

ORDINANCE NO. 2010-04

AN ORDINANCE OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, FLORIDA, PERTAINING TO ADULT ENTERTAINMENT AND SEXUALLY ORIENTED BUSINESSES (COLLECTIVELY AND FREQUENTLY DESCRIBED HEREIN AS SIMPLY ADULT ENTERTAINMENT ESTABLISHMENTS); CREATING DIVISION 1; PROVIDING FOR A SHORT TITLE; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR DEFINITIONS; PROVIDING FOR A PENALTY AND ADDITIONAL REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INTERPRETATION AND CONSTRUCTION OF THE ORDINANCE; PROVIDING FOR LEGISLATIVE AUTHORITY; PROVIDING FOR PREEMPTION, APPLICABILITY OF THE ORDINANCE, PURPOSE AND PRESUMPTIONS OF FACT; PROVIDING FOR PROOF OF ALCOHOLIC CONTENT OF BEVERAGES; PROVIDING FOR ADMINISTRATIVE RESPONSIBILITIES AND POWER OF ADMINISTRATIVE AGENCIES; PROVIDING FOR GENERAL REQUIREMENTS FOR LICENSED ESTABLISHMENTS; PROVIDING FOR LOCATION REQUIREMENTS; PROVIDING FOR RESTRICTIONS ON ADVERTISING; PROVIDING FOR DESIGN OF ENTRANCE AND SIGN CRITERIA; PROVIDING FOR PROSCRIPTIONS; PROHIBITING THE ADMISSIONS OF MINORS IN LICENSED PREMISES; PROHIBITING THE SALE OF ADULT MATERIALS TO MINORS; CREATING DIVISION 2; PROVIDING FOR SPECIFIC LICENSING REQUIREMENTS; PROVIDING FOR THE CLASSIFICATION OF ADULT ENTERTAINMENT LICENSES; PROVIDING FOR THE DISQUALIFICATION FOR A LICENSE; PROVIDING FOR APPLICATIONS FOR ADULT ENTERTAINMENT LICENSES; PROVIDING A CONTINUING DUTY OF A LICENSEE TO DISCLOSE INFORMATION TO THE TOWN; PROVIDING FOR INVESTIGATIONS; PROVIDING FOR THE APPROVAL OR DENIAL OF AN APPLICATION; PROHIBITING MULTIPLE LICENSES FOR A SINGLE PREMISES; PROVIDING FOR REQUIREMENTS FOR LEASED PREMISES; PROVIDING FOR REGULATORY FEES; PROVIDING FOR THE DISPLAY OF LICENSE; PROVIDING FOR TERM AND RENEWAL; PROVIDING FOR LICENSE TRANSFER; PROVIDING FOR THE CHANGE OF LOCATION OR NAME OF BUSINESS; PROVIDING FOR THE SUSPENSION OR REVOCATION OF LICENSES; PROVIDING FOR LICENSEE RECORDS AND REPORTS; PROVIDING FOR PROVISIONS RELATED TO THE TRANSFER OF LICENSES; PROVIDING AN APPEAL PROCESS FOR THE SUSPENSION OR REVOCATION OF LICENSES; PROVIDING APPEAL PROCEDURES FOR THE SUSPENSION AND REVOCATION OF LICENSES; CREATING DIVISION 3; PROVIDING FOR WORKER RECORDS; CREATING DIVISION 4; PROVIDING FOR REQUIREMENTS FOR LEISURE SPA ESTABLISHMENTS; PROVIDING FOR THE CONTROL OF COMMUNICABLE DISEASES; PROVIDING FOR EMPLOYEE QUALIFICATIONS; PROVIDING FOR HOME MASSAGE TREATMENT; PROVIDING FOR THE ADMISSION AND TREATMENT OF MINORS, HOURS OF OPERATION, INSPECTIONS AND PROHIBITIONS; CREATING DIVISION 5; PROVIDING REQUIREMENTS FOR ADULT

MOTION PICTURE THEATERS; PROVIDING FOR ADMISSION OF MINORS, INSPECTIONS AND PROHIBITIONS; CREATING DIVISION 6; PROVIDING FOR ADMISSION OF MINORS, INSPECTIONS AND PROHIBITIONS; PROVIDING FOR PROVISIONS RELATING TO NOTICE OF SALE OF ADULT MATERIALS AND AUTHORITY TO REQUIRE ADDITIONAL INFORMATION; CREATING DIVISION 7; PROVIDING PROVISIONS FOR ADULT DANCING ESTABLISHMENTS; PROVIDING FOR INSPECTIONS; CREATING DIVISION 8; PROVIDING FOR PROVISIONS FOR ESCORT SERVICES; CREATING DIVISION 9; PROVIDING FOR PENAL PROVISIONS; PROVIDING FOR PROHIBITED ACTS WHERE ALCOHOLIC BEVERAGES ARE PRESENT; PROVIDING FOR PROHIBITED ACTS GENERALLY; PROVIDING FOR PROHIBITED ACTS BY CUSTOMERS; PROVIDING FOR IMMUNITY FROM PROSECUTION FOR TRESPASS RELATING TO DEPARTMENTS, EMPLOYEES, ATTORNEYS, AND OFFICERS OR AGENTS OF THE TOWN OF GRANT-VALKARIA OR ANY LAW ENFORCEMENT OFFICER; PROHIBITING ADULT ENTERTAINMENT ESTABLISHMENTS AS HOME OCCUPATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

**WHEREAS**, the Town of Grant-Valkaria may lawfully regulate certain activities within and the location and appearance of adult entertainment establishments and establishments dealing in alcoholic beverages; and

**WHEREAS**, the activities of certain commercial enterprises, that are appropriately included within the definition of the term "adult entertainment establishment" or "sexually oriented business", have resulted in the necessity for Code provisions regulating adult entertainment establishments and sexually oriented business activities and the activities of other similar businesses; and

**WHEREAS**, the Town Council of the Town of Grant-Valkaria, Florida, has reason to believe and believes that (a) when the possession, display, exhibition, distribution and sale of books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and devices that depict, illustrate, describe or relate to specified sexual activities and/or (b) with the operation

and maintenance of places where parts of one person are treated or encountered by rubbing, stroking, kneading or tapping by a second person, accompanied by the exposure or display of specified anatomical areas, other activities tend to accompany them that are illegal, immoral or unhealthy, and

**WHEREAS**, such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, obscene, lewd and lascivious behavior, exposing minors to harmful materials, exposing citizens to an unsanitary and/or unhealthy environment, sale or possession of controlled substances, and violent crimes against persons and property, and

**WHEREAS**, illegal, immoral or unhealthful activities tend to concentrate around and be aggravated by the presence of the activities detailed above, and

**WHEREAS**, the buildings and establishments in which the activities and business operations described above take place are conducive to and may be used for the commission of immoral, lewd, indecent or illegal acts, and

**WHEREAS**, failure of the Town of Grant-Valkaria to ensure that adult entertainment activities and sexually oriented business are appropriately regulated would have adverse negative impacts on the Town; and

**WHEREAS**, the business operations and activities detailed above frequently occur in commercial establishments either selling or allowing consumption of alcoholic beverages on the premises, and

**WHEREAS**, there is a direct relationship between the concurrent consumption of alcoholic beverages and the activities described above and an increase in criminal activities, degradation and disturbances of the peace and good order of the community, and

**WHEREAS**, certain studies have shown the concurrence of the sale and consumption of

alcoholic beverages with the activities described above is hazardous to the health and safety of those persons in attendance, and tends to depreciate the value of adjoining property, harm the economic welfare of the community as a whole and adversely affect the public's interest in the quality of life, tone of commerce, and total community environment of the Town, and

**WHEREAS**, the Town of Grant-Valkaria is a rural and family oriented community that encourages economic and tourism development based on family oriented activities and events; and

**WHEREAS**, the Town Council desires to protect and preserve the unique character of the Town of Grant-Valkaria as a rural and family oriented attraction for families, tourists and businesses; and

**WHEREAS**, the Town of Grant-Valkaria is essentially a rural residential suburban community of less than 5,000 people; and

**WHEREAS**, the Town of Grant-Valkaria is a Town that is, and desires very much to continue to be, a community that contains and is known for traditional wholesome public recreational activities and family oriented facilities and recreational activities, such as by means of illustration and without limitation: a community center, public boat ramp, historical tourism sites, water sports, and all of their attendant activities; and

**WHEREAS**, the Town Council finds and determines that the provisions contained herein are the most reasonable and minimal restrictions required so as to regulate conduct which is or could be adverse to public order, health, safety, morals and welfare within the Town of Grant-Valkaria; and

**WHEREAS**, the passage of this Ordinance is necessary to preserve the basic family oriented character of the Town of Grant-Valkaria; and

**WHEREAS**, the prohibition and regulation of the public display of nude conduct or sexual

behavior, or the simulation thereof, and the graphic depiction of nude and sexual conduct in such establishments will promote the general health, safety, order, morals, and welfare of the public and further promote and enhance the development of residential areas and businesses and industries other than said establishments within the Town of Grant-Valkaria; and

**WHEREAS**, the Town’s Charter provides, in part, that “...*all codes and ordinances... of Brevard County in effect on the day of adoption of this Charter shall... remain in force and effect as municipal codes, ordinances... of the town*; and

**WHEREAS**, upon the adoption of the Town’s Charter, the Adult Entertainment Code of Brevard County, Sections 62-4901 through 62-5142, became a municipal code of Grant-Valkaria; and

**WHEREAS**, adult entertainment establishments require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate, and

**WHEREAS**, the Town Council finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of the municipality that demands reasonable regulation of adult entertainment establishments in order to protect the health and well-being of the citizens; and

**WHEREAS**, there is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the reduction of property values; and

**WHEREAS**, it is recognized that adult entertainment establishments, due to their nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

**WHEREAS**, the potential dangers to the health, safety, and welfare of the citizens of Grant-Valkaria posed by permitting a sexually-oriented business or an adult entertainment establishment to operate without first meeting the requirements of this ordinance are so great as to require the inspection and licensing of said establishments prior to permitting them to initiate operations and thereafter, and

**WHEREAS**, there is a higher incidence of criminal activity among the employees of commercial establishments that permit the concurrence of the consumption of alcoholic beverages and adult entertainment than among the employees of other commercial establishments, and

**WHEREAS**, the Town, through its police power and the Twenty-First Amendment of the United States Constitution, has the right to regulate the time, place and manner of the selling and consumption of alcohol, and

**WHEREAS**, sexually-oriented businesses and adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled or not adequately controlled by the operators of the establishments or businesses. Further, there are presently no mechanisms or inadequate mechanisms to make the owners of these businesses or establishments responsible for the activities that occur on their premises, and

**WHEREAS**, certain workers of certain sexually-oriented businesses and adult entertainment establishments defined in this Ordinance engage in a higher incidence of certain types of illicit sexual behavior than workers of other business establishments, and

**WHEREAS**, sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses and adult entertainment establishments, especially those which provide private or semi-private areas, booths or cubicles for viewing films, videos, live sex shows and those having physical interaction between workers and customers, and **WHEREAS**, offering and providing such private spaces encourages such previously mentioned activities, which create unhealthy conditions, and

**WHEREAS**, persons frequent certain adult theaters, adult arcades, and other sexually-oriented businesses and adult entertainment establishments for the purpose of engaging in sex within the premises of such businesses and establishments, and

**WHEREAS**, at least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses and adult entertainment establishments, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections, and

**WHEREAS**, since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992, and currently there are 1,400,000 people infected with the disease nationally with 40,000 people becoming infected annually, and

**WHEREAS**, as of December 31, 1995, there have been 51,838 reported cases of AIDS in the State of Florida with over 100,000 AIDS cases being reported in the State of Florida from 1983 -2005 and Florida ranks third in cumulative AIDS cases in the United States and has the second highest AIDS rate in the United States, and

**WHEREAS**, from 1981 to June 1996, the number of living persons testing positive for

the HIV antibody with AIDS symptoms has risen to 73,217 in the 28 states having confidential reporting requirements, and

**WHEREAS**, the number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990, and between 2004 and 2005, the national syphilis rate increased 11.1 per cent, and

**WHEREAS**, the number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990, and currently 350,000 cases of gonorrhea are reported annually with Florida reporting over 20,000 cases of gonorrhea annually, and

**WHEREAS**, 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, and

**WHEREAS**, according to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts, and

**WHEREAS**, sanitary conditions in some sexually-oriented businesses and adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities, and

**WHEREAS**, numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses and adult entertainment establishments where persons view "adult" oriented films which causes many concerns of Grant-Valkaria citizens including but not limited to health and aesthetic concerns, and

**WHEREAS**, the findings noted above and as set forth hereinafter raise substantial governmental concerns, and

**WHEREAS**, the activities occurring at sexually-oriented businesses and adult

entertainment establishments occur at establishments and businesses which operate primarily for the purpose of making a profit and, as such, their locations are subject to regulation by the Town in the interest of the good order, health, safety, economy, property values, and general welfare of the people, businesses and industries of the Town. A major industry which is important to the community's economic welfare is tourism by persons seeking to bring children to visit Grant-Valkaria and environs who wish to stay in a community with a family atmosphere not dominated by commercialized sexual themes, and

**WHEREAS**, when the activities occurring at sexually-oriented businesses and adult entertainment establishments are present in establishments and businesses, other activities which are illegal, unsafe, or unhealthy tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to, prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials and unhealthy environments, exposing other citizens to unhealthy environments, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property, and

**WHEREAS**, when the activities occurring at sexually-oriented businesses and adult entertainment establishments are competitively exploited in establishments and businesses, they tend to attract an undesirable number of transients, lower real property values, promote the particular crimes described above, discourage tourism and, ultimately, lead residents to move to other locations, and

**WHEREAS**, the activities occurring at sexually-oriented businesses and adult entertainment establishments sometimes occur in establishments and businesses concurrent with the sale and consumption of alcoholic beverages which concurrence leads to a further increase in criminal activity, unsafe activity, and disturbances of the peace and order of the surrounding community and creates additional hazards to the health and safety of customers and workers and further depreciates the value of adjoining real property harming the economic welfare of the surrounding community and adversely affecting the quality of life, commerce, and community environment, and

**WHEREAS**, physical contact or touching within sexually-oriented businesses and adult entertainment establishments between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases, and

**WHEREAS**, in order to preserve and safeguard the good order, health, morals, safety, and general welfare of the people of the Town it is necessary and advisable for the Town to regulate sexually-oriented businesses and adult entertainment establishments, and

**WHEREAS**, the potential dangers to the good order, health, safety, and general welfare of the people of the Town posed by permitting a sexually-oriented business or adult entertainment establishment to operate without first meeting the requirements under this Code are so great as to require the inspection and examination of such establishments prior to their being permitted to operate, and

**WHEREAS**, straddle dancing is primarily conduct rather than communication or expression, and

**WHEREAS**, straddle dancing, unregulated private performances, and enclosed adult booths in sexually-oriented businesses and adult entertainment establishments have resulted in indiscriminate commercial sex between individuals and poses a threat to the health of the participants and promotes the spread of communicable sexually transmitted diseases, and

**WHEREAS**, workers at sexually-oriented businesses and adult entertainment establishments engage in a higher incidence of certain types of unhealthy or criminal behavior than workers of other establishments and businesses including, but not limited to, a very high incidence of illegal prostitution or engaging in lewdness in violation of Florida Statutes, Chapter 796, operation without business tax receipts and illegal and unlicensed massage, and

**WHEREAS**, physical contact or touching between workers of sexually-oriented businesses and adult entertainment establishments and customers poses a threat to the health of both and promotes the spread of communicable and sexually transmissible diseases, and

**WHEREAS**, the practice of not paying or underpaying workers at sexually-oriented

businesses and requiring them to earn their entire income from tips or gratuities from their customers who are predisposed to want sexual activity has resulted in a high incidence of prostitution and crimes related to lewdness by workers, and

**WHEREAS**, sexually-oriented businesses involve some activities that are pure conduct engaged in for the purpose of making a profit, rather than speech or expressive activity and, therefore, are subject to and require increased regulation to protect the health, good order, morals, welfare and safety of the community, and

**WHEREAS**, the Town of Grant-Valkaria wants to prevent these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of adult entertainment establishments as well as the health problems associated with such businesses;

**WHEREAS**, the Town now desires to adopt its own Adult Entertainment Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF GRANT-VALKARIA, BREVARD COUNTY, STATE OF FLORIDA, AS FOLLOWS:**

## **SECTION 1. New Adult Entertainment Code Adopted.**

### **“ADULT ENTERTAINMENT CODE”**

#### **DIVISION 1. GENERALLY**

##### **Sec. 1. Short title.**

This article may be known and cited as the Adult Entertainment Code.

##### **Sec. 2. Findings of fact.**

(A) Based on evidence and testimony presented at public hearings before the Town Council which included a presentation indicating the adverse secondary effects of adult entertainment establishments and sexually oriented businesses in other communities in the United States and in reports made available to the town council and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 427 U.S. 50 (1976); *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *City of Erie, et al. v. Pap’s A.M tdba “Kandyland”*, 529 U.S. 227 (2000); *Schad v. Mount Ephraim*, 452 U.S. 61 (1981); *Geaneas v. Willets*, 911 F.2d 579 (11<sup>th</sup> Cir. 1990); *Moffett v. State* 340 So2d 1155, 1156, n.3 (Fla. 1977); *Café 207, Inc., v. St. Johns County*, 856 F.Supp. 641 (M.D. Fla. 1994); *Board of County Commissioners v. Dexterhouse*, 348 So.2d 916 (Fla. 2<sup>nd</sup> DCA 1977), *ATS Melbourne, Inc., v. City of Melbourne*, 475 So2d 1257 (Fla. 5<sup>th</sup> DCA 1985), *Boss Capital, Inc., City of Casselberry*, 187 F.3d 1251 (11<sup>th</sup> Cir. 1999), *California v. LaRue*, 409 U.S. 109 (1972), *David Vincent, Inc., v. Broward County*, 200 F.3d 1325 (11<sup>th</sup> Cir. 200), *City of Daytona Beach v. Del Percio*, 476 So2d 197 (Fla. 1985), *Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975), *Grand Faloon Tavern, Inc., v. Wicker* 670 F.3d 943 (11<sup>th</sup> Cir. 1982), *Hart Book Stores, Inc., v. Edmisten*, 612 F.2d 821 (4<sup>th</sup> Cir. 1979), *International Eateries of America, Inc., v. Broward County*, 941 F.2d 1157 (11<sup>th</sup> Cir. 1991), *Krueger v. City of Pensacola*, 759 F.2d 851 (11<sup>th</sup> Cir. 1985), *Leverett v. City of Pinellas Park*, 775 F.2d 1536 (11<sup>th</sup> Cir. 1985), *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), *City of Newport v. Iacobucci*, 479 U.S. 92 (1986), *New York State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981), *Northland Cinema, Inc., v. City of Seattle*, 585 P.2d 709 (Wash. 1978), *Ramirez v. Pugh* 379 F.3d 122 (3<sup>rd</sup> Cir 2004), *Red-Eyed Jack, Inc., v. City of Daytona Beach*, 165 F.Supp. 1322 (M.D. Fla. 2001), *Peek-A-Boo Lounge of Bradenton, Inc., v. Manatee County*, 337 F.3d 1251 (11<sup>th</sup> Cir. 2003), *44 Liquormart, Inc., v. Rhode Island*, 517 U.S. 484 (1996) and on the substance of and findings made or incorporated in studies accomplished in other communities and ordinances enacted in other communities, including but not limited to Phoenix, Arizona; Tucson, Arizona; St. Paul, Minnesota; Minneapolis, Minnesota; Houston, Texas; New York, New York; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Austin, Texas; Macon-Bibb County, Georgia; Palm Beach County, Florida; Manatee County, Florida; Jacksonville, Florida, City of Marion, South Dakota; Broward County, Florida; the findings of the Attorney General of the State of Minnesota; the *Report of the United States Attorney General's Commission on Pornography* (1986); the *Adult Entertainment Study, Department of City Planning, City of New York* (November, 1994); the *Final Report to the City of*

*Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard* (McCleary and Meeker, October 23, 1991); *Adult Bookstores Impact on Property Values* conducted by the Division of Planning, Department of Metropolitan Development, Indianapolis, 1984 “*Adult Entertainment Businesses in Indianapolis, An Analysis*” conducted by the Division of Planning, Department of Metropolitan Development, Indianapolis, January 1984; *Report on Adult Businesses in Austin*, Office of Land Development Services (May 19, 1986); *Reducing Residential Crime and Fear: The Hartford Neighborhood Crime Prevention Program* (Fowler, McCalla and Mangione, December, 1979); *Report of the Attorney General’s Working Group on the Regulation of Sexually Oriented Businesses* (Attorney General of Minnesota, June 6, 1989); *The Social Life of Small Urban Spaces* (Whyte, 1980); *Dangerous Situations: Social Context and Fear of Victimization* (Warr, 1980, 68 [3], p. 891-907); *Committee on the Proposed Regulation of Sexually Oriented Businesses* (1983, Houston City Council); *Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers* (March 3, 1986); *The Physical Environment of Street Blocks and Resident Perceptions of Crime and Disorder; Implications for Theory and Measurement* (Perkins, Meeks and Taylor, Journal of Environmental Psychology, 1993, 12: p. 29-49); *An Analysis of the Effects of SOBs on the Surrounding Neighborhoods in Dallas, Texas* (April 29, 1997); *Effects of Adult Entertainment Businesses on Residential Neighborhoods* (The Department of Planning, Research & Development, El Paso, September 26, 1986) the publication entitled “*Protecting Communities From Sexually Oriented Businesses*” (Southwest Legal Press, Inc.); *Adult Entertainment Legislative Record*, City of Federal Way (Londi K. Lindell, Federal Way City Attorney); *City of Kelso, Zoning for Sexually Oriented Businesses* (Chuck Long, Chairman, Kelso Planning Commission); *Regulating Adult Entertainment Establishments in Maine* (Matthew Nazar, Director, Land Use Program); the publication entitled “*Local Regulation of Adult Businesses*” (Clark, Boardman and Callaghan); *Report of the Surgeon General’s Workshop on Pornography and Public Health* (Mulvey and Haugaard, June 22-24, 1986); *Municipal Regulation of Adult-Oriented Businesses* (Pennsylvania Legislator’s Municipal Deskbook, Third Edition, 2006); *MCLE Self-Study: The Brave New World of Adult Entertainment Regulation* (Public Law Journal Vol. 23, No. 3, Summer 2000, Jeffery Goldfarb); publications prepared by the Florida Family Association, Inc. (Tampa, Florida) relating to the regulation of sexually oriented businesses and adverse secondary effects of sexually oriented businesses; the “*Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses,*” Peter R. Hecht, Ph.D. (1996); various public meeting transcripts from the City of Melbourne, Florida; City of Palm Bay, Florida; city of Casselberry, Florida and Pinellas County, Florida; and the findings of fact relating to the Adult Entertainment Code of Orange County, Florida, and Seminole County, Florida, two neighboring counties in Central Florida, other matters and materials submitted at the public hearings relating to this Code and other matters and documents relating to all of such, the council finds:

(1) Establishments exist or may exist within the Town and other nearby municipalities and counties in Central Florida where books, magazines, motion pictures, prints, pamphlets, photographs, periodicals, newspapers, comic books, written or printed stories or articles, cards, records, novelties or any written, printed or recorded matter of any such character which may or may not require mechanical or other means to be transmitted into auditory, visual or sensory representations of such character; and/or devices which depict, illustrate, describe or relate to specified sexual activities are possessed, displayed, exhibited, distributed and/or sold.

(2) Establishments exist or may exist within the Town or other nearby municipalities or

counties in Central 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, who, for any form of commercial gain, perform or are presented while displaying or exposing any specified anatomical area; or
- c. Where straddle dancing or private modeling occurs.

(3) Establishments exist or may exist within the town and surrounding municipalities where sexually oriented services are offered for commercial or pecuniary gain in the form of commercial physical contact or escort services. The employees of such sexually oriented businesses engage in physical contact or touching with customers, including acts of prostitution, or encourage or entice customers to engage in acts of lewdness.

(4) Sexually-oriented businesses and adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled or not adequately controlled by the operators of the establishments or businesses. Further, there are presently no mechanisms or inadequate mechanisms to make the owners of these businesses or establishments responsible for the activities that occur on their premises.

(5) Certain workers of certain sexually-oriented businesses and adult entertainment establishments defined in this Code engage in a higher incidence of certain types of illicit sexual behavior than workers of other business establishments.

(6) Sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses and adult entertainment establishments, especially those which provide private or semi-private areas, booths or cubicles for viewing films, videos, live sex shows and those having physical interaction between workers and customers.

(7) Offering and providing such private spaces encourages such previously mentioned activities, which create unhealthy conditions.

(8) Persons frequent certain adult theaters, adult arcades, and other sexually-oriented businesses and adult entertainment establishments for the purpose of engaging in sex within the premises of such businesses and establishments.

(9) At least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses and adult entertainment establishments, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

(10) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, 253,448 through December 31, 1992 and currently there are 1,400,000 people infected with the disease nationally with 40,000 people becoming infected annually.

(11) As of December 31, 1995, there have been 51,838 reported cases of AIDS in the State of Florida with over 100,000 AIDS cases being reported in the State of Florida from 1983 -2005 and Florida ranks third in cumulative AIDS cases in the United States and has the second highest AIDS rate in the United States.

(12) From 1981 to June 1996, the number of living persons testing positive for the HIV antibody with AIDS symptoms has risen to 73,217 in the 28 states having confidential reporting requirements.

(13) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990 and between 2004 and 2005, the national syphilis rate increased 11.1 per cent.

(14) The number of cases of gonorrhea in the United States reported annually remains at a high level; with over one-half million cases being reported in 1990 and currently 350,000 cases of gonorrhea are reported annually with Florida reporting over 20,000 cases of gonorrhea annually.

(15) 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.

(16) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(17) Sanitary conditions in some sexually-oriented businesses and adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of owners and operators of the facilities to self-regulate those activities and maintain those facilities.

(18) Numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses and adult entertainment establishments where persons view "adult" oriented films which give rise to health and aesthetic concerns.

(19) The activities described in subsections (1) through (18) occur at establishments for the purpose of making a profit, and, as such, are subject to regulation by the Town in the interest of the health, safety, morals and general welfare of the people of the Town.

(20) When the activities described in subsections (1) through (18) are present in establishments within the Town, other activities which are illegal, immoral 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, sale or possession of controlled substances, and violent crimes against persons or property.

(21) When the activities described in subsections (1) through (18) are present in establishments within the Town, they tend to attract an undesirable number of transients, blight neighborhoods,

adversely affect neighboring businesses, lower real property values, promote crime, particularly the kinds detailed in subsection (5), and ultimately lead residents and businesses to move to other locations.

(22) The establishments in which the activities described in subsections (1) through (18) occur are usually constructed, in part or in whole, of substandard materials, and are usually maintained in a manner reflecting disregard for the health and safety of the occupants, and have exterior appearance and/or signage which depreciates the value of adjoining real property and otherwise contributes to urban decline.

(23) The activities described in subsections (1) through (18) frequently occur in establishments concurrent with the sale and consumption of alcoholic beverages.

(24) The occurrence of the sale and consumption of alcoholic beverages with the activities described in subsections (1) through (18) leads to an increase in criminal activity, moral degradation and disturbances of the peace and order of the Town.

(25) The concurrence of the sale and consumption of alcoholic beverages with the activities described in subsections (1) through (18) is hazardous to the health and safety of those persons in attendance, depreciates the value of adjoining real property, harms the economic welfare of the Town and adversely affects the public's interest in the quality of life, tone of commerce, and community environment in the Town.

(26) In order to preserve and safeguard the health, safety, morals and general welfare of the Town, it is necessary and advisable for the Town to regulate the sale and consumption of alcoholic beverages at establishments where the activities described in subsections (1) through (18) occur.

(27) Workers of establishments at which the activities described in subsections (1) through (18) occur engage in a higher incidence of certain types of criminal behavior than workers of other establishments, including prostitution and lewdness in violation of F.S. ch. 796, operating without a business tax receipt and operating unlicensed massage parlors and cosmetology businesses.

(28) Physical contact within establishments at which the activities described in subsections (1) through (18) occur between workers exhibiting specified anatomical areas and customers poses a threat to the health of both and promotes the spread of communicable and social diseases. It is desirable in the prevention of the spread of communicable diseases, to protect minors, to ensure correct identification of persons working in establishments, to enable the effective deployment of law enforcement personnel, to notify workers of conduct that is permitted and prohibited under this Code, to detect and discourage the involvement of organized crime in the adult entertainment and sexually oriented business industry and to have available for inspection from operators of establishments a limited amount of information regarding certain workers who may engage in the conduct which this Code is designed to prevent or who are likely to be witnesses to such activity.

(29) In order to preserve and safeguard the health, safety, morals and general welfare of the people of the Town, it is necessary and advisable for the Town to regulate the conduct of owners, managers, operators, agents, employees, entertainers, performers and customers at establishments where the activities described in subsections (1) through (18) occur.

(30) The potential dangers to the health, safety, morals and general welfare of the people of the Town posed by permitting an establishment at which the activities described in subsections (1) through (18) occur to operate without first obtaining a license under this Code are so great as to require the licensure of such establishments prior to their being permitted to operate.

(31) Requiring licensees of establishments at which the activities described in subsections (1) through (18) occur to keep a list of information concerning current workers and certain past workers will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects, and by preventing minors from working in such establishments.

(32) Prohibiting establishments at which the activities described in subsections (1) through (18) occur from operating within set distances of educational institutions, religious institutions, areas zoned for residential use, and parks, at which minors are customarily found, will serve to protect minors from the adverse effects of the activities that accompany such establishments.

(33) Straddle dancing does not contain any element of communication, and is therefore conduct rather than expression.

(34) Straddle dancing in establishments poses a threat to the health of the participants and promotes the spread of communicable and social diseases.

(35) Physical contact or touching between employees or workers of sexually oriented businesses and customers poses a threat to the health of both, and promotes the spread of communicable and sexually transmissible diseases.

(36) The practice of not paying workers at sexually oriented businesses and requiring them to earn their entire income from tips or gratuities from customers who are predisposed to desire or want sexual activity has resulted in a high incidence of prostitution and crimes related to lewdness.

(37) Sexually oriented businesses involve activities that are pure conduct engaged in for the purpose of making a profit, rather than speech or expressive activity, and therefore are subject to and require increased regulation to protect the health, welfare and safety of the community.

(38) Requiring sexually oriented businesses to maintain worker records will discourage incidents of criminal behavior such as lewdness and prostitution, thereby further safeguarding the health of both employees and customers and assisting in the facilitation of the identification of potential witnesses or suspects if criminal acts occur.

(39) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented businesses and adult entertainment establishments, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(40) Removal of doors on adult booths and requiring sufficient lighting on premises with adult

booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

(41) This Ordinance is not intended to suppress any activities protected by the First Amendment, but is intended to be a content neutral enactment to address the secondary effects of sexually oriented businesses.

(42) The general welfare, health, good order, morals and safety of the citizens of the Town will be promoted by the enactment of this Code.

The findings made herein raise important, substantial, and compelling governmental concerns. Sexually oriented businesses and adult entertainment establishments have operational characteristics which should be reasonably regulated in order to protect those governmental concerns.

(B) Intent. It is the intent of this Code to protect and preserve the good order, health, peace, morals, safety, and welfare of the citizens of the Town of Grant-Valkaria. This Code regulates conduct and is not an ordinance that affects the use of land as contemplated by Section 166.041, Florida Statutes.

(C) Authority. This Code is enacted under the constitutionally derived home rule power of the Town of Grant-Valkaria in the interest of the good order, health, morals, peace, safety, and general welfare of the people of the Town.

(D) Recitals. It is the Town Council's further intention to accomplish those intents and purposes expressed by the Town Council in the recitals of the ordinance from which this Section derives, each of which are incorporated by reference into this section.

(E) Speech protection. Nothing herein shall be construed to prohibit constitutionally protected expression or speech. This Code is intended to reasonably regulate the adult entertainment industry and sexually-oriented businesses which engage in commercial activities involving acts or services of a sexually explicit nature or which involve acts or services involving matters which are sexual in nature.

### **Sec. 3. Definitions.**

For the purpose of this article, the following words and phrases shall have the meaning set forth in this section, unless it is clear from the context that a different meaning is intended:

*Adult arcade* means an establishment where, for any form of consideration, one or more motion projectors, slide projectors, videotape or playback and viewing devices, or similar machines, for viewing by five or fewer persons each, are used to show films, motion pictures, videocassettes, slides, digital or other photographic reproductions which are characterized by emphasis on the depiction or description of specified sexual activities or specified anatomical areas. For the purpose of this article, adult arcade is included within the definition of adult motion picture theater.

*Adult bookstore* means an establishment which sells, leases or rents adult material for any form of consideration, unless the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprises less than ten percent of the gross income from the sale or rental of goods or services at the establishment or the individual items of adult material offered for sale or rental comprise less than 15 percent of the individual items publicly displayed at the establishment as stock in trade. It is an affirmative defense to an alleged violation of this article regarding operating an adult bookstore without an adult entertainment license if the alleged violator shows that the adult material is accessible only by employees and either the gross income from the sale or rental of adult material comprises less than ten percent of the gross income from the sale or rental of goods or services at the establishment, or the individual items of adult material offered for sale or rental comprise less than 15 percent of the individual items publicly displayed at the establishment as stock in trade.

*Adult booth* means a separate partially or fully enclosed booth within an adult entertainment establishment accessible to any person, regardless of whether a fee is charged for access, for the purpose of viewing adult materials. The term "adult booth" does not include a hallway or foyer used primarily to enter or exit the establishment or its restrooms. However, only one person shall be allowed to occupy a booth at any time.

*Adult dancer* Any person who, for commercial or pecuniary gain, offers, suggests, or agrees to engage in a private performance, modeling or display of male or female lingerie, bathing suits, under garments, or specified anatomical areas to the view of a customer.

*Adult dancing establishment* means

- 1) a commercial establishment that permits suffers or allows adult dancers to display or expose specified anatomical areas. Any establishment on whose premises any employee displays or exposes specified anatomical areas shall be deemed an adult dancing establishment and shall be required to obtain a license under this article.
- 2) where any worker wears and displays to a customer any covering, tape, pastie, or other device which simulates or otherwise gives the appearance of the display or exposure of any specified anatomical areas, regardless of whether the worker actually engages in performing or dancing; or
- 3) Offers, solicits, or contracts to dance or perform with or for a customer and accepts any consideration, tip, remuneration or compensation from or on behalf of that customer; or
- 4) Dances or performs at or within three (3) feet of a customer and accepts any consideration, tip, remuneration, or compensation from or on behalf of that customer; or
- 5) A bona fide private club whose membership as a whole engages in social nudism or naturalism as in a nudist resort or camp and at which specified sexual activities do not occur shall be presumed not to be an adult performance establishment.

*Adult entertainment establishment* means an adult motion picture theater, a leisure spa establishment, an adult bookstore or an adult dancing establishment.

*Adult materials* mean any one or more of the following:

- (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slide, digital or other visual representations or recordings, novelties and devices, which have as their primary or dominant theme matter depicting, illustrating, describing or relating to specified sexual activities or specified anatomical areas; or
- (b) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

*Adult motel* means any hotel or motel, boardinghouse, rooming house or other lodging which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; offers a sleeping room for rent for a period of time that is less than ten (10) hours; allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours and otherwise advertises outside the individual rooms the presentation of film, video or any other visual material or methods which has as its primary or dominant theme matters depicting, illustrating or relating to specified sexual activities for observation by patrons thereof. For the purposes of this article, an adult motel is included within the definition of adult motion picture theater.

*Adult motion picture theater* means an enclosed building or a portion or part of an enclosed building, or an open air theater designed to permit viewing by patrons seated in automobiles or other seating provisions, for presenting, for any form of consideration, film, video, digital or any other visual material or method which has as its primary or dominant theme matters depicting, illustrating or relating to specified sexual activities for observation by patrons thereof, and includes any hotel or motel, boardinghouse, rooming house or other lodging for any form of consideration which advertises the presentation of such film material. For the purposes of this article, an adult motion picture theater includes an adult arcade, an adult motel and an adult motion picture booth.

*Alcoholic beverage* means all distilled spirits and all beverages containing one-half (1/2) of one (1) percent (.005) or more alcohol by volume. It shall be prima-facie evidence that a beverage is an alcoholic beverage if there is proof that the beverage in question was or is known as beer, wine, whiskey, moonshine whiskey, moonshine, shine, rum, gin, tequila, bourbon, vodka, scotch, scotch whiskey, brandy, malt liquor, or by any other similar name or names, or was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name, or trademark. Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell, or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to his opinion about whether such beverage is an alcoholic beverage.

*Conviction* means a determination of guilt resulting from a plea or trial, regardless of whether

adjudication was withheld or whether imposition of sentence was suspended.

*Customer means* (1) Any person present at an adult entertainment establishment or sexually-oriented business, other than operators or workers, regardless of whether the person has given or paid any consideration to be present at the adult entertainment establishment or sexually-oriented business and regardless of whether the person has paid any money for goods or services at or to the adult entertainment establishment or sexually-oriented business; or (2) Any person, excluding a worker or operator, who has paid, or has offered, agreed, been solicited, or had someone else offer or agree on that person's behalf to pay any consideration, fee, or tip to an operator or worker of an adult entertainment establishment or sexually-oriented business.

*Escort means* any person who, for commercial or pecuniary gain, compensation or tips, agrees to, offers to go, or goes to any place, including, but not limited to, a business, hotel, motel, residence, boat, vessel, motor vehicle, or other mode of transportation to do any of the following acts:

- (1) Act as a companion or date for, or converse with a customer;
- (2) Engage in commercial bodily contact with another person;
- (3) Engage in a private performance;
- (4) Engage in adult modeling or act as an adult model;
- (5) Display specified anatomical areas, strip naked, or go topless; or
- (6) Engage in any specified sexual activity.

Nothing in this definition shall be construed to legalize prostitution or other conduct prohibited by this Code or other law. Workers of a licensed adult-performance establishment for whom worker records are maintained pursuant to this Code are excluded from the definition of escort when engaged in the expressive display of specified anatomical areas at a licensed adult-performance establishment.

An escort who is a paid employee type worker of an escort service for whom taxes and social security payments are withheld and paid by the escort service, and who is not an independent contractor, is not required to obtain his or her own sexually-oriented business license for activities conducted pursuant to employment with the escort service.

*Escort service means* a person, business, establishment, or place operated for commercial or pecuniary gain, which advertises as an "escort", "escort service" or "escort agency" or otherwise offers or advertises that it can furnish escorts, a private performance, or adult models; or offers or actually provides, arranges, dispatches, or refers workers or themselves to act as an escort or engage in a private performance for a customer. An affirmative defense to an allegation that any person, business or establishment or entity is acting as an escort service is that it is a bona fide dating or matching service which arranges social matches or dates for two persons who each wish to meet a compatible companion when neither of said persons solicits, accepts, or receives any financial gain or any monetary tip, consideration, or compensation for the meeting or date is not an escort service.

*Establishment* means the site, physical plant or premises, or portion thereof, upon which certain activities or operations are being conducted for commercial or pecuniary gain. Applicability of the term "operated for commercial or pecuniary gain" shall not depend upon actual profit or loss, and shall be presumed where the establishment has a business tax receipt.

*Inspector* means the Town Administrator or his designee, an employee in the Town building code compliance division, the Town's law enforcement authority and code enforcement, who shall inspect premises licensed under this code and who are authorized to take or require the actions authorized by this code in case of violations being found on licensed premises, and also to inspect premises seeking to be licensed under this article and to require corrections of unsatisfactory conditions found on the premises.

*Leisure spa establishment* means a site or premises, or portion thereof, upon which any person performs any of the treatments, techniques or methods of treatment referred to in the definition of the term "leisure spa service" in this section, or where such treatments or techniques are administered, practiced, used, given, applied, or advertised, promoted or used as a place where a leisure spa service occurs or which is described or depicted as a "body scrub salon," "body wash salon," or "body relaxation salon" but shall not include the following: licensed health care facilities; licensed physicians or nurses engaged in the practice of their professions; educational or professional athletic facilities, if a leisure spa is a normal and usual practice in such facilities; or establishments exempted under F.S. ch. 480 or F.S. ch. 400.

*Leisure spa patron* means any person who receives, or pays to receive, a leisure spa or leisure spa service from a leisure spa technician for value.

*Leisure spa service* means any method of treating the external parts of the body, consisting of touching, rubbing, stroking, kneading, manipulating, washing, scrubbing, tapping or vibrating, with such treatments being performed by the hand or with any other body part or by any mechanical or electrical instrument.

The following persons engaged in the bona fide performance of the following activities shall not be deemed to be engaging in a leisure spa service for the purposes of this Code when they are engaged in the bona fide practice of their occupation or profession:

(a) Persons licensed as a massage therapist or apprentice massage therapist pursuant to Florida Statutes, Chapter 480, when providing massage services in an establishment licensed under Florida Statutes, Chapter 480.

(b) Persons licensed under the laws of the State of Florida to practice medicine, surgery, osteopathy, chiropody, naturopathy, or podiatry.

(c) Persons licensed under the laws of the State of Florida as a physician's assistant or nurse.

(d) Persons holding a drugless practitioner's certificate under the laws of the State of Florida.

(e) Persons licensed as barbers or cosmetologists under the laws of the State of Florida.

(f) Persons performing authorized services in a hospital, nursing home, sanitarium, adult congregate living facility, group home, day care center, or similar place of business when owned and operated in accordance with the laws of the State of Florida.

(g) Persons who are instructors, coaches, or athletic trainers employed by, or on behalf of, any professional, amateur, Olympic, or similar athletic team engaging in bona fide athletic events, or when employed by a governmental entity or a bona fide educational institution.

(h) Persons licensed as physical therapists under the laws of the State of Florida.

*Leisure spa technician* means any person who engages in the business of performing leisure spa services or leisure spa treatments, techniques or methods of treatment referred to in the definition of the term "leisure spa service" in this section.

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

*Park* means a tract of land within any jurisdiction which is kept for ornament or recreation and which is maintained as public property including, but not limited to, a playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land.

*Person* means individuals, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations and all other groups or combinations or entities.

*Personal advertising* means any communication on the part of any employee of an adult entertainment establishment that is designed to encourage a prospective patron to enter such establishment and is performed by repeatedly speaking in a raised tone of voice, by making prominent physical gestures, such as waving or repeatedly pointing, or by holding signs or other written statements. Personal advertising shall not include oral or physical references to an adult entertainment establishment by patrons or spectators.

*Premises* means a physical plant or location which is enclosed by walls or any other enclosing structural device or which is covered by a single roof, and shall include any structure, structures or land, or contiguous structures or land within 500 feet of the physical plant or location where such structures or land and the physical plant or location are under common ownership, control or possession.

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

*School* means an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by F.S. ch. 233. This definition includes a nursery school, kindergarten, elementary school, junior high school, middle school, senior high school or any special institution of learning under the jurisdiction of the state department of education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university. This definition of the term "school"

shall also include any educational facility at which minor children reside in conjunction with their educational experience.

*Specified anatomical areas* means:

- (a) Less than completely and opaquely covered:
  - i. Human genitals or pubic region.
  - ii. The human cleavage of the human buttocks.
  - iii. That portion of the human female breast encompassed within an area falling below the horizontal line one would have to draw to intersect a point immediately above the top of the areola (the colored ring around the nipple). This definition shall include the entire lower portion of the breast, but shall not be interpreted to include any portion of the cleavage of the breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola is not so exposed.
  - iv. The vulva;
  - v. The anus;
  - vi. The penis;
  - vii. The scrotum;
  - viii. The cleavage of the buttocks;
  - ix. The buttocks;
  - x. The anal cleft;
  - xi. The anal cleavage;
  - xii. The areola on the breast of a female;
  - xiii. The nipple on the breast of a female.
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (c) Body paint, body dyes, tattoos, liquid latex whether wet or dried, G-Strings, thongs, and similar coverings shall not be considered an opaque covering.

*Specified criminal act* means a violation of this article; an offense under F.S. ch. 794 (sexual battery) or F.S. ch. 826 (bigamy, incest), F.S. ch. 800 (lewdness, indecent exposure); an offense under F.S. §§ 806.01, 806.10, 806.111 or 806.13(2) (arson and criminal mischief); an offense under F.S. ch. 796 (prostitution); an offense under F.S. §§ 847.013, 847.0133, 847.0135, or 847.014 (obscenity); an offense under F.S. § 877.03 (breach of the peace); an offense under F.S. § 893.13 (possession or sale of controlled substances); or an offense under F.S. § 849.09(2), 849.10 or 849.25(3) (gambling); or violation of laws or ordinances of another municipal jurisdiction or state or the federal government analogous to such statutes or successor statutes to such statutes.

*Specified sexual activities* means:

- (a) Human genitals in a state of sexual stimulation, arousal or tumescence.
- (b) Acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia or zoerasty.

(c) Fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast.

(d) Oral, anal, or vaginal penetration by, or union with, the sexual organ or any other part of the body of another;

(e) Anal or vaginal penetration of another or oneself with any object; or

(f) The handling or fondling of the sexual organ of another for the purpose of masturbation directly or through a medium; or

(g) Excretory functions as part of or in connection with any of the activities set forth in subsections (a) through (f) of this definition.

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

*Town Administrator* means the Town Administrator of the Town or designee.

*Town* means the Town of Grant-Valkaria.

*Town Council* means the Town Council of Grant-Valkaria.

*Violation of this code or ordinance* means an act prohibited by any provision of this article as found by a jury of other trier of fact. Each violation occurring shall be considered a separate and distinct violation from any other occurring on the same day or in the same establishment or by the same person.

*Worker* means a person who works or performs in a commercial establishment, irrespective of whether the person is paid a salary or wage by the owner or manager of the premises. The term “employee” is synonymous with the term “worker”.

#### **Sec. 4. Penalty; additional remedies.**

(1) The Town Council may bring suit to restrain, enjoin or otherwise prevent the violation of the article.

(2) Any person who violates this article shall be guilty of an offense and punished according to F.S. §§ 775.082(4)(b) and 775.083(e)

#### **Sec. 5. Severability.**

If any portion, clause, phrase, sentence or classification of this article is held or declared to be either unconstitutional, invalid, inapplicable, inoperative or void, such declaration shall not be

construed to affect other portions of this article. It is hereby declared to be the express intent of the Town Council that any such unconstitutional, invalid, inapplicable, inoperative or void portion or portions of this article did not induce its passage and that, without the inclusion of any such portion or portions of this article, the board would have enacted the valid constitutional portions thereof.

#### **Sec. 6. Interpretation and Construction.**

This article shall be liberally construed to accomplish its purpose of licensing, regulating, regulation the location of and dispersing adult entertainment and related activities. Unless otherwise indicated, all provisions of this article shall apply equally to all persons, regardless of sex. The words "he," "his" and "him" as employed in this article shall be construed to apply to feminine pronouns and neutral pronouns, as well as to males, unless the context suggests otherwise. Words used in the singular shall include the plural, unless the context suggests otherwise.

#### **Sec. 7. Authority.**

This article is enacted under the police power and authority of the Town, and the Twenty-First Amendment to the United States Constitution, in the interest of the public health, peace, morals, safety and general welfare of the citizens and inhabitants of the Town, to regulate the sale and consumption of alcoholic beverages. Furthermore, the Adult Entertainment Code is enacted pursuant to the constitutionally derived home rule power of the Town of Grant-Valkaria established pursuant to Article VIII, Section 2(b), Florida Constitution and Chapter 166, Florida Statutes

#### **Sec. 8. Obscenity not permitted.**

Nothing in this article shall be construed to allow or permit conduct prohibited by F.S. ch. 847 (obscenity) and its amendments or successor statutes. These matters are preempted to the state and are subject to state regulation. It is not the intent of the Town council to legislate with respect to preempted matters.

#### **Sec. 9. Applicability.**

This article shall be effective throughout the municipal boundaries of the Town as they exist from time to time.

#### **Sec. 10. Purpose.**

The intent of the Town Council in adopting this Adult Entertainment Code is to establish reasonable and uniform regulations that will protect the health, safety, morals, and general welfare of the people, businesses, and industries of Grant-Valkaria and to reduce the adverse effects adult entertainment businesses have upon the Town, to regulate the location of all adult entertainment establishments within the Town, and to protect the health, safety, morals and welfare of the citizens and inhabitants of the Town. The provisions of this Code have neither the purpose nor the effect of imposing an unreasonable limitation or unreasonable restriction on the content of any

lawful communicative materials including sexually oriented materials. Similarly, it is not the intent of this Code to unreasonably restrict or deny access by distributors and exhibitors of sexually oriented entertainment protected by the First amendment to their intended market.

### **Sec. 11. Presumptions of fact.**

The following shall be presumed in actions brought for violations of this code:

(1) Any establishment which has received a business tax receipt to operate commercially is presumed to be an establishment.

(2) A person who operates or maintains an adult establishment is presumed to be aware of the activities which are conducted in such establishment.

### **Sec. 12. Proof of alcoholic content of beverages.**

(1) In all actions, civil or criminal, for violation of this code, testimonial evidence that a beverage was an alcoholic beverage, beer or wine may be offered by any person who, by experience in the past in handling or using alcoholic beverages, beer or wine, or who by taste, smell or drinking of such liquids, has knowledge of the presence of the alcoholic content thereof or the intoxicating effect thereof.

(2) The presence of alcoholic content of any beverage, beer or wine may be shown by hydrometer or gravity test made in or away from the presence of the fact finder by any person who has knowledge of the use of the instrument, but the production of such evidence is optional.

### **Sec. 13. Administrative responsibilities.**

(1) The Town council is the legislative branch of the Town government.

(2) Ultimate responsibility for the administration of this article is vested in the Town Council. The Town Council hereby designates to the Town Administrator the responsibility for granting, denying, revoking, renewing, suspending, and canceling adult entertainment licenses for proposed or existing adult entertainment establishments.

(3) The Town Administrator is responsible for inspecting any proposed establishment for which a license is being applied or any licensed establishment in order to ascertain whether it complies with or is complying with Division 1 and the Town's building department personnel are responsible to ascertain that all applicable building codes, statutes, ordinances and regulations in effect in the Town are complied with. The code enforcement department is also responsible for ascertaining whether a proposed establishment for which a license is being applied complies with all locational requirements of this code, applicable portions of Division 1 of this code, and all applicable zoning and land use regulations in effect in the town.

(4) The Town's law enforcement authority is responsible for verifying information contained on an application pursuant to Division 2; for inspecting any proposed, licensed or unlicensed establishment in order to ascertain whether it is in compliance with applicable criminal statutes and ordinances, including those set forth as Division 2 of this code; and for enforcing applicable

criminal statutes and ordinances, including those set forth as Division 2 of this code.

**Sec. 14. Power of administrative agencies.**

When a provision of this article gives a particular agency or office the authority or duty to act, the authority or duty vests any officer or employee or in any inspector who is given the authority or duty to act in accordance with the administrative procedures of the agency or office concerned.

**Sec. 15. Permitting violations or illegal acts on licensed premises.**

It shall be unlawful for a licensee, owner, employee or independent contractor to permit, suffer or allow violations of this article or illegal acts to take place on premises licensed under this article, if the licensee or employee knows or has reason to know that such violations or illegal acts are taking place.

**Sec. 16. General requirements for licensed premises.**

In addition to the special requirements contained in Divisions 4, 5, 6, 7 and 8 of this article, each premises licensed under this article shall:

- (1) Conform to all applicable building statutes, codes or ordinances, whether federal, state or local.
- (2) Conform to all applicable fire statutes, codes or ordinances, whether federal, state or local.
- (3) Conform to all applicable health statutes, codes or ordinances, whether federal, state or local.
- (4) Have each and every glass area that faces a public thoroughfare or through which casual passersby can see the materials or activity inside the licensed premises covered over by black paint or other opaque covering; provided that this requirement shall not apply if the uncovered glass area exposes to public view only a lobby or anteroom containing no material or activities of an adult nature. Such lobby or anteroom may contain a reception center or desk and chairs or couches for customers to use while waiting.
- (5) Conform to the requirements of F.S. ch. 381 and the rules and regulations of the state department of health and rehabilitative services made pursuant thereto. Each licensed premises shall be deemed to be a place serving the public for the purpose of sanitary facilities.
- (6) Conform to the following sanitary facilities requirements:
  - a. *Water supply.* The water supply must be adequate, of safe, sanitary quality and from an approved source in accordance with provisions of rule 62-555 F.A.C.
  - b. *Restrooms.* All licensed establishments shall be provided with adequate and conveniently located toilet facilities for the establishment's employees and patrons in accordance with the provisions of F.A.C. chs. 64E-10. All toilet facilities must be of readily cleanable design and be kept clean, in good repair and free from objectionable odors. Restrooms must be vented to the outside of any building, be equipped with mechanical exhaust systems and be well

lighted. Floors shall be of impervious, easily cleanable materials. Walls shall be smooth, nonabsorbent and easily cleanable. Toilet tissue shall be provided. Easily cleanable receptacles shall be provided for waste materials, and such receptacles in toilet rooms for women shall be covered. Toilet rooms shall be completely enclosed and shall have tight fitting self-closing doors. Such doors shall not be left open except during cleaning or maintenance. Toilet rooms shall not open directly into food service or preparation areas (beverage is considered a food). Hand washing signs shall be posted in each toilet room used by employees.

(7) Keep the adult entertainment establishment or sexually-oriented business license posted and prominently displayed in a conspicuous place at the establishment or business at all times, which license shall be available for inspection upon request at all times by the public, any law enforcement officer and the Mayor, or his/her designee, when the establishment or business is open for business.

(8) Provide to any law enforcement officer and the Town Administrator, during all hours of operation or when an operator is present at the establishment, access through the main entrance and into all areas of the establishment where customers are permitted without the necessity of using a key, computer entry, password or seeking clearance from a worker or customer to obtain entry through an electronically operated door or entryway.

(9) Install, construct, keep, maintain or allow only those signs at the establishment or building exterior which comply with the provisions relating to signage in the Land Development Regulations of the Town of Grant-Valkaria.

(10) Not allow any person under eighteen (18) years of age to be present when services are provided to or performed for a customer or when the establishment or business is open for business.

(11) Not employ or provide goods or services to any person under eighteen (18) years of age.

(12) Not provide, offer or engage in any services to any person when not licensed to do so under this Code.

(13) Not operate when a license issued pursuant to this Code has been suspended, revoked or canceled or when the license is expired.

(14) Not permit any animal except seeing-eye dogs accompany a worker or customer when services are provided or performed.

(15) Not place, operate or contain video cameras, transmitting or taping equipment anywhere on the premises except where customers are advised in advance by posted notice.

(16) Not advertise the presentation of any activity prohibited by any law, rule or regulation whether Federal, State or local.

(17) Ensure that the view areas specified in this Code remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any customer is present in the

premises so as to ensure that no customer is permitted access to any area of the premises which has been designated as an area in which non-workers will not be permitted.

(18) Ensure that at least one operator is on duty and present at the establishment or business when the establishment or business is open for business that is responsible and knows the whereabouts of all records required by this Code. Said operator's name shall be conspicuously posted on the premises at all times the business or establishment is open for business.

(19) Ensure that at least one operator is situated in each manager's station, when required by this Code, at all times that any customer is present inside the premises.

(20) Ensure that the premises are equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than 15-20 average maintained foot candles as measured thirty-five (35) inches above the floor level. The light shall be maintained at all times any customer is present in the premises.

(21) Not alter or otherwise change the contents of an adult entertainment establishment or sexually-oriented business license.

(22) Ensure that each exterior entrance and exit door for use by customers and interior doors which permit entrance to the interior and exit to the interior from any interior foyer area shall remain unlocked when any person who is not a worker is inside the establishment.

(23) Establish, create and maintain worker records as required by this Code.

(24) Ensure that no alcoholic beverages shall be bought, sold, given away or consumed on the premises of any adult entertainment establishment or sexually-oriented business.

### **Sec. 17. Location requirements. Adult Businesses/Adult Entertainment Establishments Overlay District**

(1) This section may be known and cited as the Adult Entertainment Locational Ordinance Code.

(2) Purpose and Intent. The Adult Entertainment Establishments Overlay Zone district is a zone that establishes a layer of regulations that apply within that portion of the Industrial Light (IU) and Industrial Heavy (IU-1) districts lying within the property described as:

THAT PART OF SECTION 21, TOWNSHIP 29 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA BEING BOUNDED ON THE WEST BY THE WEST LINE OF SAID SECTION 21, ON THE NORTH BY THE NORTH LINE OF SAID SECTION 21, ON THE EAST BY THE WESTERLY RIGHT-OF-WAY LINE OF OLD DIXIE HIGHWAY AND ON THE SOUTH BY THE SOUTH LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 3118, PAGE 140 AND THE WEST AND SOUTH LINES OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 3365, PAGE 833, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, and as depicted on the Official Zoning Map as "AEOA.", in addition to the zoning regulations specified in the underlying zones, IU and IU-1, in order to designate where adult entertainment establishments may locate in the Town. The purpose and intent of this overlay zone district is to consolidate the location of adult entertainment establishments so that the secondary effects of such uses will be concentrated

in a specific area of the Town to facilitate more effective law enforcement and regulation of such uses and provide buffer requirements which will minimize the secondary impacts from these businesses upon other properties in their vicinity and protect the general health, safety and welfare of the community. Adult entertainment establishments are normally associated with adverse secondary impacts, including prostitution, drug activities, and other unlawful conduct and therefore the Town is making all reasonable efforts to minimize such negative effects through this overlay zone district approach. All Adult Entertainment Establishments shall be located within the contiguous AEOA.

(3) Notwithstanding any other provision of this article or any provision of any land use or zoning ordinance of the Town, no person shall cause or permit the establishment or operation of any adult entertainment establishment:

- (a) Within 500 feet from any other adult entertainment establishment;
- (b) Within 1000 feet from any preexisting religious institution, school or day care center;
- (c) Within 500 feet from any area zoned for residential use within the town;
- (d) Within 500 feet of any public park.

(4) The distance between any two adult entertainment establishments shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each such establishment. The distance between any adult entertainment establishment and any religious institution or school shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment to the closest property line of the religious institution or school. The distance between any adult entertainment establishment and an area zoned for residential use shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment establishment to the nearest boundary of the area zoned for residential use.

(5) *Nonconforming uses.* The distance and dispersal requirements of this section shall not apply to adult entertainment establishments existing and operating on the effective date of the ordinance from which this article is derived, but such establishments shall be deemed nonconforming. If any such nonconforming adult entertainment establishment voluntarily ceases to do business for a period of 180 consecutive days, then it shall be deemed abandoned and thereafter shall not reopen except in conformance with these distance and dispersal standards. However, no adult entertainment establishment shall expand the square footage or cubic footage of the establishment beyond its current dimensions.

## **Sec. 18. Advertising.**

No establishment regulated under this article shall:

- (1) Display a sign advertising the presentation of any activity prohibited by a state statute, an ordinance of the town or any applicable municipal ordinance;
- (2) Erect, install, maintain, alter or operate any sign in violation of this Code;
- (3) Engage in, encourage or permit any form of personal advertising for the commercial benefit

of the establishment or for the commercial benefit of any individual who displays or exhibits specified anatomical areas within the establishment; or

(4) Display any sign for the regulated establishment other than one 'primary sign' and one 'secondary sign,' as provided herein.

(a). Primary signs shall have no more than two display surfaces. Each such display surface shall:

1. Not contain any flashing lights;
2. Be a flat plane, rectangular in shape;
3. Not exceed 75 square feet in area; and
4. Not exceed ten feet in height or ten feet in length.

(b). Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

1. The name of the regulated establishment and/or
2. One or more of the following phrases:
  - i. Adult bookstore.
  - ii. Adult movie theater.
  - iii. Adult cabaret.
  - iv. Adult lounge.
  - v. Adult novelties.
  - vi. Adult entertainment.

3. Primary signs for adult movie theaters may contain the additional phrase, 'Movie Titles Posted on Premises.'

(c). Each letter forming a word on a primary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(d). Secondary signs shall have only one display surface. Such display surface shall:

1. Be a flat plane, rectangular in shape;
2. Not exceed 20 square feet in area;
3. Not exceed five feet in height and four in width; and
4. Be affixed or attached to any wall or door of the establishment.

(e). The provisions of item 1 of subsection a. and subsections b. and c. shall also apply to secondary signs.

(f). These regulations are in addition to the provisions of the applicable Town Sign Ordinance. Where there is a conflict, the more restrictive shall apply.

### **Sec. 19. Design of entrance; sign at entrance.**

(1) The entrance to any adult entertainment establishment shall be designed in such a manner that no person outside the building or property can see the materials or depictions of specified anatomical areas or specified sexual activities offered to patrons within the adult establishment.

(2) Immediately inside the entrance of any adult entertainment establishment there shall be posted a well-lighted sign which shall read as follows:

NOTICE

THIS ESTABLISHMENT OFFERS MATERIAL OR ENTERTAINMENT HAVING SEXUAL CONTENT. SUCH MATERIALS OR ENTERTAINMENT ARE FOR ADULTS ONLY. IF THIS OR NUDITY WOULD OFFEND YOU, DO NOT ENTER.

Such sign shall be clear and legible, and the text thereof shall be set forth in letters of uniform size having a height of not less than one inch and not more than two inches.

**Sec. 20. Proscriptions where food or beverages are sold or where alcoholic beverages are sold, dispensed or permitted.**

The human genitals or pubic region, the areola of the female breast, and the cleavage of the human buttocks shall not be displayed or exposed on premises licensed under this article where alcoholic beverages are sold, dispensed, permitted or consumed, except in connection with excretory functions. It shall be unlawful for any employee to exhibit specified anatomical areas while selling or dispensing any form of food or beverage.

**Sec. 21. Admission of minors.**

It shall be unlawful for a licensee under this article to admit or to permit the admission of minors within the licensed premises.

**Sec. 22. Sales to minors.**

It shall be unlawful for any person to sell, barter or give, or to offer to sell, barter or give, to any minor, any service, material or device on the premises of any adult bookstore, adult motion picture theater, leisure spa establishment or adult dancing establishment.

**DIVISION 2. LICENSE**

**Sec. 30. Required; classifications.**

(1) No adult bookstore, leisure spa establishment, adult motion picture theater or adult dancing establishment shall be permitted to do business in the Town without having first obtained a license as required under this code. Adult entertainment establishments legally in existence and operating on the date that any ordinance amendments are passed by the board are granted permission to file an application for a license under this article or otherwise comply with the amended adult entertainment code not later than 55 days after the date the amendments are passed by the council.

(2) Adult entertainment establishment licenses referred to in this article shall be one of five separate types of licenses, which are classified as follows:

- (a) Adult bookstore.
- (b) Adult motion picture theatre.
- (c) Leisure spa.
- (d) Adult dancing.
- (e) Escort service.

(3) An adult entertainment establishment shall be limited to one of the five classes of licenses and thereby limited to the one type of activity for which the license is issued. However, a given adult entertainment business operating with a valid business tax receipt at the time of the effective date of the ordinance from which this article is derived shall be allowed to apply for and receive those licenses necessary to operate the types of adult entertainment it offered immediately prior to such effective date, provided it complies with all other requirements of this code.

### **Sec. 31. Disqualification.**

(1) *Noncompliance of premises.* No license shall be issued under this article as a result of investigations by the applicable administrative agency or office which determine that the proposed licensed premises do not meet each and every one of the general and special requirements for the type of license applied for as established in divisions 1, 4, 5, 6, 7 and 8 of this code, or if the proposed premises fail to satisfy all applicable building, zoning, health and fire codes, ordinances, statutes or regulations, whether federal, state or local; further, no license shall be issued on false information given in the application for license.

(2) *Prior revocation or suspension of license.* No license shall be issued to an applicant where any person listed in sec. 32 (a) (1) has had a license under this code suspended or revoked or was an officer or director of a corporation which had such a license suspended or revoked during the previous year.

(3) *Disqualification by law or court order.* No license shall be issued when its issuance would violate a statute, ordinance or law, or when an order from a court of law prohibits the applicant from obtaining an adult entertainment or business tax receipt in the Town.

### **Sec. 32. Application.**

(1) *Required information and documents.* Any individual, partnership or corporation desiring to engage in the business of operating an adult bookstore, adult motion picture theater or adult dancing establishment shall file an application with the Town Administrator. The application shall contain, at a minimum, the following information, and shall be accompanied by the following documents:

(a) If the applicant is:

- i. An individual, legal name, aliases, and date of birth aliases;
- ii. A partnership, the full name of the partnership and the legal names, aliases, and dates of birth used by all general partners, accompanied by, if in existence, a copy of the written partnership agreement; or
- iii. A corporation, the exact corporate name, the date of incorporation, and the legal names, aliases, and dates of birth and the capacity of all the officers, directors.

(b) If the business is to be conducted under a name other than that of the applicant, the business name and the county of registration under F.S. § 865.09 or its successor statute;

(c) Whether the applicant or any of the other individuals listed pursuant to subsection (a) of this section has, within the five-year period immediately preceding the date of the application, been convicted of a specified criminal act, and, if so, the particular criminal act involved and the place of conviction;

- (d) Whether the applicant or any of the other individuals listed pursuant to subsection (a) of this section has had its license under this article previously suspended or revoked, or has been a partner in a partnership or an officer, or director of a corporation whose license under this article has previously been suspended or revoked, including the date of suspension or revocation;
- (e) The classification of the license for which the application is being filed;
- (f) Whether the applicant holds any other adult entertainment establishment licenses, and, if so, the number and locations of such licensed premises;
- (g) The location of the proposed establishment, including a legal description legal street address, and business phone number;
- (h) The names, aliases, and dates of birth of the employees, if known, or, if presently unknown or if there will be no employees, a statement to that effect; and
- (i) A floor plan, drawn to substantially accurate scale, of the proposed licensed premises, indicating the areas to be covered by the license, all windows, doors, entrances and exits, and the fixed structural features of the proposed licensed premises. The term "fixed structural features," for purposes of this subsection, shall include walls, stages, immovable partitions, projection booths, admission booths, concession booths or stands, immovable counters and similar structures that are intended to be permanent.
- (j) If the applicant is not the owner of the real property, both a notarized statement that the owner of the real property has approved of the proposed adult entertainment use, and a copy of the lease or other rental agreement.
- (k) Each applicant shall be under a continuing duty and obligation to disclose to the Town Administrator or designee any and all changes or alterations in the information or disclosures required by this Ordinance. It is the duty of each applicant to correct changes, false or erroneous information provided in the application.

(2) *Fee.* Each application shall be accompanied by a nonrefundable fee as outlined in section 36 payable at the time the application is filed.

### **Sec. 33. Investigation.**

Upon receipt of an application for a license under this article properly filed with the Town Administrator, and upon payment of the application fee, the Town's law enforcement authority shall verify the information required by section 32 (1) (a) through (c). All other applicable administrative agencies and offices shall investigate the proposed licensed premises for compliance with this code and all other applicable laws and regulations relating to construction, safety, fire protection, zoning and public health. The investigation shall be concluded within 45 days from the date of the application. Each administrative agency shall state on the application the results and findings of its investigation, recommending either approval or disapproval of the application.

### **Sec. 34. Issuance or denial.**

(1) *Approval and issuance.* Upon the completion of the investigation of an application for a license under this code the Town Administrator shall approve or disapprove the application. If approved, the Town Administrator shall notify the applicant within seven days and issue the license upon the payment of appropriate license fee provided in sections 36 and 38.

(2) *Disapproval and denial.* The application will be denied in the event that the granting of the application would violate a statute or ordinance, lease, or an order from a court of law which prohibits the applicant from obtaining an adult entertainment establishment license. If any agency, office or department recommends disapproval, it shall indicate the reason therefore upon the application, or in a separate writing, and the Town Administrator shall deny the application. If the application is disapproved, the Town Administrator shall notify the applicant of the disapproval and the reasons therefore within seven days.

(3) *Further grounds for denial.* Notwithstanding any other provision in this article, the Town Administrator shall deny any application for a license in which the applicant:

(a) has supplied false or untrue information.

(b) The application does not comply with the requirements of this Code and/or statutes expressly made applicable to adult entertainment establishments and sexually-oriented businesses such as section 847.0134, Florida Statutes.

(c) The applicant or any of the individuals stated in Section 32 of this Code has a license under this Code which is under suspension.

(d) The applicant or any of the individuals stated in Section 32 of this Code is or was at the time of suspension an officer, director, managing member, or majority stockholder in an entity who has a license under this Code which is under suspension.

(e) The applicant or any of the individuals stated in Section 32 of this Code had a license under this Code which had been revoked within the preceding two years.

(f) The applicant or any of the individuals stated in Section 32 of this Code is or was at the time of suspension an officer, director, managing member, or principal stockholder in an entity who had a license under this Code which had been revoked within the preceding two (2) years.

(4) *Time limit for action on application.* The Town Administrator shall approve or disapprove all applications within 45 days from the date a completed application has been submitted. All inspections shall be promptly conducted to conform with the time limit for application review. Upon the expiration of 45 days, if the applicant has not been notified that the application has been denied, the applicant shall be permitted to initiate operating the adult entertainment establishment and the license shall be issued and forwarded to the applicant.

(5) *Incorrect or incomplete application.* In the event the Town Administrator determines or learns at any time that the applicant has incorrectly completed an application for a proposed establishment or has not properly completed the application, the Town Administrator shall promptly notify the applicant of such fact and shall allow the applicant ten days to correct or properly complete the application. The revised application shall then be promptly forwarded to the appropriate agency, office or department for review. The time period for granting or denying the application shall be stayed during the period in which the applicant is allowed an opportunity to correct or properly complete the application. Upon receipt of the revised application, the review

time period shall be extended for ten days (from 45 to 55 days).

(6) *Appeal of denial.* Any applicant may appeal the decision to deny a license to the circuit court for the Eighteenth Judicial Circuit by filing a petition for writ of certiorari with the clerk to the circuit court not later than 30 days after the decision. The status quo shall be maintained pending the outcome of judicial review, unless otherwise ordered by a court of law.

(7) The applicant may not reapply for a license for a period of nine (9) months from the date of denial unless there has been an intervening change in the circumstances which may lead to a difference decision regarding the former reason(s) for denial.

### **Sec. 35. Multiple licenses for single premises prohibited; leasing of premises.**

No more than one license shall be issued and in effect for any single adult entertainment establishment within the Town, subject to section 30 (2). No building, premises, structure or other facility that allows, contains or offers any classification of adult entertainment as defined in section 30 shall allow, contain or offer any other classification of adult entertainment. The licensed premises may be owned by a licensee or may be leased by the licensee from a person not a licensee so long as the lessee who is operating the licensed premises undergoes the equivalent licensing process under this article; provided that a licensee who is a tenant or lessee may not surrender his tenancy or lease to the owner or lessor if by so doing the owner or lessor will take possession, control and operation of the licensed premises and the business licensed under this article, unless the license is transferred as provided in section 39; and further provided that a licensee who is the owner of the licensed premises may not lease or otherwise give up possession, control and operation of the licensed premises and the business licensed under this article to any other individual, partnership or corporation, unless the license is transferred as provided in section 39.

### **Sec. 36. Regulatory Fees.**

(1) There are hereby levied the following annual license fees under this article:

- (a) Adult bookstore: \$200.00
- (b) Leisure Spa establishment: \$200.00
- (c) Adult motion picture theaters, as follows:
  - i. Having only adult motion picture booths: \$50.00 for each booth, \$200.00 maximum.
  - ii. Having only a hall or auditorium: \$200.00 or \$2.50 for each seat or place whichever is greater.
  - iii. Designed to permit viewing by patrons seated in automobiles: \$200.00 or \$2.50 for each speaker or parking space whichever is greater.
  - iv. Having a combination of any of the facilities in subsections (1)(c)i, (1)(c)ii and (1)(c)iii of this section: The license fee applicable to each under subsections (1)(c)i, (1)(c)ii, and (1)(c)iii.
  - v. Adult motel: \$300.00
- (d) Adult dancing establishment: \$2000.00.

(2) The license fees collected under this article are fees paid for the purpose of investigation provided for in section 33, examination and inspection of licensed premises under this article and

the administration thereof, and are declared to be regulatory fees and are not business tax receipts. The payment of a license fee under this article shall not relieve any licensee or other person of a liability for and the responsibility of paying for doing such acts and providing such information as may be required by such sections.

**Sec. 37. Display.**

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

**Sec. 38. Term; renewal.**

(1) All licenses issued under this article, except new licenses, shall be annual licenses, which shall be paid for on or before October 1 and shall expire on September 30 of the following year. A licensee beginning business after October 1 and before April 1 may obtain a new license upon application therefore and the payment of the appropriate license fee, and such license shall expire on the following September 30. A licensee beginning business after March 31 and before October 1 may obtain a new license upon application therefore and the payment of one-half of the appropriate license fee required in this division for the annual license, and such license shall expire on September 30 of the same year. The provisions of this subsection shall not affect the provisions of section 39.

(2) A licensee under this article shall be entitled to a renewal of his annual license from year to year as a matter of course, on or before October 1, by presenting the license for the previous year or satisfactory evidence of its loss or destruction to the Town Administrator and by paying the appropriate license fee. A license that is not renewed by October 1 of each year shall be considered delinquent, and, in addition to the regular license fee, subject to delinquency penalty of ten percent of the license fee for the month of October and an additional penalty of five percent of the license fee for each additional month, or fraction thereof, of delinquency until paid, provided that the total delinquency penalty shall not exceed 25 percent of the license fee. All licenses not renewed within 120 days of September 30 will be revoked by the Town Administrator, unless such license is involved in litigation.

**Sec. 39. Transfer.**

When a licensee shall have made a bona fide sale of the business which he is licensed under this article to conduct, he may obtain a transfer of the license issued under this article to the purchaser of the business, but only if, before the transfer, the application of the purchaser shall be approved by the Town Administrator in accordance with the same procedure provided in sections 32, 33 and 34 in the case of issuance of new licenses. Before the issuance of any transfer of license, the transferee shall pay a transfer fee of ten percent of the appropriate annual license fee. Licenses issued under this article shall not be transferable in any other way than provided in this section.

**Sec. 40. Change of location or name of business.**

(1) *New location.* A licensee under this article may move his licensed premises to a new location and operate at the new location upon approval by the county sheriff and all other applicable administrative agencies or offices of the licensee's application for a change of location. The licensee shall submit to the Town Administrator an application for a change of location, accompanied by an application fee equal to the fees as stated in Section 36, at the time the application is filed. The application will contain or have attached to it a plan drawn to a substantially accurate scale of the licensed premises at the new location, indicating the area to be included in the new licensed premises, all windows, doors, entrances and exits, and the fixed structural features of the new licensed premises. The term "fixed structural features," for purposes of this subsection, shall have the same meaning as in section 32 (1) (i). Upon approval of the application, there shall be issued to the licensee a license for the new location without the payment of any further fee other than the application fee for a change of location.

(2) *Change of name.* No licensee may change the name of the business located at his licensed premises without first giving the town administrator 30 days' notice, in writing, of such change and without first making payment to the Town Administrator of a change-of-name fee of \$10.00.

(3) The fees collected under this section are fees paid for the purpose of investigation, examination and inspection of licensed premises under this article and the administration thereof, and are declared to be regulatory fees and are not business tax receipts. The payment of a fee under this section shall not relieve any licensee or other person of a liability for and the responsibility of paying for doing such acts and providing such information as may be required by such sections.

#### **Sec. 41. Suspension and revocation of licenses.**

(1) *Suspension for illegal transfer.* In the event that any department, agency or office learns that a licensee engaged in a license transfer contrary to section 39, the Town Administrator shall forthwith notify the licensee of the pending suspension of the license. If the suspension becomes effective, the suspension shall remain in effect until documents which satisfy the requirements of section 39 are filed with the Town Administrator and a transferred license has been issued.

(2) *Suspension for violation of building, fire, environmental health, or zoning statute, code, ordinance, or regulation.* In the event a department, agency or office learns or finds upon sufficient cause that a licensed adult entertainment establishment is operating in violation of a building, fire, environmental health, or zoning statute, code, ordinance or regulation, whether federal, state, or local, contrary to the respective general requirements of section 16, such department, agency or office shall promptly notify the Town Administrator who shall then promptly notify the licensee of the violation and shall allow the licensee a seven-day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven-day period the Town Administrator shall forthwith notify the licensee of pending suspension of the license. If the suspension becomes effective, the suspension shall remain in effect until the Town Administrator determines that the violation in question has been corrected.

(3) *Suspension for illegal conduct at establishment.*

(a) *Three convictions.* In the event three or more violations of specified criminal acts occur at an adult entertainment establishment within a two-year period, and convictions result from at least three of the violations, the Town Administrator shall, upon receiving evidence of the three convictions, notify the licensee of a pending suspension of the license for a period of 30 days. For the purposes of calculating this two-year period, the two-year period shall be deemed to be those 24 months occurring immediately prior to the violation occurrence date

for which the thirty day suspension is sought.

(b) *Additional conviction following suspension.* In the event one or more additional violations of any specified criminal act occurs at the same establishment within a period of two years from the date of the last violation from which the conviction resulted for which the license was suspended for thirty (30) days under subsection (c)(1), but not including any time during which the license was suspended for 30 days, and a conviction results from one or more of the violations, the Town Administrator shall, upon receiving evidence of the additional conviction after previous suspension, notify the licensee of a pending suspension of the license for a period of 90 days.

(c) *Additional conviction following two prior suspensions.* In the event one or more additional violations of any specified criminal act occurs at the same establishment within a period of two years from the date of the last violation from which the conviction resulted for which the license was suspended for 90 days under subsection (c)(2), but not including any time during which the license was suspended for 90 days, and a conviction results from one or more of the violations, the Town Administrator shall, upon receiving evidence of the additional conviction after two previous suspensions, notify the licensee of the pending suspension of the license for a period of 180 days.

(4) *Revocation for repeat convictions following three suspensions.* In the event one or more additional violations of any specified criminal act occurs at an adult entertainment establishment which has had a license suspended for a period of 180 days pursuant to section 41(c)(3), and the violation occurs within a period of two years from the date of the last violation from which the conviction resulted for which the license was suspended for 180 days, but not including any time during which the license was suspended for 180 days, the Town Administrator shall, upon receiving evidence of a conviction for the subsequent violation after three suspensions, forthwith notify the licensee of the pending revocation of the license.

(5) *Revocation for false information.* In the event code enforcement receives evidence that a license was granted, renewed, or transferred based upon false information, misrepresentation of fact, or mistake of fact, the Town Administrator shall forthwith notify the licensee.

(6) *Transfer or renewal.* The transfer or renewal of a license pursuant to this code shall not defeat a suspension or revocation of a license or related proceedings.

(7) *Methods of notice of pending suspension or revocation.* Whenever a notice of pending suspension or revocation must be sent by mail it shall be made by certified mail, return receipt requested, mailed to the licensee's last provided address of record and such notice may also be made by code enforcement by posting a copy of the written notice at the licensee's establishment or making actual delivery to the licensee.

## **Sec. 42. Suspension and revocation proceedings; Appeal.**

(1) *Challenge to suspension or revocation.* If the Town Administrator notifies a licensee in writing of the pending suspension or revocation of a license, then the suspension or revocation shall become final and effective ten days after mailing to the licensee's record address, posting the notice at the establishment, or actual delivery of the notice to the licensee, unless the licensee first files with the Town Administrator a written response stating the reasons why the suspension or revocation is alleged to be in error or inappropriate and a written notice of intent to challenge the suspension or revocation requesting a hearing to determine whether the suspension or revocation will become effective. A suspension or revocation already in effect but not previously challenged in a suspension or revocation hearing, may be challenged in the same manner but is not abated

during the proceedings. For purposes herein a response or notice of intent to challenge is deemed filed when it is received by the Town.

(2) *Hearing on suspension or revocation.* When a licensee files a written response and notice of intent to challenge a pending or existing suspension or revocation then a public hearing to determine if the pending suspension or revocation will become effective and final shall be held by the Town Council. The Town Administrator shall notify the town attorney and any appropriate town staff who shall schedule and provide notice of the hearing.

(a) The suspension or revocation hearing should be held within 30 days of a written challenge and request for a hearing, or as soon thereafter as can reasonably be scheduled, but no sooner than after seven days notice mailed to the licensee and posting to the public at a place for notices in a public building.

(b) The participants before the Town Council shall be the licensee, any witnesses of the licensee, town staff, any interested members of the public, and any witnesses of the interested members of the public. All witnesses who participate at the hearing shall provide their legal name, mailing address and telephone number to the Town Council.

(c) The licensee and any witnesses of the licensee shall be limited to a total of 30 minutes to present the licensee's case. Town staff shall be similarly limited to a total of 30 minutes. Each interested member of the public and their witnesses shall be limited to five minutes. Rebuttal witnesses shall be limited to 5 minutes. Summations shall not exceed ten minutes. For good cause shown, the Town Council, by a two-thirds affirmative vote, may grant additional time to each side or the public.

(d) Testimony and evidence may be submitted by any witness but shall be limited to matters directly relating to the grounds for suspension or revocation, including the licensee's knowledge of illegal activity occurring at the establishment. It is a rebuttable presumption that the licensee is aware of all activities that are conducted by employees or patrons of the establishment. Irrelevant, immaterial, or unduly repetitious testimony or evidence may be excluded.

(e) All testimony shall be under oath. The Town Council by a majority vote shall decide if a challenge is made, all questions of procedure and standing. The order of presentation of testimony and evidence shall be as follows:

- i. The licensee and any witnesses of the licensee.
- ii. Any interested member of the public and their witnesses, if any.
- iii. The town staff and any witnesses.
- iv. Rebuttal witnesses from the licensee.
- v. Rebuttal witnesses from the town staff.
- vi. Summation by the licensee.
- vii. Summation by the town staff.

(f) Any member of the town council may question witnesses or request additional evidence as deemed necessary and appropriate.

(g) To the maximum extent practicable, the hearing shall be informal. Reasonable cross examination of witnesses shall be permitted, but questioning shall be confined as closely as possible to the scope of direct testimony.

(h) If the Town Council comes to believe that any facts, claims, or allegations necessitate additional review or response by either the licensee or staff, then the hearing may be continued until an announced date certain.

(i) The Town Council shall render a written decision determining whether the suspension or revocation will become or remain effective within ten days after the suspension or revocation

hearing concludes. The written decision shall specifically include findings determining whether the violation(s) of this article or specified criminal act(s) occurred at the establishment during the time period in question, and whether the licensee of the establishment is responsible because the licensee had actual or implied knowledge that the violation(s) or act(s) were being committed, the violation(s) or act(s) were facilitated or condoned by the licensee, or that the violation(s) or act(s) occurred because the licensee should have known of the illegal activity but acted recklessly, carelessly, negligently, or with a lack of diligence.

(3) *Filing of decision.* The original of the written decision of the Town Council shall be filed with the Town Clerk, and copies shall be mailed to the licensee, and to any interested member of the public who participated at the hearing.

(4) *Surrender of license.* A notice of final suspension or revocation shall be provided to the licensee in person or by certified mail to the licensee's record address. The licensee shall immediately return and surrender a revoked license to the permitting and enforcement department.

(5) *Judicial review.* Any person who participated in a suspension or revocation hearing before the Town Council and who is aggrieved by the decision of the Town Council, may challenge the decision in the circuit court by filing a petition for writ of certiorari with the clerk to the circuit court not later than 30 days after the decision of the Town Council is rendered. The decision shall be deemed rendered when filed with the Town Clerk. The appellate record before the circuit court shall consist of the complete record of the proceedings before the code enforcement special master. In the event of such an appeal, the action shall be promptly reviewed by the circuit court. The suspension or revocation of a license shall be abated during a timely noticed appeal of the Town Council ruling to the circuit court until the day following the decision of the court.

(6) *Requirement of exhaustion of procedures.* Judicial review of a suspension or revocation, or related hearing or appeal proceedings, shall be available only after the administrative remedies procedures and remedies set forth in this section have been exhausted.

(7) *Notice of final suspension or revocation.* If no response or request for a suspension or revocation hearing is filed within seven days of the notice of a pending suspension or revocation, or if the licensee who requested the hearing does not appear at the suspension or revocation hearing after notice, or if the Town Council decides after a hearing that a pending suspension or revocation will become final and no appeal is made to the circuit court, then the Town Administrator shall issue to the licensee notice of final suspension or revocation of the adult entertainment license and mail or arrange delivery of the notice to the licensee's record address.

(8) *Effective date of suspension or revocation.* The suspension or revocation of a license shall take effect the day after delivery of a notice of final suspension or revocation to the licensee in person, or by mail to the licensee's record address, or on the date the licensee surrenders the license, whichever happens first. The licensee shall immediately return and surrender a revoked license to the Town Administrator. A suspension or revocation shall be abated during an appeal of a the Town Council's ruling to the circuit court until the day following the decision of the court.

(9) *Effect of final revocation.* If a license is revoked, the licensee of the adult entertainment establishment shall not be allowed to obtain another adult entertainment license for a period of one year, and no adult entertainment license shall be issued again to any other person for the location upon which the adult entertainment establishment was situated.

### **Sec. 43. Advertisement of adult entertainment.**

Any establishment that displays within 100 feet of its premises a sign or other form of advertisement capable of leading a reasonable person to believe that the establishment offers, presents, permits or engages in any activity required by this article to be licensed shall obtain an adult entertainment license for such activity.

**Sec. 44. Operation of unlicensed premises.**

It shall be unlawful for any person to operate an adult bookstore, adult motion picture theater, leisure spa establishment or adult dancing establishment unless such business has a currently valid license therefore under this article, which license shall not be under suspension or either permanently or conditionally revoked.

**Sec. 45. Continuing Duty/False or Misleading Information.**

(A) Each applicant shall be under a continuing duty and obligation to disclose to the Town Administrator his/her designee any and all changes or alterations in the information or disclosures required by this Code. It is the duty of each applicant to correct changed, false or erroneous information provided in an application. It is unlawful for an applicant to fail to disclose changes in information provided or to fail to correct false or erroneous information given in an application immediately upon the applicant knowing or being in such a position that he or she should have known that the information provided has changed or was false or erroneous when provided.

(B) It is unlawful for any person applying for an adult entertainment establishment or sexually-oriented business license to make a false or misleading statement or provide false or misleading information which is intended to facilitate the issuance of a license.

**Sec. 46. Consent.**

By applying for a license under this Code, the applicant shall be deemed to have been provided a copy of this Code, to understand it by having the opportunity to have consulted with counsel or otherwise, and to have consented to the provisions of this Code.

**DIVISION 3. WORKER RECORDS**

**Sec. 50. Records and inspection of records.**

(1) An adult entertainment establishment shall maintain a worker record for each worker who currently works or performs at the establishment, and for each worker who works at the establishment during the preceding one-year period.

- (a) The worker record shall contain the current or former worker's full legal name, any aliases, and date of birth.
- (b) The worker record shall also describe the status of each worker, i.e. whether the worker is or was a paid employee for whom income taxes and social security payments are or were withheld or is or was a lessee, sublessee, independent contractor or subcontractor.
- (c) The worker record shall also contain a copy of all valid business tax receipts for each

worker of the establishment.

(2) Each operator of the establishment shall be responsible for knowing the location of the originals or the true and exact photocopies thereof, of each worker record.

(3) Each operator of the establishment shall, upon request by a the Town's law enforcement authority or code enforcement officer, when the establishment is open for business, immediately make available for inspection the original, or the true and exact photocopies thereof, of any worker record.

#### **DIVISION 4. LEISURE SPA ESTABLISHMENTS**

##### **Sec. 60. Generally.**

(1) It shall be unlawful for any person to operate, own, conduct or carry on, or permit to be operated, owned, conducted or carried on, any leisure spa establishment of any type or kind, including but not limited to a leisure spa, leisure spa service business, or any leisure spa business or service offered in conjunction with or as part of any health club, health spa, resort or health resort, gymnasium, athletic club or other business, without compliance with the provisions of this article.

(2) In addition to the general requirements contained in division 1 of this article, a leisure spa establishment shall observe the following special requirements:

(a) Dressing rooms shall be proportioned to the maximum number of persons or patrons who are expected to be in them at one time, excluding attendants and assistants, and providing a minimum of 12 square feet per person or patron. Separate dressing rooms shall be provided for men and women. Floors shall be of a smooth, impervious material with a nonslip surface and shall be covered at the wall junction for thorough cleaning. Each dressing room area shall contain floor drains. Partition walls shall be covered from the floor to 30 inches above the floor with ceramic tile or other impervious material.

(b) One shower shall be provided for each ten men or women, based upon the maximum number of persons who are expected to be using shower facilities at one time, and separate shower facilities shall be provided for men and women. Floors and partition walls shall be constructed as required in subsection (2)(a) of this section for dressing rooms. Each shower will be constructed of ceramic tile, other impervious material, or single molded material. Each shower shall provide hot and cold running water.

(c) One locker shall be provided for each patron who is expected to be on the licensed premises at one time, which shall be of sufficient size to hold clothing and other articles of wearing apparel. Each locker shall be capable of being locked by the patron with no one else having the key so long as the patron is using the locker, or the locker shall be under the constant attention and supervision of the attendant.

(d) Each room or enclosure where leisure spa services are performed shall be provided with lighting of a minimum of five footcandles as measured four feet above the floor, which lights shall remain on at all times during business hours, and one light capable of providing 50 footcandles of light in all corners of leisure spa bath, shower or toilet rooms, which light shall be turned on when cleaning these areas.

(e) The premises shall have adequate equipment for disinfecting and cleaning nondisposable instruments and materials used in administering leisure spa services. Such materials and

instruments shall be cleaned after each use. Methods of cleaning and sanitizing shall be approved by the director of consumer health services consistent with the practices accepted by the National Sanitation Foundation, American Academy of Sanitarians or Center for Disease Control.

(f) Closed cabinets shall be provided for use of all storage equipment, supplies and clean linens. All used and soiled linens and towels shall be kept in water soluble linen bags designed to hold infectious linen and kept in covered containers or cabinets, which containers or cabinets shall be kept separate from the clean storage cabinets.

(g) Clean linen and towels shall be provided for each leisure spa patron. No common use of towels or linens shall be permitted.

(h) Oils, creams, lotions or other preparations used in administering leisure spa services shall be kept in clean containers or cabinets.

(i) Each room or enclosure where leisure spa services are performed shall contain a hand washing sink with hot and cold running water. Each technician shall wash his or her hands in hot running water, using soap or disinfectant, before and after administering a massage to each patron.

(j) All walls, ceilings, floors, pools, lavatories, showers, bathtubs, steam rooms and other physical facilities shall be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs and showers shall be thoroughly cleaned after each use.

(k) If male and female patrons are served, separate rooms or enclosures for leisure spa services shall be provided.

(l) No person shall consume food or beverages in leisure spa work areas, nor shall there be any smoking in leisure spa work areas.

(m) Animals, except guide dogs, shall not be permitted in leisure spa establishments.

(n) The premises shall be equipped with a service sink for custodial services, which sink shall be located in a janitorial room or custodial room separate from leisure spa service rooms. Such sink is to be properly connected to hot and cold running water and to a sewer system.

(o) Leisure spa services of a person by another person who displays or exhibits specified anatomical areas are prohibited.

(p) No person shall perform leisure spa services on the genitals or pubic area of another person.

(q) It shall be unlawful for a leisure spa employee, owner or independent contractor to perform leisure spa services on a patron of the opposite sex.

(r) Not place or permit the placement of any bed, mattress or sofa at the business; provided, however, that a sofa may be placed in the reception area open to the public at the main entrance of the business and cots or padded mats may be used when providing commercial bodily contact.

(s) Disinfect and sterilize non-disposable instruments after each use on a customer.

(t) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage any suggestion that workers will be dressed in any manner other than as required in this Code.

(u) Not provide services at any place other than a physical location licensed to provide

commercial bodily contact under the provisions of this Code.

**Sec. 61. Control of communicable diseases.**

No leisure spa technician shall administer leisure spa services to any person:

- (1) If the leisure spa technician believes, knows or should know that he or she is not free of any contagious or communicable disease or infection.
- (2) To any person exhibiting any skin fungus, skin infection, skin inflammation or skin eruption; provided, however, that a physician duly licensed to practice in the state may certify that such person may be safely administered leisure spa services.
- (3) To any person who is not free of communicable diseases or infection or whom the leisure spa technician believes or has reason to believe is not free of communicable diseases or infection.

**Sec. 62. Qualifications of employees.**

No employee or independent contractor of a leisure spa establishment may perform a leisure spa service upon any person unless he or she is duly permitted pursuant to this article and state law, and such permit is in good standing and active.

**Sec. 63. Home massage treatment.**

Massage may only be administered in a patron's home by a leisure spa technician having a permit issued in accordance with F.S. ch. 480, and being employed by a leisure spa establishment having a valid license pursuant to this article. The leisure spa establishment must keep, for at least one year, a record of all patrons receiving massage services in a place other than a licensed leisure spa establishment, a record of the place where these massage services were administered, and a record of the leisure spa technician who administered these massage services. No leisure spa technician shall administer any leisure spa services at a location which does not conform to or comply with the standards set forth in this article.

**Sec. 64. Admission or treatment of minors.**

- (1) No leisure spa establishment license holder shall allow a leisure spa patron under 18 years of age to enter such establishment, nor shall a leisure spa technician perform any services upon a leisure spa establishment patron under 18 years of age, without the written consent of that leisure spa establishment patron's parents or legal guardian, executed before a notary public of the state.
- (2) Each leisure spa establishment license holder shall keep a register or list of all leisure spa establishment patrons under 18 years of age and keep a copy of the written consent as required in subsection (1) of this section.

**Sec. 65. Hours of operation.**

No leisure spa establishment shall be operated between the hours of 10:00 p.m. and 9:00 a.m. No leisure spa establishment patron shall remain upon the premises of a leisure spa establishment during these hours.

**Sec. 66. Inspections.**

Inspections by the health department, planning and zoning division, or building department, fire marshal, shall be made from time to time and at least twice each year to inspect each leisure spa establishment in the Town for the purposes of determining that the provisions of this article are being complied with.

**Sec. 67. Performing or engaging in specified sexual activities.**

It shall be unlawful for any person to perform or engage in specified sexual activities in a leisure spa establishment or on the premises thereof.

**DIVISION 5. ADULT MOTION PICTURE THEATERS**

**Sec. 70. Generally.**

(1) It shall be unlawful for any person to operate, own, conduct or carry on, or permit to be operated, owned, conducted or carried on, any adult motion picture theater as defined by this article, without compliance with the provisions of this article.

(2) In addition to the general requirements contained in division 1 of this article, an adult motion picture theater shall observe the following special requirements:

- (a) Each adult motion picture booth shall be open or have a rectangular-shaped entranceway not less than 30 inches wide and not less than six feet high.
- (b) Each adult motion picture booth shall have sufficient individual, separated seats, not couches, benches or the like, to accommodate the person expected to use the booth who may occupy the area. Only one person may occupy an adult motion picture booth at any time.
- (c) Each adult motion picture booth or theatre shall be designed so that a continuous main aisle runs alongside the seating areas in order that each person seated on the areas shall be visible from the aisle at all times. Neither adult motion picture theatres nor booths shall be locked or secured to prevent entry, except during hours in which the establishment is closed to business.
- (d) Each adult motion picture theatre or booth shall be designed such that all areas where a patron or customer is to be positioned are visible from a continuous main aisle and are not obscured, wholly or partially, by any curtain, door, wall, partition or other enclosure.
- (e) In addition to the sanitary facilities required by section 16, there shall be provided, within or adjacent to the common corridor, passageway or area in adult motion picture theaters having adult motion picture booths, adequate lavatories equipped with running water, hand cleaning soap or detergent and sanitary towels or hand drying devices. Common towels are prohibited.
- (f) An adult motion picture theater designed to permit viewing by patrons seated in automobiles or other seating provisions shall have the motion picture screen so situated, or the perimeter of the licensed premises so screened or fenced, that the projected film material may not be seen from any public right-of-way, from any property zoned for residential use, or from any religious institution or school.

- (g) Each adult motion picture theatre or booth shall have posted at the entranceway to the applicable theatre or booth the maximum number of persons who may occupy the applicable theatre or booth, which number shall not exceed the number of seats within the theatre or booth.
  - (h) Each motion picture booth shall have walls or partitions of solid construction without any holes or openings except for the entranceway as provided in subsection (2)(a) of this section.
- (3) If the adult theater contains an auditorium or hall, comply with each of the following provisions:
- (a) Have individual and separate seats (not couches, benches, or other seating configurations allowing or providing for the seating of multiple persons on the same item of furniture) to accommodate the maximum number of persons who may occupy the area;
  - (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 entrance to the auditorium or hall which lists the maximum number of persons who may occupy the auditorium or hall area, which number shall not exceed the number of seats within the hall or auditorium area; and
  - (d) Be illuminated at an illumination of not less than 15-20 foot candles average maintained as measured at thirty (35) inches above the floor level and shall maintain the light at all times so that any customer present in the hall or auditorium may be seen.
- (4) Have one or more manager's stations.
- (5) Configure the interior of the premises in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose excluding restrooms.
- (6) If the premises have two or more manager's stations designated, configure the interior of the premises in such a manner that there is an unobstructed view of each area of the premises to which any customer is permitted access for any purposes from at least one of the manager's stations. The view required in this Subsection shall be by direct line of sight from the manager's station.
- (7) If the adult motion picture theater is designed to permit outdoor viewing by persons seated in automobiles, cause the motion picture screen so situated, or the perimeter of the establishment so fenced, such that the material to be seen by those persons may not be seen from any public right of way, property assigned a residential zoning classification or assigned a residential land use designation, any religious institution or church, any educational institution or school, or from a park.
- (8) Cover the floors of areas accessible to customers with smooth and non-permeable flooring material which can withstand frequent effective cleaning with industrial strength cleaning agents.

Carpeting of any type is prohibited.

(9) Use smooth and non-permeable upholstery material, which can withstand frequent cleaning with industrial strength cleaning agents, to cover furniture permitted by this Code for the use of customers.

(10) Have, in areas accessible to customers, interior wall surfaces which can withstand frequent cleaning with industrial strength cleaning agents.

(11) Use only those shades and blinds which can withstand frequent cleaning with industrial strength cleaning agents. (Draperies are prohibited.)

(12) Maintain areas accessible to customers in a clean and sanitary condition.

(13) Keep all furniture upholstery material free from holes and rips.

(14) Utilize an appropriate and effective adaptation of the U.S. Center for Disease Controls universal precautions for the storage and transmission of the HIV virus and other diseases when cleaning or sanitizing the establishment.

**Sec. 71. Admission of minors.**

No adult motion picture theater, as defined by this article, shall allow any person under 18 years of age to enter such establishment.

**Sec. 72. Inspections.**

Inspections by the health department, planning and zoning division, or building department, fire marshal, shall be made from time to time and at least twice each year to inspect each adult motion picture theater in the Town for the purposes of determining that the provisions of this article are being complied with.

**Sec. 73. Display of specified anatomical areas.**

It shall be unlawful for any person to display or exhibit specified anatomical areas in adult motion picture theaters or on the premises thereof, except in connection with excretory functions.

**Sec. 74. Engaging in specified sexual activities.**

It shall be unlawful for any person to engage in specified sexual activities in adult motion picture theaters or on the premises thereof.

**Sec. 75. Hours of operation.**

No adult motion picture theater shall be operated between the hours of 10:00 p.m. and 9:00 a.m. No leisure spa patron shall remain upon the premises of a leisure spa establishment during these hours.

## **DIVISION 6. ADULT BOOKSTORES**

### **Sec. 80. Generally.**

(1) It shall be unlawful for any person to operate, own, conduct, carry on or permit to be operated, owned, conducted or carried on any adult bookstore as defined by this article, without compliance with the provisions of this article.

(2) In addition to the general requirements contained in division 1 of this article, an adult bookstore shall observe the following special requirements:

(a) All materials, devices and novelties shall be so displayed that they cannot be seen by anyone other than customers who have entered the licensed premises.

(b) If recordings are offered for sale and customers may listen to them while on the licensed premises, and if soundproof booths or rooms are made available for use by customers who desire to listen or read, then each such booth or room shall have:

i. An open entranceway not less than two feet wide and not less than six feet high, not capable of being closed or partially closed by any curtain, door or other partition which would be capable of wholly or partially obscuring any person situated within the booth.

ii. Except for the entranceway, walls or partitions of solid construction without any holes or openings in such walls or partitions.

iii. Sufficient individual, separate seats, not couches, benches or the like, to accommodate the expected number of persons who will occupy the booths or rooms at one time; however, only one person may occupy such booth or room at any time.

iv. The number of patrons who may occupy the booth or room at one time clearly stated on or near the door to the booth or room, and only that number of persons shall be permitted inside the booth or room at one time.

v. The door or doors opening into the booth or room incapable of being locked or otherwise fastened so that the door or doors will freely open from either side.

vi. All areas where a patron or customer is to be positioned visible from a continuous main aisle and not obscured by any curtain, door, wall or other enclosure.

### **Sec. 81. Admission of minors.**

No adult bookstore, as defined by this article, shall allow any person under 18 years of age to enter such establishment.

### **Sec. 82. Inspections.**

Inspections by the health department, planning and zoning division, or building department, fire marshal, shall be made from time to time and at least twice each year to inspect each adult bookstore theater in the Town for the purposes of determining that the provisions of this article are being complied with.

### **Sec. 83. Display of specified anatomical areas.**

It shall be unlawful for any person to display or exhibit specified anatomical areas in adult bookstores or on the premises thereof, except in connection with excretory functions.

**Sec. 84. Engaging in specified sexual activities.**

It shall be unlawful for any person to engage in specified sexual activities in adult bookstores or on the premises thereof.

**Sec. 85. Sale of non-adult material.**

(1) Adult bookstores, as defined by this article, which sell or offer for sale or rent for any form of consideration non-adult materials in addition to adult materials as defined by this article shall observe the following additional requirements:

- (a) Materials which are of a non-adult nature shall be segregated from adult material.
- (b) The adult materials shall be maintained in a separated area from which no patron may review such material from the area utilized for non-adult material.
- (c) No patron shall be required to enter the separated area of adult material in order to review non-adult materials which are offered for sale or rental.

(2) The adult materials area shall have posted a well-lighted sign at the entrance to such area, which shall read as follows:

NOTICE

THIS AREA OFFERS MATERIALS HAVING SEXUAL CONTENT. SUCH MATERIAL IS FOR ADULTS ONLY. IF ADULT MATERIALS WOULD OFFEND YOU, DO NOT ENTER.

Such sign shall be clear and legible, and the text thereof shall be set forth in letters of uniform size having a height of not less than one inch and not more than two inches. This requirement shall be in addition to the requirements of section 19.

**Sec. 86. Authority to require information regarding sale of adult material.**

The owner or operator of any commercial establishment which sells or rents books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides or other representations or recordings or novelties and devices, may be required, if so requested by the town administrator, to provide additional information referable to requirements under this article, including inventory listing or sales records, for the purposes of determining if the commercial establishment is an adult bookstore. Failure to provide such materials upon written request of the town administrator shall be sufficient cause for the suspension of that commercial establishment's license as required by division 2 of this article. The owner or operator shall have a 30-day period from the date of the written demand within which to provide the requested information. He shall have two additional periods of 15 days each within which to provide such information upon showing of good cause of his inability to provide it earlier, provided the request is made before the expiration of the existing period.

**Sec. 87. Hours of operation.**

No adult bookstore shall be operated between the hours of 10:00 p.m. and 9:00 a.m. No leisure spa patron shall remain upon the premises of a leisure spa establishment during these hours.

## **DIVISION 7. ADULT DANCING ESTABLISHMENTS**

### **Sec. 90. Generally.**

In addition to the general requirements for adult entertainment establishments contained in this article, an adult dancing establishment shall, regardless of whether it is licensed, observe the following special requirements:

- (1) It shall have a stage 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) It shall provide an area three feet in width running along or around the entire edge of the stage within which patrons of the establishment shall not enter while a dancer is performing, entertaining or standing on the stage; and
- (3) There shall be no areas for private performances, and private performances are prohibited.

### **Sec. 91. Inspections.**

Inspections by the health department, planning and zoning division, or building department, fire marshal, shall be made from time to time and at least twice each year to inspect each adult dancing establishment in the Town for the purposes of determining that the provisions of this article are being complied with.

### **Sec. 92. Hours of operation.**

No adult dancing establishment shall be operated between the hours of 10:00 p.m. and 9:00 a.m. No leisure spa patron shall remain upon the premises of an adult dancing establishment during these hours.

## **DIVISION 8. ESCORT SERVICE REGULATIONS.**

### **Sec. 93. Generally**

In addition to all general provisions of this Code pertaining to adult entertainment establishments and sexually-oriented businesses, an escort service, regardless of whether licensed under this Code, shall:

- (1) Not advertise, offer or perform any other service than services which are posted,
- (2) Cause all workers and escorts to conceal their specified anatomical areas with an opaque covering at all times when on the premises of the escort service,

(3) Not advertise, display, publish, exhibit, place, distribute or promote on any advertising matter or signage services that are not posted or a suggestion that services not posted will be provided.

(4) Not begin a meeting or service with a customer between 10:00 p.m. of any day of the week and 9:00 a.m. the following day.

(5) If offering or providing escorts or escort service within the Town of Grant-Valkaria, each escort service shall notify the Brevard County Sheriffs Department and the Mayor or his/her designee of an authorized physical location, which mayor may not be within the Town, from where the escort service operates and dispatches escorts.

(6) Include in all advertising or promotional literature posted, placed, published, or distributed within the Town of Grant-Valkaria the number of a valid sexually-oriented business license issued by the Town unless the escort service does not refer, send, or dispatch escorts to any location within the jurisdictional limits of the Town of Grant-Valkaria.

(7) Each escort service shall ensure that every escort and worker of the escort service is provided with a copy of the escort service's license and carries it while working as an escort for the service, and displays said license upon the request of any law enforcement officer or the Mayor or his/her designee. In addition to a copy of the escort service's license, each escort service shall ensure that each escort has obtained a business tax receipt to engage in the occupation of escort within the Town and that they carry said license while working, and displays said license upon the request of any law enforcement officer or the Mayor or his/her designee. Notwithstanding the foregoing, an escort or worker of an escort service who is a paid employee for whom taxes and social security payments are withheld and paid by the licensed escort service and who is not an independent contractor may substitute and carry a copy of the sexually-oriented business/escort service license of the employing escort service only, provided that worker records as required by this Code are created and maintained by the licensed escort service.

(8) If a meeting with or the service of a customer occurs at a location not open to the public, then the escort shall check in with the on duty manager of the premises in person where the meeting or service occurs or begins prior to meeting or servicing a customer and advise the manager of the following: names of the escort(s), the escort service and customer(s); the escort's time of arrival and estimated time of departure; and a copy of the escort service's sexually-oriented business license and the escort's own business tax receipt, if applicable, and the location of the meeting within the structure.

#### **Sec. 94. Inspections.**

Inspections by the health department, planning and zoning division, or building department, fire marshal, shall be made from time to time and at least twice each year to inspect each escort service establishment in the Town for the purposes of determining that the provisions of this article are being complied with.

### **DIVISION 9. PENAL PROVISIONS**

**Sec. 100. Prohibited acts where alcoholic beverages are present.**

- (1) It shall be unlawful for any person within an establishment, regardless of whether it is licensed under this article, where the person knows or should have known that alcoholic beverages are on the premises, to exhibit or display any specified anatomical areas as defined in this article.
- (2) It shall be unlawful for any person maintaining or operating an establishment, regardless of whether it is licensed under this article, where the person knows or has reason to know that alcoholic beverages are on the premises of the commercial establishment, to knowingly, or with reason to know, permit, suffer or allow any person on the premises to exhibit or display any specified anatomical areas as defined in this article.
- (3) Notwithstanding any provisions of this article to the contrary, it shall not be unlawful for any person or employee of any establishment to expose specified anatomical areas in connection with the use of approved sanitary facilities commonly known as restrooms. However, specified anatomical areas shall be exposed or displayed only in connection with excretory functions.

**Sec. 101. Prohibited acts and conduct generally.**

- (1) *Operation without proper license.* It shall be unlawful for any person to be an operator of an adult entertainment establishment where the person knows or should know:
  - (a) That the establishment does not have the appropriate classification of adult entertainment license for the classification of entertainment offered within the establishment;
  - (b) That the establishment has a license which is under suspension;
  - (c) That the establishment has a license which has been revoked or cancelled; or
  - (d) That the establishment has a license which is expired.
- (2) *Violation of general or special requirements.* It shall be unlawful for any person to be an operator or manager of:
  - (a) An adult entertainment establishment which does not satisfy the requirements of section 16.
  - (b) A leisure spa establishment which does not satisfy all the special requirements of division 4.
  - (c) An adult entertainment motion picture theatre which does not satisfy all the special requirements of division 5.
  - (d) An adult entertainment bookstore which does not satisfy all the special requirements of division 6.
  - (e) An adult dancing establishment which does not satisfy all of the special requirements of division 7.
  - (f) An escort service which does not satisfy all the special requirements of division 8.
- (3) *Allowing workers to engage in prohibited acts.* It shall be unlawful for an owner or operator of an adult entertainment establishment, regardless of whether it is licensed under this article, to knowingly, or with reason to know, permit, suffer or allow a worker to:
  - (a) Engage in a straddle dance with a person at the establishment;
  - (b) Contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;
  - (c) Engage in any specified sexual activity at the establishment;
  - (d) Where alcoholic beverages are sold, offered for sale, dispensed or consumed, display or

- expose at the establishment less than completely and opaquely covered human genitals or pubic region or other areas defined as specified anatomical areas;
- (e) Display or expose at the establishment less than completely and opaquely covered human genitals or pubic region or other specified anatomical areas, unless such employee is continuously away from any person other than another employee, and unless such employee is in an area as described in section 90 (1) or (2);
  - (f) Display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;
  - (g) Engage in a private performance;
  - (h) While engaged in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee;
  - (i) Intentionally touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to intentionally touch the clothed or unclothed breasts of any female person; or
  - (j) Work, if the employee has not applied for and obtained a temporary or permanent permit under this article.
- (4) *Advertising prohibited activity.* It shall be unlawful for an owner or operator of an adult entertainment 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.
- (5) *Admission of minors.* It shall be unlawful for an owner or operator of an adult entertainment establishment, regardless of whether it is licensed under this article, to knowingly, or with reason to know, permit, suffer or allow:
- (a) Admittance to the establishment of a person under 18 years of age;
  - (b) A person under 18 years of age to remain at the establishment;
  - (c) A person under 18 years of age to purchase goods or services at the establishment; or
  - (d) A person to work at the establishment as an employee who is under 18 years of age.
- (6) *Working at an establishment which does not have valid license.* It shall be unlawful for any person to work in an adult entertainment 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, regardless of whether he has applied for and obtained a temporary or permanent permit under this article.
- (7) *Working without business tax receipt.* It shall be unlawful for an employee of an adult entertainment establishment, regardless of whether it is licensed under this Code, to fail to obtain, carry and produce for inspection by a law enforcement officer upon request, a business tax receipt for the occupation in which the employee is engaged.
- Exception:* It is an affirmative defense to an alleged violation of this subsection and this subsection does not apply to an employee of an adult entertainment establishment who is a paid employee for whom income taxes and social security payments are withheld and paid by the adult entertainment establishment, and who is not an independent contractor.
- (8) *Engaging in prohibited activity.* It shall be unlawful for any employee of an adult entertainment establishment, regardless of whether it is licensed under this article, to:
- (a) Engage in a straddle dance with a person at the establishment;
  - (b) Contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;
  - (c) Engage in any specified sexual activity at the establishment;
  - (d) Where the employee knows or should know that alcoholic beverages are sold, offered for

- sale or consumed, display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered;
- (e) Display or expose at the establishment less than completely and opaquely covered human genitals or pubic region, less than completely and opaquely covered cleavage of the human buttocks, less than completely and opaquely covered areola and nipple of the human female breast, or human male genitals in a discernibly turgid state, even if completely and opaquely covered, unless such employee is continuously positioned away from any person other than another employee, and unless such employee is in an area as described in section 90;
- (f) Engage in the display or exposure of any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;
- (g) Engage in a private performance;
- (h) While engaging in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee; or
- (i) Touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to touch the clothed or unclothed breast of any female person.
- (9) *Touching of employee by person.*
- (a) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch an employee who is displaying or exposing any specified anatomical area at the adult entertainment establishment.
- (b) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch the clothed or unclothed breast of any employee, or to touch the clothed body of any employee at any point below the waist and above the knee of the employee.
- (10) *Exceeding occupancy limit of adult booth.* It shall be unlawful for any person to occupy an adult booth, which booth is already occupied by one person, in violation of section 70 (2)(b) or section 80 (2)(b)iii.
- (11) *Use of restrooms or dressing rooms.* Notwithstanding any provision indicating to the contrary, it shall not be unlawful for any employee of an adult entertainment 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.
- (12) *Alteration of license or permit.*
- (a) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment license without the written permission of the town administrator.
- (b) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment permit without the written permission of the county sheriff.
- (13) *Penalty.* Whoever violates any section of this division may be prosecuted and punished as provided by F.S. § 162.22.
- (14) *Owner responsibility.*
- (a) As used in this division, owner shall mean and include the owner, and co-owner, partner, managing partner or chief executive officer.
- (b) All acts of any servant, agent, independent contractor or employee, paid or unpaid, of an

owner shall be imputed to the owner and be deemed to be an act of the owner if done within the scope of such servant, agent, independent contractor or employee's scope of authority under the owner.

(c) Any owner convicted of violating this Code due to responsibility imposed pursuant to this section shall be subject to a fine.

### **Sec. 102. Engaging in Prohibited Activity--Customers.**

(A) It is unlawful for any customer in or for an adult entertainment establishment or sexually-oriented business regardless of whether licensed pursuant to this Code to do any of the following acts:

(1) To engage or participate in a straddle dance at the establishment or business.

(2) To offer, contract or otherwise agree to engage or participate in a straddle dance with a person at the establishment or business.

(3) To engage or participate in any specified sexual activity at the establishment or business or while in the presence of a worker.

(4) To display or expose while in the presence of a worker or when at the establishment or business any specified anatomical area.

(5) To offer or deliver a tip or gratuity to any worker of an establishment or business before, during or after the provision of services except at an adult performance establishment.

(6) If a worker is a female, to intentionally touch, fondle or manipulate her on her clothed or unclothed breast(s), either directly or through a medium.

(7) To intentionally touch, fondle, massage, or manipulate any specified anatomical area of a worker, a customer, or himself or herself, whether clothed or unclothed, on the premises of the establishment or business.

(8) To intentionally touch, fondle, massage or manipulate a worker on any specified anatomical area when at or receiving services from the adult entertainment establishment or sexually-oriented business.

(9) To intentionally touch, fondle, massage or manipulate the clothed or unclothed breast(s) of a female worker, or to touch the clothed or unclothed body of a worker at any point below the waist and above the knee of the worker when at an adult entertainment establishment or sexually-oriented business.

(10) To occupy an adult booth in which booth there are more people than that specified on the posted sign required by this Code.

(11) To otherwise violate or aid or abet a violation of this Code.

(12) To encourage or solicit any worker to engage in any specified sexual activity.

(13) To consume, or purchase alcoholic beverages on the premises of any adult entertainment establishment or sexually-oriented business.

(B) It is unlawful for any customer at or of a sexually-oriented business to do any of the following acts regardless of whether the establishment is licensed pursuant to this Code:

(1) To intentionally touch, massage or manipulate, directly or indirectly or through a medium while on the premises of the establishment or when with a worker, the customer's specified anatomical areas.

(2) To solicit any worker to provide a service not posted.

(3) To solicit or receive any service not indicated and contracted for in the written customer contract.

(4) To provide to the worker providing the service either directly, indirectly or through a medium, any tip, gratuity or other consideration beyond the fee specified in the customer contract.

(5) To expose any specified anatomical area.

### **Sec. 103. Immunity from Prosecution**

The Town and any and all of its officers, departments or agents and any law enforcement officer shall be immune from prosecution, civil or criminal, for the reasonable, good-faith trespass upon an adult entertainment establishment or sexually-oriented business while acting within the scope of the authority set forth in this Code

### **Sec. 104. Home Occupations**

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

## **SECTION 2. Conflicting Provisions**

In the case of direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code regulations, the more restrictive shall apply.

## **SECTION 3. Severability**

If any subsection, clause, phrase, word or provision of this ordinance is, for any reason, held invalid or unconstitutional by any court of competence jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct, and independent provision, in such holding shall not effect the validity of the remaining portions of this ordinance, providing the remaining portions

effectuate the purpose and intent of this ordinance.

**SECTION 4. Effective Date**

This ordinance shall take effect in accordance with the Town Charter.

PASSED AND ADOPTED by the Town Council of the Town of Grant-Valkaria, Brevard County, Florida, 14<sup>th</sup> day of July, 2010.

(Signature on file)

\_\_\_\_\_  
Del Yonts, Mayor

ATTEST:

(signature on file)

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Susanne R. Krueger, Town Clerk

First Reading: June 23, 2010

Second Reading: July 14, 2010

Roll Call Vote:	Del Yonts	<u>AYE</u>
	Joe Hackford	<u>AYE</u>
	Lisette Kolar	<u>AYE</u>
	Pat Bryan	<u>AYE</u>
	Jason Mahaney	<u>ABSENT-EXCUSED</u>
	Dan Faden	<u>AYE</u>
	Cathy DeMott	<u>AYE</u>