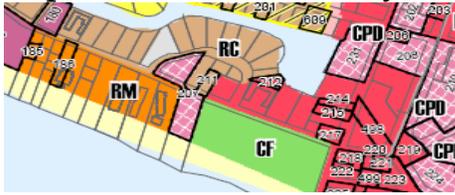


**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Local Planning Agency

From: Frank Shockey, Interim Community Development Director

Date: April 22, 2009

RE: Regulation of sexually oriented businesses

At LPA request, the Town Manager authorized Jerry Murphy of Murphy Planning to study the practices of other communities in regulating sexually oriented businesses and prepare updates to the Town's ordinance addressing the subject, which is somewhat aged. In addition to the draft ordinance containing suggestions for possible Town policy, Mr. Murphy has provided voluminous background material which has been encoded onto data discs for your reference. The locations of these various examples and studies included are cataloged in relation to their file names in the attached table of contents, for ease of retrieval when using the disc.

SECONDARY EFFECTS STUDIES

GENERAL

Environmental Research Group 1996 PDF (822KB)

ARIZONA

Phoenix, AZ 1984 PDF (272KB)

Phoenix, AZ Factual Record (1995-1998)

Cabarets, Part 1 PDF (968 KB)

Cabarets, Part 2 PDF (841 KB)

Cabarets, Part 3 PDF (1.34 MB)

In-Call Nude Studios PDF (1.59 MB)

Sex Clubs, Part 1 PDF (1.02 MB)

Sex Clubs, Part 2 PDF (1.10 MB)

SOB Supplement, Part 1 PDF (1.18 MB)

SOB Supplement, Part 2 PDF (1.54 MB)

Topless Bars, Part 1 PDF (1.09 MB)

Topless Bars, Part 2 PDF (1.08 MB)

Tucson, AZ 1990 PDF (184KB)

CALIFORNIA

Garden Grove, CA 1991 PDF (1919KB)

Los Angeles, CA 1977 PDF (3059KB)

Whittier, CA 1978 PDF (529KB)

COLORADO

Adams County, CO 1990 PDF (381KB)

Denver, CO 1998 PDF(2963KB)

CONNECTICUT

Milford, CT 2004

FLORIDA

Manatee County, FL 1987 PDF (733KB)

Daytona Beach, FL 2004

Ybor City, FL 2003

GEORGIA

St. Mary's, GA 1996 PDF(90KB)

Rome, GA 1995 PDF(331KB)

INDIANA

Indianapolis, IN 1984 PDF (2099KB)

Indianapolis, IN and Los Angeles, CA 1984 PDF (345KB)

MINNESOTA

Minneapolis, MN 1980 PDF (2301KB)

Minnesota Attorney General's Report 1989 PDF (1401KB)

St. Paul, MN 1983 PDF (427KB)

MISSOURI

Kansas City, MO 1998-1999

Part 1 PDF(2775KB)

Part 2 PDF(7784KB)

Part 3 PDF(1626KB)

Part 4 PDF(2176KB)

NORTH CAROLINA

New Hanover County, NC 1989 PDF (600KB)

NEVADA

Las Vegas, NV 1978 PDF (971KB)

NEW YORK

Cattaraugus County, NY 1998 PDF (1089KB)

Islip, NY 1980 PDF (3491KB)

New York City, NY 1994 PDF (3515KB)

New York Times Square 1994 (Word)

OHIO

Cleveland, OH 1977 PDF (95KB)

OKLAHOMA

Oklahoma City, OK 1986 PDF (131KB)

Oklahoma City, OK 1989 report on SOB abatement PDF (271KB)

TEXAS

Amarillo, TX 1977 PDF (593KB)

Austin, TX 1986 PDF (1726KB)

Beaumont, TX 1982 PDF (264KB)

Cleburne, TX 1997 PDF (600KB)

Dallas, TX 1997 PDF (867KB)

El Paso, TX 1986 PDF (1359KB)

Houston, TX 1997 PDF (709KB)

VIRGINIA

Newport News, VA 1996 PDF (2171KB)

WASHINGTON

Bellevue, WA 1998 PDF (2841KB)

DesMoines, WA 1984 PDF (2759KB)

Seattle, WA 1989 PDF (1137KB)

WISCONSIN

St. Croix County, WI 1993 PDF (500KB)

ORDINANCE 09-__

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH OBSCENITY, PUBLIC NUDITY, AND SEXUALLY-ORIENTED BUSINESSES REGULATION ORDINANCE; ~~REPEALING ORDINANCES 96-03 AND 96-04~~; PROVIDING AUTHORITY; TITLE AND CITATION; FINDING OF NECESSITY; PURPOSE, INTENT, AND FINDINGS; DEFINITIONS; CLASSIFICATIONS; REQUIRING LICENSES; INVESTIGATION OF APPLICATIONS AND ISSUANCE OF LICENSES; FEES; INSPECTIONS; EXPIRATION OF LICENSES; SUSPENSION OF LICENSES; REVOCATION OF LICENSES; PROHIBITING TRANSFER OF LICENSES; PROVIDING LOCATION OF SEXUALLY-ORIENTED BUSINESSES; REGULATIONS PERTAINING TO EMPLOYEE RECORDS; ADDITION REGULATIONS FOR ADULT MOTELS; ADDITIONAL REGULATIONS FOR EXHIBITION OF SEXUALLY-EXPLICIT LIVE ENTERTAINMENT OR MEDIA IN VIEWING ROOMS; ADDITIONAL REGULATIONS FOR ESCORT AGENCIES; ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS; ADDITIONAL REGULATIONS FOR PUBLIC CONDUCT; PATRON AGE RESTRICTIONS; HOURS OF OPERATION; ADDITIONAL CRIMINAL PROHIBITIONS; ADDITIONAL OPERATIONAL PROVISIONS FOR SEXUALLY-ORIENTED BUSINESSES; EXEMPTIONS; ENFORCEMENT AND PENALTIES; INJUNCTION; JUDICIAL REVIEW; IMMUNITY FROM PROSECUTION; NOTICE; SEVERABILITY; CONFLICTING ORDINANCE PROVISIONS; AND EFFECTIVE DATE.

RECITALS:

WHEREAS, sexually-oriented businesses require special supervision from the public safety agencies of the Town in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the Town; and

WHEREAS, the Town Council finds that sexually-oriented businesses 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 Town that demands reasonable regulation of sexually-oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually-oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually-oriented businesses, 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 downgrading of property values; and

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

WHEREAS, the Town Council desires to minimize and control 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, the Town Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens and visitors of the Town; 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 sexually-oriented businesses; and

WHEREAS, it is not the intent of the Town Council to condone or legitimize the distribution of obscene material, and the Town Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the Town.

Pursuant to the authority granted by the Constitution and the legislature of the State of

IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

SECTION 1: Authority.

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2: Title and Citation.

This Ordinance will be known and cited as the "TOWN OF FORT MYERS BEACH OBSCENITY, PUBLIC NUDITY, AND SEXUALLY-ORIENTED BUSINESSES REGULATION ORDINANCE."

SECTION 3. Finding of Necessity.

The Town Council finds that the passage of regulations and restrictions regarding obscenity, public nudity, and sexually-oriented businesses within the Town as set forth elsewhere in this Ordinance is necessary for the effective administration and operation of the Town and the health, safety, security, and welfare of the residents, business owners, and others within the Town.

SECTION 4. Purpose, Intent, and Findings.

A. Purpose and Intent. It is the purpose of this ordinance to reasonably regulate sexually-oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually-oriented businesses within the Town and alleviate the adverse secondary effects of sexually-oriented businesses on adjacent and nearby uses of land. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. It is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. It is neither the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material. It is neither the intent nor effect of this ordinance to regulate matters of massage establishments licensed and regulated by the Department of Professional Regulation, Board of Massage, pursuant to Chapter 480, Florida Statutes.

B. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, TDA "Kandyland", 529 U.S. 277 (2000), and *City of Los Angeles v. Alameda Books, Inc.* 121 S. Ct. 1223 (2001) and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually-oriented Businesses,

(June 6, 1989, State of Minnesota), the Council finds:

- (1) Sexually-oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are regularly uncontrolled by the operators of the establishments. Further, there is presently no effective mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- (2) Certain employees of sexually-oriented businesses defined in this ordinance as adult theatres and adult cabarets engage in higher incidences of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually-oriented businesses, especially those that provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such space encourages such activities, that creates unhealthy conditions.
- (5) Persons frequent certain adult theatres, adult arcades, and other sexually-oriented businesses for the purpose of engaging in sex within the premises of such sexually-oriented businesses.
- (6) At least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States—600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992.
- (8) As of _____, 2009, there have been _____ reported cases of AIDS in the State of Florida.
- (9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in the State of Florida.
- (10) 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.

- (11) 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.
- (12) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (14) Sanitary conditions in some sexually-oriented businesses 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 the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- (15) Numerous studies and reports have determined that semen is found in the areas of sexually-oriented businesses where persons view "adult" oriented films.
- (16) The findings noted in paragraphs number 1 through 15 raise substantial governmental concerns.
- (17) Sexually-oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.
- (18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually-oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually-oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually-oriented business, fully in possession and control of the premises and activities occurring therein.
- (19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult

theatres.

- (20) Requiring licensees of sexually-oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
- (21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually-oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
- (22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct that this ordinance is designed to prevent or who are likely to be witnesses to such activity.
- (23) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.
- (24) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct that leads to the transmission of sexually transmitted diseases.
- (25) The general health, safety, security, and welfare of the residents, business owners, and others within the Town will be promoted by the enactment of this Ordinance.

SECTION 5. Definitions.

- (1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show graphic media to five (5) or fewer persons per machine at any given time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- (2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment that, as one (1) of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- (a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other graphic media that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- (b) instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials or other media that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(3) ADULT CABARET means a restaurant, or similar commercial establishment that regularly features:

- (a) persons who appear in a state of nudity or semi-nude condition; or
- (b) live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (c) films, motion pictures, video cassettes, slides or other graphic media that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment that:

- (a) 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 graphic media that 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 that indicates the availability of this adult type of graphic media; or
- (b) offers a sleeping room for rent for a period of time that is less than

ten (10) hours; or

- (c) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar graphic media are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (6) ADULT PHYSICAL CULTURE ESTABLISHMENT means a commercial establishment that advertises, offers, or provides for any form of consideration body rubs or physical contact with "specified anatomical areas". Establishments that routinely provide medical services by State licensed medical practitioners, electrolysis treatment by licensed operators of electrolysis equipment, and massage by licensed massage therapists are excluded from this definition.
- (7) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that for any form of consideration regularly features persons who appear in a state of nudity or semi-nude condition, or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- (8) EMPLOYEE means a person who performs any service on the premises of a sexually-oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and whether or not said person is paid a salary, wage, or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- (9) ESCORT means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to appear in a state of nudity or semi-nude condition.
- (10) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one (1) of its primary business purposes for any form of consideration.
- (11) ESTABLISHMENT means and includes any of the following:
- (a) the opening or commencement of any sexually-oriented business

- as a new business;
- (b) the conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business;
 - (c) the addition(s) of any sexually-oriented business to any other existing business, whether or not a sexually-oriented business; or
 - (d) the relocation of any sexually-oriented business.
- (12) LICENSEE means a person in whose name a license to operate a sexually-oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually-oriented business.
- (13) LINGERIE MODELING BUSINESS means an establishment where a person, who appears in a state of nudity, semi-nude condition, or in lingerie, is available to be observed by a person or persons for any form of consideration.
- (14) NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio does not include a proprietary school licensed by the State of Florida, or a college, junior college or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:
- (a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
 - (b) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
 - (c) where no more than one (1) nude or semi-nude model is on the premises at any given time.
- (15) NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the areola, or the showing of the covered male genitals in a discernibly turgid state.
- (16) OPERATOR means and includes the owner, licensee, custodian, manager, and person in charge of any licensed premises.

- (17) LICENSED PREMISES means any premises that is classified as a sexually-oriented business and requires a license under this Ordinance.
- (18) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (19) SEMI-NUDE or in a SEMI-NUDE CONDITION means the exposure of the female breast with less than fully opaque covering below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
- (20) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one (1) of its principal business purposes, offers for any form of consideration:
- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - (b) activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nude condition.
- (21) SEXUALLY-ORIENTED BUSINESS means a business fitting the definition of adult arcade, adult bookstore, adult novelty store, adult physical culture establishment, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, lingerie modeling business, nude model studio, or sexual encounter center, regardless of whether or not said establishment has received a sexually-oriented business license under this Ordinance.
- (22) SPECIFIED ANATOMICAL AREAS means:
- (a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - (b) less than fully and opaquely covered human genitals, pubic area, **buttocks**, anus, anal cleft or cleavage, or a female breast below a horizontal line across the top of the areola at its highest point.

This definition includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in

part.

(23) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

(a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries; [Town Ordinance references specific Chapters of the Florida Statutes—794, 796, 800, 826, 827.04, 837, 847, 893, and "An offense under either the Florida or Federal Racketeer Influenced and Corrupt Organization (RICO) Act—but provides no lapse times as the Model does below]

(b) for which:

(1) less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(3) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(c) The fact that a conviction is being appealed has no effect on the disqualification of the applicant or a person residing with the applicant.

(24) SPECIFIED SEXUAL ACTIVITIES means any of the following:

- (a) human genitals in a state of sexual stimulation, arousal, or tumescence;
- (b) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, anal cleft or cleavage, or female breasts;
- (c) sex acts, normal or perverted, actual or simulated, including

intercourse, oral copulation, masturbation, or sodomy and also including as examples, but not limited to, any of the following: acts of human anilingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellatio, flagellation, masochism, necrophilia, pederasty, pedophilia, sadism, sado-masochism, sapphism, urolagnia, or zooerasty; or

(d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

(25) SUBSTANTIAL ENLARGEMENT of a sexually-oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

(26) TOWN MANAGER means the Town Manager of the Town of Fort Myers Beach or designee.

(27) TRANSFER OF OWNERSHIP OR CONTROL of a sexually-oriented business means and includes any of the following:

- (a) the sale, lease, or sublease of the business;
- (b) the transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (c) the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 6. Obscenity, Public Nudity, Semi-Nude Condition; Regulations for Public Conduct.

(A) It is a misdemeanor for a person to knowingly and intentionally appear in any public place, including a sexually-oriented business, in a state of nudity, exposing specified anatomical areas, or depicting specified sexual activities.

(B) It is a misdemeanor for a person who knowingly or intentionally appears in any public place, including a sexually-oriented business, in a semi-nude condition unless the person is a licensed sexually-oriented business employee who, while semi-nude, is no closer than ten (10) feet to any patron or customer and on a stage at least two (2) feet above the floor area designated for patrons within a licensed sexually-oriented business.

(C) It is a misdemeanor for an employee, while semi-nude in a sexually-oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually-oriented business.

(D) It is a misdemeanor for an employee, while semi-nude in a sexually-oriented business, to touch a customer or the clothing of a customer.

SECTION 7. Classification of Sexually-Oriented Businesses; Prohibition Against Possession, Sales, or Service of Alcoholic Beverages at Sexually-Oriented Businesses.

(A) Sexually-oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores, adult novelty stores, or adult video stores;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult physical culture establishment;
- (7) adult theaters;
- (8) escort agencies;
- (9) lingerie modeling business;
- (10) nude model studios; and
- (11) sexual encounter centers.

(B) The possession, sales, or service of alcoholic beverages is prohibited on the premises of any sexually-oriented business, whether or not licensed under this Ordinance. It is a misdemeanor for a person to possess, sell, or serve alcoholic beverages on the premises of any sexually-oriented business.

(C) It is a misdemeanor for any person maintaining, owning, or operating an alcoholic beverage establishment to knowingly and intentionally allow any person to appear in a state of nudity, in a semi-nude condition, exposing specified anatomical areas, or depicting specified sexual activities.

(D) It is a misdemeanor for a person to knowingly and intentionally appear in an alcoholic beverage establishment in a state of nudity, semi-nude condition, exposing specified anatomical areas, or depicting specified sexual activities. [Is it desirable to repeat these provisions in the LDC for SOB/COP?]

SECTION 8. Sexually-Oriented Business and Employee Licenses Required.

(A) Prohibitions:

- (1) A sexually-oriented business must not operate without a valid license issued by the Town Manager for the particular classification of sexually-oriented business.
- (2) Any person who operates a sexually-oriented business must not employ

any person to work for the sexually-oriented business who is not licensed as a sexually-oriented business employee by the Town pursuant to this ordinance.

- (3) A person must not obtain employment with a sexually-oriented business without having first secured a sexually-oriented business employee license pursuant to this ordinance.

It is unlawful, and a person commits a misdemeanor by violating a prohibition of paragraph (A) of this Section.

(B) All applicants must submit an original and three (3) copies of the sworn application for a license to the Town Manager on a form provided by the Town.

(C) All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant must provide such information (including fingerprints) as required for the Town to determine whether the applicant meets the qualifications established in this Ordinance.

(D) A person who wishes to operate a sexually-oriented business must sign the application for a license as an applicant. If a person other than an individual wishes to operate a sexually-oriented business, all persons legally responsible for the operations of the sexually-oriented business or who have power to control or direct its operations must sign the application for a license as applicant(s). Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s). Each applicant must be qualified according to the provisions of this Ordinance and each applicant is considered a licensee if a license is granted.

(E) Sexually-oriented business license. The completed application for a sexually-oriented business license must contain the following information and must be accompanied by the following documents:

- (1) If the applicant is:
 - (a) an individual, the individual must state their legal name and any aliases and submit proof that they are 18 years of age;
 - (b) a partnership, the partnership must state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of any partnership agreement;
 - (c) a corporation, the corporation must state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation and the State of Florida, the names and capacity of all officers, directors, and controlling stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

- (2) If the applicant intends to operate the sexually-oriented business under a name other than that of the applicant; he or she must state
 - (a) the sexually-oriented business's fictitious name, and
 - (b) submit the registration documents required under § 865.09, Florida Statutes.
- (3) Whether any applicant(s), or any person(s) residing with any applicant(s), has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- (4) Whether any applicant(s), or any person(s) residing with any applicant(s), has had a previous license under this ordinance, or other similar sexually-oriented business ordinances from another municipality or county denied, suspended, or revoked, including the name and location of the sexually-oriented business for which the permit was denied, suspended, or revoked, as well as the date of the denial, suspension or revocation, and whether any applicant(s) or any person(s) residing with any applicant(s) has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is licensed under this ordinance, or other similar sexually-oriented business ordinances from another municipality or county, which license was previously denied, suspended, or revoked, including the name and location of the sexually-oriented business for which the permit was denied, suspended, or revoked as well as the date of denial, suspension or revocation.
- (5) Whether any applicant(s) or any person(s) residing with any applicant(s) holds any other license(s) under this ordinance or other similar sexually-oriented business ordinance from another municipality or county and, if so, the names and locations of such other licensed businesses.
- (6) The single classification of license for which the applicant is filing.
- (7) The location of the proposed sexually-oriented business, including a legal description of the property, street address, and telephone number(s), if any. The application must include a copy of the plat or plats, if any, and the correct STRAP number(s). If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots, the legal description must specifically describe the perimeter boundary of the total property, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. However, the application must provide the STRAP number for every parcel. The Town Manager has the right to reject any legal description that is not sufficiently detailed to locate the property on official digitally-generated maps.

- (8) Mailing address(es) and residential address(es) for the applicant(s).
- (9) A recent photograph of the applicant(s).
- (10) Driver's license number(s) for the applicant(s).
- (11) A sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The sketch or diagram must designate any areas in which patrons will not be allowed.
- (12) A current certificate and straight-line drawing prepared by a registered land surveyor within thirty (30) days prior to the date the application is submitted depicting:
 - (a) the property lines and the structures containing any existing sexually-oriented businesses, and
 - (b) any zoning district that allows residential uses, and
 - (c) the property lines of any established hotel, motel, restaurant, school (noncommercial), day care center (child), park, playground, place of worship, religious facility, public recreation facility, or cultural facility, as defined in the Land Development Code

within 1000 feet of the property to be certified. For purposes of this Ordinance, a use will be considered existing or established if it is in existence at the time an application is submitted.

- (13) If an applicant wishes to operate a sexually-oriented business, other than an adult motel, that proposes to exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor area, films, video cassettes, other graphic media, or live entertainment that depict specified sexual activities or specified anatomical areas, then the applicant must comply with the application requirements set forth in Section 19 of this Ordinance.
- (14) The names of all employees of a sexually-oriented business, the known employees of a proposed sexually-oriented business, and if the names of such employees are presently unknown, a statement to that effect and date and time certain, acceptable to the Town Manager, by which such information will be supplied to the Town.

(F) Sexually-oriented Business Employee License. The completed application for a sexually-oriented business employee license must contain the following information and must be accompanied by the following documents:

- (1) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (2) Age, date, and place of birth;
- (3) Height, weight, hair and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state and number of driver's permit or other identification card information; and
- (7) Proof that the individual is at least 18 years of age.

(G) The following documents must be attached to the application form for a sexually-oriented business employee license as provided above:

- (1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints must be paid by the applicant.
- (2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, municipality, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension must be attached to the application.
- (3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

(H) Applicant(s) for any license under this Ordinance ha(s)(ve) a continuing affirmative duty to promptly supplement by certified mail all information required by this Ordinance in the event such information changes in any way from what is stated or included in the application. The failure to comply with this duty within 30 days from the date of such change by supplementing the application on file with the Town and the Lee County Sheriff's Office is grounds for suspension of a license.

SECTION 9. Investigation of Application and Issuance of Licenses.

(A) Employee License Application. Upon the filing of a complete application for a sexually-oriented business employee license, ~~alternative one, the Town will issue a temporary license to said applicant. T~~ ~~alternative two~~ the

application will be referred to the appropriate Town departments and agents for investigation of the information contained on the application and compliance with applicable comprehensive plan provisions, code requirements, and other applicable laws and regulations. The Lee County Sheriff's Office is responsible for providing information to the Town Manager on whether an applicant has been convicted of a specified criminal act during the tie period set forth in this Ordinance by performing an FCIC/NCIC records request check. The Town Manager will complete the application investigation process within thirty (30) days from the date the completed application is filed. After the completed investigation, the Town will issue a license unless the Town determines by a preponderance of the evidence to make one (1) or more of the following factual findings:

- (1) The application is incomplete. If the Town Manager determines or learns at any time prior to a final determination on the license application that the applicant has not properly completed the application for a license under this Ordinance, the Town Manager will promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying the application for a license will begin again upon resubmission of a completed application.
 - (2) The applicant failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (3) The applicant is under the age of 18 years;
 - (4) The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;
 - (5) The sexually-oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or
 - (6) The applicant has had a sexually-oriented business employee license revoked by the Town within two (2) years of the date of the current application. If the sexually-oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this Ordinance is subject to judicial review as set forth in Section 29 of this Ordinance.
- (B) Renewal. A license granted pursuant to this Ordinance is subject to annual renewal by the operator(s) filing a complete application and a factual finding by the Town that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, that would be grounds to deny the initial license application. The renewal of the license is subject to the payment of the fee as set forth in Section 10 of this Ordinance.
- (C) Business License Application. Within 30 days after receipt of a completed

sexually-oriented business application, the Town will approve or deny the issuance of a license to an applicant. The Town will approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one (1) or more of the following findings is true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or any person(s) with whom an applicant is residing is overdue in payment to the Town, Lee County, or any special district within the municipal limits of the Town of any taxes, fees, fines, or penalties assessed against or imposed in relation to any business.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or provided information with the application.
- (4) An applicant or a person(s) with whom the applicant is residing has been denied a license by the Town to operate a sexually-oriented business within the preceding 12 months or whose license to operate a sexually-oriented business has been revoked within the preceding 12 months.
- (5) An applicant or a person(s) with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.
- (6) The premises to be used for the sexually-oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.
- (7) The license fee required by this ordinance has not been paid.
- (8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

(D) The license, if granted will state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually-oriented business and the classification for which the license is issued pursuant to Section 7 of this Ordinance. All licenses must be posted in a conspicuous place at or near the entrance to the sexually-oriented business so that they may be easily read at any time.

(E) The health department, fire department, and the building official will complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the Town.

(F) A sexually-oriented business license will issue for only one (1) classification as found in Section 7 of this Ordinance.

SECTION 10. Investigation and License Fees.

(A) Every application for a sexually-oriented business license (whether for a new license or for renewal of an existing license) must be accompanied by a \$ _____ non-refundable application and investigation fee **OPTION**

(B) [In addition to the application and investigation fee required above, e] [E]very sexually-oriented business license (whether for a new license or for renewal of an existing license) must be accompanied by an annual \$1000.00 [current] non-refundable application, investigation, and license fee.

(C) Every application for a sexually-oriented business employee license (whether for a new license or for renewal of an existing license) must be accompanied by an annual \$250.00 [current] non-refundable application, investigation, and license fee.

(D) All license applications and fees must be submitted to the Town Manager.

(E) All application, investigation, and license fees are subject to modification by resolution of the Town Council.

SECTION 11. Inspection of Premises.

(A) An applicant or licensee must permit representatives of the Sheriff's Office, Health Department, Fire Department, Department of Community Development, or other Town departments and agencies to inspect the premises of a new or proposed sexually-oriented business for the purpose of insuring compliance with the law, at any time it is, or is proposed to be, occupied or open for business.

(B) A person who operates a sexually-oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises, regardless of whether or not a permit has been issued for the premises, at any time it is open for business.

SECTION 12. Expiration of License.

(A) Each annual license will expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 8 of this Ordinance. Application for renewal of an annual license must be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the license will expire.

(B) When a license expires or the Town denies renewal of a license, the applicant will not be issued a license for one (1) year from the date of expiration or denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license only after at least ninety (90) days have elapsed since the date denial became final.

SECTION 13. Suspension of License.

The Town will suspend a license for a period not to exceed thirty (30) days if it determines by a preponderance of evidence that a licensee or an employee if a licensee has:

- (A) violated or is not in compliance with any provision or requirement of this ordinance;
- (B) refused to allow an inspection of the sexually-oriented business premises as authorized by this chapter.

SECTION 14. Revocation of License.

(A) The Town will revoke a license if it determines by a preponderance of evidence that:

- (1) a cause of suspension in Section 13 of this Ordinance occurs and the license has been previously suspended within the preceding twelve (12) months;
- (2) a licensee gave false or misleading information in the material submitted during the application process;
- (3) a licensee knowingly allowed possession, use, or sale of any controlled substance on the premises;
- (4) a licensee knowingly allowed prostitution on the premises;
- (5) a licensee knowingly operated the sexually-oriented business during a period of time when the licensee's license was suspended;
- (6) a licensee has been convicted of a specified criminal act for which the time period required by this Ordinance has not elapsed;
- (7) on two (2) or more occasions within a twelve (12) month period, a person committed an offence, occurring on the licensed premises, constituting a specified criminal act for which a conviction is obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed will have no effect on the revocation of the license;
- (8) except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
- (9) a licensee knowingly allowed the possession, sales, or service of alcoholic beverages on the premises; or
- (9) a licensee is delinquent in payment to the Town, County, any special district within the municipal limits of the Town, or State for any taxes or fees past due.

(C) When the Town revokes a license, the revocation will continue for one (1) year, and the former licensee will not be issued a sexually-oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Town finds that the basis for the revocation has

been corrected or abated, the former licensee may be granted a license no sooner than ninety (90) days since the date the revocation became effective.

SECTION 15. Transfer of License Prohibited.

A licensee must not transfer a license to another person, and a licensee must not operate a sexually-oriented business under the authority of a license at any place other than the address of the sexually-oriented business designated in the application.

SECTION 16. Location of Sexually-Oriented Businesses.

(A) A person commits a misdemeanor if that person operates, causes, or allows the operation of a sexually-oriented business in a location prohibited by this Ordinance or Chapter 34 of the Town of Fort Myers Beach Land Development Code, as amended.

(B) A person commits a misdemeanor if that person operates, causes, or allows the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually-oriented business within 1000 feet of another sexually-oriented business. Presence of a city, county, or other political subdivision boundary is irrelevant for purposes of calculating the distance requirements of this Ordinance.

(C) A person commits a misdemeanor if that person operates, causes, or allows the operation, establishment, or maintenance of more than one (1) sexually-oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually-oriented business in any building, structure, or portion thereof containing another sexually-oriented business.

(D) For purposes of this Ordinance, the distance between any two (2) sexually-oriented businesses is measured on a straight horizontal line, without regard to the intervening structures, objects, or political boundaries, from the closest point on the perimeter boundary lines of each parcel of land on which each business is located.

(E) Any sexually-oriented business lawfully operating on **effective date, 2009**, but in violation of any provision of subsections (A) through (D) of this Section is deemed a nonconforming use. The nonconforming use may continue for a period not to exceed one (1) year from the effective date of this Ordinance, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses must not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually-oriented businesses are within 1000 feet of each other and otherwise in a permissible location, the sexually-oriented business that was first established and continually operating at a particular

location is the conforming use and the later established business(es) (is/are) nonconforming.

(F) A sexually-oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually-oriented business license, of a use listed in subsection B of this Section within 1000 feet of the sexually-oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

SECTION 17. Regulations Pertaining to Employee Records.

(A) The licensee of a sexually-oriented business is responsible for keeping a record of all employees who are currently employed by the establishment and of all former employees who were employed by the establishment during the preceding one (1) year period. The record must contain the current or former employees full legal names, including any aliases, and dates of birth.

(B) The original records required by Section 8 of this Ordinance, or true and exact copies thereof, must be kept at the sexually-oriented business at all times and copies provided by certified mail to the Town Manager within 30 days of any change in required information.

(C) Any operator of a sexually-oriented business is responsible for knowing the location of the original records or the true and exact copies thereof.

(D) Any operator of the sexually-oriented business must, upon request by the Town Manager, an authorized Town employee, or a law enforcement officer acting under this Ordinance or otherwise pursuant to law, make available for inspection the original records or the true and exact copies thereof, during normal working hours and during the hours of operation of the sexually-oriented business.

SECTION 18. Additional Regulations for Adult Motels.

(A) Evidence that a guest unit in a hotel, motel, resort, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

(B) A person in control of a guest unit in a hotel, motel, resort, or similar commercial establishment that does not have a sexually-oriented business license commits a misdemeanor by allowing a guest unit to be occupied for any form of consideration by a person and, within ten (10) hours from the time the room is rented, by allowing the same guest unit to again be occupied for any form of consideration.

SECTION 19. Additional Regulations for Exhibition of Sexually-Explicit Live Entertainment or Graphic Media in Viewing Rooms.

(A) A person who operates or causes to be operated a sexually-oriented business, other than an adult motel, that exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other media that depicts specified sexual activities or specified anatomical areas, must comply with the following requirements:

- (1) Upon application for a sexually-oriented business license, the application must be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion(s) of the premises in which patrons will not be allowed. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram must also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint will not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) The application must be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town.
- (4) It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises must be configured in such a manner that there is a direct, unobstructed line-of-sight view of every area of the premises to which any patron is allowed access for any purpose, excluding restrooms, from a manager's station. If the premises has two (2) or more manager's stations designated, then the interior of the premises must be configured in such a manner that there is at all times a direct, unobstructed line-of-sight view of every area of the premises to which any patron is allowed access for any purpose, except restrooms, from at least one (1) of the manager's stations. Restrooms must not contain any equipment for viewing any graphic media that depicts specified sexual activities or specified anatomical areas.
- (6) It is the duty of the licensee to ensure that the direct line-of-sight view

specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be allowed in the application filed pursuant to subsection (1) of this Section.

- (7) No viewing room may be occupied by more than one (1) person at any given time.
- (8) The premises must be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
- (9) It is the duty of the licensee to ensure that the illumination described above is maintained at all times when any patron is present on the premises.
- (10) The licensee must not allow openings of any kind to exist between viewing rooms or booths.
- (11) A person must not make or attempt to make an opening of any kind between viewing booths or rooms.
- (12) The licensee must, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The licensee must cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (14) The licensee must cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material must be used within forty eight (48") inches of the floor.

(B) A person having a duty under Subsection (1) through (14) of Subsection (A) of this Section commits a misdemeanor if he knowingly fails to fulfill that duty.

SECTION 20. Additional Regulations for Escort Agencies.

- (A) An escort agency must not employ any person under the age of 18 years.
- (B) A person commits a violation if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

SECTION 21. Additional Regulations for Nude Model Studios.

- (A) A nude model studio must not employ any person under the age of 18 years.
- (B) A person under the age of 18 years commits a violation if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio.

(C) A person commits a violation if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises that can be viewed from the public right of way.

(D) A nude model studio must not place or permit a bed, sofa, or mattress in any room on the premises except that a sofa may be placed in a reception room open to the public.

SECTION 22. Patron Age Restrictions at a Sexually-Oriented Business.

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually-oriented business.

SECTION 23. Hours of Operation.

(A) The opening or operation of a sexually-oriented business, except for an adult motel, is prohibited at any time between the following hours:

(1) 12 midnight on Monday and 9:00 a.m. on Monday.

(2) 12 midnight on Tuesday and 9:00 a.m. on Tuesday.

(3) 12 midnight on Wednesday and 9:00 a.m. on Wednesday.

(4) 12 midnight on Thursday and 9:00 a.m. on Thursday.

(5) 12 midnight on Friday and 9:00 a.m. on Friday.

(6) 1:00 a.m. on Saturday and 9:00 a.m. on Saturday.

(7) 1:00 a.m. on Sunday and 12 noon on Sunday.

(8) On legal holidays established by state law, the hours of prohibition are the same for the days on which such holidays fall as for subsection (6), above.

(B) It is unlawful and a person commits a misdemeanor by operating or causing the opening or operation of a sexually-oriented business, regardless of whether or not a license has been issued under this ordinance for said business, during the hours of prohibition provided in subsection (A) of this Section.

(C) It is unlawful and a person commits a misdemeanor if, by working as an employee of a sexually-oriented business, regardless of whether or not a license has been issued under this ordinance for said business, said employee engages in any performance, solicits any performance, makes any sale, solicits any sale, provides any service or solicits any service

associated with the sexually-oriented business during the hours of prohibition provided in subsection (A) of this Section.

SECTION 24. Additional Criminal Prohibitions.

In addition to the criminal provisions found at other sections of this Ordinance, the following criminal provisions also apply to sexually-oriented businesses:

(A) It is unlawful and a misdemeanor for a licensee or operator to operate or for any person to be an operator or employee of a sexually-oriented business where the licensee, operator, or employee knows or should know any of the following:

- (1) That the sexually-oriented business does not have a sexually-oriented business license issued under this Ordinance; or
- (2) That the sexually-oriented business has a license that is cancelled, expired, revoked, or suspended.

(B) It is unlawful and a person commits a misdemeanor by altering or otherwise changing the contents of a sexually-oriented business or employee license.

SECTION 25. Additional Operational Provisions for Sexually-Oriented Businesses.

(A) Every sexually-oriented business must, regardless of whether or not said business is licensed under this Ordinance, observe the following general requirements:

- (1) Maintain the premises in a sanitary manner. A sexually-oriented business is prohibited in any structure, building, establishment, or premises that does not have adequate and sanitary equipment or that does not conform to all applicable local and state regulations.
- (2) Conform to all applicable:
 - (a) federal, State, or local building, fire, and health statutes, codes, ordinances, and regulations;
 - (b) State and local zoning and land use laws and regulations; and
- (3) Maintain a continuously updated compilation of the records required by this Ordinance and, on the first Monday of every month, provide the Town Manager or designee with an update of those records for all persons who are, or have been, employees at the business since the first Monday of the previous month, and their positions.

(B) No licensee or operator may change the name of a sexually-oriented business unless and until the licensee or operator satisfies each of the following requirements:

- (1) Provide the Town Manager or designee 30 days notice in writing of the proposed name change; and
- (2) Pays the Town Manager or designee a three dollar (\$3.00) change of name fee; and
- (3) Complies with Fictitious Name Act codified in § 865.09, Florida Statutes.

SECTION 26. Exemptions.

(A) It is a defense to prosecution under Section 6 of this Ordinance that a person appearing in a state of nudity did so in a modeling class operated:

- (1) by a proprietary school, licensed by the State of Florida, a college, junior college, or university supported entirely or partly by taxation;
- (2) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) in a structure:
 - (a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (b) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - (c) where no more than one (1) nude model is on the premises at any given time.

(B) It is a defense to prosecution for a violation of Section 6 of this Ordinance that a person exposed any specified anatomical area during the person's bona fide use of a rest room or dressing room. If the dressing room is on the premises of a sexually-oriented business, the dressing room must be accessible only to employees.

SECTION 27. Enforcement and Penalties.

(A) If any person fails or refuses to obey or comply with or violates any of the criminal provisions of this Ordinance, such person upon conviction of such offense, is guilty of a misdemeanor and will be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed 60 days in the County jail, or both, in the discretion of the court. Each non-compliance or violation will constitute a separate offense.

(B) Nothing herein contained will prevent or restrict the Town from taking any other lawful action in any court of competent jurisdiction necessary to prevent or remedy any non-compliance or violation. Such other lawful actions will include, but will not be limited to, an equitable action for injunctive relief or an action at law for damages.

(C) Further, nothing in this Section will be construed to prohibit the Town from prosecuting any violation of this Ordinance by means of the code enforcement system established pursuant to the authority of Chapter 162, Florida Statutes.

(D) All remedies and penalties provided for in this Section are cumulative and independently available to the Town and the Town is authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law.

SECTION 28. Injunction.

A person who operates or causes to be operated a sexually-oriented business without a valid license or in violation of Section 13 of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations are punishable by a fine of \$200.00 or thirty (30) days imprisonment. Each day a sexually-oriented business so operates is a separate offense or violation.

SECTION 29. Judicial Review.

After denial of an application, denial of a renewal of an application, suspension of any license, or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action will be promptly reviewed by the court.

SECTION 30. Immunity from Prosecution.

Town of Fort Myers Beach employees, the Town Council, the Lee County Sheriff's Office, all other Town agencies and agents, and all other County officers, agents, and employees, charged with enforcement of the State and local laws and codes are immune from prosecution, civil or criminal, for reasonable, good faith trespass upon a sexually-oriented business while acting within the scope of authority conferred by this Ordinance.

SECTION 31. Notice

Any notice required or furnished by the Town under this Ordinance may be accomplished by sending written notification by certified mail to the mailing address provided on the license application. The Town will consider said mailing address the correct mailing address unless the Town Manager is otherwise

notified in writing by certified mail .

SECTION 32. Severability.

If any section, subsection, or clause of this ordinance is deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses will not be affected.

SECTION 33. Conflicting Ordinance Provisions.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 34. Effective Date.

This ordinance will become effective _____, 2009.

The foregoing ordinance was enacted by Town Council upon a motion by Council Member _____, and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor _____
Herb Acken, Vice Mayor _____
Tom Babcock _____
Jo List _____
Bob Raymond _____

DULY PASSED AND ENACTED this _____ day of _____ 2009.

ATTEST: TOWN OF FORT MYERS BEACH,
FLORIDA

By: _____ By: _____
Michelle Mayor, Town Clerk Larry Kiker, Mayor

Approved as to form by:

Anne Dalton, Esquire
Town Attorney