

ORDINANCE NO. 0-10-02

**An ordinance of the City of Gainesville, Florida, amending the Land Development Code related to sexually oriented businesses; by revising the definitions for sexually oriented businesses; by allowing certain types of sexually oriented businesses as uses by right in the Tourist-Oriented Business District (BT), General Business District (BUS) and General Industrial District (I-2); by stating the intent, purpose and findings for the regulation of sexually oriented businesses; by imposing spacing requirements and design restrictions; by allowing for limited retail sales as an accessory use to retail trade establishments; by providing for permitted nonconforming uses; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.**

**WHEREAS**, publication of notice of a public hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

**WHEREAS**, notice was given and publication made as required by law and a public hearing on the petition was then held by the City Plan Board on October 28, 2009 and by the City Commission on January 21, 2010; and

**WHEREAS**, pursuant to law, an advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of the public hearing to be held in the City Commission Meeting Room, First Floor, City Hall, in the City of Gainesville at least seven (7) days after the day the first advertisement was published; and

**WHEREAS**, a second advertisement no less than two columns wide by 10 inches long was placed in the aforesaid newspaper notifying the public of the second public hearing to be held at the adoption stage at least five (5) days after the day the second advertisement was published; and

1           **WHEREAS**, the public hearings were held pursuant to the published notices  
2 described above, at which hearings the parties in interest and all others had an opportunity  
3 to be and were, in fact, heard.

4           **WHEREAS**, the City Commission of the City of Gainesville, Florida,  
5 understands that the current provisions of its land development code related to adult and  
6 sexually oriented establishments may not be adequate to balance the competing First  
7 Amendment interests related to certain aspects of such businesses and community  
8 concerns with the negative secondary effects of such businesses; and

9           **WHEREAS**, the City retained Duncan Associates, a nationally known planning  
10 consulting firm, to review the current provisions of its land development code related to  
11 adult and sexually oriented establishments and to make recommendations to the City; and

12           **WHEREAS**, Duncan Associates assigned nationally known planner, Eric Damian  
13 Kelly, Ph.D, FAICP, to conduct such review and make recommendations; and

14           **WHEREAS**, Dr. Kelly prepared a report for the City entitled "Recommendations  
15 Zoning Amendments Related to Sex Businesses" dated September 2008 (the "Duncan  
16 Recommendations"); and

17           **WHEREAS**, part of the context for the review and recommendations was an  
18 August 2003 report prepared for Alachua County, entitled "Regulation of Sexually  
19 Oriented Businesses in Alachua County: Field Survey, Analysis and Recommendations"  
20 (the "Duncan Study"). This study included businesses in the City of Gainesville; and

21           **WHEREAS**, the United States Supreme Court in *City of Renton v. Playtime*  
22 *Theater, Inc.*, 475 U.S. 41 (1986) and other cases has held that a local government may  
23 regulate sexually oriented businesses through content-neutral, time, place, and manner

1 restrictions, so long as the regulations are designed to serve the government interest and  
2 do not unreasonably omit avenues of communication, and are aimed not at the content of  
3 speech protected by the First Amendment but rather at the secondary effects of said  
4 businesses on the surrounding community; and

5       **WHEREAS**, the United States Supreme Court in *Repton* held that a local  
6 government may rely upon the experiences of other cities, as well as on its own studies, in  
7 enacting local legislation to regulate sexually oriented businesses; and

8       **WHEREAS**, based on its review and consideration of the Duncan Study, the  
9 Duncan Recommendations, together with the following studies (collectively the  
10 “Studies”), and evidence provided at the public hearings, the City Commission, with the  
11 advice of the City Plan Board, finds that sexually oriented businesses may have negative  
12 secondary effects on the community including, but not limited to, personal and property  
13 crimes, public safety risks, prostitution, potential spread of disease, lewdness, public  
14 indecency, illicit sexual activity, illicit drug use and drug trafficking, undesirable and  
15 criminal behavior associated with alcohol consumption, negative impacts on surrounding  
16 properties, litter, and sexual assault and exploitation.

17       “A Report on the Secondary Impacts of Adult Use Businesses in the City of  
18 Denver,” January 1998;

19       “Staff Report, Whittier City Planning Commission; Subject: Adult Business  
20 Regulations,” July 11, 1994;

21       Report concerning adverse impacts associated with adult entertainment uses in  
22 New York City, 1993-94;

1           “Final Report to the City of Garden Grove: the Relationship between Crime and  
2 Adult Business Operations on Garden Grove Boulevard,” Richard W. McCleary, Ph.D.,  
3 James W. Meeker, J.D., Ph.D., October 23, 1991;

4           “City of Tucson, Police Staff Memorandum, Subject: Adult Entertainment  
5 Ordinance,” May 1, 1990;

6           “Report on Adult Oriented Business in Austin,” May 19, 1986;

7           “Adult Business Study” conducted by the Planning Department City of Phoenix,  
8 May 25, 1979; and

9           “Study of the Effects of the Concentration of Adult Entertainment Establishments  
10 in the City of Los Angeles,” June 1977.

11           **WHEREAS**, the studies conducted by the Cities of Austin (1986), Garden Grove  
12 (1999) and New York City (1994) all reflect clear findings, based on the opinions of real  
13 estate professionals, that sexually oriented businesses have a negative effect on the values  
14 of residential properties located within 500 feet or less of such businesses; and

15           **WHEREAS**, a much more recent survey of Florida appraisers, prepared in  
16 December 2007 by Duncan Associates for Palm Beach County, Florida, generally found  
17 that: 87-90 percent of responding appraisers believed that a sexually oriented business  
18 will have a negative effect on the market value of a single-family residence located within  
19 500 feet; about two-thirds of the appraisers surveyed believe that the separation distance  
20 between such a business and a residence at which there will be “no measurable effect” on  
21 the market value will be a half-mile or more; between 50.7 percent and 61.2 percent of  
22 the surveyed appraisers also believed that a sexually oriented business would have a  
23 negative impact on the market value of a community shopping center; and

1           **WHEREAS**, the Commission recognizes from the Studies that businesses with  
2 live entertainment may have greater negative effects on the community than those that  
3 simply offer goods at retail; and

4           **WHEREAS**, the Commission finds that Article IV of Chapter 14.5 of the Code of  
5 Ordinances, dealing with “Adult Performance Establishments,” provides additional  
6 controls to address such issues and that further regulation in the City’s land development  
7 code for such establishments are not necessary; and

8           **WHEREAS**, the Duncan Study, the Duncan Recommendations and comments of  
9 the City’s own professional staff indicate that the City’s current land development  
10 regulations do not make appropriate distinctions among other sexually oriented  
11 businesses and between such businesses and other general businesses that carry some  
12 amount of sexually oriented goods and products; and

13           **WHEREAS**, the Duncan Recommendations included specific recommendations  
14 about classification of sexually oriented businesses; and

15           **WHEREAS**, the revised regulations fully address the different types of sexually  
16 oriented businesses that currently exist or might exist in the future in the City of  
17 Gainesville; and

18           **WHEREAS**, one sexually oriented business in Alachua County has motion  
19 picture arcades containing video viewing booths; and

20           **WHEREAS**, the Duncan Study, citing in part the 1990 Tucson study as well as  
21 experience in other communities, suggests that the function of the viewing booths is  
22 simply to provide a place and manner of presentation of sexually oriented material that

1 provides viewers with a place in which they may masturbate or engage in casual sex of  
2 other types; and

3 **WHEREAS**, a study undertaken for the City of Alachua by an experienced crime-  
4 scene investigator confirmed such findings locally; and

5 **WHEREAS**, the Commission believes that motion picture arcades are an  
6 undesirable place and means of presentation of material that is readily available in other  
7 forms in the City and within Alachua County; and

8 **WHEREAS**, sexually oriented media is available in a number of different  
9 contexts in the City and Alachua County, including, but not limited to, the backrooms of  
10 some general, or “mainstream” video and retail stores, such as Modern Age Tobacco  
11 Shop; at Video Warehouse, which handles exclusively sexually oriented media; and at  
12 XMart; and

13 **WHEREAS**, both Modern Age Tobacco and XMart also carry sexually oriented  
14 devices; and

15 **WHEREAS**, public officials and law enforcement officials do not appear to have  
16 received complaints about the availability of sexually oriented media and devices in the  
17 backrooms of general video or retail stores;

18 **WHEREAS**, public officials and law enforcement officials were in some cases  
19 unaware of the availability of sexually oriented media and devices in the backrooms of  
20 some general retail stores, further suggesting that such availability has little, if any,  
21 impact on the community; and

1           **WHEREAS**, the Duncan Recommendations to allow properly zoned general  
2 retail stores to carry such material, subject to proper controls to prevent its availability to  
3 minors, is a logical continuation of current practice; and

4           **WHEREAS**, the Duncan Study found a number of different land-use types among  
5 the sexually oriented businesses that exist in the City and Alachua County; and

6           **WHEREAS**, a primary difference between the XMart and other businesses is the  
7 fact that the XMart is located directly adjacent to and along pedestrian routes serving a  
8 residential neighborhood, whereas other venues are located primarily in commercial  
9 areas, well separated from residential areas; and

10           **WHEREAS**, the concept of separating sexually oriented businesses from  
11 residential areas and other sensitive uses is consistent with the use of zoning to separate  
12 incompatible uses, and it is a concept that has been upheld by the courts, beginning with  
13 the decision of the United States Supreme Court in *Young v. American Mini-Theaters*,  
14 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976); and

15           **WHEREAS**, from a zoning perspective, sexually oriented business uses are  
16 incompatible with sensitive uses such as residential areas, places of religious assembly,  
17 public parks and uses that predominately serve minors; and

18           **WHEREAS**, the separation of sexually oriented businesses from residential areas,  
19 public parks, places of religious assembly, public and private schools, and youth  
20 associations will mitigate the negative effect of such businesses on these sensitive uses;  
21 and

22           **WHEREAS**, the Studies indicate that the clustering of sexually oriented  
23 businesses can increase the negative secondary effects of such businesses; and

1           **WHEREAS**, studies relied on by the City of Los Angeles similarly found that  
2 there was an increased impact from two or more co-located sexually oriented businesses,  
3 a finding on which the U.S. Supreme Court held that the City was entitled to rely, in *City*  
4 *of Los Angeles v. Alameda Books, Inc.*, 152 L. Ed. 2d 670, 122 S. Ct. 1728 (U.S. 2002);  
5 and

6           **WHEREAS**, the City currently has no problem with the clustering or co-location  
7 of such businesses, but the Commission wants to avoid such problems in the future; and

8           **WHEREAS**, the separation of sexually oriented businesses from other sexually  
9 oriented businesses will achieve this objective; and

10           **WHEREAS**, the City Commission recognizes that it must provide sexually  
11 oriented businesses with a reasonable opportunity to locate and that the number of sites  
12 available for such businesses must be greater than the number of sexually oriented  
13 businesses in existence in the City under the holding in *Daytona Grand, Inc. v. City of*  
14 *Daytona Beach, Florida*, 490 F.3d 860, (11<sup>th</sup> Cir. 2007) and cases cited therein; and

15           **WHEREAS**, there are at least five known sexually oriented businesses in  
16 existence in the City; and

17           **WHEREAS**, after several public meetings and review and consideration of the  
18 Duncan Recommendations, the City Commission, with the advice of the City Plan Board,  
19 has considered carefully which zoning districts provide a combination of suitable  
20 environments for retail and entertainment and have an adequate land area to provide sites  
21 for such businesses that are adequately separated from incompatible uses; and

22           **WHEREAS**, the Commission finds that the General Business (BUS) District and  
23 Tourist- Oriented Business (BT) District include many of the large and intensive

1 commercial areas of the city, providing sites for additional commercial enterprises that  
2 would be adequately separately from incompatible uses; and

3 **WHEREAS**, the Commission finds, however; that, based on the Duncan  
4 Recommendations, the number of parcels in the BUS and BT district that will meet the  
5 proposed separation requirements of 1,000 feet may be more limited than the number of  
6 parcels that Florida courts have held to be required in other communities; and

7 **WHEREAS**, after careful study of the option of allowing such businesses in the I-  
8 1 or I-2 Industrial districts, the Commission concluded that the geography of the current I-  
9 1 district is such that allowing such businesses in both the I-1 and BUS districts could  
10 lead to some apparent concentration of such businesses in one part of the community, a  
11 result that could increase the negative secondary effects of the businesses; and

12 **WHEREAS**, the Commission finds that allowing such businesses in the I-2, BUS  
13 and BT districts provides a large geographic area that would allow for wider separation  
14 among potential sexually oriented businesses; and

15 **WHEREAS**, the Commission finds that allowing such businesses in the I-2, BUS  
16 and BT districts provides more than 100 parcels potentially available for sexually oriented  
17 businesses and this number of parcels exceeds the number of sexually oriented businesses  
18 that currently exist or are likely to seek to exist in the City; and

19 **WHEREAS**, the Commission has accepted the Duncan Recommendations  
20 concerning lighting and other internal design requirements that have been used in other  
21 communities to reduce the negative secondary effects and potential unlawful activities in  
22 such businesses without censoring or otherwise interfering with the availability of  
23 sexually oriented materials or lawful performances; and

1           **WHEREAS**, the Comprehensive Plan has an objective that the City implement  
2 regulations that will protect low-intensity uses from the negative impacts of high-intensity  
3 uses and provide for the healthy coexistence and integration of various land use, the City  
4 Commission finds the provision that will allow such businesses in the I-2, BUS and BT  
5 districts consistent with the Comprehensive Plan; and

6           **WHEREAS**, the Commission, after months of study, multiple public meetings  
7 and on the advice of the City Plan Board, concludes that the approval of these regulations  
8 will provide appropriate zoning restrictions to limit the negative secondary effects of  
9 sexually oriented businesses while conforming with the Constitutional requirements for  
10 such regulations as set forth by the United States Supreme Court, the Eleventh Circuit  
11 Court of Appeals, and the federal courts in Florida.

12           **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**  
13 **OF THE CITY OF GAINESVILLE, FLORIDA:**

14           **Section 1. Findings.** The City Commission adopts the foregoing findings as set  
15 forth in the above whereas clauses.  
16

17           **Section 2. Section. 30-23 Definitions,** of the Land Development Code of the  
18 City of Gainesville, is amended by deleting the definition listed below. All other existing  
19 definitions remain in full force and effect.  
20

21 ~~Adult and sexually oriented establishment means any facility or establishment described~~  
22 ~~in article VI.~~  
23

24           **Section 3. Section 30-23. Definitions,** of the Land Development Code of the  
25 City of Gainesville is amended by adding the below listed definitions and integrating the  
26 new definitions into existing definitions in alphabetical order. All existing definitions  
27 remain in full force and effect.  
28

29 Hardcore [pornography] means depictions of sexual conduct that include one or more of  
30 the following: erect male organ; contact of the mouth of one person with the genitals of  
31 another; penetration of a finger or male organ into any bodily orifice in another person;  
32 open female labia; penetration of a sex toy or other device into a bodily orifice of any

1 person, sometimes assisted by another person; actual male ejaculation; or the aftermath of  
2 male ejaculation.

3  
4 Motion picture arcade means any booth, cubicle, stall or compartment which is smaller  
5 than 600 square feet in floor area, which is designed, constructed or used to hold or seat  
6 customers, and which is used for presenting motion pictures or viewing publications for a  
7 fee by any photographic, electronic, magnetic, digital or other means or medium  
8 (including, but not limited to, film, video or magnetic tape, laser disc, cd-rom, books,  
9 magazines or periodicals) for observation by customers therein. Motion picture arcades  
10 are a prohibited use in all zoning districts in the City.

11  
12 Public park means properties and facilities owned and operated by any governmental  
13 agency which are open to the general public for recreational purposes.

14  
15 Public school means a school which is operated by a governmental agency and meets all  
16 criteria imposed by law or ordinance to satisfy the requirements for mandatory school  
17 attendance of elementary, middle or high school.

18  
19 Residential area, when used in the context of regulating sexually oriented businesses,  
20 shall mean any of the following: land zoned in any RSF district, any RMF district, the  
21 MH district, the RC district, the RMU district, PD (that includes residential  
22 development), or the RH-1 or RH-2 district.

23  
24 Sadomasochistic practices means flagellation or torture by or upon a person clothed or  
25 naked, or the condition of being fettered, bound, or otherwise physically restrained on the  
26 part of one so clothed or naked.

27  
28 Sexual conduct or specified sexual activities means the engaging in or the commission of  
29 an act of sexual intercourse, oral genital contact, masturbation, or the touching of the  
30 sexual organs, pubic region, buttock or female breast of another person for the purpose of  
31 arousing or gratifying the sexual desire of another person.

32  
33 Sexually oriented business is an inclusive term used to describe collectively: sexually  
34 oriented cabaret; sexually oriented motion picture theater; motion picture arcade; massage  
35 parlor, establishment or practice that is not licensed under Chapter 480, Florida Statutes;  
36 and sexually oriented retail store. This collective term does not describe a specific land  
37 use and shall not be considered a single use category for purposes of the zoning code or  
38 other applicable ordinances.

39  
40 Sexually oriented cabaret means a building that features dancing or other live  
41 entertainment that is distinguished or characterized by an emphasis on the exhibiting of  
42 “sexual conduct” or “specified anatomical areas” for observation by customers therein on  
43 more than half the days that it is open, or which is marketed as or offers performances  
44 described as “adult” or “XXX”. The fact that an establishment does not serve alcoholic  
45 beverages shall not remove it from classification as a “sexually oriented cabaret” if it

1 otherwise falls under this definition. This definition is intended to include “Adult  
2 Performance Establishments” as defined in Chapter 14.5, Article IV of the Gainesville  
3 Code of Ordinances, but this definition is not limited to such establishments.

4  
5 *Sexually oriented devices* means any three-dimensional object designed and marketed for  
6 stimulation of the male or female human genital organ or anus or for sadomasochistic use  
7 or use in sexual conduct and shall include devices such as dildos, vibrators, penis pumps,  
8 and physical representations of the human genital organs. Nothing in this definition shall  
9 be construed to include devices primarily intended for protection against sexually  
10 transmitted diseases or for preventing pregnancy.

11  
12 *Sexually oriented media* includes magazines, books, videotapes, movies, slides, cd-roms  
13 or other devices used to record computer images, or other media which are distinguished  
14 or characterized by their emphasis on matter depicting, describing or relating to “sexual  
15 conduct” or “specified anatomical areas” (separately defined).

16  
17 *Sexually oriented motion picture theater* means a cinema or motion picture theater which  
18 shows hardcore features on more than half the days that it is open, or which is marketed  
19 as or offers features described as “adult” or “XXX”. This definition specifically  
20 excludes motion picture arcades.

21  
22 *Sexually oriented devices* means any three-dimensional object designed and marketed for  
23 stimulation of the male or female human genital organ or anus or for sadomasochistic use  
24 and shall include devices such as dildos, vibrators, penis pumps, and physical  
25 representations of the human genital organs. Nothing in this definition shall be construed  
26 to include devices primarily intended for protection against sexually transmitted diseases  
27 or for preventing pregnancy.

28  
29 *Sexually oriented retail store* means a retail sales or service establishment that meets any  
30 one of the following four tests:

- 31  
32 A. More than thirty percent (30%) of the gross public floor area or stock in  
33 trade consists of sexually oriented media; or  
34 B. It offers for sale items from any two (2) of the following categories:  
35 sexually oriented media; lingerie; leather goods marketed or presented in a  
36 context to suggest their use for sadomasochistic practices; and the  
37 combination of such items comprise more than ten percent (10%) of its  
38 gross public floor area or stock in trade; or  
39 C. More than five percent (5%) of its gross public floor area or stock in trade  
40 consists of sexually oriented devices; or  
41 D. It is advertised, marketed, or holds itself out in any forum as an “XXX,”  
42 “adult,” or “sex” business.  
43  
44  
45

1 Specified Anatomical Areas means any of the following, singly or in combination:

- 2  
3 A. less than completely and opaquely covered: human genitals, pubic region,  
4 buttock and female breast below a point immediately above the top of the  
5 areola; and  
6  
7 B. human male genitals in a discernibly turgid state, even if completely and  
8 opaquely covered.  
9

10 Youth association means any building used for providing programs and recreational  
11 activities for youth from public schools and private schools, such as but not limited to,  
12 YMCA, YWCA, Boys' and Girls' Club.  
13

14 **Section 4. Section 30-61. General business district (BUS),**(c) *Permitted uses,*  
15 of the Land Development Code of the City of Gainesville is amended to read as follows:  
16

17 (c) *Permitted uses.*  
18

SIC	Uses	Conditions
	USES BY RIGHT:	
	Any accessory uses customarily and clearly incidental to any permitted principal use	
	Bed and breakfast establishments	In accordance with article VI
	Compound uses	
	Eating places	
	Itinerant food vendor	Only on parcels that contain a retail store with a minimum gross floor area of 50,000 square feet and in accordance with chapter 19, article IV
	Outdoor cafe	As defined in article II and in accordance with article VI
	Personal fitting and sales of prosthetic or orthopedic appliances	
	Places of religious assembly	In accordance with article VI
	Public service vehicles	As defined in article II and in accordance with article VI
	Repair services for household needs	As defined in article II
	Forest nursery for sale of planted trees only	In a non-enclosed (outdoor), fenced area; excluding storage and outside storage of all other items other than: (1) trees planted in the ground, and (2) mechanical and vehicular equipment used to plant, cultivate and harvest the trees; subject to development plan

		review
GN-074	Veterinary services	Only within enclosed buildings and in accordance with article VI
IN-0752	Animal specialty services, except veterinary	Only within enclosed buildings
GN-078	Landscape and horticultural services	
MG-15	Building construction - General contractors and operative builders	
GN-171	Plumbing, heating and air conditioning contractors	
GN-172	Painting and paper hangers	
GN-173	Electrical work	
IN-2261	Finishers of broadwoven fabrics of cotton	
IN-2262	Finishers of broadwoven fabrics of manmade fiber and silk	
MG-27	Printing, publishing and allied industries	
MG-43	U.S. Postal Service	
GN-472	Arrangement of passenger transportation	Offices only, with no operation of passenger tours from the site
MG-48	Communications	Accessory transmission, retransmission and microwave towers up to and including 100 feet in height in accordance with article VI
GN-523	Paint, glass and wallpaper stores	
GN-525	Hardware stores	
GN-526	Retail nurseries, lawn and garden supply stores	
MG-53	General merchandise stores	
MG-54	Food stores	Accessory gasoline and alternative fuel pumps in accordance with article VI
GN-553	Auto and home supply stores	Excluding garage and installation facilities except as provided for with a special use permit
GN-554	Gasoline service stations including the sale of	In accordance with article VI

	alternative fuels for automobiles	
MG-56	Apparel and accessory stores	
MG-57	Home furniture, furnishings and equipment stores	
MG-59	Miscellaneous retail	Direct selling establishments (IN-5963) and fuel oil dealers (IN-5983) with inside storage, display and sales only
	<u>Sexually oriented retail store</u>	<u>In accordance with section 30-90</u>
Div. H	Finance, insurance and real estate	Excluding cemetery subdivisions and developers (IN-6553)
MG-72	Personal services	Including funeral services and crematories in accordance with article VI
MG-73	Business services	Excluding outdoor advertising services (IN-7312, heavy construction equipment rental and leasing (IN-7353), and equipment rental and leasing, not elsewhere classified (IN-7359); and including disinfecting and pest control services (IN-7342), in accordance with article VI.
GN-752	Automobile parking	
MG-76	Miscellaneous repair services	Excluding miscellaneous repair shops and related services (GN-769), and including repair services for household needs as defined in article II
MG-78	Motion pictures	Excluding drive-in theaters (IN-7833) and outdoor filming facilities and <u>sexually oriented motion picture theaters and motion picture arcades</u>
MG-79	Amusement and recreation services	Only within enclosed structures, and excluding go-cart rental and raceway operations and also excluding commercial sports (GN-794)
MG-80	Health services	Including nursing and personal care facilities (GN-805) in accordance with article VI, and excluding hospitals (GN-806) and rehabilitation centers.
MG-81	Legal services	
MG-82	Educational services	Including private schools in accordance with article VI
MG-83	Social services	Including day care as defined in article II and in accordance with article VI, excluding rehabilitation centers, halfway houses, social service homes, and residences for destitute people as defined in article II
GN-841	Museums and art galleries	
MG-86	Membership organizations	
MG-87	Engineering, accounting, research, management and related services	Excluding testing laboratories, (IN-8734) and facility support management services (IN-8744)

MG-89	Services, not elsewhere classified	
Div. J	Public administration	
	USES BY SPECIAL USE PERMIT	
	Accessory transmission, retransmission and microwave towers over 100 feet in height	In accordance with article VI
	Alcoholic beverage establishments	In accordance with article VI
	Food distribution center for the needy	In accordance with article VI
	Limited automotive services	In accordance with article VI
	Rehabilitation centers	In accordance with article VI
	Residences for destitute people	In accordance with article VI
GN-598	Fuel dealers	In accordance with article IX
GN-701	Hotels and motels	
GN-702	Roominghouses and boardinghouses	In accordance with article VI

1  
2  
3 **Section 5. Section 30-63. Tourist-oriented business district (BT), (c) Permitted uses,**  
4 **(1) Uses by right,** of the Land Development Code of the City of Gainesville is amended to  
5 read as follows:

6  
7 (c) *Permitted uses.*

8  
9 (1) *Uses by right.*

- 10  
11 a. Local and suburban transit and interurban highway passenger  
12 transportation (MG-41).  
13  
14 b. U.S. Postal Service (MG-43).  
15  
16 c. Food stores (MG-54).  
17  
18 d. Auto and home supply stores (GN-553).  
19  
20 e. Gasoline service stations (GN-554), in accordance with article VI.

- 1  
2 f. Apparel and accessory stores (MG-56).  
3  
4 g. Eating places.  
5  
6 h. Miscellaneous retail (MG-59) excluding fuel dealers (GN-598).  
7  
8 i. Hotels and motels (GN-701).  
9  
10 j. Organization hotels and lodging houses, on membership basis  
11 (GN-704).  
12  
13 k. Personal services (MG-72), excluding funeral service and  
14 crematories (GN-726), and also excluding linen supply (IN-7213),  
15 diaper service (IN-7214), and industrial launderers (IN-7218).  
16  
17 l. Automotive repair, services and garages (MG-75), excluding  
18 carwashes.  
19  
20 m. Motion pictures (MG-78), including sexually oriented motion  
21 picture theaters in accordance with Section 30-90.  
22  
23 n. Amusement and recreation services, except motion pictures, and  
24 excluding go-cart raceway operations and go-cart rentals (MG-79).  
25  
26 o. Museums and art galleries (GN-841).  
27  
28 p. Membership organizations (MG-86).  
29  
30 q. Recreational vehicle parks and campsites, in accordance with  
31 article VI (GN7033).  
32  
33 r. Public service vehicles, in accordance with article VI.  
34  
35 s. ~~Adult and sexually oriented establishments, in accordance with~~  
36 ~~article VI. Sexually oriented cabarets, in accordance with Section~~  
37 ~~30-90.~~  
38  
39 t. Arrangement of passenger transportation (GN-472).  
40  
41 u. Any accessory use customarily incidental to a permitted principal  
42 use.  
43  
44 v. Alcoholic beverage establishments, in accordance with article VI.  
45

- 1 w. Bed and breakfast establishments, in accordance with article VI.
- 2
- 3 x. Outdoor cafe, as defined in article II and in accordance with article
- 4 VI.
- 5
- 6 y. Places of religious assembly, in accordance with article VI.
- 7
- 8 z. Sexually oriented retail store, in accordance with Section 30-90.
- 9

10  
 11 **Section 6. Section 30-70. General Industrial District (I-2),**(c)*Permitted uses,*  
 12 (1) *Uses by right,* of the Land Development Code of the City of Gainesville is amended to  
 13 read as follows:

14  
 15 (c) *Permitted uses.*

16  
 17 (1) *Uses by right.*

- 18
- 19 a. Food and kindred products (MG-20), excluding the following: wet
- 20 corn milling (IN-2046); raw cane sugar (IN-2061); beet sugar (IN-
- 21 2063); soybean oil mills (IN2075); and distilled liquor (IN-2085).
- 22
- 23 b. Tobacco products (MG-21), excluding cigarettes (IN-2111).
- 24
- 25 c. Textile mill products (MG-22), excluding cotton finishing plants
- 26 (IN-2261).
- 27
- 28 d. Apparel and other finished products made from fabrics and similar
- 29 materials (MG-23).
- 30
- 31 e. Lumber and wood products, except furniture (MG-24).
- 32
- 33 f. Furniture and fixtures (MG-25).
- 34
- 35 g. Paper and allied products (MG-26), excluding the following: pulp
- 36 mills (IN-2611); paper mills (IN-2621); paperboard mills (IN-
- 37 2631); and packaging--coated and laminated paper (IN-2671).
- 38
- 39 h. Printing, publishing, and allied industries (MG-27), excluding
- 40 gravure commercial printing (IN-2754).
- 41
- 42 i. Chemicals and allied products (MG-28), excluding the following:
- 43 alkalis and chlorine (IN-2812); inorganic pigments (IN-2816);
- 44 cellulosic manmade fibers (IN2823); noncellulosic organic fibers
- 45 (IN-2824); gum and wood chemicals (IN2861); nitrogenous

- 1 fertilizers (IN-2873); phosphatic fertilizers (IN-2874); synthetic  
2 rubber (IN-2822); medicinals and botanicals (IN-2833); cyclic  
3 crudes and intermediates (IN-2865); explosives (IN-2892); and  
4 carbon black (IN-2895).  
5
- 6 j. Petroleum refining and related industries (MG-29), excluding the  
7 following: petroleum refining (IN-2911); petroleum and coal  
8 products (not elsewhere classified) (IN-2999); and asphalt paving  
9 mixtures and blocks (IN-2951).  
10
- 11 k. Rubber and miscellaneous plastics products (MG-30).  
12
- 13 l. Leather and leather products (MG-31).  
14
- 15 m. Stone, clay, glass, and concrete products (MG-32), excluding the  
16 following: hydraulic cement (IN-3241); lime (IN-3274); flat glass  
17 (IN-3211); glass containers (IN-3221); pressed and blown glass  
18 (not elsewhere classified) (IN-3229); brick and structural clay tile  
19 (IN-3251); ceramic wall and floor tile (IN-3253); clay refractories  
20 (IN-3255); structural clay products (not elsewhere classified) (IN-  
21 3259); vitreous plumbing fixtures (IN-3261); vitreous china food  
22 utensils (IN-3262); gypsum products (IN-3275); and ground or  
23 treated minerals (IN-3295).  
24
- 25 n. Primary metal industries (MG-33), excluding the following: steel  
26 works, blast furnaces, and rolling mills (IN-3312);  
27 electrometallurgical products (IN-3313); primary copper (IN-  
28 3331); primary aluminum (IN-3334); primary nonferrous metals  
29 (not elsewhere classified) (IN-3339); secondary smelting and  
30 refining of nonferrous metals (IN-3341); gray iron foundries (IN-  
31 3321); copper rolling and drawing (IN-3351); aluminum extruded  
32 products (IN-3354); aluminum rolling and drawing (IN-3355);  
33 aluminum die-castings (IN-3363); and copper foundries (IN-3366).  
34
- 35 o. Fabricated metal products, except machinery and transportation  
36 equipment (MG-34), excluding the following: nonferrous forgings  
37 (IN-3463); and metal coatings and allied services (IN-3479).  
38
- 39 p. Industrial and commercial machinery and computer equipment  
40 (MG-35).  
41
- 42 q. Electronic and other electrical equipment and components, except  
43 computer equipment (MG-36).  
44
- 45 r. Transportation equipment (MG-37).

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- s. Measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks (MG-38).
- t. Miscellaneous manufacturing industries (MG-39).
- u. Construction (Div. C).
- v. Transportation, communications, electric, gas and sanitary services (Div. E).
- w. Wholesale trade (Div. F), excluding junkyards and salvage yards.
- x. Building materials, hardware, garden supply and mobile home dealers (MG-52).
- y. Fuel dealers (GN-598).
- z. Business services (MG-73); including disinfecting and pest control services (IN7342), in accordance with article VI .
- aa. Automotive repair, services and parking (MG-75).
- bb. Miscellaneous repair services (MG-76).
- cc. Reserved.
- dd. Landscape and horticultural services (GN-078).
- ee. Eating places.
- ff. Personal services (MG-72).
- gg. Outdoor storage.
- hh. Veterinary services (GN-074), in accordance with article VI.
- ii. Animal services, except veterinary (GN-075).
- jj. Nonstore retailers (GN-596).
- kk. Public service vehicles in accordance with article VI.
- ll. Farm labor and management services (GN-076).

- 1 mm. Car washes (IN-7542).
- 2
- 3 nn. Reserved.
- 4
- 5 oo. Amusement and recreation services, not elsewhere classified (IN-
- 6 7999), excluding go-cart raceway operations and go-cart rentals,
- 7 excluding sexually oriented businesses.
- 8
- 9 pp. Noncommercial research organizations (IN-8733).
- 10
- 11 qq. Engineering, architectural and surveying services (IN-871).
- 12
- 13 rr. Any accessory use incidental to a permitted principal use.
- 14
- 15 ss. Legal services (MG-81).
- 16
- 17 tt. Motion picture production and allied services (GN-781); motion
- 18 picture distribution and allied services (GN-782).
- 19
- 20 uu. Bowling centers and billiard and pool establishments (GN-793).
- 21
- 22 vv. Recycling centers, in accordance with article VI.
- 23
- 24 ww. Research, development and testing service (GN-873).
- 25
- 26 xx. Sexually oriented motion picture theaters, in accordance with
- 27 Section 30-90.
- 28
- 29 yy. Sexually oriented cabarets, in accordance with Section 30-90.
- 30
- 31 zz. Sexually oriented retail stores, in accordance with Section 30-90.
- 32
- 33

34 **Section 7. Section 30-90. Adult and sexually oriented establishments** of the  
 35 Land Development Code of the City of Gainesville is amended to read as follows:

36  
 37 **Sec. 30-90. Sexually oriented businesses ~~Adult and sexually oriented~~**  
 38 **~~establishments.~~**

39  
 40 (a) Intent and Purpose. It is the intent and purpose of this section to regulate sexually  
 41 oriented businesses, in order to promote the health, safety, and general welfare of the  
 42 citizens of the city, and to establish reasonable and uniform regulations to prevent the  
 43 negative secondary effects of sexually oriented businesses within the city. The provisions  
 44 of this section have neither the purpose or nor effect of imposing a limitation or  
 45 restriction on the content or reasonable access to any communicative materials, including

1 sexually oriented materials. Similarly, it is neither the purpose nor the effect of this  
 2 section to restrict or deny access by adults to sexually oriented materials protected by the  
 3 First Amendment, or to deny access by the distributors and exhibitors of sexually oriented  
 4 entertainment to their intended market. Neither is it the purpose nor effect of this chapter  
 5 to condone or legitimize the distribution of obscene material. There are some uses which,  
 6 because of their very nature, are recognized as having serious objectionable operational  
 7 characteristics, particularly when several of them are concentrated under certain  
 8 circumstances thereby having a deleterious effect upon the adjacent areas. Special  
 9 regulation of these uses is necessary to ensure that these adverse effects will not  
 10 contribute to the blighting or downgrading of the surrounding neighborhood. These  
 11 special regulations are itemized in this section. The primary control or regulation is for  
 12 the purpose of is preventing a concentration of these uses in any one area, to ensure the  
 13 integrity of the city's residential neighborhoods and to protect the integrity of the city's  
 14 places of religious assembly, schools, parks and playgrounds, areas where juveniles often  
 15 eongregate.

16  
 17 (b) Findings. Based on evidence of the adverse secondary effects of sexually oriented  
 18 businesses set forth in studies and case law considered by the city commission and on  
 19 evidence and recommendations presented in hearings and in reports to the city  
 20 commission; ~~T~~the city commission hereby finds as follows:

21  
 22 (1) Sexually oriented businesses, as a category of commercial uses, are  
 23 associated with a wide variety of adverse secondary effects including, but not  
 24 limited to, personal and property crimes, public safety risks, prostitution, potential  
 25 spread of disease, lewdness, public indecency, illicit sexual activity, illicit drug  
 26 use and drug trafficking, undesirable and criminal behavior associated with  
 27 alcohol consumption, negative impacts on surrounding properties, litter, and  
 28 sexual assault and exploitation.

29  
 30 (2) Each of the foregoing negative secondary effects constitutes a harm which the  
 31 city has a substantial government interest in preventing and/or abating in the  
 32 future. This substantial government interest in preventing secondary effects,  
 33 which is the city's rationale for this section, exists independent of any  
 34 comparative analysis between sexually oriented and non-sexually oriented  
 35 businesses. Additionally, the city's interest in regulating sexually oriented  
 36 businesses extends to future secondary effects that could occur in the city related  
 37 to current sexually oriented businesses as well as sexually oriented businesses that  
 38 may locate in the city in the future. The city finds that the cases and secondary  
 39 effects documentation relied on in this section are reasonably believed to be  
 40 relevant to said secondary effects.

41  
 42  
 43 (1) — The possession, display, exhibition, production, distribution and sale of  
 44 books, magazines, motion pictures, videotapes, prints, photographs,  
 45 periodicals, records, novelties and similar devices which depict, illustrate,

1 describe or relate to specified sexual activities is a business that exists  
2 within the city;

3  
4 ~~(2) — The operating and maintaining of places presenting dancers displaying or~~  
5 ~~exposing specified anatomical areas are businesses that exist within the~~  
6 ~~city;~~

7  
8 ~~(3) — When the activities detailed in subsections (b)(1) and (b)(2) of this section~~  
9 ~~are present in an area of the city, they are often followed by other activities~~  
10 ~~which are illegal, immoral or unhealthful, such as prostitution, lewd and~~  
11 ~~lascivious behavior, exposing minors to harmful materials, possession,~~  
12 ~~distribution and transportation of obscene materials, sale or possession of~~  
13 ~~controlled substances, and violent crimes against persons and property;~~  
14 ~~and these illegal, immoral or unhealthful activities tend to concentrate~~  
15 ~~around and be aggravated by the presence of the activities detailed in~~  
16 ~~subsections (b)(1) and (b)(2) of this section;~~

17  
18 ~~(4) — Based upon evidence and testimony from the city's professional planners,~~  
19 ~~the grouping together of the activities described above lowers property~~  
20 ~~values, detracts from the aesthetic beauty of residential, commercial and~~  
21 ~~institutional neighborhoods and is harmful to juveniles who congregate in~~  
22 ~~such residential and institutional areas;~~

23  
24 ~~(5) — Based upon evidence and testimony from the city's professional law~~  
25 ~~enforcement officers, the grouping together of the activities described~~  
26 ~~above creates an inordinate amount of concentrated crime in such areas;~~

27  
28 ~~(6) — Also based upon evidence and testimony from the city's professional law~~  
29 ~~enforcement officers, many of the types of establishments at which the~~  
30 ~~activities described above occur are likely to soon attempt to locate in this~~  
31 ~~community;~~

32  
33 ~~(7) — Also based upon evidence and testimony from the city's professional law~~  
34 ~~enforcement officers and the city's professional planners, the location of~~  
35 ~~the activities described above near residential, institutional or other areas~~  
36 ~~where juveniles often congregate lowers property values in such areas and~~  
37 ~~exposes juveniles to the activities described in subsection (b)(3) of this~~  
38 ~~section;~~

39  
40 ~~(8) — Based upon evidence and testimony received from the city's professional~~  
41 ~~planners, there will be free and reasonable access for and to the regulated~~  
42 ~~uses, and the limitations imposed herein will not preclude robust~~  
43 ~~competition with other regulated uses; and~~  
44

1           (9) ~~Based upon the experiences of other cities statewide and nationwide, the~~  
2           ~~evidence and testimony of the city's professional planners and law~~  
3           ~~enforcement officers appear to be correct.~~

4  
5           (e) ~~Definitions.~~ As used in this section, the following definitions shall apply:

6  
7           (1) ~~Adult bookstore or film store~~ means an establishment having as a  
8           ~~substantial portion of its stock in trade books, magazines, other~~  
9           ~~periodicals, films, videotapes, video disks or similar items which are~~  
10           ~~distinguished or characterized by their emphasis on matter depicting,~~  
11           ~~describing or relating to specified sexual activities or specified anatomical~~  
12           ~~areas (as defined below).~~

13  
14           (2) ~~Adult cabaret~~ means a bar, lounge, club or other establishment which  
15           ~~sells, dispenses, serves or allows the consumption of alcoholic beverages~~  
16           ~~on the premises and which features as part of the regular entertainment~~  
17           ~~topless or bottomless dancers, strippers, whether male or female, or similar~~  
18           ~~entertainers whose acts are characterized by an emphasis on matter~~  
19           ~~depicting, describing or relating to specified sexual activities or specified~~  
20           ~~anatomical areas (as defined below).~~

21  
22           (3) ~~Adult photographic or art studios~~ means a place or establishment wherein  
23           ~~a substantial portion of the services or stock in trade consists of~~  
24           ~~photographs, drawings, sketches, paintings, statues, effigies or the like,~~  
25           ~~including those which are made or exhibited on the premises, and which~~  
26           ~~are characterized by an emphasis on matter depicting, describing or~~  
27           ~~relating to specified sexual activities or specified anatomical areas (as~~  
28           ~~defined below).~~

29  
30           (4) ~~Adult mini-motion picture theater or drive-in~~ means an enclosed building  
31           ~~or open air establishment with a capacity for fewer than fifty (50) persons~~  
32           ~~in which a substantial portion of the material presented is distinguished or~~  
33           ~~characterized by an emphasis on matter depicting, describing or relating to~~  
34           ~~specified sexual activities or specified anatomical areas (as defined~~  
35           ~~below), for observation by patrons therein.~~

36  
37           (5) ~~Adult motion picture theater or drive-in~~ means an enclosed building or  
38           ~~open air establishment with a capacity of 50 or more persons in which a~~  
39           ~~substantial portion of the material presented is distinguished or~~  
40           ~~characterized by an emphasis on matter depicting, describing or relating to~~  
41           ~~specified sexual activities or specified anatomical areas (as defined~~  
42           ~~below), for observation by patrons therein.~~

43  
44           (6) ~~Emphasis or emphasis on~~ means that the type of matter specified is the  
45           ~~apparent matter upon which the particular work or exhibition is based, or~~

1 that the matter specified is a substantial portion of such work or  
2 exhibition. Because of the matters specified in subsections (c)(11) and  
3 (c)(12) of this section, the establishments exhibiting, creating or selling  
4 such goods or exhibitions are not generally open to juveniles.  
5

6 (7) ~~Established places of religious assembly~~ means established places of  
7 worship at which nonprofit religious services are regularly conducted and  
8 carried on.  
9

10 (8) ~~Public playground or public park~~ means properties and facilities owned  
11 and operated by any governmental agency which are open to the general  
12 public for recreational purposes.  
13

14 (9) ~~Regulated uses or adult and sexually oriented establishments~~ means those  
15 uses specified and defined in subsections (c)(1), (2), (3), (4) and (5) of this  
16 section.  
17

18 (10) ~~School~~ means a public or private educational institution offering students a  
19 conventional academic curriculum, including kindergartens, elementary  
20 schools, middle schools, high schools, colleges and universities. Such term  
21 shall also include all adjacent properties owned and used by such schools  
22 for educational or recreational purposes.  
23

24 (11) ~~Specified sexual activities~~ means:

25  
26 a. ~~Human genitals in a state of sexual stimulation or arousal;~~

27  
28 b. ~~Acts of human masturbation, sexual intercourse or sodomy; and~~

29  
30 c. ~~Fondling or other erotic touching of human genitals, pubic region,~~  
31 ~~buttock or female breast.~~  
32

33 (12) ~~Specified anatomical areas~~ means:

34  
35 a. ~~Less than completely and opaquely covered:~~

36  
37 1. ~~Human genitals;~~

38  
39 2. ~~Pubic region;~~

40  
41 3. ~~Buttock; and~~

42  
43 4. ~~Female breast below a point immediately above the top of~~  
44 ~~the areola; and~~  
45

b. ~~Human male genitals in a discernably turgid state, even if completely and opaquely covered.~~

(~~dc~~) *Spacing.* A sexually oriented business ~~regulated use~~ may not be established or continued in any permitted district unless all other requirements of the chapter pertaining to such districts and to buildings generally are met and unless the ~~regulated use~~ sexually oriented business is at least 1,000 feet from any other sexually oriented business, place of religious assembly, public school, private school, public park, youth association or residential area.

(1) ~~1,000 feet from any other regulated use;~~

(2) ~~400 feet from any established place of religious assembly, public or private school, public playground or public park; and~~

(3) ~~400 feet from any area zoned in a residential category.~~

~~For purposes of the distance limitations, the measurement shall be made by extending a straight line from main entrance of the building of the regulated use to the front door of the main building occupied by any other regulated use or any established place of religious assembly or to the nearest property line of any residential district, playground, school or park.~~

(1) *Measurement.* For purposes of the spacing requirements, the measurement shall be made by extending a straight line from the nearest property line of the sexually oriented business to the nearest property line of the other sexually oriented business, place of religious assembly, public school, private school, public park, youth association or residential area. If any such use is located in a multi-tenant building, then property line shall mean the nearest line of the leasehold or other space actually controlled or occupied by the sexually oriented business, place of religious assembly, public school, private school, or youth association.

(2) *Exception to spacing requirement.* Any sexually oriented business which is established in conformity with this section and other applicable laws and ordinances shall not be made unlawful, if a place of religious assembly, public school, private school, public park, or residential area is created or established within the distance limitations subsequent to the filing of the application for the establishment of the sexually oriented business with the City Planning and Development Department or subsequent to the lawful establishment of the sexually oriented business.

(~~ed~~) *Obscenity not permitted.* Nothing in this section shall be construed as permitted or allowing a violation of any state or federal law, including F.S. Ch. 847, relating to obscenity.

1  
 2 (fe) ~~Existing establishments.~~ Any use herein defined as a sexually oriented motion  
 3 picture theater, retail store or cabaret regulated use or an adult and establishment which,  
 4 on the date this section becomes applicable to such use, which, on April 15, 2010 is  
 5 existing, in actual operation and open to the public, and which in all other respects is in  
 6 full compliance with applicable laws and ordinances of the city, but which would not  
 7 otherwise be permitted under the terms of this section, shall then become a permitted  
 8 nonconforming uses.

9  
 10 (g) ~~Exception to spacing requirement.~~ Any use herein defined as a regulated use or an  
 11 adult and establishment which is established in conformity with this section and other  
 12 applicable laws and ordinances shall not be made unlawful if, subsequent to the  
 13 establishment and operation of such regulated use, a place of religious assembly, school,  
 14 playground, park, or residential area is created or established within the distance  
 15 limitations for the regulated use specified in this section.

16  
 17 (f) Design restrictions for sexually oriented motion picture theater. Any sexually  
 18 oriented motion picture theater shall meet the following design standards at all times:

19  
 20 (1) Presentation Area. All screenings and presentations of motion pictures,  
 21 videos or other visual media shall occur in a room open to all customers of  
 22 the establishment and containing at least 600 square feet of floor area. No  
 23 curtains, screens, shades or other devices shall be used to obscure any part  
 24 of the room.

25  
 26 (2) Lighting. The lighting level in the area occupied by customers shall be at  
 27 least 2 footcandles at floor level.

28  
 29 (3) Seating. Seating shall consist of individual, theater-style chairs, with solid  
 30 arms separating the chairs. No couches, benches, individual chairs, beds,  
 31 loose cushions or mattresses, or other forms of seating may be provided.  
 32 Separate spaces for wheelchairs shall be provided in accordance with the  
 33 applicable provisions of the adopted building code in effect from time to  
 34 time and the Americans with Disabilities Act.

35  
 36 (g) Design standards for sexually oriented cabarets. In addition to those standards  
 37 applicable to Adult Performance Establishments under Sect. 14.5-75, the following  
 38 design standards shall apply to any sexually oriented cabaret at all times:

39  
 40 (1) Presentation Area. All performances and all interactions between  
 41 performers and customers shall occur in a room open to all customers of  
 42 the establishment and containing at least 600 square feet of floor area. No  
 43 curtains, screens, shades or other devices shall be used to obscure any part  
 44 of the room.

1           (2) Lighting. The lighting level in the area occupied by customers shall be at  
 2           least 5 footcandles at a height of 3 feet off the floor.

3  
 4           (h) Retail store with limited quantities of sexually oriented media or devices. A retail  
 5           trade establishment (SIC Division G) which devotes more than ten (10) percent but less  
 6           than thirty (30) percent of its floor area, or stocks more than ten (10) percent but less than  
 7           thirty (30) percent of the number of items in inventory, to sexually oriented media or  
 8           sexually oriented devices, shall be treated for zoning purposes as an accessory use to the  
 9           primary retail trade of the store and not as a sexually oriented retail store, provided that it  
 10           meets the following conditions:

11  
 12           (1) All sexually oriented media or devices shall be maintained in a room that  
 13           is separated from other material by an opaque wall that extends to the  
 14           ceiling or eight feet above the floor, whichever is less; and

15  
 16           (2) Access to the room containing the sexually oriented media or devices shall  
 17           be through a door or through a space that can be entered only by passing  
 18           directly by the manager's or cashier's principal work station; and

19  
 20           (3) The room containing sexually oriented media or devices shall be posted  
 21           with a notice indicating that only persons 18 years of age or older are  
 22           allowed in the room; and

23  
 24           (4) Access to the room shall be physically limited to adults through control of  
 25           access by an employee of the store, through use of an access release  
 26           located at least 66 inches off the floor, or through constant monitoring of  
 27           the room by an employee on duty, where such employee has visual control  
 28           of the separate room through direct visibility, through electronic means or  
 29           through a window or mirror providing visibility into the room from the  
 30           manager's or cashier's work station.

31  
 32           The conditions listed as (1) thorough (4) above shall not apply to a retail trade  
 33           establishment which allows only persons who are 18 years of age or older to enter the  
 34           premises.

35  
 36           **Section 8.** It is the intention of the City Commission that the provisions of  
 37 Sections 2 through 7 of this ordinance shall become and be made a part of the Code of  
 38 Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of  
 39 this Ordinance may be renumbered or relettered in order to accomplish such intentions.

1           **Section 8.** If any word, phrase, clause, paragraph, section or provision of this  
 2 ordinance or the application hereof to any person or circumstance is held invalid or  
 3 unconstitutional, such finding shall not affect the other provisions or applications of the  
 4 ordinance which can be given effect without the valid or unconstitutional provisions or  
 5 application, and to this end the provisions of this ordinance are declared severable.

6           **Section 9.** All ordinances, or parts of ordinances, in conflict herewith are to the  
 7 extent of such conflict hereby repealed.

8           **Section 10.** This ordinance shall become effective immediately upon final  
 9 adoption.

10           **PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

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ATTEST:

\_\_\_\_\_  
PEGEEN HANRAHAN, MAYOR

Approved as to form and legality

\_\_\_\_\_  
KURT M. LANNON  
CLERK OF THE COMMISSION

\_\_\_\_\_  
MARION J. RADSON  
CITY ATTORNEY

This Ordinance passed on first reading this 1st day of April, 2010.

This Ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2010.

MJR/NMS: rs