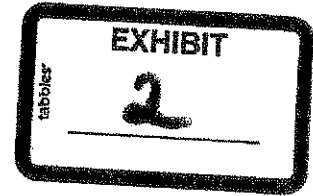


1 EXHIBIT 2 to City Planning Staff report  
2 for Petition PB-09-124 TCH



3 **Proposed Findings**

4 **Note to Plan Board: These findings are intended to set forth the basis for**  
5 **the revised regulations. These will be updated after your hearing(s) and**  
6 **after the City Commission hearing(s) concerning the regulations and will**  
7 **appear in final form in the preface to the Ordinance. It is important that**  
8 **you read through these findings and review and consider the studies and**  
9 **cases cited herein. Planning staff will make copies of the studies and**  
10 **cases available to you via electronic means or hard copy, if you prefer,**  
11 **prior to your meeting.**

12  
13 WHEREAS, the City Commission of the City of Gainesville, Florida, understands that  
14 the current provisions of its land development code related to adult and sexually oriented  
15 establishments may not be adequate to balance the competing First Amendment interests related  
16 to certain aspects of such businesses and community concerns with the negative secondary  
17 effects of such businesses; and

18  
19 WHEREAS, the City retained Duncan Associates, a nationally known planning  
20 consulting firm, to review the current provisions of its land development code related to adult  
21 and sexually oriented establishments and to make recommendations to the City; and

22  
23 WHEREAS, Duncan Associates assigned nationally known planner, Eric Damian Kelly,  
24 Ph.D, FAICP, to conduct such review and make recommendations; and

25  
26 WHEREAS, Dr. Kelly prepared a report for the City entitled "Recommendations Zoning  
27 Amendments Related to Sex Businesses" dated September 2008 (the "Duncan  
28 Recommendations"); and

29  
30 WHEREAS, part of the context for the review and recommendations was an August 2003  
31 report prepared for Alachua County, entitled "Regulation of Sexually Oriented Businesses in  
32 Alachua County: Field Survey, Analysis and Recommendations" (the "Duncan Study"). This  
33 study included businesses in the City of Gainesville; and

34  
35 WHEREAS, the United States Supreme Court in *City of Renton v. Playtime Theater,*  
36 *Inc.*, 475 U.S. 41 (1986) and other cases has held that a local government may regulate sexually  
37 oriented businesses through content-neutral, time, place, and manner restrictions, so long as the  
38 regulations are designed to serve the government interest and do not unreasonably omit avenues  
39 of communication, and are aimed not at the content of speech protected by the First Amendment  
40 but rather at the secondary effects of said businesses on the surrounding community; and  
41

1 WHEREAS, the United States Supreme Court in *Renton* held that a local government  
2 may rely upon the experiences of other cities, as well as on its own studies, in enacting local  
3 legislation to regulate sexually oriented businesses; and  
4

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

14 "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver,"  
15 January 1998;  
16

17 "Staff Report, Whittier City Planning Commission; Subject: Adult Business  
18 Regulations," July 11, 1994;  
19

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

23 "Final Report to the City of Garden Grove: the Relationship between Crime and Adult  
24 Business Operations on Garden Grove Boulevard," Richard W. McCleary, Ph.D., James  
25 W. Meeker, J.D., Ph.D., October 23, 1991;  
26

27 "City of Tucson, Police Staff Memorandum, Subject: Adult Entertainment Ordinance,"  
28 May 1, 1990;  
29

30 "Report on Adult Oriented Business in Austin," May 19, 1986;  
31

32 "Adult Business Study" conducted by the Planning Department City of Phoenix, May 25,  
33 1979; and  
34

35 "Study of the Effects of the Concentration of Adult Entertainment Establishments in the  
36 City of Los Angeles," June 1977.  
37

38 WHEREAS, the studies conducted by the Cities of Austin (1986), Garden Grove (1999)  
39 and New York City (1994) all reflect clear findings, based on the opinions of real estate  
40 professionals, that sexually oriented businesses have a negative effect on the values of residential  
41 properties located within 500 feet or less of such businesses; and  
42

43 WHEREAS, a much more recent survey of Florida appraisers, prepared in December  
44 2007 by Duncan Associates for Palm Beach County, Florida, generally found that: 87-90  
45 percent of responding appraisers believed that a sexually oriented business will have a negative  
46 effect on the market value of a single-family residence located within 500 feet; about two-thirds

1 of the appraisers surveyed believe that the separation distance between such a business and a  
2 residence at which there will be "no measurable effect" on the market value will be a half-mile  
3 or more; between 50.7 percent and 61.2 percent of the surveyed appraisers also believed that a  
4 sexually oriented business would have a negative impact on the market value of a community  
5 shopping center; and  
6

7 WHEREAS, the Commission recognizes from the Studies that businesses with live  
8 entertainment may have greater negative effects on the community than those that simply offer  
9 goods at retail; and  
10

11 WHEREAS, the Commission finds that Article IV of Chapter 14.5 of the Code of  
12 Ordinances, dealing with "Adult Performance Establishments," provides additional controls to  
13 address such issues and that further regulation in the City's land development code for such  
14 establishments are not necessary; and  
15

16 WHEREAS, the Duncan Study, the Duncan Recommendations and comments of the  
17 City's own professional staff indicate that the City's current land development regulations do not  
18 make appropriate distinctions among other sexually oriented businesses and between such  
19 businesses and other general businesses that carry some amount of sexually oriented goods and  
20 products; and  
21

22 WHEREAS, the Duncan Recommendations included specific recommendations about  
23 classification of sexually oriented businesses; and  
24

25 WHEREAS, the revised regulations fully address the different types of sexually oriented  
26 businesses that currently exist or might exist in the future in the City of Gainesville; and  
27

28 WHEREAS, one sexually oriented business in Alachua County has motion picture  
29 arcades containing video viewing booths; and  
30

31 WHEREAS, the Duncan Study, citing in part the 1990 Tucson study as well as  
32 experience in other communities, suggests that the function of the viewing booths is simply to  
33 provide a place and manner of presentation of sexually oriented material that provides viewers  
34 with a place in which they may masturbate or engage in casual sex of other types; and  
35

36 WHEREAS, a study undertaken for the City of Alachua by an experienced crime-scene  
37 investigator confirmed such findings locally; and  
38

39 WHEREAS, the Commission believes that motion picture arcades are an undesirable  
40 place and means of presentation of material that is readily available in other forms in the City  
41 and within Alachua County; and  
42

43 WHEREAS, sexually oriented media is available in a number of different contexts in the  
44 City and Alachua County, including, but not limited to, the backrooms of some general, or  
45 "mainstream" video and retail stores, such as Modern Age Tobacco Shop; at Video Warehouse,  
46 which handles exclusively sexually oriented media; and at XMart; and

1  
2 WHEREAS, both Modern Age Tobacco and XMart also carry sexually oriented devices;  
3 and  
4

5 WHEREAS, public officials and law enforcement officials do not appear to have  
6 received complaints about the availability of sexually oriented media and devices in the  
7 backrooms of general video or retail stores;  
8

9 WHEREAS, public officials and law enforcement officials were in some cases unaware  
10 of the availability of sexually oriented media and devices in the backrooms of some general retail  
11 stores, further suggesting that such availability has little, if any, impact on the community; and  
12

13 WHEREAS, the Duncan Recommendations to allow properly zoned general retail stores  
14 to carry such material, subject to proper controls to prevent its availability to minors, is a logical  
15 continuation of current practice; and  
16

17 WHEREAS, the Duncan Study found a number of different land-use types among the  
18 sexually oriented businesses that exist in the City and Alachua County; and  
19

20 WHEREAS, a primary difference between the XMart and other businesses is the fact that  
21 the XMart is located directly adjacent to and along pedestrian routes serving a residential  
22 neighborhood, whereas other venues are located primarily in commercial areas, well separated  
23 from residential areas; and  
24

25 WHEREAS, the concept of separating sexually oriented businesses from residential areas  
26 and other sensitive uses is consistent with the use of zoning to separate incompatible uses, and it  
27 is a concept that has been upheld by the courts, beginning with the decision of the United States  
28 Supreme Court in *Young v. American Mini-Theaters*, 427 U.S. 50, 96 S. Ct. 2440, 49 L. Ed. 2d  
29 310 (1976); and  
30

31 WHEREAS, from a zoning perspective, sexually oriented business uses are incompatible  
32 with sensitive uses such as residential areas, places of religious assembly, public parks and uses  
33 that predominately serve minors; and  
34

35 WHEREAS, the separation of sexually oriented businesses from residential areas, public  
36 parks, places of religious assembly, public and private schools, and youth associations will  
37 mitigate the negative effect of such businesses on these sensitive uses; and  
38

39 WHEREAS, the Studies indicate that the clustering of sexually oriented businesses can  
40 increase the negative secondary effects of such businesses; and  
41

42 WHEREAS, studies relied on by the City of Los Angeles similarly found that there was  
43 an increased impact from two or more co-located sexually oriented businesses, a finding on  
44 which the U.S. Supreme Court held that the City was entitled to rely, in *City of Los Angeles v.*  
45 *Alameda Books, Inc.*, 152 L. Ed. 2d 670, 122 S. Ct. 1728 (U.S. 2002); and  
46

1 WHEREAS, the City currently has no problem with the clustering or co-location of such  
2 businesses, but the Commission wants to avoid such problems in the future; and  
3

4 WHEREAS, the separation of sexually oriented businesses from other sexually oriented  
5 businesses will achieve this objective; and  
6

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

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

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

22 WHEREAS, the Commission finds that the General Business (BUS) District and Tourist-  
23 Oriented Business (BT) District include many of the large and intensive commercial areas of the  
24 city, providing sites for additional commercial enterprises that would be adequately separately  
25 from incompatible uses; and  
26

27 WHEREAS, the Commission finds, however; that, based on the Duncan  
28 Recommendations, the number of parcels in the BUS and BT district that will meet the proposed  
29 separation requirements of 1,000 feet may be more limited than the number of parcels that  
30 Florida courts have held to be required in other communities; and  
31

32 WHEREAS, after careful study of the option of allowing such businesses in the I-1 or I-2  
33 Industrial districts, the Commission concluded that the geography of the current I-1 district is  
34 such that allowing such businesses in both the I-1 and BUS districts could lead to some apparent  
35 concentration of such businesses in one part of the community, a result that could increase the  
36 negative secondary effects of the businesses; and  
37

38 WHEREAS, the Commission finds that allowing such businesses in the I-2, BUS and BT  
39 districts provides a large geographic area that would allow for wider separation among potential  
40 sexually oriented businesses; and  
41

42 WHEREAS, the Commission finds that allowing such businesses in the I-2, BUS and BT  
43 districts provides more than 100 parcels potentially available for sexually oriented businesses  
44 and this number of parcels exceeds the number of sexually oriented businesses that currently  
45 exist or are likely to seek to exist in the City; and  
46

1           WHEREAS, the Commission has accepted the Duncan Recommendations concerning  
2 lighting and other internal design requirements that have been used in other communities to  
3 reduce the negative secondary effects and potential unlawful activities in such businesses without  
4 censoring or otherwise interfering with the availability of sexually oriented materials or lawful  
5 performances; and  
6

7           THEREFORE the Commission, after months of study, multiple public meetings and on  
8 the advice of the City Plan Board, concludes that the approval of these regulations will provide  
9 appropriate zoning restrictions to limit the negative secondary effects of sexually oriented  
10 businesses while conforming with the Constitutional requirements for such regulations as set  
11 forth by the United States Supreme Court, the Eleventh Circuit Court of Appeals, and the federal  
12 courts in Florida.  
13

## 1 Proposed Regulations

2  
3 Section 30-23. Definitions, of the Land Development Code is amended by DELETING this  
4 definition:

5  
6 ~~Adult and sexually-oriented establishment means any facility or establishment described in~~  
7 ~~article VI.~~  
8

9 Section 30-23. Definitions, of the Land Development Code is amended by ADDING to that  
10 section, integrated into the existing alphabetical order, the following definitions or amendments  
11 to existing definitions:

12  
13 Hardcore [pornography] means depictions of sexual conduct that include one or more of the  
14 following: erect male organ; contact of the mouth of one person with the genitals of another;  
15 penetration of a finger or male organ into any bodily orifice in another person; open female labia;  
16 penetration of a sex toy or other device into a bodily orifice of any person, sometimes assisted by  
17 another person; actual male ejaculation; or the aftermath of male ejaculation.  
18

19 Motion picture arcade means any booth, cubicle, stall or compartment which is smaller than 600  
20 square feet in floor area, which is designed, constructed or used to hold or seat customers, and  
21 which is used for presenting motion pictures or viewing publications for a fee by any  
22 photographic, electronic, magnetic, digital or other means or medium (including, but not limited  
23 to, film, video or magnetic tape, laser disc, cd-rom, books, magazines or periodicals) for  
24 observation by customers therein. Motion picture arcades are a prohibited use in all zoning  
25 districts in the City.  
26

27 Public park means properties and facilities owned and operated by any governmental agency  
28 which are open to the general public for recreational purposes.  
29

30 Public school means a school which is operated by a governmental agency and meets all criteria  
31 imposed by law or ordinance to satisfy the requirements for mandatory school attendance of  
32 elementary, middle or high school.  
33

34 Residential area, when used in the context of regulating sexually oriented businesses, shall mean  
35 any of the following: land zoned in any RSF district, any RMF district, the MH district, the RC  
36 district, the RMU district, PD (that includes residential development), or the RH-1 or RH-2  
37 district.  
38

39 Sadomasochistic practices means flagellation or torture by or upon a person clothed or naked, or  
40 the condition of being fettered, bound, or otherwise physically restrained on the part of one so  
41 clothed or naked.  
42

43 Sexual conduct means the engaging in or the commission of an act of sexual intercourse, oral  
44 genital contact, masturbation, or the touching of the sexual organs, pubic region, buttock or

1 female breast of another person for the purpose of arousing or gratifying the sexual desire of  
2 another person.

3  
4 Sexually oriented business is an inclusive term used to describe collectively: sexually oriented  
5 cabaret; sexually oriented motion picture theater; motion picture arcade; massage parlor,  
6 establishment or practice that is not licensed under Chapter 480, Florida Statutes; and sexually  
7 oriented retail store. This collective term does not describe a specific land use and shall not be  
8 considered a single use category for purposes of the zoning code or other applicable ordinances.

9  
10 Sexually oriented cabaret means a building that features dancing or other live entertainment that  
11 is distinguished or characterized by an emphasis on the exhibiting of "sexual conduct" or  
12 "specified anatomical areas" for observation by customers therein on more than half the days that  
13 it is open, or which is marketed as or offers performances described as "adult" or "XXX". The  
14 fact that an establishment does not serve alcoholic beverages shall not remove it from  
15 classification as a "sexually oriented cabaret" if it otherwise falls under this definition. This  
16 definition is intended to include "Adult Performance Establishments" as defined in Chapter 14.5,  
17 Article IV of the Gainesville Code of Ordinances, but this definition is not limited to such  
18 establishments.

19  
20 Sexually oriented devices means any three-dimensional object designed and marketed for  
21 stimulation of the male or female human genital organ or anus or for sadomasochistic use or use  
22 in sexual conduct and shall include devices such as dildos, vibrators, penis pumps, and physical  
23 representations of the human genital organs. Nothing in this definition shall be construed to  
24 include devices primarily intended for protection against sexually transmitted diseases or for  
25 preventing pregnancy.

26  
27 Sexually oriented media includes magazines, books, videotapes, movies, slides, cd-roms or other  
28 devices used to record computer images, or other media which are distinguished or characterized  
29 by their emphasis on matter depicting, describing or relating to "sexual conduct" or "specified  
30 anatomical areas" (separately defined).

31  
32 Sexually oriented motion picture theater means a cinema or motion picture theater which shows  
33 hardcore features on more than half the days that it is open, or which is marketed as or offers  
34 features described as "adult" or "XXX". This definition specifically excludes motion picture  
35 arcades.

36  
37 Sexually oriented devices means any three-dimensional object designed and marketed for  
38 stimulation of the male or female human genital organ or anus or for sadomasochistic use and  
39 shall include devices such as dildos, vibrators, penis pumps, and physical representations of the  
40 human genital organs. Nothing in this definition shall be construed to include devices primarily  
41 intended for protection against sexually transmitted diseases or for preventing pregnancy.

42  
43 Sexually oriented retail store means a retail sales or service establishment that meets any one of  
44 the following four tests:  
45



- 1 A. More than thirty percent (30%) of the gross public floor area or stock in trade  
2 consists of sexually oriented media; or  
3 B. It offers for sale items from any two (2) of the following categories: sexually  
4 oriented media; lingerie; leather goods marketed or presented in a context to  
5 suggest their use for sadomasochistic practices; and the combination of such items  
6 comprise more than ten percent (10%) of its gross public floor area or stock in  
7 trade; or  
8 C. More than five percent (5%) of its gross public floor area or stock in trade  
9 consists of sexually oriented devices; or  
10 D. It is advertised, marketed, or holds itself out in any forum as an "XXX," "adult,"  
11 or "sex" business.  
12

13 Specified Anatomical Areas means any of the following, singly or in combination:  
14

- 15 A. less than completely and opaquely covered: human genitals, pubic region, buttock  
16 and female breast below a point immediately above the top of the areola; and  
17  
18 B. human male genitals in a discernibly turgid state, even if completely and opaquely  
19 covered.  
20

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

1 Section 30-61. General business district (BUS),(c) *Permitted uses*, of the Land Development  
2 Code is amended to read as follows:

3  
4 (c) *Permitted uses*.  
5

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 alternative fuels for automobiles	In accordance with article VI
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

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

3  
4 (c) *Permitted uses.*

5  
6 (1) *Uses by right.*

- 7  
8 a. Local and suburban transit and interurban highway passenger  
9 transportation (MG-41).  
10  
11 b. U.S. Postal Service (MG-43).  
12  
13 c. Food stores (MG-54).  
14  
15 d. Auto and home supply stores (GN-553).  
16  
17 e. Gasoline service stations (GN-554), in accordance with article VI.  
18  
19 f. Apparel and accessory stores (MG-56).  
20  
21 g. Eating places.  
22  
23 h. Miscellaneous retail (MG-59) excluding fuel dealers (GN-598).  
24  
25 i. Hotels and motels (GN-701).  
26  
27 j. Organization hotels and lodging houses, on membership basis (GN-704).  
28  
29 k. Personal services (MG-72), excluding funeral service and crematories  
30 (GN-726), and also excluding linen supply (IN-7213), diaper service (IN-  
31 7214), and industrial launderers (IN-7218).  
32  
33 l. Automotive repair, services and garages (MG-75), excluding carwashes.  
34  
35 m. Motion pictures (MG-78), including sexually oriented motion picture  
36 theaters in accordance with Section 30-90.  
37  
38 n. Amusement and recreation services, except motion pictures, and excluding  
39 go-cart raceway operations and go-cart rentals (MG-79).  
40  
41 o. Museums and art galleries (GN-841).  
42  
43 p. Membership organizations (MG-86).  
44  
45 q. Recreational vehicle parks and campsites, in accordance with article VI  
46 (GN7033).

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- r. Public service vehicles, in accordance with article VI.
- s. ~~Adult and sexually oriented establishments, in accordance with article VI.~~  
Sexually oriented cabarets, in accordance with Section 30-90.
- t. Arrangement of passenger transportation (GN-472).
- u. Any accessory use customarily incidental to a permitted principal use.
- v. Alcoholic beverage establishments, in accordance with article VI.
- w. Bed and breakfast establishments, in accordance with article VI.
- x. Outdoor cafe, as defined in article II and in accordance with article VI.
- y. Places of religious assembly, in accordance with article VI.
- z. Sexually oriented retail store, in accordance with Section 30-90.

1 **Section 30-70. General Industrial District (I2), (c) Permitted uses, (1) Uses by right, of the**  
2 **Land Development Code is amended to read as follows:**  
3

4 (c) *Permitted uses.*

5  
6 (1) *Uses by right.*

- 7  
8 a. Food and kindred products (MG-20), excluding the following: wet corn  
9 milling (IN-2046); raw cane sugar (IN-2061); beet sugar (IN-2063);  
10 soybean oil mills (IN2075); and distilled liquor (IN-2085).  
11  
12 b. Tobacco products (MG-21), excluding cigarettes (IN-2111).  
13  
14 c. Textile mill products (MG-22), excluding cotton finishing plants (IN-  
15 2261).  
16  
17 d. Apparel and other finished products made from fabrics and similar  
18 materials (MG-23).  
19  
20 e. Lumber and wood products, except furniture (MG-24).  
21  
22 f. Furniture and fixtures (MG-25).  
23  
24 g. Paper and allied products (MG-26), excluding the following: pulp mills  
25 (IN-2611); paper mills (IN-2621); paperboard mills (IN-2631); and  
26 packaging--coated and laminated paper (IN-2671).  
27  
28 h. Printing, publishing, and allied industries (MG-27), excluding gravure  
29 commercial printing (IN-2754).  
30  
31 i. Chemicals and allied products (MG-28), excluding the following: alkalis  
32 and chlorine (IN-2812); inorganic pigments (IN-2816); cellulosic  
33 manmade fibers (IN2823); noncellulosic organic fibers (IN-2824); gum  
34 and wood chemicals (IN2861); nitrogenous fertilizers (IN-2873);  
35 phosphatic fertilizers (IN-2874); synthetic rubber (IN-2822); medicinals  
36 and botanicals (IN-2833); cyclic crudes and intermediates (IN-2865);  
37 explosives (IN-2892); and carbon black (IN-2895).  
38  
39 j. Petroleum refining and related industries (MG-29), excluding the  
40 following: petroleum refining (IN-2911); petroleum and coal products (not  
41 elsewhere classified) (IN-2999); and asphalt paving mixtures and blocks  
42 (IN-2951).  
43  
44 k. Rubber and miscellaneous plastics products (MG-30).  
45  
46 l. Leather and leather products (MG-31).



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- m. Stone, clay, glass, and concrete products (MG-32), excluding the following: hydraulic cement (IN-3241); lime (IN-3274); flat glass (IN-3211); glass containers (IN-3221); pressed and blown glass (not elsewhere classified) (IN-3229); brick and structural clay tile (IN-3251); ceramic wall and floor tile (IN-3253); clay refractories (IN-3255); structural clay products (not elsewhere classified) (IN3259); vitreous plumbing fixtures (IN-3261); vitreous china food utensils (IN3262); gypsum products (IN-3275); and ground or treated minerals (IN-3295).
  - n. Primary metal industries (MG-33), excluding the following: steel works, blast furnaces, and rolling mills (IN-3312); electrometallurgical products (IN-3313); primary copper (IN-3331); primary aluminum (IN-3334); primary nonferrous metals (not elsewhere classified) (IN-3339); secondary smelting and refining of nonferrous metals (IN-3341); gray iron foundries (IN-3321); copper rolling and drawing (IN-3351); aluminum extruded products (IN-3354); aluminum rolling and drawing (IN-3355); aluminum die-castings (IN-3363); and copper foundries (IN-3366).
  - o. Fabricated metal products, except machinery and transportation equipment (MG-34), excluding the following: nonferrous forgings (IN-3463); and metal coatings and allied services (IN-3479).
  - p. Industrial and commercial machinery and computer equipment (MG-35).
  - q. Electronic and other electrical equipment and components, except computer equipment (MG-36).
  - r. Transportation equipment (MG-37).
  - 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).

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2 z. Business services (MG-73); including disinfecting and pest control  
3 services (IN7342), in accordance with article VI .  
4  
5 aa. Automotive repair, services and parking (MG-75).  
6  
7 bb. Miscellaneous repair services (MG-76).  
8  
9 cc. Reserved.  
10  
11 dd. Landscape and horticultural services (GN-078).  
12  
13 ee. Eating places.  
14  
15 ff. Personal services (MG-72).  
16  
17 gg. Outdoor storage.  
18  
19 hh. Veterinary services (GN-074), in accordance with article VI.  
20  
21 ii. Animal services, except veterinary (GN-075).  
22  
23 jj. Nonstore retailers (GN-596).  
24  
25 kk. Public service vehicles in accordance with article VI.  
26  
27 ll. Farm labor and management services (GN-076).  
28  
29 mm. Car washes (IN-7542).  
30  
31 nn. Reserved.  
32  
33 oo. Amusement and recreation services, not elsewhere classified (IN-7999),  
34 excluding go-cart raceway operations and go-cart rentals, excluding  
35 sexually oriented businesses.  
36  
37 pp. Noncommercial research organizations (IN-8733).  
38  
39 qq. Engineering, architectural and surveying services (IN-871).  
40  
41 rr. Any accessory use incidental to a permitted principal use.  
42  
43 ss. Legal services (MG-81).  
44  
45 tt. Motion picture production and allied services (GN-781); motion picture  
46 distribution and allied services (GN-782).

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uu. Bowling centers and billiard and pool establishments (GN-793).

vv. Recycling centers, in accordance with article VI.

ww. Research, development and testing service (GN-873).

xx. Sexually oriented motion picture theaters, in accordance with Section 30-90.

yy. Sexually oriented cabarets, in accordance with Section 30-90.

zz. Sexually oriented retail stores, in accordance with Section 30-90.

1 Section 30-90. Adult and sexually oriented establishments of the Land Development Code is  
2 amended to read as follows:  
3

4 Sec. 30-90. Sexually oriented businesses ~~Adult and sexually oriented~~  
5 ~~establishments.~~  
6

7 (a) Intent and Purpose. It is the intent and purpose of this section to regulate sexually  
8 oriented businesses, in order to promote the health, safety, and general welfare of the citizens of  
9 the city, and to establish reasonable and uniform regulations to prevent the negative secondary  
10 effects of sexually oriented businesses within the city. The provisions of this section have neither  
11 the purpose or nor effect of imposing a limitation or restriction on the content or reasonable  
12 access to any communicative materials, including sexually oriented materials. Similarly, it is  
13 neither the purpose nor the effect of this section to restrict or deny access by adults to sexually  
14 oriented materials protected by the First Amendment, or to deny access by the distributors and  
15 exhibitors of sexually oriented entertainment to their intended market. Neither is it the purpose  
16 nor effect of this chapter to condone or legitimize the distribution of obscene material. There are  
17 some uses which, because of their very nature, are recognized as having serious objectionable  
18 operational characteristics, particularly when several of them are concentrated under certain  
19 circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of  
20 these uses is necessary to ensure that these adverse effects will not contribute to the blighting or  
21 downgrading of the surrounding neighborhood. These special regulations are itemized in this  
22 section. The primary control or regulation is for the purpose of is preventing a concentration of  
23 these uses in any one area, to ensure the integrity of the city's residential neighborhoods and to  
24 protect the integrity of the city's places of religious assembly, schools, parks and playgrounds,  
25 areas where juveniles often congregate.  
26

27 (b) Findings. Based on evidence of the adverse secondary effects of sexually oriented  
28 businesses set forth in studies and case law considered by the city commission and on evidence  
29 and recommendations presented in hearings and in reports to the city commission; The city  
30 commission hereby finds as follows:  
31

32 (1) Sexually oriented businesses, as a category of commercial uses, are associated with a  
33 wide variety of adverse secondary effects including, but not limited to, personal and  
34 property crimes, public safety risks, prostitution, potential spread of disease, lewdness,  
35 public indecency, illicit sexual activity, illicit drug use and drug trafficking, undesirable  
36 and criminal behavior associated with alcohol consumption, negative impacts on  
37 surrounding properties, litter, and sexual assault and exploitation.  
38

39 (2) Each of the foregoing negative secondary effects constitutes a harm which the city  
40 has a substantial government interest in preventing and/or abating in the future. This  
41 substantial government interest in preventing secondary effects, which is the city's  
42 rationale for this section, exists independent of any comparative analysis between  
43 sexually oriented and non-sexually oriented businesses. Additionally, the city's interest in  
44 regulating sexually oriented businesses extends to future secondary effects that could  
45 occur in the city related to current sexually oriented businesses as well as sexually  
46 oriented businesses that may locate in the city in the future. The city finds that the cases

1 and secondary effects documentation relied on in this section are reasonably believed to  
2 be relevant to said secondary effects.  
3  
4

- 5 ~~(1) The possession, display, exhibition, production, distribution and sale of books,~~  
6 ~~magazines, motion pictures, videotapes, prints, photographs, periodicals, records,~~  
7 ~~novelties and similar devices which depict, illustrate, describe or relate to~~  
8 ~~specified sexual activities is a business that exists within the city;~~  
9
- 10 ~~(2) The operating and maintaining of places presenting dancers displaying or~~  
11 ~~exposing specified anatomical areas are businesses that exist within the city;~~  
12
- 13 ~~(3) When the activities detailed in subsections (b)(1) and (b)(2) of this section are~~  
14 ~~present in an area of the city, they are often followed by other activities which are~~  
15 ~~illegal, immoral or unhealthful, such as prostitution, lewd and lascivious behavior,~~  
16 ~~exposing minors to harmful materials, possession, distribution and transportation~~  
17 ~~of obscene materials, sale or possession of controlled substances, and violent~~  
18 ~~crimes against persons and property; and these illegal, immoral or unhealthful~~  
19 ~~activities tend to concentrate around and be aggravated by the presence of the~~  
20 ~~activities detailed in subsections (b)(1) and (b)(2) of this section;~~  
21
- 22 ~~(4) Based upon evidence and testimony from the city's professional planners, the~~  
23 ~~grouping together of the activities described above lowers property values,~~  
24 ~~detracts from the aesthetic beauty of residential, commercial and institutional~~  
25 ~~neighborhoods and is harmful to juveniles who congregate in such residential and~~  
26 ~~institutional areas;~~  
27
- 28 ~~(5) Based upon evidence and testimony from the city's professional law enforcement~~  
29 ~~officers, the grouping together of the activities described above creates an~~  
30 ~~inordinate amount of concentrated crime in such areas;~~  
31
- 32 ~~(6) Also based upon evidence and testimony from the city's professional law~~  
33 ~~enforcement officers, many of the types of establishments at which the activities~~  
34 ~~described above occur are likely to soon attempt to locate in this community;~~  
35
- 36 ~~(7) Also based upon evidence and testimony from the city's professional law~~  
37 ~~enforcement officers and the city's professional planners, the location of the~~  
38 ~~activities described above near residential, institutional or other areas where~~  
39 ~~juveniles often congregate lowers property values in such areas and exposes~~  
40 ~~juveniles to the activities described in subsection (b)(3) of this section;~~  
41
- 42 ~~(8) Based upon evidence and testimony received from the city's professional~~  
43 ~~planners, there will be free and reasonable access for and to the regulated uses,~~  
44 ~~and the limitations imposed herein will not preclude robust competition with other~~  
45 ~~regulated uses; and~~  
46

1 (9) ~~Based upon the experiences of other cities statewide and nationwide, the evidence~~  
2 ~~and testimony of the city's professional planners and law enforcement officers~~  
3 ~~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 substantial~~  
8 ~~portion of its stock in trade books, magazines, other periodicals, films, videotapes,~~  
9 ~~video disks or similar items which are distinguished or characterized by their~~  
10 ~~emphasis on matter depicting, describing or relating to specified sexual activities~~  
11 ~~or specified anatomical areas (as defined below).~~  
12

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

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

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

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

41 (6) ~~Emphasis or emphasis on means that the type of matter specified is the apparent~~  
42 ~~matter upon which the particular work or exhibition is based, or that the matter~~  
43 ~~specified is a substantial portion of such work or exhibition. Because of the~~  
44 ~~matters specified in subsections (e)(11) and (e)(12) of this section, the~~  
45 ~~establishments exhibiting, creating or selling such goods or exhibitions are not~~  
46 ~~generally open to juveniles.~~

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- (7) ~~Established places of religious assembly means established places of worship at which nonprofit religious services are regularly conducted and carried on.~~
- (8) ~~Public playground or public park means properties and facilities owned and operated by any governmental agency which are open to the general public for recreational purposes.~~
- (9) ~~Regulated uses or adult and sexually oriented establishments means those uses specified and defined in subsections (c)(1), (2), (3), (4) and (5) of this section.~~
- (10) ~~School means a public or private educational institution offering students a conventional academic curriculum, including kindergartens, elementary schools, middle schools, high schools, colleges and universities. Such term shall also include all adjacent properties owned and used by such schools for educational or recreational purposes.~~
- (11) ~~Specified sexual activities means:~~
- a. ~~Human genitals in a state of sexual stimulation or arousal;~~
  - b. ~~Acts of human masturbation, sexual intercourse or sodomy; and~~
  - e. ~~Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.~~
- (12) ~~Specified anatomical areas means:~~
- a. ~~Less than completely and opaquely covered:~~
    - 1. ~~Human genitals;~~
    - 2. ~~Pubic region;~~
    - 3. ~~Buttock; and~~
    - 4. ~~Female breast below a point immediately above the top of the areola; and~~
  - 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

1 least 1,000 feet from any other sexually oriented business, place of religious assembly, public  
 2 school, private school, public park, youth association or residential area.

3  
 4 ~~(1) 1,000 feet from any other regulated use;~~

5  
 6 ~~(2) 400 feet from any established place of religious assembly, public or private~~  
 7 ~~school, public playground or public park; and~~

8  
 9 ~~(3) 400 feet from any area zoned in a residential category.~~

10  
 11 ~~For purposes of the distance limitations, the measurement shall be made by extending a~~  
 12 ~~straight line from main entrance of the building of the regulated use to the front door of~~  
 13 ~~the main building occupied by any other regulated use or any established place of~~  
 14 ~~religious assembly or to the nearest property line of any residential district, playground,~~  
 15 ~~school or park.~~

16  
 17 ~~(1) *Measurement.* For purposes of the spacing requirements, the measurement shall~~  
 18 ~~be made by extending a straight line from the nearest property line of the sexually~~  
 19 ~~oriented business to the nearest property line of the other sexually oriented~~  
 20 ~~business, private school, public park, youth association or residential area~~

21  
 22 ~~(2) *Exception to spacing requirement.* Any sexually oriented business which is~~  
 23 ~~established in conformity with this section and other applicable laws and~~  
 24 ~~ordinances shall not be made unlawful, if a place of religious assembly, public~~  
 25 ~~school, private school, public park, or residential area is created or established~~  
 26 ~~within the distance limitations subsequent to the filing of the application for the~~  
 27 ~~establishment of the sexually oriented business with the City Planning and~~  
 28 ~~Development Department or subsequent to the lawful establishment of the~~  
 29 ~~sexually oriented business.~~

30  
 31 ~~(ed) *Obscenity not permitted.* Nothing in this section shall be construed as permitted or~~  
 32 ~~allowing a violation of any state or federal law, including F.S. Ch. 847, relating to obscenity.~~

33  
 34 ~~(fe) *Existing establishments.* Any use herein defined as a sexually oriented business regulated~~  
 35 ~~use or an adult and establishment which, on the date this section becomes applicable to such use,~~  
 36 ~~which, on ((insert effective date of ordinance)) is existing, in actual operation and open to the~~  
 37 ~~public, and which in all other respects is in full compliance with applicable laws and ordinances~~  
 38 ~~of the city, but which would not otherwise be permitted under the terms of this section, shall then~~  
 39 ~~become a permitted nonconforming uses.~~

40  
 41 ~~(g) *Exception to spacing requirement.* Any use herein defined as a regulated use or an adult~~  
 42 ~~and establishment which is established in conformity with this section and other applicable laws~~  
 43 ~~and ordinances shall not be made unlawful if, subsequent to the establishment and operation of~~  
 44 ~~such regulated use, a place of religious assembly, school, playground, park, or residential area is~~  
 45 ~~created or established within the distance limitations for the regulated use specified in this~~  
 46 ~~section.~~



1  
2 (f) Design restrictions for sexually oriented motion picture theater. Any sexually oriented  
3 motion picture theater shall meet the following design standards at all times:  
4

- 5 (1) Presentation Area. All screenings and presentations of motion pictures, videos or  
6 other visual media shall occur in a room open to all customers of the  
7 establishment and containing at least 600 square feet of floor area. No curtains,  
8 screens, shades or other devices shall be used to obscure any part of the room.  
9
- 10 (2) Lighting. The lighting level in the area occupied by customers shall be at least 2  
11 footcandles at floor level.  
12
- 13 (3) Seating. Seating shall consist of individual, theater-style chairs, with solid arms  
14 separating the chairs. No couches, benches, individual chairs, beds, loose  
15 cushions or mattresses, or other forms of seating may be provided. Separate  
16 spaces for wheelchairs shall be provided in accordance with the applicable  
17 provisions of the adopted building code in effect from time to time and the  
18 Americans with Disabilities Act.  
19

20 (g) Additional design standards for sexually oriented cabarets. In addition to those standards  
21 applicable to Adult Performance Establishments under Sect. 14.5-75, the following design  
22 standards shall apply to any sexually oriented cabaret:  
23

- 24 (1) All performances and all interactions between performers and customers shall  
25 occur in a room open to all customers of the establishment and containing at least  
26 600 square feet of floor area. No curtains, screens, shades or other devices shall  
27 be used to obscure any part of the room.  
28
- 29 (2) Lighting. The lighting level in the area occupied by customers shall be at least 5  
30 footcandles at a height of 3 feet off the floor.  
31

32 (h) Retail store with limited quantities of sexually oriented media or devices. A retail trade  
33 establishment (SIC Division G) which devotes more than ten (10) percent but less than thirty  
34 (30) percent of its floor area, or stocks more than ten (10) percent but less than thirty (30) percent  
35 of the number of items in inventory, to sexually oriented media or sexually oriented devices,  
36 shall be treated for zoning purposes as an accessory use to the primary retail trade of the store  
37 and not as a sexually oriented retail store, provided that it meets the following conditions:  
38

- 39 (1) All sexually oriented media or devices shall be maintained in a room that is  
40 separated from other material by an opaque wall that extends to the ceiling or  
41 eight feet above the floor, whichever is less; and  
42
- 43 (2) Access to the room containing the sexually oriented media or devices shall be  
44 through a door or through a space that can be entered only by passing directly by  
45 the manager's or cashier's principal work station; and  
46

- 1       (3) The room containing sexually oriented media or devices shall be posted with a  
2       notice indicating that only persons 18 years of age or older are allowed in the  
3       room: and
- 4
- 5       (4) Access to the room shall be physically limited to adults through control of access  
6       by an employee of the store, through use of an access release located at least 66  
7       inches off the floor, or through constant monitoring of the room by an employee  
8       on duty, where such employee has visual control of the separate room through  
9       direct visibility, through electronic means or through a window or mirror  
10       providing visibility into the room from the manager's or cashier's work station.

11

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

14

15       (i) Additional restrictions on signage. Any sexually oriented business located on the same  
16       street as and within 2,000 feet of one or more dwellings located in a residential area shall be  
17       subject to the following additional restrictions on signage at the establishment:

- 18
- 19       (1) Notwithstanding the height or size standards otherwise applicable to signs in that  
20       zoning district, the exterior signs on such business shall be designed and installed  
21       so that they are not visible from the residential area;
- 22
- 23       (2) Exterior signs on such businesses shall not flash, scroll, scintillate or move or give  
24       the appearance of motion.
- 25