



MEMORANDUM

Office of the City Attorney

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TO: Honorable Mayor and City Commissioners **DATE:** June 12, 2000
FROM: City Attorney **CONSENT**
SUBJECT: Changes to adult performance establishment licensing ordinance

Recommendation: The City Commission authorize the City Attorney to draft and the Clerk of the Commission to advertise an ordinance amending the adult performance establishment license requirements to conform to a recent Supreme Court decision.


In November, 1995 the City Commission adopted an ordinance regulating adult performance establishments. Among other things, the ordinance requires the owner of such an establishment to get a license from the City.

On April 3, 2000 the U.S. Supreme Court let stand a decision of the 11th Circuit Court of Appeals, which held that certain provisions of Jacksonville's adult entertainment licensing requirements are unconstitutional. One of these requirements is that a corporation applying for a license must provide the names of its "principal stockholders." The court held that since officers and directors run corporations and stockholders do not, the City could enforce its rules through the officers and directors of the corporation and it should not require stockholders' names. Gainesville's ordinance requires a corporate applicant to provide stockholders' names, and we advise that this requirement be removed from the ordinance.


The court also found that the Jacksonville ordinance was unconstitutional because it did not require the City to make a prompt decision on the application. Under the Jacksonville ordinance, the applicant is allowed to open the business, pending the final decision on the application, if the City does not make its decision within 45 days after the application is filed. The court held that this is not enough, stating, "A business can scarcely afford to operate in limbo, not knowing whether the City will shut it down the next day or not." Gainesville's ordinance allows an applicant to open the business if the City has not made a decision within 30 days of a proper application being filed, but the business would have to close if the City decided to deny the permit. We advise that the ordinance be changed to provide that lack of a decision after 30 days shall be the same as an approval.

A third suggested change concerns revocation of a license. The ordinance currently states that the revocation shall take effect, and the business must close, 10 days after the notice of revocation is sent. We advise that this be changed to require the business to close the later of 10 days after the notice of revocation is sent, or the end of judicial proceedings, if the license holder files for judicial review of the revocation decision.

Prepared by:


Patricia M. Carter, Sr. Asst. City Attorney

Reviewed and
approved by:


Marion J. Radson, City Attorney