AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AMENDING PART III, UNIFIED LAND DEVELOPMENT CODE, TITLE 39, (THE ALACHUA COUNTY ZONING CODE); AMENDING SECTION 390.03 TO ADD DEFINITIONS OF A HOUSE OF WORSHIP, MASSAGE, MASSAGE THERAPY, MEDIA, MOTION PICTURE, PARK, PRIMARY LIVE ENTERTAINMENT, SADOMASOCHISTIC PRACTICES, SCHOOL, SEX SHOP, SEXUAL CONDUCT, SEXUALLY ORIENTED BUSINESS, SEXUALLY ORIENTED CABARET, SEXUALLY ORIENTED MOTION PICTURE THEATER, SEXUALLY EXPLICIT MEDIA, SEXUALLY ORIENTED MEDIA STORE, SPECIFIED ANATOMICAL AREAS; AMENDING SECTION 390.03 REGARDING THE DEFINITION OF CHURCH; CREATING SECTION 393.51 REGARDING MASSAGE THERAPY; CREATING SECTION 393.52 REGARDING MOTION PICTURE ARCADE BOOTHS; CREATING SECTION 393.53 REGARDING RETAIL ESTABLISHMENTS WITH LIMITED QUANTITIES OF SEXUALLY ORIENTED MEDIA; CREATING SECTION 393.54 REGARDING SEXUALLY ORIENTED BUSINESSES—ADDITIONAL LOCATION REQUIREMENTS; CREATING SECTION 393.55 REGARDING SEXUALLY ORIENTED CABARETS—DESIGN STANDARDS; CREATING SECTION 393.56 REGARDING SEXUALLY ORIENTED MOTION PICTURE THEATERS; CREATING SECTION 393.57 REGARDING ADDITIONAL STANDARDS APPLICABLE TO NONCONFORMING SEXUALLY ORIENTED BUSINESSES; AMENDING SECTION 392.63 RELATING TO THE OR BR AND BR-1 ZONING DISTRICTS; AMENDING SECTION 392.64 RELATING TO THE BH ZONING DISTRICT; AMENDING SECTION 392.65 RELATING TO THE BH ZONING DISTRICT; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR LIBERAL CONSTRUCTION PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Board of County Commissioners of Alachua County, Florida, finds that

a substantial need exists to revise significantly the ordinances regarding sexually oriented

businesses within the Alachua County; and

WHEREAS, the Board of County Commissioners retained Duncan Associates to
conduct a study of existing regulated uses and related businesses in Alachua County; and

WHEREAS, Duncan Associates assigned nationally known planner, Eric Damian Kelly "Kelly", to conduct that study; and

WHEREAS, Kelly has completed that study, including the following elements: Field study, involving visits to all identified existing sexually oriented businesses in Alachua County, including those within the incorporated limits of Gainesville; Meetings with a stakeholder group involved in these businesses; Consultation with the Alachua County Attorney on this issue; Consultation with the professional planning staff of Alachua County on this issue; Review of studies of sexually oriented businesses in other communities; Investigation of regulatory approaches to massage therapy in other states and communities; Review of existing regulations under Florida law; and Review of related ordinances in Gainesville; and

WHEREAS, Duncan Associates has summarized this work and presented recommendations to the County in an August 2003 report entitled "Regulation of Sexually Oriented Businesses in Alachua County: Field Survey, Analysis and Recommendations;" (hereinafter called the "Duncan study"); and

WHEREAS, the United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986) held that a local government may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses; and

WHEREAS, the United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected...
speech within said establishments but rather at the secondary effects of said establishments on
the surrounding communities; and

WHEREAS, from the following studies, the Board of County Commissioners also finds
that such businesses may have secondary effects involving crimes related to the activities in the
establishment, of which prostitution and crimes of violence are those of greatest concern. See for
example:

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


"Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul," June
1978, City of Saint Paul Division of Planning, Department of Planning and Management;
and Community Crime Prevention Project, Minnesota Crime Control Planning Board.

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

WHEREAS, reports from representatives of the Sheriff of Alachua County reflect an
increase in prostitution and other criminal activity along Southwest 13th Street, just outside the
Gainesville city limits, since a sex shop (the XMart) opened in that location and added an arcade
with video viewing booths; and

WHEREAS, surveys of appraisers conducted by the City of Indianapolis (1984) and
Rochester (1999) and a survey of real estate brokers in New York City (1994) all reflect clear
findings by these professionals that sexually oriented businesses have a negative effect on
residential properties located within 500 feet or less of such businesses; and

WHEREAS, the Board of County Commissioners recognizes that some of the cited studies included bars without adult entertainment among the businesses studied. The Board of County Commissioners finds, nevertheless, that addressing the establishments that have live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, because bars in Florida are already regulated by the state, and the state regulations directly address many of the concerns that arise with the service of alcohol; and

WHEREAS, studies in New York (1994), Phoenix (1979), Indianapolis (1984), Whittier (1994) and St. Paul (1978) indicate that the clustering of sexually oriented businesses can increase the negative secondary effects of such businesses; and

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

WHEREAS, at this time there is no clustering of sexually oriented businesses in Alachua County, but the Board of County Commissioners wants to avoid such problems in the future; and

WHEREAS, three sexually oriented businesses in Alachua County have installed arcades containing video viewing booths; and

WHEREAS, two of those arcades were installed in establishments located in zoning districts in which on-premise entertainment and arcades are not permitted; and

WHEREAS, the Board of County Commissioners wants to re-emphasize that such arcades, if allowed, are a form of on-premises entertainment similar to movie theaters that should be allowed – as they are now – only in districts allowing such on-premise entertainment; and
WHEREAS, the Duncan study, citing in part a 1990 Tucson study as well as experience in other communities, suggests that the function of the viewing booths is only to provide a place and manner of presentation of sexually oriented material that provides viewers with a place in which they may masturbate or engage in casual sex of other types; and

WHEREAS, a study undertaken for the City of Alachua by an experienced crime-scene investigator confirmed such findings locally, finding that paper towels removed from video arcades at XMart and Pure Pleasure Adult Video in Alachua County contained sperm; and

WHEREAS, the Board of County Commissioners believes that video arcades are an undesirable place and means of presentation of material that is readily available in other forms in the County; and

WHEREAS, the Board recognizes that one business has lawfully acquired the equipment for such an arcade and believes that requiring its disposal might be an undue hardship; and

WHEREAS, the Board therefore has determined that the best course of action is to support its enforcement staff in efforts to require the removal of the arcades that were installed in violation of the current ordinance, to ban the future installation of arcades, and to require that the one arcade, for which the equipment was acquired for use in a place where it was allowed, be reconfigured to provide visibility into all of the booths, allowing management and law enforcement to ensure that such booths are not used for sexual activity; and

WHEREAS, the Duncan Study found a number of different land-use types among the sexually oriented businesses in Alachua County; and

WHEREAS, sexually oriented media are available in a number of different contexts in Alachua County, including: the backrooms of some general, or "mainstream" video stores; a backroom at Modern Age Tobacco Shop; at Video Warehouse, which handles exclusively
sexually oriented media; and at XMart, on Southwest 13th Street; and

WHEREAS, both Modern Age Tobacco and XMart also carry sexually oriented novelties, devices and toys; and

WHEREAS, public officials and law enforcement officials have received numerous complaints about the XMart but not about the availability of similar materials in these other venues; and

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

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

WHEREAS, the separation of such uses from residential areas will mitigate or possibly eliminate the negative effect of such businesses on residential property values; and

WHEREAS, studies in Newport News (1996), St. Paul (1978) and Whittier (1994) indicate that the secondary impacts of businesses with live entertainment may be significantly greater than the secondary impacts of sexually oriented businesses without such entertainment, and

WHEREAS, based on recommendations from its own law enforcement officers, the Board finds that the potential for interaction between paying customers and sexually oriented
entertainers in fact creates an environment that can lead to negotiations for other sexual activities, some of which may be unlawful; and

WHEREAS, the Duncan study and comments from representatives of the Alachua County Sheriff indicate that the management controls at the one existing establishment in the unincorporated part of the County essentially mitigate the adverse secondary effects of that business; and

WHEREAS, the Gainesville experience with its establishment with live entertainment has been quite different, resulting in litigation and an agreement to close the business; and

WHEREAS, the Board wants to avoid such problems in the future; and

WHEREAS, the Board believes that by requiring an increased separation for sexually oriented businesses with live entertainment (such as Trader’s Cabaret) from sensitive uses will help to minimize the negative impacts of such businesses; and

WHEREAS, the Board has been guided in establishing the separation requirements by the apparent success of the current location of the establishment with live entertainment; and

WHEREAS, based on recommendations of law enforcement officers, the Board believes that ensuring that sexually oriented dance performances take place on a stage, rather than on the same floor as the customer, limits the likelihood of unlawful or inappropriate sexual contact between customers and dancers; and

WHEREAS, again the Board has been guided by the apparent success of such a model at the existing establishment in the County; and

WHEREAS, the Board and its staff have been advised that some communities attempt to address such issues through licensing; and

WHEREAS, the Board has concluded that it would be inefficient to establish a licensing
ordinance for one or two businesses if the issues can be addressed through police-power regulations incorporated in the zoning ordinance; and

WHEREAS, from the Duncan report and from reports from other communities, the Board is aware that some communities have to devote police resources to investigating activities at "massage parlors" operated by persons not licensed as massage therapists; and

WHEREAS, the County has had one or two inquiries about establishing such parlors; and

WHEREAS, the Board is not aware of any such massage parlors in the unincorporated County; and

WHEREAS, the Board wishes to avoid the potential problems with such establishments; and

WHEREAS, the Board has thus concluded that massages should be offered in Alachua County only by persons licensed by the State of Florida or by persons in training in accordance with the provisions of the Florida Massage Practices Act; and

WHEREAS, public officials and law enforcement officials were totally unaware of the availability of sexually oriented media in the backrooms of some general media stores, further indicating that such availability has little if any impact on the community; and

WHEREAS, the recommendation in the Duncan study to allow properly zoned general media stores to carry such material, subject to proper controls to prevent its availability to minors, is a logical continuation of current practice; and

WHEREAS, the Duncan Study and comments of the County’s own professional staff indicate that the County’s current zoning regulations do not make appropriate distinctions among sexually oriented businesses and between such businesses and other businesses carrying sexually
oriented goods and products; and

WHEREAS, the Duncan study included specific recommendations about classification of such businesses;

NOW THERFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:

Section 1. The Board of County Commissioners adopts the foregoing findings.

Section 2. Section 390.03, Alachua County Code, is hereby amended by adding to the list of definitions the following, to be inserted in alphabetical order among the definitions already included in such section:

     *Hard core [pornography]:* Depictions of specified sexual activities that include one or more of the following: erect male organ; contact of the mouth of one person with the genitals of another; penetration of a finger or male organ into any bodily orifice in another person; open female labia; penetration of a sex toy or other device into a bodily orifice of any person, sometimes assisted by another person; actual male ejaculation; or the aftermath of male ejaculation.

     *House of Worship: Any building used for nonprofit purposes by an established religious organization holding either tax exempt status under Section 501(c)(3) of the Internal Revenue Code or under Florida's property tax law, where such building is primarily intended to be used as a place of worship and including customary accessory uses.*

     *Massage: touch, stroking, kneading, stretching, friction, percussion and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or
adjustment).

*Massage therapy:* the profession in which the practitioner applies massage techniques with the intent of positively affecting the health and well-being of the client, and may adjunctively (i) apply allied modalities, heat, cold, water and topical preparations not classified as prescription drugs, (ii) use hand held tools or devices designed as t-bars or knobbies, and (iii) instruct self care and stress management. "Manual" means by use of hand or body.

*Media:* anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything which is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, cd-roms, other magnetic media, and undeveloped pictures.

*Motion picture arcade:* any booth, cubicle, stall or compartment which is smaller than 500 square feet in floor area, which is designed, constructed or used to hold or seat customers, and which is used for presenting motion pictures or viewing publications for a fee by any photographic, electronic, magnetic, digital or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines or periodicals) for observation by customers therein.

*Park:* a piece of land that is owned by the State of Florida, Alachua County, or an incorporated municipality within Alachua County, that is developed and operated for active and/or passive recreational purposes, and that is open to the public on a regular schedule.
Primary live entertainment: that entertainment which characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.

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

School: any public or private educational institution offering general educational programs required by the State of Florida for students in grades kindergarten through 12th grade. This definition does not include such specialized institutions as dancing schools and driving schools.

Sex shop: a retail sales and services establishment that meets any of the following tests:

(1) It offers for sale items from any two (2) of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices, and the combination of such items make up more than ten percent (10%) of its stock in trade or occupies more than 10 percent (10%) of its floor area; or,

(2) More than five percent (5%) of its stock in trade consists of sexually-oriented toys or novelties; or,

(3) More than five percent (5%) of its gross public floor area is devoted to the display of sexually-oriented toys or novelties.

Sexual conduct: the engaging in or the commission of an act of sexual intercourse, oral-genital contact, masturbation, or the touching of the sexual organs, pubic region,
buttock or female breast of another person for the purpose of arousing or gratifying the sexual desire of another person.

Sexually oriented business: an inclusive term used to describe collectively: sexually oriented cabaret; sexually oriented motion picture theater; motion picture arcade; massage parlor or shop unless operated by a massage therapist licensed by the State of Florida; retail sales and services falling into the category of sex shop or sexually oriented media shop. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the zoning code or other applicable ordinances.

Sexually oriented cabaret: a building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment which constitutes the “primary live entertainment” is distinguished or characterized by an emphasis on the exhibiting of “sexual conduct” or “specified anatomical areas” for observation by customers therein. The fact that an establishment does not serve alcoholic beverages shall not remove it from classification as a “sexually oriented cabaret” if it otherwise falls under this definition.

Sexually oriented motion picture theater: a cinema or motion picture theater which shows hard-core features on more than half the days that it is open, or which is marketed as or offers features described as “adult”, “XXX”, or sexually oriented.

Sexually explicit media: magazines, books, videotapes, movies, slides, cd-roms or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “sexual conduct” or “specified anatomical areas” (separately defined).
Sexually oriented media store: a retail sales and services establishment that rents and/or sells media, and that meets any of the following three tests:

(1) More than thirty percent (30%) of the gross public floor area is devoted to sexually oriented media; or

(2) More than thirty percent (30%) of the stock in trade consists of sexually oriented media; or

(3) It is advertised, marketed, or holds itself out in any forum as “XXX,” “adult,” “sex” or otherwise as a sexually-oriented business.

Specified Anatomical Areas mean and include: (1) less than completely and opaquely covered: human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Section 3. Section 390.03 of the Code of Alachua County is hereby amended by amending the definition of “church” to read as follows:

Church. See “House of Worship.”

Section 4. Section 393.51 of the Alachua County Code is hereby created, to read as follows:

Sec. 393.51 Massage Therapy

A massage therapy studio or other establishment operated or staffed by one or more massage therapist(s) licensed by the Board of Massage Therapy in accordance with the Florida Massage Practice Act, as codified at Fla. Stats. Sect. 480.031 et seq. shall be considered a “personal service” for purposes of this Title. Alachua County shall not issue a permit or license to operate a massage establishment unless the applicant for such permit or license has been
licensed by the Board of Massage Therapy or the applicant provides the name(s) and or licensing information of one or more persons who are so licensed and who will provide massage therapy at the establishment. Any such massage establishment shall maintain posted on its premises copies of the license(s) of the licensed massage therapist(s) who provide services at the establishment. There shall be a rebuttable presumption that any massage establishment operated by a person who is not a licensed massage therapist and that does not have posted on its premises one or more licenses of massage therapists who provide personal services there is operating in violation of this title and subject to enforcement action and penalty under this title, in addition to any violation of the Massage Practice Act. Nothing in this section shall be construed to limit the operation of a massage school in accordance with the applicable provisions of the Massage Practice Act or the provision of clinical experience to students of a massage school in a setting consistent with the provisions of the Massage Practice Act.

Section 5. Section 393.52 of the Alachua County Code is hereby created, to read as follows:

Sec. 393.52 Motion Picture Arcade Booths

(a) New motion picture arcade booths prohibited. Motion picture arcade booths are a prohibited use in all zoning districts in Alachua County. After February 1, 2004, no new motion picture arcade booths may be established in any zoning district. This section shall have no effect on the showing of motion pictures in motion picture theaters in permitted districts or in public areas of retail stores. For purposes of this section, any space smaller than 500 square feet in area used for the showing of motion pictures for a fee charged to the viewer(s) shall be considered a motion picture arcade booth.
(b) *Arcade booths existing on February 1, 2004.* Motion picture arcade booths which were legally installed or constructed prior to **February 1, 2004**, and which were in existence on **February 1, 2004**, may continue at the same location, subject to the following requirements.

(1) *Continuous Requirements.*

   a. Management shall post on each booth and enforce a requirement that only one person is allowed in each booth at one time; and

   b. Management shall ensure that there are no openings in walls between booths and shall immediately patch with permanent opaque material any opening that is found; and

   c. Floors, walls, seats and any other surfaces in arcade rooms shall be non-porous; and

   d. Lighting in the hallways leading to the booths and in other parts of the establishment open to the public shall at all times be maintained at a no less than ten footcandles at floor level.

(2) *Additional Requirement Effective March 1, 2004.* From and after March 1, 2004, there shall be no doors, curtains, shutters or other visual obstructions in the door or entrance to each booth.

(3) *Additional Requirement Effective February 1, 2005.* From and after February 1, 2005, motion picture arcade booths shall be arranged or configured so that the interior of each booth is at all times clearly visible from a space of at least 500 square feet that is open to customers generally and from the cash register or other station in the establishment normally occupied by the manager or clerk on duty.
Section 6. Section 393.53 of the Alachua County Code is hereby created, to read as follows:

Sec. 393.53 Retail Establishments with Limited Quantities of Sexually Oriented Media

A retail establishment which devotes more than ten percent of its floor area or ten percent of the number of items in inventory to sexually-explicit material, but which devotes less than thirty percent of its floor area and less than thirty percent of the number of items in inventory to sexually-explicit material shall be treated for zoning purposes as a book or media shop and not as a sexually-oriented media shop, provided that it meets the following conditions:

(a) All sexually-explicit media shall be maintained in a room that is separated from other material by an opaque wall that extends to the ceiling or eight feet above the floor, whichever is less; and

(b) Access to the room containing the sexually-explicit media shall be through an opaque, solid door; and

(c) The room containing sexually-explicit media shall be posted with a notice indicating that only persons 18 years of age or older are allowed in the room; and

(d) Access to the room shall be physically limited to adults through control of access by an employee of the store, through use of an access release located at least 66 inches off the floor, or through constant monitoring of the room by an
employee on duty through electronic means or through a window or mirror
providing visibility into the room from the manager’s or cashier’s work station.

Section 7. Section 393.54 of the Alachua County Code is hereby created, to read as
follows:

Sec. 393.54 Sexually Oriented Businesses – Additional Location

Requirements

(a) Purpose and Intent. The purpose of this section is three-fold:

(1) To ensure that sexually oriented businesses are located so that they are
separated from residential neighborhoods, where children and others are likely to be
walking and should not be forced to encounter such a business in their daily activities;

(2) To ensure that sexually oriented businesses are sufficiently separated from
libraries, parks, schools, and houses of worship that persons visiting such places and
institutions will not be forced to encounter a sexually oriented business in close proximity
to these places and institutions; and

(3) To ensure that sexually oriented businesses are sufficiently separated from
one another that the County does not inadvertently create a “combat zone” or other area
that is perceived to be dominated by such businesses or that causes the concentration of
the secondary effects of such businesses in one area.

(b) Separation Requirements. Sexually oriented businesses shall be allowed only in
the zoning districts in which a specific sexually oriented business is listed as a permitted use
under Chapter 392. Any sexually oriented business established or expanded after February 1,
2004, in such a district shall be separated from other specified uses by the distances specified in
the following table, 393.53A
(c) Measurement.

Measurements for purposes of this section shall be made from the nearest property line of the use which is not a sexually oriented business to the nearest property line of the sexually oriented business. If the sexually oriented business is located in a multi-tenant building, then the distance shall be measured from the nearest property line of the use which is not a sexually oriented business to the nearest line of the leasehold or other space actually controlled or occupied by the sexually oriented business

(d) Limitations.

(1) School. The separation requirement from a “school” will apply only if one or more of the following applies: (i) the school is a public school; or (ii) the school has been in operation at the same location for one year or more; or (iii) the location at which the school is now operating is owned by the organization operating the school.

(2) House of worship. The separation requirement from a “house of worship” will apply only if one or more of the following applies: (i) the house of worship has been
in operation at the same location for one year or more; or (ii) the location at which the house of worship is now operating is owned by the organization operating the house of worship.

(3) **Residentially zoned land.** For purposes of this section only, “residentially zoned land” shall mean land carrying an Alachua County zoning district designation beginning with an R and codified as part of Chapter 392, Article III or an exclusively residential planned development.

Section 8. Section 393.55 of the Alachua County Code is hereby created, to read as follows:

**Sec. 393.55 Sexually Oriented Cabarets – Design Standards**

Any building used for the operation of a sexually oriented cabaret in the County shall meet the following design standards at all times that such cabaret is operated in such building:

1. **Stage Required.** The building shall include one or more stages, on which all performances shall take place. Each such stage shall be in a room open to all customers of the establishment and containing at least 600 square feet of floor area. The stage shall be raised at least 18 inches above the level of the floor on which customers stand or are seated and shall be further separated from customers by a rail or other barrier at least 30 inches off the floor; if the stage is at least 30 inches high, the additional barrier shall not be required.

2. **Performance Areas.** All performances and all inter-actions between performers and customers shall occur so that the performers (and any customer directly involved) are visible from a room open to all
customers of the establishment and containing at least 600 square feet of floor area. No doors, curtains, screens, shades, dividers or other devices shall be used to obscure any part of the room or any booth. Any private performance booth in existence on January 27, 2004, may continue in use regardless of whether it is fully visible from the larger room, provided that it must be visible from a hallway meeting the lighting standards required by this section, that hallway must be open to all customers of the establishment and other persons lawfully entering onto the premises, and the entrance to the booth shall not be obscured from the hallway by any door, curtain, or other device.

(3) Lighting. The lighting level in the primary area occupied by customers shall be at least 2.5 footcandles at a height of 3 feet off the floor. This lighting standard shall not apply to the stage or to performance booths but shall apply in any hallway or other access area to the booths and in the area around the stage.

Section 9. Section 393.56 of the Alachua County Code is hereby created, to read as follows:

Sec. 393.56 Sexually Oriented Motion Picture Theaters

Any building used for the operation of a sexually oriented motion-picture theater in the County shall meet the following design standards at all times that such theater is operated in such building:

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

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

(3) Seating. Seating shall consist of individual, theater-style chairs, with solid arms separating the chairs. No couches, benches, individual chairs, beds, loose cushions or mattresses, or other forms of seating may be provided. Separate spaces for wheelchairs shall be provided in accordance with the applicable provisions of the Southern Building Code and the Americans with Disabilities Act.

Section 10. Section 393.57 of the Alachua County Code is hereby created, to read as follows:

Sec. 393.57 Additional Standards Applicable to Nonconforming Sexually Oriented Businesses

(a) Purpose and Intent. On the date of adoption of new standards for the location of sexually oriented businesses, there are one or more sexually oriented businesses that already exist but that fail to conform to the location requirements imposed in the new standards. In each case, the nonconformity involves proximity to residential neighborhoods or other sensitive uses. To balance the interests of these established businesses with the interests of the affected neighborhoods and other sensitive uses, the County Commission has determined that such uses should be allowed to continue to operate but should be
subject to additional standards to mitigate the impacts of their proximity to these sensitive uses.

(b) **Standards.** Any sexually oriented business that is a lawful nonconforming use because it is located in a zoning district which does not permit such use or because it does not conform to the separation requirements of Sect. 393.54(b) shall be subject to the following additional standards:

1. **Operating Hours.** Each such business that offers on-premises entertainment (including live entertainment, motion pictures, videos, arcade booths, modeling or any other form of on-premises entertainment) shall be closed from 2:00 a.m. to 9:00 a.m. each day. This restriction on operating hours shall not apply to a nonconforming business that only offers retail goods for sale or rental.

2. **Restrictions on Signage.** Any sign on such a business, including both those that have on-premises entertainment and those that do not, shall be oriented so that it is not legible from any lot occupied by a single-family residence, a school or a house of worship. If it is impracticable to reorient the sign to preclude its legibility from such locations, the affected sexually oriented business may either install a landscaped or other screening device to accomplish the same purpose or remove the sign.

**Section 11.** Section 392.63 (relating to the BR and BR-1 zoning districts) of the Alachua County Code is hereby amended, by revising sub-sections (1) and (2) to read as follows, leaving the rest of the section unchanged:

1. **Uses permitted in BR district.** Professional services, including offices for
veterinarians, veterinary hospitals or clinics conducted wholly within a noise-attenuated structure; personal services; business services; financial institutions, including commercial banks; retail sales and services; type A restaurants; cocktail lounges, bars, taverns, hotels and motels, and nightclubs within the principal building; and excluding automotive sales and services and service stations. A retail sales or rental establishment in which more than ten percent of the floor area is devoted to sexually oriented media or in which more than ten percent of the inventory consists of sexually oriented media shall be subject to Section 393.53, except that a retail sales and/or rental establishment that falls under the definition of “sexually oriented media store” or “sex shop” is not permitted in this district.

(2) **Uses permitted in BR-1 district.** Types A and B restaurants, service stations, gift shops as part of and in conjunction with another permitted use, convenience food stores, hotels, motels, museums, and art galleries. A retail sales or rental establishment in which more than ten percent of the floor area is devoted to sexually oriented media or in which more than ten percent of the inventory consists of sexually oriented media shall be subject to Section 393.53, except that a retail sales and/or rental establishment that falls under the definition of “sexually oriented media store” or “sex shop” is not permitted in this district.

**Section 12.** Section 392.64 of the Alachua County Code (relating to the BH zoning district) is hereby amended, by revising sub-section (1) to read as follows, leaving the rest of the section unchanged:

1) **Uses permitted.** Professional services, including offices for veterinarians, veterinary hospitals or clinics conducted wholly within a noise-attenuated structure; personal services; retail sales and services; hotels and motels; cocktail lounges and nightclubs within the principal building and as accessory to hotels and motels; types A and B restaurants; financial institutions
including commercial banks; and service stations, but excluding major repairs, paint and body works. The following additional use shall be permitted, subject to the conditions set forth in Sect. 393.54: sexually oriented media store. A retail sales or rental establishment in which more than ten percent of the floor area is devoted to sexually oriented media or in which more than ten percent of the inventory consists of sexually oriented media, but which does not fall under the definition of "sexually oriented media store" or sex shop" shall be subject to Sect. 393.53 and shall not be subject to Sect. 393.54.

Section 13. Section 392.65 of the Alachua County Code (relating to the BA zoning district) is hereby amended, by revising sub-sections (1) and (2) to read as follows, leaving the rest of the section unchanged:

(1) Uses permitted in BA districts. Business services, professional services, including offices for veterinarians, veterinary hospitals or clinics conducted wholly within a noise-attenuated structure; personal services; retail sales and services; type A and type B restaurants; bars; taverns; drive-in theaters; service stations; sale of new and used automobiles; truck sales; trailer sales; automotive, truck, or trailer rental; motels, hotels, cocktail lounges, nightclubs; and auto repair facilities including overhauling, major repairs, paint and body work; commercial recreation and entertainment uses; but excluding manufactured home and mobile home sales and rental. Outdoor temporary display and sales of automobiles, light trucks, motorcycles, boats, and similar products as use accessory to retail uses. The following additional uses shall be permitted, subject to the conditions set forth in Sect. 393.54: sexually oriented motion picture theater; sexually oriented cabaret; and sexually oriented media store. A retail sales or rental establishment in which more than ten percent of the floor area is devoted to sexually oriented media or in which more than ten percent of but which does not fall under the definition of
“sexually oriented media store” or sex shop” shall be subject to Sect. 393.53 and shall not be subject to Sect. 393.54.

(2) **Uses permitted in BA-1 districts.** All uses permitted in the BA district; provided, however, that the storage or display of goods and commodities shall be contained within a completely enclosed building. The following additional use shall be permitted, subject to the conditions set forth in Sect. 393.54: sex shop.

**Section 15.** Severability. It is the declared intent of the Board of County Commissioners of Alachua County, Florida, that, if any section, subsection, sentence, clause, phrase, or provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

**Section 16.** Inclusion in the Code, Scrivener’s Error. It is the intention of the Board of County Commissioners of Alachua County, Florida, and it is hereby provided that the provisions of this ordinance shall become and be made a part of the Code of Laws and Ordinances of Alachua County, Florida; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word “ordinance” may be changed to “section,” “article,” or other appropriate designation. The correction of typographical errors which do not affect the intent of the ordinance may be authorized by the County Manager or designee without public hearing, by filing a corrected or recodified copy of the same with the Clerk of the Circuit Court.

**Section 17.** Effective Date. A certified copy of this ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners, and shall take effect upon filing with the Department of State.
DULY ADOPTED in regular session, this 10th day of February, 2004.

ATTEST:

J. K. "Buddy" Irby, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

By: Mike Byerly, Chair

APPROVED AS TO FORM

Alachua County Attorney