

ORDINANCE NO. 85-1

AN ORDINANCE REGULATING ADULT-ORIENTED BUSINESSES AS DEFINED HEREIN; PROVIDING FOR DISTANCE REQUIREMENTS; PROVIDING FOR NONCONFORMING ESTABLISHMENTS; REQUIRING A LICENSE FOR OPERATION; REQUIRING AN INVESTIGATION & FEE PRIOR TO ISSUANCE OF LICENSE; REQUIRING AUTHORIZATION FOR ISSUANCE OF LICENSE FOLLOWING CONVICTION FOR CERTAIN CRIMES OR AFTER REVOCATION; PROVIDING FOR THE TERM AND FOR RENEWAL OF THE LICENSE; PROVIDING FOR APPEAL FROM DENIAL OF THE LICENSE; PROVIDING FOR AUTHORITY AND GROUNDS FOR REVOCATION; PROVIDING FOR NOTICE AND HEARING CONCERNING REVOCATION; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

SECTION 1.

PURPOSE

It is the purpose of this ordinance to protect the health, safety, morals and welfare of the citizens and inhabitants of Hernando County, Florida, and to regulate adult bookstores, adult motion picture theaters, adult dancing establishments, massage establishments, and adult motels and hotels so as to lessen the concentration of such establishments and their proximity to each other and to other stated establishments which would otherwise work a deleterious effect upon the adjacent areas and could contribute to the blighting and downgrading of the surrounding neighborhoods.

SECTION 2.

DEFINITIONS

The following terms, when used in this ordinance, shall have the meaning respectively ascribed to them in this section:

(a) adult bookstore is a place where books, magazines, records, photographs or moving pictures are sold, or rented, or a part of any business set aside as a place where books, magazines, records, photographs or moving pictures are sold, or rented, which has as a primary purpose the offering for sale to adults of books, magazines, records, photographs, moving pictures or other merchandise which have as their dominant or primary theme matters depicting, describing or relating to specified sexual activities.

The following shall constitute a prima facie showing of a primary purpose:

A place that sells or offers for sale, for any form of consideration, adult material, the gross sale of which represents more than ten percent (10%) of the gross sales of the place or that comprises more than twenty-five percent (25%) of the individual items it displays on the premises as its stock in trade in any one or more of the following categories: (1) new publications, (2) used publications, (3) new merchandise, (4) used merchandise.

(b) adult motion picture booth is an area within an adult motion picture theater designed for or used for the viewing by one (1) person of motion pictures which have as their dominant or primary theme matters depicting, describing, or relating to specified sexual activities.

(c) adult motion picture theater is a place where motion pictures are shown, or a section, department, or part of any business set aside for the showing of motion pictures, which has as its principal purpose the offering for viewing to adults of motion pictures which have as their dominant or primary theme matters depicting, describing, or relating to specified sexual activities.

(d) adult dancing establishment is a commercial establishment that permits, suffers or allows dancers to display or expose specified anatomical areas.

Any establishment on whose premises and employee, who need not be the same employee, displays or exposes specified anatomical areas on more than one (1) day in a thirty (30) day period shall be deemed an adult dancing establishment and shall be required to obtain a license under this ordinance.

(e) adult motel or hotel is a place where motion pictures are shown in rooms designed primarily for lodging, which motion pictures have as their dominant or primary theme matters depicting, describing or relating to specified sexual activities.

(f) massage establishment is a site or premises, or portion thereof, upon which any person, who is an owner, proprietor, or employee, manipulates the superficial tissues of the body of another person, with any portion of the hand, foot, leg, arm, or elbow, but not including the following: licensed health care facilities; licensed physicians or nurses engaged in the practice of their professions; educational athletic facilities, if the massage is a normal and usual practice in such facilities; establishments exempted under Chapter 480.034, Florida Statutes; or massage establishments licensed under Chapter 480, Florida Statutes.

(g) interested party is any person, partnership or corporation which is an applicant for a license or who is an employee of an applicant for a license, any person who is a partner in a partnership which is an applicant for a license and any person, partnership or corporation which is an officer, director or principal stockholder of a corporation which is an applicant for a license.

(h) authorization holder shall mean any person who has received authorization under the provisions of this ordinance to obtain an occupational license to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment, adult motel or hotel.

(i) principal stockholder is any person, partnership or corporation which owns or controls legally or beneficially twenty-five (25) per cent or more of a corporation's outstanding stock. In addition, if a principal stockholder of a corporation (referred to herein as corporation A) is another corporation (referred to herein as corporation B), the officers, directors, and principal stockholders of corporation B shall be considered principal stockholders of corporation A. If a corporation is registered with the Federal Securities Exchange Commission or is registered pursuant to Chapter 517, Florida Statutes, and the corporation's stock is for sale to the general public, such corporation shall be considered not to have any principal stockholders.

(j) specified criminal act is any felony or soliciting for prostitution, pandering, prostitution, keeping a house of ill fame, lewd and lascivious behavior, exposing minors to harmful materials, distributing obscene materials, possession of obscene materials, transporting obscene materials, or sale or possession of a controlled substance or narcotic.

(k) specified sexual activities are any one or more of the following:

(1) depiction of human genitals in a state of sexual stimulation or arousal;

(2) acts of human masturbation, sexual intercourse, sodomy, masochism, sadism, or sadomasochism; and

(3) fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(l) specified anatomical areas:

(1) less than completely and opaquely covered:

(A) human genitals or pubic region;

(B) buttock; and

(C) female breast below a point immediately above the top of the areola.

(2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(m) Board shall mean the Board of County Commissioners of Hernando County, Florida.

SECTION 3.

ADULT MOTION PICTURE BOOTHS

Each adult motion picture booth shall have a rectangular-shaped entranceway not less than two (2) feet six (6) inches wide and six (6) feet, eight (8) inches high. There shall be no door, curtain or other obstruction blocking or closing off any part of or all of such entranceway at any time. Only one (1) individual shall be permitted in any such adult motion picture booth at any given time.

SECTION 4.

DISTANCE REQUIREMENTS

No adult bookstore, adult motion picture theater, adult dancing establishment, adult motel or hotel, or massage establishment shall be located within a one (1) mile radius, property line to property line, of any other of the aforementioned establishments or within one thousand (1,000) feet, property line to property line, of any establishment selling beer, wine or intoxicating liquor for consumption on the premises; hotels, or motels; public lodging houses; churches; schools; kindergartens, nursery schools, day care centers, public parks, pawnshops, pool or billiard halls, or property zoned residential, as defined in the county zoning ordinance.

SECTION 5.

NONCONFORMING ADULT BOOKSTORES, ADULT MOTION
PICTURE THEATER, ADULT DANCING ESTABLISHMENTS,
MESSAGE ESTABLISHMENTS, AND ADULT MOTELS & HOTELS

Adult bookstores, adult motion picture theaters, adult dancing establishments, massage establishments, and adult motels and hotels which have been established at their existing locations prior to the effective date of this section, and which are not in conformity to the requirements of this ordinance, may continue to operate until two (2) years after the effective date of this ordinance. Thereafter, unless such adult bookstore, adult motion picture theater, adult dancing establishments, massage establishments, and adult motels and hotels conforms to the provisions of this ordinance, it shall no longer be permitted to operate. If a nonconforming spacing situation can be eliminated by the abatement of one or more such establishments. The establishment which has been in business for the longest period of time shall be permitted to remain.

SECTION 6.

OPERATING ADULT BOOKSTORE, ADULT MOTION PICTURE
THEATER, ADULT DANCING ESTABLISHMENT, MASSAGE
ESTABLISHMENT, OR ADULT MOTEL OR HOTEL WITHOUT LICENSE

It shall be unlawful for any person, partnership, corporation or any other entity to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment or adult motel or hotel within the county unless such adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment or adult motel or hotel shall have a currently valid regulator license therefor.

SECTION 7.

REQUIRED APPLICATION, INVESTIGATION REQUIRED;
CONTENTS OF APPLICATION; FEE

An annual authorization shall be required for each adult bookstore, each adult motion picture theater, each adult dancing establishment, each massage establishment and each adult motel and hotel. No authorization shall be issued until an application is made to the Planning & Development Department which shall cause an investigation to be made to determine whether the applicant has complied with this section and all other requirements of this ordinance and of the Florida Statutes. The application form shall be available from the Tax Collector. Upon completion of the investigation and finding that the applicant has complied with the requirements of this Ordinance and Florida Statutes, the Planning & Development Department will send to the Tax Collector the appropriate authorization form so that the Tax Collector can issue an occupational license. If the applicant fails to meet the requirements, the Planning & Development Department will so notify the applicant. Each application must be accompanied by a fee to cover the cost of the investigation and administration. The fee schedule will be set by resolution adopted by the Board of County Commissioners. Each application must be sworn to and state the name, address and age of the applicant, or if a partnership, the names, addresses and ages of

the persons who constitute such partnership, or if a corporation, the names, addresses and ages of its directors, officers and principal stockholders. Each application must also include the names, addresses and ages of all present employees of the adult bookstore or adult motion picture theater or adult dancing establishment or massage establishment or adult motel or hotel or if there are no employees, a statement to that effect, and a statement as to whether any interested party of the applicant has been convicted within ten (10) years of the date of application of any specified criminal act and if so, the name of such interested party, the date and place of conviction and the nature of the crime for which the interested party was convicted. Authorizations issued pursuant to this ordinance shall be in addition to and not in lieu of any occupational licenses or other licenses or permits required under this ordinance or any other ordinance.

Authorization holders are required to notify the Department of Planning & Development of any changes in ownership. Failure to do so are grounds for revocation of the authorization. Any change of ownership shall not be effective until such time as a new annual authorization shall have been obtained pursuant to the procedure set forth herein.

SECTION 8.

NOT TO BE ISSUED WITHOUT SPECIFIC AUTHORIZATION
FOLLOWING CONVICTION OF CERTAIN CRIMES.

The department shall not grant, without specific authorization from the Board of County Commissioners, a license or a renewal of a license to operate and adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment, and adult motel and hotel, to any applicant if an interested party thereof has been convicted of a specified criminal act and such conviction is final and not on appeal within ten (10) years of the date of application. The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond upon a charge of crime.

SECTION 9.

NOT TO BE ISSUED WITHOUT SPECIFIC AUTHORIZATION
TO CERTAIN PERSON, ETC., AFTER REVOCATION.

(a) The Department of Planning & Development shall not grant, without specific authorization from the Board of County Commissioners, an authorization to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment or adult motel or hotel, to a person if such person, an employee of such person, a partner in a partnership, an officer, director or principal stockholder of a corporation, was authorized to obtain an occupational license to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment, or adult motel or hotel, at the time such license was revoked under the provisions of this ordinance.

(b) The Department of Planning & Development shall not grant, without specific approval from the Board of County Commissioners, an authorization to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment, or adult motel or hotel, to a partnership if any partner, to any employee, to any partner in a partnership, or to any officer, director or principal stockholder of a corporation which was authorized to obtain an occupational license to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment, or adult motel or hotel, at the time such authorization was revoked under the provisions of this ordinance.

(c) The Department of Planning & Development shall not grant, without specific authorization from the Board of County Commissioners, an authorization to obtain an occupational license to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment, or adult motel or hotel, to a corporation if any officer, director or principal stockholder thereof, or to any employee, or to any partner in a partnership, or to any officer, director or

principal stockholder of a corporation which was authorized to obtain an occupational license to operate an adult bookstore, adult motion picture theater, adult dancing establishment, massage establishment, adult motel or hotel at the time such authorization was revoked under the provisions of this ordinance.

SECTION 10.

ISSUANCE; TERM; RENEWAL.

If the department determines that the applicant for an authorization under this ordinance is eligible for the issuance of an authorization, an authorization shall be issued for the fiscal year beginning October first and ending September thirtieth, or a fraction thereof. A authorization shall be renewed upon the approval of the department after an application for renewal has been duly submitted together with a renewal application fee which will be set by the Board Resolution. In order for the department to grant a renewal, the application for renewal and the investigation thereon must show that the applicant is eligible under the provisions hereof for the issuance of an authorization.

SECTION 11.

APPEAL FROM DENIAL.

If the department determines that it may not issue an authorization to an applicant under the provisions of this ordinance, the department shall notify the applicant of the department's intention to deny such authorization. Such notice shall include a copy of this section and the reason for the denial of the authorization. The applicant shall have the right to appeal the denial within ten (10) days of receipt by applicant of notice of intent to deny. The Board, within thirty (30) days of such appeal, shall hold a public hearing to determine whether issuance or renewal of the authorization would be detrimental to the public health, morals, safety and welfare. If the Board determines that the issuance of the authorization would not be detrimental to the public health, morals, safety and welfare, the

Board shall specifically authorize the Department of Planning & Development to issue an authorization to the applicant and the department shall issue such authorization forthwith. If the Board determines tha the issuance of the authorization would be detrimental to the public health, morals, safety and welfare, the Board shall so notify the applicant and the department shall not issue such authorization.

SECTION 12.

AUTHORITY TO REVOKE; GROUNDS FOR REVOCATION.

The Board, by majority vote of those present, after a public hearing as hereinafter provided, is hereby authorized to revoke any authorization issued under the provisions of this ordinance under any one or more of the following circumstances if the Board makes an affirmative finding that the continued operation of the authorized premises would be detrimental to the public health, morals, safety and welfare:

(a) If the authorization holder is convicted of a specified criminal act.

(b) If the authorization holder is a partnership, if any partner thereof is convicted of a specified criminal act.

(c) If the authorization holder is a corporation, if any officer, director or principal stockholder is convicted of a specified criminal act.

(d) A nuisance as defined in Chapter 823, Florida Statutes, is maintained on the licensed premises.

(e) If the authorization holder or any employee engages in or permits on the authorized premises, disorderly or indecent conduct as defined by those portions of the Florida Statutes held constitutional by applicable case law.

(f) If the authorization holder fails to comply with the fire prevention ordinances of the County after reasonable notice shall have been given to the licensee to eliminate or correct any condition in violation of such ordinances on the authorized premises.

(g) If the authorization holder fails to comply with any provisions of the health ordinances of the County or the State after reasonable notice shall have been given to the holder to eliminate or correct any condition in violation of such ordinances on the licensed premises.

(h) If the authorization holder fails to comply with any provision of the County building code, the County electrical code, the County mechanical code or the County plumbing code after reasonable notice shall have been given to the authorization holder to eliminate or correct any condition in violation of such ordinances on the authorized premises.

(i) If any employee of authorization holder has been convicted of a specified criminal act for act(s) committed by the employee on the authorized premises while employed by the authorization holder.

(j) If authorization holder fails to comply with any provisions of this ordinance after reasonable notice shall have been given to the authorization holder to eliminate or correct any condition in violation of such ordinance on the licensed premises.

(k) If the authorization holder fails to comply with provisions of Florida Statutes and this ordinance concerning licensing of operators of moving picture machines after reasonable notice shall have been given to comply with such provisions and this ordinance.

(l) If the authorization holder furnishes incorrect or incomplete information on its application for authorization or application for renewal of authorization.

SECTION 13.

NOTICE AND HEARING CONCERNING REVOCATION.

Whenever the Board shall find any of the conditions enumerated in Section 12 to exist, it shall notify the authorization holder that the Board shall hold a public hearing to determine whether the continued operation of the authorized premises is detrimental to the public health, morals, safety and

welfare. Such hearing is to be held at a time and place to be specified in the notice and at a time not less than ten (10) days from the date of service of the notice. Service may be by Sheriff's service of process or by hand-delivery by a County Code Enforcement Officer. Such notice shall also list with specificity the acts or occurrence concerning which the hearing will be held.

SECTION 14.

PROSCRIPTIONS WHERE ALCOHOLIC BEVERAGES ARE
SOLD, DISPENSED OR PERMITTED.

No portion of the human genital or pubic region, human buttocks, or the areola of the human female breast shall be displayed or exposed on a authorized premises where alcoholic beverages are sold, dispensed or permitted.

SECTION 15.

ENFORCEMENT.

In addition to the general penalty provided for violation of county ordinances, adult bookstores, adult motion picture theaters, adult dancing establishments, massage establishments and adult motels and hotels not in conformity to the requirements of this ordinance are declared to be nuisances and the Director of the Department of Planning & Development may request the Board of County Commissioners to authorize the legal staff to bring appropriate civil action in the court of appropriate jurisdiction for their abatement.

SECTION 16.

OBSCENITY NOT PERMITTED.

Nothing in this ordinance shall be construed to allow or permit the possession, distribution and transportation of obscene materials or to authorize the exposing of persons under eighteen (18) years of age to motion pictures, exhibitions, shows, representations and presentations of specified sexual activities or persons displaying or exhibiting specified anatomical areas.

These matters are preempted to the State and are subject to State regulations, and it is not the intent of the Board to legislate with respect to preempted matters.

SECTION 17.

LIBERAL CONSTRUCTION.

This ordinance shall be liberally construed to accomplish its purpose of licensing, regulating and dispensing adult entertainment and related activities. Unless otherwise indicated, all sections of this ordinance shall apply equally to all persons regardless of sex.

SECTION 18.

SEVERABILITY.

If any part, section, subsection or other portion of this ordinance or any application thereof to any person or circumstances is declared to be void, unconstitutional or invalid for any reason, such part, section, subsection or other portion, or the proscribed application thereof, shall be severable and the remaining provisions of this ordinance and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Board declares that no invalid or proscribed section or application was an inducement to the enactment of this ordinance regardless of the invalid or proscribed section or application.

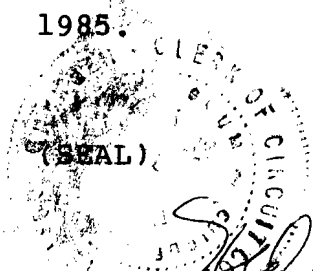

SECTION 19.

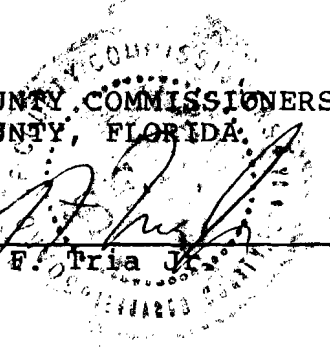
EFFECTIVE DATE.

This ordinance shall take effect pursuant to general law.

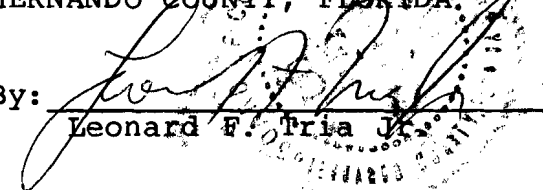
ADOPTED in Regular Session this 12th day of February, 1985.

Attest:

 (SEAL)

Harold William Brown

 BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA

By:


Leonard F. Fria Jr.