

PROPOSED
ORDINANCE NO. 34-21

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING SECTIONS 7-3-23 AND 7-3-119 AND REPEALING SECTION 7-3-45 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; ELIMINATING PERMIT REQUIREMENTS FOR ADULT ENTERTAINMENT EMPLOYEES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 7-3-23 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 7-3-23 - General appeals.

Appeals alleging error in the denial, suspension or revocation of a license or permit under this chapter shall be by petition for a formal hearing before the city council. A notice of intent to appeal shall be filed with the city clerk within 15 days after the mailing of a notice of denial, suspension or revocation of a license or permit. Thereafter, and upon payment of a fee of \$100.00 to cover administrative costs, a hearing will be scheduled within 45 days. The clerk shall give the petitioning party at least ten days' written notice of the time and place for the hearing.

SECTION 2. Section 7-3-45 of the Code of the City of Pensacola, Florida, is hereby repealed.

~~Sec. 7-3-45. - Permits for employees in licensed premises.~~

~~(a) Adult entertainment permit required. Unless specifically excluded below, it shall be unlawful for any person to obtain employment as an employee in an establishment licensed under this chapter, for any form of consideration, unless and until such person shall have first obtained an adult entertainment permit or temporary permit from the mayor. All references to the mayor in this chapter shall also refer to his or her designee. This section shall not apply to employees engaged exclusively in performing janitorial, maintenance or other services, not including bartending, table service or entertaining.~~

~~(b) Qualifications. Employees of a licensee on a licensed premises shall not be less than 18 years of age.~~

~~(c) Application for an issuance of adult entertainment permit.~~

- ~~(1) Permission is hereby granted for an employee working at an establishment legally in operation under this chapter on the date of adoption of this chapter to continue working until an application for a permit under this chapter is filed with the mayor, not later than 45 days for adult bookstores, leisure spa establishments, adult motion picture theaters, and 75 days for adult dancing establishments, from the date of adoption of this chapter, and for a period, after filing of an application, not to exceed 21 days.~~
 - ~~(2) All present and prospective employees employed on the premises of an adult entertainment establishment shall file an application for an adult entertainment permit with the mayor.~~
 - ~~(3) All applications shall be accompanied by a nonrefundable payment of a \$30.00 fee.~~
 - ~~(4) At the time an applicant applies for a permit and completes all requirements for the issuance of a permit, he or she shall be issued a temporary permit valid for 21 days. No later than 21 days from the filing of an application, the mayor shall issue a permit.~~
 - ~~(5) It shall be the duty of the mayor to issue the applicant a written permit which shall be signed by the mayor, and shall bear the name, all aliases, age, signature and photograph of the applicant. The mayor shall procure the fingerprints and a photograph of the applicant, the applicant's address, sex, and the names of all entertainment establishments where the applicant is to work or perform and shall keep the same on file. The fingerprints, names of establishments and photograph of the applicant shall be furnished by the applicant at the time of the filing of his or her application. Upon delivery of the permit to the applicant, the applicant may begin working on the licensed premises as a permanent employee. There shall be submitted with each application for a permit, proof of the applicant's age. Such proof may be provided by production of the applicant's driver's license, passport, or a certified copy of his or her birth certificate.~~
 - ~~(6) No permit shall be issued when its issuance would violate a statute, ordinance, law or when an order from a court of law prohibits the applicant from obtaining an adult entertainment permit in the city.~~
- ~~(d) Revocation. Should a permit be issued as a result of false information, misrepresentation of fact or mistake of fact, it shall be revoked.~~

- ~~(e) Expiration and renewal. A permit under this chapter shall expire one year from the date of issuance. A permittee under this chapter shall be entitled to a renewal of his or her permit as a matter of course, except when said permit has been suspended or revoked, upon presentation of his or her previous permit or presentation of an affidavit as to its destruction to the police chief and payment of a \$30.00 fee.~~
- ~~(f) Possession of permit required. It shall be unlawful for an employee, as defined in this chapter, to work or perform in an adult entertainment establishment without being in possession of a valid adult entertainment permit.~~
- ~~(g) Violations. Any person who violates the provisions of this section, or otherwise fails to secure a permit as required by this section, shall be prosecuted and punished in accordance with section 1-1-8.~~
- ~~(h) Suspension of permit.
 - ~~(1) Conviction for violation of article VIII of this chapter. In the event a permittee commits one or more violations of article VIII of this chapter, and a conviction results from at least one of the violations, the mayor shall, upon the date of the conviction, suspend the permit, and notify the permittee of the suspension. The suspension shall remain in effect for a period of 90 days.~~
 - ~~(2) Effective date of suspension. The period of the suspension shall begin 15 days after the date the mayor mails or delivers the notice of suspension to the permittee or on the date the permittee surrenders his or her permit to the mayor, whichever happens first.~~~~
- ~~(i) Appeal. If an application for a permit is denied or if a permit is suspended or revoked, the applicant or permittee may, within 15 days after the mailing of a notice of denial or suspension or revocation, appeal to the city council. If the applicant or permittee does not appeal the denial, suspension or revocation of a permit, the applicant or permittee shall be deemed to have failed to have exhausted his or her administrative remedies.~~
- ~~(j) Replacement of lost permits. Replacements for lost permits shall be obtained by completing an application as required in this section. All applications for replacement permits shall be accompanied by a \$10.00 fee.~~
- ~~(k) Change of address, name or place of employment. Whenever any person, after applying for or receiving an adult entertainment permit, shall move from the residential address named in such application, or in the permit issued to him, such person shall, within 30 days, submit written notice to the mayor of such change and shall make a payment to the city in the amount of \$3.00 for~~

~~change of address fee. In no event shall this eliminate or modify the requirements of this section as to change of business location.~~

SECTION 3. Section 7-3-119 of the Code of the City of Pensacola, Florida, is hereby amended to read as follows:

Sec. 7-3-119 - Prohibited conduct within adult entertainment establishments.

- (a) It shall be unlawful for any person to be an owner, operator or manager of an adult entertainment establishment where the person knows or should know:
 - (1) That the establishment does not have the appropriate classification of adult entertainment license for the classification of entertainment offered within the establishment;
 - (2) That the establishment has a license which is under suspension;
 - (3) That the establishment has a license which has been revoked or canceled; or
 - (4) That the establishment has a license which is expired.
- (b) It shall be unlawful for any person to be an owner, operator or manager of:
 - (1) An adult entertainment establishment which does not satisfy the requirements set forth herein.
 - (2) An adult entertainment motion picture theater which does not satisfy all the special requirements set forth herein.
 - (3) An adult dancing establishment which does not satisfy all of the special requirements set forth herein.
 - (4) An adult entertainment bookstore which does not satisfy all the special requirements set forth herein.
 - (5) An adult leisure spa establishment which does not satisfy all the special requirements set forth herein.
- (c) It shall be unlawful for an owner or operator of an adult entertainment establishment, regardless of whether it is licensed under this chapter, to knowingly, or with reason to know, permit, suffer, or allow an employee:
 - (1) To engage in a straddle dance with a person at the establishment;

- (2) To contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;
- (3) To engage in any specified sexual activity at the establishment;
- (4) To, where alcoholic beverages are sold, offered for sale, dispensed, or consumed, display or expose at the establishment less than completely and opaquely covered specified anatomical areas;
- (5) To display or expose at the establishment less than completely and opaquely covered specified anatomical areas, unless such employee is continuously away from any person other than another employee, and unless such employee is in an area as described in section 7-3-36(6)c;
- (6) To display or expose any specified anatomical area while simulating any specified sexual activity with any other person at the establishment, including with another employee;
- (7) To engage in a private performance;
- (8) To, while engaged in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee; or
- (9) To intentionally touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person, or to intentionally touch the clothed or unclothed breasts of any female person; ~~or~~
- ~~(10) To work, if the employee has not applied for and obtained a temporary or permanent permit under this chapter.~~

(d) Advertising prohibited activity. It shall be unlawful for an owner or operator of an adult entertainment establishment, regardless of whether it is licensed under this chapter, to advertise the presentation of any activity prohibited by any applicable state statute or local ordinance.

(e) Minors prohibited. Except as provided in section 7-3-60, it shall be unlawful for an owner or operator of an adult entertainment establishment, regardless of whether it is licensed under this chapter, to knowingly, or with reason to know, permit, suffer, or allow:

- (1) Admittance to the establishment of a person under 18 years of age;
- (2) A person under 18 years of age to remain at the establishment;

- (3) A person under 18 years of age to purchase goods or services at the establishment; or
- (4) A person to work at the establishment as an employee who is under 18 years of age.
- (f) Working at establishment which does not have valid adult entertainment license. It shall be unlawful for any person to work in an adult entertainment establishment that he or she knows or should know is not licensed under this chapter, or which has a license which is under suspension, has been revoked or canceled, or has expired. ~~regardless of whether he or she has applied for and obtained a temporary or permanent adult entertainment permit under this chapter.~~

~~(g) Working without permit prohibited.~~

~~(1) Subject to the limitations provided for herein, it shall be unlawful for any person to work in an adult entertainment establishment, regardless of whether it is licensed under this chapter, if the person has not applied for and obtained a temporary or permanent adult entertainment permit under this chapter.~~

~~(2) Subject to the limitations provided for herein, it shall be unlawful for any person working in an adult entertainment establishment, regardless of whether it is licensed under this chapter, to fail to produce a valid temporary or permanent permit within 72 hours upon demand for inspection by any law enforcement officer. For the purposes of this provision, such a temporary or permanent permit is only valid if the person has applied for and obtained such permit prior to the demand.~~

~~(h)~~(g) Engaging in prohibited activity. It shall be unlawful for any employee of any adult entertainment establishment, regardless of whether it is licensed under this chapter:

- (1) To engage in a straddle dance with a person at the establishment;
- (2) To contract or otherwise agree with a person to engage in a straddle dance with a person at the establishment;
- (3) To engage in any specified sexual activity at the establishment;
- (4) To, where the employee knows or should know that alcoholic beverages are sold, offered for sale, or consumed, display or expose at the establishment less than completely and opaquely covered specified anatomical areas or human male genitals in a discernibly turgid state, even if completely and opaquely covered;

- (5) To display or expose at the establishment less than completely and opaquely covered specified anatomical areas, or human male genitals in a discernibly turgid state, even if completely and opaquely covered, unless such employee is continuously positioned away from any person other than another employee, and unless such employee is in an area as described in section 7-3-36(6)c;
- (6) To engage in the display or exposure of any less than completely and opaquely covered specified anatomical areas while simulating any specified sexual activity with any other person at the establishment, including with another employee;
- (7) To engage in a private performance;
- (8) To, while engaging in the display or exposure of any specified anatomical area, intentionally touch any person at the adult entertainment establishment, excluding another employee;
- (9) To touch the clothed or unclothed body of any person at the adult entertainment establishment, excluding another employee, at any point below the waist and above the knee of the person; or
- (10) To touch the clothed or unclothed breast of any female person.

(j)(h) Touching of employee by person.

- (1) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to intentionally touch an employee who is displaying or exposing any specified anatomical area at the adult entertainment establishment.
- (2) It shall be unlawful for any person in an adult entertainment establishment, other than another employee, to touch the clothed or unclothed body of any employee at any point below the waist and above the knee of the employee.
- (3) It shall be unlawful for any person in an adult entertainment establishment to intentionally touch the clothed or unclothed breast of any employee.

(j)(i) Exceeding occupancy limit of adult booth. It shall be unlawful for any person to occupy an adult booth in which booth is already occupied by one person in violation of section 7-3-74 or for a greater number of persons to occupy an adult booth than are allowed in violation of section 7-3-89.

~~(k)~~(j) Use of restroom or dressing rooms. Notwithstanding any provision indicating to the contrary, it shall not be unlawful for any employee of an adult entertainment establishment, regardless of whether it is licensed under this chapter, to expose any less than completely and opaquely covered specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

~~(l)~~(k) Hours of operation.

(1) It shall be unlawful for any operator of an adult entertainment establishment, other than a leisure spa establishment, to allow such establishment to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 3:00 a.m. and 11:00 a.m. of any particular day.

(2) It shall be unlawful for any employee of an adult entertainment establishment, other than a leisure spa establishment, to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 3:00 a.m. and 11:00 a.m. of any particular day.

~~(m)~~(l) Alteration of license or permit. (1) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment license without the written permission of the city.

~~(2) It shall be unlawful for any person to alter or otherwise change the contents of an adult entertainment permit without the written permission of the city.~~

~~(n)~~(m) Violation subject to criminal prosecution. Whoever violates any section of this article may be prosecuted and punished as provided in section 1-1-8.

SECTION 4. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk