

ARTICLE VII SPECIAL ORDINANCES AND PROVISIONS

Sec. 27-110 - Reasonable Accommodation

(a) Intent and Purpose, Definitions, Fees.

- (1) This Division sets forth the City’s provisions for processing requests for a reasonable accommodation to the City’s residential housing ordinances, rules, policies, and procedures for persons with disabilities as provided by the Federal Fair Housing Amendments Act (42 U.S.C. 3601, et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) ("ADA").
- (2) The City has considered recent studies commissioned by the City of Delray Beach (titled, “Delray Beach, Florida: Principles to Guide Zoning for Community Residences for People with Disabilities,” and dated August, 2017), the City of Pompano Beach (titled, “Pompano Beach, Florida: Principles to Guide Zoning for Community Residences for People with Disabilities,” and dated February, 2018), and the City of Fort Lauderdale (titled, “Principles to Guide Zoning for Community Residences for People with Disabilities,” and dated February, 13, 2018), which studies were prepared by Mr. Daniel Lauber, AICP. These studies identify significant public purposes of furthering beneficial health goals for certain types of disabled residents, in terms of facilitating community integration and normalization. The studies, in part, conclude that when recovery residences are clustered in an area, or when a recovery residence is located within six hundred and sixty (660) feet from another recovery residence, there are material increased risks that facilitating community integration and normalization will be adversely affected. The regulations in this Division concerning the rebuttable presumptions which arise when recovery residences locate within a six hundred sixty (660) foot separation standard are designed to further such significant public interests.
- (3) For purposes of this Division, an “Administrative Appeal” is an available administrative remedy for an applicant to seek review of a Chief Administrative Officer Determination in certain cases. The remedy involves a de novo, quasi-judicial review of the application which is conducted by the Special Magistrate in accordance with Section 27-110(f)(6) of this Code.
- (4) A “Community Residence” for purposes of this Division is a residential living arrangement of more than three (3) individuals living together in a single dwelling unit, where: (a) not all of such individuals are related to each other by bonds of consanguinity, marriage, legal adoption, or other qualifying circumstances identified in the definition of “Family” in Section 27-11 of this Code; (b) one (1) or more of such individuals is experiencing a disability; (c) all such individuals are living as a single, functional family; and (d) the disabled resident(s) are in need of the mutual support furnished by other residents of the dwelling unit, as well as any incidental support services, if any, provided there. The residents may be self-governing or supervised by a sponsoring entity or its staff, which provides habilitative or rehabilitative services,

related to the residents' disabilities. The Community Residence seeks to emulate a biological family to normalize its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter in a family-like environment, and any treatment is incidental. The supportive inter-relationships between residents are an essential component of a Community Residence. A Community Residence which has received and maintained a reasonable accommodation pursuant to this Division shall be considered a residential "Family" use for the purposes of the City's land development regulations, so as to implement the policy considerations of the FHA and ADA. A Community Residence does not include any other group living arrangement for unrelated individuals who are not experiencing a disability, nor does the definition include residential facilities for prison pre-parolees or sex offenders. Community Residences do not include community residential homes that are defined in Section 419.001(1)(a), Florida Statutes, as amended, and licensed by the Florida Agency for Persons with Disabilities, the Florida Department of Elderly Affairs, the Florida Agency for Health Care Administration, or the Florida Department of Children and Families. Community Residences include functional family living arrangements of four (4) or more unrelated individuals that reside in recovery residences which are certified by the credentialing entity designated under Section 397.487 of the Florida Statutes, as amended, or which are operated in accordance with the Oxford House Manual C.

- (5) For purposes of this Division, a "Determination" shall mean a decision on an application for a reasonable accommodation which is made by the Chief Administrative Officer under the provisions of Subsection (f) of this Division, or by the Special Magistrate under the provisions of Section 27-110(g)(4) of this Code. The word "Determine" means to make a Determination.
- (6) For purposes of this Division, a "disability" is a physical or mental impairment that substantially limits one or more of an individual's major life activities, impairs an individual's ability to live independently, having a record of such impairment, or being regarded as having such an impairment. People experiencing or possessing a "disability" for purposes of this Division do not include individuals who are currently using alcohol or illegal drugs, or who are currently using legal drugs to which they are addicted, or who constitute a direct threat to the health and safety of others. Except as provided in the preceding sentence, an individual experiencing a "disability" is "disabled," and this will include a person that qualifies as disabled or handicapped under the FHA or ADA, or both.
- (7) For purposes of this Division, a "Lot" shall be as defined in Section 27-11 of this Code.
- (8) For purposes of this Division, a "pending application" shall mean an application for a reasonable accommodation which has been accepted by the Planning, Zoning, and Economic Development (PZED) Department and for which:
 - a. The Determination has not been made; or,

- b. For Chief Administrative Officer Determinations, the Determination has been made, and:
 - 1. The thirty (30) day time frame for an Administrative Appeal has not run, or
 - 2. If an Administrative Appeal has been sought, either a Final Order of the Special Magistrate has not been rendered but may still be timely made, or if rendered, such Final Order remains subject to judicial review (i.e. by Petition for Writ of Certiorari, and thereafter, further discretionary, appellate review); or,
 - c. For Special Magistrate Determinations, the Determination has been made and remains subject to judicial review (i.e. by Petition for Writ of Certiorari, and thereafter, further discretionary, appellate review).
- (9) For purposes of this Division, a "reasonable accommodation" is a change, exception, or adjustment to an ordinance, rule, policy, or procedure that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including any public or common-use spaces thereof.
- (10) There shall be no fee imposed by the City in connection with an application for a reasonable accommodation under this Division or for an Administrative Appeal of a Chief Administrative Officer Determination to the Special Magistrate. The City shall have no obligation to pay an applicant's or intervenor's attorney fees or costs in connection with an application, or an Administrative Appeal, or any other proceeding before the Special Magistrate.

(b) *Applications for a Reasonable Accommodation.*

- (1) A request for reasonable accommodation shall be made by completing a reasonable accommodation request form. The form shall be developed and modified from time to time by the PZED Department consistent with law, and shall be maintained by the PZED Department.
- (2) When an applicant has completed the form and has included all of the information required, the form and information shall be filed with the PZED Department, and the PZED Department shall file stamp the form with the date its filing was accepted, and such form and information shall thereafter be considered an application. The reasonable accommodation application shall contain responses to questions, and any additional information as the applicant may determine is necessary for processing and evaluating the reasonable accommodation request. The reasonable accommodation request form shall be accessible on the City's web-site and accessible at the PZED Department.
- (3) The applicant may be the property owner, a tenant, a governmental agency, a parent or guardian of the disabled person, a provider of services to the disabled person, or the

disabled person; however, in all cases, if the property owner is not the applicant, the property owner shall join in and consent to the application and shall be treated as an “applicant” for the purposes of this Division. In all cases, the applicant and the property owner shall be responsible to comply with the requirements of this Division, and with the conditions or limitations of the Determination.

- (4) Should the information provided with a reasonable accommodation request form include medical information or records, including records indicating the medical condition, diagnosis or medical history of a disabled individual, the disabled individual may, at the time such medical information is submitted, request that the City, to the extent allowed by law, treat such medical information as confidential information of the disabled individual. The City shall thereafter endeavor to provide written notice to the disabled individual, and the applicant, of any request received by the City for disclosure of the medical information or documentation which the disabled individual has requested be treated as confidential by the City. The City may cooperate with the disabled individual, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the City shall have no obligation to initiate, prosecute or pursue any such action, or defend against a request for such records, or to incur any legal or other expenses in connection therewith (whether by retention of outside counsel or allocation of internal resources), and the City may comply with any records request or judicial order without prior notice to the disabled individual.
- (5) Submittal requirements. The application shall be made, in writing, and shall include the following information:
- a. For all applications:
1. Name and contact information of the applicant;
 2. Signature of applicant;
 3. Date of application;
 4. Owner’s consent to the application (it shall be presumed that the owner is as indicated by the most recent ad valorem tax roll information concerning the Lot);
 5. Information regarding the Lot at which a reasonable accommodation is requested, including the address, and ad valorem tax folio number or property identification number;
 6. The specific ordinance, rule, policy, or procedure for which the reasonable accommodation is being requested;

7. The specific relief sought by the application and how such relief serves the special needs of the disability at issue;
 8. Information concerning whether the relief requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy housing;
 9. If there is to be an on-site supervisor, staff, or manager serving the premises, provide the name and contact information (phone and email) for each, and whether they will reside on the Lot with the disabled persons(s);
 10. Relevant information pertaining to the disability;
 11. A description of all installations or modifications which have been made to improvements on the Lot after the date of the Lot's most recent closed building permit, or if there are none, an Affidavit of No Change executed by the property owner (for purposes of this Paragraph 11, the most recent "closed" building permit is that which was: a. issued for improvements or alterations which have passed all inspections and received a Certificate of Occupancy or a Certificate of Completion or equivalent, and b. either: (i) where only building permits meeting the requirements of a. above were issued prior thereto, or (ii) the building permit meeting the requirements of a. above was the first building permit issued for the Lot in question);
 12. A description of all installations and modifications to improvements for the Lot which are proposed to be made before or during the time frame the Determination is to be effective;
 13. Any other relevant information pertaining to the Lot, and the information solicited by the reasonable accommodation request form;
 14. An irrevocable confirmation by the applicant and the property owner (of the Lot) that the City may inspect the Lot's improvements for compliance with applicable provisions of the Florida Building Code and Florida Fire Prevention Code while the application is pending, and that the City may, after a Determination is issued which grants the accommodation or grants an alternative accommodation, periodically inspect such improvements, after reasonable notice and during reasonable times, for compliance with the terms and conditions of the Determination; and,
 15. The extent of services or programs which will be provided to disabled persons at the Lot, and whether the service provider is licensed or certified.
- b. For applications pertaining to or relating to a Community Residence, the following additional submittals or information shall be required:

1. Whether the Community Residence operator or owner is currently certified by the credentialing entity designated under Section 397.487 of the Florida Statutes, as amended (or whether the Community Residence is currently certified by the credentialing entity designated under Section 397.487 of the Florida Statutes, as amended);
2. Whether the Community Residence is operated in accordance with the Oxford House Manual C;
3. If neither 1. nor 2. are applicable, information concerning:
 - (i) The identity, education, licensure, and training of staff servicing the Community Residence;
 - (ii) How the applicant will ensure the home will emulate a biological family;
 - (iii) How the home will be operated to achieve normalization and community integration;
 - (iv) If any property line of the Lot on which the Community Residence is proposed is within Six Hundred Sixty (660) Feet of the nearest property line of a Lot where an existing Community Residence is located, measured by airline measurement, information the applicant believes is important to consider in rebutting the presumptions which arise under Paragraph (a)(2) of this Division;
 - (v) How the rules and practices governing the Community Residence's operation will actually protect residents from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications;
 - (vi) A disclosure of all instances within the two (2) year period preceding the application of any evidence of resident abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications;
 - (vii) A disclosure of the steps taken to address matters disclosed in (vi) above, how outcomes are measured for such steps, and the outcomes experienced as a result of such steps; and,
 - (viii) A disclosure of all services related to resident disabilities that are proposed to be provided and where such services will be provided;
4. The maximum number of individuals who will reside in the dwelling unit for the period of time that the Determination is to be effective; and,

5. Information concerning the relationship between the number of residents and the therapeutic benefits to the Community Residence's disabled residents.

(c) Repetitive Applications, Qualified Stay.

- (1) An application for a reasonable accommodation for a Lot shall not be accepted by the PZED Department (including an amendment to a prior application), during any time period:

- a. In which the Lot has a pending application for a reasonable accommodation; or,
- b. Is within a six (6) month period of time from the later of: 1. the date the most recent prior application for a reasonable accommodation for such Lot was accepted by the PZED Department, or 2. the date the Determination was issued for the most recent prior application for a reasonable accommodation for such Lot (taking into consideration the possibility that an application for a reasonable accommodation may be withdrawn, or may be deemed withdrawn or abandoned, prior to a Determination being made).

- (2) The provisions of Subsection (1) above shall not be applied to prevent a new application for a reasonable accommodation for the subject Lot which is:

- a. Necessary as a result of new and materially different facts which a reasonable person would conclude were not foreseeable at the time the prior application was filed; and
- b. Which relate to a different ordinance, rule, policy, or procedure than was (were) at issue in the prior application.

- (3) Qualified automatic stay of enforcement.

- a. In the absence of either a known specific condition which creates risks to life safety, or a prior Special Magistrate Final Order or a prior Court Final Judgment, after an application for reasonable accommodation is filed with the PZED Department, and during the time frame it is pending before the City, the City will take no action to enforce the specific municipal provision, regulation, policy, or condition which is the subject of the application.
- b. The provisions of paragraph (3)a. above shall not affect the City's ability to enforce any municipal ordinance, rule, policy, or procedure which is not the subject of the application, or prevent the City from enforcing any federal or state or County law.

(d) PZED Advisory Review, other Department Reviews.

- (1) The PZED Department shall review the application and prepare a report and recommendation. The PZED Department may request and obtain information from other Departments when processing the application, and may ask other Departments to comment on the application. When the PZED report and recommendation is prepared, the application, the PZED report and recommendation, and any other comment(s) received by the PZED Department from other Departments which are referenced in the PZED Department report and recommendation will be referred to either the Chief Administrative Officer (for Determinations made pursuant to Section 27-110(f) of this Code), or by the Special Magistrate (for Determinations made pursuant to Section 27-110(g) of this Code).
- (2) When the matter involves a modification or termination of a Determination (and the effective date thereof) which is referred by the Chief Administrative Officer to the Special Magistrate pursuant to Subsection (i)(5) below, the Chief Administrative Officer may direct one or more municipal Department(s) to issue a report and recommendation concerning the circumstances applicable to the matter in light of the criteria identified in Subsection (i)(5) below.

(e) Criteria for Evaluation of an Application for a Reasonable Accommodation.

- (1) In evaluating an application for a reasonable accommodation, the PZED Department, and either the Chief Administrative Officer or Special Magistrate, as applicable shall consider:
 - a. Whether the requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under federal or state law;
 - b. Whether an accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy housing;
 - c. The extent to which the relief requested would serve the special needs of the disability at issue;
 - d. The physical attributes and conditions of the subject Lot and structures and improvements thereon, and whether they are compliant with applicable provisions of the Florida Building Code and Florida Fire Prevention Code;
 - e. Whether the type of accommodation requested or the objective the accommodation seeks will foreseeably impose an undue financial or administrative burden on the City (to determine these burdens, the City may consider: 1. prior experience with the applicant or operator, or property owner, or some or all of the foregoing, 2. prior experience at the Lot, 3. prior experience at other properties for which similar types of requests have been approved, 4. the City's financial resources, and 5. the City's personnel time and effort expended in the processes and procedures outlined in this Division, in ensuring the

conditions and limitations of Determinations are followed, in providing services to the Lot and to other property where like Determinations have been issued, and in enforcing violations of law which relate to the Lot and to other property where like Determinations have been issued);

- f. Any evidence that the accommodation would result in a threat to the health or safety of individuals, or damage;
 - g. The extent to which the accommodation may impair the policy interests served by the ordinance, rule, policy, or procedure affected by the application;
 - h. The extent to which a more tailored exception, modification, or alternative accommodation to the applicable ordinance, rule, policy, or procedure would affect the purposes served by the requested reasonable accommodation without the same degree of 1. foreseeable, accompanying burdens, or 2. impact to the policy considerations underlying the ordinance, rule, policy, or procedure in question, or 3. both 1. and 2.;
 - i. The extent to which the application, if granted, may foreseeably result in violations of other law relating to the premises (e.g. parking);
 - j. Any specific request or directive from any federal or state agency which has been made or received concerning the application; and,
 - k. Information provided by the applicant on the reasonable accommodation request form and information provided by the PZED Department and any other Department concerning the completed application. Information provided by City Departments may include information concerning a portion of the City to which certain uniform regulations and requirements or various combinations thereof apply under the provisions of the comprehensive zoning ordinance, as such portion of the City surrounding the Lot is demarcated in the professional opinion of the PZED Director (the “Surrounding District”). Information provided by City Departments may include, but not be limited to, zoning and land use information, police incident data, fire rescue data, code enforcement data, false burglar or medical alarm data, census data, on-site and off-site physical conditions, photographs and aerials of subject Lot and of the Surrounding District, Surrounding District information and data (i.e. traffic routes that show the boundaries of the Surrounding District, interior street patterns, significant physical features, both natural and man-made [such as a canals and lakes], population data, school locations, park and recreation amenities, and municipal activity and projects), and any other relevant information concerning the application or issues relevant to the Determination of the application for a reasonable accommodation.
- (2) When the application for a reasonable accommodation concerns or involves a Community Residence, in addition to the factors set forth in Subsection (1) above, the

PZED Department shall evaluate the following additional criteria, and the Chief Administrative Officer and Special Magistrate shall not grant the application or an alternative application unless he or she reasonably concludes that the criteria in a., b., and c. below are met:

a. The Community Residence:

1. Is one whose owner or operator is certified by the credentialing entity designated under Section 397.487 of the Florida Statutes, as amended (or that the Community Residence is certified by the credentialing entity designated under Section 397.487 of the Florida Statutes, as amended), or,
2. Is operated in accordance with the Oxford House Manual C, or
3. Where neither 1. nor 2. is applicable:
 - (i) Will be operated in a manner effectively similar to the Community Residences described in 1. or 2.,
 - (ii) Staff, if any, will be adequately trained,
 - (iii) Will emulate a biological family,
 - (iv) Will be operated to achieve normalization and community integration,
 - (v) Rules and practices governing how the home is operated will protect residents from abuse, exploitation, fraud, theft, insufficient support, use of illegal drugs or alcohol, and misuse of prescription medications; and

b. The proposed Community Residence will not interfere with the normalization and community integration of the residents of any existing Community Residence and that the presence of other nearby Community Residences will not interfere with the normalization and community integration of the residents of the proposed Community Residence (in this regard, if any property line of the Lot where a proposed Community Residence is to be located is within Six Hundred Sixty (660) Feet of the nearest property line of a Lot where an existing Community Residence is situate, measured by airline measurement, rebuttable presumptions shall arise that the proposed Community Residence's location will interfere with the normalization and community integration of the residents of such existing Community Residence, and that the location of the existing Community Residence will interfere with the normalization and community integration of the residents of the proposed Community Residence (which rebuttable presumptions shall require clear and convincing evidence to overcome); and

- c. The primary function and use of the proposed Community Residence is residential, and any services are merely incidental to the residential use of the Lot.

(f) Chief Administrative Officer Determinations.

- (1) The Chief Administrative Officer shall have the authority to consider and act on all applications for a reasonable accommodation, except for an application for a Community Residence in which more than six (6) persons will reside. Determinations of applications which can not be authorized by the Chief Administrative Officer under the provisions of this Subsection shall be made by the Special Magistrate under Subsection (g) of this Division.
- (2) The Chief Administrative Officer may choose to refer an application for a reasonable accommodation which he or she is authorized to consider and Determine to the Special Magistrate under Subsection (g) of this Division, and when such referral is made, the Determination and judicial review of same shall be governed by Subsection (g) below, and the Administrative Appeal procedure set forth in Subsection (6) below shall not be available.
- (3) For those applications considered and Determined by the Chief Administrative Officer, he or she shall issue a written Determination after considering the criteria specified in Subsection (e) above and may:
 - a. Grant the accommodation request, with or without conditions;
 - b. Grant a portion of the request and deny a portion of the request (which shall be an alternative reasonable accommodation), with or without conditions; or
 - c. Deny the request.

Any Determination under (3)(b) or (3)(c) above shall state the grounds therefor.

- (4) All Chief Administrative Officer Determinations shall give notice of the applicant's right to an Administrative Appeal to the Special Magistrate under the provisions of Subsection (6) below. The Chief Administrative Officer's Determination shall be sent to the City Clerk who shall note the Determination's rendition date (the date the Clerk enters the Determination in the Public Record). The City Clerk shall then transmit the Determination to the PZED Department. The Determination shall then be sent by the PZED Department to the applicant by certified mail.
- (5) Except as provided in this Subsection, the Chief Administrative Officer shall issue a Determination within forty-five (45) days of the date the complete application was stamped as filed by the PZED Department. The issue date shall be the date the Determination is signed by the Chief Administrative Officer. The issue date shall not be construed to be the rendition date for purposes of this Section. If reasonably necessary to make a decision, the Chief Administrative Officer may, prior to the end of

such forty-five (45) day period, request additional information from the applicant or from any City Department, specifying in sufficient detail what information is required. The applicant, or Department, or both, as the case may be, shall have fifteen (15) days after the date of the request for additional information to provide the requested information to the Chief Administrative Officer. In the event a request for additional information is made, the forty-five (45) day period to issue a Determination shall no longer be applicable, and the Chief Administrative Officer shall issue a Determination within thirty (30) days after receipt of the additional information. If the applicant fails to provide the requested additional information within said fifteen (15) day period, the application for reasonable accommodation shall be deemed abandoned and withdrawn, and the Chief Administrative Officer shall advise the PZED Department to notify the applicant by First Class Mail that the application has been deemed abandoned and withdrawn.

(6) Administrative Appeal of Chief Administrative Officer Determinations, Judicial Review.

- a. In the event an applicant disagrees with a Chief Administrative Officer Determination and desires to seek review thereof, the applicant shall file a Notice of Appeal with the City Clerk within thirty (30) days of the date the Determination is rendered. The Determination shall be rendered the date the City Clerk certifies that the Determination has been entered into the City's record. The Notice of Appeal shall describe in sufficient detail the grounds of the Appeal (i.e. the Determination's error and the relief sought).
- b. The City Clerk shall forward to the Special Magistrate the record of the proceedings which shall consist of a copy of the application, a copy of the PZED Department report and recommendation, a copy of any Department comment requested by the PZED Department in its report and recommendation, as well as any information submitted by the applicant or by another Department in response to a request for additional information made by the Chief Administrative Officer prior to the Determination, the Determination, and the Notice of Appeal.
- c. The Special Magistrate shall conduct a quasi-judicial hearing on the Administrative Appeal. All testimony shall be sworn and cross-examination shall be permitted. Witnesses who refuse to be cross-examined may have their testimony stricken from the proceedings. Formal Rules of evidence shall not apply, but fundamental rights of due process shall be observed and shall govern the proceedings. The Special Magistrate shall allow the applicant an opportunity to present evidence and argument on the matter and shall also allow the City and any intervenor to present evidence and argument. The Special Magistrate shall rule on all Motions to Intervene at the onset of the quasi-judicial hearing, or at an earlier hearing established for such purpose. The Special Magistrate may consider testimony from members of the public at the hearing. The Special Magistrate shall have the power to impose supplemental rules to govern the proceedings, to issue subpoenas for evidence, to take testimony, under oath, and

issue rulings. In the Administrative Appeal, the applicant shall have the burden of persuasion by the preponderance of evidence (except as to rebutting the presumptions created by Section 27-110(e)(2)b. of this Code, which require clear and convincing evidence), and shall have the burden of going forward with the evidence. The City may be represented by any City Department, or by an attorney. The applicant and any intervenor may be represented by an attorney if they desire.

- d. The scope of review of the Special Magistrate shall be de novo, and the Special Magistrate may grant the application with or without conditions, grant an alternative accommodation with or without conditions, or deny the accommodation. The Special Magistrate shall consider the factors specified in Section 27-110(e) of this Code, the record, and the evidence presented at the hearing in making his or her decision. The decision of the Special Magistrate on an Administrative Appeal shall be evidenced by a Final Order, and the Clerk of the Special Magistrate shall send a copy of the Final Order to the applicant, and any intervenor as soon as possible after rendition by First Class Mail.
- e. The City shall provide notice of the quasi-judicial hearing concerning the Administrative Appeal to the applicant and any intervenors by certified mail, at least fourteen (14) days prior to the quasi-judicial hearing. The City shall also provide notice of the quasi-judicial hearing, by First Class Mail, to all property owners within Three Hundred Feet (300') of the Lot for which the reasonable accommodation is requested, as their names and addresses appear on the most recent County real property ad valorem tax roll, at least fourteen (14) prior to the quasi-judicial hearing. The notice of the quasi-judicial hearing shall be posted outside of City Hall for at least three (3) days prior to the quasi-judicial hearing. The Special Magistrate shall render a decision on the Administrative Appeal as soon as reasonably practicable, but in any event, no later than sixty (60) days after the Notice of Appeal is filed, unless the applicant and City agree to an extension of such time period. In the event the Special Magistrate fails to meet the required timetable, the Determination shall be deemed quashed, and shall be returned to the Chief Administrative Officer to make another, different Determination within a thirty (30) day time frame.
- f. The City, the applicant, or an intervenor may file a Motion for a re-hearing of the matter within ten (10) days of the date the Magistrate Final Order is rendered. The Magistrate shall not be required to conduct a hearing to determine whether or not to grant the Motion. The filing of a Motion for a re-hearing shall not toll or affect the time periods within which the applicant or an intervenor is required to seek judicial review as provided in the next paragraph g. below.
- g. In the event the applicant or an intervenor, or both, disagrees with a Special Magistrate Final Order on an Administrative Appeal, he or she may seek judicial review by filing a Petition for Writ of Certiorari in the Circuit Court of the 17th Judicial Circuit in and for Broward County Florida within thirty (30) days of the

Final Order's rendition. The Final Order shall be rendered the date the Code Enforcement Clerk certifies that the Final Order has been entered into the City's public record.

(g) *Special Magistrate Determinations, and Proceedings to Modify or Terminate Determinations.*

(1) Determinations of applications for a reasonable accommodation.

- a. The Special Magistrate shall have jurisdiction to consider and Determine all applications for a reasonable accommodation which the City Chief Administrative Officer is not authorized to Determine.
- b. The Special Magistrate shall have jurisdiction to consider all applications for a reasonable accommodation which are referred to the Special Magistrate by the Chief Administrative Officer pursuant to Subsection (f)(2) above.
- c. Within thirty (30) days of the date the PZED Department accepted the application, the PZED Department shall forward to the Clerk of the Special Magistrate a copy of the application, a copy of the PZED Department report and recommendation, a copy of any Department comment referenced by the PZED Department in its report and recommendation, as well as any information submitted by the applicant.
- d. The Clerk of the Special Magistrate shall open a Case file, assign a Case Number to the Case file, and note the date the Case file was opened. In conjunction with the City Clerk, the Clerk of the Special Magistrate shall set the matter for a Special Magistrate hearing. The Clerk of the Special Magistrate and City Clerk will cooperate to ensure that the hearing is advertised as required by this Subsection (1).
- e. The caption of the Case shall be as follows:

SPECIAL MAGISTRATE
CITY OF PLANTATION, FLORIDA

Case No. _____

In re:

Application for a Reasonable
Accommodation for Property
having a Street Address of:

_____ /

- f. The City shall provide notice of the quasi-judicial hearing concerning the Special Magistrate Determinations to the applicant, the property owner (who shall be treated as an applicant for purposes of this Division as identified by the most

recent ad valorem tax roll), and any known intervenors by certified mail, at least fourteen (14) days prior to the quasi-judicial hearing. The City shall also provide notice of the quasi-judicial hearing, by First Class Mail, to all property owners within Three Hundred Feet (300') of the Lot for which the reasonable accommodation is requested, as their names and addresses appear on the most recent County real property ad valorem tax roll, at least fourteen (14) days prior to the quasi-judicial hearing. The notice of the quasi-judicial hearing shall be posted outside of City Hall for at least three (3) days prior to the quasi-judicial hearing.

- g. The Special Magistrate shall conduct a quasi-judicial hearing on the application. All testimony shall be sworn and cross-examination shall be permitted. Witnesses who refuse to be cross-examined may have their testimony stricken from the proceedings. Formal Rules of evidence shall not apply, but fundamental rights of due process shall be observed and shall govern the proceedings. The Special Magistrate shall allow the applicant an opportunity to present evidence and argument on the matter and shall also allow the City and any intervenor to present evidence and argument. The Special Magistrate shall rule on all Motions to Intervene at the onset of the quasi-judicial hearing, or at an earlier hearing established for such purpose. The Special Magistrate may consider testimony from members of the public at the hearing. The Special Magistrate shall have the power to impose supplemental rules to govern the proceedings, to conduct preliminary hearings, to issue subpoenas for evidence, to take testimony, under oath, and issue rulings. In these proceedings, the applicant shall have the burden of persuasion by the preponderance of evidence (except as to rebutting the presumption created by Section 27-110(e)(2)b. of this Code which requires clear and convincing evidence), and shall have the burden of going forward with the evidence. The City may be represented in the proceedings by any City Department, or by an attorney. The applicant and any intervenors may be represented by an attorney if they desire.
- h. The Special Magistrate may grant the application with or without conditions, grant an alternative accommodation with or without conditions, or deny the application. The Special Magistrate shall consider the factors specified in Section 27-110(e) of this Code, the PZED report and recommendations (which may include information from other Departments), the record, and the evidence presented at the hearing in making his or her Determination. The Determination of the Special Magistrate shall be evidenced by a Final Order, and the Clerk of the Special Magistrate shall send a copy of the Final Order to the applicant, and any intervenor as soon as possible after rendition by First Class Mail.
- i. The Special Magistrate shall render a decision on the application as soon as reasonably practicable, but in any event, no later than sixty (60) days after the Case is opened by the Clerk of the Magistrate, unless the applicant, City, or an intervenor demonstrates that undue prejudice would result, in which case the Special Magistrate may grant a reasonable extension to the sixty (60) day

timeframe, provided such extension does not to exceed an additional thirty (30) days. In the event the Special Magistrate fails to meet the required timetable within which to render a Determination, the application shall be deemed granted.

- j. The City, the applicant, or an intervenor may file a Motion for a re-hearing of the matter within ten (10) days of the date the Magistrate Final Order is rendered. The Magistrate shall not be required to conduct a hearing to determine whether or not to grant the Motion. The filing of a Motion for a re-hearing shall not toll or affect the time periods within which the applicant or an intervenor is required to seek judicial review as provided in the next paragraph k.
- k. In the event the applicant, or an intervenor, or both, disagrees with a Special Magistrate Determination, he or she may seek judicial review by filing a Petition for Writ of Certiorari in the Circuit Court of the 17th Judicial Circuit in and for Broward County Florida within thirty (30) days of the Final Order's rendition. The Final Order shall be rendered the date the Code Enforcement Clerk certifies that the Final Order has been entered into the City's public record.

(2) Special Magistrate proceedings to modify or terminate a Determination.

- a. The Special Magistrate shall have jurisdiction to consider a modification or termination of a Determination (and the effective date thereof), when the Chief Administrative Officer refers such a matter to the Clerk of the Special Magistrate pursuant to Subsection (i)(5) below.
- b. Upon receiving a referral, the Clerk of the Special Magistrate shall open a Case file, assign a Case Number to the Case file, and note the date the Case file was opened. The Clerk of the Special Magistrate shall also advise any Department which has been requested by the Chief Administrative Officer to provide a report and recommendation of the date the case file was opened.
- c. The caption of the Case shall be as follows:

**SPECIAL MAGISTRATE
CITY OF PLANTATION, FLORIDA**

Case No. _____

In re:

Modification or Termination of a
Reasonable Accommodation for Property
having a Street Address of:

_____ /

- d. Within thirty (30) days of the date the case was opened, any Department which has been so directed by the Chief Administrative Officer shall forward to the Clerk of the Special Magistrate a copy of its report and recommendation.

- e. In conjunction with the City Clerk, the Clerk of the Special Magistrate shall set the matter for a Special Magistrate hearing. The Clerk of the Special Magistrate and City Clerk will cooperate to ensure that the hearing is advertised as required by this Subsection (2).

- f. The City shall post a notice of the hearing on the Lot for which the reasonable accommodation at issue was granted (the “subject Lot”), at least ten (10) days prior to the quasi-judicial hearing. The City shall also provide notice of the Special Magistrate quasi-judicial hearing concerning the case to the applicant of the reasonable accommodation at issue (as their name and address appeared on the application), and any known intervenors by certified mail, at least fourteen (14) days prior to the quasi-judicial hearing. The City shall also provide notice of the quasi-judicial hearing, by First Class Mail, to all property owners within Three Hundred Feet (300’) of the subject Lot, as their names and addresses appear on the most recent County real property ad valorem tax roll, at least fourteen (14) days prior to the quasi-judicial hearing. The notice of the quasi-judicial hearing shall also be posted outside of City Hall for at least three (3) days prior to the quasi-judicial hearing.

- g. The Special Magistrate shall conduct a quasi-judicial hearing on the matter. All testimony shall be sworn and cross-examination shall be permitted. Witnesses who refuse to be cross-examined may have their testimony stricken from the proceedings. Formal Rules of evidence shall not apply, but fundamental rights of due process shall be observed and shall govern the proceedings. The Special Magistrate shall allow the applicant an opportunity to present evidence and argument on the matter and shall also allow the City and any intervenor to present evidence and argument. The Special Magistrate shall rule on all Motions to Intervene at the onset of the quasi-judicial hearing, or at an earlier hearing established for such purpose. The Special Magistrate may consider testimony from members of the public at the hearing. The Special Magistrate shall have the power to impose supplemental rules to govern the proceedings, to conduct preliminary hearings, to issue subpoenas for evidence, to take testimony, under oath, and issue rulings. In these proceedings, the City shall have the burden of persuasion by the preponderance of evidence, and shall have the burden of going forward with the evidence. The City may be represented in the proceedings by any City Department, or by an attorney. The applicant and any intervenors may be represented by an attorney if they desire.

- h. The Special Magistrate may modify or terminate the Determination. The Special Magistrate shall consider the report and recommendations of any Department, the record, the evidence presented at the hearing, and the criteria set forth in in Section 27-110(i)(5) of this Code. The decision of the Special Magistrate shall be evidenced by a Final Order, and the Clerk of the Special Magistrate shall send a copy of the Final Order to the applicant, and any intervenor as soon as possible after rendition by First Class Mail.

- i. The Special Magistrate shall enter a Final Order on the matter as soon as reasonably practicable, but in any event, no later than sixty (60) days after the Case is opened by the Clerk of the Magistrate, unless the applicant, City, or an intervenor demonstrates that undue prejudice would result, in which case the Special Magistrate may grant a reasonable extension to the sixty (60) day timeframe, provided such extension does not to exceed an additional thirty (30) days. In the event the Special Magistrate fails to meet the required timetable, the Determination which is the subject of the proceedings shall be deemed to have not been modified or terminated.
- j. The City, the applicant, or an intervenor may file a Motion for a re-hearing of the matter within ten (10) days of the date the Magistrate Final Order is rendered. The Magistrate shall not be required to conduct a hearing to determine whether or not to grant the Motion. The filing of a Motion for a re-hearing shall not toll or otherwise affect the time period within which the applicant or an intervenor is required seek judicial review as provided in the next paragraph k.
- k. In the event the applicant, or an intervenor, or both, disagrees with a Special Magistrate Final Order, he or she may seek judicial review by filing a Petition for Writ of Certiorari in the Circuit Court of the 17th Judicial Circuit in and for Broward County Florida within thirty (30) days of the Final Order's rendition. The Final Order shall be entered the date it is signed by the Special Magistrate, and it shall be deemed rendered the date the Code Enforcement Clerk certifies that the Final Order has been entered into the City's public record.

(h) Expiration Recertification of Determination.

- (1) For purposes of establishing the initial time period within which a Determination shall remain viable before it expires unless it is recertified, the following schedule is established:
 - a. For applications filed and accepted by the PZED Department on or between July 15 of a calendar year and January 14 of the next succeeding calendar year, any granted Determination (for an accommodation or alternative accommodation) shall expire on the September 30 which next succeeds the January 14 date, unless such Determination is recertified as provided in Subsection (2).
 - b. For applications filed and accepted by the PZED Department on or between January 15 of a calendar year and July 14 the same calendar year, any granted Determination (for an accommodation or an alternate accommodation) shall expire on September 30 of the next ensuing calendar year, unless such Determination is recertified as provided in Subsection (2).
- (2) For a viable Determination to be recertified, a new application for a reasonable accommodation shall need to be accepted by the PZED Department on or between

April 30 and July 1 of the calendar year in which the Determination shall expire, and a new Determination issued by September 1 of such calendar year. In the event this occurs, the Determination shall be considered “recertified” and shall be valid until September 30 of the next ensuing calendar year, at which time it shall expire, unless the Determination receives another recertification pursuant to the timetable set forth in this Subsection (2). There shall be no limit on the number of times a Determination can be recertified.

- (3) Failure to recertify a Determination shall result in the expiration of the approved reasonable accommodation.
- (4) Recertification requests shall follow the same requirements as the initial request for a reasonable accommodation as set forth in this Division.

(i) *Violations, Penalties and Modification or Termination.*

- (1) Any property owner, operator, or other person who may be an applicant under this Division who falsifies or conceals material information in such applicant’s application for reasonable accommodation or any recertification has committed a violation of this Code and is subject to the penalties set forth in this Section.
- (2) Any property owner, operator, or other person who may be an applicant under this Division who causes, permits, facilitates, aids, or abets any violation of any provision of the granted reasonable accommodation or granted alternative reasonable accommodation has committed a violation of this Code and is subject to the penalties set forth in this Section.
- (3) Any property owner, operator, or other person who may be an applicant under this Division who fails to perform any obligation, act or duty as contemplated in this Division or as set forth in the granted reasonable accommodation or granted alternative reasonable accommodation has committed a violation of this Code and is subject to the penalties set forth in this Section.
- (4) The penalties and prosecution methods for a violation of the Code as specified in this Section may be by any of the following:
 - a. The City may prosecute violations under Chapter 6, Article I, General Code Enforcement Procedure, and subject the violator to the penalties prescribed thereunder.
 - b. The City may prosecute a violation of this Division under Chapter 6, Article II, Supplemental Code Enforcement Procedure, Civil Violation Tickets (“Civil Citation”), where:

1. For the first Civil Citation, the civil penalty shall be One Hundred Dollars (\$100). If the violator chooses to contest the Civil Citation, the maximum penalty shall be One Hundred Fifty Dollars (\$150) per Civil Citation.
 2. For a repeat violation, the civil penalty shall be Two Hundred Dollars (\$200). If the violator chooses to contest the Civil Citation, the maximum penalty shall be Two Hundred Fifty Dollars (\$250) per Civil Citation.
 - c. The City may prosecute a violation of this Code under Section 1-13, and if desired, Section 1-14 of this Code.
- (5) *False or failure to disclose material information.*
- a. If at any time during the period for which the Determination is effective it is determined by the Chief Administrative Officer that: 1. a material statement contained in the application, or material information provided by the applicant, was false when provided, or 2. the applicant omitted material information, or failed to disclose material information, the omission of which would cause a reasonable person to conclude that the application was misleading, or 3. that applicant has on more than two (2) occasions failed to perform any obligation, act or duty as contemplated in this Division or as set forth in a granted Determination, or 4. some or all of 1. – 3., the Determination shall be subject to modification or termination. The Chief Administrative Officer may refer all such matters to the Clerk of the Special Magistrate for scheduling of a hearing pursuant to procedures of Subsection (g)(2).
 - b. If such a referral is made, the Chief Administrative Officer may determine whether any Department should be directed to furnish a report and recommendation to the Special Magistrate as provided by Subsection (d)(2) above, and if such a direction is made, he or she shall advise the Clerk of the Special Magistrate.
 - c. In the event the Determination is modified by the Special Magistrate, the modified Determination shall be considered the “viable Determination” for purposes of recertification under Subsection (h)(2) of this Division, regardless of any intervening applications for recertification and any approvals thereof.
 - d. In the event the Determination is terminated by the Special Magistrate, a new application for the same Determination shall not be accepted by the City for a period of one (1) year, and the termination shall terminate all intervening applications for re-certification of such Determination and any approvals thereof.
- (6) In addition to the remedies specified in this Section to address violations, the City may exercise and seek any and all remedies provided by law.

(j) *Other General and Implementing Provisions.*

- (1) The City shall display a notice in the City's public notice bulletin board (and shall maintain copies of the notice available for review in the PZED Department, and the City Clerk's Office), advising the public that disabled individuals (and qualifying persons or entities) may request reasonable accommodation as provided herein. The City will also display a notice on its website.
- (2) The City shall provide such clerical assistance and clerical accommodation as may be required pursuant to FHA and ADA in connection with a disabled person's request for reasonable accommodation, so as to ensure the reasonable accommodation process is accessible to persons experiencing disabilities.
- (3) All Determinations granting a reasonable accommodation or alternative accommodation prior to (the effective date of this Ordinance) shall expire on September 30, 2021.
- (4) All owners of residential real property shall have 90 day subsequent to (the effective date of this Ordinance) to apply for a reasonable accommodation where:
 - a. The use of such property on (the effective date of this Ordinance) is in violation of the City Code provisions for "Family" use (the definition of which in Sec. 27-1 of this Code limits to not more than three (3) individuals who are not interrelated from occupying the whole or part of: 1. a single-family home, or 2. a single-family dwelling, or 3. a dwelling unit in a building containing multi-family dwelling units), and,
 - b. Such use would not be in such violation if a reasonable accommodation was granted pursuant to this Division.

In the event an application is not timely filed as required by this Subsection (4), or thereafter a Determination granting an accommodation or an alternate accommodation is not issued in accordance with the provisions of this Division, the violation shall be subject to the provisions of Section 27-110(i) above.

Sec. 27-111 - Adult Entertainment.

- (a) Findings, intent and purpose. Based on the findings incorporated in the United States Attorney General's Commission on Pornography (1986); "A Summary of a National Survey of Real Estate Appraisers Regarding the Effect of Adult Bookstores on Property Values, " conducted by the Division of Planning, Department of Metropolitan Development, City of Indianapolis, January, 1984; the "Study of the Effects of Concentration of Adult Entertainment Establishments in the City of Los Angeles, " conducted by the Planning Committee for the Los Angeles City Council, June, 1977; the study conducted by the City of Austin, Texas; the Metropolitan Bureau of Investigation (MBI) for the Ninth Judicial Circuit (Orlando area); and information from Tampa, Florida, detailing the effects of adult

entertainment establishments in the Tampa area, and based upon such other information as is known to the city, the city hereby finds:

- (1) Establishments exist or may exist or may want to open within the city where books, magazines, motion pictures, prints, photographs, periodicals, records, novelties and/or devices which depict, illustrate, describe or relate to specified sexual activities are possessed, displayed, exhibited, distributed or sold.
- (2) Establishments exist or may exist or may want to exist within the city:
 - a. Where the superficial tissues of one person are manipulated, rubbed, stroked, kneaded, or tapped by a second person, who is not a licensed medical professional, accompanied by the display or exposure of specified anatomical areas (as defined herein);
 - b. Where dancers, entertainers, performers or other individuals, who, for any form of commercial gain, perform or are presented while displaying or exposing any specified anatomical areas;
 - c. Where lap dancing occurs.
- (3) The activities described in subsections (1) and (2) are subject to regulation by the city in the interest of the health, safety, morals and general welfare of the people of the city.
- (4) The competitive commercial exploitation of such nudity and semi-nudity is adverse to the public's interest and the quality of life, tone of commerce, and total community environment of the city.
- (5) The commercial exploitation of nudity and semi-nudity consists of the use of nude and semi-nude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or semi-nude entertainment in exchange for or as consideration for nude or semi-nude performance by such individuals.
- (6) The commercial exploitation of nude and semi-nude acts, exhibitions, and nude entertainment frequently occurs at commercial establishments either selling or allowing consumption of alcoholic beverages on the premises.
- (7) There is a direct relationship between the consumption of alcoholic beverages and the nude and semi-nude activities mentioned above, and an increase in criminal activities, moral degradation, and the disturbances of the peace and the good order of the community. The concurrences of these activities is hazardous to the health and the safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole.
- (8) The combination of the sale and consumption of alcoholic beverages with the performance of nude and semi-nude acts, exhibitions and entertainment is adverse to

the public's interest and the quality of life, tone of commerce and total community environment in the city.

- (9) In order to promote and preserve the public peace and good order and to safeguard the health, safety, morals and welfare of the community and the citizens thereof, it is necessary and advisable for the city to prohibit certain forms of nude and semi-nude acts, exhibitions, entertainment and commercial establishments at which alcoholic beverages are, or are available to be, sold or consumed.
- (10) In order to preserve the public peace and good order, and to safeguard the health, safety, morals and welfare of the community and citizens thereof, it is necessary and advisable to regulate and restrict the conduct of owners, operators, agents, employees, entertainers, performers, patrons, spectators and persons on the premises of the commercial establishments subject to this article.
- (11) There is a direct relationship between the display or depiction of specified anatomical areas in subsections (1) and (2) and an increase in criminal activities, moral degradation and disturbances of the peace and good order of the community, and the concurrences of these activities is hazardous to the health and safety of those persons in attendance and tends to depreciate the value of adjoining property and harm the economic welfare of the community as a whole. These secondary effects are adverse to the public's interest and quality of life, tone of commerce and total community environment in the city.
- (12) When the activities described in subsections (1) or (2) are (or may be) presented in establishments within the city, other activities which are illegal, immoral or unhealthful tend (or may tend) to accompany them, concentrate around them, and be aggravated by them. Such other activities include but are not limited to prostitution, solicitation for prostitution, lewd and lascivious behavior, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property.
- (13) When the activities described in subsections (1) or (2) are (or may be) present in establishments within the city, they tend (or will tend) to blight neighborhoods, adversely affect neighboring businesses, lower property values, foster an atmosphere which promotes crime, and ultimately lead residents and businesses to move to other locations.
- (14) Physical contact within establishments at which the activities described in subsections (1) or (2) occur between employees exhibiting specified anatomical areas and customers poses a threat to the health of both and may lead to the spread of communicable and social diseases.
- (15) In order to preserve and safeguard the health, safety, morals and general welfare of the people of the city, it is necessary and advisable for the city to regulate the conduct of owners, managers, operators, agents, employees, entertainers, performers and

customers at establishments where the activities described in subsections (1) or (2) occur.

- (16) The potential dangers to the health, safety, morals and general welfare of the people of the city from the activities described in subsections (1) or (2) occurring at establishments without first obtaining a permit under this article are so great as to require the licensure of such establishments prior to their being permitted to operate.
- (17) "Lap dancing" does not contain any element of communication, and is therefore conduct rather than expression.
- (18) "Lap dancing" in establishments poses a threat to the health of the participants and promotes the spread of communicable and social diseases.
- (19) The city finds that sexually oriented business is frequently used for unlawful and unhealthy sexual activities, including prostitution and sexual liaison of a casual nature.
- (20) The concern over sexually transmitted diseases is a legitimate health concern of the city which demands reasonable regulations of sexually oriented businesses in order to protect the health and well-being of the citizens.
- (21) Licensing is a legitimate reasonable means of accountability to ensure that operators of sexually oriented businesses comply with the reasonable regulations within this article and the locational requirements of the zoning code, and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(b) Definitions. As used in this article, the following terms shall have the respective meanings ascribed to them:

Adult store. An establishment having a significant portion of its stock in trade, books, magazines, periodicals, still or motion pictures, sexual prosthetic devices, or other materials which are distinguished or characterized by their emphasis on matters depicting, ascribing or relating to "specified sexual activities," or "specified anatomical areas," as defined herein, or an establishment which advertises or otherwise indicates that such materials, or a segment or section devoted to such materials, are open to and available for examination or purchase only by persons eighteen (18) years of age or older. For the purpose of this paragraph, a "significant portion" of its stock in trade means more than two (2) percent of its books, magazines, periodicals, still or motion pictures, or other illustrative materials, or more than two (2) percent of all of the foregoing, which are distinguished or characterized by their emphasis on depicting, describing, or relating to "specified anatomical areas" or "specified sexual activities" as defined herein.

Adult cabaret or theater. An establishment having any performance or other live activity having as a dominant theme or distinguished or characterized by an emphasis on matters depicting, describing, or relating to any of the "specified sexual activities" or "specified anatomical areas," as defined herein for observation by patrons therein.

Adult entertainment establishment. Any body rub or bath house establishment, adult store, adult motion picture theater, adult mini-motion picture theater, adult cabaret or theater, escort service, body painting studio, encounter parlor, sex consultation business (except for consultations with a licensed medical professional), nude photography studio, nude modeling business, nude dancing studio, dating service, as defined in this article, or any other similar adult entertainment establishment.

Adult mini-motion picture theater. An enclosed building or portion thereof, used for presenting any material having as a dominant theme or presenting any material distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified anatomical areas" or "specified sexual activities," as defined herein, for observation by patrons therein.

Adult motion picture theater. An enclosed building or portion thereof with a seating capacity of fifty (50) or more persons, or an open air drive-in facility of any size or capacity, used for presenting any material having as a dominant theme or presenting any material distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein, for observation by patrons therein.

Alcoholic beverage. A beverage containing more than one (1) percent of alcohol by weight, including but not limited to beer and wine. It shall be prima facie evidence that a beverage is an alcoholic beverage if proof exists:

- The beverage in question was or is known as whiskey, moonshine whiskey, shine, rum, gin, tequila, vodka, scotch, scotch whiskey, brandy, beer, malt liquor, or by any other similar name or names; or
- The beverage was contained in a bottle or can labeled as any of the above names, or a name similar thereto, and the bottle or can bears the manufacturer's insignia, name or trademark.

Any person who, by experience in the handling of alcoholic beverages, or who by taste, smell/or drinking of such alcoholic beverages has knowledge of the alcoholic nature thereof, may testify as to his opinion about whether such beverage is an alcoholic beverage.

Body rub or bath house establishment. Any establishment having a fixed place of business, other than a massage establishment permitted and regulated under Chapter 480, Florida Statutes, or its successor, which advertises or administers, a substantial or significant portion of its business activity, without limitation, baths, showers, sauna baths, steam baths or similar devices except for those establishments regulated pursuant to F.S. sections 501.012 to F.S. 501.019 or their successors.

Dating service, escort service, body painting studio, encounter parlor, sex consultation business, nude photography studio, nude modeling business, nude dancing studio, or any other similar adult entertainment establishment, however styled. Without limitation, any establishment which advertises or conducts activities for compensation, that are designed or

intended to establish a sexual communication, engagement or relationship, whether on-premises or off-premises, between its clients and its employees.

Specified anatomical areas.

- Less than completely and opaquely covered human genitals, pubic regions, buttock(s), and female breast(s) below a point immediately above the top of the areola; and
- Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities.

- Human genitals in a state of sexual stimulation or arousal;
- Acts of human masturbation, sexual intercourse or sodomy;
- Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

(c) *Prohibited operations.*

- (1) The city finds that those individuals who desire to purchase, lease or sell those items and services enumerated in section 27-800 findings (a)(1) and (2) have reasonable alternative avenues available to purchase, lease, sell or otherwise obtain those items and services including, but not limited to, (1) access to these items and services within the immediate vicinity of the city, including locations in incorporated and unincorporated Broward, Dade and Palm Beach counties, which permit the sale and distribution of these types of items and services; (2) access to cable television, including premium channels, pay-per-view channels and adult channels; (3) access to satellite dish transmissions; (4) Internet access; (5) telephone access; (6) access to on-line computer services; and (7) access to these materials via mail and other delivery services.
- (2) Notwithstanding the remaining sections of this article, the city expressly prohibits the establishment and operation anywhere within the city limits of adult entertainment establishments as defined herein including, but not limited to, adult stores; adult cabaret or theaters; adult mini-motion picture theaters; adult motion picture theaters; body rub or bath house establishments; dating services; escort services; body painting studios; encounter parlors; sex consultation businesses, except by a licensed medical professional; nude photography studios; nude modeling businesses; nude dancing studios; and other similar adult entertainment establishments. This section will control regardless of any conflict with any other section of this division, except section 27-803 (and section 2 of Ordinance No. 2132 which created this regulation).
- (3) Severability. In the event this section of the City Code is declared by a court of competent jurisdiction to be invalid, such decision shall not affect the remaining divisions and sections of this article.

(d) *Prohibited activities.*

(1) Prohibition.

- a. No person or employee shall expose to public view his or her human genitals, pubic region, or opening between the human buttocks, female breast below a point immediately above the top of the areola, or any simulation thereof in any establishment selling, serving or allowing the consumption of alcoholic beverages.
- b. No person maintaining, owning or operating an establishment serving alcoholic beverages shall suffer or permit any person or employee to expose to public view his or her human genitals, pubic region, or opening between the human buttocks, female breast below a point immediately above the top of the areola, or any simulation thereof within the establishment selling, serving or allowing the consumption of alcoholic beverages.
- c. No person or employee anywhere in an establishment selling, serving or allowing consumption of alcoholic beverages, shall display those specified anatomical areas, as defined herein.
- d. No person in or employee of an adult entertainment establishment shall, while exposing to public view his or her human genitals, pubic region, opening between the human buttocks, or female breast below a point immediately above the top of the areola, or any simulation thereof touch anywhere any patron or customer of the premises.
- e. No person in or employee of an adult entertainment establishment shall, while exposing to public view his or her human genitals, pubic region, opening between the human buttocks, or female breast below a point immediately above the top of the areola, or any simulation thereof, touch the aforesaid specified anatomical areas of any other employee or person who is exposing to public view his or her human genitals, pubic region, opening between the human buttocks, or female breast below a point immediately above the top of the areola, or any simulation thereof.

(e) Zoning Regulations.

- (1) Rules of construction. This article shall be liberally construed to accomplish its purpose of permitting, regulating and dispersing adult entertainment establishments.
- (2) Purpose. It is the intent of the city's governing body in adopting this article to establish reasonable and uniform regulations that will reduce the adverse secondary effects adult entertainment establishments have upon the residents of the city and protect the health, safety, morals and general welfare of the people of the city.

(3) Zoning district and distance limitations.

- a. Adult entertainment establishments shall be permitted uses in the I-LP zoning district; provided that no such use shall be located where the property line of the site of the adult entertainment establishment is closer than seven hundred (700) feet by airline measurement from the nearest property line of any site wherein a residential use, house of worship use, hospital use, public or private school use, day care center use, or public park use is situated. Neither the board of adjustment nor the city council shall be able to grant waivers or variances of the requirements of this section. An adult entertainment establishment shall not be allowed anywhere in the city as a use variance.
- b. The property line of any site wherein a house of worship use, public or private school use, residential use, day care center use, or public park use is intended to be situate shall not be closer than seven hundred (700) feet by airline measurement to the nearest property line of any adult entertainment establishment. Neither the board of adjustment nor the city council shall be able to grant waivers to, or variances of, the requirements of this section.

(4) Performance standards.

- a. All building openings, entries, windows, doors or other apertures for adult bookstores, adult motion picture theaters and adult mini-motion picture theaters shall be located, covered or screened in such a manner as to prevent a view into the interior except the entryway from the exterior of the building; provided, however, that such openings shall not be painted out, blacked out or otherwise obscured in a garish manner.
- b. The entire interior of an adult bookstore or an adult mini-motion picture theater which has separate projection illumination of at least two (2) watts per square foot of floor area while open, and every portion of such interior shall be readily visible at all times to the clerk or other supervisory personnel from the counter or other regular station.
- c. If separate booths, rooms, cubicles or other similar areas are provided for use by clients of the adult entertainment establishment, such areas may not have doors or other solid enclosures, but may only have a thin, opaque cloth curtain which may be opened from the exterior at all times and which does not extend any closer than three (3) feet to the surface of the floor.
- d. Off-street parking requirements for adult entertainment establishments shall be those specified in city ordinances for the nature of the use apart from its adult entertainment characteristics (such as retail and service stores, theaters, and so forth), where applicable. With respect to adult mini-motion picture theaters which provide booths, rooms, cubicles or other separate areas for viewing, the parking standard shall be one (1) space for each one hundred (100) square feet of gross

floor area, or one (1) space for each one hundred (100) square feet of gross floor area excluding such separate areas together with one (1) space for each such separate area, whichever is greater.

- (5) Waiver or modification of restrictions and special provisions concerning nonconformities. The governing body of the city, after proper application and public hearing in the same manner that site plan applications are reviewed and approved, may waive or modify any of the restrictions of section 27-808 upon finding, in addition to other required findings set forth elsewhere in this Code:
- a. That the requested waiver modification will not enlarge or encourage the development of a "skid row" area or "neighborhood blight" area; and
 - b. That the requested waiver modification will not be contrary to any program of neighborhood conservation, crime prevention, redevelopment or improvement, either residential or nonresidential; and
 - c. That all other applicable regulations of this division and any other ordinance or law will be observed.

In granting any such waiver or modification, the governing body of the city may prescribe any conditions that it deems necessary in the public interest.

All such waivers or modifications shall be applicable only to the person receiving them, and shall be valid for five (5) years and then shall expire, such that the use will become nonconforming. Any use which conformed to the regulations in effect in this division when such use was established and that becomes nonconforming as a result of a change in the regulations or the expiration of the variance, shall be discontinued within five (5) years of the date the use first becomes nonconforming.

(f) Additional permitting.

- (1) Permit requirements. No person may operate an "adult entertainment establishment," as defined herein without first applying for and receiving an "adult entertainment permit" to engage in such activity from the city. The permit required by this section shall be in addition to and not satisfied by any other local business tax receipt or zoning permit which may be held, obtained or required of such persons, nor shall it be satisfied by any other state or county permit. Any transfer of stock, assets, ownership or management control shall require the building and zoning director to review same based on the standards set forth in this division and shall be subject to all other applicable permit requirements as well.
- (2) Application; granting. Applications for a permit to operate an adult entertainment establishment shall be made to the city upon such form and in such manner as shall be prescribed by the city, such form to elicit the following information:

- a. Identification; interests. The name of the applicant for a permit under this section, if an individual, or in the case of a firm, corporation, partnership, association or organization, any person having managerial control or a material interest therein. For the purposes of this article a material interest means direct or indirect ownership of more than five (5) percent of the total assets or capital stock of any business entity. If one (1) or more of the stockholders having a material interest in the applicant business entity is itself a corporation, such requirement shall extend to any officer, director or shareholder owning a material interest in such business entity. All such persons must include their business address and name on the application form.
- b. Penal history. The criminal record, if any, other than misdemeanor traffic violations of the applicant or any person specified in subsection (1) above. The same information shall be provided for all employees of the applicant on a continuing basis during the life of its adult entertainment establishment permit.
- c. Business history. Whether the applicant has operated or applied to operate an adult entertainment type of business in this or any other state and, if so, whether the franchise, or permit for such business has ever been denied, revoked or suspended, and if so, the reasons therefor, and the business activity or occupation of the applicant subsequent to such denial, revocation or suspension.
- d. Existence of business entity. If the applicant is a corporation, the applicant shall submit proof of incorporation in good standing in the state of incorporation and, if a foreign corporation, the applicant shall provide information certifying that the applicant is qualified to do business in this state. If the applicant is operating under a fictitious name, the applicant shall submit proof that it has registered such fictitious name and is entitled to its use.
- e. Prior occupation. The business, occupation or employment of the applicant, if an individual, or any other individual specified in subsection (1) above, for the three (3) years immediately preceding the date of application.
- f. Statement of the specific and exact nature of the business to be conducted. The applicant for a permit shall provide a statement clearly specifying the type of business to be conducted and if merchandise is to be sold, a description of such merchandise. The applicant must further provide such other information as to its business intent and purpose as the city may require to properly process the application.
- g. Signature on application and manner of submission; fee. An application for a permit for an adult entertainment establishment shall be signed by the individual submitting the application; and, in the case of a corporation, by the president and secretary thereof; and, in the case of a partnership or other association, by all members of the partnership or association. The completed application shall be

submitted to building and zoning director and shall be accompanied by a fee of twenty-five dollars (\$25.00).

- h. Standards for issuance. Based upon the information obtained by the city in the processing of the application, the building and zoning director shall either grant or deny the permit based upon compliance with the following standards:
1. That, upon the information available, it appears that the applicant will conduct the business in accordance with the ordinances of the city and county, and the laws of Florida and the United States of America.
 2. That, upon information available, it appears that no material false statement or information has been provided by the applicant.
 3. Prior convictions. That, upon information available, it appears that no individual, or any of the other persons specified in subsection (1) above, has been convicted, pleaded guilty, pleaded nolo contendere, or suffered a forfeiture for any criminal offense directly related to the nature of the occupation, profession or business for which the permit is sought; provided, however, that any such persons who have had their civil rights restored shall only be denied a permit if such crime was a felony or a first degree misdemeanor.

These requirements shall be continuously satisfied and if any of these requirements are not met (regardless of whether the city knew or had reason to know of same), then the permit shall be subject to revocation.

- (3) Denial. The building and zoning director shall accept or deny the application within thirty (30) days of receiving all information required by subsection (f)(2) above. Should the building and zoning director deny an application for an adult entertainment permit, the applicant shall be notified of such denial by certified mail not later than ten (10) days after taking such action. The notice of denial shall contain a statement of the reasons the application was denied.
- (4) Appeal from denial. An applicant for an adult entertainment permit may appeal the denial of such permit to the board of adjustment. Should an applicant seek an appeal from the denial of the permit, the applicant shall furnish a written request for an appeal to the city clerk not later than ten (10) days after the date of the registered letter advising applicant of the denial of the permit. Upon receipt of a written request for an appeal, the city clerk shall fix the date, and time at which the city commission shall hear the appeal, such hearing to be held not less than ten (10) nor more than sixty (60) days subsequent to the date upon which the request for appeal was filed with the city clerk. On setting the matter for hearing, the city clerk shall notify the applicant of the date and time of such hearing. At the conclusion of the hearing, the board of adjustment shall either sustain the decision of the building and zoning director or direct the building and zoning director to issue a permit.

- (5) Regulatory fee. Each permittee shall pay an annual regulatory fee in the amount of twenty-five dollars (\$25.00). Such regulatory fee shall [be] in addition to any required occupational permits.
- (6) Transfer. An adult entertainment permit issued under the provisions of this division may not be assigned or transferred without the consent of the city after a determination that the new permittee meets the initial requirements for issuing a new permit. Any appeal and hearing thereon shall be conducted in accordance with the procedures set forth for the denial of a permit.
- (7) Information to be filed monthly with the city. Each month during the term of a permit each permittee shall supply the building and zoning department with the following information, such information to be provided on the form and in the manner prescribed by the city:
- a. A statement as to whether any arrests have occurred upon the permitted premises and, if so, the dates of such arrests, the persons arrested and the offense with which each of those persons was charged.
 - b. Any material change in any of the information required pursuant to the original application for the permit.
- (8) Revocation. The violation of any of the terms and conditions of this article or the violation of any ordinance of the city or county, or the violation of any of the laws of the state or the United States of America as they pertain to the conduct of the permitted business shall be cause for revocation of the permit. If at any time during the period for which the permit is issued it is determined that any statement contained in the application, or otherwise provided by the applicant upon which the permit was issued, is untrue or in the event the person to whom such permit is issued or an employee of such person has violated the ordinances of the city or county, or the laws of the state or the United States of America in the practice of the business for which the permit was issued, the permit shall be subject to revocation. The building and zoning director will give ten (10) days' notice that the permit is being revoked because of the violation of the aforementioned. Upon such decision, the permittee shall have ten (10) days to cease all operations and shall be considered as having forfeited such permit and the rights acquired thereunder after ten (10) days. Should the building and zoning director decide to revoke a permit, the permittee shall be provided with notice of such revocation and the reasons therefor. Upon receipt of such notice, the permittee shall have ten (10) days to appeal such revocation to the board of adjustment, and the appeal and hearing thereon shall be conducted in accordance with the procedures set forth for the denial of a permit. The revocation of the permit shall be stayed pending such appeal unless the board of adjustment, after hearing, determines that the public health, safety, and welfare would be threatened by a stay of such revocation pending full hearing. If the permit holder cures the violation(s) after notice from the building and zoning director, the permit holder may use such cure(s) as part of the basis for its appeal. If the board of

adjustment upholds the building and zoning director's decision to revoke the permit, then the permit will be deemed revoked and the adult entertainment establishment must close within forty-eight (48) hours of the notice of such decision.

- (9) Unlawful to operate without a permit. It shall be unlawful for any person to conduct an adult entertainment establishment within the city without obtaining a permit for such business pursuant to this division.

Sec. 27-112 – Medical Marijuana.

- (a) Definitions. As used in this article, the following terms shall have the respective meanings ascribed to them:

Medical Marijuana Treatment Center Dispensing Facilities means any dispensing facility, as defined by Fla. Admin. Code r. 64-4.001, as amended, with all applicable regulations, or any other similar facility or operation, of an approved Medical Marijuana Treatment Center authorized to operate in Florida under Art. X, § 29 of the Florida Constitution, §381.986, Florida Statutes, as amended.

- (b) Prohibition Concerning Medical Marijuana.

- (1) Purpose. It is the purpose of this ordinance to prohibit Medical Marijuana Treatment Centers created under Art. X, § 29 of the Florida Constitution from establishing Medical Marijuana Treatment Center Dispensing Facilities within the municipal limits of the City of Plantation;
- (2) Findings. Based on authority granted to municipalities in Section 381.986(11) Florida Statutes, the City Council finds that a ban on the establishment of Medical Marijuana Treatment Center Dispensaries within the City of Plantation is in the best interest of the City;
- (3) Medical Marijuana Treatment Center Dispensing Facilities are prohibited within the boundaries of the City of Plantation.