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ORDINANCE NO. 2022-16

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AMENDING THE CODE OF ORDINANCES BY CREATING _____ ENTITLED “SEXUALLY ORIENTED BUSINESSES”; PROVIDING FOR DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR LICENSING AND REGULATION OF SUCH BUSINESSES AND THEIR EMPLOYEES; PROVIDING FOR A DISTANCE SEPARATION BETWEEN ENTERTAINERS AND PATRONS IN SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR CODIFICATION; PROVIDING FOR A CONFLICTS CLAUSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Westlake finds that sexually oriented businesses, as category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, and are often associated with crime and the downgrading of property values; and

WHEREAS, underage performers have been used in sexually oriented entertainment, both in films and in live performances; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

1 **WHEREAS**, the City Council has determined that locational criteria alone do not
2 adequately protect the health, safety, and general welfare of the people of this City;
3 and
4

5 **WHEREAS**, it is not the intent of the City Council to condone or legitimize the
6 distribution of obscene material, and the Council recognizes that state and federal law
7 prohibits the distribution of obscene materials and expects and encourages state law
8 enforcement officials to enforce state obscenity statutes against any such illegal
9 activities in the City; and
10

11 **WHEREAS**, the City recognizes its constitutional duty to interpret, construe, and
12 amend its laws and ordinances to comply with constitutional requirements as they
13 are announced; and
14

15 **WHEREAS**, with the passage of any ordinance, the City and the City Council accept
16 as binding the applicability of general principles of criminal and civil law and
17 procedure and the rights and obligations under the United States and Florida
18 Constitutions, and the Florida Rules of Civil and Criminal Procedure; and
19

20 **WHEREAS**, it is not the intent of this ordinance to suppress any speech activities
21 protected by the U.S. Constitution or the Florida Constitution, but to enact an
22 ordinance to further the content-neutral governmental interests of the City, to wit, the
23 controlling of secondary effects of sexually oriented businesses;
24

25 **NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY FOR THE**
26 **CITY OF WESTLAKE, FLORIDA, AS FOLLOWS:**
27

28 **SECTION 1.** Recitals. The foregoing recitals are confirmed, adopted and
29 incorporated herein and made a part hereof by this reference.

30 **SECTION 2.** The City Council hereby creates Section
31 _____ of the City's Code of Ordinances as follows:

32 **ARTICLE . SEXUALLY ORIENTED BUSINESSES**

33 **Sec. . Purpose and findings.**

34 **(a) Purpose.** It is the purpose of this article to regulate sexually oriented
35 businesses in order to promote the health, safety, morals, and general welfare of
36 the citizens of the city, to establish reasonable and uniform regulations to prevent
37 the deleterious secondary effects of sexually oriented businesses within the city,
38 and to prevent illicit activity and other undesirable community conditions
39 associated with the combination of sexually oriented businesses and alcohol
40 consumption. The provisions of this article have neither the purpose nor effect of

1 imposing a limitation or restriction on the content or reasonable access to any
2 communicative materials, including sexually oriented materials. Similarly, it is
3 neither the intent nor effect of this article to restrict or deny access by adults to
4 sexually oriented materials protected by the First Amendment, or to deny access by
5 the distributors and exhibitors of sexually oriented entertainment to their intended
6 market. Neither is it the intent nor effect of this article to condone or legitimize the
7 distribution of obscene material.

8 (b) Findings. Based on evidence of the adverse secondary effects related to
9 sexually oriented businesses presented in hearings and in reports made available
10 to the Council, and on findings, interpretations, and narrowing constructions
11 incorporated in numerous cases, including, but not limited to Pap's A.M. v. City of
12 Erie, 529 U.S. 277 (2000); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425
13 (2002); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v.
14 American Mini Theatres, 426 U.S. 50 (1976), Barnes v. Glen Theatre, Inc., 501 U.S.
15 560 (1991); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); California v. LaRue,
16 409 U.S. 109 (1972); as well as in the cases of Artistic Entertainment, Inc. v. City of
17 Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Peek-A-Boo Lounge of Bradenton,
18 Inc. v. Manatee County, 337 F.3d 1251 (11th Cir. 2003); Gary v. City of Warner
19 Robins, 311 F.3d 1334 (11th Cir. 2002); Ward v. County of Orange, 217 F.3d 1350
20 (11th Cir. 2000); Boss Capital, Inc. v. City of Casselberry, 187 F.3d 1251 (11th Cir.
21 1999); David Vincent, Inc. v. Broward County, 200 F.3d 1325 (11th Cir. 2000);
22 Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998); Lady J.
23 Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); Lady J. Lingerie,
24 Inc. v. City of Jacksonville, 973 F.Supp. 1428 (M.D. Fla. 1997); Grand Faloon Tavern,
25 Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); Board of County Commissioners v.
26 Dexterhouse, 348 So. 2d 916 (Ct. App. Fla. 1977); International Food & Beverage
27 Systems v. Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); and other cases; and
28 reports of secondary effects occurring in and around sexually oriented businesses,
29 including, but not limited to, Phoenix, Arizona - 1979; Minneapolis, Minnesota-
30 1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977;
31 Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California
32 - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma
33 - 1986; Cleveland, Ohio - 1977 ; and Dallas, Texas - 1997; St. Croix County,
34 Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996;
35 New York Times Square study - 1994; Phoenix, Arizona -1995-98; and also on
36 findings of physical abuse from the paper entitled "Stripclubs According to
37 Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program
38 Director, Freedom and Justice Center for Prostitution Resources, Minneapolis,
39 Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David
40 Sherman, presented to the Michigan House Committee on Ethics and Constitutional
41 Law, Jan. 12, 2000, and the Report of the Attorney General's Working Group On The

1 Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the
2 council finds:

3 (1) Sexually oriented businesses, as a category of commercial uses, are
4 associated with a wide variety of adverse secondary effects including, but not
5 limited to, personal and property crimes, prostitution, potential spread of disease,
6 lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative
7 impacts on property values, urban blight, pornographic litter, and sexual assault
8 and exploitation.

9 (2) Sexual acts, including masturbation, oral and anal sex, sometimes occur at
10 unregulated sexually oriented businesses, especially those which provide private
11 or semi-private booths, rooms, or cubicles for view films, videos, or live sexually
12 explicit shows, which acts constitute a public nuisance and pose a risk to public
13 health through the spread of sexually transmitted diseases.

14 (3) The prevention of sexual contact between patrons and employees at
15 sexually oriented businesses is unrelated to the suppression of free expression and
16 serves to address the concerns raised in the findings contained herein.

17 (4) Separating entertainers from patrons and prohibiting entertainers and
18 patrons from engaging in sexual fondling and caressing in sexually oriented
19 businesses would reduce the opportunity for prostitution transactions and thus
20 should deter prostitution.

21 (5) Each of the foregoing negative secondary effects constitutes a harm which
22 the city has a substantial government interest in preventing and/or abating.

23 Sec. . Definitions.

24 For purposes of this article, the words and phrases defined in the sections
25 hereunder shall have the meanings therein respectively ascribed to them unless a
26 different meaning is clearly indicated by the context.

27

28 Adult bookstore/adult video store means a commercial establishment which has
29 significant or substantial portion of its stock-in trade or derives a significant or
30 substantial portion of its revenues or devotes a significant or substantial portion of
31 its interior business or advertising, or maintains a substantial section of its sales or
32 display space to the sale or rental, for any form of consideration, of any one or more
33 of the following:

34 Books, magazines, periodicals or other printed matter, or photographs, films,
35 motion pictures, video cassettes, compact discs, slides, or other visual
36 representations which are characterized by their emphasis upon the exhibition or
37 description of "specified sexual activities" or "specified anatomical areas."

1 The term "adult bookstore/adult video store" shall also include a commercial
2 establishment which regularly maintains one or more "adult arcades." "Adult
3 arcade" means any place to which the public is permitted or invited wherein coin-
4 operated or slug-operated or electronically, electrically, or mechanically controlled
5 still or motion picture machines, projectors, or other image-producing devices are
6 regularly maintained to show images to five (5) or fewer persons per machine at
7 any one time, and where the images so displayed are distinguished or characterized
8 by their emphasis upon matter exhibiting or describing "specified sexual activities"
9 or specified "anatomical areas."

10 Adult cabaret means a nightclub, bar, juice bar, restaurant, bottle club, or similar
11 commercial establishment, whether or not alcoholic beverages are served, which
12 regularly features persons who appear semi-nude.

13 Adult motel means a motel, hotel, or similar commercial establishment which:

14 (1) Offers accommodations to the public for any form of consideration; provides
15 patrons with closed-circuit television transmissions, films, motion pictures, video
16 cassettes, other photographic reproductions, or live performances which are
17 characterized by the depiction or description of "specified sexual activities" or
18 "specified anatomical areas"; and which advertises the availability of such material
19 by means of a sign visible from the public right-of-way, or by means of any on or
20 off-premises advertising, including but not limited to, newspapers, magazines,
21 pamphlets or leaflets, radio or television; or

22 (2) Offers a sleeping room for rent for a period of time that is less than ten (10)
23 hours; or

24 (3) Allows a tenant or occupant of a sleeping room to subrent the room for a
25 period of time that is less than ten (10) hours.

26 Adult novelty store means a commercial establishment to which minors are
27 restricted access by reason of age and which regularly features instruments,
28 devices, or paraphernalia which are designed for use or marketed primarily for
29 stimulation of human genital organs or for sadomasochistic use or abuse of
30 themselves or others, including such items as dildos, vibrators, penis rings, rubber
31 vaginas, and similar devices. The foregoing instruments, devices, or paraphernalia
32 shall not be interpreted to include condoms, diaphragms, intra-uterine devices
33 (IUDs), or similar prophylactic means of preventing pregnancy.

34 Adult motion picture theater means a commercial establishment where films,
35 motion pictures, videocassettes, slides, or similar photographic reproductions
36 which are characterized by their emphasis upon the exhibition or description of
37 "specified sexual activities" or "specified anatomical areas" are regularly shown for
38 any form of consideration.

39

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1 Alcoholic beverage shall mean all distilled spirits and all beverages containing one-
2 half of one percent or more alcohol by volume.

3 Controlling interest means the power, directly or indirectly, to direct the operation,
4 management or policies of a business or entity, or to vote twenty (20 percent or
5 more of any class of voting securities of a business. The ownership, control, or
6 power to vote twenty per cent or more of any class of voting securities of a business
7 shall be presumed, subject to rebuttal, to be the power to direct the management,
8 operation or policies of the business.

9 Distinguished or characterized by an emphasis upon means the dominant or
10 principal theme of the object described by such phrase. For instance, when the
11 phase refers to films "which are distinguished or characterized by an emphasis
12 upon the exhibition or description of specified sexual activities or specified
13 anatomical areas," the films so described are those whose dominant or principal
14 character and theme are the exhibition or description "specified anatomical areas"
15 or "specified sexual activities."

16 Employ, employee, and employment" describe and pertain to any person who
17 performs any service on the premises of a sexually oriented business, on a full time,
18 part time, or contract basis, whether or not the person is denominated an employee,
19 independent contractor, agent, or otherwise. Employee does not include a person
20 exclusively on the premises for repair or maintenance of the premises or for the
21 delivery of goods to the premises.

22 Establish or establishment shall mean and include any of the following:

23 (1) The opening or commencement of any sexually oriented business as a new
24 business;

25 (2) The conversion of an existing business, whether or not a sexually oriented
26 business, to any sexually oriented business; or

27 (3) The addition of any sexually oriented business to any other existing sexually
28 oriented business.

29 Hearing officer shall mean an individual licensed to practice law in Florida
30 appointed by the City Council of the City of Westlake.

31 Licensee shall mean a person or business entity in whose name a license to operate
32 a sexually oriented business has been issued, as well as the individual or individuals
33 listed as an applicant on the application for a sexually oriented business license.

34 Nudity or a state of nudity means the showing of the human male or female genitals,
35 pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering,
36 or the showing of the female breast with less than a fully opaque covering of any
37 part of the nipple and areola.

1 Operate or cause to operate shall mean to cause to function or to put or keep in a
2 state of doing business. "Operator" means any persons on the premises of a sexually
3 oriented business who is authorized to exercise overall operational control of the
4 business or who causes to function or who puts or keeps in operation the business.
5 A person may be found to be operating or causing to be operated a sexually oriented
6 business whether or not that person is an owner, part owner, or licensee of the
7 business.

8 Person shall mean individual, proprietorship, partnership, corporation,
9 association, or other legal entity.

10 Regularly features or regularly shown means a consistent or substantial course of
11 conduct, such that the films or performances exhibited constitute a substantial
12 portion of the films or performances offered as a part of the ongoing business of the
13 sexually oriented business.

14 Semi-nude, state of semi-nudity, or semi-nude condition shall mean the showing of
15 the female breast below a horizontal line across the top of the areola and extending
16 across the width of the breast at that point, or the showing of the male or female
17 buttocks. This definition shall include the entire lower portion of the human female
18 breast, but shall not include any portion of the cleavage of the human female breasts
19 exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel
20 provided the areola is not exposed in whole or in part.

21 Semi-nude model studio means any place where a person, who regularly appears
22 in a state of semi-nudity is provided for money or any form of consideration to be
23 observed, sketched, drawn, painted, sculptured, photographed, or similarly
24 depicted by other persons.

25 It is a defense to prosecution for any violation of this article that a person appearing
26 in a state of semi-nudity or semi-nudity did so in a modeling class operated:

27 (1) By a college, community college, or university supported entirely or partly
28 by taxation;

29 (2) By a private college or university which maintains and operates educational
30 programs in which credits are transferable to college, community college, or
31 university supported entirely or partly by taxation; or

32 (3) In a structure:

33 a. Which has no sign visible from the exterior of the structure and no other
34 advertising that indicates a semi-nude person is available for viewing; and

35 b. Where, in order to participate in a class a student must enroll at least three
36 days in advance of the class.

1 Sexual encounter center shall mean a business or commercial enterprise that, as
2 one of its principal business purposes, purports to offer for any form of
3 consideration:

4 (1) Physical contact in the form of wrestling or tumbling between persons of the
5 opposite sex; or

6 (2) Physical contact between male and female persons and/or persons of the
7 same sex when one or more of the persons is semi-nude.

8 Sexually oriented entertainment activity means the sale, rental, or exhibition for
9 any form of consideration, of books, films, video cassettes, magazines, periodicals,
10 or live performances which are characterized by an emphasis on the exposure or
11 display of specific sexual activity.

12 Specified anatomical areas means and includes:

13 (1) Less than completely and opaquely covered: human genitals, pubic region;
14 buttock; and female breast below a point immediately above the top of the areola;
15 and

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

18 Specified criminal activity means any of the following offenses:

19 (1) Fla. Stat. § 787.025 (luring or enticing a child); Fla. Stat. § 794.011 (sexual
20 battery); Fla. Stat. § 794.05 (unlawful sexual activity with certain minors); Fla. Stat.
21 Ch. 796 (prostitution offenses); Fla. Stat. Ch. 800 (lewdness; indecent exposure);
22 Fla. Stat. Ch. 847 (obscenity); Fla. Stat. Ch. 815 (racketeering); Fla. Stat. § 896.101
23 (Florida Money Laundering Act); Fla. Stat. § 893.13 (controlled substance offenses);
24 criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses
25 or offenses in other jurisdictions that, if the acts would have constituted any of the
26 foregoing offenses if the acts had been committed in Florida; for which:

27 a. Less than two (2) years have elapsed since the date of conviction or the date
28 of release from confinement imposed for the conviction, whichever is the later date,
29 if the conviction is of a misdemeanor offense;

30 b. Less than five (5) years have elapsed since the date of conviction or the date
31 of release from confinement for the conviction, whichever is the later date, if the
32 conviction is of a felony offense; or

33 c. Less than five (5) years have elapsed since the date of the last conviction or
34 the date of release from confinement for the last conviction, whichever is the later
35 date, if the convictions are of two or more misdemeanor offenses or combination of
36 misdemeanor offenses occurring within any 24-month period.

1 (2) The fact that a conviction is being appealed shall have no effect on the
2 disqualification of the applicant.

3 Specified sexual activity means simulated or actual:

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

5 (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia,
6 sado-masochistic abuse, felatio or cunnilingus;

7 (3) Fondling or erotic touching of human genitals, pubic region, buttock or
8 female breasts; or

9 (4) Excretory functions as a part of or in connection with any of the activities
10 described in (1), (2) and (3) above.

11 Transfer of ownership or control of a sexually oriented business shall mean any of
12 the following:

13 (1) The sale, lease, or sublease of the business;

14 (2) The transfer of securities which constitute a controlling interest in the
15 business, whether by sale, exchange, or similar means; or

16 (3) The establishment of a trust, gift, or other similar legal device which
17 transfers the ownership or control of the business, except for transfer by bequest
18 or other operation of law upon the death of the person possessing the ownership
19 or control.

20 Viewing room shall mean the room, booth, or area where a patron of sexually
21 oriented business would ordinarily be positioned while watching a film,
22 videocassette, or other video reproduction.

23

24 Sec. _____ . Classification.

25 Sexually oriented businesses shall be classified as follows:

26 (1) Adult bookstores/adult video stores;

27 (2) Adult cabarets;

28 (3) Adult motels;

29 (4) Adult motion picture theaters;

30 (5) Adult novelty stores;

31 (6) Semi-nude model studios

32

33 Sec _____ . License required.

1 (a) Requirement. No sexually oriented business establishment shall be permitted
2 to operate without having been first granted an sexually oriented business license
3 by the City planning department under this code.

4
5 (b) It shall be unlawful for any person or business entity to operate a sexually
6 oriented business in the City of Westlake without a valid sexually oriented business
7 license.

8
9 (c) An applicant for a sexually oriented business license shall file in person at
10 the office of the city clerk a completed application made on a form provided by the
11 city clerk. The application shall be signed by the applicant and notarized, and shall
12 state that the applicant is swearing or affirming all information on the application
13 is true and correct. An application shall be considered complete when it contains
14 the information required in paragraphs (1) through (6) as follows:

15 (1) The applicant's full true name and any other names used in the preceding
16 five (5) years.

17 (2) Current business address or another mailing address of the applicant.

18 (3) Written proof of age, in the form of a copy of a birth certificate and a picture
19 identification document issued by a governmental agency.

20 (4) The business name, location, legal description, mailing address and phone
21 number of the sexually oriented business.

22 (5) The name and business address of the statutory agent or other agent
23 authorized to receive service of process.

24 (6) A statement of whether the applicant has been convicted or has pled guilty
25 or nolo contendere, regardless of whether adjudication is withheld, to a specified
26 criminal activity as defined in this article, and if so, the specified criminal activity
27 involved, including the date, place, and jurisdiction of each as well as the dates of
28 conviction and release from confinement, where applicable.

29 The information provided pursuant to paragraphs (1) through (6) of this
30 subsection shall be supplemented in writing by certified mail, return receipt
31 requested, to the city clerk within ten (10) working days of a change of
32 circumstances which would render the information originally submitted incorrect
33 or incomplete.

34 (d) An application for a sexually oriented business license shall be accompanied
35 by a sketch or diagram showing the configuration of the premises, including a
36 statement of total floor space occupied by the business. The sketch or diagram need
37 not be professionally prepared but shall be drawn to a designated scale or drawn

1 with marked dimensions of the interior of the premises to an accuracy of plus or
2 minus six (6) inches. Applicants who are required to comply with sections _____
3 and _____ of this article shall submit a diagram indicating that the premises meets
4 the requirements of those sections.

5 (e) If a person who wishes to operate a sexually oriented business is an
6 individual, he or she shall sign the application for a license as applicant. If a person
7 who wishes to operate a sexually oriented business is other than an individual, each
8 officer, director, general partner or other person who will participate directly in
9 decisions relating to management and control of the business shall sign the
10 application for a license as applicant. Each applicant must be qualified under
11 section _____ and each applicant shall be considered a licensee if a license
12 is granted.

13

14

15 Sec. _____ . Issuance of license.

16 (a) Upon the filing of a completed application under section _____ for a
17 sexually oriented business license, the city clerk shall immediately issue a
18 temporary license to the applicant, which temporary license shall expire upon the
19 final decision of the city to deny or grant the license. Within twenty (20) days of the
20 initial filing date of the completed application, the clerk shall issue a license to the
21 applicant or issue to the applicant a letter of intent to deny the application. The
22 clerk shall approve the issuance of a license unless one or more of the following is
23 found to be true:

24 (1) An applicant is less than eighteen (18) years of age.

25 (2) An applicant has failed to provide information as required by section
26 _____ for issuance of a license or has falsely answered a question or request for
27 information on the application form.

28 (3) The license application fee required by this article has not been paid.

29 (4) An applicant has had a license revoked under this article within one (1) year
30 preceding the date of application.

31 (5) The sexually oriented business premises is not in compliance with the
32 interior configuration requirements of this article or is not in compliance with
33 locational requirements established in the applicable zoning regulations.

34 (6) An applicant has been convicted of a specified criminal activity, as defined
35 in this article.

36 (b) The license, if granted, shall state on its face the name of the person or
37 persons to whom it is granted, the number of the license issued to the licensee(s).

1 the expiration date, and, the address of the sexually oriented business. The sexually
2 oriented business license shall be posted in a conspicuous place at or near the
3 entrance to the sexually oriented business so that it may be easily read at any time.

4
5 Sec. _____ . Fees.

6 The initial license and annual renewal fees for sexually oriented business licenses
7 shall be as established by resolution adopted by City Council.

8 Sec. _____ . Inspection.

9 (a) Sexually oriented businesses shall permit officers or agents of the City of
10 Westlake to inspect, from time to time on an occasional basis, the portions of the
11 sexually oriented business premises where patrons are permitted, for the purpose
12 of ensuring compliance with the specific regulations of this article, during those
13 times when the sexually oriented business is occupied by patrons or is open for
14 business. A licensee's knowing or intentional refusal to permit such an inspection
15 shall not constitute a misdemeanor, but shall constitute a violation of this section
16 for purposes of license denial, suspension, and/or revocation. This section shall be
17 narrowly construed by the city to authorize reasonable inspections of the licensed
18 premises pursuant to this article, but not to authorize a harassing or excessive
19 pattern of inspections.

20 (b) The provisions of this section do not apply to areas of an adult motel which
21 are currently being rented by a customer for use as a permanent or temporary
22 habitation.

23
24 Sec. _____ . Expiration of license.

25 (a) Each license shall remain valid for a period of one (1) calendar year from the
26 date of issuance unless otherwise suspended or revoked. Such license may be
27 renewed only by making application and payment of a fee as provided in section
28 _____ and section _____ .

29 (b) Application for renewal should be made at least ninety (90) days before the
30 expiration date, and when made less than ninety (90) days before the expiration
31 date, the expiration of the license will not be affected.

32 Sec. _____ . Suspension.

33 The city shall issue a written letter of intent to suspend a sexually oriented business
34 license for a period not to exceed thirty (30) days if the sexually oriented business
35 licensee has knowingly violated this article or has knowingly allowed an employee
36 to violate this article.

37 Sec. _____ . Revocation.

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1 (a) The city shall issue a letter of intent to revoke a sexually oriented business
2 license if the licensee commits two or more causes of suspension in section
3 _____ within a twelve-month period.

4 (b) The city shall issue written intent to revoke a sexually oriented business
5 license, as applicable, if it determines that:

6 (1) The licensee has knowingly given false information in the application for the
7 sexually oriented business license.

8 (2) The licensee has knowingly engaged in or allowed possession, use, or sale of
9 controlled substances on the premises;

10 (3) The licensee has knowingly engaged in or allowed prostitution on the
11 premises;

12 (4) The licensee knowingly operated the sexually oriented business during a
13 period of time when the license was suspended;

14 (5) The licensee has knowingly engaged in or allowed any specified sexual
15 activity to occur in or on the licensed premises.

16 (c) The fact that any relevant conviction is being appealed shall have no effect
17 on the revocation of the license, provided that, if any conviction which serves as a
18 basis of a license revocation is overturned on appeal, that conviction shall be
19 treated as null and of no effect for revocation purposes.

20 (d) Nature of revocation. When, after the notice and hearing procedure
21 described in section _____, the hearing officer revokes a license, the revocation shall
22 continue for one (1) year and the licensee shall not be issued a sexually oriented
23 business license for one (1) year from the date revocation becomes effective,
24 provided that, if the conditions of section _____ (b) are met, a provisional license
25 will be granted pursuant to that section.

26

27 Sec. _____. Hearing; denial, revocation, and suspension; appeal.

28 (a) If the city determines that facts exist for denial, suspension, or revocation of
29 a license under this chapter, the city shall notify the applicant or licensee
30 (respondent) in writing of the intent to deny, suspend or revoke the license,
31 including the grounds thereof, by personal delivery, or by certified mail. The
32 notification shall be directed to the most current business address or other mailing
33 address on file with the city clerk for the respondent. Within ten (10) working days
34 of receipt of such notice, the respondent may provide to the city clerk a written
35 response that shall include a statement of reasons why the respondent believes the
36 license should not be denied, suspended, or revoked.

1 Within five (5) days of the receipt of respondent's written response, the city clerk
2 shall notify respondent in writing of the hearing date on respondent's denial,
3 suspension, or revocation proceeding. Within twenty (20) working days of the
4 receipt of respondent's written response, the hearing officer shall conduct a
5 hearing at which respondent shall have the opportunity to present all of
6 respondent's arguments and to be represented by counsel, present evidence and
7 witnesses on his or her behalf, and cross-examine any of the city's witnesses. The
8 city shall also be represented by counsel, and shall bear the burden of proving the
9 grounds for deny, suspending, or revoking the license. The hearing shall take no
10 longer than two (2) days, unless extended to meet the requirements of due process
11 and proper administration of justice. The hearing officer shall issue a written
12 opinion within five (5) days after the hearing.

13 If a court action challenging the city's decision is initiated, the city shall prepare and
14 transmit to the court a transcript of the hearing within ten (10) days after the
15 issuance of the hearing officer's written opinion. If a response is not received by the
16 city clerk in the time stated or, if after the hearing the hearing officer finds that
17 grounds as specified in this article exist for denial, suspension, or revocation, then
18 such denial, suspension, or revocation shall become final five (5) days after the city
19 sends, by certified mail, written notice to the respondent that the license has been
20 denied, suspended, or revoked. Such notice shall include a statement advising the
21 respondent of the right to appeal such decision to a court of competent jurisdiction.
22 If the hearing officer finds that no grounds exist for denial, suspension, or
23 revocation of a license, then within five (5) days after the hearing, the hearing
24 officer shall order the city clerk to immediately withdraw the intent to deny,
25 suspend, or revoke the license and to notify the respondent in writing by certified
26 mail of such action. The city clerk shall contemporaneously therewith issue the
27 license to the applicant.

28 (b) When a decision to deny, suspend or revoke a license becomes final, the
29 applicant or licensee (aggrieved party) whose application for a license has been
30 denied or whose license has been suspended or revoked shall have the right to
31 appeal or challenge such action to any court of competent jurisdiction. Upon the
32 filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's
33 enforcement of the denial, suspension, or revocation, the city shall immediately
34 issue the aggrieved party a provisional license. The provisional license shall allow
35 the aggrieved party to continue operation of the sexually oriented business and will
36 expire upon the court's entry of a judgment on the aggrieved party's appeal or other
37 action to restrain or otherwise enjoin the city's enforcement.

38 (c) Application of article during temporary license or provisional license
39 periods. Sexually oriented businesses operating or working under temporary
40 licenses (as provided for in section (a)), provisional licenses (as provided for
41 in section (b)), or de facto temporary licenses (as provided for in section

1 _____) shall be subject to the provisions of section _____, section _____,
2 section _____, section _____, section _____, and section _____
3 of this article.

4
5
6
7
8

9 Sec. _____. Transfer of license.

10 A licensee shall not transfer license to another, nor shall a licensee operate a
11 sexually oriented business under the authority of a license at any place other than
12 the address designated in the sexually oriented business license application.

13

14 Sec. _____. Hours of operation.

15 No sexually oriented business shall be or remain open for business between 1:00
16 a.m. and 8:00 a.m.

17

18 Sec. _____. Regulations pertaining to exhibition of sexually explicit films or videos.

19 (a) A person who operates or causes to be operated a sexually oriented
20 business, other than an adult motel, which exhibits on the premises in a viewing
21 room of less than one hundred fifty (150) square feet of floor space, a film, video
22 cassette, or other video reproduction characterized by an emphasis on the display
23 of specified sexual activities or specified anatomical areas shall comply with the
24 following requirements.

25 (1) Each application for a sexually oriented business license shall contain a
26 diagram of the premises showing the location of all manager's stations, viewing
27 rooms, overhead lighting fixtures, video cameras and monitors installed for
28 monitoring purposes and restrooms, and shall designate all portions of the
29 premises in which patrons will not be permitted. Restrooms shall not contain video
30 reproduction equipment. The diagram shall also designate the place at which the
31 permit will be conspicuously posted, if granted. A professionally prepared diagram
32 in the nature of an engineer's or architect's blueprint shall not be required;
33 however, each diagram shall be oriented to the north or to some designated street
34 or object and shall be drawn to a designated scale or with marked dimensions
35 sufficient to show the various internal dimensions of all areas of the interior of the
36 premises to an accuracy of plus or minus six (6) inches. The clerk may waive the

1 foregoing diagram for renewal applications if the applicant adopts a diagram that
2 was previously submitted and certifies that the configuration of the premises has
3 not been altered since it was prepared.

4 (2) The application shall be sworn to be true and correct by the applicant.

5 (3) No alteration in the configuration or location of a manager's station or
6 viewing room may be made without the prior approval of the city.

7 (4) It shall be the duty of the operator, and of any employees present on the
8 premises, to ensure that no patron is permitted access to any area of the premises
9 which has been designated as an area in which patrons will not be permitted in the
10 application filed pursuant to paragraph (1) of this subsection.

11 (5) The interior premises shall be equipped with overhead lighting fixtures of
12 sufficient intensity to illuminate every place to which patrons are permitted access
13 at an illumination of not less than one (1) foot candle as measured at the floor level.
14 It shall be the duty of the operator, and of any employees present on the premises,
15 to ensure that the illumination described above is maintained at all times that the
16 premises is occupied by patrons or open for business.

17 (6) It shall be the duty of the operator, and of any employees present on the
18 premises, to ensure that no sexual activity occurs in or on the licensed premises.

19 (7) It shall be the duty of the operator, and of any employees present on the
20 premises, to ensure that not more than one person is present in a viewing room at
21 any time. No person shall enter a viewing room that is occupied by another person.

22 (8) It shall be the duty of the operator, and of any employees present on the
23 premises, to ensure that no openings of any kind exist between viewing rooms. No
24 person shall make an attempt to make an opening of any kind between viewing
25 rooms.

26 (9) It shall be the duty of the operator, or of any employee who discovers two
27 or more patrons in a viewing room or discovers any person making or attempting
28 to make an opening of any kind between viewing rooms, to immediately escort such
29 persons from the premises.

30 (10) It shall be the duty of the operator, or of any employee, who discovers an
31 opening of any kind between viewing rooms to immediately secure such rooms,
32 and prevent entry into them by any patron until such time as the wall between the
33 rooms has been repaired to remove the opening. Removal and repairing openings
34 between viewing rooms shall be in a manner that is as structurally substantial as
35 the original wall construction.

36 (11) It shall be the duty of the operator, at least once each business day, to inspect
37 the walls between viewing rooms for openings of any kind, documented by
38 appropriate logs.

1 (12) It shall be the duty of the operator to post conspicuous signs in well-lighted
2 entry areas of the business stating all of the following:

3 a. That no loitering is permitted in viewing rooms.

4 b. That the occupancy of viewing rooms is limited to one (1) person.

5 c. That sexual activity on the premises is prohibited.

6 d. That the making of openings between viewing rooms is prohibited.

7 e. That violators will be required to leave the premises.

8 f. That violations of subparagraphs b., c. and d. of this paragraph are unlawful.

9 (13) It shall be the duty of the operator to ensure that floor coverings in viewing
10 rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

11 (14) It shall be the duty of the operator to ensure that all wall surfaces and seating
12 surfaces in viewing rooms are constructed of or permanently covered by
13 nonporous easily cleanable material.

14 (15) It shall be the duty of the operator to ensure that premises are clean and
15 sanitary. Such duty shall be fulfilled if the operator complies with the following
16 cleaning procedures:

17 a. The operator shall maintain a regular cleaning schedule of at least two (2)
18 cleanings per day, documented by appropriate logs.

19 b. The operator shall provide an employee to check all areas for garbage, trash,
20 body fluids and excrement and to remove and clean all areas with a disinfectant.

21 c. Thorough cleaning of the entire interior of any room providing patron
22 privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors,
23 seating, monitors, video cameras, and windows and other surfaces.

24 (16) The interior of the premises shall be configured in such a manner that there
25 is an unobstructed view from a manager's station of every area of the premises,
26 including the interior of each viewing room but excluding restrooms, to which any
27 patron is permitted access for any purpose. A manager's station shall not exceed
28 thirty-two (32) square feet of floor area. If the premises has two (2) or more
29 manager's stations designated, then the interior of the premises shall be configured
30 in such a manner that there is an unobstructed view of each area of the premises to
31 which any patron is permitted access for any purpose from at least one (1) of the
32 manager's stations. The view required in this paragraph must be by direct line of
33 sight from the manager's station. It is the duty of the operator to ensure that at least
34 one (1) employee is on duty and situated in each manager's station at all times that
35 any patron is on the premises. It shall be the duty of the operator, and it shall also
36 be the duty of any employees present on the premises, to ensure that the view area
37 specified in this paragraph remains unobstructed by any doors, curtains, walls,

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1 merchandise, display racks or other materials or enclosures at all times that any
2 patron is present on the premises.

3 (17) It shall be the duty of the operator or manager of the business to ensure that
4 no sexually oriented entertainment activity or visual depictions characterized by
5 an emphasis on actual "specified anatomical areas" or "specified sexual activities"
6 are visible from a public right of way adjacent to the establishment.

7 (b) It shall be unlawful for a person having a duty under this section to
8 knowingly fail to fulfill that duty.

9

10 Sec. ____ . Loitering and exterior lighting and monitoring requirements.

11 (a) It shall be the duty of the operator of a sexually oriented business to:

12 (1) Post conspicuous signs stating that no loitering is permitted on such
13 property;

14 (2) Designate one or more employees to monitor the activities of persons on
15 such property by visually inspecting such property at least once every ninety (90)
16 minutes or inspecting such property by use of video cameras and monitors; and

17 (3) Provide lighting of the exterior premises to provide for visual inspection or
18 video monitoring to prohibit loitering. If used, video cameras and monitors shall
19 operate continuously at all times that the premises are open for business. The
20 monitors shall be installed within a manager's station.

21 (b) It shall be unlawful for a person having a duty under this section to
22 knowingly fail to fulfill that duty.

23

24 Sec. ____ . Penalties and enforcement.

25 (a) A person who knowingly violates, disobeys, omits, neglects, or refuses to
26 comply with or resists the enforcement of any of the provisions of this chapter shall
27 be subject to a penalty, not to exceed five hundred dollars (\$500.00) and sixty (60)
28 days in jail, upon proper adjudication in a court of competent jurisdiction. Each day
29 the violation is committed, or permitted to continue, shall constitute a separate
30 offense and shall be fined as such.

31 (b) The city attorney is hereby authorized to institute proceedings necessary for
32 the enforcement of this article to prosecute, restrain, or correct violations hereof.
33 Such proceedings, including injunction, shall be brought in the name of the city,
34 provided, however, that nothing in this section and no action taken hereunder, shall
35 be held to exclude such criminal proceedings as may be authorized by other
36 provisions of the City Code, or any of the laws or ordinances in force in the city or

1 to exempt anyone violating this Code or any part of the said laws from any penalty
2 which may be incurred.

3 Sec. _____ . Applicability of article to existing businesses.

4 Upon the passage of Ord. No. _____ , the provisions of this article shall apply
5 to the activities of all sexually oriented businesses described herein, regardless of
6 whether such businesses or activities were established or commenced before, on,
7 or after the effective date of this article, provided that:

8 (1) All existing sexually oriented businesses are hereby granted a de facto
9 temporary license to continue operation or employment for a period of ninety (90)
10 days following the effective date of this article.

11 (2) Within said one hundred ninety (90) days, all sexually oriented businesses
12 must make application for a license pursuant to this article.

13 (3) Within said ninety (90) days, all sexually oriented businesses must make
14 any necessary changes to the interior configurations of the regulated business
15 premises (e.g., building a stage, removing doors from video booths) to conform to
16 this article. This ninety (90) day grace period for making interior configuration
17 changes shall not relieve the sexually oriented business and its employees of the
18 duty to maintain the distance of six (6) feet between semi-nude employees and
19 patrons, as required by section _____ (b), nor shall it relieve the business and its
20 employees of the duty to abide by the provisions of subsections _____ (a), (c) and (d).

21

22 Sec. _____ . Prohibited activities.

23 (a) It is unlawful for a sexually oriented business to knowingly violate the
24 following regulations or to knowingly allow an employee or any other person to
25 violate the following regulations.

26 (1) It shall be a violation of this article for a patron, employee, or any other
27 person to knowingly or intentionally, in a sexually oriented business, appear in a
28 state of nudity, regardless of whether such public nudity is expressive in nature.

29 (2) It shall be a violation of this article for a person to knowingly or
30 intentionally, in a sexually oriented business, appear in a semi-nude condition
31 unless the person is an employee who, while semi-nude, remains at least six (6) feet
32 from any patron or customer and on a stage at least eighteen (18) inches from the
33 floor in a room of at least one thousand (1,000) square feet.

34 (3) It shall be a violation of this article for any employee who regularly appears
35 semi-nude in a sexually oriented business to knowingly or intentionally touch a
36 customer or the clothing of a customer on the premises of a sexually oriented
37 business.

1 (4) It shall be a violation of this article for any person to sell, use, or consume
2 alcoholic beverages on the premises of a sexually oriented business.

3 (b) A sign in a form to be prescribed by the city clerk and summarizing the
4 provisions of paragraphs (1), (2), (3), and (4) of subsection (a), shall be posted near
5 the entrance of the sexually oriented business in such a manner as to be clearly
6 visible to patrons upon entry.

7
8 Sec. _____ . Scierter required to prove violation or business licensee liability.

9 Notwithstanding anything to the contrary, for the purposes of this article, an act by
10 an employee that constitutes grounds for suspension or revocation of that
11 employee's license shall be imputed to the sexually oriented business licensee for
12 purposes of finding a violation of this article, or for purposes of license denial,
13 suspension, or revocation, only if an officer, director, or general partner, or a person
14 who managed, supervised, or controlled the operation of the business premises,
15 knowingly, or with constructive knowledge, allowed such act to occur on the
16 premises. It shall be a defense to liability that the person to whom liability is
17 imputed was powerless to prevent the act.

18
19 Sec. _____ . Failure of city to meet time frame not to risk applicant/licensee rights.

20 In the event that a city official is required to take an act or do a thing pursuant to
21 this article within a prescribed time, and fails to take such act or do such thing
22 within the time prescribed, said failure shall not prevent the exercise of
23 constitutional rights of an applicant or licensee. If the act required of the city under
24 this article is not completed in the time prescribed, includes approval of
25 condition(s) necessary for approval by the city of an applicant or licensee's
26 application for a sexually oriented business license (including a renewal), the
27 applicant or licensee shall be allowed to commence operations or employment the
28 day after the deadline for the city's action has passed.

29
30 Sec. _____ . - Standards and requirements for sexually oriented business
31 establishments.

32
33 (a)Location. Sexually oriented business establishments as defined herein which
34 meet all requirements set forth in this chapter shall be permitted only in the Mixed
35 Use district and shall be located the following minimum distances from other
36 uses:(1) Another sexually oriented business establishment or use: 1,000 feet. (2)A
37 church or place of worship: 1,000 feet. (3)An educational institution:

1 1,000 feet.(4)A public park: 1,000 feet.(5)Existing residence residentially
2 zoned and/or real property: 1,000 feet.

3

4 (b)Measurement. For the purpose of measuring distances in the determination of
5 locations for sexually oriented business establishments and related accessory uses,
6 as defined herein, all distances shall be measured from property line to property
7 line in a straight path without regard to intervening structures or objects. Location
8 requirements may not be varied.

9

10 (c)On-site parking requirements. One parking space per each 100 square feet of
11 gross floor area is required. Off-site parking is strictly prohibited.

12 Sec. ____ . Severability.

13 This article and each section and provision of said chapter hereunder, are hereby
14 declared to be independent divisions and subdivisions and, notwithstanding any
15 other evidence of legislative intent, it is hereby declared to be the controlling
16 legislative intent that if any provisions of said chapter, or the application thereof to
17 any person or circumstance is held to be invalid, the remaining sections or
18 provisions and the application of such sections and provisions to any person or
19 circumstances other than those to which it is held invalid, shall not be affected
20 thereby, and it is hereby declared that such sections and provisions would have
21 been passed independently of such section or provision so known to be invalid.
22 Should any procedural aspect of this article be invalidated, such invalidation shall
23 not affect the enforceability of the substantive aspects of this article.

24 **SECTION 3. Codification.** It is the intention of the City Council of the City of
25 Westlake that the provisions of this Ordinance shall become and be made a part of
26 the Code of Ordinances of the City of Westlake, Florida, and that the Sections of this
27 Ordinance may be renumbered, re-lettered and the word "Ordinance" may be
28 changed to "Section," "Article" or such other word or phrase in order to accomplish
29 such intention.

30

31 **SECTION 4. Conflicts.** All ordinances or parts of ordinances,
32 resolutions or parts of resolutions which are in conflict herewith, are hereby
33 repealed to the extent of such conflict.

34

35

36 **SECTION 5. Effective Date.** This ordinance shall be effective upon
37 adoption on second reading.

38

39 **PASSED** this ____ day of _____, 2023, on first reading.

1 **PUBLISHED** on this ____ day of _____, 2023 in the Palm Beach Post.

2 **PASSED AND ADOPTED** this ____ day of _____, 2023, on second reading.

3

4

City of Westlake

5

John Paul O'Connor, Mayor

6 **ATTEST:**

7

Zoie Burgess, City Clerk

9

10

APPROVED AS TO LEGAL FORM:

11

12

OFFICE OF THE CITY ATTORNEY

13

14

15

16