

Chapter 65

ADULT USES

[HISTORY: Adopted by the Town Council of the Town of Callahan as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Alcoholic beverages — See Ch. 66.
Public nudity — See Ch. 129.
Zoning — See Ch. 195.

ARTICLE I

Sale of Sexual Devices

[Adopted 2-7-2005 by Ord. No. 1-O-2005]

§ 65-1. Sale prohibited.

It shall be unlawful to publicly distribute devices designed or marketed as useful primarily for the stimulation of human genital organs within the corporate limits of the Town of Callahan, Florida in return for anything of pecuniary value.

- A. "Publicly distribute" means to import, export, sell, rent, lend, transfer possession of or title to, display, show, present, or provide items in a manner that, regardless of any age restrictions, is observable by, open to the public generally, or conducted on commercial premises.
- B. "For any thing of pecuniary value" means in exchange for, in return for, or for any consideration consisting of, whether wholly or partly:
 - (1) Any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property, whether real or personal, tangible or intangible; or
 - (2) Any offer or agreement to pay, furnish or provide any money, negotiable instrument, debt, credit, chose in action, interest in wealth, or any other property, whether real or personal, tangible or intangible.
- C. "Genital organs" includes all parts of the male and female reproductive organs and the anus.

§ 65-2. Applicability.

This article does not apply to acts performed for a bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose. Public distribution for a bona fide medical, scientific, educational, legislative, judicial or law enforcement purpose shall be an affirmative defense to any fine imposed pursuant to this article.

§ 65-3. Effect on license.

The Town of Callahan shall not issue or renew the occupational or business license of any person or entity whose business intends to or does violate this article.

§ 65-4. Penalties for offenses.

Any person or entity that violates this article shall be guilty of a misdemeanor punishable by a fine not to exceed \$500 per occurrence or imprisonment in the County jail not to exceed 60 days, or both. Each calendar day that the conduct that violates this article is not abated after receiving notice of the violation constitutes a separate violation.

§ 65-5. Enforcement.

In addition to any other remedy or power available to the Town of Callahan, the Town Council may direct the Town Attorney to obtain an injunction from a court of competent jurisdiction that orders the abatement of any conduct that violates this article.

ARTICLE II
Regulation of Sexually Oriented Businesses
[Adopted 3-7-2005 by Ord. No. 2-O-2005]

§ 65-6. Purpose and findings.

- A. Purpose. It is the purpose of this article to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the Town of Callahan, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials.
- B. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented and made available to the Town Council as well as studies conducted in other cities, including but not limited to Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics developed by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Town Council finds that:
- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

- (2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.
- (3) Sexual acts, including masturbation and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- (6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, non-A, non-B, amebiasis, salmonella infections, and shigella infections.
- (7) As of June, 2001, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 793,025.
- (8) As of 2003, there have been 95,141 reported cases of AIDS in the State of Florida, according to the Florida Department of Health.
- (9) The total number of cases of genital chlamydia trachomatis infections in the United States reported in 2000 was 702,093, a six-percent increase over the year 1999.
- (10) The total number of cases of early (less than one year) syphilis in the United States reported during the period 1996-2000 was 212,672.
- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,730,911 cases reported during the period 1996-2000.
- (12) The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (13) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part because the activities conducted there are unhealthy and in part because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities.
- (15) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view adult-oriented films.

- (16) Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity.
- (17) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use.
- (18) Alcohol consumption in adult establishments increases the likelihood of crime, illegal drug use, and illegal sexual activity, and encourages undesirable behavior that is not in the interest of the public health, safety, and welfare.
- (19) The findings noted in Subsection B(1) through (18) raise substantial governmental concerns.
- (20) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (21) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such licensing procedure will place a heretofore nonexistent incentive on operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- (22) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.
- (23) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.
- (24) It is desirable, in the prevention of crime and the spread of communicable diseases, to obtain a limited amount of information regarding certain employees who may engage in the conduct this article is designed to prevent or who are likely to be witnesses to such activity.
- (25) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this article.
- (26) The barring of such individuals from operation or employment in sexually oriented businesses for a period of five years for a previous felony conviction serves as a deterrent to further criminal conduct and prevents conduct which leads to the transmission of sexually transmitted diseases.
- (27) The general welfare, health, morals, and safety of the citizens of this Town will be promoted by enactment of this article.

- (28) When more than one sexually oriented business use occupies the same location or business address, the secondary effects caused by such businesses are increased. Secondary effects are eliminated or controlled to a greater degree when only a single sexually oriented business use is allowed to occupy the same location.

§ 65-7. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion-picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE or ADULT VIDEO STORE — A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, videocassettes or video reproductions, slides, or other visual representations that are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas. A principal business purpose exists if materials offered for sale or rental depicting or describing specified sexual activities or specified anatomical areas generate 20% or more of the business's income, or account for 20% or more of inventory, or occupy 20% or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration of the specified materials that depict or describe specified sexual activities or specified anatomical areas.

ADULT CABARET — A nightclub, bar, restaurant, cafe, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

- A. Persons who appear in a state of nudity or semi-nudity;
- B. Live performances that are distinguished or characterized by the exposure of specified anatomical areas or by specified sexual activities;
- C. Films, motion pictures, videocassettes, slides, photographic reproductions, or other image-producing devices that are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
- D. Persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

ADULT MOTEL — A hotel, motel or similar commercial establishment that:

- A. Offers accommodation to the public for any form of consideration and provides patrons

with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions;

- B. Offers a sleeping room for rent for a period of time that is less than 24 hours; or
- C. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 24 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER — A theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or seminudity, and/or live performances that are distinguished or characterized by the exposure of specified anatomical areas or by specified sexual activities.

EMPLOYEE — A person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY — A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISHMENT — Includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The additions of any sexually oriented business to any other existing sexually oriented business;
- D. The relocation of any sexually oriented business; or
- E. A sexually oriented business or premises on which the sexually oriented business is located.

LICENSED DAY-CARE CENTER — A facility licensed by the State of Florida, whether situated within the Town or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

LICENSEE — A person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

LIVE THEATRICAL PERFORMANCE — A play, skit, opera, ballet, concert, comedy, or musical drama.

NUDE MODEL STUDIO — Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

NUDITY or a STATE OF NUDITY — The appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

PERSON — An individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES — The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including but not limited to the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to § 65-9 of this article.

SEMINUDE or SEMINUDITY — The appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex;
or
- B. Activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or seminudity.

A principal business purpose exists if the services offered are intended to generate business income.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, nude model

studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS

- A. The human male genitals in a discernibly turgid state, even if fully and opaquely covered;
- B. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

SPECIFIED CRIMINAL ACTIVITY — Any of the following offenses: Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries, for which:

- A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
- B. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense;
- C. Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- C. Masturbation, actual or simulated; or
- D. Excretory functions as part of or in connection with any of the activities set forth in Subsections A through C above.

SUBSTANTIAL ENLARGEMENT (of a sexually oriented business) — The increase in floor areas occupied by the business by more than 25%, as the floor areas existed on March 7, 2005.

TRANSFER OF OWNERSHIP OR CONTROL (of a sexually oriented business) — Includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

- C. The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 65-8. Classification.

Sexually oriented business uses are classified as follows:

- A. Adult arcades.
- B. Adult bookstores or adult video stores.
- C. Adult motels.
- D. Adult motion-picture theaters.
- E. Adult theaters.
- F. Adult cabarets.
- G. Escort agencies.
- H. Nude model studios.
- I. Sexual encounter centers.

§ 65-9. License required.

- A. It shall be unlawful:
 - (1) For any person to operate a sexually oriented business without a valid sexually oriented business operator's license ("operator's license") issued by the Town Clerk pursuant to this article;
 - (2) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business if such employee is not in possession of a valid sexually oriented business employee license ("employee license") issued to such employee by the Town Clerk pursuant to this article; or
 - (3) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Director pursuant to this article.
 - (4) It shall be a defense to Subsections A(2) and (3) of this section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.
 - (5) Violation of any provision within this subsection shall constitute a misdemeanor.
- B. An application for a sexually oriented business operator's license must be made on a form provided by the Town. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space

occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Prior to issuance of an operator's license, the premises must be inspected by the Town's Building Inspector and Zoning Administrator. Prior inspection by the Town's Building Inspector and Zoning Administrator shall be required only when the provisions set forth in §§ 65-24 and/or 65-23 are applicable.

- C. An application for a sexually oriented business employee license must be made on a form provided by the Town.
- D. All applicants for a license must be qualified according to the provisions of this article. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the Town to determine whether the applicant meets the qualifications established under this article. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.
- E. If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten-percent or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.
- F. Applications for an operator's license, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The following information shall be provided on the application form:
 - (1) The name, street address (and mailing address if different) of the applicant(s).
 - (2) The applicant's social security number or its federally issued tax identification number.
 - (3) The name under which the establishment is to be operated and a general description of the services to be provided. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business's fictitious name and submit the required registration documents.
 - (4) Whether the applicant has been convicted, or is awaiting trial on pending charges, of a specified criminal activity, as defined in § 65-7, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
 - (5) Whether the applicant has had a previous license under this article or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for

- which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- (6) Whether the applicant holds any other licenses under this article or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.
 - (7) The single classification of license, as found in § 65-8, for which the applicant is filing.
 - (8) The telephone number of the establishment.
 - (9) The address and legal description of the tract of land on which the establishment is to be located.
 - (10) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought.
 - (11) If the establishment is not in operation, the expected start up date (which shall be expressed in number of days from the date of issuance of the business license). If the expected start up date is to be more than 10 days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.
 - (12) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, videocassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 65-22 hereunder.

G. Each application for an operator's license shall be accompanied by the following:

- (1) Payment of the application fee in full.
- (2) If applicant is an entity, a certified copy of the applicant's articles of incorporation, organizational articles, or other documents reflecting the entities registration with a state, together with all amendments thereto.
- (3) If the establishment is a foreign entity, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.
- (4) Proof of the current fee ownership of the tract of land on which the establishment is to

be situated in the form of a copy of the recorded deed.

- (5) If the person(s) identified as the fee owner(s) of the tract of land in Subsection G(4) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business.
 - (6) A current certificate and straight-line drawing prepared, within 30 days prior to application, by a registered land surveyor, depicting the property lines and the structures containing any existing sexually oriented businesses within 1,500 feet of the property to be certified and the property lines of any established religious institution/synagogue, school, public park or recreation area within 800 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
 - (7) Current iterations of Subsection G(2) through (6) shall be furnished to the Town Clerk with any renewal applications.
- H. Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Town Clerk by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the Town Clerk. Applications must be submitted to the office of the Town Clerk or the Clerk's designee during regular working hours. Each applicant shall be required to give the following information on the application form:
- (1) The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases.
 - (2) Age, and date and place of birth.
 - (3) Height, weight, hair color, and eye color.
 - (4) Present residence address and telephone number.
 - (5) Present business address and telephone number.
 - (6) Date, issuing state, and number of photo driver's license, or other state issued identification card information.
 - (7) Social security number.
 - (8) Proof that the individual is at least 18 years old.

The personal information provided in this subsection shall be confidential and shall not be disclosed to the public except to the extent required by state or federal law.

- I. Attached to the application form for any license under this article shall be the following:
- (1) A color photograph of the applicant clearly showing the applicant's face, and the

applicant's fingerprints on a form provided by or acceptable to the Nassau County Sheriff's office. Any fees for photographs and fingerprints shall be paid by the applicant.

- (2) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- (3) A statement whether the applicant has, within the past five years, been convicted or is awaiting trial on pending charges of a "specified criminal activity" as defined in § 65-7 and, if so, the "specified criminal activity" involved; the date, place and jurisdiction of each.

J. Every application for a license under this article shall contain a statement under oath that:

- (1) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and
- (2) The applicant has read the provisions of this article.

K. A separate application and operator's license shall be required for each sexually oriented business classification as set forth in § 65-8.

L. The fact that a person possesses other types of state or Town permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business operator or employee license.

§ 65-10. Issuance of license.

A. Upon the filing of an application for a sexually oriented business employee license, the Town Clerk shall issue a temporary license to said applicant. An investigation shall then be made on the information contained in the application. The application process shall be completed within 90 days from the date of the completed application.

- (1) After the investigation, the Town Clerk shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - (a) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (b) The applicant is under the age of 18 years;

- (c) The applicant has been convicted of a "specified criminal activity" as defined in § 65-7 of this article;
 - (d) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this article; or
 - (e) The applicant has had a sexually oriented business employee license revoked by the Town within two years of the date of the current application.
 - (2) If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Subsection I of this section.
- B. A license issued pursuant to Subsection A of this section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.
- C. A license issued pursuant to Subsection A of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity," as defined in this article, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within 90 days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 65-11. Nonrenewal of a license shall be subject to appeal as set forth in Subsection I of this section.
- D. If application is made for a sexually oriented business operator's license, the Town Clerk shall approve or deny issuance of the license within 90 days of receipt of the completed application. The Town Clerk shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - (1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (2) An applicant is under the age of 18 years;
 - (3) An applicant has been denied a license by the Town to operate a sexually oriented business within the preceding 12 months, or whose license to operate a sexually oriented business has been revoked within the preceding 12 months;
 - (4) An applicant is overdue in payment to the Town for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought or the property on which the sexually oriented business is located or will be located;
 - (5) An applicant has been convicted of a "specified criminal activity" as defined in §

65-7;

- (6) The premises to be used for the sexually oriented business have not been approved by the Health Department, Building Department, and Zoning Department as being in compliance with applicable laws and ordinances, if such approval is required under other sections of this article;
 - (7) The license fee required under this article has not been paid;
 - (8) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this article.
- E. A license issued pursuant to Subsection D of this section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the § 65-8 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- F. If so required under other sections of this article, the Building Inspector and Zoning Administrator shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the completed application by the Town Clerk. The certification shall be promptly presented to the Town Clerk. Failure of an appropriate department to timely certify its inspection shall not be grounds for refusing to issue a license within the mandatory time period prescribed in Subsection D. In the event the Town Clerk fails to render a decision on the application within the time specified herein, the operator shall be permitted to commence operation of the business.
- G. A sexually oriented business license shall issue for only one classification, as set forth in § 65-8.
- H. In the event that the Town Clerk determines that an applicant is not eligible for a sexually oriented business operator's license, the applicant shall be given notice in writing of the reasons for the denial within 90 days of the receipt of the completed application by the Town Clerk, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than 10 days in order to make modifications necessary to comply with this article.
- I. An applicant may appeal the decision of the Town Clerk regarding a denial to the Town Council by filing a written notice of appeal with the city secretary within 10 days after service of notice upon the applicant of the Town Clerk's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Town Clerk may, within 15 days of service upon him of the applicant's memorandum, submit a responsive memorandum to the Town Council. After reviewing such memoranda, as well as the Town Clerk's written decision, if any, and exhibits submitted to the Town Clerk, the Town Council shall vote either to uphold or overrule the Town Clerk's decision. Such vote shall be taken within 21 calendar days after the date on which the city secretary receives the notice of appeal.
- J. A license issued pursuant to Subsection D of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant

has not been convicted of any "specified criminal activity," as defined in this article, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within 30 days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 65-11.

- K. A business existing and operating as a sexually oriented business at the time of the adoption of this article shall have 75 days in which to comply with the licensing provisions required herein. Employees of an existing sexually oriented business shall have 60 days in which to comply with the licensing provisions required herein.

§ 65-11. Fees.

The annual fee for a sexually oriented business operator's license, whether new or renewal, is \$500. The annual fee for a sexually oriented business employee license, whether new or renewal, is \$50. These fees are to be used to pay for the cost of the administration and enforcement of this article.

§ 65-12. Inspection.

- A. The Town shall regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this article. An applicant or licensee shall permit representatives of the Town to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this article; and to requests for identification of those individuals who reasonably appear to be under the age of 18.
- B. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he/she refuses to promptly permit such lawful inspection of the premises.

§ 65-13. Expiration of license: denial of renewal.

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 65-9. Application for renewal should be made at least 30 days before the expiration date. When application is made less than 30 days before the expiration date, the expiration of the license will not be affected.
- B. When the Town Clerk denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

§ 65-14. Suspension.

The Town Clerk shall suspend a license for a period not to exceed 30 days if he determines that the licensee or an employee of licensee has:

- A. Violated or is not in compliance with any section of this article;
- B. Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;

- C. Refused to allow prompt inspection of the sexually oriented business premises as authorized by this article;
- D. With knowledge, permitted gambling by any person on the sexually oriented business premises.

A licensee may appeal the revocation of a license to the Town Council in accordance with the procedure set forth in § 65-10I.

§ 65-15. Revocation.

- A. The Town Clerk shall revoke a license if a cause of suspension in § 65-14 occurs and the license has been suspended within the preceding 12 months.
- B. The Town Clerk shall revoke a license if he determines that:
 - (1) A licensee gave materially false or misleading information in the material submitted during the application process;
 - (2) A licensee was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
 - (3) A licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;
 - (4) A licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;
 - (5) A licensee has, with knowledge, permitted prostitution on the premises;
 - (6) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (7) A licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;
 - (8) A licensee is delinquent in payment to the Town or state for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;
 - (9) A licensee has, with knowledge, permitted a person under 18 years of age to enter or remain in the establishment;
 - (10) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a nonlicensee of the establishment; or
 - (11) A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.
- C. When the Town Clerk revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a license for one year from the date revocation became

effective. A licensee may appeal the revocation of a license to the Town Council in accordance with the procedure set forth in § 65-10I.

§ 65-16. No transfer of license.

- A. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application and set forth in the operator's license.
- B. An operator's license shall not be transferable from one location to another.

§ 65-17. Location restrictions.

Sexually oriented businesses shall be permitted in any commercial district, provided that:

- A. The sexually oriented business may not be operated within:
 - (1) Eight hundred feet of a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - (2) Eight hundred feet of a public or private educational facility, including but not limited to child day-care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; "school" includes the school ground but does not include the facilities used primarily for another purpose and only incidentally as a school;
 - (3) Eight hundred feet of a public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Town;
 - (4) Eight hundred feet of the property line of a lot zoned for residential use and devoted to a residential use as defined in the Zoning Code; or
 - (5) Eight hundred feet of another sexually oriented business.
- B. A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business that is classified in accordance with § 65-8.
- C. For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, or licensed day-care center.
- D. For purposes of Subsection C of this section, the distance between any two sexually

oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

§ 65-18. Nonconforming uses.

- A. Any business lawfully operating on the effective date of this article that is in violation of the locational requirements of this article shall be deemed a nonconforming use. The nonconforming use will be permitted, but no change whatsoever in the nature of the sexually oriented business engaged shall be permitted. All other provisions of this article shall apply to the nonconforming use, including those that may require the business to eliminate certain classifications of sexually oriented business.
- B. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, or residential district within 800 feet of the sexually oriented business. This provision applies only to the renewal of a valid business license and does not apply when an application for a business license is submitted after an operator's license has expired or has been revoked.

§ 65-19. Additional regulations for adult motels.

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the enterprise is an "adult motel" as that term is defined in this chapter.
- B. It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again.
- C. For purposes of Subsection B of this section, the term "rent" or "subrent" means the act of permitting a room to be occupied for any form of consideration.
- D. Violation of Subsection B of this section shall constitute a misdemeanor.

§ 65-20. Additional regulations for escort agencies.

- A. An escort agency shall not employ any person under the age of 18 years.
- B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.
- C. Violation of this section shall constitute a misdemeanor.

§ 65-21. Additional regulations for nude model studios.

- A. A nude model studio shall not employ any person under the age of 18 years.

- B. A person under the age of 18 years commits a misdemeanor if the person appears seminude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a rest room not open to the public view or visible by any other person.
- C. A person commits a misdemeanor if the person appears in a state of nudity or, with knowledge, allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

§ 65-22. Regulations pertaining to exhibition of sexually explicit films and videos.

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, videocassette, or other video reproduction that depicts specified sexual activities or specified anatomical areas shall comply with the following requirements:
 - (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since said diagram was prepared.
 - (2) The application shall be sworn to be true and correct by the applicant.
 - (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town Clerk.
 - (4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
 - (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be

configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- (6) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection A of this section remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other object(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to Subsection A of this section.
 - (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candle as measured at the floor level.
 - (8) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
 - (9) No viewing room or booth may be occupied by more than one person at any time.
 - (10) No opening of any kind shall exist between viewing rooms or booths.
 - (11) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one person at a time occupies a viewing booths or rooms, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.
 - (12) The operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
 - (13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
 - (14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.
- B. A person having a duty under Subsections A(1) through (14) of this section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty.

§ 65-23. Exterior portions of sexually oriented businesses.

- A. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from any point outside the

establishment.

- B. It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this article.
- C. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:
 - (1) The establishment is a part of a commercial multiunit center; and
 - (2) The exterior portions of each individual unit in the commercial multiunit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multiunit center.
- D. Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.
- E. A violation of any provision of this section shall constitute a misdemeanor.

§ 65-24. Signage.

- A. Notwithstanding any other Town ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one primary sign and one secondary sign, as provided herein.
- B. Primary signs shall have no more than two display surfaces. Each such display surface shall:
 - (1) Not contain any flashing lights;
 - (2) Be a flat plane, rectangular in shape;
 - (3) Not exceed 75 square feet in area; and
 - (4) Not exceed 10 feet in height or 10 feet in length.
- C. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner and may contain only the name of the enterprise.
- D. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- E. Secondary signs shall have only one display surface. Such display surface shall:
 - (1) Be a flat plane, rectangular in shape;
 - (2) Not exceed 20 square feet in area;

- (3) Not exceed five feet in height and four feet in width; and
- (4) Be affixed or attached to any wall or door of the enterprise.
- F. The provisions of Subsection B(1) and Subsections C and D shall also apply to secondary signs.
- G. Violation of any provision of this section shall constitute a misdemeanor.

§ 65-25. Sale, use, or consumption of alcoholic beverages prohibited.

- A. The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.
- B. Any violation of this section shall constitute a misdemeanor.

§ 65-26. Minors prohibited from entry; attendant required.

- A. It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- B. It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of 18 years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished:
 - (1) A valid operator's, commercial operator's, or chauffeur's driver's license; or
 - (2) A valid personal identification certificate issued by the State of Florida reflecting that such person is 18 years of age or older.
- C. Violation of this section shall constitute a misdemeanor.

§ 65-27. Massages or baths.

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided. Violation of this section shall constitute a misdemeanor.

§ 65-28. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 10:00 p.m. and 11:00 a.m. on weekdays and Saturdays. No sexually oriented business shall open for business or remain open for business on Sunday or any legal holiday recognized by the State of Florida.

§ 65-29. Exemptions.

Notwithstanding any other provision in this article, movies rated G, PG, PG-13, R, or NC-17 by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this article.

§ 65-30. Notices.

- A. Any notice required or permitted to be given by the Town Clerk or any other Town office, division, department or other agency under this article to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license or any notice of address change that has been received by the Town Clerk. Notices mailed as above shall be deemed "given" upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Town Clerk or his designee shall cause it to be posted at the principal entrance to the establishment.
- B. Any notice required or permitted to be given to the Town Clerk by any person under this article shall not be deemed "given" until and unless it is received in the office of the Town Clerk.
- C. It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Town Clerk, in writing, of any change of residence or mailing address.

§ 65-31. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid operator's license, or in violation of § 65-17 of this article, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.