

ADMINISTRATIVE MEMORANDUM NO. 19-084

**TO:** Planning and Zoning Board  
**VIA:** David L. Recor, ICMA-CM, Director of Development Services  
**VIA:** Jennifer Gomez, AICP, Assistant Director of Development Services  
**FROM:** Daniel T. Keester-O'Mills, AICP, Principal Planner  
**SUBJECT:** Text Amendments to Chapter 155, Zoning Code  
Article 4 – Use Standards for Sexually Oriented Business  
**DATE:** April 12, 2019 - Revised 4/23/2019

The Development Services Department has prepared a text amendment to Chapter 155 which clarifies that when a use is defined as a "Sexually Oriented Business" that shall be considered the principal use, and no other uses may be permitted in connection with that business unless specifically listed as a customary accessory use. Staff believes that this text amendment is consistent with State Statutes, as it is intended to protect minors and the general public from being exposed to obscene acts (as defined by Chapter 847 of the Florida State Statutes). The amendment seeks to prohibit "sexually oriented businesses" from proposing expansions or additions to the business from other uses that may be permitted within the same zoning district.

Staff is recommending that this proposed text amendment be declared "Zoning in Progress," and staff will defer relevant applications in accordance with the applicable standards of the Zoning Code (155.2309 Review of Applications for Permits and Development Orders with Regard to Zoning in Progress).

## Chapter 155, Article 4, Part 2

### § 155.4201. GENERAL

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#### C. Development with Multiple Principal Use Types

A development may include multiple principal uses, provided each principal use is a principal use type allowed in the applicable zoning district and the development complies with any use-specific standards applicable to each of the included use types. If a use within a development is determined to be an accessory use to a principal use in the development, such accessory use shall be subject to the accessory use standards in [Article 4: Part 3](#) (Accessory Uses and Structures). However if no accessory use standards are established in Section [155.4303](#), Standards for Specific Accessory Uses and Structures, such accessory use shall be subject to the principal use standards in [Article 4: Part 2](#), Principal Uses and Structures, as well as the standards in Section [155.4302.B](#), General Standards for All Accessory Uses and Structures.

##### I. Exemptions

- a. Sexually Oriented Businesses (155.4224.A.), due to the operational characteristics, shall not be permitted to have multiple principal uses. Additionally, permitted accessory uses shall be limited to those identified as Customary Accessory Uses to a sexually oriented business identified in the use-specific standards. All Principal and Customary Accessory Uses shall be regulated by the use-specific standards of a Sexually Oriented Business (155.4224. A.).

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## § 155.4224. COMMERCIAL: SEXUALLY ORIENTED BUSINESSES

### A. Sexually Oriented Business

#### 1. Purpose

Sexually oriented businesses are recognized as having certain serious and objectionable operational characteristics and deleterious secondary effects on adjacent areas, particularly when several sexually oriented businesses are concentrated or when they are located in close proximity to residential neighborhoods and uses involving the assembly of children or other vulnerable or sensitive persons. Special regulation of these uses is necessary to ensure that these adverse effects do not contribute to the degradation or decline of surrounding neighborhoods. The primary intent of the following standards is to prevent the concentration of sexually oriented businesses in any one location and separate them from residential neighborhoods and vulnerable uses.

#### 2. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPUD	PCD	PD-TO	LAC	PD-1
			P													

#### 3. Definition

A sexually oriented business includes any of the following establishments or premises:

##### a. Adult Book, Adult Novelty, or Adult Video Store

A retail establishment that offers for sale or rent books, magazines, other periodicals, videos, discs, slides, photographs, instruments, devices, paraphernalia, or other printed matter or graphic media that are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specific sexual activities, or specified anatomical areas, and which materials constitute 20 percent or more of the establishment's inventory at any time, or are displayed on more than 20 percent of that portion of the establishment's floor area used for public display of stock; or

##### b. Massage Establishment, Unlicensed

An unlicensed massage establishment is an establishment that offers, sells, or provides manipulation of the tissues or other tactile stimulation of the human body with the hand, foot, arm, leg, elbow, or part of the torso, whether or not aided by any electrical or mechanical device, by persons who are not licensed massage therapists under Chapter 480 of the Florida Statutes, or athletic trainers employed by on behalf of educational or professional athletic teams, or licensed physicians, nurses, or other health care practitioners engaged in the practice of their profession. A massage may also include bathing or application of oils, lotions, or similar preparations to the human body. An unlicensed massage establishment does not include a therapeutic massage establishment; or

c. Any premises where members of the public or any person for consideration may participate in or may observe or view any activity, live or recorded performance, or any visual images tangibly fixed in any medium, which activity, performance, image, or recording has an emphasis on, or has as its primary or dominant theme, subject matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; or

d. Any premises where the presentation or distribution of any performance, recording, or visual image requires the exclusion of minors from the premises pursuant to F.S. Ch. 847.

#### 4. Standards

##### a. Separation Requirements

A new sexually oriented business shall be separated from certain existing uses and zoning in accordance with [Table 155.4224.A.4](#): Minimum Separation from Certain Existing Uses and Zoning.

**TABLE 155.4224.A.4: MINIMUM SEPARATION FROM CERTAIN EXISTING USES AND ZONING**

TABLE 155.4224.A.4: MINIMUM SEPARATION FROM CERTAIN EXISTING USES AND ZONING <sup>1</sup>	
Existing Use/Zoning	Minimum Separation
	Sexually Oriented Business
Child care facility	1,000 feet <sup>2</sup>
School	
Other sexually oriented business	
Park	
Place of worship	
Residential zoning district	
Alcoholic Beverage Establishment	
NOTES:	
1. Compliance with these separation standards shall not be affected by the subsequent establishment of one of the uses or zoning from which separation is required on a property closer than the required separation distance. In such a case, the sexually oriented business shall be construed as continuing to comply with the separation standards.	
2. Separation shall be measured as the shortest distance between the property lines of the lot containing the sexually oriented business and the nearest property lines of the lots containing the use or zoning from which separation is required.	

**b. Customary Accessory Uses**

The maximum cumulative aggregate gross floor area of all accessory uses on a parcel shall be 49% of the gross floor area of a principal building or use on the development site.

i. Bar or Lounge

ii. Restaurant

iii. Specialty eating or drinking establishment

iv. Retail Sales (provided the gross floor area occupied by the retail sales use does not exceed 20 percent of the gross floor occupied by the principal use)

**b. c. Exterior Observation and Display Prohibited**

No sexually oriented business shall be conducted in any manner that permits any person on any parcel of property or public right-of-way within the city, other than the parcel upon which the sexually oriented business is located, to observe any live or recorded performance, or any visual image tangibly fixed in any medium, which performances, images or recordings have as their primary or dominant theme subject matter depicting, describing, or relating to specified sexual activities or specified anatomical areas or which performance, recording, or visual image requires the exclusion of minors pursuant to F.S. Ch. 847, other than such observation as may occur as a result of the observer's intentional reception of such a performance, recording, or visual image within an enclosed structure.

**d. Presentations in Enclosed Rooms**

No sexually oriented business shall permit or maintain any enclosed room for use by any member of the public, other than restrooms, and dressing rooms which are not viewable or accessible by patrons, unless each such room is greater than 500 total square feet in size.

**d. e. Punitive Standards and Right to Appeal**

i. Other than the procedures to appeal the decision of the City's Development Services Director as provided for in subsection iii below, no variances from the standards listed in Section [155.4224.A.3](#) or [155.4224.A.4](#) shall be permitted for any reason.



- ii. No zoning conditions, restrictions, safeguards, or standards shall apply to or be imposed on any sexually oriented business, other than those prohibitions and restrictions expressly set forth in this section and in the city's code of ordinances.
- iii. A party aggrieved by the final decision of the Development Services Director on an application to establish a Sexually Oriented Business may appeal the Decision to the ZBA in accordance with the procedures and standards in Section [155.2424](#), Appeal.

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#### **155.4302. GENERAL**

##### **A. Applicability**

This part applies to uses that are customarily incidental and subordinate to a principal use of the same lot. Further this part also applies to any nonhabitable structure that is detached from a principal structure on the same lot that is incidental and subordinate in use and size to the principal structure and principal use of the same lot. Section [155.4302.B](#), General Standards for All Accessory Uses and Structures, establishes general standards that apply to all allowed accessory uses and structures. Section [155.4302.C](#), Abbreviations Used in Accessory Use/Structure District Tables, explains the abbreviations used in the tables showing whether a particular type of accessory use or structure is permitted or prohibited within the various zoning districts. Section [155.4303](#), Standards for Specific Accessory Uses and Structures, establishes a list of allowed accessory uses and structures, along with standards that apply to the accessory uses or structures regardless of the zoning district in which they are allowed or the review procedure by which they are approved, unless expressly stated to the contrary. These standards may be modified by other applicable requirements in this Code. If a use is determined to be an accessory use in a development, and the use is not established in Section [155.4303](#), Standards for Specific Accessory Uses and Structures, such accessory use shall be subject to the principal use standards in [Article 4: Part 2](#), Principal Uses and Structures, as well as the standards in Section [155.4302.B](#), General Standards for All Accessory Uses and Structures.

##### **B. General Standards for All Accessory Uses and Structures**

###### **I. Relationship to Principal Use or Structure**

- a. Except as otherwise authorized in Section [155.4403.J](#), Temporary Use of an Accessory Structure as a Principal Dwelling, an accessory use or structure shall not be established or constructed before the establishment or construction of the principal use or structure.
- b. If the principal use or structure is destroyed or removed, the accessory use or structure shall be removed. This includes fences, except those allowed under Section [155.5302.C.1.](#), Fences Prohibited on Vacant Lots.
- c. Unless otherwise provided for in a use-specific standard in [Article 4: Part 2](#), Principal Uses and Structures, or in Section [155.4303](#), Standards for Specific Accessory Uses and Structures, the maximum cumulative aggregate gross floor area of all accessory uses or structures on a parcel shall be 49% of the gross floor area of a principal building or use on the development site.
- d. Accessory uses in connection with a Sexually Oriented Businesses ([155.4224.A.](#)), due to the operational characteristics, shall be limited to the customary accessory uses identified as permitted with the principal use.

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