

ORDINANCE NO. 2024-____

AN ORDINANCE AMENDING THE ORANGE COUNTY ADULT ENTERTAINMENT CODE, CODIFIED AT CHAPTER 3 OF THE ORANGE COUNTY CODE, BY AMENDING SECTION 3-35 (“SUSPENSION”), SECTION 3-36 (“REVOCATION”), AND SECTION 3-37 (“CHALLENGE OF SUSPENSION OR REVOCATION NOTIFICATION; DETERMINATION BY HEARING OFFICER”); AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. Amendments; In General. With respect to the amendments to the Orange County Adult Entertainment Code set forth in Section 2 through Section 4, new wording is indicated by underlines, and deleted wording is shown by strike-throughs.

Section 2. Amendments to Section 3-35 (“Suspension”). Section 3-35 is amended to read as follows:

Sec. 3-35. Suspension.

(a) *Violation of building, fire, health, or zoning statute, code, ordinance, or regulation.* In the event a department learns or finds upon sufficient cause that a licensed adult entertainment establishment is operating in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state, or local, contrary to the respective general requirements of section 3-101, the department shall promptly notify the licensee and the property owner of record of the violation and shall allow the licensee a seven-day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven-day period, the department shall notify the tax collector, who shall forthwith suspend the license, and shall notify the licensee and the property owner of record of the suspension by certified mail, return receipt requested. The suspension shall remain in effect until the department notifies the tax collector in writing that the violation of the provision in question has been corrected.

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42 (b) *Illegal transfer.* In the event the tax collector learns
44 or finds upon sufficient cause that a licensee engaged in a license
46 transfer contrary to section 3-33, the tax collector shall forthwith
suspend the license, and notify the licensee and the property owner
of the suspension by certified mail, return receipt requested. The
suspension shall remain in effect until the tax collector is satisfied
that the requirements of section 3-33(a) have been met.

48 (c) *Convictions of, or violations by, workers.*

50 (1) *Thirty day suspension.* In the event a worker
52 commits (or workers commit) three (3) or more violations of article
54 V of this chapter or specified criminal acts at an adult entertainment
establishment within a two-year period, or convictions result from
56 at least three (3) such violations, the tax collector shall, upon receipt
of evidence of such violations or the third conviction, notify the
58 licensee and the property owner of record that the license will be
suspended for a period of thirty (30) days, subject to the licensee's
and the property owner's right to each file a timely challenge to the
60 notice of suspension under section 3-37(a). If and when the
suspension takes effect, the suspension shall remain in effect for a
62 period of thirty (30) days.

64 (2) ~~*Sixty-Ninety day suspension.*~~ In the event a
worker commits (or workers commit) two (2) or more violations of
66 article V of this chapter or specified criminal acts at the
establishment within a period of two (2) years from the date of the
68 notice of suspension for thirty (30) days under subsection (c)(1), or
a conviction results from at least two (2) of such violations, the tax
70 collector shall, upon receipt of evidence of such violations, acts, or
of the additional convictions, notify the licensee and the property
72 owner of record that the license will be suspended for a period of
ninety (90) days, subject to the licensee's and the property owner's
74 right to each file a timely challenge to the notice of suspension under
section 3-37(a). If and when the suspension takes effect, the
76 suspension shall remain in effect for a period of ninety (90) days.

78 (3) *One hundred eighty day suspension.* In the
event a worker commits (or workers commit) one (1) or more
80 violations of article V of this chapter or specified criminal acts at the
establishment within a period of two (2) years from the date of the
82 notice of suspension for ninety (90) days under subsection (c)(2), or
a conviction results from at least one (1) of such violations, the tax
84 collector shall, upon receipt of evidence of such violation or of the
first additional conviction, notify the licensee and the property

86 owner of record that the license will be suspended for a period of
88 one hundred eighty (180) days, subject to the licensee’s and the
property owner’s right to each file a timely challenge to the notice
90 of suspension under section 3-37(a). If and when the suspension
takes effect, the suspension shall remain in effect for a period of one
hundred eighty (180) days.

92 (d) *Transfer, renewal, or amendment.* The transfer,
94 renewal or amendment of a license pursuant to this chapter shall not
frustrate or defeat the terms of subsections (c)(1), (2) or (3).

96 (e) *Effective date of suspension.* All periods of
98 suspension shall take effect ten (10) days after the date the tax
collector mails the notice of suspension to the licensee and the
100 property owner or the tax collector or sheriff posts the notice of
suspension at the licensee’s establishment, or on the date the
102 licensee delivers his license to the tax collector, whichever happens
first. However, in the event the licensee or the property owner timely
104 challenges the suspension pursuant to the procedure set forth in
section 3-37, the suspension shall be abated until the hearing officer
106 files the original of a written decision suspending the license
pursuant to section 3-37(g), and the time expires ~~for the licensee~~ to
108 seek judicial review of the hearing officer’s decision under section
3-38(a) without judicial review being sought. If the licensee or the
110 property owner timely seeks judicial review under section 3-38(a),
the suspension shall continue to be abated until a final judicial
112 decision by the circuit court.

114 **Section 3. Amendments to Section 3-36 (“Revocation”).** Section 3-36 is amended to

read as follows:

116 **Sec. 3-36. Revocation.**

118 (a) *False information.* In the event the tax collector
learns or finds upon sufficient cause that a license under this article
120 was granted, transferred, or renewed based upon false or incorrect
information, misrepresentation of fact, or mistake of fact, the tax
collector shall forthwith revoke the license by certified mail, return
122 receipt requested, and notify the licensee and the property owner of
record of the revocation.

124 (b) *Convictions of, or violations by, workers.* In the
126 event a worker commits (or workers commit) one (1) or more
violations of article V of this chapter or any specified criminal act at

128 an adult entertainment establishment which has had a license
130 suspended for a period of one hundred eighty (180) days pursuant to
132 section 3-35(c)(3), and the violation occurs within a period of two
134 (2) years from the date of the notice of suspension for one hundred
136 eighty (180) days or a conviction results from at least one (1) of such
138 violations, the tax collector shall, upon receipt of evidence of such
violation or a conviction for the subsequent violation, notify the
licensee and the property owner of record that the license will be
revoked, subject to the licensee's right and the property owner's
right to each file a timely challenge to the notice of revocation under
section 3-37(a).

140 (c) *Convictions of, or violations by, operator.*
Notwithstanding any interpretation of the application of section 3-
142 35(c)(1) to the contrary, in the event an operator commits (or
operators commit) three (3) or more specified criminal acts at an
144 adult entertainment establishment within a period of two (2) years,
the tax collector shall, upon receipt of evidence of the commission
146 of the specified criminal acts, or a third conviction for such acts,
notify the licensee and the property owner of record that the license
148 will be revoked, subject to the licensee's right and the property
owner's right to each file a timely challenge to the notice of
150 revocation under section 3-37(a).

152 (d) *Transfer, renewal, or amendment.* The transfer,
renewal or amendment of a license pursuant to this chapter shall not
154 defeat the terms of subsections (b) or (c).

156 (e) *Effect of revocation.* If the license is revoked, no
adult entertainment license shall be issued again to any person for a
158 period of one year for the location upon which the adult
entertainment establishment was situated. Furthermore, if the
160 establishment existed as a nonconforming use prior to the
revocation, the nonconforming use shall be deemed to have been
162 relinquished and shall be terminated.

164 (f) *Effective date of revocation.* The revocation shall
take effect ten (10) days after the date the tax collector mails the
166 notice of revocation to the licensee and the property owner, or the
date the tax collector or sheriff posts the notice of revocation at the
168 licensee's establishment, or on the date the licensee delivers his
license to the tax collector, whichever happens first. However, in the
170 event the licensee or the property owner timely challenges the
revocation pursuant to the procedure set forth in section 3-37, the
172 revocation shall be abated until the hearing officer files the original
of a written decision revoking the license pursuant to section 3-

174 37(g), and the time expires to seek judicial review of the hearing
176 officer's decision under section 3-38(a) without judicial review
178 being sought. If the licensee or the property owner timely seeks
judicial review under section 3-38(a), the revocation shall continue
to be abated until a final judicial decision by the circuit court.

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182 **Section 4. Amendments to Section 3-37 (“Challenge of suspension or revocation
notification; determination by hearing officer”).** Section 3-37 is amended to read as follows:

184 **Sec. 3-37. Challenge of suspension or revocation notification;
determination by hearing officer.**

186 (a) *Challenge of suspension or revocation notification.*
188 ~~If a licensee decides to~~ A challenge of a notice of suspension or
190 revocation, ~~the licensee shall, be filed in writing with the tax~~
192 ~~collector within ten (10) days after receipt or the posting of such~~
194 ~~notice, file with the tax collector a notice requesting a hearing~~
~~pursuant to subsection (b).~~ The licensee challenge shall set forth
therein the specific reasons or grounds for the challenge. why the
licensee believes the suspension or revocation would be in error.
The challenge shall be deemed to constitute a request for a hearing
pursuant to this section.

196 (b) *Appointment of hearing officer.* From time to time,
198 the board of county commissioners shall appoint and retain ~~three (3)~~
200 one (1) or more hearing officers to hear applications for
202 determinations of suspensions and revocations. ~~Each of the~~ A
204 hearing officers shall be a licensed attorney with the Florida Bar who
206 has practiced law in the state for at least five (5) years, and who has
208 experience in land use law, real estate law, local governmental law,
and/or administrative law. None of the A hearing officers shall not
210 be representing clients before any agency of the county government
212 or any agency of any municipality in the county during the period in
which they ~~serve as hearing officers~~ serve as such. None of the
Also, neither a hearing officers nor the law firms with which they
hearing officer may be associated shall be representing a clients in
any judicial or administrative proceeding in which Orange County
is an adverse party during the period the hearing officer serves as
such.

214 (c) *Terms; compensation.* ~~Each~~ A hearing officer shall
216 serve for the term of the hearing officer's agreement with the board,
may be terminated only for cause, and shall be compensated at a rate
or rates to be fixed by the board.

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(d) *Ex parte communication.*

(1) No county employee, elected official, or other person who is or may become a party to a proceeding before a hearing officer shall engage in an ex parte communication with the hearing officer. However, the foregoing does not prohibit discussions between the hearing officer and county clerical staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the application.

(2) If a person engages in an ex parte communication with the hearing officer, the hearing officer shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten (10) days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the hearing officer may withdraw from the case.

(3) Any person who makes an ex parte communication prohibited by subsection 30-37(c)(1), and any hearing officer who fails to place in the record any such communication, is acting in violation of this article and may be assessed a civil penalty not to exceed five hundred dollars (\$500.00).

(e) *Prohibited from acting as agent or attorney for subject matter.* A hearing officer, and any firm with which he or she is or may become associated, is prohibited for a period of three (3) years after rendition of a decision on a licensee's request from acting as an agent or attorney on any matter involving property which was the subject of the proceeding in which the hearing officer presided. Violations of this subsection shall be prosecuted in the manner provided by general law.

(f) *Hearings.*

(1) All hearings shall be conducted within a reasonable time after appointment of a hearing officer receipt by the tax collector of a written challenge to a notice of suspension or revocation, shall be open to the public, and shall be advertised in a

264 newspaper of general circulation not less than seven (7) days prior
266 to the date of the hearing. ~~Hearing officers shall be appointed to
suspension and revocation cases on a rotating basis.~~

268 (2) The participants before the hearing officer
270 shall be Orange County, Orange County's witnesses, the licensee,
272 and the licensee's witnesses, if any, and, as may be applicable, the
property owner, and the property owner's witnesses, if any.

274 (3) Orange County shall present its case within a
276 reasonable period of time, including rebuttal, as shall the licensee
and the licensee's witnesses, if any, and, as may be applicable, the
property owner, and the property owner's witnesses, if any.

278 (4) Testimony and evidence shall be limited to
280 matters directly relating to the pending suspension or revocation.
282 Irrelevant, immaterial or unduly repetitious testimony or evidence
may be excluded. The hearing officer may take statements from
interested members of the public.

284 (5) All testimony shall be under oath. The order
286 of presentation of testimony and evidence shall be as follows:

288 a. Orange County and its witnesses.
290 b. The licensee and the licensee's
witnesses, if any.

292 c. As may be applicable, the property
owner, and the property owner's witnesses, if any.

294 c. Rebuttal and summation by Orange
296 County, if any.

298 d. Surrebuttal and summation by the
300 licensee, if any, and as may be applicable, the property owner, and
the property owner's witnesses, if any.

302 (6) To the maximum extent practicable, the
304 hearings and admission of evidence shall be informal. Reasonable
306 cross examination of witnesses shall be permitted, but questioning
308 shall be confined as closely as possible to the scope of direct
testimony. The decision shall be supported by competent,
substantial evidence. Hearsay evidence shall be admissible, but no
decision may be based entirely on hearsay evidence. The hearing
officer may call and question witnesses, issue subpoenas, and/or

310 request additional evidence as he or she deems necessary and
312 appropriate. To that end, if during the hearing the hearing officer
believes that any facts, claims, or allegations necessitate review and
314 response by ~~either~~ Orange County or the licensee, or ~~both~~, as may
be applicable, the property owner, then the hearing officer may order
316 the hearing continued until a date certain. The hearing officer shall
decide all questions of procedure and standing.

318 (7) Orange County shall prove by clear and
convincing evidence at the hearing that the violations of article V or
320 specified criminal acts occurred at the establishment during the
period of time in question, and that the licensee was culpably
322 responsible because: (A) the licensee or an operator of the
establishment had actual or implied actual knowledge that the
324 violations or acts were being committed;; (B) the violations or acts
were fostered or condoned by the licensee or an operator;; and/or
326 (C) that the violations or acts occurred because the licensee or an
operator acted recklessly, carelessly, negligently, or with a lack of
328 diligence.

330 (8) It is not the intent of this chapter to suspend
or revoke a license for conduct or acts containing a significant
332 expressive element. Accordingly, the licensee or the property ownr
of record may raise as an affirmative defense and prove at the
334 hearing that the violations or acts in question contained a significant
expressive element.

336 (9) The hearing officer shall render a written
338 decision on the suspension or revocation challenge within thirty (30)
days after the hearing concludes.

340 (g) *Filing of decision.* The original of the hearing
342 officer's written decision shall be filed with the clerk to the board of
county commissioners, and copies shall be ~~mailed~~ provided to the
344 tax collector, the licensee, the property owner, and to any interested
member of the public who participated at the hearing and requested
346 a copy of the written decision.

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Section 5. Effective Date. This ordinance shall become effective pursuant to general

law.

ADOPTED THIS ___ DAY OF _____, 2024.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk to the Board of County Commissioners

By: _____
Deputy Clerk