

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WACKO'S TOO, INC., a Florida, corporation doing business as "Wackos", **MHHS-SINSATIONS, LLC**, a Florida limited liability company doing business as "Sinsations", **PATMILT, INC.**, a Florida corporation doing business as "Passions", **BARE ASSETS, INC.**, a Florida corporation, **EMPERORS, INC.**, a Florida corporation doing business as "EMPEROR'S WHITES PLACE LLC", a Florida limited liability company doing business as "Gold Club Jacksonville", **MT PRODUCTIONS, INC.**, a Florida corporation doing business as "Thee Officers Club", **HORTON ENTERPRISES, INC.**, a Florida corporation doing business as "The New Solid Gold", **NEVA CLINKSCALE**, an individual, **TIFFANY TYRRELL**, an individual, **ALEXZANDRIA PELLITTERI-ALLEN**, an individual, and **CHELSEY LAMON**, an individual,

Plaintiffs,

VS.

CITY OF JACKSONVILLE, a Florida
municipal corporation,

Defendant.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION
AND SUPPORTING MEMORANDUM OF LAW

Plaintiffs file their Motion for Preliminary Injunction, pursuant to Rule 65, Fed.R.Civ.P. and Rule 6.02 M.D.Fla.Loc.R., and move this Court to enter a preliminary injunction prohibiting the CITY OF JACKSONVILLE from enforcing Ordinance 2022-172-E, and in support thereof state:

MATERIAL FACTS AND SUMMARY OF CLAIMS

1. Plaintiffs have filed a Complaint under 42 U.S.C. §1983 asserting that Ordinance 2022-172-E (copy attached as Exhibit “1” hereto) violates the First and Fourteenth Amendments on its face and as applied to the Plaintiffs for a host of reasons, including the imposition of an unconstitutional prior restraint.

2. Plaintiffs fall into one of four general categories:

A. WACKO’S TOO, INC. / PATMILT, INC. / BARE ASSETS, INC. / EMPERORS, INC. / WHITES PLACE LLC / MT PRODUCTIONS, INC. / and HORTON ENTERPRISES, INC. own and operate “bikini bars”. (Doc. 1 at 4-6). Those businesses provide live exotic dance performances in a nightclub format where alcoholic beverages are sold. (Id.). Performers in those clubs wear coverings over their breasts, buttocks and pubic region. The dancers perform choreographed routines to a wide variety of music which varies somewhat between the clubs and performers. (Doc. 1 at 8, ¶¶23-24). The bikini bars are defined as “Dancing

Entertainment Establishments” by the Jacksonville Code of Ordinances and are regulated primarily under Chapter 151 of the Code. (Doc. 1 at 8, ¶25).

B. MHHS-SINSATIONS, LLC owns and operates a “juice bar” where live nude dance is offered in a nightclub setting that does not involve the sale of alcoholic beverages. (Doc. 1 at 4, ¶10; 8, ¶26). Businesses such as Sinsations are defined as “Adult Entertainment Establishments” by the Jacksonville Code of Ordinances and are regulated primarily under Chapter 150 of the Code. (Doc. 1 at 9, ¶27).

Together, the various Dancing Entertainment and Adult Entertainment Establishments are referred to as the “Club Plaintiffs”.

C. ALLEN is an individual exotic dance performer who performs at Emperor’s. (Doc. 1 at 7, ¶19; 9, ¶29). ALLEN is over the age of eighteen, but under the age of twenty-one. (Id.).

D. CLINKSCALE and TYRELL are exotic dancer performers at Emperor’s (Doc. 1 at 7, ¶¶17, 18; 9, ¶29). LAMON is an exotic dancer at Wacko’s (Doc. 1 at 7, ¶20; 9, ¶29). Those Plaintiffs are over the age of twenty-one. (Id.).

Together, ALLEN, CLINKSCALE, TYRELL and LAMON are referred to as the “Individual Plaintiffs”.

3. The expression offered by Plaintiffs is not intended to be, nor is it, obscene as contemplated by contemporary community standards. Plaintiffs do not intend this expression to appeal to any prurient interest. These performances are

presumptively protected by the First Amendment to the Constitution of the United States. Plaintiffs have a clear legal right to engage in protected speech of this nature. (Doc. 1 at 9-10, ¶¶31-33).

4. Plaintiffs' legal arguments may be summarized as follows:

A. The licensing provisions of Ordinance 2022-172-E [§§150.224 and 151.214] impose an unconstitutional prior restraint. FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990), Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999) and Wacko's Too, Inc. v. City of Jacksonville, 522 F.Supp. 3d 1132 (M.D. Fla. 2021) control this inquiry:

(1) The Ordinance has insufficient criteria to limit the discretion of the Sheriff as the permitting official. Rather than providing precise substantive standards leading to a ministerial decision, the Sheriff has the unfettered discretion to deny a Work Identification Card based on his subjective determination that the "proof submitted" is "not satisfactory". *See*, §§150.224(f) and 151.214(f). The Sheriff is also the official who decides what offenses qualify as a "human trafficking-related" crime. *See*, §§150.224(c) and 151.214(c).

(2) The fourteen (14) day period for issuance of a license is unreasonably long given the Sheriff's minimal duties in evaluating the applicant. *See*, §§150.224(f) and 151.214(f).

(3) The temporary license given to the performer is not an adequate substitute for a Work Identification Card. While the performer is authorized to dance in reliance on her receipt, no club can allow her to dance as clubs must obtain and keep a record of the actual Work Identification Card. *Compare*, §§150.224(a), (g) and 151.214(a), (g) *with* §§150.224(c), (e) and (f) and §§151.214(c), (e) and (f). Accordingly, the Ordinance does not guarantee the right to speak within a specified brief period of time.

(4) The provisions for appeal from an adverse licensing decision [§§150.224(h) and 151.214(h)] are inadequate under the First Amendment and violate Florida's doctrine of separation of powers. Those provisions also do not maintain the *status quo* for current performers.

B. The prohibition against issuing permits to adult performers who are under the age of twenty-one [§§150.224(c) and 151.214(c)] violates the First Amendment and the Equal Protection Clause for the following reasons:

- (1) It is content-based and fails strict scrutiny;
- (2) It not narrowly tailored under intermediate scrutiny given the availability of less burdensome regulations and the poor fit to the asserted government interest;
- (3) It is underinclusive because no other professions are regulated and persons under the age of 21 can be employed in every other capacity in exotic

dance clubs. Young adults can patronize or even own an adult club, but can't dance.

(4) It violates Equal Protection and cannot survive heightened scrutiny because it invidiously and irrationally burdens a fundamental right.

C. The requirement under §§150.224(c) and 151.214(c) that performers disclose the names of all venues where they intend to perform burdens speech and is not narrowly tailored to advance any legitimate governmental interest.

D. The trigger provision for the under-21 ban is indecipherable and the term "human trafficking-related charge" is undefined and lacks a commonly-understood meaning. *See*, §§150.224(c) and 151.214(c). Those provisions are unconstitutionally vague.

E. The ban on performers under the age of twenty-one is irrational and violates Plaintiffs' right of occupational liberty.

MEMORANDUM OF LAW

I. PRELIMINARY INJUNCTION STANDARD.

In order to obtain a preliminary injunction, a plaintiff must show the following: (1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public

interest. Vital Pharms., Inc. v. Alfieri, 23 F.4th 1282, 1290–91 (11th Cir. 2022).

Plaintiffs can easily meet each requirement.

The licensing provisions of Ordinance 2022-172-E [§§150.224 and 151.214] obviously impose an unconstitutional prior restraint which includes none of the substantive and procedural safeguards required by FW/PBS, *supra* and Lady J. Lingerie, *supra*.

II. PLAINTIFFS’ SPEECH IS PROTECTED BY THE FIRST AMENDMENT.

There is no dispute that exotic dancing entertainment is entitled to protection under the First Amendment. *See, e.g., Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 565 (1991) (“Several of our cases contain language suggesting that nude dancing of the kind involved here is expressive conduct protected by the First Amendment.”); City of Erie v. Pap’s A.M., 529 U.S. 277, 289 (2000) (“[N]ude dancing of the type at issue here is expressive conduct...”). Ordinance 2022-172-E infringes on Plaintiffs’ First Amendment rights because it imposes a license requirement before Plaintiffs may speak or associate.

III. PLAINTIFFS HAVE THE REQUISITE STANDING; THIS CASE IS RIPE; AND THERE ARE NO GROUNDS FOR ABSTENTION.

Plaintiffs clearly have standing to challenge the constitutionality of Ordinance 2022-172-E. The Individual Performers must obtain licenses pursuant to

§§150.224(c) and 151.214(c) or they will be prohibited from dancing. The Club Plaintiffs are prohibited from allowing any performer to dance who does not have the requisite license.

Plaintiffs' principal claims are based on prior restraint law concerning the discretion of the permitting official, the lack of definite time standards and the failure to maintain the *status quo* pending judicial review. These are purely facial challenges. *See, generally, Miami Herald Pub. Co. v. City of Hallandale*, 734 F.2d 666, 674 (11th Cir. 1984) ("In a facial challenge such as this, the facts of the challenging party's case are irrelevant."). Plaintiffs can bring their claims regardless of whether the license in question was granted or denied or whether a Plaintiff even applied for a license. *See, City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755-56 (1988) ("[O]ur cases have long held that when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, one who is subject to the law may challenge it facially without the necessity of first applying for, and being denied, a license.").

In addition, pre-enforcement challenges are permitted in First Amendment cases where the plaintiff is plainly affected by the law and it is likely that the law will be enforced against that litigant. *See, e.g., Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *Wollschlaeger v. Governor, Fla.*, 848 F.3d 1293 (11th Cir. 2017).

There is no plausible reason for this Court to abstain from ruling in this case.¹

IV. **PLAINTIFFS ARE THREATENED WITH IRREPARABLE INJURY.**

No lengthy argument on this point is necessary. The deprivation of rights guaranteed under the First Amendment is an irreparable injury as a matter of law. *See, Elrod v. Burns*, 427 U.S. 347 (1976). Since the Plaintiffs allege that they are threatened with the loss of First Amendment rights, irreparable injury is presumed. *See, Deerfield Medical Center v. County of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *See, also, FF Cosmetics FL, Inc. v. City of Miami Beach*, 866 F.3d 1290, 1298 (11th Cir. 2017) (“[A]n ongoing violation of the First Amendment constitutes an irreparable injury.”).

An injunction which prevents the enforcement of a patently unconstitutional Ordinance does not disserve the public interest. To the contrary, “enjoining the ordinances, if they were found to be in violation of the First Amendment, would advance the public’s interest in freedom of speech.” *FF Cosmetics*, 866 F.3d at 1298. The bond requirement, if any, should be *de minimis*.

¹ Abstention would not be proper under *Younger v. Harris*, 401 U.S. 37 (1971) because there are no pending state court proceedings or enforcement actions involving the Plaintiffs. This case does not present difficult and unsettled areas of state law so *Railroad Comm’n v. Pullman*, 312 U.S. 496 (1941) is inapplicable. As the Supreme Court said in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976), “[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.”

V. THERE IS A STRONG LIKELIHOOD THAT PLAINTIFFS WILL PREVAIL ON THE MERITS OF THEIR CLAIMS.

A. Ordinance 2022-172-E Imposes an Unconstitutional Prior Restraint.

Whenever one is required to obtain a permit from the government in order to engage in speech, the permitting scheme is a prior restraint on activities protected by the First Amendment. *See, Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). When an ordinance acts as a prior restraint on free speech, the ordinance is presumed to be unconstitutional, and in such cases, the government bears a heavy burden to demonstrate that the restriction is valid. *See, Bantam Books v. Sullivan*, 372 U.S. 58 (1963).

Jacksonville imposes a prior restraint on all exotic dancers:

Sec. 150.224. / 151.214 Performer work identification card.

(a) Performer Work Identification Card required. Any person desiring to perform in an adult entertainment establishment licensed under this Chapter must obtain a Work Identification Card from the Sheriff. No person shall act as a performer in a dancing entertainment establishment without having previously obtained said Work Identification Card, except as permitted during the Grace Period as set forth in this section.

The Club Plaintiffs are subject to a significant fine if they allow an unpermitted dancer to perform. *See, §§150.224(m), 151.214(m)*. In this case, the restraint is unconstitutional because the licensing law does not include all of the substantive and procedural guarantees required by the First Amendment.

This Court has already trod over much of this same ground in the case of Wacko's Too, *supra*, where the original version of the dancer licensing ordinance was declared to be an unconstitutional prior restraint. Presumably, the City intended to cure those defects when it passed Ordinance 2022-172-E. However, all of the same defects have carried over to the new law – indeed, the Ordinance still includes some of the exact language which Plaintiffs successfully attacked in the predecessor litigation. Even worse, some of the purportedly curative provisions of the new Ordinance actually create new constitutional defects not found in the original law.²

FW/PBS, Inc. v. City of Dallas, *supra*, is the Supreme Court's seminal case on the subject of prior restraints as they relate to the licensing of commercial speech:

Our cases addressing prior restraints have identified two evils that will not be tolerated in such schemes. First, a scheme that places “unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship.” Lakewood v. Plain Dealer Publ. Co., 486 U.S. 750, 757, 108 S.Ct. 2138, 2143, 100 L.Ed.2d 771 (1988)...[citation omitted] “It is well settled by a long line of recent decisions of this Court that an ordinance which... makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of such official – is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms.” Shuttlesworth, *supra*, 394 U.S., at 151, 89 S.Ct., at 938-39.

² The “trigger provision” for the ban on performers under the age of 21 is one such provision, as is the provisional license which theoretically gives performers the ability to dance but prohibits the Clubs from allowing them to take the stage.

Second, a prior restraint that fails to place limits on the time within which the decisionmaker must issue the license is impermissible. Freedman, *supra*, 380 U.S. at 59, 85 S.Ct. at 739...Where the licensor has unlimited time within which to issue a license, the risk of arbitrary suppression is as great as the provision of unbridled discretion. A scheme that fails to set reasonable time limits on the decisionmaker creates the risk of indefinitely suppressing permissible speech.

493 U.S. at 225-27; *See, also*, Lady J. Lingerie, 176 F.3d at 1363. The Supreme Court has also required any prior restraint to provide for prompt judicial review *before* the status quo is altered. In a licensing context “[o]nly a judicial determination in an adversary proceeding ensures the necessary sensitivity to freedom of expression.” Freedman v. Maryland, 380 U.S. 51, 58 (1965); *See, also*, CAMP Legal Def. Fund, Inc. v. City of Atlanta, 451 F.3d 1257, 1281 (11th Cir. 2006) (Same).

The Ordinance continues to afford the Sheriff unfettered discretion to determine when, in his subjective judgment, the application is “not satisfactory”:

... Should the Sheriff determine that the proof submitted with the application for the Work Identification Card as required hereinabove is not satisfactory or full payment of the application fee is not received, the Sheriff shall deny issuance of the said Work Identification Card...

§150.224(f), §151.214(f). The failure to correct that defect is especially surprising as this Court pointed out that the exact same language was unconstitutional in Wacko’s Too:

[T]he Sheriff... may evaluate the application as satisfactory or unsatisfactory however he or she chooses to do so. §§150.224(c), 151.214(c). “[V]irtually any amount of discretion beyond the merely ministerial is suspect,” and the licensing scheme places much more than

ministerial discretion in the hands of the Sheriff. Lady J. Lingerie, 176 F.3d at 1362.

As written, the licensing regime conditions First Amendment activity - the ability to perform at adult entertainment establishments in Jacksonville - on the uncabined discretion of the Sheriff. This is expressly prohibited by Shuttlesworth and the long line of prior restraint cases in its wake.

Wacko's Too, 522 F.Supp. 3d at 1146-47. The same defect is apparent in the Sheriff's authority to determine which crimes are disqualifying under the undefined term "human trafficking-related". *See*, §§150.224(l) and 151.214(l).

The time required to review a license application is excessively long and the Ordinance does not guarantee performers the right to dance during that time or if the Sheriff fails to make a timely decision. The Ordinance allows the Sheriff 14 days to evaluate an application for a Work Identification Card:

... The Sheriff shall approve or deny an application within fourteen (14) days of receipt of a completed application and payment of the applicable fee. If the Sheriff fails to approve or deny an application within the 14-day time limit, the application shall be deemed granted and the applicant can continue to rely on his or her receipt or check copy as a substitute for the Work Identification Card to legally perform or can request the Sheriff to issue an official card.

See, §§150.224(f) and 151.214(f).³

³ A performer may "request" the Sheriff to issue an "official card", but nothing in the Ordinance requires the Sheriff to comply with that request. The Ordinance does not provide a remedy if the Sheriff fails or refuses to issue the Card upon request. The "request" language could also lead clubs to deny access to their stage for any performer who has not secured a Work Identification Card within 14 days after submitting her application. The clubs would

Why does the decision take so long? The Sheriff is required to evaluate an application to make sure it is complete; he must confirm that the applicant took a human trafficking course; and he has to take the applicant's picture. All that can be done at the time the application is submitted and would take a matter of minutes. *See*, §§150.224(c) (d), (f) and 151.214(c), (d) (f). The only inquiry which requires research is the verification that the performer has not committed a disqualifying crime. *See*, §§150.224(l) and 151.214(l). That research is typically conducted electronically through the National Crime Information Center (NCIC) database. The criminal background search can be completed in a matter of minutes.⁴ At least one Court has determined that a dancer license review period as short as five days is an unconstitutional prior restraint. *See*, Kev, Inc. v. Kitsap Cnty., 793 F.2d 1053, 1060 (9th Cir. 1986) (“[T]he County has failed to demonstrate a need for section 7d’s five-day delay period between the dancer’s filing of an application and the County’s

reasonably assume that the application was either denied or that the “request” for a card was refused. The discretionary “request” language is every bit as unconstitutional as the discretionary “may” language at issue in Redner v. Dean, 29 F.3d 1495, 1500–01 (11th Cir. 1994).

⁴ According to the FBI, the NCIC database provides law enforcement officers with near-instantaneous access to criminal records on a nationwide basis: “Those records are available to other law enforcement agencies nationwide. For example, an officer can search NCIC during a traffic stop. The *system responds instantly* and tells the officer if the vehicle is stolen or the driver is wanted.” (emphasis added). *See*, <https://le.fbi.gov/informational-tools/ncic> (last accessed 7/21/22).

granting of a license. The ordinance unreasonably prevents a dancer from exercising first amendment rights while an application is pending.”).⁵

The City may have intended to avoid the prior restraint trap by allowing performers to dance without a Work Identification Card while their application is pending or in the event the Sheriff fails to make a licensing decision. In particular, §§150.224(c), (e) and (f) and §§151.214(c), (e) and (f) theoretically allow a performer to rely on a Sheriff’s receipt or her check as something like a provisional or temporary license. However, the City failed to make those same changes with respect to the regulated clubs. The Ordinance makes it quite clear that the Club Plaintiffs cannot allow any performer to dance unless she provides an actual Work Identification Card:

(a) Performer Work Identification Card required. ... Additionally, no license holder or establishment manager shall employ, contract with or otherwise allow any performer to perform in an adult entertainment establishment who does not possess a valid and effective Work Identification Card except as permitted during the Grace Period as set forth in this section.

⁵ The time taken to process a dancer’s application should be contrasted with the time needed to evaluate a license for the dance facility. Business licensing ordinances typically require time-consuming zoning verification and facility inspections in addition to a criminal background search. Even in those circumstances, the permitting decision must be swift. *Compare, Redner v. Dean*, 29 F.3d 1495, 1511 (11th Cir. 1994) (Evaluating a 14 day review period for licensing sexually oriented businesses). Given the ministerial nature of the task, it should not take the Sheriff’s Office 14 hours to evaluate a dancer’s application, much less 14 days.

§§150.224(a) and 151.214(a).⁶

The Ordinance also imposes record-keeping requirements on the Club Plaintiffs which can only be satisfied with an actual Work Identification Card:

(g) Retention of Performer Roster and Work Identification Card.

The adult entertainment establishment shall also maintain a Work Identification Card file, organized alphabetically by performer's last name, with legible photocopies of the Work Identification Card of each performer performing at said establishment for a period of two (2) years from each performer's most recent performance date. Other than performers performing during the Grace Period established in this section, *no performer shall perform until the performer roster is updated to include the performer information, and the legible photocopy of the Work Identification Card is placed on file as required herein.* (Emphasis added).

§§150.224(g) and 151.214(g).⁷ In short, there is a disconnect between the performers' supposed right to dance in reliance on a receipt and the fact that no Club can allow her to perform without an actual Work Identification Card. The temporary license does not actually allow a performer to dance and the possibility of a delayed

⁶ One can easily see how the City could have created a true temporary license which might have avoided some of the procedural defects in the Ordinance. Adding an additional exception to §§150.224(a) and 151.214(a) might have done the trick:

... and except for those performers who have a receipt or check demonstrating that they applied for a Work Identification Card and whose application has not been denied.

⁷ Again, a more careful draftsman would have made a record-keeping exception for performers authorized to dance using a receipt or check. When it comes to First Amendment rights, these small details matter.

decision amounts to an unlawful prior restraint. Again, this defect was squarely addressed in the Wacko's Too decision. *See, Wacko's Too*, 522 F. Supp. 3d at 1147.

The Ordinance also fails to preserve the *status quo* for current performers such as the Individual Plaintiffs. That is because the Sheriff can impose a prior restraint on those performers before a judge has issued a ruling upholding a decision to deny the license. The Ordinance allows a performer the right to seek judicial review of an adverse license decision. However, the Ordinance makes it quite clear that she cannot perform while the appeal is being pursued:

(h) Appeal. In the event that an applicant for a Work Identification Card is denied, said applicant may request emergency injunctive relief from the Circuit Court of the Fourth Judicial Circuit of the State of Florida. Due to the overriding public interest in not having persons with criminal convictions identified in paragraph (l) perform in adult entertainment establishments, *no provisional Work Identification Cards shall be issued by the Sheriff.* (emphasis added).

§§150.224(h) and 151.214(h). This Court has previously held that the failure to preserve the *status quo* during the licensing process violates the First Amendment.

See, Wacko's Too, 522 F.Supp. 3d at 1147–48. These are not new lessons.⁸

Even if the City preserved the *status quo* pending judicial review, the provisions for that appeal are themselves unlawful. As noted above, the only

⁸ Because the constitutional defects are pervasive and the Ordinance cannot be cured without extensive re-writing, the unconstitutional portions cannot be severed from the ineffectual remainder of the law. *See, Cafe Erotica of Fla., Inc. v. St. Johns Cnty.*, 360 F.3d 1274, 1292 (11th Cir. 2004).

appellate review afforded by the Ordinance is the filing of a preliminary injunction by the aggrieved applicant. *See*, §§150.224(h) and 151.214(h). Preliminary injunctions do not provide the broad review contemplated by the Supreme Court when it mandated a prompt judicial disposition of licensing decisions. *See*, City of Littleton, Colo. v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774, 124 S. Ct. 2219 (2004). Equally important, Florida does not provide for the review of municipal licensing decisions by injunction. Instead, the usual method of review is by common law certiorari. *See, e.g., City of Satellite Beach v. Goersch*, 217 So. 3d 1143, 1145 (Fla. 5th DCA 2017) (“Florida courts are authorized to use the common law writ of certiorari to review the actions of local government agencies...”). The City’s attempt to narrow the form of judicial review available violates the separation of powers:

Municipalities in Florida may not specify procedures to be used by Florida courts. That is the role of the Florida Supreme Court alone, and any arrangement to the contrary raises separation of powers concerns. *See* Fla. Const. Art. V § 2(a)... The City may issue guidelines to law enforcement regarding civil citations to enforce the Code, but it may not craft its own procedure for Florida courts.

Wacko’s Too, 522 F.Supp. 3d at 1157.

The requirement that performers disclose the names of all of the clubs where they intend to perform as a condition for receiving a license [§§150.224(c) and 151.214(c)] is both a prior restraint and a violation of the narrow tailoring requirement. *See*, FF Cosmetics, *supra*. Entertainment establishments have a

separate obligation to keep track of the performers dancing in their clubs. *See*, §§150.224(g) and 151.214(g). The disclosure requirement is an unnecessary and duplicative burden on speech and can create a Catch-22 problem for new applicants as described in Plaintiffs’ Complaint. (Doc. 1 at 48, ¶115).

B. The Ban Against Performers under the Age of Twenty-One Violates the First Amendment.

The Ordinance contemplates that performers under the age of twenty-one will be prohibited from obtaining a Work Identification Card as soon as that ban is determined to be “valid” – whatever that may mean. *See*, §§150.224(c) and 151.214(c). The ban against performers under the age of twenty-one violates the First and Fourteenth Amendments because it is content-based; it is not narrowly tailored; it burdens speech without advancing a substantial governmental interest; it is underinclusive; and because it discriminates invidiously. This is an issue that has been briefed extensively in the Wacko’s Too case. Here, space constraints require a more condensed presentation.

The U.S. Supreme Court has proclaimed the general First Amendment right of adults to access adult entertainment. *See, generally, United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994) (“[N]onobscene, sexually explicit materials involving persons over the age of 17 are protected by the First Amendment.”). The consensus view across the United States is that local governments may not prohibit

persons over the age of eighteen from entering exotic dance establishments or performing at them. In Essence, Inc. v. City of Fed. Heights, 285 F.3d 1272, 1283 (10th Cir. 2002) the Tenth Circuit considered a law which banned both patrons and performers from an adult business unless they were over twenty-one. Indeed, the law prohibited *anyone* under the age of twenty-one from entering such a business. The Court found that there was no evidence to support the claim that increasing the age of patrons and performers would reduce the “secondary effects” thought to be associated with nude dancing. Id. at 1287–89.

In State v. Cafe Erotica, Inc., 269 Ga. 486, 500 S.E.2d 574 (Ga. 1998), Georgia’s Supreme Court specifically held that it was unconstitutional to prohibit citizens under the age of twenty-one from patronizing adult businesses:

In the expansion of the mantle of protection which shields minors from harmful materials to cover those between 18 and 21 years of age, the State has restricted the speaker’s audience and has prevented the 18-, 19-, and 20-year-olds from determining what constitutionally-protected sexual material they will view, without providing a compelling state interest which justifies taking legislative action restricting free speech. Accordingly, we agree with the trial court that the OCGA §16-12-103(b)(2) is an unconstitutional infringement on free speech rights protected by the First Amendment ...

Id., 269 Ga. at 489–90, 500 S.E.2d at 576–77. In T. Weston, Inc. v. Mineral Cty., W.Va., 2008 WL 3474146 at *11 (N.D. W.Va. 2008), the Court relied on Essence and Cafe Erotica, to conclude that “the proscription of persons between the ages of

18 and 21 on the premises where live exotic entertainment is offered offends the First Amendment rights of persons in that age group.”

The principle case in opposition is neither controlling nor persuasive. Doe I v. Landry, 909 F.3d 99 (5th Cir. 2018) upheld a state statute which prohibited dancers under the age of 21 from exposing their buttocks or breasts in a bar. That case is distinguishable in at least four respects: (1) the Louisiana statute focuses on nudity, which does not occur in Dancing Entertainment Establishments (*i.e.* bikini bars); (2) it is limited to alcohol establishments while Jacksonville’s Ordinance also extends to businesses which do not serve alcohol; (3) Plaintiffs here have asserted that Jacksonville’s Code is content-based, fails the narrow tailoring requirement and is underinclusive – claims that were never asserted in Doe; and (4) the Wacko’s Too Plaintiffs showed that there has *never* been a human trafficking arrest in any of the regulated businesses. *See*, Request for Judicial Notice (Doc. 67 [Wacko’s Too]).

The claim of underinclusiveness appears to be unique to this litigation and to Wacko’s Too. That claim arises from the fact that a ban which supposedly focuses on human trafficking ignores all potential victims except those actually engaged in First Amendment expression – the disfavored category of exotic dance performers. The Ordinance does not ban persons under the age of 21 from being employed in adult clubs as security staff, waiters and deejays. An 18-year old can even own an adult dance club. What evidence does the City have to suggest that a waitress is

invulnerable to human trafficking while *every* twenty-year old performer is certain to be victimized (since *every* twenty-year old is disqualified from dancing)? Compare, Brown v. Entm't Merchants Ass'n, 131 S.Ct. 2729, 2740 (2011) (“Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.”); See, also, Reed v. Town of Gilbert, 135 S. Ct. 2218, 2232 (2015) (“[A] ‘law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction on truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited,’”).

For purposes of the Equal Protection Clause, the ban against performers under the age of twenty-one is subject to heightened scrutiny because the fundamental right of speech is implicated. See, e.g., Doe v. Moore, 410 F.3d 1337, 1346 (11th Cir. 2005) (“Group classification by legislative act will be analyzed under a strict scrutiny if the classification infringes fundamental rights or concerns a suspect class.”). The ban violates Equal Protection because it treats *sui juris* adults differently for an insubstantial and invidious reason.

C. Portions of the Ordinance are Unconstitutionally Vague.

A law is deemed void for vagueness if it fails to describe an offense “with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory

enforcement.” Kolender v. Lawson, 461 U.S. 352, 357 (1983). “It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.” Grayned v. City of Rockford, 408 U.S. 104, 108 (1972). Laws must be particularly precise where First Amendment rights are at issue. *See*, Wollschlaeger, 848 F.3d at 1320, *citing* NAACP v. Button, 371 U.S. 415 (1963) (“[S]tandards of permissible statutory vagueness are strict in the area of free expression.”).

The term “human trafficking-related” crime found in §§150.224(c) and 151.214(c) is a neologism – an invented term without definition, common usage or grounding in statutory law. A license application – and associated speech rights – can be denied based on whatever the Sheriff thinks these words mean.

Equally problematic are the trigger provisions which activate the under 21 ban. *See*, §§150.224(c) and 151.214(c). Plaintiffs dissected every bit of that language in their Complaint (Doc. 1 at 6-8). The argument boils down to the fact that no one can tell whether that ban is in effect now and, if not, when it will take effect. There is no doubt that this inchoate ban will have a chilling effect on speech as many potential performers under the age of twenty-one are likely to conclude that they are not permitted to dance.

D. Deprivation of Occupational Liberty

Plaintiffs have a constitutional right to pursue their chosen, entirely lawful,

profession:

It is a basic truism of the law and reinforced by the United States Supreme Court that “[i]t is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose....” Lowe v. Sec. & Exch. Comm’n, 472 U.S. 181, 228, 105 S.Ct. 2557, 86 L.Ed.2d 130 (1985) (citation omitted). “Occupational freedom, the right to earn a living as one chooses, is a nontrivial constitutional right entitled to nontrivial judicial protection.” Patel v. Texas Dep’t of Licensing & Regulation, 469 S.W.3d 69, 2015 WL 3982687, 58 Tex. Sup. Ct. J. 1298 (Tex. June 26, 2015) (Willett, J., concurring).

Muratti-Stuart v. Dep’t of Bus. & Pro. Regul., 174 So.3d 538, 540 (Fla. 4th DCA 2015); *See, also*, Wroblewski v. City of Washburn, 965 F.2d 452, 455 (7th Cir. 1992), *quoting* Lawson v. Sheriff of Tippecanoe County, 725 F.2d 1136, 1138 (7th Cir. 1984) (“The concept of liberty protected by the due process clause has long included occupational liberty – ‘the liberty to follow a trade, profession, or other calling.’”).

Occupational liberty claims are evaluated under the rational basis test. *See, e.g.*, Engquist v. Oregon Dep’t of Agric., 478 F.3d 985, 997 (9th Cir. 2007), *aff’d sub nom.* Engquist v. Oregon Dep’t of Agr., 553 U.S. 591, 128 S. Ct. 2146 (2008); Tiwari v. Friedlander, 26 F.4th 355, 361 (6th Cir. 2022). The rational basis test “is not toothless.” Berger v. City of Mayfield Heights, 154 F.3d 621, 625 (6th Cir. 1998) (Citation and internal quotes omitted).

Here, the flat ban on performers under the age of twenty-one goes far beyond a mere licensing requirement; the prohibition violates performers' legal right to work at or contract with an exotic dance facility. In addition, the ban includes no grandfather provision. Performers like ALLEN who are currently performing will suddenly lose their livelihood in a local industry where the City's own evidence shows that no human trafficking occurs.

There are two facts which illustrate the fundamental irrationality of the age ban. First, it is irrational to regulate adult dance clubs out of a concern for human trafficking when it is known as a matter of incontrovertible fact that those clubs are not associated with trafficking. Second, it is irrational to ban performers under the age of twenty-one from pursuing a lawful profession while allowing all other persons under twenty-one to be employed by, own and patronize exactly the same businesses. Why would a performer dancing on stage be more susceptible to human trafficking than a waitress who has prolonged, direct contact with the patrons and staff who presumably (but not in reality) present a trafficking risk for young ladies? An irrational law foreclosing an entire profession cannot stand even if it is well-intentioned.

WHEREFORE, Plaintiffs pray for entry of a Preliminary Injunction enjoining the City of Jacksonville and its officers and agents from enforcing Ordinance 2022-172-E in whole or in part.

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1 Introduced by Council Members Cumber and Carlucci and Co-Sponsored by
2 Council Members Diamond, DeFoor, and Ferraro & amended by the
3 Neighborhoods, Community Services, Public Health and Safety Committee:
4
5

6 **ORDINANCE 2022-172-E**

7 AN ORDINANCE AMENDING CHAPTER 150 (ADULT
8 ENTERTAINMENT AND SERVICES CODE), PART 2
9 (ADMINISTRATION), SECTION 150.224 (PERFORMER
10 WORK IDENTIFICATION CARD), *ORDINANCE CODE*, TO
11 AMEND THE PROCESS FOR ISSUANCE OF A PERFORMER
12 WORK IDENTIFICATION CARD FOR ALL PERFORMERS IN
13 ADULT ENTERTAINMENT ESTABLISHMENTS; AMENDING
14 CHAPTER 151 (DANCING ENTERTAINMENT
15 ESTABLISHMENT CODE), PART 2 (ADMINISTRATION),
16 SECTION 151.214 (PERFORMER WORK IDENTIFICATION
17 CARD), *ORDINANCE CODE*, TO AMEND THE PROCESS FOR
18 ISSUANCE OF A PERFORMER WORK IDENTIFICATION CARD
19 FOR ALL PERFORMERS IN DANCING ENTERTAINMENT
20 ESTABLISHMENTS; PROVIDING AN EFFECTIVE DATE.
21

22 **BE IT ORDAINED** by the Council of the City of Jacksonville:

23 **Section 1. Intent and severability.** The intent of this
24 legislation is to enact a scheme of uniform and non-discriminatory
25 time, place and manner regulations for performers at adult
26 entertainment establishments and dancing entertainment establishments
27 in the City. It is the Council's intent that these regulations be
28 interpreted and applied to not eliminate all forms of adult
29 entertainment, but instead, to be narrowly tailored and limited to
30 assist in reducing criminal activities occurring at these facilities.
31 The provisions of this Ordinance are intended to be severable, and

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1 if any provision is declared invalid or unenforceable by a court of
 2 competent jurisdiction, such provision shall be severed and the
 3 remainder shall continue in full force and effect with the Ordinance
 4 being deemed amended to the least degree legally permissible.

5 **Section 2. Amending Chapter 150 (Adult Entertainment and**
 6 **Services Code), Part 2 (Administration), Section 150.224 (Performer**
 7 **work identification card), Ordinance Code.** Chapter 150 (Adult
 8 Entertainment and Services Code), Part 2 (Administration), Section
 9 150.224 (Performer work identification card), *Ordinance Code*, is
 10 hereby amended to read as follows:

11 **CHAPTER 150. ADULT ENTERTAINMENT AND SERVICES CODE.**

12 * * *

13 **PART 2. ADMINISTRATION**

14 * * *

15 **Sec. 150.224. Performer work identification card.**

16 (a) *Performer Work Identification Card required.* Any person
 17 desiring to perform in an adult entertainment establishment licensed
 18 under this Chapter must obtain a Work Identification Card from the
 19 Sheriff. No person shall act as a performer in an adult entertainment
 20 establishment without having previously obtained said Work
 21 Identification Card, except as permitted during the Grace Period as
 22 set forth in this section. Additionally, no license holder or
 23 establishment manager shall employ, contract with or otherwise allow
 24 any performer to perform in an adult entertainment establishment who
 25 does not possess a valid and effective Work Identification Card except
 26 as permitted during the Grace Period as set forth in this section.
 27 Establishment managers shall be required to review all Performer
 28 Rosters at the commencement of his or her shift to verify compliance
 29 with this section.

30 (b) *Penalty.* Violations of this section shall be a civil
 31 infraction. Any performer, license holder, owner, operator or manager

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1 who violates or knowingly permits a violation of this section shall
 2 be assessed a civil penalty of \$200~~guilty of a misdemeanor of the~~
 3 ~~second degree.~~

4 (c) *Application for Work Identification Card.* An application
 5 for a Work Identification Card shall be ~~created by and~~ obtained from
 6 the Sheriff. ~~The Sheriff is authorized to include whatever information~~
 7 ~~he or she deems relevant to the purposes established in this section~~
 8 ~~for issuance of the Work Identification Card, including~~ The
 9 application shall include: the applicant's full legal name (including
 10 maiden name, if applicable); residential address; driver's license
 11 number or government issued identification or passport number; date
 12 of birth; natural hair and eye color; race; sex; height and weight;
 13 place of birth (city, state or country); telephone number; email
 14 address; a list of locations of and descriptions of any tattoos;
 15 confirmation that the applicant has not been convicted within the
 16 relevant periods of time of any violation listed in subparagraph (l),
 17 and a list of each adult entertainment establishment where the
 18 applicant will be performing and each stage name used by the applicant
 19 at each location~~fingerprinting and photographs and proof of a valid~~
 20 ~~and effective work permit or visa for non-U.S. citizens.~~ Each
 21 applicant shall ~~demonstrate~~ affirm through either attestation on the
 22 application or presentation of a certificate of completion to the
 23 Sheriff that he or she has completed ~~a~~one, free-of-charge, sex
 24 trafficking education program. ~~Acceptable training programs include~~
 25 ~~those developed and presented by the American Hotel & Lodging~~
 26 ~~Association,~~ the Polaris Project
 27 (<https://polarisproject.org/training/>) (approximately 45 min. in
 28 length), ~~ECPAT-USA, Business Ending Slavery & Trafficking and or the~~
 29 U.S. Department of Homeland Security, Blue Campaign Consequences
 30 Training ([https://www.dhs.gov/blue-](https://www.dhs.gov/blue-campaign/course-consequences-p01)
 31 campaign/course consequences p01) (approximately 15 min. in length).

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1 The Sheriff shall maintain and make available to any applicant each
2 sex trafficking education program in the event any applicant does not
3 have online access to the program(s). Additionally, the applicant
4 shall affirm that he or she understands that the Work Identification
5 Card may be immediately revoked if issuance of the card is made
6 illegal through order of any court. ~~Other programs not listed may~~
7 ~~be approved by the Sheriff.~~ The application shall be in writing,
8 signed and notarized, fully completed and submitted to the Sheriff
9 together with the nonrefundable application fee. Each applicant must
10 submit proof of identity at the time the application is submitted.
11 It is the Council's intent that no Work Identification Card shall be
12 issued to any applicant who is under the age of twenty-one (21) years
13 of age; however, this requirement shall not become effective unless
14 and until the legality of this age restriction is determined to be
15 valid or the City is otherwise not legally prevented from imposing
16 this restriction. ~~and proof that applicant is at least twenty-one~~
17 ~~(21) years of age. Work Identification Cards shall not be issued to~~
18 ~~any person under the age of twenty one.~~ Additionally, ~~n~~No Work
19 Identification Card shall be issued to an applicant who has been
20 convicted of human trafficking or any human trafficking-related
21 charge or who is currently on ~~probation~~suspension for any violation
22 listed under subsection (1), below. Work Identification Cards are
23 valid for a term of one (1) year. Applicants are required to update
24 his or her application with changes to any of the application
25 information (except height and weight) within 60 days of the change
26 of such information. All current performers shall ~~obtain~~complete and
27 submit an application for a Work Identification Card within ninety
28 (90) days from the effective date of this section (the "Grace
29 Period"). Upon conclusion of the Grace Period, no performer shall be
30 permitted to perform until a current Work Identification Card is
31 obtained or without a valid copy of the application fee payment check

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1 or receipt as specified in subparagraph (e), below.

2 (d) *False statement or false information in applying for a Work*
3 *Identification Card.* It shall be unlawful for any person applying for
4 a Work Identification Card to make a false statement or otherwise
5 provide false information which is intended to facilitate the issuance
6 of same. In addition to any other penalties provided herein, the
7 Sheriff is authorized to petition the court for immediate revocation
8 of any Worker Identification Card that has been determined by the
9 Sheriff to have been issued based on fraudulent or false information.

10 (e) *Fees.* The applicant shall pay an application fee with each
11 new request for a Work Identification Card and with each renewal of
12 a Work Identification Card. The fees shall not be prorated. The
13 applicant shall also pay a duplicate card fee for each duplicate copy
14 of an existing Work Identification Card. The initial fee for an
15 initial Work Identification Card shall be \$100. The initial fee for
16 a renewal card shall be \$50. The initial fee for a duplicate
17 replacement card shall be \$35. The Sheriff shall be entitled to
18 impose a three percent (3%) annual increase of the fees. A copy of
19 the check, or of a receipt issued by the Sheriff, showing payment for
20 an application or duplicate card shall operate as a receipt for said
21 fees and shall allow the applicant to perform pending receipt of the
22 official Work Identification Card. ~~The initial and renewal~~
23 ~~application fee shall be \$150. The fee for issuance of a duplicate~~
24 ~~Work Identification Card shall be \$50. Fees are non-refundable.~~

25 (f) *Issuance of Work Identification Card.* The Sheriff is
26 responsible for verifying all information contained on a Work
27 Identification Card application. The Sheriff shall approve or deny
28 an application within fourteen (14) days of receipt of a completed
29 application and payment of the applicable fee. If the Sheriff fails
30 to approve or deny an application within the 14-day time limit, the
31 application shall be deemed granted and the applicant can continue

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1 to rely on his or her receipt or check copy as a substitute for the
2 Work Identification Card to legally perform or can request the Sheriff
3 to issue an official card. ~~Upon determining that the Work~~
4 ~~Identification Card should be issued, the Sheriff shall immediately~~
5 ~~render a Work Identification Card to the applicant. Said~~ An issued
6 Work Identification Card shall, at a minimum, include the performer's
7 name, photograph, date of birth, height, weight, natural eye and hair
8 color, and a unique card number. Should the Sheriff determine that
9 the proof submitted with the application for the Work Identification
10 Card as required hereinabove is not satisfactory or full payment of
11 the application fee is not received, the Sheriff shall deny issuance
12 of said Work Identification Card and shall provide written
13 notification to the applicant stating the reason(s) for any such
14 denial.

15 (g) *Retention of Performer Roster and Work Identification Card.*
16 All persons required pursuant to this Code to obtain a Work
17 Identification Card shall keep same on their person or with their
18 personal belongings at all times while performing at an adult
19 entertainment establishment. The adult entertainment establishment
20 shall compile and retain a complete performer roster that includes
21 all performers performing at the establishment for a period of thirty
22 (30) days from each performer's most recent performance date. The
23 performer roster shall be organized by date and performer, including
24 the performer's first and last name and stage name. The adult
25 entertainment establishment shall also maintain a Work Identification
26 Card file, organized alphabetically by performer's last name, with
27 legible photocopies of the Work Identification Card of each performer
28 performing at said establishment for a period of two (2) years from
29 each performer's most recent performance date. Other than performers
30 performing during the Grace Period established in this section, no
31 performer shall perform until the performer roster is updated to

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1 include the performer information, and the legible photocopy of the
2 Work Identification Card is placed on file as required herein. The
3 performer roster and the Work Identification Card file shall be made
4 available to the Sheriff for inspection and/or copying upon request,
5 which shall only be made during normal business hours when the
6 establishment is open to the public.

7 (h) *Appeal.* In the event that an applicant for a Work
8 Identification Card is denied, said applicant may request emergency
9 injunctive relief from the Circuit Court of the Fourth Judicial
10 Circuit of the State of Florida. Due to the overriding public interest
11 in not having persons ~~under the age of twenty-one or with criminal~~
12 ~~convictions~~ identified in paragraph (l) perform in adult
13 entertainment establishments, no provisional Work Identification
14 Cards shall be issued by the Sheriff.

15 (i) *Transfer of Work Identification Card prohibited.* A Work
16 Identification Card shall not be transferred from one person to
17 another; however, the person to whom the Work Identification Card was
18 issued may utilize same in any ~~and all~~ licensed adult entertainment
19 establishments ~~in the City~~ identified in the Work Identification Card
20 application.

21 (j) *Alteration of Work Identification Card prohibited.* It shall
22 be unlawful for any person to alter or otherwise change the contents
23 of a Work Identification Card without the written permission of the
24 Sheriff.

25 (k) *Requirement of Managers, License Holders, Owners and*
26 *Operators to Verify Work Identification Cards of Performers.* No person
27 managing, owning or operating or holding a license to operate an
28 adult entertainment establishment shall permit, employ, or otherwise
29 allow any person to perform at said establishment unless such person
30 has a valid, current, Work Identification Card issued in accordance
31 herewith, unless such performer is performing within the Grace Period

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1 established in this section. Each owner and operator of the
2 establishment shall have a separate and independent duty to verify
3 that all performers are in compliance with this section. Each manager
4 of the establishment shall have a separate and independent duty to
5 verify that all performers are in compliance with this section during
6 all times the manager is working at the establishment. Separate
7 violations may be issued to the managers, owners and operators of the
8 establishment for each performer, and for each day that a performer
9 does not have the required Work Identification Card. It shall be
10 prima facie evidence of a violation of this Chapter if the
11 establishment does not have a legible photocopy of a current Work
12 Identification Card on file for each performer as of the date of each
13 performance, except during the Grace Period.

14 (1) Violations that are subject to criminal prosecution;
15 suspension. ~~Either while performing at or while present in any adult~~
16 ~~entertainment establishment, any performer who violates this section~~
17 ~~may be prosecuted by the State Attorney. Upon conviction of such~~
18 ~~violation, the prosecuting officials shall notify the Sheriff of said~~
19 ~~conviction.~~ ~~Additionally,~~ fFor any performer convicted of the
20 following violations either while performing at or while present in
21 any adult entertainment establishment, the performer's Work
22 Identification Card shall be suspended as follows:

- 23 i. Five (5) years for prostitution;
- 24 ii. Three (3) years for ~~violent~~ forcible felonies;
- 25 iii. Three (3) years for narcotic sales or drug trafficking;
- 26 iv. One (1) year for lewd/obscene acts; and
- 27 v. One (1) year for possession of narcotics or narcotics
28 paraphernalia.

29 The suspensions authorized herein shall not be ordered as part of any
30 criminal penalties assessed in any criminal proceeding. It is the
31 Council's intent that the remedies established herein are civil in

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1 nature and are not intended to be a criminal penalty in contravention
 2 of those established in the Florida Statutes. The Sheriff is
 3 authorized to petition the court for immediate suspension of any
 4 Worker Identification Card as authorized herein.

5 (m) *Violation Subject to Civil Prosecution.* Any owners,
 6 managers or operators of an adult entertainment establishment who
 7 violates the provisions of ~~subsections (g), (k) or (l) of this section~~
 8 may be prosecuted by the Sheriff or the City. Upon adjudication of
 9 such civil violation, the prosecuting officials shall notify the
 10 Sheriff of such adjudication within five (5) business days. Violations
 11 shall be ~~considered a Class F civil offense~~assessed a fine of \$200,
 12 with each day upon which a violation occurs constituting a separate
 13 civil offense.

14 (n) *Violations Subject to All Legal Remedies.* The violation of
 15 any provision of this section may be prosecuted pursuant to the civil
 16 procedures and penalties of Chapter 609, *Ordinance Code*, or through
 17 the issuance of notices to appear, at the discretion of the Sheriff
 18 or the City. Additionally, the City shall be authorized to take any
 19 appropriate legal action, including, but not limited to, seeking
 20 cease and desist orders, and requesting temporary or permanent
 21 injunctive relief. It is the intent and purpose of this section to
 22 provide additional and cumulative remedies.

23 **Section 3. Amending Chapter 151 (Dancing Entertainment**
 24 **Establishment Code), Part 2 (Administration), Section 151.214**
 25 **(Performer work identification card), Ordinance Code.** Chapter 151
 26 (Dancing Entertainment Establishment Code), Part 2 (Administration),
 27 Section 151.214 (Performer work identification card), *Ordinance Code*,
 28 is hereby amended to read as follows:

29 **CHAPTER 151. DANCING ENTERTAINMENT ESTABLISHMENT CODE.**

30 * * *

31 **PART 2. ADMINISTRATION**

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* * *

Sec. 151.214. Performer work identification card.

(a) *Performer Work Identification Card required.* Any person desiring to perform in a dancing entertainment establishment licensed under this Chapter must obtain a Work Identification Card from the Sheriff. No person shall act as a performer in a dancing entertainment establishment without having previously obtained said Work Identification Card, except as permitted during the Grace Period as set forth in this section. Additionally, no license holder or establishment manager shall employ, contract with or otherwise allow any performer to perform in a dancing entertainment establishment who does not possess a valid and effective Work Identification Card except as permitted during the Grace Period as set forth in this section. Establishment managers shall be required to review all Performer Rosters at the commencement of his or her shift to verify compliance with this section.

(b) *Penalty.* Violations of this section shall be a civil infraction. Any performer, license holder, owner, operator or manager who violates or knowingly permits a violation of this section shall be assessed a civil penalty of \$200~~guilty of a misdemeanor of the second degree.~~

(c) *Application for Work Identification Card.* An application for a Work Identification Card shall be ~~created by and~~ obtained from the Sheriff. ~~The Sheriff is authorized to include whatever information he or she deems relevant to the purposes established in this section for issuance of the Work Identification Card, including~~ The application shall include: the applicant's full legal name (including maiden name, if applicable); residential address; driver's license number, government issued identification or passport number; date of birth; natural hair and eye color; race; sex; height and weight; place of birth (city, state or country); telephone number;

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1 email address; a list of locations of and descriptions of any tattoos;
 2 confirmation that the applicant has not been convicted within the
 3 relevant periods of time of any violation listed in subparagraph (1),
 4 and a list of each dancing entertainment establishment where the
 5 applicant will be performing and each stage name used by the applicant
 6 at each location~~fingerprinting and photographs and proof of a valid~~
 7 ~~and effective work permit or visa for non-U.S. citizens. Each~~
 8 ~~applicant shall demonstrate~~affirm through either attestation on the
 9 application or presentation of a certificate of completion to the
 10 Sheriff that he or she has completed a~~one, free-of-charge,~~ sex
 11 ~~trafficking education program. Acceptable training programs include~~
 12 ~~those developed and presented by the American Hotel & Lodging~~
 13 ~~Association,~~ the Polaris Project
 14 (<https://polarisproject.org/training/>) (approximately 45 min. in
 15 length), ~~ECPAT-USA, Business Ending Slavery & Trafficking and/or~~ the
 16 U.S. Department of Homeland Security , Blue Campaign Consequences
 17 Training ([https://www.dhs.gov/blue-](https://www.dhs.gov/blue-campaign/course-consequences-p01)
 18 campaign/course consequences p01) (approximately 15 min. in length).
 19 The Sheriff shall maintain and make available to any Applicant each
 20 sex trafficking education program free-of-charge in the event any
 21 applicant does not have online access to the program(s). Additionally,
 22 the applicant shall affirm that he or she understands that the Work
 23 Identification Card may be immediately revoked if issuance of the
 24 card is made illegal through order of any court. ~~Other programs not~~
 25 ~~listed may be approved by the Sheriff.~~ The application shall be in
 26 writing, signed and notarized, fully completed and submitted to the
 27 Sheriff together with the nonrefundable application fee. Each
 28 applicant must submit proof of identity at the time the application
 29 is submitted. It is the Council's intent that no Work Identification
 30 Card shall be issued to any applicant who is under the age of twenty-
 31 one (21) years of age; however, this requirement shall not become

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1 effective unless and until the legality of this age restriction is
2 determined to be valid or the City is otherwise not legally prevented
3 from imposing this restriction. ~~and proof that applicant is at least~~
4 ~~twenty-one (21) years of age. Work Identification Cards shall not be~~
5 ~~issued to any person under the age of twenty-one. Additionally, nNo~~
6 Work Identification Card shall be issued to an applicant who has been
7 convicted of human trafficking or any human trafficking-related
8 charge or who is currently on ~~probation~~ suspension for any violation
9 listed under subsection (1), below. Work Identification Cards are
10 valid for a term of one (1) year. Applicants are required to update
11 his or her application with changes to any of the application
12 information (except height and weight) within 60 days of the change
13 of such information. All current performers shall ~~obtain~~ complete
14 and submit an application for a Work Identification Card within ninety
15 (90) days from the effective date of this section (the "Grace
16 Period"). Upon conclusion of the Grace Period, no performer shall be
17 permitted to perform until a current Work Identification Card is
18 obtained or without a valid copy of the application fee payment check
19 or receipt as specified in subparagraph (e), below.

20 (d) *False statement or false information in applying for a Work*
21 *Identification Card.* It shall be unlawful for any person applying for
22 a Work Identification Card to make a false statement or otherwise
23 provide false information which is intended to facilitate the issuance
24 of same. In addition to any other penalties provided herein, the
25 Sheriff is authorized to petition the court for immediate revocation
26 of any Worker Identification Card that has been determined by the
27 Sheriff to have been issued based on fraudulent or false information.

28 (e) *Fees.* The applicant shall pay an application fee with each
29 new request for a Work Identification Card and with each renewal of
30 a Work Identification Card. The fees shall not be prorated. The
31 applicant shall also pay a duplicate card fee for each duplicate copy

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1 of an existing Work Identification Card. The initial fee for an
2 initial Work Identification Cards shall be \$100. The initial fee for
3 a renewal card shall be \$50. The initial fee for a duplicate
4 replacement card shall be \$35. The Sheriff shall be entitled to
5 impose a three percent (3%) annual increase of the fees. A copy of
6 the check, or of a receipt issued by the Sheriff, showing payment for
7 an application or duplicate card shall operate as a receipt for said
8 fees and shall allow the applicant to perform pending receipt of the
9 official Work Identification Card. ~~The initial and renewal~~
10 ~~application fees shall be \$150. The fee for issuance of a duplicate~~
11 ~~Work Identification Card shall be \$50. Fees are non-refundable.~~

12 (f) *Issuance of Work Identification Card.* The Sheriff is
13 responsible for verifying all information contained on a Work
14 Identification Card application. The Sheriff shall approve or deny
15 an application within fourteen (14) days of receipt of a completed
16 application and payment of the applicable fee. If the Sheriff fails
17 to approve or deny an application within the 14-day time limit, the
18 application shall be deemed granted and the applicant can continue
19 to rely on his or her receipt or check copy as a substitute for the
20 Work Identification Card to legally perform or can request the Sheriff
21 to issue an official card. ~~Upon determining that the Work~~
22 ~~Identification Card should be issued, the Sheriff shall immediately~~
23 ~~render a Work Identification Card to the applicant. Said~~ An issued
24 Work Identification Card shall, ~~at a minimum,~~ include the performer's
25 name, photograph, date of birth, height, weight, natural eye and hair
26 color, and a unique card number. Should the Sheriff determine that
27 the proof submitted with the application for the Work Identification
28 Card as required hereinabove is not satisfactory or full payment of
29 the application fee is not received, the Sheriff shall deny issuance
30 of said Work Identification Card and shall provide written
31 notification to the applicant stating the reason(s) for any such

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1 denial.

2 (g) *Retention of Performer Roster and Work Identification Card.*

3 All persons required pursuant to this Code to obtain a Work
4 Identification Card shall keep same on their person or with their
5 personal belongings at all times while performing at a dancing
6 entertainment establishment. The dancing entertainment establishment
7 shall compile and retain a complete performer roster that includes
8 all performers performing at the establishment for a period of thirty
9 (30) days from each performer's most recent performance date. The
10 performer roster shall be organized by date and performer, including
11 the performer's first and last name and stage name. The dancing
12 entertainment establishment shall also maintain a Work Identification
13 Card file, organized alphabetically by performer's last name, with
14 legible photocopies of the Work Identification Card of each performer
15 performing at said establishment for a period of two (2) years from
16 each performer's most recent performance date. Other than performers
17 performing during the Grace Period established in this section, no
18 performer shall perform until the performer roster is updated to
19 include the performer information, and the legible photocopy of the
20 Work Identification Card is placed on file as required herein. The
21 performer roster and the Work Identification Card file shall be made
22 available to the Sheriff for inspection and/or copying upon request,
23 which shall only be made during normal business hours when the
24 establishment is open to the public.

25 (h) *Appeal.* In the event that an applicant for a Work
26 Identification Card is denied, said applicant may request emergency
27 injunctive relief from the Circuit Court of the Fourth Judicial
28 Circuit of the State of Florida. Due to the overriding public interest
29 in not having persons ~~under the age of twenty-one or~~ with criminal
30 convictions identified in paragraph (l) perform in adult
31 entertainment establishments, no provisional Work Identification

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1 Cards shall be issued by the Sheriff.

2 (i) *Transfer of Work Identification Card prohibited.* A Work
3 Identification Card shall not be transferred from one person to
4 another; however, the person to whom the Work Identification Card was
5 issued may utilize same in any ~~and all~~ licensed dancing entertainment
6 establishments ~~in the City~~ identified in the Work Identification Card
7 application.

8 (j) *Alteration of Work Identification Card prohibited.* It shall
9 be unlawful for any person to alter or otherwise change the contents
10 of a Work Identification Card without the written permission of the
11 Sheriff.

12 (k) *Requirement of Managers, License Holders, Owners and*
13 *Operators to Verify Work Identification Cards of Performers.* No person
14 managing, owning or operating or holding a license to operate a
15 dancing entertainment establishment shall permit, employ, or
16 otherwise allow any person to perform at said establishment unless
17 such person has a valid, current, Work Identification Card issued in
18 accordance herewith, unless such performer is performing within the
19 Grace Period established in this section. Each owner and operator of
20 the establishment shall have a separate and independent duty to verify
21 that all performers are in compliance with this section. Each manager
22 of the establishment shall have a separate and independent duty to
23 verify that all performers are in compliance with this section during
24 all times the manager is working at the establishment. Separate
25 violations may be issued to the managers, owners and operators of the
26 establishment for each performer, and for each day that a performer
27 does not have the required Work Identification Card. It shall be
28 prima facie evidence of a violation of this Chapter if the
29 establishment does not have a legible photocopy of a current Work
30 Identification Card on file for each performer as of the date of each
31 performance, except during the Grace Period.

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1 (1) Violations that are subject to criminal prosecution;
 2 suspension. ~~Either while performing at or while present in any dancing~~
 3 ~~entertainment establishment, any performer who violates subsection~~
 4 ~~(a) of this section may be prosecuted by the State Attorney. Upon~~
 5 ~~conviction of such violation, the prosecuting officials shall notify~~
 6 ~~the Sheriff of said conviction. Additionally, f~~For any performer
 7 convicted of the following violations either while performing at or
 8 while present in any dancing entertainment establishment, the
 9 performer's Work Identification Card shall be suspended as follows:

- 10 i. Five (5) years for prostitution;
- 11 ii. Three (3) years for ~~violent~~forcible felonies;
- 12 iii. Three (3) years for narcotic sales or drug trafficking;
- 13 iv. One (1) year for lewd/obscene acts; and
- 14 v. One (1) year for possession of narcotics or narcotics
- 15 paraphernalia.

16 The suspensions authorized herein shall not be ordered as part of any
 17 criminal penalties assessed in any criminal proceeding. It is the
 18 Council's intent that the remedies established herein are civil in
 19 nature and are not intended to be a criminal penalty in contravention
 20 of those established in the Florida Statutes. The Sheriff is
 21 authorized to petition the court for immediate suspension of any
 22 Worker Identification Card as authorized herein.

23 (m) *Violation Subject to Civil Prosecution.* Any owners,
 24 managers or operators of a dancing entertainment establishment who
 25 violates the provisions of ~~subsections (g), (k) or (l) of this section~~
 26 may be prosecuted by the Sheriff or the City. Upon adjudication of
 27 such civil violation, the prosecuting officials shall notify the
 28 Sheriff of such adjudication within five (5) business days.
 29 Violations shall be ~~considered a Class F civil offense~~assessed a fine
 30 of \$200, with each day upon which a violation occurs constituting a
 31 separate civil offense.

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1 (n) *Violations Subject to ~~All~~ Legal Remedies.* The violation of
2 any provision of this section may be prosecuted pursuant to the civil
3 procedures and penalties of Chapter 609, *Ordinance Code* or through
4 the issuance of notices to appear, at the discretion of the City or
5 the Sheriff. Additionally, the City shall be authorized to take any
6 appropriate legal action, including, but not limited to, seeking
7 cease and desist orders, and requesting temporary or permanent
8 injunctive relief. It is the intent and purpose of this section to
9 provide additional and cumulative remedies.

10 **Section 4. Effective Date.** This ordinance shall become
11 effective upon signature by the Mayor or upon becoming effective
12 without the Mayor's signature.

13
14 Form Approved:

15
16 /s/ Paige H. Johnston

17 Office of General Counsel

18 Legislation prepared by: Jason R. Teal

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