

## REPORT OF THE PLANNING AND DEVELOPMENT DEPARTMENT

The Planning and Development Department hereby forwards to the Planning Commission, Land Use and Zoning Committee, Rules Committee, and City Council its comments and recommendations on:

### ORDINANCE 2014-164

**AN ORDINANCE AMENDING CHAPTER 151 (DANCING ENTERTAINMENT ESTABLISHMENT CODE), ORDINANCE CODE AND CHAPTER 656 (ZONING CODE), ORDINANCE CODE; AMENDING SECTION 151.103 (DEFINITIONS) AND SECTION 656.1601 (DEFINITIONS), ORDINANCE CODE, TO MODIFY THE DEFINITION OF A DANCING ENTERTAINMENT ESTABLISHMENT AND TO ADD NEW DEFINITIONS WITH RESPECT TO SAME; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

#### I. GENERAL INFORMATION

The bill amends Ordinance Code Chapter 151 – Dancing Entertainment Establishment Code and Chapter 656 Zoning Code to modify the definition of a dancing entertainment establishment in both chapters and to add additional definitions to Chapter 151.

The revised definition of “dancing entertainment establishment” is amended to incorporate (i) the particular type of dance involved, (ii) the dancer’s attire, and (iii) the regularity with which the establishment features such dancers, and specifically excludes nightclubs and restaurants where dancing entertainment establishment activities do not occur as well as any establishment defined or regulated by Chapter 150 – Adult Entertainment and Services Code – from the definition. The “whereas” clauses of the bill state Council’s intention to adopt and incorporate the evidence, studies and testimony set forth in applicable judicial opinions, cases and previous legislation with respect to these establishments, including when combined with alcohol.

#### II. EVALUATION

- A. The need and justification for the change A recent ruling by a U.S. District Court judge in the case of Albanese Enterprises, Inc., v. City of Jacksonville found that the City’s ordinance was over-broad with regard to the definition of “dancing entertainment establishment” by virtue of lacking specificity about the type of dance being regulated, the dancers’ attire and the regularity with which the establishment features such dancers. This bill is introduced to add the degree of specificity as indicated by the court.
- B. Summary of Bill The bill revises the definition of a dancing entertainment establishment to add specificity to the activity the City desires to regulate.
- C. The relationship of the proposed amendment to the Comprehensive Plan and the work of the Department with appropriate consideration as to whether the proposed amendment will further the purposes of the Zoning Code and Comprehensive Plan.

This bill is consistent with the spirit and intent of both the Comprehensive Plan and the Zoning Code in that it is the intent of the legislation to protect and preserve the public health, safety and welfare of the people of the City of Jacksonville by instituting and enforcing rules which reduce and minimize the adverse impacts and secondary effects of dancing entertainment establishments, including when such establishments combine the use and consumption of alcohol, and in so doing seeks to: (i) avoid a concentration of uses which cause or intensify physical and social blight, (ii) reduce the negative impacts of such establishments upon other business uses, neighborhood property values, residential areas and public and semi-public uses, and (iii) improve the visual appearance of the community.

*D. Consistency with the Comprehensive Plan.*

The Comprehensive Plan is silent to dancing entertainment establishments, but as previously noted, this legislation is consistent with the spirit and intent of the Comprehensive Plan.

### III. RECOMMENDATIONS

The Planning and Development Department recommends that Ordinance 2014-164 be **APPROVED**.

1 Introduced by the Council President at the request of the Office of  
2 General Counsel:

3  
4 **ORDINANCE 2014-164**

5 AN ORDINANCE AMENDING CHAPTER 151 (DANCING  
6 ENTERTAINMENT ESTABLISHMENT CODE), *ORDINANCE*  
7 *CODE* AND CHAPTER 656 (ZONING CODE), *ORDINANCE*  
8 *CODE*; AMENDING SECTION 151.103 (DEFINITIONS)  
9 AND SECTION 656.1601 (DEFINITIONS), *ORDINANCE*  
10 *CODE*, TO MODIFY THE DEFINITION OF A DANCING  
11 ENTERTAINMENT ESTABLISHMENT AND TO ADD NEW  
12 DEFINITIONS WITH RESPECT TO SAME; PROVIDING  
13 FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

14  
15 **WHEREAS**, it is the intent of this Ordinance to protect and  
16 preserve the public health, safety and welfare of the people of the  
17 City of Jacksonville by instituting and enforcing rules which  
18 reduce and minimize the adverse impacts and secondary effects of  
19 dancing entertainment establishments, including when such  
20 establishments combine the use and consumption of alcohol, and in  
21 so doing seeks to: (i) avoid a concentration of uses which cause or  
22 intensify physical and social blight, (ii) reduce the negative  
23 impacts of such establishments upon other business uses,  
24 neighborhood property values, residential areas and public and  
25 semi-public uses, and (iii) improve the visual appearance of the  
26 community; and

27 **WHEREAS**, the City Council desires to insure that such  
28 establishments do not impede redevelopment and neighborhood  
29 revitalization efforts and finds that the activities regulated  
30 herein are being accomplished in order to reduce the negative  
31 secondary effects often associated with such establishments

1 including but not limited to prostitution, attempted rape, rape,  
2 murder and assaults on police officers in and around establishments  
3 dealing in alcoholic beverages, recognizing that actual and  
4 simulated nudity and sexual conduct and the depiction thereof  
5 coupled with alcohol in public places begets undesirable behavior  
6 and that sexual, lewd, lascivious and salacious conduct among  
7 patrons and employees within establishments dealing in alcoholic  
8 beverages often results in violations of the law and dangers to the  
9 health, safety and welfare of the public; and

10 **WHEREAS**, the City Council readopts and incorporates all of the  
11 evidence, studies and testimony presented at prior public hearings  
12 before the City Council regarding Ordinances 1994-190-651, 2003-  
13 755-E, 2005-743-E, and 2007-1047-E; and

14 **WHEREAS**, the City Council hereby adopts and incorporates the  
15 sworn testimony and evidence as set forth in the affidavits of  
16 Jacksonville Sheriff's Office personnel attested to and filed in  
17 the following case: H&J Land Investments, Inc., et al., v. City of  
18 Jacksonville, et al., Case No.: 3:13-cv-1174-J-34-TEM, United  
19 States District Court, Middle District of Florida, Jacksonville  
20 Division; and

21 **WHEREAS**, the City Council hereby adopts and incorporates the  
22 evidence, studies and testimony set forth in judicial opinions  
23 throughout country, including, but not limited to, Daytona Grand,  
24 Inc., v. City of Daytona Beach, 490 F. 3d 860 (11<sup>th</sup> Cir. 2007) and  
25 Peek-A-Boo Lounge of Bradenton, Inc., v. Manatee County, 337 F.3d  
26 1251 (11<sup>th</sup> Cir. 2003), that demonstrate among other things that the  
27 various types of activities described herein, including when  
28 combined with the consumption of alcoholic beverages, encourage  
29 criminal activity; and

30 **WHEREAS**, in response to an Order issued in the following case:  
31 Albanese Enterprises, Inc., v. City of Jacksonville, Case No.:

1 3:13-cv-1471-J-34MCR, United States District Court, Middle District  
2 of Florida, Jacksonville Division, the Council desires to modify  
3 the definition of a "dancing entertainment establishment" to  
4 incorporate: (i) the particular type of dance involved, (ii) the  
5 dancer's attire, and (iii) the regularity with which the  
6 establishment features such dancers; now therefore

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

8 **Section 1.** Chapter 151 (Dancing Entertainment  
9 Establishment Code), *Ordinance Code* is hereby amended to read as  
10 follows:

11 **CHAPTER 151 DANCING ENTERTAINMENT ESTABLISHMENT CODE**

12 **PART 1. GENERAL PROVISIONS.**

13  
14 \* \* \*

15 **Sec. 151.103. Definitions.**

16 (a) Dancing entertainment establishment means any  
17 establishment where during its hours of operation any worker  
18 wearing sexually provocative attire dances erotically and accepts  
19 any consideration, tip, remuneration or compensation from or on  
20 behalf of a customer. A dancing entertainment establishment shall  
21 not include any nightclub or restaurant where dancing entertainment  
22 establishment activities do not occur, theater, concert hall, art  
23 center, museum, or similar establishment that is primarily devoted  
24 to the arts or theatrical performances as defined in Section  
25 150.103 (Definitions), *Ordinance Code*. A dancing entertainment  
26 establishment does not include any establishment defined or  
27 regulated in Chapter 150 (Adult Entertainment and Services Code),  
28 Ordinance Code.

29 (b) Erotically means an exhibition, presentation or  
30 representation conducted in a sexually simulated manner arousing  
31 sexual desire and/or excitement.

1           (c) Sexually provocative attire means clothing that exposes  
2 to public view any portion of the breasts below the top of the  
3 areola and any portion of the buttocks or genitals.

4           (d) Straddle means the following act: the straddling of the  
5 legs of one person over any part of the body of any other person,  
6 regardless of whether there is a touch or touching.

7           (e) Touch means to touch with a portion of the human body or  
8 with any object.

9           (f) Employee means a person who works on a licensed premises,  
10 irrespective of whether the person is paid a salary or wage by the  
11 owner or manager of the regulated premises.

12           (g) Inspector means the Sheriff, or an employee of the Public  
13 Health Unit authorized and designated by the Public Health Officer,  
14 or of the Building Inspection Division, authorized and designated  
15 by the Chief of the Division or of the Fire Prevention Division,  
16 authorized by the Chief, Fire Prevention, or of the Planning and  
17 Development Department, authorized and designated by the Director  
18 of Planning and Development to inspect premises regulated under  
19 this Chapter and to take or require the actions authorized by this  
20 Chapter in case of violations being found on regulated premises,  
21 and also to inspect premises seeking to be licensed under this  
22 Chapter and to require corrections of unsatisfactory conditions  
23 found on the premises.

24           (h) Premises means all rooms and areas within the same  
25 building or within buildings on the same or adjacent land which are  
26 so closely connected therewith to admit free passage and which are  
27 under (1) the same ownership, or (2) the same dominion and control.  
28 The same dominion and control shall be rebuttably presumed where  
29 the areas are leased to the same or a related person. Free passage  
30 shall be rebuttably presumed where same ownership or same dominion  
31 and control exist.

1 (g) *Sheriff* means the Office of the Sheriff.

2 (h) *Specified criminal act* means a violation of this Chapter  
3 or Chapter 150; an offense under F.S. Ch. 800; an offense under  
4 F.S. Ch. 796; an offense under F.S. Ch. 847; an offense under F.S.  
5 § 893.13; and includes a violation of any similar ordinance, law or  
6 regulation whether in Florida or in any other state.

7 (i) *Violation* means any judicial action inconsistent with a  
8 determination of innocence, including by not limited to, a plea of  
9 guilty, a plea of no contest, withhold of adjudication or guilt or  
10 paying court costs.

11 (j) *Performer* means any person who dances and accepts any  
12 consideration, tip, remuneration or compensation from or on behalf  
13 of a customer at any commercial establishment that has or requires  
14 a dancing entertainment establishment license.

15 (k) *Dance performance permit* means an identification card,  
16 issued by a commercial establishment that has or requires a dancing  
17 entertainment establishment license, to each performer, which shall  
18 contain at a minimum the name and photograph of the performer.

19 \* \* \*

20 **CHAPTER 656. ZONING CODE.**

21 **PART 16. DEFINITIONS**

22 **Sec. 656.1601. Definitions.**

23 \* \* \*

24 ~~*Dancing entertainment establishment* means any establishment~~  
25 ~~where any worker dances and accepts any consideration, tip,~~  
26 ~~remuneration or compensation from or on behalf of a customer. A~~  
27 ~~dancing entertainment establishment shall not include any theater,~~  
28 ~~concert hall, art center, museum, or similar establishment that is~~  
29 ~~primarily devoted to the arts or theatrical performances as defined~~  
30 ~~in Section 150.103. has the exact same meaning as set forth in~~  
31 Section 151.103 (Definitions), Ordinance Code.

1 \* \* \*

2 **Section 2. Severability.** In the event that any word,  
3 phrase, clause, subsection, section or other provision of this  
4 ordinance is declared invalid, unenforceable, unconstitutional or  
5 void, or is permanently enjoined, then the invalid word, phrase,  
6 clause, subsection, section or other provision of this ordinance is  
7 hereby repealed and invalidated. If the existence of any word,  
8 phrase, clause, subsection, section or other provision of this  
9 ordinance would result in any other word, phrase, clause,  
10 subsection, section or other provision of the Jacksonville  
11 *Ordinance Code* to be held to be invalid, unenforceable, or  
12 unconstitutional, then the word, phrase, clause, subsection,  
13 section or other provision which causes such invalidity,  
14 unconstitutionality, or unenforceability is hereby repealed and  
15 invalidated. The invalidity of any portion of this ordinance shall  
16 not affect any other section, subsection, paragraph, subparagraph,  
17 sentence, phrase, clause or word of Chapter 150, Chapter 151,  
18 Chapter 656, or any other part the Jacksonville *Ordinance Code*.

19 **Section 3. Effective Date.** This Ordinance shall become  
20 effective upon signature by the Mayor or upon becoming effective  
21 without the Mayor's signature.

22  
23 Form Approved:

24  
25 Jason R. Gabriel

26 Office of General Counsel

27 Legislation Prepared By: Jason R. Gabriel

28 G:\SHARED\LEGIS.CC\2014\Ord\Land Use General\Dancing Entertainment Establishments 2014 S. Durden

29 Edits.doc



**CITY COUNCIL RESEARCH DIVISION  
LEGISLATIVE SUMMARY**



**JEFFREY R. CLEMENTS**  
Chief of Research  
(904) 630-1377

117 West Duval Street  
City Hall, Suite 425  
Jacksonville, FL 32202  
FAX (904) 630-3403

**Bill Type and Number:** Ordinance 2014-164 - revised

**Introducer/Sponsor(s):** Council President at the request of

**Date of Introduction:** February 25, 2014

**Committee(s) of Reference:** R. LUZ

**Date of Analysis:** February 27, 2014

**Type of Action:** Ordinance Code amendment

**Bill Summary:** The bill amends Ordinance Code Chapters 151 – Dancing Entertainment Establishment Code – and 656 – Zoning Code – to modify the definition of a “dancing entertainment establishment” and to add new definitions. The revised definition of “dancing entertainment establishment” is amended to incorporate (i) the particular type of dance involved, (ii) the dancer’s attire, and (iii) the regularity with which the establishment features such dancers, and specifically excludes nightclubs and restaurants where dancing entertainment establishment activities do not occur and any establishment defined or regulated by Chapter 150 – Adult Entertainment and Services Code – from the definition. The “whereas” clauses of the bill state Council’s intention to adopt and incorporate the evidence, studies and testimony set forth in applicable judicial opinions, cases and previous legislation with respect to these establishments, including when combined with alcohol.

**Background Information:** A recent ruling by a U.S. District Court judge in the case of *Albanese Enterprises, Inc., v. City of Jacksonville* found that the City’s ordinance was over-broad with regard to the definition of “dancing entertainment establishment” by virtue of lacking specificity about the type of dance being regulated, the dancers’ attire and the regularity with which the establishment features such dancers. This bill is introduced to add the degree of specificity as indicated by the court.

**Policy Impact Area:** Regulation of erotic dancing establishments

**Fiscal Impact:** Undetermined

**Analyst:** Clements

