



## City of Alachua

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**MAYOR GIB COERPER**

Vice Mayor Shirley Green Brown  
Commissioner Ben Boukari, Jr.  
Commissioner Gary Hardacre  
Commissioner Robert Wilford

**PLANNING & COMMUNITY DEVELOPMENT****DIRECTOR KATHY WINBURN, AICP**

### INTER-OFFICE COMMUNICATION

**Date:** October 2, 2013

**To:** Planning & Zoning Board Members

**From:** Kathy Winburn, AICP  
Planning Director

**Re:** Planning and Zoning Board Meeting October 8, 2013

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Please note that the following items, which were delivered to each Planning & Zoning Board member on Thursday September 26, 2013, are part of the back-up material for Item #2 (LDR Text Amendment) on the Agenda for the October 8, 2013 Planning & Zoning Board meeting:

1. A CD which includes the legislative record for Ordinance 04-01 related to the City's sexually oriented business regulations, which is now codified in Articles 4 and 10 of the City's Land Development Regulations; and
2. A CD which includes six (6) additional studies which will be part of the legislative record for proposed Ordinance 13-15. Two of these articles were provided to the Planning and Zoning Board during the hearing on establishing the Gateway Overlay District.

Thank you, and feel free to contact me should you have any additional questions regarding this correspondence.





# City of Alachua

Planning & Community Development Department

## Staff Report

**Planning & Zoning Board Hearing Date:** October 8, 2013  
**Legislative Hearing**

**SUBJECT:** A request to amend the City's Land Development Regulations (LDRs) as follows: Article 10, Section 10.2, of the City of Alachua Land Development Regulations, amending the definitions of massage parlor or shop; sex shop; sexual conduct; sexually explicit media; sexually oriented business; sexually oriented cabaret or sex oriented cabaret; sexually oriented cinema, sexually oriented motion picture theatre or sex oriented cinema; sexually oriented media store; and sexually oriented toys or novelties; and, adding definitions of bath house, massage therapist and vertical display area, gross.

**APPLICANT:** City of Alachua (Staff-Initiated Amendment)

**PROJECT PLANNER:** Kathy Winburn, AICP

**RECOMMENDATION:** Staff recommends that the Planning & Zoning Board transmit the proposed Land Development Regulations Text Amendment to the City Commission with a recommendation to **APPROVE**.

**RECOMMENDED MOTION:** *Based upon the presentation at the workshop conducted on October 7, 2013, the presentation before this Board, the studies and case law provided and referenced, and Staff's recommendation for approval, this Board finds the application to be consistent with the City of Alachua Comprehensive Plan and in compliance with the Land Development Regulations and transmits the proposed Land Development Regulations Text Amendment to the City Commission, with a recommendation to approve.*

## BACKGROUND, PURPOSE, AND SUMMARY OF PROPOSED AMENDMENTS

City Staff is updating the City's sexually oriented business ordinance contained within the Land Development Regulations and recommends clarification in order to ensure that the regulations are in conformance with the First Amendment protection afforded to sexually oriented businesses. Additionally, legal rulings involving such businesses and uses can result in changes to how these types of uses should be regulated and defined.

The City of Alachua contracted with Eric Damian Kelly, Ph.D, FAICP to assist the City with the technical updates to the Land Development Regulations dealing with sexually oriented businesses. Dr. Kelly assisted with drafting the original regulations for the City in 2003. Dr. Kelly also assisted the City in 2011 with the adoption of the City of Alachua Gateway Overlay District. He has reviewed the City's existing regulations from a planning and legal perspective, and has made the suggested revisions as set forth in proposed Ordinance 13 15 and below.

Since the City's adoption of the sexually oriented business ordinance in 2003, several additional studies have been conducted/discovered which further quantify the adverse secondary effects of sexually oriented businesses. These studies are as follows:

1. Survey of Texas Appraisers; Secondary Effects of Sexually Oriented Businesses on Market Values
2. Survey of Florida Appraisers: Effects of Land Uses on Surrounding property Values.
3. Crime Related Secondary Effects of Sexually Oriented Businesses: Report to the Hillsborough County Commission
4. Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard
5. Adult Entertainment Business in Oklahoma City A Survey of Real Estate Appraisers
6. Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles

Copies of these studies are attached for your review. These studies are being incorporated into the legislative record for the City's sexually oriented business ordinance. Also attached is a CD containing the entire legislative record for Ordinance 0-04-01 (adopted November 17, 2003) which is now contained in Articles 4 and 10 of the LDRs and is also incorporated in its entirety into the legislative record for this amendment.

## SUMMARY OF PROPOSED TEXT

The proposed amendments to Article 10 are described below, with the revisions shown in red (text that is ~~struck through~~ is to be removed; text that is underlined is to be added). Some of the changes include a brief commentary.

### ARTICLE 10: DEFINITIONS

Bath house means an establishment which is not a hotel, but which contains any combination of baths, showers, saunas and pools for public use and which excludes persons under the age of 18 from part or all of the facility that is open to adults.

*Massage parlor ~~or shop~~* means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, massage therapist or similar professional person licensed by the State. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

Massage therapist means a person licensed in accordance with F.S. ch. 480.

*Sex shop* means an establishment offering goods for sale or rent and that meets any of the following tests:

1. More than ten percent of its stock in trade consists of sexually explicit media and/or sex toys and novelties, or any combination thereof, and it also offers for sale items from any two of the following categories: sexually oriented media; lingerie and/or; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices, and the combination of such items make up more than ten percent of its stock in trade or occupies more than ten percent of its floor area; or
2. More than ten percent of its gross public floor area is devoted to the display of sexually explicit media and/or sex toys and novelties, or any combination thereof, and it also offers for sale lingerie and/or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; or
3. More than ten percent of its gross vertical display area is devoted to the display of sexually explicit media and/or sex toys and novelties, or any combination thereof; or
2. 4. More than five percent of its stock in trade consists of sexually oriented toys or novelties; or
3. 5. More than five percent of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

For the purposes of this definition, the "gross public floor area" devoted to any class of items shall include the aisles or other areas where customers stand when viewing such items as well as the actual area under the display racks for the items.

*Commentary: In Doctor John's, Inc. v. City of Sioux City, 389 F. Supp. 2d 1096 (N.D. Iowa 2005), the court struck down as unconstitutional a definition similar to the current definition because it construed the ordinance as saying that the sale of a "single item" of adult media in a store that specialized in lingerie would turn it into an adult business. Number 3 above, related to "gross vertical display area," was added due to the ability of a store to display sex toys on a wall, thereby taking up limited floor area.*

**Sexual conduct** means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, ~~buttock~~ or female breast of another person for the purpose of arousing or gratifying the sexual desire of ~~another person~~ customers or members of the audience.

*Commentary: The above definition was common at one time but is problematic and potentially overbroad today. Reference Dream Palace v. County of Maricopa, 384 F. 3d 990, 1017 (9<sup>th</sup> Cir. Ariz. 2004) and Schultz v. City of Cumberland, 228 F. 3d 831 (7<sup>th</sup> Cir. Wis. 2000). The proposed amendment reflects the common practice of ballet dancers, as well as dancers on a popular dance competition program on network television, whereby dancers may touch their own buttocks as well as those of dance partners.*

**Sexually explicit media** means magazines, books, videotapes, movies, slides, CD-ROMs, or other devices used to record computer images, or other media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified anatomical areas and/or sexual conduct.

**Sexually oriented business** ~~means is~~ an inclusive term used to describe collectively: sexually oriented cabaret; sexually oriented media store; sexually oriented motion picture theater; sex shop; ~~motion picture arcade~~; bathhouse; and massage parlor (subject to exceptions in the separate definition of massage parlor )or shop and/or sex shop.

*Commentary: Motion picture arcades have been effectively prohibited (reference Subsection 4.3.4(I)(1)(f) of the LDRs).*

*The parenthetical addition regarding massage parlors is for clarification purposes.*

**Sexually oriented cabaret** or **sex oriented cabaret** means a building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment that constitutes the primary live entertainment is distinguished or characterized by an emphasis on the exhibiting of specific sexual activities or specified anatomical areas for observation by customers therein; without limiting the foregoing, the definition also includes a building or portion of a building where the waitpersons or other service staff display specified anatomical areas for observation by others therein.

*Commentary: Entm't Prods., Inc. v. Shelby County, 588 F.3d 372 (6<sup>th</sup> Cir. Tenn. 2009) upheld against a vagueness challenge a definition of "adult cabaret" which addressed the exposure of waiters and bartenders. The proposed amendment therefore addresses the potential for nude or partially nude service staff.*

*Sexually oriented cinema, sexually oriented motion picture theater or sex oriented cinema* means a cinema or motion picture theater that shows hard-core sexually explicit features on more than half the days that it is open during any 90-day period, or that ~~is marketed as or offers~~ advertises or holds itself out in any forum as offering features movies or other media described as adult, XXX or sexually oriented.

*Sexually oriented media store* means an establishment that rents and/or sells media, and that meets any of the following three tests:

1. 30 percent or more of the gross public floor area is devoted to sexually explicit media and/or to aisles from which customers view the displays of such media;
2. 30 percent or more of the stock in trade consists of sexually explicit media;
3. It advertises or holds itself out in any forum as XXX, adult, sexually oriented or otherwise as a sexually oriented business other than a sexually oriented movie theater or sexually oriented cabaret.

*Sexually oriented toys or novelties* means instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs. The use for which a device is designed, intended or marketed may be determined from: the name of the device; the shape of the device; information on the package in which the device is offered; the retail context in which the device is offered; advertising material about the device or any combination of these factors.

Vertical display area, gross means the total of the following: 1) all wall space used for product display or for photos of or posters about specific products, as measured by the smallest rectangle that will include all of the materials on one wall plane; and 2) for each set of display shelves, racks or other display devices, the area of the smallest rectangle that is perpendicular to the floor that will include the entire display rack or device and any and all products extending above or to the side of such rack.

## **FINDINGS OF FACT:**

### **COMPLIANCE WITH LAND DEVELOPMENT REGULATIONS**

Subsection 2.4.1(E)(1) of the Land Development Regulations (LDRs) states that, "in determining whether to approve a proposed text amendment to the Land Development Regulations, the City Commission shall find that an application is consistent with the following standards." These standards are listed below, followed by Staff's evaluation.

- (a) **Consistent with Comprehensive Plan** – Whether and the extent to which the proposed amendment is consistent with the Comprehensive Plan.

**Evaluation & Findings:** *This amendment does not conflict with any Goals, Objectives, or Policies of the Comprehensive Plan.*

- (b) **Consistent with Ordinances** – Whether the proposed amendment is in conflict with any provision of these LDRs or the City Code of Ordinances.

**Evaluation & Findings:** *This amendment does not conflict with any provisions of the LDRs or the City Code of Ordinances.*

- (c) **Changed Conditions** – Whether and the extent to which there are changed conditions that require an amendment.

**Evaluation & Findings:** *The changed conditions are a result of updated case law which affects how certain aspects of sexually oriented businesses may be defined and described.*

- (d) **Community Need** – Whether and the extent to which the proposed amendment addresses a demonstrated community need.

**Evaluation & Findings:** *The community need is based on the need to define and describe aspects of sexually oriented businesses that are consistent with case law and to the benefit of the community, so as to limit potential negative secondary effects of such businesses.*

- (e) **Compatible with Surrounding Uses** – Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zone districts in these LDRs, or will improve compatibility among uses and will ensure efficient development within the City.

**Evaluation & Findings:** *The proposed amendment does not affect compatibility with surrounding uses.*

- (f) **Development Patterns** – Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

**Evaluation & Findings:** *The proposed amendment does not have a direct impact on development patterns, since the amendment does not affect the allowable locations for sexually oriented businesses.*

- (g) **Effect on Natural Environment** – Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

**Evaluation & Findings:** *The proposed amendment will not impact the natural environment.*

- (h) **Public Facilities** – Whether and the extent to which the proposed amendment would result in development that is adequately served by public facilities (roads, potable water, sewage, storm water management, parks, and solid wastes).

**Evaluation & Findings:** *The proposed amendment will have no impact to the provision of public facilities.*



**ORDINANCE 13 15**

**AN ORDINANCE OF THE CITY OF ALACHUA, FLORIDA, RELATING TO THE AMENDMENT OF THE CITY'S LAND DEVELOPMENT REGULATIONS; AMENDING ARTICLE 10, DEFINITIONS, SECTION 10.2, BY AMENDING THE FOLLOWING DEFINITIONS: MASSAGE PARLOR; SEX SHOP; SEXUAL CONDUCT; SEXUALLY EXPLICIT MEDIA; SEXUALLY ORIENTED BUSINESS; SEXUALLY ORIENTED CABARET OR SEX ORIENTED CABARET; SEXUALLY ORIENTED CINEMA, SEXUALLY ORIENTED MOTION PICTURE THEATRE, OR SEX ORIENTED CINEMA; SEXUALLY ORIENTED MEDIA STORE; AND SEXUALLY ORIENTED TOYS OR NOVELTIES; AND BY ADDING THE FOLLOWING DEFINITIONS: BATH HOUSE; MASSAGE THERAPIST AND VERTICAL DISPLAY AREA, GROSS; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**RECITALS**

**WHEREAS**, the City of Alachua City Commission has determined that it is a valid exercise of its police power to regulate the use of land through zoning;

**WHEREAS**, the City of Alachua City Commission has found there to be a substantial governmental interest in regulating the secondary effects of sexually oriented businesses;

**WHEREAS**, on November 17, 2003, the City of Alachua City Commission passed Ordinance 04-01, which contains definitions used in conjunction with the regulation of the adverse secondary effects of sexually oriented businesses;

**WHEREAS**, the City of Alachua City Commission incorporates into the record of this ordinance the entire legislative record for Ordinance 04 01, which is now codified in Articles 4 and 10 of the City's Land Development Regulations;

**WHEREAS**, a Text Amendment to the City's Land Development Regulations ("LDRs"), as described below, has been proposed to update the definitions in Article 10, Section 10.2 as set forth below;

**WHEREAS**, after due public notice, the City Commission and the City's Planning and Zoning Board held a Joint Workshop on October 7, 2013 regarding the proposed amendment which included testimony from

expert Dr. Eric Damian Kelly and staff on the regulation of sexually oriented businesses, which is incorporated into the legislative record for this ordinance;

**WHEREAS**, a duly advertised public hearing was conducted on the proposed amendment on October 8, 2013 by the Planning and Zoning Board, sitting as the Local Planning Agency (“LPA”), and the LPA:

1. reviewed and considered the presentations and comments received during the public hearing concerning the amendment;
2. found the amendment to the definitions to be consistent with the City of Alachua Comprehensive Plan; and
3. made its recommendation for approval to the City Commission;

**WHEREAS**, the City of Alachua Planning and Zoning Board and the City of Alachua City Commission were provided the opportunity to review articles dealing with the regulation of sexually oriented businesses because of the adverse secondary effects caused by them;

**WHEREAS**, the City Commission held duly advertised public hearings on October 21, 2013 and November 4, 2013 on the proposed amendment and provided for and received public participation;

**WHEREAS**, the City Commission has determined and found said application for the amendment to be consistent with the City’s Comprehensive Plan and City’s LDRs;

**WHEREAS**, for reasons set forth in this ordinance the Alachua City Commission finds and declares that the enactment of this amendment is in the furtherance of the public health, safety, morals, order, comfort, convenience, appearance, prosperity, or general welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE PEOPLE OF THE CITY OF ALACHUA, FLORIDA:**

**Section 1.     Incorporation of Recitals**

The above recitals are true and correct and incorporated in this ordinance.

**Section 2.     Amendment to the Land Development Regulations**

Article 10, Section 10.2 of the City's Land Development Regulations is hereby amended as follows (text that is underlined is to be added, text that is ~~struck through~~ is to be deleted):

Bath house means an establishment which is not a hotel, but which contains any combination of baths, showers, saunas and pools for public use and which excludes persons under the age of 18 from part or all of the facility that is open to adults.

~~Massage parlor or shop~~ means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, massage therapist or similar professional person licensed by the State. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

Massage therapist means a person licensed in accordance with F.S. ch. 480.

~~Sex shop~~ means an establishment offering goods for sale or rent and that meets any of the following tests:

1. More than ten percent of its stock in trade consists of sexually explicit media and/or sex toys and novelties, or any combination thereof, and it also offers for sale items from any two of the following categories: sexually oriented media; lingerie and/or; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices, and the combination of such items make up more than ten percent of its stock in trade or occupies more than ten percent of its floor area; or
2. More than ten percent of its gross public floor area is devoted to the display of sexually explicit media and/or sex toys and novelties, or any combination thereof, and it also offers for sale lingerie and/or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; or
3. More than ten percent of its gross vertical display area is devoted to the display of sexually explicit media and/or sex toys and novelties, or any combination thereof; or
2. 4. More than five percent of its stock in trade consists of sexually oriented toys or novelties; or
3. 5. More than five percent of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

For the purposes of this definition, the "gross public floor area" devoted to any class of items shall include the aisles or other areas where customers stand when viewing such items as well as the actual area under the display racks for the items.

*Sexual conduct* means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, ~~buttock~~ or female breast of ~~another~~ person for the purpose of arousing or gratifying the sexual desire of ~~another person~~ customers or members of the audience.

*Sexually explicit media* means magazines, books, videotapes, movies, slides, CD-ROMs, or other devices used to record computer images, or other media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified anatomical areas and/or sexual conduct.

*Sexually oriented business* ~~means is~~ an inclusive term used to describe collectively: sexually oriented cabaret; sexually oriented media store; sexually oriented motion picture theater; sex shop; ~~motion picture arcade~~; bathhouse; and massage parlor (subject to exceptions in the separate definition of massage parlor) ~~or shop~~ and/or sex shop.

*Sexually oriented cabaret* or *sex oriented cabaret* means a building or portion of a building regularly featuring dancing or other live entertainment if the dancing or entertainment that constitutes the primary live entertainment is distinguished or characterized by an emphasis on the exhibiting of specific sexual activities or specified anatomical areas for observation by customers therein; without limiting the foregoing, the definition also includes a building or portion of a building where the waitpersons or other service staff display specified anatomical areas for observation by others therein.

*Sexually oriented cinema*, *sexually oriented motion picture theater* or *sex oriented cinema* means a cinema or motion picture theater that shows ~~hard-core sexually explicit~~ features on more than half the days that it is open during any 90-day period, or that ~~is marketed as or offers~~ advertises or holds itself out in any forum as offering features movies or other media described as adult, XXX or sexually oriented.

*Sexually oriented media store* means an establishment that rents and/or sells media, and that meets any of the following three tests:

1. 30 percent or more of the gross public floor area is devoted to sexually explicit media and/or to aisles from which customers view the displays of such media;
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3. It advertises or holds itself out in any forum as XXX, adult, sexually oriented or otherwise as a sexually oriented business other than a sexually oriented movie theater or sexually oriented cabaret.

*Sexually oriented toys or novelties* means instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs. The use for which a device is designed, intended or marketed may be determined from: the name of the device; the shape of the device; information on the package in which the device is offered; the retail context in which the device is offered; advertising material about the device or any combination of these factors.

Vertical display area, gross means the total of the following: 1) all wall space used for product display or for photos of or posters about specific products, as measured by the smallest rectangle that will include all of the materials on one wall plane; and 2) for each set of display shelves, racks or other display devices, the area of the smallest rectangle that is perpendicular to the floor that will include the entire display rack or device and any and all products extending above or to the side of such rack.

**Section 3. Findings of Fact**

1. The possession, display, exhibition, production, distribution and sale of books, magazines, motion pictures, video tapes, prints, photographs, periodicals, records, and similar devices which depict, illustrate, describe or relate to specified sexual activities is a business that exists within the City;
2. Based upon the experiences of other cities nationwide, when sexually oriented businesses are present in an area of the city, other activities tend to accompany them which are illegal or unhealthful, such as prostitution, lewd and lascivious behavior, exposing minors to harmful materials, possession, distribution and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property; and these illegal or unhealthful activities tend to concentrate around and be aggravated by sexually oriented businesses;
3. Based upon evidence and expert testimony from the city's professional planner and Dr. Eric Kelly and based upon evidence from other communities nationwide, the grouping together of the activities described above produce adverse secondary effects including: lowers property values, detracts from the aesthetic beauty of residential, commercial and institutional neighborhoods and is harmful to minors who congregate in such residential and institutional areas;
4. Based upon evidence and testimony received from the city's professional planner and expert witnesses, there will be free and reasonable access for and to the regulated uses, and the limitations and definitions contained herein will not preclude robust competition with other regulated uses;
5. Studies in other communities have shown that some of the unacceptable secondary effects from sexually oriented businesses come from lingerie modeling studios, "massage parlors" operated by persons who are not state-licensed massage therapists, and others who engage in touching and

similar activities with customers for pay. The courts have consistently held that these businesses have no First Amendment protection. Prohibiting such businesses would help minimize the future adverse effects of sexually oriented businesses on a community and would have no effect whatsoever on protected First Amendment rights.

**Section 4. Conclusions of Law**

The authority for the enactment of this ordinance is Chapter 163, Part I, Florida Statutes; Sections 166.021 and 166.041; the City's Comprehensive Plan and applicable studies along with state and federal case decisions.

**Section 4. Codification of and Correction of Scrivener's Errors**

The City Manager or designee, without public hearing, is authorized to correct any typographical errors which do not affect the intent of this ordinance. A corrected copy shall be posted in the public record.

**Section 5. Ordinance to be Construed Liberally**

This ordinance shall be liberally construed in order to effectively carry out the purposes hereof which are deemed to be in the best interest of the public health, safety and welfare of the citizens and residents of the City of Alachua, Florida.

**Section 6. Repealing Clause**

All ordinances or parts of ordinances in conflict herewith are, to the extent of the conflict, hereby repealed.

**Section 7. Severability**

It is the declared intent of the City Commission of the City of Alachua that, if any section, sentence, clause, phrase, or provision of this ordinance is for any reason held or declared to be unconstitutional, void, or inoperative by any court or agency of competent jurisdiction, such holding of invalidity or unconstitutionality shall not affect the remaining provisions of this ordinance, and the remainder of the ordinance after the exclusions of such part or parts shall be deemed to be valid.

**Section 8. Effective Date**

This ordinance shall take effect immediately after its passage and adoption. No development orders, development permits, or land uses dependent on this amendment may be issued or commenced before this amendment has become effective.

**PASSED** on first reading the 21st day of October, 2013.

**PASSED** and **ADOPTED**, in regular session, with a quorum present and voting, by the City Commission, upon second and final reading this 4th day of November, 2013.

CITY COMMISSION OF THE  
CITY OF ALACHUA, FLORIDA

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**Gib Coerper, Mayor**

**ATTEST:**

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Traci L. Cain, City Manager/Clerk





STATE OF FLORIDA  
COUNTY OF ALACHUA

Published Daily and Sunday  
Gainesville, Florida

Before the undersigned authority personally appeared Eryka Rollins

Who on oath says that he/she is Advertising Account Manager of THE

GAINESVILLE SUN, a daily newspaper published in Gainesville in Alachua County, Florida, that the  
attached copy of advertisement, being a Notice of Public Hearing

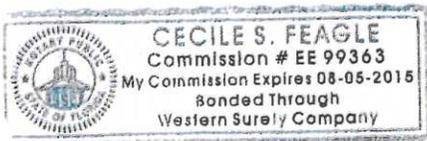
In the matter of A Request By The City of Alachua To Amend Article 10. Section 10.2. Of The City's  
Land Development Regulations

In the James A. Lewis Commission Chambers in City Hall, was published  
in said newspaper in the issue of, September 26, 2013.

Affiant further says that THE GAINESVILLE SUN is a newspaper published at Gainesville, in said  
Alachua County, Florida and that the said newspaper has heretofore been continuously published in said  
Alachua County, each day, and has been entered as second class mail matter at the post office in  
Gainesville, in said Alachua County, Florida, for a period of one year next preceding the first publication  
of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any  
person, firm or corporation any discount for publication in said newspaper.

Sworn to and subscribed before me this  
26 Day of Sept A.D. 20 13.

Cecile Feagle  
(Seal) Notary Public





www.gainesville.com

THURSDAY, SEPTEMBER 26, 2013 THE GAINESVILLE SUN 19A

# Construction convoy creeps over Colorado mountains

**Preliminary estimates put the initial cost of fixing public infrastructure at more than \$760 million.**

The Associated Press

DENVER — A convoy of heavy construction equipment crept over a high-elevation highway through Rocky Mountain National Park on Wednesday to join a massive road rebuilding project after the Colorado

The damage to state highways alone is about \$430 million, officials said, with 200 miles of

roads and 50 bridges destroyed. The flooding also caused eight confirmed deaths and damaged or destroyed nearly 1,800 homes.

Trail Ridge Road was closed to other vehicles to make way for the slow-moving convoy traveling from Grand County on the west side of the park to the eastern entrance of the national park.

Sections of the twisting two-lane road are more than 12,000 feet above sea level and traverse steep slopes with breathtaking drop-offs. It is one of only two routes into Estes Park that survived the floods.

The road reopened at midday Wednesday after the convoy finished the trek.

State and local highway crews and construction companies are rushing to make temporary repairs to flood-damaged roadways, hoping to get key roads open by Dec. 1, before winter sets in.

Complete damage figures, including problems on private property, weren't available. But preliminary estimates put the initial cost of fixing public infrastructure at more than \$760 million, with more expenses to come.

Meanwhile, state regulators were monitoring spills and

damage to equipment in an oilfield northeast of Denver. At least 24,500 gallons had spilled in 11 incidents, the Colorado Oil and Gas Conservation Commission said.

Flooding has hampered attempts to fully inspect storm damage in the oilfield.

Where crews can get in, they are using containment booms and vacuum trucks to capture and remove oil-contaminated water.

Five communities remained under orders from the state health department to boil drinking water or use bottled water because of contamination concerns. Health department

teams have been dispatched to 20 drinking water or wastewater treatment operations that requested help with assessing damage and cleaning repairs.

State officials were looking for money for repairs, starting with federal highway aid. Colorado Sens. Mark Udall and Michael Bennet asked Congress to lift a \$100 million cap on federal money for disaster-related road repairs.

In a conference call with Gov. John Hickenlooper, state and local officials discussed how to pay for emergency repairs, and local governments asked how they could assist their counterparts.

# Scalia expects NSA wiretaps to end up in court

The Associated Press

McLEAN, Va. — Supreme Court Justice Antonin Scalia says the courts will ultimately have to determine the legality of wiretapping by the National Security Agency.

And he's not sure that's a good thing. Scalia addressed NSA wiretapping Wednesday in a speech to the Northern Virginia Technology Council when he was asked about technology companies' role in protecting customers' privacy when their data has been unconstitutionally collected.

Scalia said the high court originally ruled that there were no constitutional prohibitions on wiretaps because conversations were not explicitly granted privacy protection

under the Fourth Amendment, which protects Americans against unreasonable search and seizure of "their persons, houses, papers, and effects."

That 1928 opinion, in *Olmstead v. U.S.*, was overturned nearly 40 years later by the Warren court, which found, Scalia said, "there's a generalized right of privacy that comes from penumbras and emanations, blish blah blah, garbage."

"The consequence of that is that whether the NSA can do the stuff it's been doing — which used to be a question for the people — will now be resolved by the branch of government that knows the least about the issues in question, the branch that knows the least about the extent of

the threat against which the wiretapping is directed," he said.

He also said the Constitution calls for a balancing test to determine whether any search or seizure is reasonable, and that depends on the threat that is posed — another question he said courts are ill-equipped to answer.

He talked about the pat-downs and other searches that occur at airports as an example of that balancing act.

"That's a terrible intrusion of privacy," he said. "But you're willing to do it because of the seriousness of the threat."

As for the question about tech companies' obligations to inform clients about an illegal intrusion of their information, Scalia said that, yes, a

company should speak up if it knows a customer has had its data illegally seized. "But it's pretty hard to know that. ... If it's a governmental wiretap, presumably it's been approved by somebody, some lawyer expert in the field who said it was OK, and you better be damn sure you're right before you blow the cover."

In July, following the disclosures by NSA leader Edward Snowden about the extent of the agency's surveillance programs, the Electronic Privacy Information Center filed a direct appeal to the Supreme Court asking it to bar the NSA from collecting phone call records on millions of U.S. customers. The court has not yet decided whether to hear the case.

**SATURDAY 9/28/13 DOORS OPEN AT 9:00AM -TIL LAST CAR SOLD! REGISTRATION STARTS AT 9:00AM, SALE STARTS AT 10:00AM**

## Used Cars to be Sold for \$99!

One of Alachua County's largest new and used car dealers is overstocked and is forced to sell cars and trucks for as low as \$99.00 this Saturday, September 28th, 2013 during a

# FIRST COME, FIRST SOLD SALE!

Gainesville Nissan, Alachua County's largest volume dealer of new and used cars and trucks, just announced plans to hold a \$99.00 used car and truck sales event on Saturday, September 28th, 2013. According to General Manager Michael Ferro, recent record sales from the last few months have resulted in an overstock of trade-ins. "In the last three months, our sales have increased at a tremendous rate," Ferro said. "Now we must reduce the number of used cars and trucks on our used car lot to a more manageable number. In addition, the factory has shipped in more new vehicles than we can sell and more are arriving every day. During this \$99.00 sale, every used car and truck will be sold for thousands below their original price. In fact, cars that normally sell for five to eight thousand dollars, will be sold for three to five thousand dollars."

"Our customers will find these prices even lower than at wholesale auctions," Ferro said. "Auction bidding often inflates the true value of a car, so you pay more. Here, every car is on sale, first-come, first-served. It's the perfect opportunity to get a good quality used car at the lowest price possible, including cars for only \$99.00". All cars will be on display at Gainesville Nissan, 3915 N. Main Street in Gainesville, Florida at 9:00am. All vehicles will be opened so that buyers may inspect the vehicles for one hour before the sale begins at 10:00am. Whoever is sitting behind the wheel when the prices are posted on the windshield will be given the

first opportunity to purchase the vehicle at the sale price. This innovative approach to selling used vehicles will make it easy for anybody in the market for a vehicle to get a great car or truck at a very low price with no hassle.

"Wholesale buyers will be represented to take trade-ins during this sale. Local banks will be competing for your business. 100% financing means No Money Down! We've got over \$3,000,000 dollars in inventory to choose from. Our total inventory will be close to 147 used cars and trucks. We want to remind everyone that this is a first-come, first-sold sale. When our inventory has been reduced we will remove the sale prices and return to normal operations. Since we are a local business, we would like to give back to the community," Mr. Ferro said. "We would rather allow local people to buy these overstocked vehicles than wholesale them at an auction."

For an appointment, call Ken Vitale, Event Coordinator, at 352-371-2023.

**Gainesville Nissan, 3915 N. Main Street**

Call: **352-371-2023**

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### NOTICE OF PUBLIC HEARING BEFORE THE PLANNING AND ZONING BOARD OF THE CITY OF ALACHUA, FLORIDA

Notice is hereby given that the Planning and Zoning Board of the City of Alachua will hold a public hearing on October 8, 2013 at 6:30 p.m. The hearing will be held in the James A. Lewis Commission Chambers in City Hall, located at 15100 N.W. 142nd Terrace, Alachua, Florida, to consider the following: a request by the City of Alachua to amend Article 10, Section 10.2, of the City's Land Development Regulations by amending the following definitions: massage parlor; sex shop; sexual conduct; sexually explicit media; sexually oriented business; sexually oriented cabaret or sex oriented cabaret; sexually oriented cinema, sexually oriented motion picture theatre, or sex oriented cinema; sexually oriented media store; and sexually oriented toys or novelties; and by adding the following definitions: bath house; massage therapist and vertical display area, gross.

At the public hearing, all interested parties may appear and be heard with respect to the proposed amendment. Copies of the proposed amendment, the Staff Report, and related materials are available for public inspection at the Planning and Community Development Department, 15100 N.W. 142nd Terrace, Alachua, Florida, on any regular business day between the hours of 7:30 a.m. to 6:00 p.m. Written comments on the proposed amendment may be sent to the following address: City of Alachua, Planning and Community Development, P.O. Box 9, Alachua FL 32616. Notice is given pursuant to Section 286.0105, Florida Statutes, that, in order to appeal any decision made at the public hearing, you will need a record of the proceedings, and that, for such purpose, you may need to ensure that a verbatim record of the proceedings is made, which includes the testimony and evidence upon which the appeal is based. In accordance with the Americans with Disabilities Act, any persons with a disability requiring reasonable accommodation in order to participate in this meeting should call the City Clerk at (386) 418-6100 x. 101 at least 48 hours prior to the public hearing.

