



**BUSINESS TAX RECEIPT REQUIRED DOCUMENTS CHECKLIST – BUSINESS DISTRICT**

- \_\_\_ **Bay Harbor Islands Business Tax Receipt Application.**
  - \*\$25 Processing Fee (Non-refundable fee)
  - \*License Fee (To be determined after processing) based on business classification.
- \_\_\_ **Copy of the applicant State issued Identification.**

Drivers License, State Identification or Passport.
- \_\_\_ **Proof of Miami- Dade DERM review/approval of Municipal Certificate of Use.** (Form included in Application Packet)

If you operate at a **non- residential** business location in Bay Harbor Islands, you must provide proof of DERM Municipal Certificate of Use Approval. 786-315-2000 Email [dermplanner@miamidade.gov](mailto:dermplanner@miamidade.gov)  
[Home - EPS \(miamidade.gov\)](http://www.miamidade.gov)
- \_\_\_ **Copy of Miami Dade County Local Business Tax Receipt.**

All businesses operating within Miami-Dade County are required to also obtain a Miami-Dade County Local Business Tax Receipt. Online: [www.miamidade.gov/taxcollector](http://www.miamidade.gov/taxcollector)  
For more information: (305) 270-4949.
- \_\_\_ **Federal Employer Identification Number or Social Security Number.**

[www.irs.gov/EIN](http://www.irs.gov/EIN)
- \_\_\_ **Copy of State of Florida Professional Business License DBPR - (If applicable)**

All businesses regulated by the Department of Business & Professional Regulation must submit a copy of the current license. 1(850)-487-1395. [www.MyFloridaLicense.com/DBPR](http://www.MyFloridaLicense.com/DBPR)
- \_\_\_ **Corporate Registration from the State of Florida Division of Corporations.**

All businesses transacting in the State of Florida are required to register with the State of Florida. Please provide a copy of the Corporate/Limited Liability Company/Partnership Documents. [www.sunbiz.org](http://www.sunbiz.org)
- \_\_\_ **Copy of Fictitious Name Registration from the State of Florida Division of Corporations.**

(Also known as a “Doing Business As” or “DBA”)  
If you are not registering an Out-of-State Corporation as a Florida Corporation, you can register same as a fictitious name or if you are conducting business under another name. [www.sunbiz.org](http://www.sunbiz.org)
- \_\_\_ **Proof of ownership** - (Warranty Deed) or (Copy of Lease for non owner).

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**PRIOR TO THE ISSUANCE OF A BUSINESS TAX RECEIPT BY THE TOWN BUILDING DEPARTMENT THE FOLLOWING INSPECTIONS SHALL BE PERFORMED PRIOR TO THE OPENING OF A BUSINESS.**

- \_\_\_ **Life Safety Inspection or Copy of Miami- Dade Fire Rescue Dept. Annual Operating Permit.**

Miami-Dade County Fire Department  
Office of Fire Marshall - 786-331-4800 [www.miamidade.gov/fire](http://www.miamidade.gov/fire)
- \_\_\_ **Building Department Inspection (Business location only) or Copy of the Certificate of Occupancy if a Building permit was required.**

BHI Building Department – 305-993-1786 Email: [amartinez@bayharborislands-fl.gov](mailto:amartinez@bayharborislands-fl.gov)

Local Business Tax Receipts are valid from October 1st through September 30th of the following year. The tax for a new business opening after April 1st may be prorated to 50% of the annual tax. Transfer fees are equal to ten percent of the annual tax.

# Town of Bay Harbor Islands

## APPLICATION FOR BUSINESS TAX RECEIPT - BUSINESS DISTRICT

**PRINT OR TYPE ALL INFORMATION REQUESTED**

**PROCESSING FEE - \$25.00**

BEFORE OPENING A BUSINESS IN BAY HARBOR ISLANDS MAKE SURE YOU CHECK WITH THE BUILDING DEPARTMENT FOR CERTAIN CONDITIONS THAT MAY APPLY TO THE BUSINESS OR LOCATION.

EXAMPLE:     Change of Use and Occupancy Inspections  
                   Fire Department Inspections  
                   Sign Regulations

(For official use only)	
DATE RECEIVED: _____	
DATE ISSUED: _____	LICENSE FEE: \$ _____
ACCT. NO. _____	LICENSE NO. _____
CLASSIFICATION: _____	

**INDICATE TYPE OF OWNERSHIP OF BUSINESS:**    Individual    Corporation    Partnership    Other \_\_\_\_\_

*APPLICANT:		DATE OF BIRTH:
E-MAIL ADDRESS:		WORK PHONE:
SS#:	FEIN:	DRIVER LICENSE:
BUSINESS NAME:		CELL PHONE:
DOING BUSINESS AS (dba):		
BUSINESS ADDRESS:		
MAILING ADDRESS (if different)		
DESCRIPTION OF BUSINESS (provide details)		

ESTIMATED NUMBER OF EMPLOYEES: \_\_\_\_\_ DAYS BUSINESS WILL BE OPEN: \_\_\_\_\_ HOURS: \_\_\_\_\_  
 WILL BUSINESS HAVE VENDING MACHINES \_\_\_\_\_ IF SO, WHAT PRODUCT WILL BE VENDED: \_\_\_\_\_

**ATTACH THE FOLLOWING DOCUMENTS:**

CERTIFICATIONS ISSUED BY STATE/COUNTY AGENCIES  
 COPY OF ARTICLES OF INCORPORATION OR ARTICLES OF ORGANIZATION  
 LIST OF CORPORATE OFFICERS (Including Name, Address and Telephone Numbers)  
 COPY OF LEASE (IF APPLICANT IS OTHER THAN OWNER)  
 IF PROPERTY OWNER, PROVIDE COPIES OF DEED OR OTHER DOCUMENTS SHOWING OWNERSHIP

<b>LIST NAME, ADDRESS AND TYPE OF BUSINESS (both current and previous) YOU HAVE OPERATED:</b>

LIST THREE (3) REFERENCES: (Note if you list a bank, corporation, etc. include name of a contact person)

NAME	ADDRESS	PHONE

I understand that in applying for a business license in the Town of Bay Harbor Islands it is my obligation to understand and comply with the rules and regulations of the Town of Bay Harbor Islands. I acknowledge receipt of a copy of the Town's sign regulations, if applicable.

APPLICANT'S SIGNATURE \_\_\_\_\_ DATE: \_\_\_\_\_

FOR RESTAURANTS/FOOD ESTABLISHMENTS, A SOLID WASTE DEPOSIT IS REQUIRED (This amount can be adjusted depending upon monthly volume usage)

**INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED  
 PLEASE BE SURE TO ATTACH ALL REQUIRED DOCUMENTATION**

# Town of Bay Harbor Islands

## APPLICATION FOR CERTIFICATE OF OCCUPANCY

Before the issuance of a Certificate of Occupancy will be granted for the completion of a building permit or for a Business Tax Receipt, the following information must be provided.

Per the Florida Building Code, Section 503 and 307, the premises must be inspected and approved prior to new occupancy being granted.

Date: \_\_\_\_\_

Business Location	
Previous Tenant: (name)	
Previous Use (type of business)	
New Business Name	
New Tenant's Name	
Telephone Number	
Contractor's Name and Address and Phone Number	

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**OFFICIAL USE ONLY**

**Building Dept:**

Type of Business Compliant with Code?  Yes  No

Council Approval Required?  Yes  No

Council Approval Date: \_\_\_\_\_

Building Official: \_\_\_\_\_ Approval Date: \_\_\_\_\_

**Police Department:**

Background Investigation Completed?  Yes  No Date: \_\_\_\_\_

Approval for License  Yes  No Date: \_\_\_\_\_

Officer's Name: \_\_\_\_\_ Officer's Signature: \_\_\_\_\_

Officer's Remark:  
\_\_\_\_\_  
\_\_\_\_\_

**Building Department:**

Change of Use?  Yes  No

Inspections Required:

Code Compliance

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

Building

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

Electrical

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

Mechanical

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

Fire

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

Public Works

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

DERM

Inspector: \_\_\_\_\_

Date: \_\_\_\_\_

# MUNICIPAL APPLICATION FOR CERTIFICATE OF USE/OCCUPATIONAL LICENSE

<p><i>*Section 1 &amp; 2 must be completed prior to submittal for review accompanied with the municipal application along with the payment of the initial review fee. Submittal of application may result in further reviews and additional fees incurred.</i></p>	DATE
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**SECTION 1 – BUSINESS INFORMATION (to be completed by Applicant)**

SITE/BUSINESS ADDRESS	UNIT/SUITE#	PROPERTY TAX FOLIO NUMBER	
BUSINESS OWNER NAME	BUSINESS NAME OR DBA		
MAILING ADDRESS	CITY	STATE	ZIP
CORPORATE OFFICER/PARTNER/AUTHORIZED REPRESENTATIVE (NAME & TITLE)	TELEPHONE NUMBER	E-MAIL	
SQUARE FOOTAGE OF UNIT(S):	PROPOSED USE/TYPE OF BUSINESS		
<p><i>Please note that a lease agreement may be requested to verify square footage.)</i></p>	<p><i>Please note that some business types may require a DERM Operating Permit. To determine if your business requires an operating permit(s), please see page 2 of this application.</i></p>		

Further, under the penalty of perjury, I, being first duly sworn, depose and say that I have read the foregoing application and that the facts stated herein are accurate and true, including any boxes checked. I further acknowledge that this application and affidavit is subject to penalties of perjury, and acknowledge that Miami-Dade County reserves the right to revoke, cancel, void, or suspend, any permit issued pursuant to any application that contains any materially false or fraudulent statements, and acknowledge that continued operation of the uses after the permit is revoked, canceled, voided, or suspended, may subject me to enforcement penalties allowed by law.

Signature of applicant confirms the above information is true and correct. I understand the conditions under which my Certificate of Use (CU) is being approved and accept that no changes or refunds can be made once issued.

PRINT NAME	SIGNATURE
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**SECTION 2 – MUNICIPAL INFORMATION (to be completed by Municipal Official or Staff)**

MUNICIPAL CERTIFICATE OF USE APPLICATION NUMBER	PREVIOUS USE/TYPE OF BUSINESS AT THIS LOCATION	DATE OF LAST APPROVAL
Was a building permit required to establish/expand the current proposed use? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>If Yes, provide the following:</i>		
MUNICIPAL BUILDING PERMIT NUMBER	MIAMI-DADE COUNTY MUNICIPAL BUILDING APPROVAL NUMBER	
MUNICIPAL OFFICIAL PRINT NAME	TITLE	
SIGNATURE	TELEPHONE NUMBER	

**Please note that if your business type is not listed below it may not exempt you from the requirement of obtaining an operating permit.** To obtain a copy of the specific operating permit application, please visit our website at <http://www.miamidade.gov/permits/> or to verify if you require an operating permit contact us at (786) 315-2800.

TYPE OF BUSINESS / SPECIFIC USE	REQUIRED OPERATING PERMIT(S)
Agricultural Packing Houses	AW
Air Conditioning Repair	AP (if coating or painting) and IW5
Aircraft Dismantling, Maintenance, Repair	AP and IW or IW5 or IWP
Animal Grooming/Kennels	IW5
Animal Hospital/Clinic	IW5
Asphalt Plants	AP <b>and</b> IW <b>or</b> IW5
Automotive Repair	IW5
Boat Manufacturing	AP <b>and</b> IW5
Boat Repair, Maintenance	AP <b>and</b> IW5 <b>and</b> MOP
Body Shops with Painting	AP <b>and</b> IW5
Carpentry Shop	AP and IW5
Chemical Manufacturing	AP <b>and</b> IW <b>or</b> IW5 <b>or</b> IWP
Chemical or Medical laboratory	AP <b>and</b> IW5
Concrete Batch Plants	AP <b>and</b> IW5
Crematories (Human or Animal)	AP
Doctors and Dentist with X-ray Developing	IW5 <b>and</b> One-Time Compliance Report for Dental Dischargers (40 CFR 441.50)
Dry Cleaners	AP (if using perchloroethylene "PERC") <b>and</b> IW5
Food Processing Facilities	AP <b>and</b> GDO <b>or</b> IWP
Funeral Homes with Embalming	AP (if cremations conducted on-site) and IW5
General – businesses that use, handle, store or generate hazardous materials or hazardous waste	IW5
General – businesses inside wellfield protection areas and served by septic tank systems	IW6
General – businesses requiring handling, purchase or sale refrigerants containing ozone-depleting compounds	APCF
General – businesses that use a potable water supply well	PWO
General Construction Contractor	IW5
Industrial Facilities	AP <b>and</b> IW <b>or</b> IW5 <b>or</b> IWP
Industrial/Commercial Laundry	IW <b>or</b> IW5 <b>or</b> IWP
Junkyards	AP <b>and</b> IW5
Machine Shop	AP <b>and</b> IW5
Marinas	AP <b>and</b> MOP
Metal Finisher	AP <b>and</b> IWP
Pharmaceutical Manufacturing	AP <b>and</b> IWP
Photographic Film Processing	IW5
Plastics Manufacturing	AP <b>and</b> IW <b>or</b> IW5 <b>or</b> IWP
Powder Coating	AP <b>and</b> IW5 <b>or</b> IWP
Precious Metals Handling	AP <b>and</b> IW5
Print Shop	AP <b>and</b> IW5
Resource Recovery/Scrap Metal Facilities	AP <b>and</b> SW
Restaurants/Food Service Establishments	GDO
Rock Mining Operations	AP (if crushing activities on-site) <b>and</b> IW5
Silk Screening	AP <b>and</b> IW5
Stone Cutting	IW5
Tire Sales and Related Services	IW5
Transmission Repair Shop	IW5
Transporters of Liquid Wastes and Hazardous Materials	LW

**Operating Permit Abbreviation Key:**

AP – Air Operating Permit  
 APCF – Stratospheric Ozone Protection  
 AW – Agricultural Waste

GDO – Grease Discharge  
 IW5 – Industrial Facility  
 IW6 – Wellfield Protection

IW – Industrial Facility  
 IWP- Industrial Waste Pretreatment  
 LW – Liquid Waste Transporters

MOP – Marine Facility  
 PWO – Potable Water Supply  
 SW – Solid Waste

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## Sec. 23-5. Use regulations, B-1 Business district.

*Intent.* The purpose of the district is to provide appropriate land development regulations for the business/mixed-use properties on the eastern island of the town. The lots abut the Kane Concourse, the main roadway within the town. This area is the most urban in form with higher intensity development, narrow setbacks, on-street and/or garage parking facilities. The district regulations provide guidelines to encourage desired land uses such as restaurants and retail shops at street grade with other uses, including residential uses, above or behind the Kane Concourse frontage uses.

*Permitted uses.* In the B-1 business district, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed, or structurally altered which is designed, arranged, or intended to be used or occupied for any purpose, excepting for one or more of the following uses:

- (1) Multiple-family dwellings including condominiums, rental apartments, townhouses, lofts and similar dwelling units, provided the residential uses are part of a mixed-use development. No residential dwelling units may be located at ground level adjoining Kane Concourse; provided however, a lobby access is permitted. Single-family detached and two-family (duplex) dwellings are not permitted. Live/work dwelling units may be permitted if approved by the town council.
- (1a) Vacation rentals subject to the provisions in Chapter 23, Article VI of the Code of Ordinances of the Town of Bay Harbor Islands.
- (2) Business and profession office uses: Banks, savings and loan associations, business and professional offices, medical offices and clinics, stock and commodity broker, employment agency and similar uses.
- (3) Retail uses: Clothing and wearing apparel, neighborhood grocery stores, liquor and wine sales, tobacco sales, stationary, shoe sales and repairs, luggage and leather goods, sporting goods, electronic and music sales and service, telephones and communication goods, computers sales and service, optical and eye glasses, office supplies, florists, drug and sundries.
- (4) Personal service uses: Barber shop, beauty shop, skin care, day spas, dog grooming salon, nail salons, wigs and hair, fitness, exercise, weight loss, yoga, meditation center.
- (5) Miscellaneous uses: Antique display and sales, jewelry sales and repairs, furniture sales, confectionary and ice cream store, bakery and pastries, art galleries and studios, auction house, post office, theater, hardware store.
- (6) Restaurant uses: Sit-down restaurants including indoor, outdoor and sidewalk cafes; coffee shops, sandwich shops, except that no fast-food shall be permitted unless approved by the town council. A fast-food restaurant is defined as an establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, in cars on the premises, or off the premises.
- (7) Notwithstanding the foregoing, 100 percent of the ground floor space of any newly developed building or land facing Kane Concourse shall be used for the purposes set forth above excluding business and professional offices, including but not limited to physicians, attorneys, real estate offices, medical offices and clinics and stock and commodity broker offices. As used in this subsection, "newly developed" shall mean buildings constructed on vacant land or demolition of any existing building and subsequent construction of a new building. For existing buildings, at least 75 percent of the ground floor space facing Kane Concourse shall be used for the purposes set forth above excluding the above referenced office uses. For existing buildings with two or fewer ground floor uses, at least 50 percent of the ground floor space shall be used for the purposes set forth above excluding the above referenced office uses. If an existing nonconforming use vacates a ground floor space for more than 180 days, any future use shall conform to the use provisions herein.

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- (8) Religious institutions provided any such use is located on the second floor or higher floors of buildings.
  - (9) Private clubs, but only upon specific approval at a public hearing and permit from the town council. The applicant shall demonstrate compliance with subsection (8.1)(c)1., 2. and 3. herein.
  - (10) Hotels and customary accessory uses, including but not limited to, restaurants, bars, swimming pools, spas and other recreational facilities, and meeting facilities. This shall include the ability of a private school to operate a facility as part of hospitality education, provided the school is open to the general public.
  - (11) Duly licensed home occupations are permitted subject to the requirements of the Town Code for those uses.
  - (12) Convention organization services; community centers; show and film direction or production; import/export services; interior design; internet sales and service; municipal offices, parking facilities and related functions; parking of motor vehicles as accessory uses; valet parking services if approved by the town council.
  - (13) Dry cleaning pick-up and delivery, provided no on-site dry cleaning occurs; tailors, clothing alterations.
  - (14) Other similar uses as may be permitted by the town council, provided that such uses are compatible with and do not adversely affect the character of the district.
  - (15) Activities occurring on the rooftop of the building shall be subject to the following restrictions:
    - (a) Uses and facilities shall be limited to recreational facilities for the building tenants, such as jogging/walking paths, swimming pool and/or spa, sun decks, seating areas, food preparation and/or serving areas (barbecue grill/sink/storage) and similar facilities.
    - (b) Passive recreational activities, such as jogging, walking, conversation, eating, meditation, and similar passive recreational activities shall be permitted, provided no such rooftop activities shall occur prior to 8:00 a.m. or after 11:00 p.m. from Sunday through Thursday, and prior to 8:00 a.m. or after 12:00 a.m. (midnight) on Friday and Saturday.
    - (c) No commercial business activities shall operate on the building rooftop, unless specifically approved by the town council at an advertised public meeting. A commercial business is defined as one holding a valid town business tax receipt (formerly known as occupational license) or certificate of use.
    - (d) All electrical loudspeakers, amplifiers or musical instruments shall limit sound emission for background music or entertainment purposes, regardless of whether it is "live" or recorded. Such sound emissions shall not exceed 70 decibels at any time at its source, in accordance with the town's noise ordinance (article II of chapter 12).
    - (e) Certain limited events and/or functions such as charity events, fundraising receptions, cocktail parties and the like may be permitted for the building owner or tenants, their guests and invitees, if approved in writing by the town manager, prior to the event and/or function occurring. All such requests shall be submitted to the town manager's office, on a form provided by the town, at least 24 hours in advance of the event/function, except that the town manager may approve, but is not required to approve, an event/function on short-term notice based on special circumstances. At a minimum, the application form information shall include:
      - 1. The name, address, telephone number and e-mail address of the tenant/sponsor;
      - 2. The name, address, telephone number, e-mail address and signature of the building/property owner and any designated property manager;
      - 3. The estimated number of persons attending;

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4. A description of the purpose of the event/function;
  5. The hours of the event/function;
  6. A description of any planned beverage/food or entertainment; and
  7. An off-street parking plan to accommodate the attendees (if required).
- (f) All events and/or functions must be sponsored or hosted by the building owner or a building tenant, with the building owner's written consent. The building owner shall sign the town's request form or submit a separate written consent letter to the town with the request. No such limited rooftop event/function activities shall occur prior to 9:00 a.m. or after 11:00 p.m. on Sunday through Thursday and prior to 6:00 p.m. or after 12:00 a.m. (midnight) on Friday or Saturday.
- (g) No bright lights, globes, strobes or flashing lights shall be permitted.
- (h) The town reserves the right to order that any activities causing a nuisance be altered immediately to comply with Town Code provisions, or to close any activity immediately that is deemed to be in violation of this criteria that negatively affects properties both within the town and within adjoining communities.
- (i) Should these land development regulations conflict with any previously approved limitations for rooftop uses, the provisions set forth herein shall take precedence.

*Prohibited uses.* In the B-1 business district, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed, or structurally altered which is designed, arranged, or intended to be used or occupied for any of the following uses: Thrift shops or stores selling secondhand merchandise; pawn stores, gas stations; tattoo parlors or body piercing; check cashing stores; psychic or fortune tellers; flea markets; adult entertainment establishments; shops or stores selling dogs and cats; any use not specifically listed, unless permitted by the town council. Notwithstanding the above, bona fide antique or vintage stores selling clothing, accessories, jewelry and furnishings may be permitted by the town council so long as such stores are compatible with and do not adversely affect the character of the district. Antique and vintage sale items, as opposed to thrift or secondhand stores, are characterized as items from earlier periods of time. By way of example (in 2011), vintage items are typically from the time period prior to 1980 and antique items are typically from the time period prior to 1920 having some intrinsic value.

(Ord. No. 108, § 5, 6-10-57; Ord. No. 125, § 1, 1-12-59; Ord. No. 287, § 1, 1-13-75; Ord. No. 699, § 1, 3-11-02; Ord. No. 747, § 3, 8-16-04; Ord. No. 794, § 1, 4-10-06; Ord. No. 7997, § 1(Exh. A), 7-10-06; Ord. No. 893, § 1(Exh. A), 11-9-09; Ord. No. 915, § 1(Exh. A), 8-8-2011; Ord. No. 931, § 1(Exh. A), 3-12-2012; Ord. No. 963, § 1(Exh. A), 4-7-14; Ord. No. 1002, § 1(Exh. A), 11-14-16; Ord. No. 1003, § 1(Exh. A), 11-14-16)

### **Sec. 23-5.1. Adult entertainment prohibited.**

- (a) *Definitions.* For the purpose of this section, the following terms, phrases and words shall have the meaning given herein:

*Adult bookstore* means an establishment which sells, offers for sale or rents adult material for commercial gain. This definition includes establishments selling or renting adult videos when applicable under the above-stated conditions.

*Adult booth* means a small enclosed or partitioned area inside an establishment operated for commercial gain which is designed or used for the viewing of adult material by one or more persons and is accessible to any person, regardless of whether a fee is charged for access. The term "adult booth" includes, but is not limited to, a

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"peep show" booth, or other booth used to view adult material. The term "adult booth" does not include a foyer through which any person can enter or exit the establishment, or a restroom.

*Adult entertainment establishment* means any adult bookstore, adult booth, adult motion picture theater or nude dancing establishment as defined in this section.

*Adult material* means one or more of the following, regardless of whether it is new or used:

- (1) Books, magazines, periodicals or other printed matter; photographs, films, motion pictures, videocassettes, discs, slides or other visual representations; recordings, other audio matter; and novelties or devices; which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to sexual conduct or specified anatomical areas as defined in this section; or
- (2) Instruments, novelties, devices or paraphernalia which are designed for use in connection with sexual conduct as defined in this section, except for birth control devices or devices for disease prevention.

*Adult motion picture theater* means an enclosed building used for presenting for observation by patrons, motion pictures, films, or video media, distinguished or characterized by an emphasis on matter depicting, describing or relating to sexual conduct or specified anatomical areas as defined in this section. This definition includes, but is not limited to, prohibition of "X" rated motion pictures.

*Commercial gain* means operated for pecuniary gain, which shall be presumed for any establishment which has received an occupational license. For the purpose of this section, commercial or pecuniary gain shall not depend on actual profit or loss.

*Nude dancing establishment* means an establishment operated for commercial gain wherein performers or employees of the establishment display or expose to others specified anatomical areas as defined in this section, regardless of whether the performer or employee so exposed is actually engaging in dancing.

*Sexual conduct* means any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, erotic touching, caressing or fondling of the breasts, buttocks or any portion thereof, anus or genitals or the simulation thereof.

*Specified anatomical areas* as used in this section shall mean either of the following:

- (1) Less than completely opaquely covered human genitals, pubic region, anal cleft, cleft of the buttocks, and all or any part of the areola of the female breast; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

The word "used" as utilized in the definitions of "adult booth" and "adult motion picture theater" in this section shall describe a continuing course of conduct of exhibiting sexual conduct or specified anatomical areas as defined in this section.

- (b) *[Prohibited.]* No adult entertainment establishment shall be permitted on any parcel of land within 2,500 feet of any school in the Town of Bay Harbor Islands. Distance shall be measured and computed, in the case of a school, by following a straight line from the nearest point of the school grounds in use as part of the school grounds to the closest exterior door of the place of business. No application for an occupational license for such adult entertainment establishment shall be approved for zoning compliance unless such application is accompanied by a certified survey, from a registered land surveyor in the State of Florida, showing that such use meets with distance requirements as set forth herein.

(Ord. No. 660, § 1, 4-10-2000; Ord. No. 695, § 1, 11-13-01)