

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: ADULT ENTERTAINMENT BUSINESSES

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§ 110.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT BOOKSTORE. An establishment which derives more than 50% of its revenues from the offering to customers of books, magazines, sexual paraphernalia, films or videotapes (whether for viewing off premises or on premises by use of motion picture machines or other image producing devices), periodicals or other printed or pictorial materials which are intended to provide sexual stimulation or sexual gratification to such customers, and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities," or "specified anatomical areas."

ADULT CABARET. An establishment whose principal business purpose is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished by or

characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

ADULT ENTERTAINMENT ESTABLISHMENT.

Includes, but is not necessarily limited to, an adult club or cabaret used for any type presentation depicting, exhibiting or describing "specified sexual activities" or "specified anatomical areas" for observation by patrons therein and also includes bookstores, theaters, video stores, peep shows, model studios, sexual encounter centers, massage parlors, escort services and motels as the same are further defined herein and any other establishment which contains activities characterized by the performance, depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT MODEL STUDIO. Any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Modeling studios will not be considered adult entertainment establishments if the person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school, licensed by the state; a college, junior college, or university supported entirely or partly by taxation; or

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

ADULT MOTEL. A hotel, motel, or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration: provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or

"specified anatomical areas;" and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

ADULT THEATER. An establishment, containing a room with tiers or rows of seats facing a screen, or projection area, whose principal business purpose is the exhibition to customers of motion pictures which are intended to provide sexual stimulation or sexual gratification to such customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

ADULT VIDEO STORE. A commercial enterprise selling or renting any of the following as more than 50% of its gross revenues:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas;" or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

ESCORT SERVICE. A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

EXTERIOR PORTION. Any part of the physical structure of a "regulated establishment," including a wall, veneer, door, fence, roof, roof covering, or window, which is visible from any public way or public property.

MASSAGE PARLOR. Any business or establishment where massage is practiced, excluding health clubs which derive more than 90% of revenue from sport activities or sale of memberships to engage in sport activities.

NUDITY. The appearance of a bare human buttocks, male genitals, female genitals, or female breast(s).

PEEK SHOWS. A theater which presents material in the form of live shows, films or videotapes, viewed from an individual enclosure, for which a fee is charged and which is not open to the public generally but excludes any minor by reason of age.

SEMI-NUDE. A state of dress in which clothing covers no more than the genitals, pubic region, areolae of the female breast, and those portions of the body covered by supporting straps and devices.

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude; or

(3) Sadistic/masochistic flagellation or torture (real or simulated) of one person by another and/or the fettering, binding, or physically restraining one person by another.

SIGN. Any display, design, pictorial, or other representation, which shall be constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever so that the same is visible from the outside of a "regulated establishment" and that is used to seek the attraction of the public to any goods, services or merchandise available at such "regulated establishment." The term "sign" shall also include such representations painted on or otherwise affixed to any exterior portion of a "regulated establishment" as well as such representations painted on or otherwise affixed to any part of the tract upon which such a "regulated establishment" is situated.

SPECIFIED ANATOMICAL AREAS.

(1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or

(2) Human male genitals in a discernably turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITY.

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse or sodomy;

(3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts;

(4) Flagellation or torture in the context of a sexual relationship;

(5) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or

(6) Erotic touching, fondling or other such contact with an animal by a human being.
(Ord. passed 5-22-90)

§ 110.02 PROHIBITION.

It shall be unlawful for any person or group of persons, partnership, limited partnership or corporation or any other entity to operate or cause to be operated an adult entertainment establishment except as permitted herein.

(Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.03 CONDITIONAL USE PROVISION.

(A) The Planning Commission shall review and approve the location of all adult entertainment establishments prior to the issuance of a certificate of zoning compliance by the Zoning Administrator. The approval of the Planning Commission shall be in writing and accompany any request for a building permit to the codes enforcement officer.

(B) No more than one adult entertainment establishment shall be located on any one lot or parcel.

(Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.04 LOCATION.

(A) Adult entertainment establishment shall not be located closer than:

(1) 1,000 feet from any residential zoning district.

(2) 1,000 feet from any church, day-care center, public or private, elementary or secondary educational school, public park, public library, cemetery or motion picture establishment which shows G or PG rated movies to the general public on a regular basis.

(3) 2,000 feet from any other adult entertainment establishment.

(B) Measurements of distance separation shall be in a straight line from the closest points of the buildings at which the adult uses are located.

(Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.05 TEMPORARY USE PERMIT.

(A) A temporary use permit shall be required prior to the staging of any adult entertainment show or contest in an adult entertainment establishment which schedules such entertainment less than 12 times per calendar year.

(B) Activities requiring permits shall include but are not necessarily limited to male and or female burlesque or fantasy shows, wet T-shirt contests and other such one time, or irregularly scheduled events.

(C) Complete application forms shall be submitted within 30 days prior to the date of the event.

(D) A permit fee of \$250 shall accompany the application.

(E) A site plan showing parking ingress and egress and maximum seating capacity of the structure shall be required.

(F) A written certification of type of entertainment shall be provided.

(G) Temporary uses shall be subject to the conditional use provisions set forth in §§ 110.07 through 110.09.

(Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.06 OWNERSHIP DISCLOSURE.

If a person who wishes to operate an adult entertainment establishment is an individual, he must sign the application as applicant. If a person who wishes to operate an adult entertainment establishment is other than an individual, each individual who has a 10% or greater interest in the business must sign an application for a permit and or license as applicant. If a corporation is listed as an owner of the adult business or is an entity which wishes to operate such a business, each individual having a 10% or greater interest in the corporation, must sign the application for a permit and or license as applicant. All corporate officers shall also sign the application. The fact that a person possesses other types of state of county permits and or licenses does not exempt him from the requirement of obtaining a sexual oriented business permit and or license.

(Ord. passed 5-22-90)

§ 110.07 AGE REQUIREMENTS.

An adult entertainment establishment shall neither employ nor permit the admittance/patronage of any person who is under 21 years of age.

(Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.08 INSPECTIONS.

The management of adult entertainment establishment shall permit representatives of the Police Department, Sheriff's Department, Health Department, Building Inspection Department, Zoning Code Enforcement Department, Fire Department, Planning and Zoning Department or other municipal, county or state departments to inspect the premises at any time it is open for business.

(Ord. passed 5-22-90)

§ 110.09 REVOCATION OF ZONING COMPLIANCE.

The Zoning Administrator shall remove a certificate of zoning compliance thereby suspending the operation of any adult entertainment establishment for the following:

(A) For giving false or misleading information by the permittee at any time in the application process;

(B) Illegal sale of any controlled substance on the premises;

(C) Failure to permit inspection by authorized municipal, county and state agencies or personnel;

(D) Violation of age restrictions as specified in this chapter;

(E) For the arrest and conviction of any owner or employee for violation of any of the ABC laws or controlled substance laws of the state.

(Ord. passed 5-22-90)

§ 110.10 EXTERIOR PORTIONS OF REGULATED ESTABLISHMENTS.

(A) It shall be unlawful for an owner or operator of a regulated establishment to allow the merchandise or activities of the regulated establishment to be visible from any point outside such regulated establishment.

(B) It shall be unlawful for the owner or operator of a regulated establishment to allow the exterior portions of the regulated establishment to have flashing lights, or any words, lettering, photographs, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this chapter.

(C) It shall be unlawful for the owner or operator of a regulated establishment to allow exterior portions of the regulated establishment to be painted any color other than a single achromatic color (i.e. zero saturation and without hue). This provision shall not apply to any regulated establishment if the following conditions are met:

(1) The regulated establishment is a part of a commercial multi-unit center; and

(2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the regulated establishment are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(D) Nothing in this chapter shall be construed to require the painting of an otherwise unpainted exterior portion of a regulated establishment.

(E) Nothing in this section shall supersede or replace any sign regulation already in effect within the town, but shall be in addition thereto. (Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.11 SIGNAGE.

(A) It shall be unlawful for the owner or operator of any regulated establishment or any other person to erect, construct, or maintain any sign for the regulated establishment other than one "primary sign" and one "secondary sign," as provided herein.

(B) Primary signs shall have no more than two display surfaces. Each such display surface shall:

- (1) Not contain any flashing lights;
- (2) Be a flat plane, rectangular in shape;
- (3) Not exceed 75 square feet in area; and
- (4) Not exceed 10 feet in height or 10 feet in length.

(C) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

- (1) The name of the regulated establishment and/or
- (2) One or more of the following phrases:
 - (a) "Adult Bookstore";
 - (b) "Adult Movie Theater";
 - (c) "Adult Cabaret";
 - (d) "Adult Entertainment"; or
 - (e) "Adult Model Studio."

(3) Primary signs for adult movie theaters may contain the additional phrase, "Movie Titles Posted on Premises."

(D) Each letter forming a word on a primary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(E) Secondary signs shall have only one display surface. Such display surface shall:

- (1) Be a flat plane, rectangular in shape;
- (2) Not exceed 20 square feet in area;
- (3) Not exceed five feet in height and four in width; and
- (4) Be affixed or attached to any wall or door of the establishment; and

(5) These provisions shall supplement the sign requirements established by existing town ordinances. (Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.12 PARKING.

Adult entertainment establishments shall be required to provide one on-premise parking space for each 100 square-foot of gross floor area of the structure or one on-premise parking space per every three persons of maximum seating capacity, whichever is greater; plus one space per employee. Maximum seating capacity shall be determined by the County Fire Department and/or Building Inspection Department. (Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.13 HOURS OF OPERATION.

No adult establishment shall operate before 4:00 P.M. or after 12:00 midnight. (Ord. passed 5-22-90) Penalty, see § 10.99

§ 110.14 REVOCATION OF LICENSE.

In addition to any other remedies, the town may apply to General Court of Justice for suitable equitable relief to abate or otherwise enjoin any violation of this chapter. Any violation would result in revocation of permit or license. (Ord. passed 5-22-90)

§ 110.15 BUSINESS LICENSE.

Any person or other entity, prior to operating an adult entertainment establishment, shall apply for a

business license for the appropriate category of business of the adult entertainment establishment within the town limits. The applicant shall pay the fee therefore as set forth in G.S. Ch. 105.

(Ord. passed 5-22-90; Am. Ord. passed 4-10-01)

Penalty, see § 10.99