

## **ARTICLE 20. ADULT AND SEXUALLY ORIENTED ESTABLISHMENTS**

### **Section 20-1: Purpose**

The purpose of this Article shall be to set forth the regulatory and licensing requirements for adult and sexually oriented establishments located within the City of Southport. Adult and sexually oriented establishments, because of their very nature, are recognized as having serious objectionable operational characteristics. Studies and experiences that are relevant to North Carolina have shown that lower property values and increased crime rates tend to accompany and are brought about by adult and sexually oriented business establishments. The Board of Aldermen finds that regulation of these uses is necessary to ensure that these adverse secondary effects do not contribute to the blighting of surrounding neighborhoods, and to regulate acts, omissions, or conditions detrimental to the health, safety, or welfare and the peace and dignity of the city. Regulation to achieve these purposes can be accomplished by the procedures set forth hereinafter.

The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. This Article represents a balancing of the legitimate ends of the community by imposing an incidental, content neutral place, time, and manner regulation of sexually oriented businesses, without limiting alternative avenues of communication and at the same time, requiring the business to carry its share of financing administrative and enforcement activities.

### **Section 20-2: Definitions**

- (1) Administrator. For the purposes of the administration and enforcement of this Article, the Administrator shall be the responsible person.
- (2) Adult Bookstore. A bookstore:
  - (a) Which receives a majority of its gross income during any calendar month from the sale of publications (including books, magazines, and other periodicals) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section or other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium.
  - (b) Having as a preponderance (either in terms of the weight and

importance of the material or in terms of greater volume of materials) of its publications, including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium, which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section.

- (3) Adult Cabaret. A nightclub, bar, restaurant, or similar commercial establishment that, on a regular, sporadic, or transient basis, features:
  - (a) Persons who appear in a state of nudity or semi-nudity; or
  - (b) Live performances that are characterized by the exposure of “specified anatomical areas” or “specified sexual activities”, or
  - (c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”, or
  - (d) Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
- (4) Adult Establishment. An adult bookstore, adult cabaret, adult motel, adult motion picture theater, adult mini motion picture theater, escort agency, exotic car wash, exotic maid service, nude modeling studio, sexual encounter center, adult live entertainment business, or any other sexually oriented business that is similar in nature or intent to any other adult entertainment business as defined in this section. This term may be used interchangeably with sexually oriented business.
- (5) Adult Live Entertainment. Any performance of / or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.
- (6) Adult Live Entertainment Business. Any establishment or business wherein adult live entertainment is shown for observation by patrons. This shall apply whether the entertainment is presented on a regular, sporadic, or transient basis.
- (7) Adult Hotel. A hotel, motel, or similar commercial establishment that:
  - (a) Offers accommodation to the public for any form of consideration

and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that 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 that advertises the availability of this adult type of photographic reproductions; or

- (b) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
  - (c) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.
- (8) Adult Motion Picture Theater. An enclosed building or premises used for presenting motion pictures, which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein. “Adult motion picture theater” does not include any adult mini motion picture theater as defined in this section.
- (9) Adult Mini Motion Picture Theater. An enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein.
- (10) City. The City of Southport, North Carolina.
- (11) Employee. A person who performs any service on the premises of an adult establishment on a full-time, part-time, contract basis, or independent basis, whether or not the person is designated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises of equipment on the premises, or for the delivery of goods to the premises, nor does “employee” include a person exclusively on the premises as a patron or customer.
- (12) Enlargement of a Sexually Oriented Business Establishment. The increase in floor area occupied by the business by more than ten (10%) percent, as the floor area exists at the date of adoption of this Ordinance.
- (13) Escort. A person who, for consideration, agrees or offers to act as a

companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person and whose advertisements, promotions, or obvious intent to the public are sexual in nature.

- (14) Escort Agency. 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 and whose advertisements, promotions, or obvious intent to the public are sexual in nature.
- (15) Entertainer. Any person who provides entertainment within or at an adult and sexually oriented establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided by that person as an employee or an independent contractor.
- (16) Erotic. Any seductive, titillating, lustful, immodest, indecent, suggestive, passionate, or similar reference, act, service, or deed.
- (17) Establishment. Includes any of the following:
  - (a) The opening or commencement of any adult establishment as a new business;
  - (b) The conversion of an existing business, whether or not an adult establishment, to any other adult establishment;
  - (c) The additions of any sexually oriented business to any other existing sexually oriented business; or
  - (d) The relocation of any adult establishment.
- (18) Exotic Car Wash. A facility that offers a car cleaning or washing service performed by employees that are in a state of nudity or semi-nudity.
- (19) Exotic Maid Service. Any cleaning service for a residence or business where the employee is in a state of nudity or semi-nudity.
- (20) Licensee. A person in whose name a license has been issued, or the individual listed as an applicant on the application for a license.
- (21) Massage. The manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping by hand or mechanical device.
- (22) Massage Business. Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.

- (23) Nude Model Studio. Any place where a person who appears in a state of nudity or displays “specific anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.
- (24) Nudity (includes a state of nudity). The appearance of a human bare buttock, anus, anal cleft, or cleavage, pubic area, male genitals, female genitals, or vulva, with less than fully opaque covering; or human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (25) Person. For the purpose of this section shall include:
- (a) The agent in charge of the building, premises, structure, or facility; or
  - (b) The owner of the building, premises, structure, or facility when such owner knew or reasonably should have known the nature of the business located therein, and such owner refused to cooperate with the public officials in reasonable measures designed to terminate the proscribed use; provided, however, that if there is an agent in charge, and if the owner did not have actual knowledge, the owner shall not be prosecuted; or
  - (c) The owner of the business; or
  - (d) The manager of the business; or
  - (e) Any person, group of persons, firm partnership, limited partnership, or corporation; or
  - (f) An individual, proprietorship, partnership, corporation, association, or other legal entity.
- (26) Premises. For the purpose of this section, the real property upon which the adult establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult establishment license pursuant to this Article.
- (27) Semi-nude. The appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited

by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

- (28) Sexual Encounter Center. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  - (b) 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-nudity.
- (29) Sexually Oriented Devices. Without limitation, any artificial or simulated specific anatomical area or device or paraphernalia that is designed principally for specified sexual activities but shall not include any contraceptive device.
- (30) Specified Anatomical Area. Shall include the following:
- (a) Less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or
  - (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (31) Specified Sexual Activities. Shall include the following:
- (a) Human genitals in a state of sexual stimulation or arousal, or
  - (b) Acts of human masturbation, sexual intercourse, or sodomy, or
  - (c) Fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts.
- (32) Sexually Oriented Business. Any business or enterprise that has as one of its principal business purposes or as a significant portion of its business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities as specified in NCGS 14-202.10. This term may be used interchangeably with adult establishments.
- (33) Transfer of Ownership and Control. With regard to adult establishments, includes any of the following:

- (a) The sale, lease, or sub-lease of the business; or
- (b) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for the transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### **Section 20-3: Application for Licenses**

#### **(A) Adult Establishment License.**

- (1) It shall be unlawful for any person to operate or maintain an adult establishment in the city unless the owner or operator thereof has obtained an Adult Establishment License from the city. It shall also be unlawful for any person to operate such business after such license has been revoked or suspended by the city, or said license has expired.
- (2) It shall be unlawful for any entertainer to knowingly perform any work, service, or entertainment directly related to the operation of an unlicensed adult establishment within the city.
- (3) It shall be prima facie evidence that any adult establishment that fails to have posted, in a manner required by this Article, an adult establishment license, or has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer who performs any service or entertainment in which an adult establishment license is not posted, in the manner required by this Article, had knowledge that such business was not licensed.

#### **(B) Entertainer License.** It shall be unlawful for any person to work as an entertainer at an adult establishment without first obtaining a license to do so from the city, or to work as an entertainer at an adult establishment after such person's license to do so has been revoked or suspended by the city, or has expired.

#### **(C) License Classification and Fees.**

- (1) The term of all licenses required under this Article shall be for a period of twelve (12) months, commencing on the date of issuance of the license. The application for a license shall be accompanied by payment in full of the fees referred to in this Article and established by the Board of Aldermen. Payment shall be made by

certified or cashier's check or money order. No application shall be considered complete until all such fees are paid.

- (2) The license shall be issued for a specific location and/or person and shall be non-refundable or non-transferable.
- (3) The license fees shall be as set by the Board of Aldermen and be recorded in the Board of Aldermen Meeting Minutes at which they are set. The license fee for an adult establishment shall be one thousand (\$1,000) dollars per year. Additionally, there shall be an additional five hundred (\$500) dollar fee for each additional partner, if the applicant is a partnership; and if the applicant is a corporation, for each corporate officer, director, or any individual(s) having a ten (10%) percent or greater interest in the corporation.
- (4) The license fee for an adult entertainer license shall be five hundred (\$500) dollars per year.
- (5) Said license fees shall be listed on the official Schedule of Fees for the city.

#### **Section 20-4: Application Procedures**

- (A) Adult Establishment License. All persons desiring to secure a license to conduct, operate, or maintain an adult establishment under the provisions of this Article shall make a verified application to the Administrator. All applications shall require the following information and be submitted on a form supplied by the city:
  - (1) The applicant's full name and any aliases or other names by which the applicant is known or which the applicant has used at any time, and the residence address(es) for the past two years, the business and home telephone numbers, occupation, date and place of birth, social security number, driver's license number, and a recent photograph of the applicant.
  - (2)
    - (a) The name of the adult establishment, a full description of the adult entertainment to be performed on the licensed premises, the name of the owner of the premises where the adult establishment will be located, the business address and Brunswick County parcel identification number on which the business resides.
    - (b) If the persons identified as the fee owner(s) of the tract of land in item 2(a) is/are not also the owner(s) of the establishment, then the lease, purchase contract, purchase



option contract, lease option contract, or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the adult establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the purpose of the operation of an adult establishment.

- (c) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand (1,000) feet of the property to be certified; the property lines of any established religious institution/synagogue, school, library, or public park or recreation area within one thousand (1,000) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
- (d) Any of the criteria above shall not be required for a renewal application if the applicant states, in writing, that the documents previously furnished to the city with the original application or previous renewals thereof remain correct and current.

(3) The names, residence address(es) for the past two years, social security numbers, and dates of birth of all partners, if the applicant is a partnership; and if the applicant is a corporation, the same information for all corporate officers, directors, and individuals having a ten (10%) percent or greater interest in the corporation.

(4) A written statement from the applicant, or from partner, or from each corporate officer, director, or ten (10%) percent shareholder that each such person has not been convicted of, released from confinement for conviction of, or diverted from prosecution on:

- (a) A felony criminal act within five (5) years immediately preceding the application, or
- (b) A misdemeanor criminal act within two (2) years immediately preceding the application.

*Where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of the State of North Carolina or any other comparable violation of the laws of this state or the laws of any other state.*

- (5) If the applicant is a corporation, a current certificate of existence issued by the State of North Carolina Secretary of State.
  - (6) A written statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this Article regulating adult establishments.
  - (7) All applicants shall submit to fingerprinting by a City of Southport Police Officer. The fingerprint cards shall be submitted to the North Carolina State Bureau of Investigation (SBI) for processing. Returned fingerprint cards and criminal histories shall be kept on file in the City of Southport Police Department.
  - (8) A written statement signed under oath that the applicant(s) consent(s) to investigation of his/her background by the city to include fingerprinting and that the applicant(s) agrees to furnish within ten (10) days at his/her expense, a criminal history from the Clerk of Court of any county in which the applicant has resided during the five (5) preceding years.
  - (9) Failure to provide the information and documentation required by this subsection shall constitute an incomplete application which shall not be processed until complete.
- (B) Adult Entertainer License. All persons desiring to secure a license under the provisions of this Article to be an entertainer shall make a verified application to the city. All applications shall be made in person to the Administrator. All applications shall be submitted on a form supplied by the city and shall require the following information:
- (1) The applicant's full name and any aliases or other names by which

the applicant is known or which the applicant has used at any time, and the residence address(es) for the past two (2) years, the home telephone number, date and place of birth, social security number, and any stage names or nicknames used in entertaining.

- (2) The name and address of the adult establishment where the applicant intends to work as an entertainer.
- (3) A written statement from the applicant that the applicant has not been convicted of, released from confinement for conviction of, or diverted from prosecution of:
  - (a) A felony criminal act within five (5) years immediately preceding the application, or
  - (b) A misdemeanor criminal act within two (2) years immediately preceding the application, where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of the State of North Carolina or any other comparable violation of the laws of this state or the laws of any other state.
- (4) Photographs shall be taken of the applicant by the city and the Administrator charged with the administration and enforcement of the provision of this Ordinance shall have the photographs processed and retain the copies.
- (5) All applicants shall submit to fingerprinting by a City of Southport Police Officer. The fingerprint cards shall be submitted to the SBI for processing. Returned fingerprint cards and criminal histories shall be kept on file in the City of Southport Police Department.
- (6) The applicant shall present, at the time the application is made, documentation to the city for copying that the applicant has attained the age of twenty-one (21) years at the time the application is submitted. Any of the following shall be accepted as documentation of age:

- (a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;
  - (b) A state issued identification card bearing the applicant's photograph and date of birth;
  - (c) An Official and valid passport issued by the United States of America;
  - (d) An immigration card issued by the United States of America (if applicable);
  - (e) Any other form of picture identification issued by a governmental entity that is deemed reliable by the city; or
  - (f) Any other form of identification deemed reliable by the city.
- (7) A written statement signed under oath that the applicant consents to investigation of his/her background by the city to include fingerprinting and that the applicant agrees to furnish within ten (10) days at his/her expense, a criminal history from the Clerk of Court of any county in which the applicant has resided during the five (5) preceding years.
- (8) Failure to provide the information required by this subsection shall constitute an incomplete application and it shall not be processed until complete.
- (C) Application Processing. Upon receipt of a complete application for an Adult Business License or for an adult entertainer license, the Administrator shall immediately commence investigation of the application as follows:
- (1) In the case of an application for a license for an adult establishment, the Administrator shall:
    - (a) Transmit a copy of the application to the City's Code Enforcement Officer, the Planning Board, the Police Chief, and the City Clerk.

- (b) The Code Enforcement Officer shall report to the Administrator no later than fifteen (15) working days after the receipt of the application by the Administrator whether or not a proposed adult establishment complies with the requirements of the city's Unified Development Ordinance regarding location of the adult establishment building, fire, health, or similar State or local code(s). In the event that the Code Enforcement Officer fails to report to the Administrator within this time period, the Administrator shall proceed with processing the application.
- (c) The Planning Board shall review the application to confirm compliance with Articles 12 and 20. If the Planning Board confirms compliance, then a Conditional Use shall be granted and the findings transmitted to the Administrator within thirty (30) working days of receipt of the application by the Planning Board.
- (d) The Police Chief shall report to the Administrator no later than fifteen (15) working days after receipt of the application by the Police Chief the results of his/her investigation of the applicant. In the event that the Police Chief fails to report to the Administrator within this time period, the Administrator shall proceed with processing the application.
- (e) The City Clerk shall maintain said copy of the application for public review. Notice of availability of said application shall be posted in a paper of general circulation indicating the following:
  - (1) Name of applicant
  - (2) Date of application
  - (3) Nature of application
- (f) Upon completion of his/her investigation, payment of the applicable license fee, and upon receipt of the report of the Code Enforcement Officer, the Planning Board, and the Police Chief (or upon expiration of the time periods

referenced above without receiving a report), the Administrator shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Administrator exceed forty-five (45) working days from the date the application is received by the Administrator, unless consented to by the applicant.

- (2) In the case of an application for a license for an entertainer, the Administrator shall:
  - (a) Transmit a copy of the application to the Police Chief.
  - (b) The Police Chief shall report to the Administrator no later than fifteen (15) working days after receipt of the application by the Police Chief the results of his/her investigation of the applicant. In the event that the Police Chief fails to report, the Administrator shall proceed with processing the application.
  - (c) Upon completion of his/her investigation, payment of the appropriate license, and upon receipt of the report of the Police Chief (or upon expiration of either or both time periods referenced above without receiving a report), the Administrator shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Administrator exceed fifteen (15) days from the date the application is received by the Administrator, unless consented to by the applicant.

(D) Reasons for Disapproval. The Administrator must deny the Adult Business License application for one or more of the following reasons:

- (1) The license application is incomplete so as to not contain all information required by the Article.
- (2) The applicant (including any partners, corporate officers, directors, and shareholders where applicable) has been convicted of a crime in the local, state, or federal court systems for any violations listed in this section.

- (3) The applicant (including any partners, corporate officers, directors, and shareholders where applicable) has made a false or fraudulent statement in the application, evidence of which is disclosed by a city background investigation or by any other lawful means.
  - (4) The application for an adult establishment business license does not meet the requirements of this Article.
  - (5) The applicant for an adult establishment has not received a Conditional Use Permit from the Planning Board.
- (E) Notice of Approval or Disapproval
- (1) Upon a determination by the Administrator of the disapproval or approval of the application, the Administrator shall notify the applicant by personal delivery or certified mail, return receipt requested, to the address of the applicant as shown on the application. In the event that the application is disapproved, the notification shall state the basis for such disapproval.
  - (2) In the event an application is disapproved, the applicant shall have thirty (30) days from the receipt of the notice of disapproval to appeal that determination to the Superior Court of Brunswick County.
- (F) Changes to Application. All applicants shall notify the Administrator of any changes to the application within five (5) working days of the date the change occurs.

#### **Section 20-5: Prohibited Acts and Conduct**

- (A) No person under the age of twenty-one (21) years shall be permitted on the premises of any adult establishment.
- (B) No person under the age of twenty-one (21) years shall be granted a license for an Adult Establishment Business or as an entertainer.
- (C) No owner, operator, manager, employee, or entertainer, nor any customer or patron, shall appear "bottomless" or in a state of nudity while on the

premises of the adult establishment.

- (D) No owner, operator, manager, employee, or entertainer, nor any customer or patron shall perform any specified sexual activities as defined in this Ordinance, wear or use any device or covering exposed to view which simulates any specified anatomical area, use artificial device or inanimate object to perform or depict any of the specified sexual activities, as defined in this Ordinance, or participate in any act of prostitution while on the premises of the adult establishment.
- (E) No owner, operator, manager, employee, entertainer, customer, or patron of an adult establishment shall knowingly touch, fondle, or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle, or caress any specified anatomical area of his or hers, whether such specified anatomical areas are clothed, unclothed, covered, or exposed, while on the premises of the adult establishment.
- (F) There shall be a minimum separation of twenty-four (24") inches between any entertainer or performer and any patron or customer.
- (G) No owner, operator, manager, or employee shall mix, dispense, or serve any alcoholic beverage while in a state of nudity of semi-nudity.
- (H) No owner, operator, manager, or employee shall solicit, receive, or accept nor shall any customer or patron give, offer, or provide any gratuity, tip, payment, or any other form of compensation for entertainment for or while either or both is/are in a state of nudity of semi-nudity. This also pertains to the purchase of an unrelated item that includes a "free" dance, act, or service.
- (I) No owner, operator, manager, or other person in charge of the premises of an adult establishment premises shall knowingly allow or permit any person under the age of twenty-one (21) years of age to be in or upon the premises or knowingly allow or permit a violation of this Ordinance.

#### **Section 20-6: License, Posting and Display**

- (A) Every person, corporation, or partnership licensed under this Ordinance as an adult establishment shall post such license in a conspicuous place



and manner on the adult establishment premises.

- (B) Every person holding a license as an entertainer shall post his/her license in his or her work area on the adult establishment premises so it shall be readily available for inspection by the city authorities responsible for enforcement of this Ordinance.

### **Section 20-7: Inspections**

- (A) All adult establishments shall permit representatives of the Police, Fire, Zoning, or other city or state departments or agencies acting in their Official capacity, to inspect the premises as necessary to ensure that the business is complying with all applicable regulations and laws.
- (B) The owner or operator of an adult establishment shall provide, on the first work day of each month, a comprehensive written list of all employees of said adult establishment to include any and all entertainers working on the premises to the Administrator for inspection.

### **Section 20-8: Suspension or Revocation of Licenses**

- (A) The Administrator shall conduct a hearing to determine whether or not a license should be suspended or revoked, with the hearing conducted within ten (10) working days of his/her knowledge that:
  - (1) The owner or operator of an adult establishment or the holder of a license as an entertainer has violated, or knowingly allowed or permitted the violation of any of the provisions of this Ordinance; or
  - (2) There have been recurring violations of provisions of this Ordinance that have occurred under such circumstances that the owner or operator of an adult establishment knew or should have known that such violations were committed; or
  - (3) The license was obtained from false statements in the application for such license, or renewal thereof; or
  - (4) The license has been materially altered or defaced or is being or was used by a person other than the license holder or at a location

other than that identified on the license or for a use or type other than that for which the license was issued; or

- (5) The licensee failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or
  - (6) The owner or operator, or any partner, or any corporate officer or director holding an adult establishment license has become disqualified from having a license by a conviction as provided in this Article; or
  - (7) The holder of an entertainer license has become disqualified from having a license by a conviction as provided in this Article; or
  - (8) The owner or operator of the adult establishment fails to provide to the Administrator a comprehensive written list of all employees to include any and all entertainers working on the premises on the first working day of any given month.
- (B) At the hearing, the licensee shall have an opportunity to be heard, to present evidence, and to be represented by an attorney. Based on the evidence produced at the hearing, the Administrator shall take, within five (5) working days after the hearing, any of the following actions:
- (1) Suspend the license for up to ninety (90) days; or
  - (2) Revoke the license; or
  - (3) Place the license holder on administrative probation for a period of up to one (1) year, on the condition that no further violations of this Article occur during the period of probation; or
  - (4) Take no action.
- (C) The Administrator shall provide written notice of his/her decision to the applicant by certified mail., return receipt requested. The notice shall be sent immediately after the Administrator determines what action to take, as described herein.

- (D) In the event of suspension or revocation of the license or the placement on administrative probation, the licensee shall have the right to appeal that determination to the Superior Court of Brunswick County within thirty (30) days of receipt of the notice of suspension, revocation, or probation.

### **Section 20-9: License Renewal**

- (A) A license may be renewed by making application to the Administrator on application forms provided for that purpose. Any license issued under this Article shall expire as of the end of the twelve (12) month period from the date of its issuance, and renewal applications for such licenses shall be submitted no sooner than forty-five (45) days prior to expiration and no later than the city business day immediately preceding the date of expiration of the license.
- (B) Upon timely and proper application for renewal and the payment in full of the license fee, the Administrator shall issue to the applicant a receipt showing the date of the renewal application and granting to the applicant a temporary extension of the license for a period of forty-five (45) days or until the application for renewal is approved or disapproved. Any license issued under the provisions of this Article may be renewed by issuance of a new license for an additional twelve (12) month period. All applications for renewal of license shall be processed in the manner provided for the issuance of the initial license as set forth within this Article.

### **Section 20-10: Transfer of License**

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

### **Section 20-11: Locational Restrictions**

Sexually oriented businesses may be permitted as a Conditional Use in an HI zoning district provided that:

- (A) The sexually oriented business may not be located or operated within one thousand (1,000) feet of:

- (1) A church, synagogue, or regular place of worship;
  - (2) A public or private elementary or secondary school;
  - (3) A public library;
  - (4) A boundary of any residential district;
  - (5) A publicly owned park, beach, beach access, or other recreation area or facility;
  - (6) A licensed day care center;
  - (7) An entertainment business that is oriented primarily towards children;
  - (8) Another sexually oriented business.
- (B) For the purpose of this Article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is to be conducted, to the nearest property line of the premises of any use listed in (A) above.
- (C) No more than one (1) adult or sexually oriented business establishment or massage business shall be located in the same building or structure or on the same lot. No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.
- (D) Adult and sexually oriented businesses shall be located as conditional use within the HI Zoning district.
- (E) All minimum lot requirements and regulations of the HI Zoning District shall be met.
- (F) No person shall permit any viewing booth in an adult mini motion picture theater to be occupied by more than one person at any time.

#### **Section 20-12: Nonconforming Uses**

- (A) Any business lawfully operating on the effective date of this Ordinance that is in violation of the location and structural configuration requirements of this Ordinance shall be deemed a nonconforming use. The

nonconforming requirements of this Ordinance shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within one thousand (1,000) feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later established business(es) is nonconforming.

- (B) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, and does not apply when an application for a business license is submitted after a business license has expired or has been revoked.

#### **Section 20-13: Additional Regulations for Adult Motels**

- (A) Evidence that a sleeping room in a hotel, motel, or similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttal presumption that the enterprise is an adult motel as that term is defined in this Ordinance.
- (B) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.
- (C) For the purpose of this Article, the terms “rent” and “subrent” mean the act of permitting a room to be occupied for any form of consideration.

#### **Section 20-14: Additional Regulations for Escort Agencies**

- (A) An escort agency shall not employ any person under the age of twenty-one (21) years.

- (B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of twenty-one (21) years.

### **Section 20-15: Additional Regulations for Nude Model Studios**

- (A) A nude model studio shall not employ any person under the age of twenty-one (21) years.
- (B) A person under the age of twenty-one (21) years is in violation of this Article if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under twenty-one (21) years was in a restroom not open to the public view or visible by any other person.
- (C) It is a violation of this Article if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- (D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

### **Section 20-16: Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, and Live Performances**

- (A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other video reproduction, or live performance that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more managers' stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A managers' station may not exceed thirty-two

(32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designed street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Administrator.
- (4) It is the duty of the owner(s) and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designed, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (6) It shall be the duty of the owner(s) and operator, and it shall also be the duty of the agent(s) and employee(s) present in the premises,

to ensure that the view area specified in subsection (5) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) above.

- (7) No viewing room may be occupied by more than one person at any time.
- (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candle as measured at the floor level.
- (9) It shall be the duty of the owner(s) and operator, and it shall be the duty of any agent(s) and employee(s) present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (10) No licensee shall allow an opening of any kind to exist between viewing rooms or booths.
- (11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (12) The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty eight (48") inches of the floor.



- (B) A person having a duty under subsections (1) through (14) of this section is in violation of this Article if he/she knowingly fails to fulfill that duty.

### **Section 20-17: Exterior Portions of Sexually Oriented Businesses**

- (A) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- (B) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this Article.
- (C) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single monochromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:
  - (1) The 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 business, 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.
  - (3) Nothing in this Article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.
  - (4) A violation of any provision of this Section shall constitute a violation of this Article.

### **Section 20-18: Signage**

- (A) Notwithstanding Article 17, it shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or

maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) attached sign, as provided herein.

- (B) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
  - (1) not contain any flashing lights;
  - (2) be a flat plane, rectangular in shape;
  - (3) not exceed sixty-four (64) square feet in area; and
  - (4) not exceed twenty-four (24) feet in height.
- (C) Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.
- (D) Each letter forming a word on a primary sign shall be of a solid color, and each letter shall be the same print-type, size, and color. The background behind such lettering on display surface of a primary sign shall be of a uniform and solid color.
- (E) Attached signs shall have only one (1) display surface. Such display surface shall:
  - (1) be a flat plane, rectangular in shape;
  - (2) not exceed four (4) feet in height and eight (8) feet in width;
  - (3) be directly affixed or attached to any wall or door of the enterprise.
- (F) The provisions of item (1) of subsection (B) and subsection (C) and (D) shall also apply to secondary signs.
- (G) Setback, height, and any other provision of the Unified Development Ordinance that is not in conflict with this section shall apply.

### **Section 20-19: Parking**

Any adult establishment erected, altered, or converted for or to any other adult establishment shall be required to comply with the parking requirements as set forth within Article 16 of this Ordinance.

## **Section 20-20: Massages or Baths Administered by a Person of the Opposite Sex**

It shall be unlawful for a sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor, or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this Section shall constitute a misdemeanor.

## **Section 20-21: Hours of Operation**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) AM and eight o'clock (8:00) AM on weekdays and Saturdays, and one o'clock (1:00) AM and twelve o'clock (12:00) PM on Sundays.

## **Section 20-22: Exemptions**

It is a defense to prosecution under this Article that a person appearing in a state of nudity did so in a modeling class operated:

- (A) By a proprietary school, licensed by the State of North Carolina, a college, junior college, or university supported entirely or partly by taxation;
- (B) By a private college or university that maintains and operates education programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

## **Section 20-23: Notices**

- (A) Any notice required or permitted to be given by the Administrator or any other city office, division, department, or other agency under this Article to any applicant, operator, or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the Administrator. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the

postal service, the Administrator or his designee shall cause it to be posted at the principal entrance to the establishment.

- (B) Any notice required or permitted to be given to the Administrator by any person under this Article shall not be deemed given until and unless it is received in the office of the Administrator.
- (C) It shall be the duty of each owner who is designated in the license application and each operator to furnish notice to the Administrator in writing of any change of residence or mailing address.
- (D) Notice of Violation and Penalty. When the Administrator of the city determines that a person is in violation of the provisions as set forth in this Article, a written notice of violation shall be issued to the owner of the subject property. The notice of violation shall contain:
  - (1) The name and address of the person(s) in violation;
  - (2) The street address and a description of the building structure, or land upon which the violation has occurred;
  - (3) A statement specifying the nature of the violation;
  - (4) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
  - (5) A statement that the city's determination of violations may be appealed to the City Manager by filing a written notice of appeal within thirty (30) days of service of said notice of violation.
  - (6) The notice of violation shall be served upon the person(s) to whom it is directed either personally, in the manner provided for personal service of notices by the Court of local jurisdiction, or by mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested to such person at his or her last known address.
- (F) A notice of violation issued pursuant to this section constitutes a

determination from which an administrative appeal may be taken to the City Manager.