

CHAPTER 111: SEXUALLY ORIENTED BUSINESSES

§111.01 TITLE AND PURPOSE

- (A) This Chapter shall be known as the “Macon County Ordinance Regulating Sexually Oriented Businesses” and it shall be cited as Title XI: Chapter 111 of the *Macon County Code*.
- (B) The Macon County Board of Commissioners is committed to protecting the general welfare of the county through the enforcement of laws prohibiting obscenity, indecency and sexual oriented businesses while preserving constitutionally protected forms of expression. The Board of Commissioners finds that sexually oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse consequences, and finds that such effects are contrary to the general welfare of the citizens of the county. The Board of Commissioners recognizes that important and substantial governmental interests provide a constitutional basis for reasonable regulation of the time, place and manner under which sexually oriented businesses operate; and that, therefore, the Board of Commissioners has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific location requirements before they commence business, as provided in this Chapter. The Board of Commissioners finds that the licensing of sexually oriented businesses is necessary to ensure compliance with the local requirements of such businesses.
- (C) The provisions of this Chapter shall not be construed as permitting any use, activity or structure that is otherwise prohibited, illegal, or made punishable by law, nor shall it be construed to prohibit conduct or expression.
(Ordinance adopted 7/11/2005)

§111.02 AUTHORITY AND JURISDICTION

- (A) Authority. This chapter is established by the Macon County Board of Commissioners pursuant to the authority conferred in G.S. § 153A-121 (general ordinance-making power), 153A-122 (territorial jurisdiction), 153A-123 (enforcement), ~~and 153A-134 (regulation of businesses); and 160D-902.~~
- (B) Jurisdiction. The provisions of this Chapter shall apply to all unincorporated areas of Macon County lying outside of the corporate limits of any municipality. The provisions of this Chapter shall apply within the extrajurisdiction of any municipality in accordance with G.S. 160D-202(b). ~~to the extent that the provisions of this Chapter impose higher standards than any municipal ordinance applicable in the extrajurisdiction, otherwise, the municipal ordinance shall control.~~

(Ordinance adopted 7/11/2005)

§111.03 DEFINITIONS

Adult Arcade (also known as “peep show”) means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images depict or describe “specified sexual activities” or “specified anatomical areas”;

Adult Bookstore or Adult Video Store means a commercial establishment which as one of its principal business purposes offers, for sale or rental or any form of consideration any one of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videos or video reproductions, slides or other visual representations that depict or describe “specified sexual activities” or “specified anatomical areas”; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities”.

Adult Cabaret means a nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as one of its principal business purposes:

- (1) A person or persons who appear nude or semi-nude; or
- (2) Live performances which are characterized by the exposure of “specified anatomical areas” or “specified sexual activities”; or
- (3) Films, motion pictures, videos, slides or other photographic reproductions which depict or describe “specified sexual activities” or “specified anatomical areas”.

Adult Motel means a hotel, motel or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, videos, slides or other photographic reproductions that depict or describe “specified sexual activities” or “specified anatomical areas” as one of its principal business purposes; 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 sub-let the room for a period of less than ten hours.

Adult Motion Picture Theater means a commercial establishment, which, for any form of consideration, and as one of its principal business purposes, regularly shows films, motion pictures, videos, slides, or similar photographic reproductions that depict or describe “specified sexual activities” or “specified anatomical areas”.

Adult Theater means a theater, concert hall, auditorium or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons

who appear in a state of nudity, or semi-nude or live performance that depicts “specified anatomical areas” or “specified sexual activities”.

Applicant means the person who will operate the sexually oriented business and shall include each of the following persons associated with that business:

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association or general partnership;
- (3) Each general partner in a limited partnership;
- (4) Each officer, director, and owner of more than ten (10) percent stock of a corporation;
- (5) The manager of an establishment operated by a corporation;
- (6) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

Employ, employee, and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is designated as an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Escort means a person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees to privately model lingerie or to privately perform a striptease for another person.

Escort Agency means a person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip or other consideration.

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

Licensee means the person or person in whose name or names a license to operate a sexually oriented business has been issued.

Nude Model Studio means any place where a person appears semi-nude, in a state of nudity, or displays “specified anatomical areas: and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for any form of consideration. “Nude Model Studio” shall NOT include:

- (1) A proprietary school or studio that has no sign visible from the exterior of the structure and no other advertising that includes a nude or semi-nude person is available for viewing,

where in order to participate in a class a student must enroll at least three days in advance of the class, and where no more than one nude or semi-nude person is on the premises at any time; or

- (2) A community college, college or university, whether public or private, which is accredited, maintains and operates educational programs, and offers degrees.

Nudity or a State of Nudity means a person appearing in a state of dress which fails to opaquely cover his or her anus or genitals.

Operates or causes to be operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner or licensee of the business.

Ordinance Administrator means any employee or official of Macon County who is designated to administer this Chapter by the Board of Commissioners.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Semi-nude means a state of dress in which opaque clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual Encounter Center means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between men and women and/or person of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

Sexually Oriented Business means an adult arcade, adult bookstore, or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing.

Specified Anatomical Areas means human genitals in a state of sexual arousal.

Specified Sexual Activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic regions, buttocks, anus, or female breasts; or
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, fellatio, cunnilingus, or sodomy; or
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) above.

Transfer of Ownership or Control of a Sexually Oriented Business means and includes any of the following:

- (1) The sale, lease or sublease of the business;
 - (2) Persons other than those names as applicants for a license becoming associated with the business, as provided in the definition of “applicant”; except that a mere substitution of a person as manager of an establishment shall only require filing with the Ordinance Administrator as provided for in §111.20;
 - (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control possessing the ownership or control.
- (Ordinance adopted 7/11/2005)*

§110.10 CLASSIFICATION

Sexually oriented business are classified as follows:

- (1) Adult arcades
 - (2) Adult bookstores or adult video stores
 - (3) Adult cabarets
 - (4) Adult motels
 - (5) Adult motion picture theaters
 - (6) Adult theaters
 - (7) Escort agencies
 - (8) Nude model studios
 - (9) Sexual encounter centers.
- (Ordinance adopted 7/11/2005)*

§111.11 LICENSE REQUIRED

- (A) It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business privilege license issued by the Ordinance Administrator pursuant to this Chapter.
- (B) An application for a license must be made on a form prescribed by the Ordinance Administrator. An application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises.
- (C) The Ordinance Administrator may request and the applicant shall provide such information as is necessary for the Ordinance Administrator to determine whether the applicant meets the qualifications established in this Chapter.

(D) An applicant must be qualified under §111.12 and an applicant shall be considered if a licensee if a license is granted.

(E) Pursuant to G.S. 160D-403(a), applications for a license may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for a license as is authorized by the easement.

~~(D)~~(F)

(Ordinance adopted 7/11/2005)

§111.12 PROCEDURE FOR ISSUANCE OF LICENSE

(A) Within 45 days after receipt of a completed application, the Ordinance Administrator will approve or deny the issuance of a license to an applicant for a sexually oriented business license. The Ordinance Administrator shall approve the issuance of a license to an applicant only upon finding each of the following:

- (1) The applicant is not under 18 years of age.
- (2) The license fee required by this section has been paid.
- (3) The applicant or applicant's spouse is not delinquent in payment to the county of any taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to any other licensed sexually oriented business.
- (4) The applicant has provided all information required in order to determine the qualifications of the applicant under this article for issuance of the license and has not provided any false information with respect to the application.
- (5) The applicant of the proposed establishment is not in violation of any provisions of this Chapter or any regulations, codes, and statutes of Macon County or the State or Federal governments.
- (6) The applicant or applicant's spouse has not been convicted of a violation of this Chapter within two years immediately preceding the application. The fact that such a conviction is under appeal to any higher court at the time the application is made shall have no effect.
- (7) The applicant has used a valid name and produced a valid state driver's license or identification card to confirm the identity of the applicant.
- (8) In response to a request made to the Sheriff of Macon County by the Ordinance Administrator, the Sheriff has performed a criminal record check and has determined

that neither the applicant nor the applicant's spouse has been convicted of a crime involving any offense described in Articles 7A, 26, 26A, 37 or 39 of Chapter 14 of the *General Statutes of North Carolina*; or any offenses similar to these under the criminal or penal codes of North Carolina, other states, any towns, cities, or other countries; or facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which:

- (a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense;
- (b) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
- (c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or any combination of misdemeanor offenses within a 24-month period.

(B) For purposes of calculating the time elapsed since a criminal conviction in this section, the fact that a conviction is under appeal to a higher court shall have no effect.

~~(B)~~(C) Notice of the approval or denial of the permit shall be in accordance with G.S. 160D-403(b).

(D) The license, if granted, shall state on its face the legal name of the person or persons to whom it is granted, the classification of the sexually oriented business for which it is granted, the expiration date, and the address of the sexually oriented business. Licenses shall be posted in a conspicuous place at or near the entrance to a sexually oriented business so that it may be easily read at any time.

~~(C)~~(E) Vested rights and permit choice shall be governed by G.S. 160D-108.

§111.20 — FEES

- (A) Every applicant for a license to operate a sexually oriented business shall pay a nonrefundable application fee of \$1,500, which must be submitted with the application.
- (B) Every sexually oriented business shall pay a nonrefundable annual privilege license fee of \$1,000 upon license renewal. No license shall be renewed except upon payment of this annual privilege license fee.

(C) The substitution of a manager of the business which occurs during the license year shall be filed with the Ordinance Administrator within 30 days of its occurrence, and a fee of \$100 shall be paid for the Planning Director to determine that the substituted manger is qualified under this Chapter.

(D) All license applications and fees shall be submitted to the Ordinance Administrator for deposit ~~to the general fund of Macon County.~~
(Ordinance adopted 7/11/2005)

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§111.21 LOCATION REQUIREMENTS

In order to prevent the concentration of multiple sexually oriented businesses, to promote the safety and welfare of children, and to prevent the degradation of property values in residential communities, no sexually oriented business shall be located within one thousand (1,000) feet, as determined by a straight line between the nearest point between the building occupied by the sexually oriented business and the closest point of any building, structure or other improvement located on the other property, of any building structure, or improvement used by or intended for the use of any of the following:

- (1) Any other sexually oriented business;
 - (2) Any church or place of worship;
 - (3) Any public or private school or school facility used by students
 - (4) Any day-care or pre-school facility;
 - (5) Any public or government-owned park or recreation facility; or
 - (6) Any residence.
- (Ordinance adopted 7/11/2005)

§111.22 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 a.m. and one o'clock p.m. on Sundays, except to the extent allowed by state law and regulations controlling the sale of alcoholic beverages by the business if the sexually oriented business has a state ABC permit.
(Ordinance adopted 7/11/2005)

§111.23 INSPECTIONS

Any applicant and licensee shall permit officials of any law enforcement agency and any county, state or federal agency or department who enforces codes, regulations or statutes relating to human health or safety, or structural or fire safety to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business, upon presentation of proper credentials; provided, however that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured in accordance with G.S. 160D-403(c). ~~that, this section shall not apply to areas of an adult motel which are rented by a tenant for use as permanent or temporary habitation at the time such inspection is conducted.~~

(Ordinance adopted 7/11/05)

§111.30 EXPIRATION OF A LICENSE

All licenses shall expire one year from the date of issuance and may be renewed only by making application as provided in this Chapter. An application for renewal shall be made at least 45 days before the expiration date to avoid expiration of license.

(Ordinance adopted 7/11/2005)

§111.31 SUSPENSION OF A LICENSE

The Ordinance Administrator shall suspend a sexually oriented business licenses for a period not to exceed thirty days if any official conducts an inspection and determines that a licensee has:

- (1) Violated or is not in compliance with this Chapter or with any other requirements of this Code, or any other state or federal laws, regulations, codes, or statutes, including those relating to buildings, electricity, plumbing, fire safety and mechanical equipment; or
- (2) Refused to allow an inspection of the sexually oriented business premises as required by this Chapter;
- (3) Permitted gambling by any person on the sexually oriented business premises;
- (4) Failed to operate or manage a sexually oriented business in a peaceful and law-abiding manner which has resulted in the investigation of complaints, disturbances, or criminal activity by law enforcement officials on more than three occasions in any consecutive twelve month period, whether or not such investigations resulted in the arrest or criminal prosecution of any persons.

Notice of the suspension of a permit shall be in accordance with G.S. 160D-403(f).

(Ordinance adopted 7/11/2005)

§111.32 REVOCATION OF A LICENSE

- (A) The Ordinance Administrator shall revoke a sexually oriented business license if a cause for suspension in §111.31 occurs and the license has been suspended for any other reason within the preceding twelve months.
- (B) The Ordinance Administrator shall revoke a sexually oriented business license upon a determination that the licensee has done any of the following:
- (1) Provided false or misleading information in the application for a license;
 - (2) Allowed the possession, use or sale of controlled substances on the premises;
 - (3) Allowed prostitution on the premises;
 - (4) Operated or worked in the sexually oriented business during a period of time when its license was suspended;
 - (5) Been convicted of an offense named in §111.12 of this Chapter for which the time period required has not lapsed;
 - (6) Continued to employ any person in the sexually oriented business who has been convicted of any crime described in §111.12 of this Chapter and such crime was committed on the premises of the sexually oriented business or while the person was employed by the sexually oriented business;
 - (7) Allowed any specified sexual activities to occur on the premises of the sexually oriented business; or
 - (8) Become delinquent in payment to the county of any taxes, fees, fines, or penalties assessed against or imposed upon the licensee or the licensee's spouse in relation to a licensed sexually oriented business.
- (C) If the cause of a revocation is based on the criminal conviction of the licensee or any other person, the fact that such conviction is being appealed to a higher court shall be of no effect.

(D) Notice of the revocation of a permit shall be in accordance with G.S. 160D-403(f).

~~(D)~~(E) All revocations shall be for a period of one year or until the condition causing the revocation has been corrected or abated, whichever shall be the last to occur. A licensee

whose license has been revoked shall not obtain a license for any other sexually oriented business or manage or operate any other sexually oriented business during the period of such revocation.

(Ordinance adopted 7/11/2005)

§111.40 NOTICES AND REPORTS

~~(A) All notices, findings of fact, determinations, orders, denial of applications, suspensions and revocations shall be in writing and in accordance with G.S. 160D-403(b), -mailed to the applicant or licensee by certified mail to the address filed with the Ordinance Administrator.~~

(A) A licensee shall report to the Ordinance Administrator every instance in which law enforcement officers conduct any investigation or respond to any complaints or disturbances on the premises of the sexually oriented business; every conviction of an employee of the sexually oriented business of any crime specified in §111.12 of this Chapter; every instance in which any government official conducting an inspection is conducted; every transfer of ownership or control of the sexually oriented business; and every change in the management of the business. This report shall be in writing, shall be made within fifteen days of the event being reported, and shall be mailed by certified mail.

§111.50 APPEALS

An applicant whose application is denied, suspended or revoked by the Ordinance Administrator may appeal such action in writing within thirty days of receipt of notice to the Macon County ~~Planning Board~~ Board of Commissioners ~~in accordance with G.S. Chapter 160D-405 and 406~~ who shall hear the appeal not later than the second regular board meeting after receipt of the appeal. The applicant or licensee shall have the right to present evidence before the Board of Commissioners. The Board's decision shall be based solely on the criteria established in this Chapter for action by the Ordinance Administrator. A suspension or revocation shall be stayed while the appeal to the Board of Commissioners is pending.

(Ordinance adopted 7/11/2005)

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§111.60 PENALTIES, REMEDIES AND ENFORCEMENT

(A) A violation of any of the provisions of this Chapter shall be a misdemeanor subject to the penalties and enforcement provisions of N.C.G.S. ~~§160D-404(c)+53A-123~~.

(B) Each day's continuing violation of any of the provisions of this Chapter shall constitute a separate and distinct offense.

(C) The provisions of this Chapter may be enforced by any one or more of the remedies authorized by N.C.G.S. ~~§160D-404(c)+53A-123~~.

(Ordinance adopted 7/11/2005)