

AN ORDINANCE REGULATING ADULT BUSINESSES  
AND SEXUALLY ORIENTED BUSINESSES IN LENOIR COUNTY

WHEREAS, after a public meeting and reports from law enforcement agencies and private citizens, the Board of County Commissioners of Lenoir County have determined and found as a fact that regulation of the activities of sexually oriented businesses is necessary to protect the morals, public health, safety, and general welfare of the citizens and residents of Lenoir County:

NOW, THEREFORE, pursuant and under authority of North Carolina General Statute 153A (45-50) and further Article VI of Chapter VI of Chapter 153A, Section 135 of the General Statutes be it ordained the Board of Commissioners of Lenoir County North Carolina:

ARTICLE I  
Authority and Jurisdiction

The provisions of this Ordinance are adopted by the Lenoir county Board of Commissioners under authority granted by the General Assembly of the State of North Carolina, in Chapter 153A, (45-50) and further Article 6 of Chapter 153A, Section 135 of the General Statutes. From and after the effective date hereof, this Ordinance shall apply to every building, lot, tract, or parcel of land within Lenoir County exclusive of the jurisdiction of any incorporated municipality (as herein stated).

ARTICLE II  
Purpose

For the purpose of promoting the health, safety, morals and general welfare of the citizenry of Lenoir County, this Ordinance is adopted by the Board of Commissioners to regulate adult and sexually oriented businesses, as hereby defined, located in Lenoir County. Further the regulations of this Ordinance, have been made with reasonable consideration among other things, as to the character of the County and its areas and their peculiar suitability for these businesses.

Article III  
Abrogation

These regulations shall not repeal, impair, abrogate, or interfere with any existing easements, covenants, deed restrictions, setback requirements, rules, definitions,

regulations previously adopted pursuant to law in any established zoning district in Lenoir County. However, where these regulations impose greater restrictions, the provisions of these regulations shall govern.

Article IV  
Definitions

For the purpose of the Ordinance, the following definitions apply:

- (a) Adult Arcade - An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas (as defined hereinafter).
- (b) Adult Bookstore - An establishment that has as a substantial portion (over 25% of total retail space) of its stock-in-trade and offers for rent or sale, for any consideration, any one or more of the following: 1) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or 2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.
- (c) Adult Business - An adult business shall be defined as any business activity, club or other establishment which permits its employees, members, patrons or guest on its premises to exhibit any specified anatomical areas before any other person or persons.
- (d) Adult motion picture theater - An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown, and in which a substantial portion (25%) of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.
- (e) Adult theater - A theater, concert hall, auditorium or similar establishment characterized by (activities featuring ) the exposure of specified anatomical areas or by specified sexual activities.
- (f) Massage - Any manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping by hand or mechanical device.
- (g) 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.
- (h) Sexually Oriented Business - A Sexually Oriented Business shall be defined as any business activity, club or other establishment, within which the exhibition, showing, rental, or sale of materials distinguished or characterized by an emphasis on material depicting, describing, or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Sexually oriented businesses shall include, but are not limited to; adult arcades, adult bookstores, adult motion picture theaters, adult theaters, massage parlors, and/or adult video rental/sale stores as defined by this ordinance.

- (i) Specified Anatomical Areas - Specified anatomical areas shall be defined as less than completely and opaquely covered human genitals, pubic regions, buttocks and female breasts below a point immediately above the top of the areola.
- (j) Specified Sexual Activities - Specified sexual activities shall be defined as:
  - (a) Human genitals in a state of sexual stimulation or arousal;
  - (b) Acts of human masturbation, sexual intercourse, sodomy; or
  - (c) Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts;
- (k) Total Retail Space - Any space within the structure that is used for the direct sale of merchandise to the public and storage areas for those items.

ARTICLE V  
Scope and Provisions of Ordinance

- A. Adult Business
  - (i) An adult business shall be defined as any business activity, club or other establishment which permits any employee, member, patron or guest on its premises to exhibit any specified anatomical areas before any other person or persons.
  - (ii) No adult business shall be permitted in any building:
    - (a) located within 1000 feet in any direction from a building used as a residence or dwelling.
    - (b) located within 1000 feet in any direction from a building in which an adult business or a sexually oriented business is located.
    - (c) located within 1000 feet in any direction from a building used as a church, synagogue, or other house of worship.
    - (d) located within 1000 feet in any direction from a building used as a public school or as a state licensed day care center.
    - (e) located within 1000 feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.
- B. Sexually Oriented Business
  - (i) A Sexually Oriented business shall be further defined as any business activity, club or other establishment, within which the exhibition, showing, rental, or sale of materials distinguished or characterized by an emphasis on material depicting, describing, or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Regulated businesses shall include, but are not limited to; adult arcades, adult bookstores, adult motion picture theaters, adult theaters, massage parlors, and/or adult video rental/sale stores as hereinafter defined in section Article IV "Definitions", "h".
  - (ii) No Sexually Oriented Business shall be permitted in any building:
    - (a) located within 1000 feet in any direction from a building used as a residence or dwelling.

- (b) located within 1000 feet in any direction from a building in which an adult business or a sexually oriented business is located.
- (c) located within 1000 feet in any direction from a building used as a church, synagogue, or other house of worship.
- (d) located within 1000 feet in any direction from a building used as a public school or as a state licensed day care center.
- (e) located within 1000 feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.

C.

Nonconforming Adult Business and Sexually Oriented Adult Business

Any adult business or sexually oriented business lawfully operating on the effective date of this ordinance, that is in violation of this Ordinance shall be deemed a nonconforming use. Any use which is determined to be nonconforming by application of the provisions of this section shall be permitted to continue for a period not to exceed two (2) years. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If a nonconforming use is discontinued for a period of one hundred eighty days (180) or more it may not be reestablished. If two (2) or more adult businesses or sexually oriented adult businesses are within 1000 feet of one another and otherwise in a permissible location, the business which was first established and continually operating at its present location shall be considered the conforming use and the later-established business(es) shall be considered nonconforming. An adult business or sexually oriented adult business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of a church, house of worship, day care center, school, playground, public swimming pool, or public park within 1000 feet of the adult business or sexually oriented business.

ARTICLE VI

Interpretation of Terms and Definitions

- (a) Words used in the present tense include the future tense.
- (b) Words used in the singular number include the plural and words used in the plural number include the singular.
- (c) The word “person” includes an owner, firm, joint venture, association, organization, partnership, corporation, trust, and company, as well as an individual.
- (d) The word “owner” when applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by entirety of the whole or part of such building or land.
- (e) The word “Lot” includes the words “plot” or “parcel”.
- (f) The word “building” includes the word “structure”.
- (g) The word “shall” is always mandatory and not merely directory.
- (h) The words “located”, “used”, or “occupied” as applied to any

land or building shall be construed to include the words “intended, arranged, or designed to be located, used or occupied”.

- (i) The word “residence” shall mean the place adopted by a person as his place of habitation and to which, whenever he is absent, he has the intention of returning. When a person eats at one (1) place and sleeps at another, the place where such person sleeps shall be deemed his residence.

## ARTICLE VII Severability

It is hereby declared to be the intention of the board that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance is declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the board of commissioners without the incorporation in this ordinance of any such unconstitutional or invalid phrase, clause, sentence, paragraph or section.

## ARTICLE VIII Enforcement

- (a) Any person who violates this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with Section 14-4 (a) of the north Carolina General Statutes.
- (b) This ordinance may be enforced against any person who is in violation by an appropriate equitable remedy issuing from a court of competent jurisdiction as provided for in Section 153A - 123 (d) of the North Carolina General Statutes.
- (c) This ordinance may be enforced against any person who is in violation by injunction and order of abatement as provided for in Section 153A - 123(e) of the North Carolina General Statutes against any person who is in violation.
- (d) Each day’s continuing violation of this ordinance by any person is a separate and distinct offense.
- (e) as used herein, “person” shall include;
  - (i) The agent in charge of the building, premises, structures or facility.
  - (ii) 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.
  - (iii) The owner of the business; or the manager of the business.

ARTICLE IX  
Conflicting Laws Repealed

The ordinance adopted June 19, 2000 entitled “An Ordinance Regulating Sexually Oriented Businesses In Lenoir County” is hereby replaced and repealed.

This Ordinance, adopted August 21, 2000 by the Lenoir County Board of Commissioners, shall take effect and be in force from and after August 21, 2000, with the original duly filed with the Clerk to the Board in the County Managers Office.