

CHAPTER 160:

ADULT BUSINESSES AND SEXUALLY ORIENTED BUSINESSES

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160.01: TITLE

This chapter shall be known the Adult Businesses and Sexually Oriented Businesses Chapter.
(Ord. passed 11-15-99)

160.02: PURPOSE

For the purpose of promoting the health, safety, morals, and general welfare of the citizenry of Ashe County, this article is adopted by the Board of Commissioners to regulate adult and sexually oriented businesses, as hereby defined, located in the County. Further, the regulations of this article 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.
(Ord. passed 11-15-99)

160.03 AUTHORITY

The provisions of this article are adopted by the county board of commissioners under authority granted by the General Assembly of the State of North Carolina, in Chapter 153A-45 through 153A-50 and further G.S. 153A-135.
(Ord. passed 11-15-99)

160.04 JURISDICTION

From and after November 15, 1999 , this article shall apply to every building, lot, tract, or parcel of land within the County exclusive of the jurisdiction of any incorporated municipality, (as herein stated).
(Ord. passed 11-15-99)

160.05 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 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 “dwelling” shall mean “a structure or portion thereof which is used exclusively for human dwelling.
(Ord. passed 11-15-99)

160.06 DEFINITIONS

For the purpose of this article, the following definitions apply:

Adult arcade: An establishment where, for any form of consideration, one (1) or more motion picture projectors, slide projectors or similar machines for viewing by five (5) 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).

Adult bookstore: An establishment that has as a substantial portion (over twenty-five (25) percent of total retail space) of its stock-in-trade and offers for rent or sale, for any consideration, any one of more of the following:

(A) 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

(B) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

Adult businesses: Any business activity, club, or other establishment which permits its employees, members, patrons, or guests on its premises to exhibit any specified anatomical areas before any other person or persons.

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, twenty-five (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.

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.

Massage: Any manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

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.

Sexually oriented business: 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, and massage parlors as defined by this section.

Specified anatomical areas: Less than completely and opaquely covered human genitals, public regions, buttocks, and female breasts below a point immediately above the top of the areola.

Public nudity: The display of: specified anatomical areas and/or specified sexual activities as defined herein. Specified sexual activities means:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, sodomy; or

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

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.
(Ord. passed 11-15-99)

160.07 SCOPE AND PROVISIONS OF ARTICLE

(a) Adult Business

(1) 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.

(2) No adult business shall be permitted in any building:

a. Located within one thousand, three hundred and twenty (1,320) feet in any direction from a building used as a dwelling.

b. Located within one thousand, three hundred and twenty (1,320) feet in any direction from a building in which an adult business or a sexually oriented business is located.

c. Located within one thousand, three hundred and twenty (1,320) feet in any direction from a building used as a church, synagogue, or other house of worship.

d. Located within one thousand, three hundred and twenty (1,320) feet in any direction from a building used as a public school or as a state licensed day care center.

e. Located within one thousand, three hundred and twenty (1,320) feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.

(3) No adult establishment shall be located within one and a half (1 ½) miles of the Blue Ridge Parkway. The distance shall be established from the boundary of the Parkway, measured horizontally.

(4) No display of public nudity either indoors or outdoors at or in an adult business, motion picture theater, amphitheater, massage parlor, sexually oriented business, *i.e.*, dancing, car hops, car washes, outdoor showers,

parades, swimming activities, sunbathing, flashing, sound and/or stage studios, film/movie productions.

(B) Nonconforming adult business and sexually oriented adult business.

Any adult business or sexually oriented business lawfully operating on the November 15, 1999, that is in violation of this article 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 one thousand, three hundred and twenty (1,320) 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 businesses 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 one thousand, three hundred twenty (1,320) feet of the adult business or sexually oriented business.

(Ord. passed 11-15-99)

160.9 ENFORCEMENT

- (a) North Carolina General Statutes. Any person who violates this article 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 chapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction as provided for in G.S. 153A-123(d).
- (c) This article may be enforced against any person who is in violation by injunction and order of abatement as provided for in G.S. 153A-123(e).
- (d) Each day's continuing violation of this chapter by any person is a separate and distinct offense.
- (e) As used herein, "person" shall include:
 - (1) The agent in charge of the building, premises, structure, or facility.

(2) 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.

(3) The owner of the business or the manager of the business.
(Ord. passed 11-15-99)