

CHAPTER 16 - LAND USE ORDINANCE

Article XVII(C) – Adult Business Establishments

Section 16-289.50 Purpose

(A) It is the purpose of this ordinance to regulate adult business establishments in order to promote the health, safety, morals, and general welfare of the Town of Blowing Rock, as well as to establish reasonable and uniform regulations and licensing requirements to prevent the harmful location and concentration of adult business establishments in Blowing Rock. Adult business 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 business establishments. The Board of Commissioners finds that regulation of these uses is necessary to ensure that these adverse secondary effects do not have harmful impacts on the health, safety, morals, welfare, or peace and dignity of the Town and do not contribute to the blighting of surrounding neighborhoods.

(B) The provisions of this ordinance 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. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(C) This ordinance represents a balancing of the legitimate ends of the community by imposing an incidental, content-neutral, place, time, and manner regulation of adult business establishments, without limiting alternative avenues of communication; and, at the same time, requiring the business to carry its share of the financing, administrative, and enforcement activities.

[Adopted June 13, 2000]

Section 16-289.51 Findings

(A) Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and reports made available to the Board, and on findings incorporated in the cases of *City of Reton v. Playtime Theatres, Inc.*, 475 U.S.41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities, including, but not limited to, Phoenix, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington; and also on the findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Board finds:

(1) Adult business establishments lend themselves to ancillary unlawful and unhealthy activities, the control of which elsewhere presents challenges to the operators of such establishments. Further, there is presently no mechanism in this Town to make the owners of such establishments responsible for the activities that would occur on their premises.

(2) Certain employees of adult business establishments defined in this ordinance as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at adult business establishments, especially those that provide poorly lit, overly crowded, private or semi-private areas, booths, or cubicles for viewing films, videos, or live sex shows.

(4) Persons frequent certain adult theatres, adult arcades, and other adult business establishments for the purpose of engaging in sex within the premises of such establishments.

(5) At least 50 communicable diseases may be spread by activities occurring in adult business establishments, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, and hepatitis B.

(6) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infections may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(7) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(8) Sanitary conditions in some adult business establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(9) Numerous studies and reports have determined that semen is found in the areas of adult businesses where persons view "adult" oriented films.

(10) The findings noted in paragraphs number 1 through 9 raise substantial governmental concerns.

(11) Adult business establishments have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

(12) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the adult business establishments. Further, such a licensing procedure will establish an incentive for the owners and operators to see that the adult business establishment is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(13) Prohibition of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult business establishments.

(14) Requiring licensees of adult business establishments to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal

behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(15) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of adult business establishments, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(16) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding employees who may engage in the conduct that this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(17) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational concern that the applicant may engage in that conduct in contravention of this ordinance,

(18) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct that leads to the transmission of sexually transmitted diseases.

(19) The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this ordinance.

[Adopted June 13, 2000]

Section 16-289.52 Definitions

A. The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) ***Administrator.*** The Zoning Officer or such other person(s) as the Town Manager shall designate to enforce the provisions of this ordinance.

(2) ***Adult Arcade.*** Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

(3) ***Adult Bookstore, Adult Novelty Store, or Adult Video Store.*** (a) A commercial establishment that (1) receives a majority of its gross income during any calendar month from the sale or rental of publications, novelties, or devices that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; or (2) has 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, novelties, or devices that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

(b) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store, or adult video

store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(4) ***Adult Business Establishment.*** 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 specified anatomical areas and specified sexual activities. This definition includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult mini motion picture theater, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. This term may be used interchangeably with adult establishment or sexually oriented business.

(5) ***Adult Cabaret.*** A nightclub, bar, restaurant, or similar commercial establishment which regularly features: (a) persons who appear in a state of nudity or semi-nudity; or (b) live performances which are characterized by the exposure of specified anatomical areas or by 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.

(6) ***Adult Establishment.*** See Adult Business Establishment.

(7) ***Adult Live Entertainment.*** Any performance of or involving the actual presence of real people that exhibits specified sexual activities or specified anatomical areas.

(8) ***Adult Live Entertainment Business.*** Any establishment or business wherein adult live entertainment is shown for observation by patrons.

(9) ***Adult Mini Motion Picture Theater.*** An enclosed building with viewing booths designed to hold patrons that is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(10) ***Adult Motel.*** A hotel, motel or similar commercial establishment that: (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions 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 which 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 10 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 10 hours.

(11) ***Adult Motion Picture Theater.*** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas. Adult motion picture theater does not include any adult mini motion picture theater as defined in this section.

(12) **Adult Theater.** A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nudity, or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

(13) **Employee.** A person who performs any service on the premises of a adult business establishment on a full-time, part-time or contract basis, regardless of whether the person is designated as an employee, independent contractor, agent, or otherwise, or whether said person is paid a salary, wage or other compensation by the operator of said business. Also included are all persons who participate for consideration or possibility of a prize in any contests, performances, or exhibitions sponsored by or allowed at a adult business establishment or occurring upon the premises of the adult business establishment. Employee does not include a person exclusively on the premises for the repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(14) **Enlargement of An Adult business Establishment.** An increase in the floor area occupied by the business by more than ten percent, as the floor area existed on December 14, 1999.

(15) **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.

(16) **Escort Agency.** A person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(17) **Erotic.** Any seductive, titillating, lustful, immodest, indecent, suggestive, passionate, or similar reference, act, service, or deed.

(18) **Establish.** Includes any of the following: (a) the opening or commencement of any adult business establishment as a new business; (b) the conversion of an existing business, whether or not an adult business establishment, to any adult business establishment; (c) the additions of any adult business establishment to any other existing adult business establishment; or (d) the relocation of any adult business establishment.

(19) **Licensed Day Care Center.** A facility licensed by the State of North Carolina, regardless of whether it is situated within the Town, that provides care, training, education, custody, treatment, or supervision for children for less than 24 hours per day, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, regardless of whether the facility is operated for a profit or charges for the services it offers.

(20) **Licensee.** A person in whose name a license to operate a adult business establishment has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult business establishment.

(21) **Massage.** The manipulation of body muscular tissue by rubbing, stroking, kneading, or tapping, whether 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 semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of North Carolina or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure: (a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and (b) where in order to participate in a class a student must enroll at least three days in advance of the class; and (c) where no more than one nude or semi-nude model is on the premises at any one time.

(24) **Nudity or State of Nudity.** The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(25) **Person.** An individual, proprietorship, partnership, corporation, association, or other legal entity.

(26) **Premises.** The real property upon which the adult business establishment is located, including all appurtenances thereto and buildings thereon. It shall include, but not be limited to, the adult business 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 a business license pursuant to this ordinance.

(27) **Publications.** Includes, but is not necessarily limited to, books, magazines, other periodicals, videotapes, compact discs, or other photographic, electronic, magnetic, digital, or other imaging medium.

(28) **Semi-Nudity or in a Semi Nude Condition.** The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. 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.

(29) **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.

(30) **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 specified anatomical areas and specified sexual activities. This definition includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult mini motion picture theater, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. This term may be used interchangeably with adult establishment or adult business.

(31) **Sexually Oriented Devices.** Any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

(32) ***Specified Anatomical Areas.*** Less than completely and opaquely covered: (i) human genitals, pubic region, or buttock, or (iii) female breast below a point immediately above the top of the areola. Also includes human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(33) ***Specified Criminal Activity.*** (a) Any of the following offenses: (1) prostitution or promotion of prostitution; (2) dissemination of obscenity; (3) sale, distribution or display of harmful material to a minor; (4) sexual performance by a child; (5) possession or distribution of child pornography; (6) public lewdness; (7) indecent exposure; (8) indecency with a child; (9) engaging in organized criminal activity; (10) sexual assault; (11) molestation of a child; (12) gambling; (13) distribution of a controlled substance; or (14) any similar offenses to those described above under the criminal or penal code of other states or countries;

(b) For which: (1) 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 of a misdemeanor offense; (2) 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 of a felony offense; or (3) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(34) ***Specified Sexual Activities.*** Includes any of the following: (a) human genitals in a state of sexual stimulation or arousal; (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.

(35) ***Transfer of Ownership or Control.*** Includes any of the following: (a) the sale, lease, or sublease of the business; (b) the transfer of securities that constitute 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 transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(36) ***Town.*** The Town of Blowing Rock, North Carolina.

(37) ***Town Manager.*** Chief Administrative Officer for the Town of Blowing Rock.

(38) ***Zoning Officer.*** The Zoning Administrator for the Town of Blowing Rock.

[Adopted June 13, 2000]

Section 16-289.53 Classification of Adult Business Establishments

(A) Adult business establishments are classified as follows:

(1) Adult arcades;

(2) Adult bookstores, adult novelty stores, 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; or
- (9) Sexual encounter centers.

[Adopted June 13, 2000]

Section 16-289.54 Licenses Required

(A) It shall be unlawful for any person to operate or maintain an adult business establishment unless the owner or operator thereof has obtained an adult establishment license from the Town. It shall also be unlawful for any person to operate such business after such license has been revoked or suspended by the Town or has expired.

(B) It shall be unlawful for any person who operates a adult business establishment to employ a person to work or perform for the adult business establishment who is not licensed as an adult establishment employee by the Town.

(C) It shall be unlawful for any person to obtain employment with a adult business establishment without having first obtained an adult establishment employee license from the Town.

(D) It shall be unlawful for any person who operates an adult business establishment to allow any person to perform or participate in any contest or exhibition who does not have a valid and current adult establishment employee license from the Town.

(E) It shall be prima facie evidence that any adult establishment that fails to have posted an adult establishment license, in the manner required by this ordinance, has not obtained such a license.

Section 16-289.55 License Fees and Terms

(A) The term of all licenses required under this ordinance shall be for a maximum period of twelve months, starting on or after July 1 and ending the following June 30. The application for a license shall be accompanied by payment in full for the fees referred to in this ordinance and established by the Board of Commissioners. Payment shall be by certified check, cashier's check, or money order. No application shall be considered complete until all such fees are paid.

(B) All licenses shall be issued for a specific location and/or person and shall be non-refundable and non-transferable.

(C) The license fees shall be as established by the Board of Commissioners from time to time and recorded in the minutes of the meeting at which they were approved.

Section 16-289.56 Application Procedures

(A) An application for any license must be made on a form provided by the Administrator. All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Administrator to determine whether the applicant meets the qualifications established in this ordinance.

(B) All persons desiring to secure a license to conduct, operate, or maintain an adult establishment under the provisions of this ordinance shall make a verified application to the Administrator. Any application shall be submitted in the name of the person proposing to conduct, operate or maintain the adult establishment. If the person who wishes to operate the adult establishment is an individual, then that person must sign the application as the applicant. If the adult establishment will be operated by a legal entity other than an individual, then each individual who has a two-percent (2%) or greater financial interest in the business must sign the application for a license. Each such applicant must be qualified under the terms of this ordinance to operate an adult establishment and each applicant will be considered a licensee if a license is granted.

(C) The completed application for an adult establishment business license shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state his or her legal name and submit proof that he or she is at least 21 years of age. If the applicant is a partnership, the partnership shall state its complete name, the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any. If the applicant is a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors, and principal stockholders, the name of the registered corporate agent, and the address of the registered office for service of process.

(2) 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. The applicant's addresses for the past five years, any business and home phone numbers, occupation, date and place of birth, social security number, drivers license number, and a recent (within last two years) photograph.

(3) The name of the adult establishment, the single classification of license for which the applicant is filing, a 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, and the Watauga County or Caldwell County parcel identification number (PIN) of the parcel(s) on which the business will reside. If the applicant intends to operate the business under a name other than that of the applicant, he or she must state the fictitious name and submit the required registration documents.

(4) If the person identified as the fee owner of the tract of land in subsection (3) is not also the owner of the establishment, then the owner/applicant shall provide the lease, purchase contract, purchase option contract, lease option contract, or other document evidencing the legally enforceable right of the owner or proposed owner of the adult establishment to possess and use the property for the operation of the adult establishment.

(5) A current certificate and straight-line drawing prepared within thirty (30) days prior to the application by a registered land surveyor accurately depicting the property lines and the structures containing any existing adult business establishments within one thousand (1,000) feet of the property

to be certified; the property lines of any established religious institutions, schools, nursing homes, daycare establishments, libraries, or public parks or recreation areas within one thousand (1,000) feet of the property to be certified, and the location of all residential zoning districts within three hundred (300) feet of the property to be certified. For the purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(6) A sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(7) Whether any applicant, or any person residing with any applicant, has been convicted of a specified criminal activity as defined in this ordinance; and, if so, the specified criminal activity involved, and the date, place, and jurisdiction of each.

(8) A listing of all locations where the applicant, or a person residing with the applicant, currently has or previously had within the past five years a license under this ordinance or other similar adult business establishment ordinance from another city or county. Also, a statement whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar adult business establishment ordinance from another city or county denied, suspended, or revoked, including the name and location of the establishment for which the permit was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

(9) Whether the applicant, or a person residing with the applicant, has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that has had a previous license under this ordinance or other similar adult business establishment ordinance from another city or county denied, suspended, or revoked, including the name and location of the establishment for which the permit was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

(10) Whether the applicant, or a person residing with the applicant, holds any other licenses under this ordinance or other similar adult business establishment ordinance from another city or county; and, if so, the names and locations of such other licensed businesses.

(11) If the applicant is a corporation, a certificate of existence issued by the North Carolina Secretary of State is required.

(12) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate an adult business establishment in this or any other county, city, state, or country; has ever had a license, permit, or authorization to do business denied, revoked, or suspended; or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(13) A statement signed under oath that the applicant consents to investigation of his or her background by the Town, to include fingerprinting; and that the applicant agrees to furnish within ten (10) days, at his or 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.

(14) A statement signed under oath that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the applicant has read the provisions of this ordinance regulating adult establishments.

Failure to provide the information required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

(D) If an applicant wishes to operate an adult business establishment, other than an adult motel, that shall exhibit on the premises, in a viewing room or booth of less than one-hundred-fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment that depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 16-289.65.

(E) All persons desiring to secure a license to be an adult business establishment employee shall make a verified application to the Administrator. The application shall be submitted on a form to be provided by the Administrator, and shall contain the following information:

(1) The applicant's full name, any aliases, or other names (including "stage" names) by which the applicant is known or which the applicant has used at any time; present residence address and telephone number; present business address and telephone number; past residence and business addresses for the last five years; date and place of birth; drivers license number; and social security number.

(2) The name and address of the adult establishment where the applicant intends to work as an employee.

(3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance; and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(4) A current color photograph, which clearly shows the applicant's face and which has been taken within the last two years.

(5) The applicant shall submit to fingerprinting by the Blowing Rock Police Department. The fingerprinting card shall be submitted to the S.B.I. for processing. Returned fingerprint cards shall be kept on file in the Blowing Rock Police Department.

(6) Documentation suitable to the Administrator that the applicant has attained the age of 21 years at the time the application is submitted.

(7) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate an adult business establishment in this or any other county, city, state, or country; has ever had a license, permit, or authorization to do business denied, revoked, or suspended; or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(8) A statement signed under oath that the applicant consents to investigation of his or her background by the Town. The applicant must also agree to furnish within ten days, at his or her

expense, a criminal history from the clerk of court of any county in which the applicant has resided within the five preceding years.

Failure to provide the information required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

[Adopted June 13, 2000]

Section 16-289.57 Issuance of License

(A) Upon submission of a complete application and payment of the appropriate license fee, the application shall be referred to the appropriate Town departments for an investigation to be made on such information as is contained in the application. The investigation process shall be completed within thirty calendar days from the date that the completed application is filed.

(B) After the investigation of an application for an adult business establishment license is complete, the Administrator shall issue the license, unless he or she determines by a preponderance of the evidence that one or more of the following findings is true, whereupon the application must be denied:

- (1) An applicant is under 21 years of age.
- (2) An applicant is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (4) An applicant or a person with whom the applicant is residing has been denied a license by the Administrator to operate an adult business establishment within the preceding twelve months or whose license to operate an adult business establishment has been revoked by the Administrator or by another comparable jurisdiction within the preceding twelve months.
- (5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.
- (6) The premises to be used for the adult business establishment have not been approved by the Watauga County Health Department, Blowing Rock Fire Department, Blowing Rock Building Inspector, or the Blowing Rock Planning Department as being in compliance with applicable laws and ordinances.
- (7) The license fee required by this ordinance has not been paid.
- (8) The requested license will be used in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance.
- (9) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.
- (10) The applicant for the adult business establishment has not received a conditional use permit from the Town Board of Commissioners for the proposed business.

(11) There is an existing adult business establishment in the building, premises, structure, or other facility where the proposed adult business establishment would be located; and the proposed establishment would be in addition to the existing establishment.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the adult business establishment, and the classification for which the license is issued pursuant to Section 16-289.53 of this ordinance. An adult business establishment license shall be issued for only one classification as found in Section 16-289.53.

(C) After the investigation of an application for an adult business establishment employee license is complete, the Administrator shall issue the license, unless he or she determines by a preponderance of the evidence that one or more of the following findings are true, whereupon the application must be denied:

(1) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(2) The applicant is under the age of twenty-one years.

(3) The applicant has been convicted of a “specified criminal activity” as defined in this ordinance.

(4) The requested license will be used in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance.

(5) The applicant has had an adult business employee license revoked by the Administrator or by another comparable jurisdiction within two years of the date of the current application.

(6) The license fee required by this ordinance has not been paid.

(D) Each such determination and denial shall be documented in writing, and a copy of which shall be mailed to the applicant by first class mail to the address shown on the application.

(E) Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 16-289.61.

(F) Any license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the adult business establishment.

(G) An approved license for an adult business establishment shall be for a maximum period of twelve months, starting on or after July 1 and ending the following June 30. An approved license for an adult business employee shall expire one year from the date of issuance. Any such license shall be subject to annual renewal upon the written application of the applicant received not less than thirty calendar days before the license expires. Before approving the renewal of the license, the Administrator shall make a determination that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or has not committed any act during the existence of the previous license that would have been sufficient grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 16-289.58.

(H) If the Administrator denies an initial application or the renewal of an existing application, the applicant shall not be eligible for a new license within one year from the date of denial.

[Adopted June 13, 2000]

Section 16-289.58 Fees

(A) Every application for an adult business establishment license (whether for a new license or for the renewal of an existing license) shall be accompanied by a One Thousand Dollar (\$1,000.00) non-refundable application and investigation fee.

(B) In addition to the application and investigation fee required above, every adult business establishment that is granted a license (new or renewal) shall pay an annual non-refundable license fee of One Thousand Dollars (\$1,000.00) before the license is issued by the Administrator.

(C) Every application for a new adult business employee license shall be accompanied by a Two Hundred Fifty Dollar (\$250.00) non-refundable application, investigation, and license fee.

(D) In addition to the application and investigation fee required above, every adult business employee that is granted a license shall pay an annual, non-refundable license fee of Two Hundred Fifty Dollars (\$250.00) before the license is issued by the Administrator.

[Adopted June 13, 2000]

Section 16-289.59 License Posting and Display

(A) Every person licensed under this ordinance as an adult business establishment shall post such license in a conspicuous place on the adult establishment premises so that it can be readily available for inspection by Town authorities responsible for enforcement of this ordinance and can be readily observed by patrons of the adult establishment.

(B) Every person holding a license as an employee shall post his or her license in his or her work area on the adult establishment premises so that it can be readily available for inspection by Town authorities responsible for enforcement of this ordinance and can be readily observed by patrons of the adult establishment.

[Adopted June 13, 2000]

Section 16-289.60 Inspection

(A) An applicant or licensee shall permit representatives of the Blowing Rock Police Department, Fire Department, and Planning and Inspections Department, or other Town departments or agencies, to inspect the premises of the adult business establishment for the purpose of insuring compliance with the law.

(B) A person who operates an adult business establishment or his agent or employee shall commit a misdemeanor if he refuses to permit such lawful inspection of the premises.

[Adopted June 13, 2000]

Section 16-289.61 License Denial, Suspension, or Revocation; Appeal

(A) The Administrator shall conduct a hearing to determine whether a license should be suspended or revoked upon receipt of allegation or knowledge that any of the following has occurred:

- (1) The owner or operator of an adult establishment or the holder of an employee license has violated or knowingly allowed or permitted the violation of any of the provisions of this ordinance;
- (2) There have been recurrent violations of the provisions of this ordinance that have occurred under circumstances that the owner or operator of an adult establishment knew or should have known that such violations were committed;
- (3) The license was obtained through false statements in the application for the license or renewal thereof;
- (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;
- (5) The licensee failed to make a complete disclosure of all information in the application for such license or renewal thereof;
- (6) The owner, operator, any partner, any corporate officer or director holding an adult establishment license has become disqualified from having a license by a conviction as provided in this ordinance;
- (7) The holder of an employee license has become disqualified from having a license by a conviction as provided in this ordinance;
- (8) The owner, operator, or employee of any adult establishment has refused to allow an inspection of the establishment as authorized by this ordinance;
- (9) A licensee has allowed possession, use, or sale of controlled substances on the premises;
- (10) A licensee has allowed prostitution on the premises;
- (11) A licensee operated the adult business establishment during a period of time when the licensee's license was suspended;
- (12) Except in the case of an adult motel, a licensee has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
- (13) A licensee is delinquent in payment to the Town for any taxes or fees past due.

(B) At the hearing, the licensee shall have the opportunity to be heard, to present evidence, and to be represented by legal counsel. Based upon the evidence produced at the hearing, the Administrator shall take, within ten working days after the hearing, any of the following actions:

- (1) Suspend the license for up to ninety (90) days;
- (2) Revoke the license;
- (3) Place the license holder on administrative probation for a period up to one year on the condition that no further violations occur during the period of probation;
- (4) Take no action.

(C) The Administrator's decision shall be documented in writing, and a copy of the decision shall be sent immediately to the licensee by certified mail.

(D) In the event of the denial of a license application, or the suspension or revocation of an existing license, or the placement of a licensee on administrative probation, the applicant or licensee shall have the right to appeal that determination to the Blowing Rock Board of Adjustment within thirty days of receipt of the notice of denial, suspension, revocation, or probation.

(E) In the event the Board of Adjustment upholds the Administrator's decision, the applicant or licensee shall have the right to appeal that determination to the Superior Court of Watauga County within thirty days of receipt of notice of the decision.

(F) When the Administrator revokes a license, the revocation shall continue for one year, and the licensee shall not be issued an adult business establishment license for one year from the date that the revocation became effective.

[Adopted June 13, 2000]

Section 16-289.62 Transfer of License.

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

[Adopted June 13, 2000]

Section 16-289.63 Location of Adult Business Establishments

(A) An adult business establishment may be permitted as a conditional use in the General Business (GB) zoning district provided that:

(1) The adult business establishment may not be located or operated within one thousand (1,000) feet of:

(a) A church, synagogue, mosque, temple, or other building that is used primarily for religious worship and related religious activities;

(b) A public or private school or educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, community colleges, and universities. School includes school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.

(c) A public or private park or recreational area that has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball or tennis courts, pedestrian or bicycle paths, wilderness areas, golf courses, or other similar recreational activities.

(d) A public or private library.

(e) An entertainment business that is oriented primarily toward children.

(f) Another adult business establishment.

(2) The adult business establishment may not be located within three hundred (300) feet of the boundary of any residential district.

(B) For the purposes of subsection (A), 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 a part of the premises where an adult business establishment is to be conducted, to the nearest property line of the premises of a use listed in subsection (A). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

[Adopted June 13, 2000]

Section 16-289.64 Additional Regulations for Adult Motels

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial enterprise has been rented, vacated, and re-rented within a ten-hour period creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this ordinance.

(B) It is unlawful for a person, as the person in control of a sleeping room in a hotel, motel, bed and breakfast, or similar commercial enterprise that does not have an adult business establishment license, to rent or sub-rent a sleeping room to a person within ten hours from the time that the room was previously rented.

(C) For the purposes of this section, the terms “rent” and “sub-rent” mean the act of permitting a room to be occupied for any form of consideration.

[Adopted June 13, 2000]

Section 16-289.65 Additional Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment

(A) A person who operates or causes to be operated an adult business establishment, 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, live entertainment, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for an adult business establishment license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all overhead lighting fixtures, and those areas of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit 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 designated 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 licensee of the premises to ensure that at least one licensed 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 every 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 designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each 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 licensee to ensure that the view area specified in subsection (A)(5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials; and, at all times, 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 (A)(1).

(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-candles as measured at the floor level.

(9) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(10) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(11) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(12) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(13) The licensee 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) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(C) A person having a duty under Subsection (A) or (B) above commits a misdemeanor if he knowingly fails to fulfill that duty.

[Adopted June 13, 2000]

Section 16-289.66 Additional Regulations for Escort Agencies

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

[Adopted June 13, 2000]

Section 16-289.67 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 commits an offense 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 the prosecution of the person under twenty-one (21) years if that person was in a restroom not open to public view or visible to any other person.

(C) A person commits an offense 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 that 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.

[Adopted June 13, 2000]

Section 16-289.68 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 in an adult business establishment shall appear in a state of nudity or depict specified sexual activities.

(C) No person in an adult business establishment shall appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.

(D) No person, while semi-nude in an adult business establishment shall solicit any pay or gratuity from any patron or customer. No patron or customer in an adult business establishment shall pay or give any gratuity to any employee of the adult business establishment while said employee is semi-nude.

(E) No person in an adult business establishment shall perform any specified sexual activities, wear or use any device or covering that is exposed to view that simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities, or participate in any act of prostitution.

(F) No person in 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.

(G) The sale or consumption of alcohol on the premises of an adult business establishment shall be prohibited.

(H) No person shall permit any building, premises, structure, or other facility that contains any adult business establishment to contain any other kind of adult establishment.

(I) 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 other adult business establishment.

[Adopted June 13, 2000]

Section 16-289.69 Exterior Portions of Adult Business Establishments

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

(B) Except as permitted by Section 16-289.70, it shall be unlawful for the owner or operator of an adult business establishment to allow the exterior portion of the establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner.

(C) One (1) parking space per one hundred (100) square feet of gross floor area shall be provided upon the premises immediately adjoining the structure housing the adult business establishment.

(D) All parking areas and exterior entrances and exits shall be fully illuminated with night-lighting to deter criminal activities.

(E) Perimeter buffer areas shall be established in order to create spatial separation and to lessen the possible adverse impacts upon adjacent land uses. A front yard setback of sixteen (16) feet and side and rear yard setbacks of twenty-four (24) feet shall be observed for buildings and parking. This area is to be used as a buffer as follows:

(1) A Type "C", broken screen, as described in Section 16-307 of the Town Code, shall be installed along the front property line. The width of the screen shall be eight feet. All buildings and parking lots shall be set back eight feet from the edge of the buffer.

(2) Where there is a parking area that is directly visible from the adjacent street right-of-way, a Type "B", semi-opaque screen, shall be installed to screen the parking lot from the adjacent street. The width of the landscape buffer shall be eight feet. The parking lot shall be set back eight feet from the edge of the buffer.

(3) A Type "A", opaque screen, shall be installed along the side and rear lot lines. The width of the buffer shall be sixteen feet. All buildings and parking lots shall be set back eight feet from the edge of the buffer.

(4) All trees, plants, and landscaping required herein shall be perpetually maintained. Any dead, unhealthy, or missing vegetation, or any vegetation disfigured by severe pruning, shall be replaced with new vegetation.

[Adopted June 13, 2000]

Section 16-289.70 Signage

(A) It shall be unlawful for the owner or operator of any adult business establishment to erect, construct, or maintain any sign for the business except in conformance with the sign regulations of the Town (Article XVII of the Land Use Ordinance).

(B) Any sign visible from the exterior of the building shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner; and shall only contain the name of the enterprise.

[Adopted June 13, 2000]

Section 16-289.71 Hours of Operation

No adult business establishment, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and eight o'clock (8:00) A.M. In addition, no adult business establishment, except for an adult motel, may remain open between the hours of eight o'clock (8:00) A.M. and two o'clock (2:00) P.M. on any Sunday.

[Adopted June 13, 2000]

Section 16-289.72 Injunction

A person who operates or causes to be operated an adult business establishment without a valid license or in violation of this ordinance is subject to suit for injunction as well as prosecution for criminal violations. Pursuant to North Carolina General Statute 14-4, each violation of any requirement of this ordinance shall be a crime, which shall be punishable by a fine of \$500.00 or thirty days imprisonment. Each day any such violation continues or occurs is a separate offense or violation.

Notwithstanding the foregoing, licensing decisions including issuance, revocation, and suspension, based upon violations of this ordinance, shall be made by the Administrator based upon a preponderance of the evidence.

[Adopted June 13, 2000]

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