

TITLE XI: BUSINESS REGULATIONS

CHAPTER 115: ADULT SEXUALLY ORIENTED BUSINESSES

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115.01 PURPOSE

The purpose of this Ordinance shall be to set forth the regulatory and licensing requirement for adult establishments located within the Town of Black Mountain. Adult 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 establishments. The Board of Aldermen finds that regulation of these uses is necessary, to ensure that the adverse secondary effects do not contribute to the blighting of surrounding neighborhoods and to regulate acts, omissions or conditions detrimental to the health, safety or welfare and the peace and dignity of the Town. Regulation to achieve these purposes can be accomplished by the procedures set forth hereinafter.

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. This Ordinance represents a balancing of the legitimate ends of the community by imposing an incidental, content neutral place, time and manner of regulation of sexually oriented businesses, without limiting alternative avenues of communication. At the same time, requiring the business to carry its share of financing, administrative and enforcement activities.

115.02 DEFINITIONS

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) ***Adult bookstore*** means a bookstore:

(a) Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books or magazines which are distinguished or characterized by their emphasis on matter depicting describing, or relating to specified sexual activities or specified anatomical areas), as defined in this section or other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium.

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

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(2) ***Adult Cabaret*** means a nightclub, bar, restaurant or similar commercial establishment that on a regular, sporadic or transient basis features:

(a) Persons who appear in a state of nudity or semi-nudity; or

(b) Live performances that are characterized by the exposure of “specified anatomical areas” or “specified sexual activities”; or

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or

(d) Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(3) ***Adult establishment*** means any adult bookstore, cabaret, motel, motion picture theater, mini motion picture theater, escort agency, exotic car wash, exotic maid service, nude modeling studios, sexual encounter center or any other sexually oriented business that is similar in nature or intent to any other adult entertainment business as defined in this section.

(4) ***Adult live entertainment*** means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

(5) ***Adult live entertainment business*** means any establishment or business wherein adult live entertainment is shown for observation by patrons. This shall apply whether the entertainment is presented on a regular, sporadic, or transient basis.

(6) ***Adult Motel*** means a hotel, motel, bed and breakfast or similar commercial establishment that:

(a) Offers accommodation to the public for any form of consideration that provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and has a sign visible from the public right of way that advertises the availability of this type of adult photographic reproductions, or

(b) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

(c) Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than twenty-four (24) hours.

(7) ***Adult motion picture theater*** means an enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an

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emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein. "Adult motion picture theater" does not include any adult mini motion picture theater as defined in this section.

(8) ***Adult mini motion picture theater*** means an enclosed building with viewing booths designed to hold patrons, which 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 as defined in this section, for observation by patrons therein.

(9) ***Employee*** means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract or independent basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and whether or not the said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

(10) ***Enlargement of a sexually oriented business*** means the increase in floor areas occupied by the business by more than ten (10%) percent, as the floor areas exist on May 11, 1998.

(11) ***Escort*** means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person and whose advertisements, promotions, or obvious intent to the public is sexual in nature.

(12) ***Escort Agency*** means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration and whose advertisements, promotions or obvious intent to the public is sexual in nature.

(13) ***Entertainer*** means any person who provides entertainment within or at an adult establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided by that person as an employee or an independent contractor.

(14) ***Erotic*** refers to any seductive, titillating, lustful, immodest, indecent, suggestive, passionate or similar reference act, service or deed.

(15) ***Establishment*** means and includes any of the following:

(a) The opening or commencement of any sexually oriented business as a new business; or

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or

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(c) The additions of any sexually oriented business to any other existing sexually oriented business; or

(ii) The relocation of any sexually oriented business.

(16) ***Exotic car wash*** means a facility that offers a car cleaning or washing service performed by employees that are in a state of nudity or semi-nudity.

(17) ***Exotic maid service*** means any cleaning service for a residence or business where the employee is in a state of nudity or semi-nudity.

(18) ***Licensed Day Care Center*** means a facility licensed by the state of North Carolina, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated as non-profit or charges for the services it offers.

(19) ***Licensee*** means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

(20) ***Nude Model Studio*** means any place where a person, who appears in a state of nudity or displays "specified anatomical areas", is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons for consideration.

(21) ***Nudity or a State of Nudity*** means the appearance of a bare human buttocks, anus, anal cleft of cleavage, pubic area, male genitals, female genitals or vulva, with less than full opaque covering or human genitals in a discernibly turgid state even if completely and opaquely covered.

(22) ***Person*** means an individual, proprietorship, partnership, corporation, association or other legal entity.

(23) ***Premises*** means the real property upon which the sexually oriented business is located, including, all appurtenances thereto and buildings thereon, but not limited to the sexually oriented business, 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 Section 4 of this ordinance.

(24) ***Semi-Nude*** means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion on the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse shirt, leotard, bathing suit, other wearing apparel provided the areola is not exposed in whole or in part.

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(25) ***Sexual Encounter Center*** means 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.

(26) ***Sexually oriented devices*** means without limitation any artificial or simulated specified anatomical area or the device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

(27) ***Specified anatomical areas*** means:

(a) Less than completely and opaquely covered:

(1) Human genitals, pubic region or

(2) Buttock or

(3) Female breast below a point immediately above the top of the areola; or

(b) Human male genitals in a indiscernibly turgid state, even if completely and opaquely covered.

(28) ***Specified sexual activities*** means:

(a) Human genitals in a state of sexual stimulation or arousal; or

(b) Acts of human masturbation, sexual intercourse or sodomy; or

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

(29) ***Sexually oriented business*** means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing or related to anatomical areas and sexual activities as specified in N.C. G.S. 14-202.10. This term may be used interchangeably with adult establishment.

(30) ***Transfer of Ownership or Control*** of a sexually oriented business means and includes any of the following:

(a) The sale, lease or sublease of the business; or

(b) The transfer of securities that form a controlling interest in the business whether by sale, exchange or similar means; or

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(c) The establishment of a trust, gift or other similar legal device that transfers the ownership of control of the business, except for the transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(31) ***Town*** means the Town of Black Mountain, North Carolina.

(32) ***Town Manager*** means chief administrative Town official.

(33) ***Zoning Administrator*** means the zoning administrator for the Town of Black Mountain, North Carolina.

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115.03 APPLICATION FOR LICENSES.

(A) Business license.

(1) It shall be unlawful for any person to operate or maintain an adult establishment in the town 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 city or has expired.

(2) It shall be unlawful for any entertainer to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult establishment within the Town.

(3) It shall be prima facie evidence that any adult establishment that fails to have posted, in the manner required by this Ordinance, an adult establishment license has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer who performs any service or entertainment in an adult establishment in which an adult establishment license is not posted, in the manner required by this Ordinance, had knowledge that such business was not licensed.

(B) Entertainer license.

(1) It is unlawful for any person to work as an entertainer at an adult establishment without first obtaining a license to do so from the town, or to work as an entertainer at an adult establishment after such person's license to do so has been revoked, suspended by the Town or has expired.

(C) License classification and fees.

(1) The term of all licenses required under this Ordinance shall be for a period of 12 months, starting July 1 and ending June 30. The application for a license shall be accompanied by payment in full of the fees referred to in this ordinance and established by the Board of Aldermen. Payment shall be made by certified or cashier's check or money order. No application shall be considered complete until all such fees are paid.

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

(3) The license fees shall be as set by the Board of Aldermen from time to time and be recorded in the Town Board of Aldermen Meeting minutes at which they are set.

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115.04 APPLICATION PROCEDURES.

(A) Adult establishment business license.

(1) 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 Zoning Administrator. All applications shall be submitted in the name of the person proposing to conduct, operate or maintain the adult establishment. All applications shall be submitted on a form supplied by the Zoning Administrator and shall require the following information:

(a) 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 applicants addresses for the past two (2) years, any business and home telephone numbers, occupation, date and place of birth, social security number, drivers license number, and a recent (minimum of last two (2) years) photograph.

(b) The name of the adult establishment, 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, the business address and Buncombe County parcel identification number (PIN) on which the business resides.

(c) If the person(s) identified as the fee owner(s) of the tract of land in item (b) is/are not also the owner (s) of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the adult establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the purpose of the operation of an adult establishment.

(d) A current certificate and straight line drawing prepared within thirty (30) days prior to the application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented business within 1,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, library, or public park or recreation area within 1,000 feet of the property to be certified. For purposes of the Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(e) Any of the criteria above shall not be required for a renewal application if the applicant states that the documents previously furnished the Zoning Administrator with the original application or previous renewals thereof remain correct and current.

(2) The names, residence addresses for the past two (2) years, social security numbers and dates of births of all partners, if the applicant is a partnership. If the applicant is a corporation the same information for all officers, directors, and individuals having a ten (10) percent or greater interest in the corporation.

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

(a) A felony criminal act within five years immediately preceding the application; or

(b) misdemeanor criminal act within two years immediately preceding the application.

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

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

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

(6) All applicants shall submit to fingerprinting by a Black Mountain Police Officer. The fingerprint cards shall be submitted to the S.B.I. for processing. Returned fingerprint cards and criminal histories shall be kept on file in the Black Mountain Police Department.

(7) A statement signed under oath that the applicant consents to investigation of his/her background by the Town, to include fingerprinting. And that the applicant(s) agrees to furnish within ten days at his/her expense, a criminal history from the clerk of court of any county in which the applicant has resided during the five (5) preceding years. Failure to provide the information and documentation required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

(B) Adult entertainer license.

(1) All persons desiring to secure a license under the provisions of the ordinance, to be an entertainer, shall make a verified application to the Zoning Administrator. All applications shall be made in person to the Zoning Administrator or his designee. All applications shall be submitted on a form supplied by the Zoning Administrator and shall require the following information:

(a) The applicant's full name, any aliases or other names by which the applicant is known or has used at any time, the residence addresses for the past two years, the home telephone number, date and place of birth, social security number, and any stage names or nicknames used in entertaining.

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

(c) A statement from the applicant, that the applicant has not been convicted of, released from confinement for conviction of or diverted from prosecution on:

(1) A felony criminal act within five years immediately preceding the application, or

(2) A misdemeanor criminal act within two years immediately preceding the application. Where such felony or misdemeanor criminal act involved sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the laws of the State of North Carolina. Any comparable violation of the laws of this state or the laws of any other state.

(d) The applicant shall provide a current photograph with the application paperwork and this is to be retained in the Zoning Administrators file.

(e) All applicants shall submit to fingerprinting by a Black Mountain Police Officer. The fingerprint card shall be submitted to the S.B.I. for processing. Returned fingerprint cards and criminal histories shall be kept on file in the Black Mountain Police Department.

(f) The applicant shall present to the Zoning Administrator for copying documentation that the applicant has attained the age of 21 years at the time the application is submitted. Any of the following shall be accepted as documentation of age:

(1) motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth.

(2) A state issued identification card bearing the applicant's photograph and date of birth.

(3) An official and valid passport issued by the United States of America.

(4) An immigration card issued by the United States of America.

(5) Any other form of picture identification issued by a governmental entity that is deemed reliable by the Zoning Administrator.

(6) Any other form of identification deemed reliable by the Zoning Administrator.

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(g) A statement signed under oath that the applicant consents to investigation of his/her background by the Town to include fingerprinting. The applicant must also agree to furnish within ten days at his/her expense, a criminal history from the clerk of court of any county in which the applicant has resided during the five (5) preceding years.

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

(C) Application processing.

Upon receipt of a complete application for an adult establishment license or for an adult establishment entertainer's license, the Zoning Administrator shall immediately commence investigation of the application as follows:

(1) In the case of an application for a license for an adult establishment, the Zoning Administrator shall:

(a) Transmit a copy of the application to the Chief of Police and the Fire Inspector.

(b) The Police Chief and Fire Inspector shall report to the Zoning Administrator no later than fifteen (15) working days after the receipt of the application from the Zoning Administrator whether or not a proposed adult establishment complies with the requirements of the zoning ordinance regarding location of the adult establishment, building, fire, health, or similar State or local code(s). In the event that the Police Chief and the Fire Inspector fails to report to the Zoning Administrator within this time period, the Zoning Administrator shall proceed with processing the application.

(c) The Police Chief and the Fire Inspector shall report to the Zoning Administrator no later than fifteen (15) working days after the receipt of the application the results of their investigation of the applicant. In the event that the Police Chief or the Fire Inspector fails to report to the Zoning Administrator within this time period, the Zoning Administrator shall proceed with processing the application.

(d) Upon completion of his/her investigation, payment of the applicable license fee, and upon receipt of the report of the Police Chief and the Fire Inspector (or upon expiration of the time periods referenced above without receiving a report), the Zoning Administrator shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Zoning Administrator exceed forty five (45) working days from the date the application is received by the Zoning Administrator, unless consented to by the applicant (in writing and notarized).

(2) In the case of an application for a license for an entertainer, the Zoning Administrator shall:

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(a) Transmit a copy of the application to the Police Chief.

(b) The Police Chief shall report to the Zoning Administrator no later than ten (10) working days after receipt of the application the results of his/her investigation of the applicant. In the event that the police chief fails to report to the Zoning Administrator within this time period, he/she shall proceed with processing the application.

(c) Upon completion of his/her investigation, payment of the appropriate license fee and upon receipt of the report of the police chief (or upon expiration of either or both time periods referenced above without receiving a report), the Zoning Administrator shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Zoning Administrator exceed fifteen (15) days from the date the application is received by the Zoning Administrator, unless consented to by the applicant (in writing and notarized).

(3) Reasons for disapproval. The Zoning Administrator must deny the license application for one or more of the following reasons:

(a) The license application is incomplete so as to not contain all information required by this Ordinance.

(b) The applicant (including any partners, corporate officers, directors and shareholders where applicable) has been convicted of a crime in the local, state or federal court systems for any violations listed in this section.

(c) The applicant (including any partners, corporate officers, directors and shareholders where applicable) has made false or fraudulent statements in the application, evidence of which is disclosed by a city background investigation or by any other lawful means.

(d) The application for an adult establishment does not meet the requirements of this ordinance.

(e) The applicant for a sexually oriented business has not received special exception from the Zoning Board of Adjustment.

(4) Notice of approval or disapproval.

(a) Upon determination by the Zoning Administrator of the approval or disapproval of the application, he/she shall notify the applicant by personal delivery or certified returned receipt mail to the address of the applicant as shown on the application. In the event that the application is disapproved, the notification shall state the basis for such disapproval.

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(b) In the event an application is disapproved, the applicant shall have thirty (30) days from the receipt of the notice of disapproval to appeal that determination to the Superior Court of Buncombe County.

(5) Changes to application.

(a) All applicants shall notify the Zoning Administrator of any changes to the application within five working days of the date the change occurs.

115.05 PROHIBITED ACTS AND CONDUCT.

(1) No person under the age of 21 years shall be permitted on the premises of any adult establishment.

(2) No person under the age of 21 years shall be granted a license for an adult establishment business or as an entertainer.

(3) No owner, operator, manager, employee or entertainer, nor any customer or patron, shall appear "bottomless" or in a state of nudity while on the premises of the adult establishment.

(4) No owner, operator, manager, employee or entertainer, nor any customer or patron, shall perform any specified sexual activities as defined in the ordinance, wear or use any device or covering exposed to view which simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities, as defined in the ordinance, or participate in any act of prostitution while on the premises of the adult establishment.

(5) No owner, operator, manager, employee, entertainer, customer or patron of an adult establishment shall knowingly touch, fondle or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle or caress any specified anatomical area of his or hers, whether such specified anatomical areas are clothed, unclothed, covered or exposed, while on the premises of the adult establishment.

(6) There shall be a minimum separation of 24" between any entertainer or performer and any patron or customer.

(7) No owner, operator, manager or employee shall mix, dispense, or serve any alcoholic beverage while in a state of nudity or semi-nudity.

(8) No owner, operator, manager or employee shall solicit, receive or accept nor shall any customer or patron give, offer or provide any gratuity, tip, payment or any other form of compensation for entertainment for or while either or both is/are in a state of nudity or semi-nudity. This also pertains to the purchase of an unrelated item that includes a "free" dance, act or service.

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(9) No owner, operator, manager or other person in charge of the premises of an adult entertainment premises shall knowingly allow or permit any person under the age of 21 years of age to be in or upon the premises or knowingly allow or permit a violation of this ordinance.

115.06 LICENSE: POSTING AND DISPLAY.

(1) Every person, corporation or partnership licensed under this ordinance as an adult establishment shall post such license in a conspicuous place and manner of the adult establishment premises.

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

115.07 INSPECTIONS.

(1) All adult establishments shall permit representatives of the Police, Fire, Zoning or other Town or State departments or agencies acting in their official capacity to inspect the premises as necessary to ensure that the business is complying with all applicable regulations and laws.

115.08 SUSPENSION OR REVOCATION OF LICENSES.

(1) The Zoning Administrator shall conduct a hearing to determine whether or not a license should be suspended or revoked, with the hearing being conducted within ten (10) working days of his/her knowledge that:

(a) The owner or operator of an adult establishment or the holder of a license as an entertainer has violated or knowingly allowed or permitted the violation of any of the provisions of this ordinance; or

(b) There have been recurrent violations of provisions of this ordinance that have occurred under such circumstances that the owner or operator of an adult establishment knew or should have known that such violations were committed; or

(c) The license was obtained through false statements in the application for the license or renewal thereof; or

(d) The license has been materially altered or defaced or is being or was used by a person other than the license holder or at a location other than that identified on the license or for a use or type other than that for which the license was issued; or

(e) The licensee failed to make a complete disclosure of all information in the application for such license or renewal thereof; or

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(f) 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; or

(g) The holder of an entertainer license has become disqualified from having a license by a conviction as provided in this ordinance.

(2) At the hearing, the licensee shall have an opportunity to be heard, to present evidence and to be represented by an attorney. Based on the evidence produced at the hearing the Zoning Administrator shall take, within five (5) working days after the hearing, any of the following actions:

(a) Suspend the license for up to ninety (90) days; or

(b) Revoke the license; or

(c) Place the license holder on administrative probation for a period up to one (1) year on the condition that no further violations of this ordinance occur during the period of probation; or

(d) Take no action.

(3) The Zoning Administrator shall provide written notice of his/her decision to the applicant by certified returned receipt mail. The notice shall be sent immediately after the Zoning Administrator determines what action to take, as described above.

(4) In the event of suspension or revocation of the license or the placement on administrative probation, the licensee shall have the right to appeal that determination to the Town of Black Mountain Zoning Board of Adjustments within thirty (30) days of receipt of the notice of suspension, revocation or probation.

(5) In the event the Zoning Board of Adjustments upholds the Zoning Administrator's decision the licensee shall have the right of appeal of that determination to the Superior Court of Buncombe County within thirty (30) days of receipt of the notice of the decision.

115.09 LICENSE RENEWAL.

(1) A license shall be renewed by making application, to the Zoning Administrator, on forms provided for that purpose. Any license issued under this ordinance shall expire as of June 30 each year. Renewal applications for such licenses shall be submitted no sooner than forty-five (45) days prior to expiration and no later than the city business day immediately preceding the date of expiration of the license.

(2) Upon timely and proper application for renewal and the payment in full of the license fee, the Zoning Administrator shall issue to the applicant a receipt showing the date of the renewal application and granting to the applicant a temporary extension of the license for a

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period of forty-five (45) days or until the application for renewal is approved or disapproved. Any license issued under the provisions of this ordinance may be renewed by issuance of a new license for an additional twelve (12) month period. All applications for renewal of license shall be processed in the manner provided for the issuance of the initial license.

115.10 TRANSFER OF LICENSE.

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

115.11 LOCATION RESTRICTIONS.

Sexually oriented businesses may be permitted as a conditional use in a commercial district provided that:

(1) The sexually oriented business may not be located or operated within 1,320 feet of:

- (a) A church, synagogue or any regular place of worship;
- (b) A public or private elementary or secondary school;
- (c) A public library;
- (d) A boundary of any residential district;
- (e) A public park or playground;
- (f) A licensed day-care center;
- (g) An entertainment business that is oriented primarily towards children;
- (h) Another sexually oriented business.

(2) For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of any use listed in (1) above.

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115.12 NON-CONFORMING USES.

(1) Any business lawfully operating on the effective date of this ordinance that is in violation of the location or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless terminated sooner for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarge, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,320 feet of one another and otherwise in a permissible location, the business that was first established and continually operating at a particular location is the conforming use and the later established business(es) is non-conforming.

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

115.13 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(1) Evidence that a sleeping room in a hotel, motel or similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this ordinance.

(2) It is unlawful if 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 a sexually oriented business license, rents or sub rents a sleeping room to a person within ten (10) hours from the time the room is rented, he rents or sub rents the same sleeping room again.

(3) For purposes of Subsection (2) of this section, the terms "rent" or "sub rents" mean the act of permitting a room to be occupied for any form of consideration.

115.14 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

(1) An escort agency shall not employ any person under the age of 21 years.

(2) 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 21 years.

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115.15 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

(1) A nude model studio shall not employ any person under the age of 21 years.

(2) A person under the age of 21 years is in violation of this ordinance if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 21 years of age was in a restroom open to the public view or visible by any other person.

(3) It is a violation of this ordinance if the person appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

(4) 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.

115.16 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS AND LIVE PERFORMANCES.

(1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, other video reproduction or live performance that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan specifying the location of one or more manager's stations, the location of all overhead lighting fixtures and designating any portion 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 business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however, each diagram should be oriented to the north or to some 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 Zoning 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.

(b) The application shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Administrator or his/her designee.

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(d) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designed, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's station. The view required in this subsection must be by direct line of sight from the manager's station.

(f) It shall be the duty of the owners, operator, any agents and employees present in the premises to ensure that the view area specified in Subsection (e) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (a) of this section.

(g) No viewing room may be occupied by more than one (1) person at a time.

(h) 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) foot-candles as measured at the floor level.

(i) It shall be the duty of the owners, operators, any agents or employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(j) No licensee shall allow an opening of any kind to exist between viewing booths or rooms.

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

(l) The operator of the sexually oriented business shall during each business day inspect the walls between the viewing booths to determine if any openings or holes exist.

(m) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleaned surfaces, with no rugs or carpeting.

(n) The operator of the sexually oriented business shall cause all wall and ceiling surfaces in viewing booths to be constructed of or permanently covered by a nonporous easily cleaned material. No wood, plywood, composition board or other porous material shall be used within forty eight (48) inches of the floor.

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(2) A person having a duty under subsections (a) through (n) of this section is in violation of this ordinance if he/she knowingly fails to fulfill that duty.

115.17 EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

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

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner except to the extent permitted by the provisions of the ordinance.

(3) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(a) The establishment is a part of a commercial multi-unit center; and

(b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(c) Nothing in this ordinance shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(d) A violation of any provisions of this Section shall constitute a violation of this ordinance.

115.18 SIGNAGE.

(1) It shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the ones allowed in Sections 153.130 through 153.137 of the Town of Black Mountain Zoning Code.

(2) All signs for any sexually oriented business shall contain no photographs, silhouettes, drawings or pictorial representations in any manner and may contain only the name of the enterprise.

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(3) Each letter forming a word on any sign for the business shall be of a solid color and each letter shall be the same print type, size and color. The background behind such lettering on display surface of a primary sign shall be of a uniform and solid color.

115.19 MESSAGES OR BATHS ADMINISTERED BY A PERSON OF THE OPPOSITE SEX.

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

115.20 HOURS OF OPERATION.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one (1) A. M. and eight (8) A. M. on weekdays and Saturdays, and one (1) A. M. and twelve (12) P. M. on Sundays.

115.21 EXEMPTIONS.

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

(1) by a proprietary school, licensed by the State of North Carolina, a college, junior college or university supported entirely or partly by taxation;

(2) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

(3) by organizations incorporated under the laws of the State of North Carolina as non-profit corporations organized exclusively for charitable, religious, educational or scientific purposes.

115.22 NOTICES.

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

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

(2) Any notice required or permitted to be given to the Zoning Administrator by any person under this ordinance shall not be deemed given until and unless it is received in the office of the Zoning Administrator.

(3) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Zoning Administrator in writing of any change of residence or mailing address.

115.23 PENALTIES AND REMEDIES.

(1) Any person, persons or corporation operating an adult sexually oriented business as defined in this Chapter without the licenses and permits required, shall be subject to a civil penalty of \$2,500.00 for each violation.

(2) Any person, persons, corporation or other entity operating an adult sexually oriented business while holding the licenses and permits required by this Chapter who violates any provisions of this Chapter shall be subject to a civil penalty of \$2,500.00 for each violation and shall have all permits issued pursuant to the provisions of this chapter revoked, and shall not be able to reinstate such licenses or permits or obtain new licenses or permits for businesses affected by this Chapter.

(3) Any person, persons, corporation or other entity operating an adult sexually oriented business as defined in this Chapter without the licenses and permits required, or with such licenses and permits but in violation of the provisions of this Chapter, shall have his privilege license revoked if such activity occurred on the premises or in conjunction with any business for which that person holds a valid privilege license.

(4) The Town, through its Zoning Administrator, may obtain an injunction against any person, persons or corporation who operates or causes to be operated a sexually oriented business as defined in this Chapter without the required permits or licenses or in violation of this ordinance.

(5) Each day a sexually oriented business operates in violation of this ordinance is a separate offense or violation of this ordinance.

(6) The Zoning Administrator is charged with the duty and authority to enforce any and all provisions of this Ordinance.

This amendment shall be effective upon its adoption.

(Am. Ord. 0-98-08, passed 6-8-98)

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115.24 SEVERABILITY.

If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

115.25 CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

(Ord. 0-98-06, passed 5-11-98)