

**CHAPTER 116: ADULT ESTABLISHMENTS**

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**§116.01 PURPOSE AND AUTHORITY**

Whereas governments may provide for reasonable regulation of the time, place and manner under which adult establishments operate; therefore, the City Council has determined that persons seeking to operate adult establishments shall be required to obtain a license before they commence business as provided in this article. The authority for this regulation is G.S. §153A-134. (Ord. 99-02, passed 3-1-99)

**§116.02 DEFINITIONS**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADULT ARCADE:** Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons or describe specified sexual activities or specified anatomical areas. Also known as “peep show”.

**ADULT BOOKSTORE:** A bookstore:

- (1) Which prominently displays or which receives a majority of its gross income during any calendar month from the sale of publications (including books, magazines, and other publications) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; or
- (2) Having as a preponderance of its publications books, magazines, and other publications 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 chapter.

**ADULT ESTABLISHMENT:** By way of example and not limitation, any adult live entertainment business, adult arcade, adult book store, adult cabaret, adult motion picture theater, adult toy store, adult video store, body shampooing business, escort agency, massage business as defined herein, nude model studio, lingerie modeling studio, or any combination of the foregoing.

**ADULT LIVE ENTERTAINMENT:** Any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas.

**ADULT LIVE ENTERTAINMENT BUSINESS:** Any establishment or business wherein adult live entertainment is shown for observation by patrons.

**ADULT MINI MOTION PICTURE THEATER:** 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 chapter, for observation by patrons therein.

**ADULT MOTION PICTURE THEATER:** An enclosed building or premises 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 chapter, for observation by patrons therein. This does not include mini motion picture theaters.

**ADULT THEATER:** A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nudity, or live

performances that expose or depict specified sexual activities or specified anatomical areas.

**ADULT VIDEO STORE:** Any store which prominently displays or which receives a preponderance of its gross income during any calendar month from sale or rental of films, motion pictures, video cassettes, video reproductions, slides, computer media, or other visual representations that depict or describe specified sexual activities or specified anatomical areas as defined herein.

**APPLICANT:** The person who will operate the adult establishment, and shall include each of the following persons associated with that business:

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

**CHIEF OF POLICE:** The Chief of the City of Belmont Police Department, or his or her designee.

**EMPLOY, EMPLOYEE.** and **EMPLOYMENT:** Describe and pertain to any person who performs any service or entertainment upon the premises of an adult establishment whether or not the person is denominated an **EMPLOYEE**, independent contractor, agent, or otherwise. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

**ESCORT:** A person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, who, by example and not limitation, agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY:** A person or business that furnishes, offers to furnish, or advertises to furnish, or brokers escorts as one of its principal business purposes, for a fee, tip, or other consideration.

**ESTABLISHMENT:** Means and includes any of the following:

- (1) The opening or commencement of any adult establishment as a new business; or

- (2) The conversion of an existing business, whether or not a sexually oriented business, to any adult establishment; or
- (3) The addition of any adult establishment to any other existing adult establishment; or
- (4) The relocation of any adult establishment.

**LICENSEE:** Person(s) in whose name a license to operate an adult establishment has been issued.

**NUDE MODEL STUDIO:** Any place where a person who appears semi-nude, in a state of nudity, or who displays specified sexual activities or specified anatomical areas 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 or a college, junior college or university supported entirely or in part by public taxation; or in a structure:

- (1) 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
- (2) Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- (3) Where no more than one nude or semi-nude model is on the premises at any one time.

**OPERATES or CAUSES TO BE OPERATED:** To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated an adult establishment whether or not that person is an owner, part owner, or licensee of the business.

**NUDITY or STATE OF NUDITY:** The same meaning as found in the North Carolina General Statutes and common law pertaining to obscenity.

**PEEP SHOW;** See **ADULT ARCADE**

**PERSON:** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**SPECIFIED ANATOMICAL AREAS:** Means:

- (1) Less than completely and opaquely covered;
  - (a) Human genitals, pubic region,
  - (b) Buttock, or

- (c) Female breast below a point immediately above the top of the areola;  
or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES:*** Means:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts.

***TRANSFER of OWNERSHIP OR CONTROL OF AN ADULT ESTABLISHMENT:***

Means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of applicant; except that a mere substitution of a person as manager of an establishment shall only require filing with the Police Chief.
- (3) The establishment of a trust, gift, or other similar legal device which 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.  
(Ord. 99-02, passed 3-1-99)

***APPLICATIONS AND LICENSES***

**§116.10 CLASSIFICATIONS**

Adult establishments are classified as, but not limited to:

- (A) Adult arcades;
- (B) Adult bookstores;
- (C) Adult live entertainment business;
- (D) Adult mini motion picture theaters;
- (E) Adult motion picture theaters;
- (F) Adult theaters;
- (G) Adult video stores;

- (H) Escort agencies;
  - (I) Establishments offering body shampoos; and
  - (J) Nude model studios.
- (Ord. 99-02, passed 3-1-99)

**§116.11 LICENSE REQUIRED**

- (A) It is unlawful for any person to operate an adult establishment without a valid adult establishment license issued by the Police Chief.
  - (B) An application for a license must be made on a form prescribed by the Chief of Police, and submitted to the Code Enforcement Office. An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises.
  - (C) An adult establishment must obtain a permit under this article before any other permits may be issued, including zoning, building code permits, or improvement permits.
  - (D) The application may request and the applicant shall provide, information requested to allow the Chief of Police to determine if the applicant meets the qualifications required by this article.
  - (E) Licenses must be displayed in the establishment in a manner easily seen by the public.
- (Ord. 99-02, passed 3-1-99)

**§116.12 ISSUANCE OF LICENSE**

Within 30 working days after receipt of a completed application, the Chief of Police will approve or deny the issuance of a permit. Subject to compliance with the provisions of this chapter and other pertinent ordinances regulating the activity being applied for, the license will be issued unless an investigation finds any of the following:

- (A) An applicant is under 18 years of age; or
- (B) The application and investigation fee has not been paid; or
- (C) An applicant has over due fees, fines or penalties associated with the operation of an adult establishment; or

- (D) An applicant failed to provide information in order to determine the qualifications of the applicant under this article for issuance of the license, or falsely answered a question or request, for information on the application form; or
- (E) The applicant has been convicted of a felony within the last two years preceding the application. The fact the conviction is being appealed shall have no effect. Or
- (F) The applicant has be convicted of any sexually oriented crime under any local, state or federal law, or a conviction under the Mann Act, and less than five years has elapsed since the latter of the conviction or the date of release of confinement, probation, parole, or suspended sentence. An appeal shall have no effect.  
(Ord. 99-02, passed 3-1-99)

**§116.13 APPEAL**

An applicant whose application is denied, suspended, or revoked by the Chief of Police may appeal the denial in writing within 30 days to the City Council, which shall decide either to uphold the action or issue the license no later than the second regular monthly Board meeting after the receipt of the appeal. The applicant shall have the right to present evidence before the Board. The decisions to uphold the action of the Chief of Police or issue the license shall be based solely on the criteria set forth in this article. A suspension or revocation shall be stayed until decided by the Board.  
(Ord. 99-02, passed 3-1-99)

**§116.14 FEES**

Every application for an adult establishment license shall be accompanied by a \$500.00 non-refundable application and investigation fee. Additionally, every appeal pursuant to §116.13 shall be accompanied by a \$500.00 non-refundable appeal fee.  
(Ord. 99-02, passed 3-1-99)

**§116.15 TRANSFER OF LICENSE**

Unless a new application for a license is made, a licensee shall not transfer a license to another person or to another premises.  
(Ord. 99-02, passed 3-1-99)

***REGULATION AND PENALTIES***

**§116.30 INSEPCION**

A licensee or applicant shall permit representatives of the city to inspect the premises for the purposes of ensuring compliance with the law, at any time it is occupied or open for business.  
(Ord. 99-02, passed 3-1-99)

**§116.31 SUSPENSION**

The Chief of Police will suspend an adult establishment license for a period not greater than 60 days if the license has:

- (A) Violated or is not in compliance with this chapter or any other local, state or federal law; or
- (B) Refused to allow an inspection of the adult establishment premises as authorized by this chapter.  
(Ord. 99-02, passed 3-1-99)

**§116.32 REVOCATION**

- (A) The Chief of Police will revoke a license if a cause for suspension in the previous section occurs and the license has been suspended within the preceding 12 months.
- (B) The Chief of Police will revoke an adult establishment license if he or she determines that a licensee:
  - (1) Gave false or misleading information in the material submitted in the application process;
  - (2) Has allowed the possession, use, or sale of controlled substances on the premises; or
  - (3) Has allowed prostitution on the premises; or
  - (4) Has operated or worked in the adult establishment during a period of time when the licensee's license was suspended; or
  - (5) Has been convicted of a felony since the license was issued; or
  - (6) On two or more occasions within a 12 month period, an employee or performer of the adult establishment was convicted of any sexually oriented crime under any local, state or federal law which occurred on the premises; or
  - (7) Has allowed any act of sexual intercourse, masturbation, oral copulation, or sodomy to occur in or on the license premises.
- (C) The fact that conviction is being appealed shall have no effect on the revocation of the license.
- (D) When the Chief of Police revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult establishment license for one year from the date revocation became effective. If, subsequent to revocation, the Chief



of Police finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least 90 days have elapsed since the date of the revocation became effective.

(Ord. 99-02, passed 3-1-99)

**§116.33 DENIAL**

If the city denies the issuance of a license, or suspends or revokes a license, or denies an appeal, the city will send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action.

(Ord. 99-02, passed 3-1-99)

**116.34 ADDITIONAL REGULATIONS FOR ADULT ESTABLISHMENT**

- (A) A person commits an offense if the person allows another under the age of 18 years to enter or remain in or on the premises of an adult establishment.
- (B) 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 one foot candle as measured at the floor level. It shall be the duty of all employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (C) In businesses which offer adult live entertainment, the performers are required to perform on stages at least two feet high and separated from patrons by at least ten feet.

(Ord. 99-02, passed 3-1-99)

**§116.35 VIEWING OR OTHER ROOMS**

- (A) All private booths or rooms shall have only one occupant at a time. Additionally, there shall be no opening or glass of any kind between rooms or booths.
- (B) Entrances to rooms, booths or viewing areas (and to the aisles, walkways and hallways leading to rooms, booths or viewing areas) shall be free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain or other device.
- (C) 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.
- (D) It shall be the responsibility of the owners or operators to ensure the booths, rooms, and viewing areas remain unobstructed by any doors, wall, merchandise, display racks or other materials, at all times that any patron is on the premises.

(E) The operator or owner shall, during each business day, regularly inspect the walls between the rooms or booths to determine if any openings or holes exist.  
(Ord. 99-02, passed 3-1-99)

**§116.36 CRIMINAL ACTIVITY**

Any person who violates any provision of this article shall be guilty of a misdemeanor as stated in G.S. §14-4, and, upon conviction shall be subject to a fine of \$500.00, or imprisonment, or both.  
(Ord. 99-02, passed 3-1-99)

**§116.37 CIVIL INJUNCTION**

In addition to prosecution for criminal violations, any person who violates this article may be subject to all civil and equitable remedies stated in G.S. §153A-123, including abatement, injunction, and \$100.00 liability for licensing sanctions such as suspension or revocation.  
(Ord. 99-02, passed 3-1-99)

**§116.38 LIABILITY FOR THE CONDUCT OF OTHERS**

A licensee of an adult establishment is jointly and individually liable for violations of and offenses under this chapter by the employees of or performers in the adult establishment, and for all civil and criminal sanctions or remedies for such violations offenses, including but not limited to license suspension or revocation, prescribed herein.  
(Ord. 99-02, passed 3-1-99)