

**AN ORDINANCE REQUIRING THE DISPERSING OF SEXUALLY ORIENTED BUSINESSES AND LIMITING THEM TO SPECIFIED PLACES; PRESCRIBING DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES; AND PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES.**

**WHEREAS**, the McDowell County Board of Commissioners enacted on February 14, 2000 an Ordinance establishing a moratorium on Sexually Oriented Businesses in McDowell County pursuant to North Carolina General Statute 160A-181.1 expressly authorizing county regulation of sexually oriented businesses, being authority in addition to that contained in North Carolina General Statutes 153A-45 and 153A-121; and

**WHEREAS**, the McDowell County Planning Board and staff of the Planning Department have studied the secondary impacts and effects of sexually oriented businesses, all of which is a matter of record; and

**WHEREAS**, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the County; and

**WHEREAS**, the Planning Board has found by study of impacts in other counties and municipalities that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual assaults and other criminal activity; and

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of the County which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

**WHEREAS**, licensing is a legitimate and reasonable means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not allow their establishments to be used improperly or as places of illegal sexual activity or solicitation; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on the existing uses, including but not limited to businesses, schools, daycare facilities, religious institutions, parks and rural fire departments around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

**WHEREAS**, it is recognized that sexually oriented businesses, due to their nature, have serious secondary impacts, particularly when they are located in close proximity or each other, thereby downgrading the quality of life in the adjacent area; and

**WHEREAS**, family-oriented tourism is an important aspect of the local economy that would be negatively affected by increased crime and downgraded quality of life resulting from sexually oriented businesses; and

**WHEREAS**, the Board of Commissioners desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and

**WHEREAS**, the Board of Commissioners has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this County; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact and content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

**WHEREAS**, it is not the intent of the Board of Commissioners to condone or legitimize the distribution of obscene material, and the Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the County.

Pursuant to the authority granted by the Constitution and the legislature of the State of *North Carolina*, BE IT ENACTED BY THE BOARD OF COMMISSIONERS OF MCDOWELL COUNTY, NORTH CAROLINA:

### **Section 1. Purpose and Findings**

- A. **Purpose**. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the boundaries of the County. 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.
- B. **Findings**. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Board, and on findings incorporated in the cases of *City of Renton 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, Horry County and Myrtle Beach, S.C.; Richland County, S.C.; Charlotte-Mecklenburg County, N.C.; Winston Salem-Forsyth County, N.C.; Broward County, Florida; St. Johns County, Florida; Kansas City, Missouri; and also on 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 concurs with the findings contained in the Staff Report.

## **Section 2. Definitions**

**Adult** - means any individual who has attained the age of twenty-one (21) or more years.

**Adult Arcade** - means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, 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".

**Adult Bookstore** - means a bookstore:

1. Which receives a majority of its gross income during any calendar month from the sale or rental of 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; or
2. 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.

A commercial establishment may have other principal business purpose 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 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 which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

**Adult Cabaret** - means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

1. Persons who appear in a state of nudity or semi-nude; or
2. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
3. Films, motion pictures, videocassettes, slides or other photographic reproductions, which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

**Adult Establishment** - means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult live entertainment business, or massage business as defined in this section.

**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.

**Adult Live Entertainment Business** - means any establishment or business wherein adult live entertainment is shown for observation by patrons.

**Adult Mini Motion Picture Theatre** - means an enclosed building with viewing booths designed to hold patrons which 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.

**Adult Motel** - means a hotel, motel or similar commercial establishment which:

1. 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 which 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

2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

**Adult Motion Picture Theatre** - means enclosed adult 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 section, for observation by patrons therein. “Adult motion picture theatre” does not include any adult mini motion picture theatre as defined in this section.

**Adult Theatre** - means a theatre, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.

**County Official** - for purposes for this ordinance, particularly as regards enforcement, “county official” means the Planning Director of his/her subordinate officials designated by him/her.

**Employee** - means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not 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 sexually oriented business or occurring upon the premises of the sexual oriented 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.

**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.

**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.

**Establishment** - means and includes any of the following:

1. The opening or commencement of any sexually oriented business as a new business;

2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. The additions of any sexually oriented business to any other existing sexually oriented business; or
4. The relocation of any sexually oriented business.

**Licensee** - means a person in whose name a license to operate a sexually oriented business 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 a sexually oriented business.

**Massage** - means the manipulation of body muscular tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

**Massage Business** - means any establishment of business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.

**Nude Model Studio** - means 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 similar 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:

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.

**Nudity or a State Of Nudity** - means 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.

**Person** - means an individual, proprietorship, partnership, corporation, association, or other legal entity.

**Residential Structure** - means a dwelling which is occupied, available for occupancy, or currently under construction.

**Semi-Nude** or in a **Semi-Nude Condition** - means 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.

**Sexual Encounter Center** - means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. 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-nude.

**Sexually Oriented Business** - means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

**Sexually Oriented Devices** - means without limitation 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.

**Specified Anatomical Areas** - means:

1. Less than completely and opaquely covered:
  - a. Human genitals, public 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 Criminal Activity** - means any of the following offenses:

1. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or similar offenses to those described above under the criminal or penal code of other states or countries;
2. For which:
  - a. Less than five 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;
  - b. Less than ten 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
  - c. Less than ten 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.
3. 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.

**Specified Sexual Activities** - means:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy; or
3. Fondling or other erotic touching of human genitals, public regions, buttocks, or female breasts.

**Substantial Enlargement** - of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor area exist on the date this ordinance takes effect.

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



1. The sale, lease, or sublease of the business;
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
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.

### **Section 3. Classification**

Sexually oriented Businesses 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; and
9. Sexual encounter centers.

### **Section 4. License Required**

A. It is unlawful:

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the County Official pursuant to this ordinance.
2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the County Official pursuant to this ordinance.
3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.
4. For any person who operates a sexually oriented business to allow any person to perform or participate in any contest or exhibition who does not have a valid and current sexually oriented business employee license pursuant to this ordinance.

- B. An application for any license must be made on a form provided by the County Official.
- C. 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 County Official to determine whether the applicant meets the qualifications established in this ordinance.
- D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than individual, each individual who has a twenty-percent (20%) or greater financial interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.
- E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:
  - 1. If the applicant is:
    - a. An individual, the individual shall state his/her full legal name and any aliases and submit proof that he/she is twenty-one (21) years of age;
    - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
    - c. 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, and the name of the registered corporate agent and the address of the registered office for service of process.
  - 2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state:
    - a. The sexually oriented business's fictitious name; and
    - b. Submit the required registration documents.
  - 3. 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. Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and 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 is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
5. Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.
6. The single classification of license for which the applicant is filing.
7. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
8. The applicant's mailing address, residential address, any previous addresses in the past five years and e-mail address or web site (if applicable).
9. A recent photograph of the applicant(s).
10. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.
11. 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 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 (6) inches.
12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor accurately depicting the property lines and the structures containing any existing sexually oriented businesses within 1500 feet of the property to be certified; there property lines of any established religious institution/synagogue, school, public park or recreation areas, nursing home, daycare establishment, fire department or other use specified in Section 12, Subsection B, within 1500 feet of the property to be certified and the location of all residential structures within 1320 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.

13. If and applicant wishes to operate a sexually oriented business, other than an adult motel, which 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, under video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 14.
- F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the County Official the following information:
1. The applicant's full name or any other name (including "stage" names) or aliases used by the individual;
  2. Age, date, and place of birth;
  3. Height, weight, hair and eye color;
  4. Present residence address any previous addresses in the past five years and telephone number;
  5. Present business address and telephone number;
  6. Date, issuing state and number of driver's permit or other identification card information;
  7. Social Security number; and
  8. Proof that the individual is at least twenty-one (21) years of age.
- G. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:
1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the sheriff's department. Any fee for the photographs and fingerprints shall be paid by the applicant.
  2. 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, 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.

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.

### **Section 5. Issuance of License**

- A. Upon the filing of said application for a sexually oriented business employee license, the application shall be referred to the appropriate county departments for an investigation to be made on such information as is contained on the application. The investigation process shall be completed within forty-five (45) calendar days from the date the completed application is filed. After the investigation, the County Official shall issue a license, unless he/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. The applicant has failed to provide information reasonable 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 (21) years;
  3. The applicant has been convicted of a “specified criminal activity” as defined in this ordinance;
  4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or
  5. The applicant has had a sexually oriented business employee license revoked by the County Official or comparable license in any jurisdiction within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 10.
- B. Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to the address shown on the application.
- C. A license granted pursuant to paragraph (A) shall be subject to annual renewal upon the written application of the applicant received not less than thirty (30) calendar days before the license expires and a finding by the County that the

applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be 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 6.

- D. Upon the filing of said application for a sexually oriented business license, the application shall be referred to the appropriate county departments for an investigation to be made on such information as is contained on the application. The investigation process shall be completed within sixty (60) calendar days after receipt of the completed investigation report, the County Official shall approve or deny the issuance of a license to an applicant within fifteen (15) calendar days. The County Official shall approve the issuance of a license to an applicant unless he 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 twenty-one (21) years of age.
  2. An applicant is overdue in payment to the County of taxes, fees, fines, or penalties assessed against or imposed upon him/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. The applicant has been denied a license by the County Official to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
  5. An applicant has been convicted of a specified criminal activity defined in this ordinance.
  6. The premises to be used for the sexually oriented business have not been approved by the health department, fire marshal's office, and the planning and inspections department as being in compliance with applicable laws and ordinances.
  7. The license fee required by this ordinance has not been paid.
  8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.
- E. Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to the address shown on the application.

- F. A license granted pursuant to paragraph (D) shall be subject to annual renewal upon the written application of the applicant received not less than thirty (30) calendar days before the license expires and a finding by the County that the applicant has been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be 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 6.
- G. 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 sexually oriented business and the classification for which the license is issued pursuant to Section 3. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.
- H. The health department, fire marshal's office, and the planning and inspections department shall complete their certification that the premises is in compliance or not in compliance within thirty (30) days of receipt of the application by the County Official.
- I. A sexually oriented business license shall issue for only one classification as found in Section 3.

#### **Section 6. Fees**

- A. Every application for a sexually oriented business license (whether or a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee to be set in the amount specified in the McDowell County Fee Schedule.
- B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the County Official an annual non-refundable license fee within thirty (30) days of license issuance or renewal. The fee will be set in the amount specified in the McDowell County Fee Schedule.
- C. Every application for a new sexually oriented business employee license shall be accompanied by a non-refundable application and investigation fee to be set in the amount specified in the McDowell County Fee Schedule.
- D. In addition to the application and investigation fee required above, every sexually oriented business employee that is granted a license shall pay to the County Official an annual non-refundable license fee within thirty (30) days of license issuance or renewal. The fee will be set in the amount specified in the McDowell County Fee Schedule.

### **Section 7. Inspection**

- A. An applicant or licensee shall permit representatives of the Sheriff's Department, Health Department, Fire Marshal's Office, Planning Department and Building Inspections Department, or other county departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law.
- B. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time.

### **Section 8. Expiration of License**

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 4. Application for renewal shall be made at least (30) days before the expiration date, the license will expire.
- B. When the County Official denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

### **Section 9. Suspension**

- A. The County Official shall suspend a license for a period not to exceed thirty (30) days if he/she determines that a licensee or any employee of a licensee has:
  - 1. Violated or is not in compliance with any section of this ordinance;
  - 2. Refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance.
- B. Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to address shown on the application.

### **Section 10. Revocation**

- A. The County Official shall revoke a license if a cause of suspension in Section 9 occurs and the license has been suspended within the preceding twelve (12) months.
- B. The County Official shall revoke a license if he/she determines by a preponderance of the evidence that one or more of the following findings is true that:



1. A licensee gave false or misleading information in the material submitted during the application process;
2. A licensee has allowed possession, use, or sale of controlled substances on the premises;
3. A licensee has allowed prostitution on the premises;
4. A licensee operated the sexually oriented business during a period of time when the licensee's license was suspended;
5. 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; or
6. A licensee is delinquent in payment to the County or State for any taxes or fees past due.

Each revocation under (A) or (B) shall be documented in writing, a copy of which shall be mailed to the licensee by first class mail to the address shown on the license.

- C. When the County Official revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective.
- D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek judicial review of such administrative action in any court of competent jurisdiction.

### **Section 11. Transfer of License**

- A. 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.

### **Section 12. Location of Sexually Oriented Businesses**

- A. A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business within 2,000 feet of any residential structure.
- B. A person commits a misdemeanor if the person operates or causes to be operated a sexually oriented business within 2,000 feet of:

1. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
  2. A public or private 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, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.
  3. A public or private park or recreational area which has been designated for park or recreational activities including but not limited to park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public or private land within the county;
  4. A fire department or emergency service facility;
  5. An entertainment or tourism oriented business which is oriented primarily towards children or family entertainment; or
  6. A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State; or
  7. A rest home, nursing home, or family-care facility; or
  8. A group home or foster care facility.
- C. A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 2,000 feet of another sexually oriented business.
- D. A person commits a misdemeanor if that person causes or permits the operation or establishment of a sexually oriented business on a property in McDowell County that does not have direct access from a federal aid primary system highway as designated by the federal government.
- E. A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

- F. For the purpose of Subsection B of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest property line of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection B. 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.
- G. For purposes of Subsections A & C of this Section, the distance between a residence and a sexually oriented business or between two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the nearest property line of the structure in which each residence or business is located.
- H. Nothing herein is intended to or shall be construed to preempt, modify, or repeal any other land use regulation applicable to any property or its use in the County, but instead this Ordinance is intended to and shall be in addition thereto.

### **Section 13. Additional Regulations for Adult Motels**

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments 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 establishment is an adult motel as that term is defined in this ordinance.
- B. A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.
- C. For purposes of Subsection B of this section, the term “rent” or “sub-rent” mean the act of permitting a room to be occupied for any form of consideration.

### **Section 14. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment**

- A. 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, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - 1. Upon application for a sexually oriented business 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 and 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 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 County 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 County.
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 station. 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 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 which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection 1 of this Section.
7. No viewing room may be occupied by more than one person at any time.
8. Regardless of the square footage of the premises or any section thereof, each sexually oriented business other than an adult motel 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.

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.

#### **Section 15. Additional Regulations for Escort Agencies**

- A. An escort agency shall not employ any person under the age of twenty-one (21) 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 (21) years.

#### **Section 16. 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 prosecution under this subsection if the person under twenty-one (21) years 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 which 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.

### **Section 17. Additional Regulations Concerning Public Nudity**

- A. It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears 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.
- C. It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- D. It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

### **Section 18. Prohibition Against Youth in a Sexually Oriented Business**

A person commits a misdemeanor if the person allows a person under the age of twenty-one (21) years on the premises of a sexually oriented business.

### **Section 19. Prohibition of Sale or Consumption of Alcohol**

Sale or consumption of alcohol on the premises of a sexually oriented business shall be prohibited. Violations shall be a misdemeanor.

### **Section 20. Exterior Portions of Sexually Oriented Businesses**

- A. 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.
- B. Except as permitted by Section 21 below, 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.
- 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 sexually oriented business.
1. Parking spaces shall be not less than nine (9) feet in width and eighteen (18) feet in length
  2. Aisle width between rows of parking spaces shall be not less than twelve (12) feet in width (to accommodate maneuvering and one-way traffic) where angled parking spaces are used and not less than twenty-four (24) feet (to accommodate maneuvering and two-way traffic) where perpendicular parking spaces are used.
  3. Handicapped parking spaces shall be provided in accordance with North Carolina State Building Code.
- D. All parking areas and exterior entrance/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.
1. Side and rear yard setbacks of thirty (30) feet shall be observed for buildings or parking. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of planting of evergreen and/or deciduous trees spaced no less than thirty (30) feet apart. Such trees shall be at least six (6) feet high and one (1) inch caliper (trunk diameter at chest height) at time of planting and shall reach a height of no less than twenty (20) feet a maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way.
  2. Walls, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved by County Official. Considerations include but are not limited to:
    - a. Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms, and/or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link

fencing is not acceptable in meeting the performance criteria of this ordinance.

- b. Installation of supplemental vegetation and/or site features may be required if existing vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.
- F. The sexually oriented business licensee shall be responsible for proper maintenance of parking and buffer areas required by this ordinance.
- G. Any violation of this Section shall be a misdemeanor.

### **Section 21. Signage**

Any sexually oriented business shall prominently display on the outside of the building or in close proximity thereto a sign identifying the premises as an adult establishment and containing the license number under which it is operated. The sign may also indicate the name by which the establishment does business as, so long as the name does not contain vulgar or offensive language or make references, direct or implied, to specified sexual activities or specified anatomical areas. No other outside signage shall be permitted.

### **Section 22. Hours of Operation**

No sexually oriented business, 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. on weekdays and Saturdays, or during the period from eleven o'clock (11:00) P.M. Saturday until eight o'clock (8:00) A.M. Monday.

### **Section 23. Exemptions**

- A. It is a defense to prosecution under Section 27 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 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
  - 3. In a structure:
    - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and



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

**Section 24. Injunction**

- A. A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this ordinance is subject to a 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 five hundred (\$500.00) dollars or thirty (30) days imprisonment. Each day any such violation continues or occurs in is a separate offense or violation.
- B. Notwithstanding the foregoing, licensing decisions including issuance, revocation, and suspension, based upon violations of this ordinance, shall be made by the County Official based upon a preponderance of the evidence.

**Section 25. 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.

**Section 26. Conflicting Ordinances Repealed**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed, to the extent of such conflict only.

**Section 27. Effective Date**

This ordinance shall be enforced from and after February 12, 2001.

s/Michael A. Thompson  
Chairman  
Board of Commissioners of  
McDowell County, NC

s/Carrie Padgett  
Clerk to the Board of Commissioners  
McDowell County, NC