

TOWN OF DILLSBORO
An Ordinance Regulating
SEXUALLY ORIENTED BUSINESSES

An Ordinance setting forth the regulatory and licensing requirements for sexually oriented businesses located within the corporate limits of the Town of Dillsboro.

Section 1 Purpose.

The purpose of this Ordinance shall be to set forth the regulatory and licensing requirements for adult establishments located within the Town of Dillsboro. 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 these 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 regulation of sexually oriented businesses, without limiting alternative avenues of communication and at the same time, requiring the business to carry its share of financing administrative and enforcement activities.

Section 2. Definitions

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

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, 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)

(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, greeting cards, 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.

Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment that (omit-regularly)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.

Adult establishment means an adult bookstore, adult cabaret, adult motel, adult motion picture theater, adult 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 .

Adult live entertainment means any performance of or involving the actual presence of real people which exhibits specified sexual activities or 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. This shall apply whether the entertainment is presented on a regular, sporadic, or transient basis.

Adult Motel means a hotel, motel or similar commercial establishment that:

- (a) Offers accommodation to the public for any form of consideration and 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 adult type of 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.

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 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.

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.

Employee means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, 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.

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 April 1, 1999 .

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.

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.

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.

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

Establishment means and includes any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (c) The additions of any sexually oriented business to any other existing sexually oriented business; or
- (d) The relocation of any sexually oriented business.

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.

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

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 for a profit or charges for the services it offers.

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.

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.

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

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

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, 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 IV of this ordinance.

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 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, 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:

- (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-nude.

Sexually oriented devices means without limitation any artificial or simulated specified anatomical area or their 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, 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, or
- (3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

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.

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

- (B) The sale, lease, or sublease of the business;
 - (b) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
 - (c) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for the transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Town means Town of Dillsboro, North Carolina

Town Clerk means chief administrative Town official. The Town Clerk is responsible for the enforcement of this Ordinance.

Section 3 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 Town 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 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 or 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, commencing on the date of issuance of the license. 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.

- (C) All license 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.

Section 4 Application procedures.

(A) Adult establishment business license. 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 Town Clerk. 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 Town Clerk and shall require the following information:

(1) 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, and the residence addresses for the past two years, the business and home telephone numbers, occupation, date and place of birth, social security number, drivers license number, and a recent photograph of the applicant.

(2) (a) 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 Jackson County parcel identification number on which the business resides.

(b) If the persons identified as the fee owner of the tract of land in item (a) is/are not also the owner of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document evidencing the legally enforceable right of the owners or proposed owners 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;

(c) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses 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 this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

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

(D) The names, residence addresses for the past two years, social security numbers and dates of births of all partners, if the

applicant is a

(E) partnership; and if the applicant is a corporation, the same information for all corporate officers, directors, and individuals having a ten (10%) percent or greater interest in the corporation.

(4) A statement from the applicant, or from each partner, or from each corporate officer, director, or ten 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. 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 North Carolina or any other comparable violation of the laws of this state or the laws of any other state.

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

(6) 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.

(7) All applicants shall submit to fingerprinting by the Jackson County Sheriff's Department. 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 Jackson County Sheriff's Department.

(8) 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 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 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.* All persons desiring to secure a license under the provisions of this Ordinance to be an entertainer shall make a verified application to the Town Clerk. All applications shall be made in person to the Town Clerk or his designee. All applications shall be submitted on a form supplied by the Town Clerk and shall require the following information:

(1) 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, and 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.

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

(3) A statement from the applicant, that the applicant 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) 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 or any other comparable violation of the laws of this state or the laws of any other state.

(4) Photographs shall be taken of the applicant by the Jackson County Sheriff's Department. The Jackson County Sheriff shall have the photographs processed and retain the copies.

(5) All applicants shall submit to fingerprinting by the Jackson County Sheriff's Department. 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 Jackson County Sheriff's Department.

(6) The applicant shall present to the Town Clerk 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:

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

(b) A state-issued identification card bearing the applicant's photograph and date of birth;

(c) An official and valid passport issued by the United States of America;

- (d) An immigration card issued by the United States of America;
- (e) Any other form of picture identification issued by a governmental entity that is deemed reliable by the Town manager; or
- (f) Any other form of identification deemed reliable by the Town Clerk.

(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 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 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 entertainer licenses, the Town Clerk shall immediately commence investigation of the application as follows:

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

- (a) Transmit a copy of the application to the Code Enforcement Officer, the Zoning Board of Adjustment and to the Jackson County Sheriff's Department.
- (b) The Town Clerk, no later than 15 working days after the receipt of the application, shall determine 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 codes. In the event that the Town Clerk fails to make such a determination within the prescribed time period, the Town Clerk shall proceed with processing the application.
- (c) The Board of Zoning Adjustment shall review the application to confirm compliance with the Zoning Ordinance. If the Board confirms compliance then a special exception shall be granted and the findings transmitted to the Town Clerk within 20 working days of receipt of the application.
- (d) The County Sheriff shall report to the Town Clerk no later than 20 working days after the receipt of the application by the County Sheriff the results of his/her investigation of the applicant. In the event that the County Sheriff fails to report to the Town Clerk within this time period, the Town Clerk shall proceed with processing the application.
- (e) Upon completion of his/her investigation, payment of the applicable license fee, and upon receipt of the report of the Board of Zoning Adjustment and the County Sheriff (or upon expiration of the time periods referenced above without receiving a report), the Town Clerk shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Town Clerk exceed 45 working days from the date the application is received by the Town Clerk, unless consented to by the applicant.

(G) In the case of an application for a license for an entertainer, the Town Clerk shall:

- (a) Transmit a copy of the application to the Jackson County Sheriff's Department.
- (b) The County Sheriff shall report to the Town Clerk no later than 20 working

days after receipt of the application the results of his/her investigation of the applicant. In the event that the County Sheriff fails to report to the Town Clerk within this time period, the revenue manager 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 County Sheriff (or upon expiration of either or both time periods referenced above without receiving a report), the Town Clerk shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Town Clerk exceed 60 days from the date the application is received by the Town Clerk, unless consented to by the applicant.

(D) *Reasons for disapproval.* The Town Clerk shall deny the license application for one or more of the following reasons:

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

(2) 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.

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

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

(5) The applicant for a Sexually Oriented Business has not received special exception from the Zoning Board of Adjustment.

(E) *Notice of approval or disapproval.*

(1) Upon a determination by the Town Clerk of the disapproval or approval of the application, the Town Clerk shall notify the applicant by personal delivery or certified mail, return receipt requested, 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.

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

(F) *Changes to application.* All applicants shall notify the Town Clerk of any changes to

the application within five working days of the date the change occurs.

Section 5 Prohibited acts and conduct.

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

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

(C) 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.

(D) No owner, operator, manager, employee or entertainer, nor any customer or patron, shall perform any specified sexual activities as defined in this 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 this Ordinance, or participate in any act of prostitution while on the premises of the adult establishment.

(E) 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.

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

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

(H) 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.

(H) 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.

Section 6 License; Posting and display.

(A) 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.

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

Section 7 Inspections

All adult establishments shall permit representatives of the Jackson County Sheriff's Department, and all 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.

Section 8 Suspension of revocation of licenses

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

(1) 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

(2) 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

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

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

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

(6) The owner or operator, or any partner, or 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

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

(B) 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 Town Clerk shall take, within five working days after the hearing, any of the following actions:

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

(2) Revoke the license; or

(3) Place the license holder on administrative probation or a period of up to one year, on the condition that no further violations of this Ordinance occur during the period of probation; or

(4) Take no action

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

(D) 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 Superior Court of Jackson County within 30 days of receipt of the notice of suspension, revocation or probation.

Section 9 License renewal

(A) A license may be renewed by making application to the Town Clerk on application forms provided for that purpose. Any license issued under this Ordinance shall expire as of the end of the 12 month period from the date of its issuance, and renewal applications for such licenses shall be submitted no sooner than 45 days prior to expiration and no later than the city business day immediately preceding the date of expiration of the license.

(B) Upon timely and proper application for renewal and the payment in full of the license fee, the Town Clerk 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 period of 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 12 month period. All applications for renewal of license shall be

processed in the manner provided for the issuance of the initial license.

SECTION 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.

SECTION 11. Locational Restrictions.

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

(A) The sexually oriented business may not be located or operated within 1,500 feet of:

- (1) A church, synagogue, or regular place of worship;
- (2) A public or private elementary or secondary school;
- (3) A public library;
- (4) A public park or playground;
- (5) A licensed day-care center;
- (6) An entertainment business that is oriented primarily towards children.
- (7) Another sexually oriented business.

(B) 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 (A) above.

SECTION 12. Non-Conforming Uses.

(A) Any business lawfully operating on the effective date of this ordinance that is in violation of the locational 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 sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such non-conforming uses shall not be increased, enlarged, 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 sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later-established business is non-conforming.

(B) 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.

SECTION 13. Additional Regulations for Adult Motels.

(A) 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 10 hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this ordinance.

(B) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or sub-rents a sleeping room to a person and, within 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 terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

SECTION 14. Additional Regulations for Escort Agencies.

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

SECTION 15. Additional Regulations for Nude Model Studios.

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

(B) 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 was in a restroom not open to the public view or visible by any other person.

(B) 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.

(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 16. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, and Live Performances.

(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, other video

reproduction, or live performance that 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 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 designed 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 6 inches. The Town Clerk 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 Town Clerk or his designee.

(4) 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.

(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 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 stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection (5) 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 (1) of this section.

(7) No viewing room may be occupied by more than one person at any time.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 5.0 foot-candle as measured at the floor level.

(9) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and 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.

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

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

(12) 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.

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

(14) The operator of the sexually oriented business 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 composition board or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under subsections (1) through (14) of this section is in violation of this ordinance if he/she knowingly fails to fulfill that duty.

SECTION 17. 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) 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.

(C) 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:

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

(2) 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.

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

(E) A violation of any provision of this Section shall constitute a violation of this ordinance.

SECTION 18. Signage.

(C) 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 as permitted in the Zoning Ordinance for the Town of Dillsboro.

(D) Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.

SECTION 19. Massages 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.

SECTION 20. Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and ten o'clock (10:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and twelve o'clock (12:00) P.M. on Sundays.

SECTION 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.

SECTION 22. Notices.

(A) Any notice required or permitted to be given by the Town Clerk 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 United States mail, postage prepaid, return receipt requested, 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 Town Clerk. 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 service, the Town Clerk or his designee shall cause it to be posted at the principal entrance to the establishment.

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

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

SECTION 23. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid business license or in violation of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

SECTION 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.

SECTION 25. Conflicting Ordinances Repealed.

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

SECTION 26. Effective Date.

This ordinance shall be enforced from and after _____, 1999.

ADOPTED IN OPEN SESSION THIS THE ____TH DAY OF _____, 1999.

W. Wade Wilson, Mayor

ATTEST:

Herb Nolan, Town Clerk