

AMENDED
ORDINANCE REGULATING ADULT ESTABLISHMENTS
SEXUALLY ORIENTED BUSINESSES

WHEREAS, the provisions of this article are adopted by the Pitt County Board of Commissioners under the authority granted by GS § 153A-(45-50); 153A-121; 153A-(134-135); and 160A-181.1

WHEREAS, the Board of Commissioners recognizes that important and substantial governmental interests provide a constitutional basis for reasonable regulation of the time, place and manner under which adult and sexually oriented businesses operate; and

WHEREAS, for the purpose of preventing harmful secondary impacts such as neighborhood blight, increases in crime and decreases in property value, this article is adopted by the Board of Commissioners to regulate adult and sexually oriented businesses, as hereby defined, located in the County. From and after the effective date of this ordinance, this ordinance shall apply to every building, lot, tract or parcel of land within unincorporated Pitt County, in all municipalities where the Pitt County Sheriff provides law enforcement patrol, and in any incorporated municipality that by Resolution requests enforcement of this Ordinance within its jurisdiction; and

WHEREAS, the Board of Commissioners has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific location requirements before they commence business; and

WHEREAS, the regulations contained in this ordinance shall not repeal, impair, abrogate or interfere with any existing easements, covenants, deed restrictions, setback requirements, rules, definitions, or regulations previously adopted pursuant to law in any established zoning district in Pitt County. However, where these regulations impose greater restrictions, the provisions of these regulations shall govern.

AND, WHEREAS, the regulations contained in this Ordinance shall not duplicate or contradict state law or infringe upon a liberty guaranteed by the State or Federal Constitution.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF PITT ORDAINS:

1. PURPOSE.

1.1. Pitt County is committed to protecting the general welfare of the County through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses. It seeks to reduce and eliminate the deleterious effects of sexually oriented businesses while preserving constitutionally protected forms of expression. Pitt County finds that sexually oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse consequences, and finds that such effects are contrary to the general welfare of the County. The County recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place and manner under which sexually oriented businesses operate; and that, therefore, the County has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific location requirements before they commence business, as provided for in this article. The County finds that the licensing of sexually oriented businesses is necessary to ensure compliance with the location and zoning requirements of such businesses. The County finds that sexually oriented businesses in other communities have been used for unlawful sexual activities, including prostitution, and sexual encounters of a casual nature. The concern over sexually transmitted diseases is a legitimate health concern of the County. The provisions of this article shall not be construed as permitting any use, activity, or structure that is otherwise prohibited, illegal, or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that is subject to constitutional protection.

2. DEFINITIONS.

2.1. **Adult Arcade (also known as "peep show")** - any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically-controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed are characterized as depicting or describing "specified sexual activities" or "specified anatomical areas", as herein defined.

2.2. **Adult bookstore or adult video store** - any establishment which has a substantial (over 25% of total retail space) portion of its stock-in-trade and offers for sale or rental for any form of consideration any one or more of the following:

2.2.(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that are characterized by an emphasis on depiction or description of "specified sexual activities" or "specified anatomical areas"; or

2.2.(b) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

2.3. **Adult Business** - any business activity, club or other establishment which permits its employee, members, patrons or guests on its premises to exhibit any specified anatomical areas before any other person or persons.

2.4. **Adult cabaret** - a nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits or displays as one of its principal business purposes:

2.4.(a) Persons who appear nude or semi-nude; or

2.4.(b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

2.4.(c) Films, motion pictures, videocassettes, slides, or other photographic reproductions which depict or describe "specified sexual activities" or "specified anatomical areas."

2.5. **Adult motel** - a hotel, motel or similar commercial establishment that:

2.5.(a) Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes; or

2.5.(b) Offers a sleeping room for rent for a period of time that is less than ten hours; or

2.5.(c) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of less than ten hours.

2.6. **Adult motion picture theater** - a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe "specified sexual activities" or "specified anatomical areas."

2.7. **Adult theater** - a theater, concert hall, auditorium, or similar establishment characterized by (activities featuring) the exposure of "specified anatomical areas" or by "specified sexual activities".

2.8. **Applicant** - the person who will operate the sexually oriented business, and shall include each of the following persons associated with that business:

2.8.(a) The owner of a sole proprietorship;

2.8.(b) Each member of a firm, association or general partnership;

2.8.(c) Each general partner in a limited partnership;

2.8.(d) The manager of an establishment operated by a corporation;

2.8.(e) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

2.9. **Employ, employee and employment** - describes and pertains to any 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.

2.10. **Escort** - a person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees to privately model lingerie or to privately perform a striptease for another person.

2.11. **Escort agency** - a person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.

2.12. **Establishment** - is and includes any of the following:

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

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

2.12.(c) The addition of any sexually oriented business to any other existing sexually oriented business; or

2.12.(d) The relocation of any sexually oriented business.

2.13. **Licensee** - a person(s) in whose name a license to operate a sexually oriented business has been issued.

2.14. **Massage Parlor** - an establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios or massage parlors, where massage involves the massage or touching of specified anatomical areas of the body.

2.15. **Operates or causes to be operated** - to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

2.16. **Nudity or a state of nudity** -

2.16.(a) The appearance of a human anus, male genitals, or female genitals; or

2.16.(b) A state of dress which fails to opaquely cover a human anus, male genitals, or female genitals.

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

2.18. **Semi-nude** - a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

2.19. **Sexual encounter center** - a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female person and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

2.20. **Sexually oriented business** - an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, massage parlor, adult motion picture theater, adult theater, escort agency, sexual encounter center, or any combination of the foregoing.

2.21. **Specified anatomical areas** - less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

2.22. **Specified sexual activities** - includes any of the following:

2.22.(a) Human genitals in a state of sexual stimulation, arousal, or tumescence; or

2.22 (b) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or

2.22.(c) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or

2.22.(d) Masturbation, actual or simulated; or

2.22.(e) Masochism, erotic or sexually-oriented torture, beating or the infliction of pain; or

2.22 (f) Erotic or lewd touching, fondling, or other contact with an animal by a human being; or

2.22 (g) Human excretion, urination menstruation, vaginal or anal irrigation.

2.23. **Transfer of ownership or control of a sexually oriented business** - includes any of the following:

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

2.23.(b) Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of "applicant"; except that a mere substitution of a person as manager of an establishment shall only require filing a notice with the Code Enforcement Officer and Sheriff of Pitt County.

2.23.(c) 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.

2.24 **Total retail space** - any space within the structure that is used for the direct sale of merchandise to the public and storage areas for those items.

3. SEXUALLY ORIENTED BUSINESSES ARE CLASSIFIED AS FOLLOWS:

3.1. Adult arcades.

3.2. Adult bookstores or adult video stores.

3.3. Adult cabarets.

3.4. Adult motels.

3.5. Adult motion picture theaters.

3.6. Adult theaters.

3.7. Massage Parlors

3.8. Escort agencies.

3.9 Sexual encounter centers.

4. LICENSE REQUIRED.

4.1. It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license approved by the Code Enforcement Officer pursuant to this article.

4.2. An application for a license must be made on a form prescribed by the Code Enforcement Officer. An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises. The Property Tax parcel numbers for the business location shall be given.

4.3. The application may request and the applicant shall provide such information as to enable the Code Enforcement Officer to determine whether each applicant meets the qualifications established in this article.

4.4. Each applicant must be qualified in accordance with this article and each applicant shall be considered a licensee if a license is granted.

4.5. Each applicant must request and receive a special use permit when required by any local zoning ordinances.

5. ISSUANCE OF LICENSE.

5.1. Within 30 days after receipt of a completed application, the County will approve or deny the issuance of a license to an applicant for a sexually oriented business license. The County will approve the issuance of a license to an applicant unless it finds one of more of the following to be true:

5.1.(a) An applicant is under 18 years of age.

5.1.(b) The license fee required by this section has not been paid.

5.1.(c) Applicant is delinquent in payment to Pitt County of ad valorem taxes, sales taxes, the annual license fee, fees, fines, penalties, or any other fee or tax related to

the sexually oriented business or other business of the licensee, assessed against or imposed upon the applicant in relation to a sexually oriented business.

5.1.(d) An applicant has failed to provide information required in order to determine the qualifications of the applicant under this article for issuance of the license, or has falsely answered a question or request for information on the application form required.

5.1.(e) An applicant or the proposed establishment is in violation of, or is not in compliance with this article or other provisions of this Code, including local zoning requirements.

5.1.(f) An applicant has been convicted of a violation of a provision of this article, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

5.1.(g) The Sheriff of Pitt County shall make a determination to the Code Enforcement Officer based on a check of any state, federal and/or local repository for criminal history to determine if an applicant has been convicted of a crime involving:

5.1.(g)-1 Any offense described in G.S. Chapter 14 (Articles 7A, 26, 26A, 27, 37, or 39); or any similar offenses to those described above under the criminal or penal code of North Carolina, other states, Pitt County, or other counties, cities, or other countries; or facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which

5.1.(g)-1.1 Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

5.1.(g)-1.2 Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction,

whichever is the later date, if the conviction is of a felony offense; or

5.1.(g)-1.3 Less than five years have elapsed since the date of the last conviction or the date of release from confinement of 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.

5.1.(g)-1.4 The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

5.1.(g)-1.5 An applicant who has been convicted of an offense listed above may qualify for a sexually oriented business license only when the period required by this article has lapsed.

5.1.(g)1.6 The applicant has failed to make application using a legal name or has failed to produce a valid state driver's license or a valid state identification card.

5.2. The license, if granted, shall state on its face the legal name of the person or persons to whom it is granted, the classification of sexually oriented business for which it is granted, the expiration date, and the address of the sexually oriented business. Licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

6. APPEAL.

6.1. An applicant whose application is denied, suspended or revoked by Code Enforcement Officer, may appeal such action in writing within 30 days to the Pitt County Board of Adjustment, who shall hear the appeal and decide either to uphold the action of the Code Enforcement Officer or to issue the license not later than sixty (60) days after receipt of the appeal. The applicant or licensee shall have the right to present evidence before the Board of Adjustment. The decision to uphold the action of the Code Enforcement Officer or issue the license shall be based solely on the criteria established in this article for the action by the Code Enforcement Officer. A

suspension or revocation shall be stayed during the pendency of an appeal to the Board of Adjustment.

7. FEES:

7.1. Every sexually oriented business shall submit a nonrefundable business license fee of \$1,000.00 upon application for a sexually oriented business license. If the license is granted, an annual renewal application and license fee of \$200.00 shall become due and payable on the anniversary date of the issuance of the original license.

7.2. A substitution of a manager of the business which occurs during any license year shall require a completed application form on the new person be filed with the Code Enforcement Officer within 30 days of the occurrence, and a \$200.00 investigation fee paid.

7.3. All license applications and fees shall be submitted to Pitt County.

8. LOCATION

8.1. Overconcentration. No more than one (1) sexually oriented business shall be located in any one thousand three hundred and twenty (1320) foot radius (determined by a straight line measured from building to building and not by street distance). This regulation is necessary to prevent an overconcentration of sexually oriented businesses and the creation of a de facto downgrading or blighting of surrounding neighborhoods.

8.2. Residential Proximity.

8.2.(a) No sexually oriented business shall be located within a one thousand three hundred twenty (1320) foot radius (determined by a straight line measured building to building and not by street distance) of any place of worship, a residential dwelling, a school (public or private), specialty school, day-care facility, or a lot or parcel of land on which a public playground, public swimming pool, or public park is located. Special regulation of these establishments is necessary to insure that deleterious secondary effects which can reasonably be expected to result from the inappropriate location or concentration of sexually oriented businesses and these adverse effects will not contribute to a downgrading or

blighting of surrounding residential districts or certain other districts which permit residential uses.

9. NON-CONFORMING SEXUALLY ORIENTED BUSINESS

9.1 Any sexually oriented business lawfully operating on the date that this ordinance becomes effective, that is in violation of this article shall be deemed a nonconforming use.

9.2 Any use which is determined to be nonconforming by application of the provisions of this section shall be permitted to continue for a period not to exceed one year from the date this ordinance first became effective.

9.3 Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use.

9.4 If a nonconforming use is discontinued for a period of one hundred eighty (180) days or more it may not be reestablished.

9.5 If two (2) or more adult businesses or sexually oriented businesses are within one thousand three hundred twenty (1,320) feet of one another and otherwise in a permissible location, the business which was first established and continually operating at its present location shall be considered the conforming use and the later established business(es) shall be considered nonconforming.

9.6 A sexually oriented business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of a dwelling, church, house of worship, residential dwelling, day care center, school, playground, public swimming pool or public park within one thousand three hundred twenty (1,320) feet of the sexually oriented business.

10. INSPECTION.

10.1. A business license applicant or licensee shall permit representatives of the Pitt County Sheriff's Department or any other county, city, state, or federal department, division, or agency that enforces codes, regulations, ordinances or statutes relating to human health, safety or welfare or structural safety, to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

10.2. The provisions of this article do not apply to areas of an adult motel which are currently being rented by the customer for use as a permanent or temporary habitation.

11. EXPIRATION OF LICENSE.

11.1. All licenses shall expire one year from the date of issuance and may be renewed only by making application as provided in this article.

12. SUSPENSION.

12.1. The Code Enforcement Officer is authorized to, and will, suspend a sexually oriented business license for a period not to exceed 30 days if the Pitt County Sheriff's Department and/or inspections department determines that a business licensee has:

12.2. Violated or is not in compliance with this article or with any other requirements of this Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment; or

12.3. Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or

12.4. Permitted illegal gambling by any person on the sexually oriented business premises; or

12.5. Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

13. REVOCATION.

13.1. The Code Enforcement Officer is authorized to, and will, revoke a license if a cause for suspension occurs and the license has been suspended within the preceding 12 months.

13.2. The Code Enforcement Officer is authorized to, and will, revoke a sexually oriented business license if the Sheriff's Department determines that a business licensee:

13.2(a) Gave false or misleading information in the material submitted during the application process,

including, but not limited to, the use of a name other than a legal name to procure a license; or

13.2(b) Has allowed the possession, use, or sale of controlled substances on the premises; or

13.2(c) Has allowed a person to dance, perform, or otherwise appear in a state of nudity or semi-nudity at any adult business or sexually oriented business at a distance of less than five (5) feet from any patron in such establishment. In addition the proprietor of such business shall have a duty to prevent any physical contact between any patron of such business and any person in a state of nudity or semi-nudity on the premises.

13.2(d) Has allowed prostitution on the premises; or

13.2(e) Has operated or worked in the sexually oriented business during a period of time when the licensee's license was suspended; or

13.2(f) Has been convicted of an offense referenced in section 5 of this ordinance for which the time period required has not lapsed; or

13.2(g) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime as referenced in section 5 of this ordinance for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed; or

13.2(h) Has allowed any act of sexual intercourse, masturbation, oral copulation, or sodomy to occur in or on the licensed premises; or

13.2(i) Is delinquent in payment to the County of Pitt ad valorem taxes, sales taxes, or the annual license fee, or any other fee or tax related to the sexually oriented business or other business of the licensee.

13.3. When the Code Enforcement Officer revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective.

13.3(a) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

14. SEVERABILITY.

14.1 Each and every provision of this Ordinance is independent and stands alone. If any provision, section, part, paragraph, phrase, or sentence is found to be invalid, all other provisions, parts, paragraphs, phrases, and sentences shall remain valid and in full force and effect.

15. ENFORCEMENT:

15.1 Any person who violates this article shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with Section 14-4(a) of the North Carolina General Statutes.

15.2 This article may be enforced against any person who is in violation by an appropriate equitable remedy issuing from a court of competent jurisdiction as provided for in Section 153A-123(d) of the North Carolina General Statutes.

15.3 This article may be enforced against any person who is in violation by injunction and order of abatement as provided for in Section 153A-123(e) of the North Carolina General Statutes.

15.4 Each day's continuing violation of this article by any person is a separate and distinct offense.
As used herein, "person" shall include:

15.4(a) The agent or operator in charge of the establishment, business, premises, structure or facility.

15.4(b) The owner of the building, establishment, premises, structure or facility when such owner knew or reasonably should have known the nature of the business located therein.

15.4(c) The owner of the business or the manager of the business.

16. JURISDICTION.

This ordinance shall apply to every building, lot, tract or parcel of land within unincorporated Pitt County, in all

municipalities where the Pitt County Sheriff provides law enforcement patrol, and in any incorporated municipality that by Resolution requests enforcement of this Ordinance within its jurisdiction.

17. EFFECTIVE DATE.

This Amended Ordinance shall be in full force and effect on and after December 16, 2003 and shall replace the Ordinance which first became effective on October 7, 2002. All enforcement action shall be based upon the effective date of October 7, 2002.

PITT COUNTY BOARD OF COMMISSIONERS

BY: _____
CHAIRMAN

ATTEST:

SUSAN J. BANKS
CLERK TO THE BOARD