

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. GENERAL BUSINESS AND LICENSING REGULATIONS**
- 111. PEDDLERS AND SOLICITORS**
- 112. TAXICABS**
- 113. WRECKER AND TOW SERVICES**
- 114. SEXUALLY ORIENTED BUSINESSES**

CHAPTER 110: GENERAL BUSINESS AND LICENSING REGULATIONS

Section

General Provisions

110.01 Yard sales

Privilege License Tax

110.15 Definitions

110.16 License tax schedule

110.17 License tax upon certain businesses; licenses as personal privilege and not transferable; conditions applicable to licenses

110.18 Engaging in business without license prohibited

110.19 Collection of unpaid tax

110.20 License year; prorating of tax for half year; expiration date; penalty for late payment

110.21 License required for every separate business

110.22 License required for each place of business; relocation or sale

110.23 Display of license

110.24 No refund if licensee discontinues business

GENERAL PROVISIONS

§ 110.01 YARD SALES.

(A) *License required.* Any person wishing to conduct a yard sale at the person's residence in the city shall first secure a license from the city as provided by state law and this chapter.

(B) *Duration of license.* The license required by division (A) of this section will grant authority for the individual to conduct a yard sale at the individual's

residence for a stated period of five consecutive days. Thereafter, a license may not be secured for a yard sale at the same residence or by the same individual until a period of six months from the first date of the sale has elapsed.

(C) *Violation; penalties.* The penalty for conducting yard sales in violation of this section shall be in accordance with § 10.99. ('88 Code, § 11-1) (Ord. 0-80-5, passed 5-13-80) Penalty, see § 10.99

PRIVILEGE LICENSE TAX

§ 110.15 DEFINITIONS.

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

AGENT. The person having the agency for the manufacturer, producer or distributor.

BUSINESS. Any business, trade, occupation, profession, avocation or calling of any kind, subject by the provisions of this chapter to a license tax.

ENGAGED IN THE BUSINESS. Engaged in the business as owner or operator.

FISCAL YEAR. The period beginning with the first day of July and ending with the thirtieth day of the following June. ('88 Code, § 11-16)

§ 110.16 LICENSE TAX SCHEDULE.

The amounts of the license taxes imposed under this chapter shall be as established from time to time by the City Council. The schedule of the taxes shall be maintained on file in the City Clerk's office.
(`88 Code, § 11-17)

§ 110.17 LICENSE TAX UPON CERTAIN BUSINESSES; LICENSES AS PERSONAL PRIVILEGE AND NOT TRANSFERABLE; CONDITIONS APPLICABLE TO LICENSES.

In addition to the tax on property as otherwise provided for and under the power and authority conferred in the laws of the state, there shall be levied and collected annually or oftener where provided for a privilege license tax on trades, professions, agencies, business operations, exhibitions, circuses and all subjects authorized to be licensed as set out in this subchapter. All licenses shall be a personal privilege and shall not be transferable. Nothing in this subchapter shall be construed to prevent the City Council from imposing from time to time as it may see fit such license taxes as are not specifically defined in this subchapter from increasing or decreasing the amount of any special license tax or from prohibiting or regulating the business or acts licensed. All licenses are granted subject to the provisions of existing and subsequently enacted ordinances.
(`88 Code, § 11-18)

§ 110.18 ENGAGING IN BUSINESS WITHOUT LICENSE PROHIBITED.

It shall be unlawful for any person or his or her agent or servant to engage in or carry on a business in the city for which there is required a license without first having paid a license tax and obtained the license. For the purpose of this section, the opening of a place of business or offering to sell, followed by a single sale or the doing of any act or thing in furtherance of the business, shall be construed to be engaging in or carrying on such business, and each day that such person, firm or corporation shall engage in or carry on

the business shall be construed to be a separate offense.

(`88 Code, § 11-19) Penalty, see § 10.99

§ 110.19 COLLECTION OF UNPAID TAX.

If a person begins or continues to engage in a business taxed under this subchapter without payment of the required privilege license tax, the Tax Collector may use either of the following methods to collect the unpaid tax:

(A) The remedy of levy and sale or attachment and garnishment in accordance with G.S. § 160A-207; or

(B) The remedy of levy and sale of real and personal property of the taxpayer in accordance with G.S. § 105-109(d).
(`88 Code, § 11-20)

§ 110.20 LICENSE YEAR; PRORATING OF TAX FOR HALF YEAR; EXPIRATION DATE; PENALTY FOR LATE PAYMENT.

(A) All taxes provided for and fixed in this subchapter shall be for 12 months, unless otherwise specified. All licenses shall date from the first day of July of the year of issuance and shall expire on the thirtieth day of June next following; provided, where the license is issued after January first, the licensee shall be required to pay one-half of the tax prescribed, except where otherwise specifically provided for.

(B) The privilege license taxes required by this subchapter shall be deemed late if not paid on or before September first and shall be subject to a 5% penalty plus a ½% penalty for each month or fraction of a month the tax is paid after such date.
(`88 Code, § 11-21)

§ 110.21 LICENSE REQUIRED FOR EVERY SEPARATE BUSINESS.

The payment of any particular tax imposed by this subchapter shall not relieve the person paying it

from the payment of any other tax imposed by this subchapter for any other business he or she may carry on, unless so provided by the section imposing such tax; it, being the intent of this chapter that license taxes prescribed by the various sections applicable to any business shall be cumulative except where otherwise specifically provided.

(`88 Code, § 11-22)

§ 110.22 LICENSE REQUIRED FOR EACH PLACE OF BUSINESS; RELOCATION OR SALE.

A license issued for the privilege of conducting a business is valid only for the business conducted at the place and by the licensee named therein. Every person doing business in more than one factory, mill, warehouse, store, stall, stand or other place of business shall secure a separate license for each such place of business, unless the places of business are contiguous to each other, communicate directly with and open into each other and are operated as a unit. If the business is moved or if the licensee sells to another, then a new license is necessary, unless a special permit to continue business under the original license is obtained from the City Council.

(`88 Code, § 11-23)

§ 110.23 DISPLAY OF LICENSE.

Every license must be kept prominently displayed at the place of business of the licensee named in the license or, if the licensee has no fixed place of business, the licensee must keep the license wherever the business is being operated and where it can be inspected at any time by the proper municipal official.

(`88 Code, § 11-24) Penalty, see § 10.99

§ 110.24 NO REFUND IF LICENSEE DISCONTINUES BUSINESS.

No license tax shall be abated nor shall any refund of any part thereof be made in any case where the licensee discontinues his or her business before the end of the period for which the license was issued.

(`88 Code, § 11-25)

CHAPTER 111: PEDDLERS AND SOLICITORS

Section

- 111.01 Definitions
- 111.02 License requirement
- 111.03 Application procedure
- 111.04 Standards for issuance
- 111.05 Revocation procedure
- 111.06 Standards for revocation
- 111.07 Appeal procedure
- 111.08 Exhibition of identification
- 111.09 City policy on soliciting
- 111.10 Notice regulating soliciting
- 111.11 Duty of solicitors to ascertain notice
- 111.12 Prohibited solicitation
- 111.13 Soliciting from streets or medians

(1) Travels from place to place by any means carrying goods for sale, or making sales, or making deliveries; or

(2) Without traveling from place to place, sells or offers goods for sale from any public place within the city.

SOLICITOR. Any person who travels by any means from place to place, taking or attempting to take orders for sale of goods to be delivered in the future or for services to be performed in the future. A person who is a solicitor is not a peddler.
(Ord. passed - -01)

§ 111.01 DEFINITIONS.

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

BUSINESS. The business carried on by any person who is an itinerant merchant, peddler, or solicitor as defined in this section.

GOODS. Merchandise of any description whatsoever, and includes, but is not restricted to, wares and foodstuffs.

ITINERANT MERCHANT. Any person, whether as owner, agent, or consignee, who engages in a temporary business of selling goods within the city and who, in the furtherance of such business, uses any building, structure, vehicle, or any place within the city.

PEDDLER. Any person, not an itinerant merchant, who:

§ 111.02 LICENSE REQUIREMENT.

(A) Any person who is an itinerant merchant, peddler, or solicitor shall obtain a license before engaging in such activity within the city.

(B) The fee for the license required by this chapter shall be as set from time to time by the City Council.

(C) No license issued under this chapter shall be transferable.

(D) All licenses under this chapter shall expire 90 days after the date of issuance thereof.
(Ord. passed - -01) Penalty, see § 10.99

§ 111.03 APPLICATION PROCEDURE.

(A) All applicants for licenses required by this chapter shall file an application with the Clerk. This application shall be signed by the applicant if an individual, or by all partners if a partnership, or by

the president if a corporation. The applicant may be requested to provide information concerning the following items:

- (1) The name and address of the applicant;
- (2) (a) The name of the individual having management authority or supervision of the applicant's business during the time that it is proposed to be carried on in the city;
 - (b) The local address of such individual;
 - (c) The permanent address of such individual;
 - (d) The capacity in which such individual will act;
- (3) The name and address of the person, if any, for whose purpose the business will be carried on, and, if a corporation, the state of incorporation;
- (4) The time period or periods during which it is proposed to carry on applicant's business;
- (5) (a) The nature, character, and quality of the goods or services to be offered for sale or delivered;
 - (b) If goods, their invoice value and whether they are to be sold by sample as well as from stock;
 - (c) If goods, where and by whom such goods are manufactured or grown, and where such goods are at the time of application;
- (6) The nature of the advertising proposed to be done for the business;
- (7) Whether or not the applicant, or the individual identified in division (A)(2) above, or the person identified in division (A)(3) has been convicted of any crime or misdemeanor and, if so, the nature of each offense and the penalty assessed for each offense.

(B) Applicants for peddler or solicitor licenses may be required to provide further information concerning the following items, in addition to the requested under division (A) above:

- (1) A description of the applicant;
- (2) A description of any vehicle proposed to be used in the business, including its registration number, if any.

(C) All applicants for licenses required by this chapter shall attach to their application, if required by the city, credentials from the person. If any, for which the applicant proposes to do business, authorizing the applicant to act as such representative.

(D) Applicants who propose to handle foodstuffs shall also attach to their application, in addition to any attachments required under division (C), a statement from a licensed physician, dated not more than ten days prior to the date of application, certifying the applicant to be free of contagious or communicable disease.

(Ord. passed - -01)

§ 111.04 STANDARDS FOR ISSUANCE.

(A) Upon receipt of an application, an investigation of the applicant's business reputation and moral character shall be made.

(B) The application shall be approved unless such investigation discloses tangible evidence that the conduct of the applicant's business would pose a substantial threat to the public health, safety, morals, or general welfare. In particular, tangible evidence that the applicant has done any of the following will constitute valid reasons for disapproval of an application:

- (1) Has been convicted of a crime of moral turpitude;
- (2) Has made willful misstatements in the application;

(3) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors, and the like;

(4) Has committed prior fraudulent acts; or

(5) Has a record of continual breaches of solicited contracts.

(Ord. passed - -01)

§ 111.05 REVOCATION PROCEDURE.

Any license or permit granted under this chapter may be revoked by the Clerk after notice and hearing, pursuant to the standards in § 111.06. Notice of hearing for revocation shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed to the licensee at his last known address, at least ten days prior to the date set for the hearing.

(Ord. passed - -01)

§ 111.06 STANDARDS FOR REVOCATION.

A license granted under this chapter may be revoked for any of the following reasons:

(A) Any fraud or misrepresentation contained in the license application;

(B) Any fraud, misrepresentation, or false statement made in connection with the business being conducted under the license;

(C) Any violation of this chapter;

(D) Conviction of the licensee of any felony, or conviction of the licensee of any misdemeanor involving moral turpitude; or

(E) Conducting the business licensed in an unlawful manner of in such a way as to constitute a menace to the health, safety, morals, or general welfare of the public.

(Ord. passed - -01)

§ 111.07 APPEAL PROCEDURE.

(A) Any person aggrieved by a decision under §§ 111.04 or 111.06 shall have the right to appeal to the City Manager. The appeal shall be taken by filing with the City Manager, within 14 days after notice of the decision has been mailed to such person's last known address, a written statement setting forth the grounds for appeal. The City Manager shall set the time and place for a hearing, and notice for such hearing shall be given to such person in the same manner as provided in § 111.06.

(B) The order of the City Manager after the hearing shall be final.

(Ord. passed - -01)

§ 111.08 EXHIBITION OF IDENTIFICATION.

(A) Any license issued to an itinerant merchant under this chapter shall be posted conspicuously in or at the place named therein. In the event more than one place within the city shall be used to conduct the business licensed, separate licenses shall be issued for each place.

(B) The Clerk shall issue a license to each peddler or solicitor licensed under this chapter. The license shall contain the words "Licensed Peddler" or "Licensed Solicitor," the expiration date of the license, and the number of the license. The license shall be kept with the licensee during such time as he/she is engaged in the business licensed.

(Ord. passed - -01)

§ 111.09 CITY POLICY ON SOLICITING.

It is hereby declared to be the policy of the city that the occupants of the residences in the city shall make the determination of whether solicitors shall be, or shall not be, invited to their respective residences.

(Ord. passed - -01)

§ 111.10 NOTICE REGULATING SOLICITING.

(A) Notice of the refusal of invitation to solicitors, to any residence, shall be given on a weatherproof card, approximately three inches by four inches in size, exhibited upon or near the main entrance door to the residence, indicating the determination by the occupant, containing the applicable words, as follows:

"NO SOLICITORS INVITED"

(B) The letters shall be at least 1/3-inch in height. For the purpose of uniformity, the Chief of Police shall provide the cards to persons requesting, at the cost thereof.

(C) The card so exhibited shall constitute sufficient notice to any solicitor of the determination by the occupant of the residence of the information contained thereon.

(Ord. passed - -01)

§ 111.11 DUTY OF SOLICITORS TO ASCERTAIN NOTICE.

(A) It shall be the duty of every solicitor upon going onto any premises in the city upon which a residence is located to first examine the notice provided for in §111.10 if any is attached, and be governed by the statement contained on the notice. If the notice states, "NO SOLICITORS INVITED," then the solicitor, whether registered or not, shall immediately and peacefully depart from the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

(Ord. passed - -01)

§ 111.12 PROHIBITED SOLICITATION.

It is hereby declared to be unlawful and shall constitute a nuisance for any person to go upon any premises and ring a doorbell upon or near any door, or create any sound in any manner calculated to attract

the attention of the occupant thereof and engage in soliciting in defiance of the notice exhibited at the residence in accordance with the provisions of § 111.10.

(Ord. passed - -01) Penalty, see § 10.99

§ 111.13 SOLICITING FROM STREETS OR MEDIANS.

It shall be unlawful for any person to stand, sit or loiter in any street or highway, including the shoulders or median strip but excluding sidewalks, and to stop or attempt to stop any vehicle for the purpose of soliciting or accepting contributions from the occupants of any vehicle or for the purpose of distributing merchandise to the occupants of any vehicle. It also shall be unlawful for any person to stand, sit or loiter in any street or highway, including the shoulders or median strip but excluding sidewalks, and to solicit or accept contributions from the occupant of any stopped vehicle or to distribute merchandise to the occupants of any stopped vehicle.

(Ord. passed 2-26-01) Penalty, see § 10.99

CHAPTER 112: TAXICABS

Section

General Provisions

- 112.01 Certificate of convenience and necessity required
- 112.02 Certificate nontransferable; abandonment
- 112.03 Liability insurance required
- 112.04 Rates and fares to be posted
- 112.05 Annual license

Operator's Permit

- 112.15 Permit required
- 112.16 Application
- 112.17 Chief of Police to investigate application
- 112.18 Issuance
- 112.19 Revocation
- 112.20 Posting
- 112.21 Photograph and fingerprints to be attached to permit

GENERAL PROVISIONS

§ 112.01 CERTIFICATE OF CONVENIENCE AND NECESSITY REQUIRED.

Any person engaging in the business of operating taxicabs in the city shall first secure a certificate of convenience and necessity from the City Council and pay the privilege tax for operating such business. (^ 88 Code, § 20-1)

§ 112.02 CERTIFICATE NONTRANSFERABLE; ABANDONMENT.

(A) Any person holding a certificate of necessity who goes out of the taxicab business and ceases to operate his or her taxicab for a period of 90 days shall immediately lose his or her certificate which shall be automatically canceled.

(B) No holder of a certificate of necessity may transfer or sell such certificate. (^ 88 Code, § 20-2) Penalty, see § 10.99

§ 112.03 LIABILITY INSURANCE REQUIRED.

When an application for a certificate under this chapter is approved, the applicant shall be required to obtain a policy from an insurance carrier authorized to do business in this state. The insurance policy shall be conditioned on such operator's responding in damages for any liability incurred on account of any injury to persons or damage to property and shall be in at least the minimum amounts required by state law. The insurance policy shall be filed with the City Council as a condition precedent to the operation of any taxicab. (^ 88 Code, § 20-3)

Statutory reference:

Financial responsibility of taxicab operators, see G.S. § 20-280

§ 112.04 RATES AND FARES TO BE POSTED.

Every taxicab operated within the city or operated between the city and points unincorporated within a

radius of five miles of the city shall have at all times prominently posted and displayed in the taxicab, so as to be visible to the passengers therein, the rates and fares for the use of the cab.

(`88 Code, § 20-4)

Statutory reference:

Municipal authority, see G.S.

§ 160A-304

§ 112.05 ANNUAL LICENSE.

(A) Every person before operating any taxicab within the city shall apply to the Tax Collector for an annual license and shall secure from the Tax Collector an annual license for the privilege of operating each taxicab. He or she shall pay for the annual license a tax in the sum required under this code.

(B) The license shall be valid from July first of each year to June thirtieth of the following year.

(`88 Code, § 20-5)

Statutory reference:

Municipal authority,

see G.S. §§ 160A-211, 20-97

OPERATOR'S PERMIT

§ 112.15 PERMIT REQUIRED.

No person shall drive any taxicab carrying passengers for hire from place to place within the city or between city and unincorporated places within five miles of the city unless that person shall first have applied to and secured from the City Manager a permit to operate a taxicab.

(`88 Code, § 20-21) Penalty, see § 10.99

§ 112.16 APPLICATION.

The application for a permit to operate a taxicab shall be made upon blanks furnished by the city for such purpose and shall state the name, address, physical condition, physical description, former employers, court record and state chauffeur's license

number. The application shall be signed and sworn to by the applicant. The applicant shall further appear at the Police Department for the purpose of having his or her fingerprints taken, the impression of which shall constitute a part of his or her application. The applicant shall also furnish a photograph of him or herself made within 30 days of his or her application. The dimensions of the photograph shall be two and one-half inches by two and one-half inches or three inches by three inches, full face, and this photograph shall be a part of his or her application.

(`88 Code, § 20-22)

§ 112.17 CHIEF OF POLICE TO INVESTIGATE APPLICATION.

The Chief of Police shall be charged with the duty of investigating the facts stated in the application and shall report his or her findings and recommendations to the City Manager.

(`88 Code, § 20-23)

§ 112.18 ISSUANCE.

The City Manager shall issue a permit to the applicant to drive a taxicab if he or she finds that the applicant:

(A) Has not been convicted of a felony in this state or any other state within the past five years;

(B) Has not been convicted within the past five years of violation of any federal or state law relating to the use, possession or sale of alcoholic beverages or narcotic or barbiturate drugs or of any law relating to prostitution;

(C) Has no addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;

(D) Is a citizen of the United States;

(E) Has not been an habitual violator of traffic laws and ordinances during the five years prior to the application;

(F) Has passed a physical examination by a licensed physician within 30 days of the date of the application.

(`88 Code, § 20-24) (Ord. 1-87-2, passed 1-27-87)

§ 112.19 REVOCATION.

(A) A permit to drive a taxicab may be revoked by the City Manager at any time after its issuance for the following reasons:

- (1) The holder is convicted of a felony;
- (2) The holder is convicted of a violation of any federal or state statute relating to the sale, use or possession of alcoholic beverages, narcotic or barbiturate drugs or prostitution;
- (3) The holder becomes an addict or habitual user of alcoholic beverages or narcotic or barbiturate drugs;
- (4) The holder is habitually convicted of violations of traffic laws or ordinances.

(B) For the first offense of division (A) of this section, conviction of a felony, the permit shall be revoked for a period of three years. For a second conviction, the permit shall be revoked permanently.

(C) For a conviction of any of the offenses set forth in subsection (2) or (3) above, the permit shall be revoked for three years.

(D) For three convictions by the holder of violations of traffic laws within a 12 month period, the holder of a permit shall be adjudged to be an habitual violator, and the permit shall be revoked for a period of three years.

(`88 Code, § 20-25) (Ord. 1-87-2, passed 1-27-87)

Statutory reference:

Grounds for refusal of permit, see G.S. § 160A-304

§ 112.20 POSTING.

At all times while operating his or her taxicab or a taxicab belonging to any other person, the driver shall prominently post and display so as to be visible to the passengers therein his or her permit to drive a taxicab.

(`88 Code, § 20-26)

Statutory reference:

Authority of city to require posting of permit, see G.S. § 160A-304(a)

§ 112.21 PHOTOGRAPH FINGERPRINTS TO BE ATTACHED TO PERMIT.

Each permit to drive a taxicab shall have attached thereto the picture and fingerprints of the person to whom the permit is issued. The photographs and fingerprints shall be so attached to the permit as to be visible to anyone examining the front of the permit.

(`88 Code, § 20-27)

Statutory reference:

Authority of city to require posting of identification in cab, see G.S. § 160A-304(a)

CHAPTER 113: WRECKER AND TOW SERVICE

Section

General Provisions

- 113.01 Definitions
- 113.02 Policy
- 113.03 Duties and requirements of licensees
- 113.04 Heavy duty wreckers
- 113.05 Wreckers called by police
- 113.06 Fees
- 113.07 Applicability to previous licensees; noncompliance

Licenses

- 113.20 Application for license
- 113.21 Licensing
- 113.22 Mandatory refusal of application
- 113.23 Conditions precedent to issuance of license
- 113.24 Cost and inspections
- 113.25 Insurance
- 113.26 Suspension or revocation of license
- 113.27 Notification of suspension or revocation by Wrecker Inspector
- 113.28 Hold harmless provision
- 113.29 Persons prohibited from holding a license

Regulations

- 113.40 General rules and regulations
- 113.41 Storage of vehicles
- 113.42 Solicitation of business

Administration and Enforcement

- 113.55 Wrecker Inspector; duties generally
- 113.56 Appeal to the City Manager
- 113.57 Action pending appeal; lapse of time; waiver

- 113.58 Hearing; action of the City Manager
- 113.59 Hearing procedures

GENERAL PROVISIONS

§ 113.01 DEFINITIONS.

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

CHIEF OF POLICE. The executive head of the Police Department of the city or anyone designated by him or her.

HEAVY DUTY WRECKER. A truck chassis having a minimum gross vehicular weight of 24,000 pounds and a boom assembly having a minimum lifting power of 32,000 pounds, as rated by the manufacturer and any additional safety equipment as specified by the Chief of Police, and incorporated by reference as if set forth herein.

LICENSEE or APPLICANT. A person, firm or corporation engaged in the business of or offering the services of a vehicle wrecker or towing service whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle manufactured and designed for the primary purpose of removing and towing disabled motor vehicles.

LIGHT DUTY WRECKER. A truck chassis having a minimum gross vehicular weight of 10,000 pounds and a boom assembly having a minimum lifting power of 3,000 pounds, as rated by the manufacturer and any additional safety equipment as

specified by the Chief of Police, and incorporated by reference as if set forth herein.

ROTATION LIST. A list maintained by the Police Department containing the names of those "wreckers" licensed by the city to respond to requests for the towing of vehicles made by the Police Department.

(Ord. passed 5-9-89)

§ 113.02 POLICY.

In order to protect persons who operate motor vehicles inside the city, it is desirable and necessary to adopt this chapter to insure licensing, storage, availability and other controls over persons and firms licensed to provide wrecker service.

(Ord. passed 5-9-89)

§ 113.03 DUTIES AND REQUIREMENTS OF LICENSEES.

(A) The licensee shall provide a light duty wrecker or heavy duty wrecker or both of sufficient size and weight as defined in § 113.01.

(B) All wreckers shall be equipped with warning lights required under state law.

(C) The licensee shall provide continuous 24-a-day service each day of the year, and there shall be an attendant on duty at the storage lot during regular business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, except for emergencies and wrecker service calls. The daytime calls for the daytime rate will be for calls received from 8:00 a.m. until 5:00 p.m. Monday through Friday. The nighttime call rate will be for calls received from 5:01 p.m. until 7:59 a.m. Monday through Friday. The night rate will be charged for all calls received on weekends and holidays.

(D) The licensee shall assume all liability and shall indemnify and save the city harmless from such liability for damages sustained by vehicles while being towed or stored and for all personal injuries occurring

to any of the firm's employees or other persons and shall maintain the required insurance policies.

(E) The licensee shall not release any vehicle directly impounded by the city without authorization by the Police Department.

(F) The licensee shall charge for their services such rates as may be fixed by the City Council.

(G) Wrecker services shall perform towing service for the city on a rotation basis.

(H) No licensee shall intercept police calls by short-wave radio for the purpose of soliciting business.

(I) The licensee shall provide:

(1) Available space for properly accommodating and protecting a minimum of 15 disabled motor vehicles to be towed or otherwise removed from the place where they are disabled. The storage space for vehicles shall be enclosed by a minimum six foot chain link fence or a fence of similar strength and shall have all entrances and exits secure from public access.

(2) A storage vault or storage room on the storage lot or premises which is adequate to secure and protect personal property which may be left in vehicles towed to a private wrecker.

(J) *Regulations for wrecker operators.*

(1) Operator must have a valid Class "C" operator's license issued by the State Department of Motor Vehicles, G.S. § 20-7.

(2) Wrecker operators will be responsible for clearing debris from highway caused by accident and will remove any parts from the highway that are torn or come off any vehicle as the result of an accident.

(3) Wreckers must arrive at scene within 30 minutes upon notification of a request for wrecker; if not, the next wrecker on rotation will be dispatched.

(4) Wrecker operators or owners of wreckers will not argue or show disrespect toward any officer or other wrecker operator at the scene of the accident.

(5) Any complaints by wrecker operators or owners will be investigated by the Wrecker Inspector when they are properly documented and signed.

(K) Regulations concerning wrecker facilities.

(1) The name of the wrecker company must be clearly printed on both sides of the wrecker with day and night telephone numbers. Magnetic signs are permissible.

(2) Wrecker facilities, safety and service equipment will be subject to inspection by the Wrecker Inspector any time.

(3) Only one day and night telephone number will be accepted for rotation calls.

(4) Each wrecker company must have individual storage lots and/or facilities for inside storage.

(5) In emergency circumstances an officer may by-pass the rotation list.
(Ord. passed 5-9-89)

§ 113.04 HEAVY DUTY WRECKERS.

(A) A large rotation list will be maintained for the purpose of handling large truck wrecks and unusual situations where other wreckers could not adequately handle the task. Under no circumstances will several wreckers be used to handle a particular task when one large wrecker could adequately handle the situation.

(B) The officer at the scene of accident will request a regular or large wrecker based on his or her evaluation of the situation.

(C) Large rotation wreckers will be governed by the same rules and regulations as § 113.03 of this chapter, plus:

(1) Each large wrecker must be equipped with at least a 600 holmes boom or equivalent, approved by the Police Department;

(2) Each operator must possess a valid Class "A" operator's license issued by the Department of Motor Vehicles; and

(3) A separate braking system to control towed vehicles.
(Ord. passed 5-9-89)

§ 113.05 WRECKERS CALLED BY POLICE.

The Police Department shall insure that wreckers are called to the scene of an accident or to impound vehicles on a rotation basis, distributing the calls from the rotation list. The Chief of Police shall not call or cause to be called any wrecker not on the rotation list unless all such wreckers are unavailable or unless the owner of the vehicle to be towed requests that a specific wrecker be called; any wrecker called by the Police Department not on the rotation list shall comply with statutory insurance requirements. It is specifically permitted for the Police Department to call a wrecker out of sequence where due to an emergency or life threatening situation, proximity to the wreck and estimated response time make it more necessary to do so.
(Ord. passed 5-9-89)

§ 113.06 FEES.

The City Council, from time to time, upon the recommendation of the Wrecker Inspector, after having consulted with the licensee, shall establish a table of maximum fees that they be charged by licensees under the provisions of this chapter.
(Ord. passed 5-9-89)

§ 113.07 APPLICABILITY TO PREVIOUS LICENSEES; NONCOMPLIANCE.

Whenever this chapter is amended from time to time by the City Council and the amendments shall render any current approved licensee in non-

compliance with the ordinance as amended, the noncomplying licensee shall have a period of one year from the effective date of the amendment of the ordinance in which to comply.
(Ord. passed 5-9-89)

LICENSEES

§ 113.20 APPLICATION FOR LICENSE.

(A) Any person desiring to perform towing work at police request shall submit "an application for wrecker service license" in duplicate to the Chief of Police.

(B) Application forms shall be obtained from the office of the Chief of Police. These forms shall state:

(1) The name of the applicant/owner and the name of the business if different from the name of owner, the home and business address and telephone number;

(2) That the storage lot on which towed vehicles will be stored is located within the city limits or approved by the Chief of Police and additional information concerning the size and security features of the lot;

(3) The towing equipment available, its size and capacity;

(4) A complete listing of the insurance policies, complying with § 113.21, and the carriers and agents the wrecker applicant would place into effect upon license approval;

(5) Such other information as the Chief of Police may find reasonably necessary to determine whether or not the requirements of this chapter will be complied with and that it is in the best interest of the public health, safety and welfare to issue a license to the applicant.
(Ord. passed 5-9-89)

§ 113.21 LICENSING.

Within 30 days after receiving "an application for wrecker service license," the Chief of Police shall conduct an investigation to determine if the applicant has complied with the necessary standards and criteria of this chapter, and that it is in the best interest of the public health, safety and welfare that a license shall be issued to the applicant after having complied with the provisions of § 113.22. If approved, the applicant's name shall be placed at the end of the rotation list. Provided, if an applicant is refused a license by the Chief of Police, the applicant shall have the right to appeal the denial to the City Manager for a determination concerning the issuance of a license to the applicant. The appeal shall be in accordance with § 113.57.

(Ord. passed 5-9-89)

§ 113.22 MANDATORY REFUSAL OF APPLICATION.

If an applicant has been convicted, entered a plea of nolo contendere or received a prayer continued for judgment within the last three years for a felony involving moral turpitude or the offense of driving under the influence of an intoxicating liquor or drug or is an habitual offender of traffic laws, it is the finding of the City Council that it is not in the best interest of the public health, safety or welfare to issue a license under this chapter to the applicant, and therefore any such application shall be denied.

(Ord. passed 5-9-89)

§ 113.23 CONDITIONS PRECEDENT TO ISSUANCE OF LICENSE.

When an application is approved, a license will be issued when:

(A) Insurance policies required by this chapter have been procured and a copy of each given to the Chief of Police. Each policy shall be written by a company licensed to do business in North Carolina and issued in the name of the licensee.

(B) The requirements of this chapter and all other governing laws and ordinances have been met. This is to include that each licensee will maintain a business with a business telephone listing within the city limits.

(Ord. passed 5-9-89)

§ 113.24 COST AND INSPECTIONS.

Except as provided in § 113.05, all costs incidental to towing and storage shall be paid by the owner or person in charge or possession of the towed and stored vehicle to the licensee and a receipt for payment shall be issued to the person. The city shall assume no liability or responsibility for any vehicle removed from any place without the authority of the Police Department. Each licensee shall maintain approved records and claim check systems to assure release of vehicles to the rightful owner or authorized person. The records shall be open to the Police Department for investigation of specific complaints (in writing) and for compiling surveys under this chapter. Any licensee shall permit any person appointed by the Chief of Police to inspect his or her wreckers, vault, security room or storage area at such reasonable times as the Chief of Police shall deem appropriate.

(Ord. passed 5-9-89)

§ 113.25 INSURANCE.

The following are the minimum insurance requirements to be kept and maintained by any licensee under this chapter at all times the license is in effect:

(A) *Garage liability policy.* A garage liability policy covering the operation of the licensee's business, equipment or other vehicles for any bodily injury or property damage shall be in the minimum of \$100,000 for any one person injured or killed, a minimum of \$300,000 for more than one person killed or injured in any accident and an additional \$50,000 for property damage.

(B) *Garage keeper's policy.* A garage keeper's legal liability policy for each storage premises covering fire, theft, windstorm, vandalism and

explosion in the amount of \$30,000 (\$10,000 per claim per vehicle).

(C) *Notice of change.* Each policy required under this section must contain an endorsement by carriers providing ten days notice to both the city and the insured in the event of any change in coverage under the policy.

(Ord. passed 5-9-89)

§ 113.26 SUSPENSION OR REVOCATION OF LICENSE.

(A) The following shall be grounds for suspension or revocation of a license issued under this chapter:

(1) That the license was secured by fraud or by the concealment of a material fact by the licensee and such fact, if known, would have caused a refusal to issue a license;

(2) That the licensee has violated any of the requirements of the regulations established by the Chief of Police under this chapter;

(3) That past services rendered by a licensee are shown to be detrimental to the public health, safety and welfare; (This includes overcharging of wrecker fees or false charging of items done by the wrecker business.)

(4) The licensee paid in the form of a gratuity any third person for information as to the location of the accident;

(5) The licensee has violated the fee schedule by overcharge or false charges;

(6) Failure to operate the wreckers specified in such a manner as to serve the public adequately and efficiently;

(7) Failure to maintain wrecker and vehicle in good repair;

(8) Failure to pay the city privilege license fee imposed upon wreckers.

(9) Failure to report accidents while towing city rotation call vehicles or to furnish such other records and reports as may be required by this chapter and/or the Wrecker Inspector.

(B) If the Wrecker Inspector determines that any of the violations in division (A) of this section have occurred, he or she shall have the authority to revoke or suspend a license as follows:

(1) For violation of division (A)(1) of this section, revocation;

(2) For a first time violation of subsections (A)(2) through (A)(9) of this section, suspension up to 30 days;

(3) For a second violation of subsections (A)(2) through (A)(9) within a period of two years from the date of the first suspension, suspension up to 60 days; and

(4) For a third violation of subsections (A)(2) through (A)(9) within a period of two years from the date of the first violation, revocation. Any licensee who has his or her license revoked shall be eligible to apply for a new license one year from the date of the revocation. For purposes of this section, the date of suspension or date of revocation shall be the date of the notification by the Wrecker Inspector pursuant to § 113.27, or if an appeal is made, the date of the final action by the City Manager.
(Ord. passed 5-9-89)

§ 113.27 NOTIFICATION OF SUSPENSION OR REVOCATION BY WRECKER INSPECTOR.

The revocation or suspension shall be in writing and notify the licensee of the following:

(A) The nature of the violation.

(B) The Wrecker Inspector's recommendation as to whether the licensee should remain on the rotation wrecker list, should be suspended or have his or her license revoked.

(C) That the licensee has a right to an appeal of the action to the City Manager.
(Ord. passed 5-9-89)

§ 113.28 HOLD HARMLESS PROVISION.

Any licensee shall indemnify, save and hold harmless the city, its officers, agents and employees from any and all claims, actions defenses, suits and proceedings arising out of any negligent act on the part of a licensee, employee or part-time employee of the licensee, which said negligent act is the proximate cause of damage to any vehicle stored in a lot authorized under the terms of this chapter.
(Ord. passed 5-9-89)

§ 113.29 PERSONS PROHIBITED FROM HOLDING A LICENSE.

No City Council member or employee directly involved with the administration of this chapter shall be permitted to hold a license under the terms of this chapter.
(Ord. passed 5-9-89)

REGULATIONS

§ 113.40 GENERAL RULES AND REGULATIONS.

The Chief of Police, subject to approval by the City Manager, shall establish and cause the enforcement of reasonable rules and regulations for licensees as from time to time he or she deems appropriate for the safety, well-being and protection of citizens within his or her jurisdiction and their property.
(Ord. passed 5-9-89)

§ 113.41 STORAGE OF VEHICLES.

It shall be the responsibility of any licensee to secure in a safe manner any vehicle or personal

property contained in the vehicle that is placed in the custody of the licensee as a result of being called by the Police Department to perform a tow. The area within which the vehicle and/or personal property shall be stored shall meet the minimum requirements of § 113.03(I). If at the time the vehicle was towed the storage area provided by the licensee is full, then the property elsewhere as permitted by the Police Department. In the event that the vehicle or personal property placed in his or her custody is the subject of a police investigation for evidentiary purposes and the storage area is full, then the licensee shall immediately contact the Wrecker Inspector or the Desk Sergeant on duty and make arrangements to secure the vehicle and/or personal property in a safe manner.
(Ord. passed 5-9-89) Penalty, see § 10.99

§ 113.42 SOLICITATION OF BUSINESS.

No licensee may respond to the scene of an accident or emergency for the purpose of towing vehicles unless specifically called there by the police or person involved in the accident or emergency. This section is intended to prohibit licensees from soliciting business at the scenes of accidents and emergencies and shall not be construed to prohibit any licensees from contracting with any person, firm or corporations, provided the licensee, his or her agents and employees do not solicit towing contracts at the scene of accidents or emergencies.
(Ord. passed 5-9-89) Penalty, see § 10.99

ADMINISTRATION AND ENFORCEMENT

§ 113.55 WRECKER INSPECTOR; DUTIES GENERALLY.

(A) *Office created.* There is created the office of Wrecker Inspector who shall be appointed by the Chief of Police with approval of the City Manager. The Wrecker Inspector shall come from the personnel of the Police Department and shall hold the rank of Sergeant or higher.

(B) *Duties.* The Wrecker Inspector shall be responsible for:

(1) The practical administration of the wrecker ordinances and regulations and the safety and welfare of the public in connection with the operation and use of rotation wreckers.

(2) The inspection of wreckers.

(3) Advising the Chief of Police and the City Manager with respect to matters governed or incidentally involved in the operation of administration of the wreckers and the rotation wrecker ordinance.

(4) Making recommendations for submission to the City Manager and to the City Council with respect to the adequacy of wrecker service in the city to serve the public convenience and necessity.

(5) Making such studies and recommendations as he or she may deem advisable looking towards more efficient operation of wreckers and rotation wreckers to the end that the public safety and welfare will be served and proper and adequate wrecker service to the general public will be promoted.

(6) All other duties as required by this chapter.
(Ord. passed 5-9-89)

§ 113.56 APPEAL TO THE CITY MANAGER.

Whenever any provision of this chapter shall provide for an appeal of a decision of the Wrecker Inspector to the City Manager, the following procedure shall be followed.

(A) The appellant shall give written notice of appeal to the City Clerk within ten days of receiving the notice of the action he or she is appealing.

(B) The City Manager shall hold a hearing on the appeal within 30 days of receipt of the written notice of appeal.

(C) The written notice of appeal shall state whether or not the appellant wants an open or closed hearing before the City Manager.
(Ord. passed 5-9-89)

§ 113.57 ACTION PENDING APPEAL; LAPSE OF TIME; WAIVER.

(A) Whenever a provision of this chapter states a specific time within which an appeal must be taken and regardless of the level of authority from which the appeal may be taken, if the appeal is not taken within the time prescribed, then the action of the Wrecker Inspector from which the appeal may have been taken is deemed to be final.

(B) The action of the Wrecker Inspector suspending or revoking any rights granted under the authority of this chapter shall be effective upon receipt of notice by the licensee; provided, that if the licensee files a timely appeal, then any right under this chapter heretofore existing shall continue in effect during the pendency of any appeal(s) or 30 days, whichever is sooner.

(C) Any hearing may be continued upon 48 hours written notice prior to the date of the hearing; provided, that if the new date for the hearing is more than 30 days from the date of the original notice of appeal, then the rights of the appellant pursuant to division (B) of this section may only be extended upon a showing of good cause.
(Ord. passed 5-9-89)

§ 113.58 HEARING; ACTION OF THE CITY MANAGER.

(A) The purpose of the hearing before the City Manager shall be to determine whether or not the action of the Wrecker Inspector in suspending or revoking the rights and privileges of the appellant was in the best interests of the public health, safety and welfare of the city. The appellant shall be permitted to present any evidence relevant to the subject matter of the appeal. The hearing shall be administrative in nature, and the action of the City Manager shall be final.

(B) If the action of the City Manager is to affirm the action of the Wrecker Inspector, then the effective date of the action shall be on the date of the hearing. Any period of actual suspension as the result of a continuance prior to the hearing shall be counted toward any period of suspension approved by the City Manager.
(Ord. passed 5-9-89)

§ 113.59 HEARING PROCEDURES.

Any hearing before the City Manager shall use the following procedures:

(A) The hearing shall be open, unless specifically requested by the appellant prior to the hearing.

(B) The appellant shall be entitled to make any statements either by an attorney or someone of his or her own choosing.

(C) Appellant shall be entitled to make any statements or present any witnesses on his or her behalf that he or she desires.

(D) The hearing shall be administrative in nature, there shall be a right to cross-examination.

(E) The appellant shall be entitled to transcribe the proceedings at his or her own cost.
(Ord. passed 5-9-89)

CHAPTER 114: SEXUALLY ORIENTED BUSINESSES

Section

- 114.01 Purpose
- 114.02 Definitions
- 114.03 Application for licenses
- 114.04 Application procedures
- 114.05 Prohibited acts and conduct
- 114.06 Licenses; posting and display
- 114.07 Inspections
- 114.08 Suspension or revocation of licenses
- 114.09 License renewal
- 114.10 Transfer of license
- 114.11 Location restrictions
- 114.12 Nonconforming uses
- 114.13 Additional regulations for adult motels
- 114.14 Additional regulations for escort agencies
- 114.15 Additional regulations for nude model studios
- 114.16 Regulations pertaining to exhibition of sexually explicit films, videos, and live performances
- 114.17 Exterior portions of sexually oriented businesses
- 114.18 Signage
- 114.19 Hours
- 114.20 Exemptions
- 114.21 Notices
- 114.22 Injunction

- 114.99 Penalty

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 and sexually oriented business establishments. The City Council 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 city. Regulation to achieve these purposes can be accomplished by the procedures set forth hereinafter.

(B) The provisions of this chapter 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 chapter 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 chapter 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. (Ord. passed 2-9-01)

§ 114.01 PURPOSE.

(A) The purpose of this chapter shall be to set forth the regulatory and licensing requirement for adult and sexually oriented establishments located within corporate limits and extraterritorial jurisdiction of the city. Adult and sexually oriented establishments, because of their very nature, are recognized as having serious objectionable operational characteristics.

§ 114.02 DEFINITIONS.

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

ADMINISTRATIVE OFFICIAL. The Administrative Department duly appointed by the City

Manager for the administration and enforcement of this chapter.

ADULT BOOKSTORE. An establishment that receives a majority of its gross income during any calendar month from the sale of publications (including books, magazines, and other periodicals) 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.

ADULT CABARET. A nightclub, bar, restaurant, or similar commercial establishment that on a regular, sporadic, or transient basis features: persons who appear in a state of nudity or semi nudity; or live performances that are characterized by the exposure of "specified anatomical areas" or "specified sexual activities"; or 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 persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

ADULT ESTABLISHMENT. Any adult bookstore, adult cabaret, adult motel, adult motion picture theatre, adult mini motion picture theatre, escort agency, exotic car wash, exotic maid service, topless massage parlor, nude modeling studios, sexual encounter center, adult live entertainment business, or any other sexually oriented business that is similar in nature or intent to any other adult entertainment business as defined in this section. This term may be used interchangeably with sexually oriented businesses.

ADULT LIVE ENTERTAINMENT. Any performance of or involving the actual presence of real people that exhibits "specified sexual activities" or "specified anatomical areas", as defined in this section.

ADULT LIVE ENTERTAINMENT BUSINESS. 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. A hotel, motel or similar commercial establishment that offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion picture, 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 offers a sleeping room for rent for a period of time that is less than 24 hours; or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 24 hours.

ADULT MOTION PICTURE THEATRE. 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 THEATRE** does not include any **ADULT MINI MOTION PICTURE THEATRE** as defined in this section.

ADULT MINI MOTION PICTURE THEATRE. 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. A person who performs any service on the premises of an adult establishment 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 person is paid a salary, wage, or other compensation by the operator

of the 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. An increase in the floor area of a sexually oriented business by more than 10% as the floor area existed on January 9, 2001.

ESCORT. 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. Any 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 advertisement, promotions, or obvious intent to the public is sexual in nature.

ENTERTAINER. Any person who provides entertainment within or at an adult and sexually oriented 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. Any seductive, titillating, lustful, immodest, indecent, suggestive, passionate, or similar reference, act, service or deed.

EXOTIC CAR WASH. 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. A cleaning service for a residence or business where the employee is in a state of nudity or semi-nudity.

LICENSEE. 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.

MASSAGE. The manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

MASSAGE BUSINESS. Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.

NUDE MODEL STUDIO. Any place where a person who appears in a state of nudity or displays **SPECIFIC ANATOMICAL AREAS** is provided to be observed, sketched, drawn, painted, sculptured, photographed, similarly depicted by other persons for consideration.

NUDITY (includes a state of nudity). 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.

SEMI NUDE. 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. A business or commercial enterprise that, as one of its principle 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 persons and/or persons of the same sex when one or more of the persons is in state of nudity or semi-nudity.

SEXUALLY ORIENTED DEVICES. 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 AREA. 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.

SPECIFIED SEXUAL ACTIVITIES. Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

SEXUALLY ORIENTED BUSINESS. Any business or enterprise that has as one of its principle business purposes or as a significant portion of its business, an emphasis on matter and conduct depicting, describing, or relating to anatomical areas and sexual activities as specified in G.S. § 14-202.10. This term may be used interchangeably with adult establishment.

(Ord. passed 2-9-01)

§ 114.03 APPLICATION FOR LICENSES.

(A) *Adult establishment license.*

(1) It shall be unlawful for any person to operate or maintain an adult establishment in the city unless the owner or operator thereof has obtained an adult establishment license from the city. It shall also be unlawful for any person to operate such business after such license has been revoked or suspended by the city or such license has expired.

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

(3) It shall be prima facie evidence that any adult establishment that fails to have posted, in the manner required by this chapter, 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 which an adult establishment license is not posted,

in the manner required by this chapter, had knowledge that such business was not licensed.

(B) *Entertainer license.* It shall be unlawful for any person to work as an entertainer at an adult establishment without first obtaining a license to do so from the city, 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 city or has expired.

(C) *License classification and fees.*

(1) The term of all licenses required under this chapter 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 chapter and established by the City Council. Payment shall be made by certified or cashier's check or money order. No application shall be considered complete until all fees are paid.

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

(3) The license fees shall be as set by the City Council and be recorded in the City Council meeting minutes at which they are set. The license fee for an adult establishment shall be \$1,000 per year. Additionally, there shall be an additional \$500 fee per each additional partner, if the applicant is a partnership; and if the applicant is a corporation, for each corporate officer, director, or any individual(s) having a 10% or greater interest in the corporation.

(4) The license fee for an adult entertainer license shall be \$500 per year.

(Ord. passed 2-9-01) Penalty, see §114.99

§ 114.04 APPLICATION PROCEDURES.

(A) *Adult establishments license.* All persons desiring to secure a license to conduct, operate or maintain an adult establishment under the provisions of this chapter shall make a verified application to the Administrative Official. All applications shall be

submitted on a form supplied by the city 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) 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 the Richmond County parcel identification number on which the business resides.

(3) If the persons identified as the fee owner(s) of the tract of land is/are not also the owner(s) of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the 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.

(4) 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.

(5) Any of the criteria required in divisions (A)(2), (3), and (4) above shall not be required for a renewal if the applicant states, in writing, that the documents previously furnished to the city with the

original application or previous renewals thereof remain correct and current.

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

(7) A written statement from the applicant, or from partner, or from each corporate officer, director, or 10% shareholder that each such person has not been convicted of, released from confinement for conviction of, or diverted from prosecution on a felony criminal act within five years immediately preceding the application, or 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 or any other comparable violation of the laws of this state or the laws of any other state.

(8) A written 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 chapter regulating adult establishments.

(9) A written statement signed under oath that the applicant(s) consents to investigation of his/her background by the city to include fingerprinting and that the applicant(s) agrees to furnish within ten days at his/her expense, a criminal history from the Clerk of Court of any county in which the applicant has resided during the five preceding years.

(10) 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

chapter to be an entertainer shall make a verified application to the city. All applications shall be made in person to the Administrative Official. All applications shall be submitted on a form supplied by the city 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 written statement from the applicant, that the applicant has not been convicted of, released from confinement for conviction of, or diverted from prosecution on a felony criminal act within five years immediately preceding the application, or 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 or any other comparable violation of the laws of this state or the laws of any other state.

(4) The applicant shall present, at the time the application is made, documentation that the applicant has attained the age of 21 years of age. Any of the following shall be accepted as documentation of age:

(a) 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 city; or

(f) Any other form of identification deemed reliable by the city.

(5) A written statement signed under oath that the applicant consents to investigation of his/her background by the city 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 five preceding years.

(6) 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 business license or for an adult entertainer license, the Administrative Official shall immediately commence investigation of the application as follows:

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

(a) Transmit a copy of the application to the Board of Adjustment and Appeals, and the Police Chief.

(b) The Board of Adjustment and Appeals shall review the application in the same manner set forth in the Unified Development Ordinance for conditional use permits no later than 30 working days after the receipt of the application. The Board shall approve or deny the application in accordance with standards set forth in the Unified Development Ordinance for approval or denial of conditional use permits.

(c) The Police Chief shall report to the Administrative Official no later than 15 working days

after the receipt of the application by the Police Chief the result of his/her investigation of the applicant. In the event that the Police Chief fails to report to the Administrative Official within this time period, the Administrative Official shall proceed with processing the application.

(d) Upon completion of his/her investigation, payment of the applicable license fee, and upon receipt of the report Police Chief, and action by the Planning Board on the conditional use permit, the Administrative Official shall determine whether or not a license shall be issued. In no event shall the time period for determination by the Administrative Official, exceed 45 working days from the date the application is received by the Administrative Official unless consented to by the applicant.

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

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

(b) The Police Chief shall report to the Administrative Official no later than 15 working days after receipt of the application by the Police Chief, the results of his/her investigation of the applicant. In the event that the Police Chief fails to report, the Administrative Official shall proceed with processing the application.

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

(D) *Reasons for disapproval.* The Administrative Official must deny the adult business 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 chapter.

(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 violation listed in this chapter.

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

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

(5) The applicant for an adult establishment has not received a conditional use permit from the Board of Adjustment and Appeals.

(E) *Notice of approval or disapproval.*

(1) Upon a determination by the Administrative Official of the disapproval or approval of the application, the Administrative Official 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 Board of Adjustment and Appeals of the city. The applicant shall have 30 days from the date a decision is rendered by the Board of Adjustment and Appeals of the city to appeal to the Superior Court of Richmond County.

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

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

(Ord. passed 2-9-01)

§ 114.05 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 chapter, wear or use any device or covering exposed to view which stimulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities, as defined in this chapter, 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 inches 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.

(I) No owner, operator, manager or other person in charge of the premises of an adult establishment 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 chapter.

(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.06 LICENSE; POSTING AND DISPLAY.

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

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

(Ord. passed 2-9-01)

§ 114.07 INSPECTIONS.

All adult establishments shall permit representatives of the police, fire, zoning, or other city 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.

(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.08 SUSPENSION OR REVOCATION OF LICENSES.

(A) The Administrative Official 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 chapter;

(2) There have been recurrent violations of provisions of this chapter 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;

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

(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;

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

(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 chapter;

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

(8) The owner or operator of the adult establishment fails to provide to the Administrative Official a comprehensive written list of all employees to include any and all entertainers working on the premises on the first working day of any given month.

(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 Administrative Official

shall take, within five working days after the hearing, any of the following actions:

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

(2) Revoke the license;

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

(4) Take no action.

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

(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 Board of Adjustment and Appeals of the city within 30 days of receipt of the notice of suspension, revocation, or probation. The licensee shall have the right to appeal the decision of the Board of Adjustment and Appeals of the city to the Superior Court of Richmond County within 30 days of the date of decision by the Board is rendered.

(Ord. passed 2-9-01)

§ 114.09 LICENSE RENEWAL.

(A) A license may be renewed by making application to the Administrative Official on application forms provided for that purpose. Any license issued under this chapter 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

Administrative Official 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 chapter may be renewed by issuance for 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 as set forth within this chapter.

(Ord. passed 2-9-01)

§ 114.10 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.

(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.11 LOCATION RESTRICTIONS.

Sexually oriented businesses may be permitted as a Conditional Use in the Highway Business (B-3) zoning district provided that:

(A) The sexually oriented business shall not be located or operated within 500 feet of the boundary of any residential district and within 1,000 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 publicly-owned park or other recreation area or facility;
- (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 chapter, 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 a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of any use listed in division (A).

(C) No more than one adult or sexually oriented business establishment shall be located in the same building or structure or on the same lot. No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.

(D) Adult and sexually oriented businesses shall be located as a conditional use in the Highway Business (B-3) zoning district.

(E) All minimum lot requirements and regulations of the B-3 zoning district shall be met.

(F) No person shall permit any viewing booth in an adult mini-motion picture theatre to be occupied by more than one person at any time.

(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.12 NONCONFORMING USES.

Any business lawfully operating on the effective date of this chapter that is in violation of the location or structural configuration requirements of this chapter shall be deemed a nonconforming use. The nonconforming requirements of this chapter shall be deemed a nonconforming use. The nonconforming 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 nonconforming 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 1,000

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(es) is nonconforming.

(Ord. passed 2-9-01)

§ 114.13 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 ten hours creates a rebuttal presumption that the enterprise is an adult motel as that term is defined in this chapter.

(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 ten hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(C) For the purpose of division (B), the terms "rent" or sub-rent" means the act of permitting a room to be occupied for any form of consideration.
(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.14 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.
(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.15 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 chapter 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 division if the person under 21 years was in a restroom not open to the public view or visible by any other person.

(C) It is a violation of this chapter 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 that 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.

(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.16 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 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 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 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 inches. The Administrative Official 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 Administrative Official.

(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 shall 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 five-foot candles as measured at the floor level.

(9) It shall be the duty of the owners and operator, and it shall be 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 and rooms.

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

(13) The operator of the sexually oriented business shall cause all floor covering 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 porous material shall be used within 48 inches of the floor.

(B) A person having a duty under division (A) is in violation of this chapter if he/she knowingly fails to fulfill that duty.

(Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.17 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 this chapter.

(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 chapter 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 chapter. (Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.18 SIGNAGE.

(A) It shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one freestanding sign and one attached wall sign, as provided herein.

(B) Freestanding signs shall have no more than two display surfaces. Each such surface shall:

- (1) Not contain any flashing lights;
- (2) Be a flat plan, rectangular in shape;
- (3) Not exceed 64 square feet in area; and
- (4) Not exceed 24 feet in height.

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

(D) Attached wall signs shall have only one display surface. Such display surfaces shall:

- (1) Be a flat plane, rectangular in shape;
- (2) Not exceed four feet in height and eight feet in width; and
- (3) Be directly affixed or attached to any wall or door of the enterprise.

(E) Setback, height, and any other provisions of the city code or Unified Development Ordinance that is not in conflict with this section shall apply. (Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.19 HOURS OF OPERATION.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one 1:00 a.m. and 8:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 12:00 p.m. on Sundays. (Ord. passed 2-9-01) Penalty, see § 114.99

§ 114.20 EXEMPTIONS.

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

(A) By a proprietary school, licensed by the state, a college, junior college, or university supported entirely or partly by taxation;

(B) 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. (Ord. passed 2-9-01)

§ 114.21 NOTICES.

(A) Any notice required or permitted to be given by the Administrative Official or any other city office, division, department or other agency under this chapter 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 Administrative Official. 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 Administrative Official or his designee shall cause it to be posted at the principle entrance to the establishment.

(B) Any notice required or permitted to be given to the Administrative Official by any person under this chapter shall not be deemed given until and unless it is received in the office of the Administrative Official.

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

(D) When the Administrative Official of the city determines that a person is in violation of the provisions as set forth in this chapter, a written notice of violation shall be issued to the owner of the subject property. The notice of violation shall contain:

(1) The name and address of the person(s) in violation;

(2) The street address and a description of the building structure, or land upon which the violation has occurred;

(3) A statement specifying the nature of the violation;

(4) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;

(5) A statement that the city's determination of violations may be appealed to the city Board of Adjustment and Appeals by filing a written notice of appeal within 30 days of service of such notice of violation.

(E) The notice of violation shall be served upon the person(s) to whom it is directed either personally, or by mailing a copy of the notice of violation by certified mail, postage prepaid, return receipt requested to such person at his or her last known address.

(Ord. passed 2-9-01)

§ 114.22 INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid business license or in violation of this chapter 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.

(Ord. passed 2-9-01)

§ 114.99 PENALTY.

A violation of this chapter shall be a Class 3 misdemeanor punishable by a fine up to \$500 per violation or imprisonment as provided for a Class 3 misdemeanor in the North Carolina General Statutes or both. A violation of this chapter shall also subject the violator to a civil penalty of \$500 per separate violation. Each separate act in violation of this chapter shall constitute a separate violation. Each day that such separate violation shall constitute or be carried on shall constitute an additional separate violation.

(Ord. passed 2-9-01)