Chapter 24

Sexually Oriented Businesses

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24.1. Purpose and Intent

It is the purpose of this section of the zoning ordinance to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the town. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials including sexually oriented materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this ordinance to condone or legitimize the distribution of obscene material.

24.2. Definitions

24.2.1. Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

24.2.2. Adult bookstore or adult video means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe to specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities". A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials or devices which depict or describe "specified sexual activities" or "specified anatomical areas."

24.2.3. Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) Persons who appear in a state of nudity or semi nudity; or

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

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or to specified anatomical areas".

24.2.4. Adult motel means a hotel, motel or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slide, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas", and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

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

24.2.5. Adult motion theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

24.2.6 Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

24.2.7. Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

24.2.8. Escort agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

24.2.9. Establishment means and includes any of the following:

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

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

(c) The additions of any sexually oriented business to any other existing sexually oriented business; or;

(d) The relocation of any sexually oriented business.

24.2.10. Permittee and/or licensee means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

24.2.11. Nude model studio means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

24.2.12. Nudity or a state of nudity means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

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

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

24.2.15. Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

24.2.16. Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

24.2.17. Specified anatomical areas means less than completely and opaquely covered human genitals, pubic regions, buttocks and female breasts below a point immediately above the areola, or the covered male genitals in a discernibly turgid state.

24.2.18. Specified sexual activities means and includes any of the following:

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

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

(c)Masturbation, actual or simulated; or

(d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c)above.

24.2.19. Substantial enlargement of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25) percent.

24.2.20. Transfer of ownership or control of a sexually oriented business means and includes any of the following:

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

(b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal devise which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

24.3. Classification

Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Escort agencies;

(8) Nude model studios; and

(9) Sexual encounter centers.

24.4. Permit and/or License Required

24.4.1. A person commits a misdemeanor if he operates a sexually oriented business without a valid permit and/or license, issued by the town for the particular type of business.

24.4.2. An application for a business license must be made on a form provided by the business license department. The application must be accompanied by a sketch or diagram showing the configuration of the premises; including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

24.4.3. The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the health department, fire department, and building official. The health department, fire department, and building official shall complete their inspections and certify same to the town administrator within twenty-one (21) days of receipt of the application by said town administrator.

24.4.4. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit and/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) percent or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a ten (10) percent or greater interest in the corporation must sign the application for a permit and/or license as applicant.

24.4.5. The fact that a person possesses other types of state or town or county permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit and/or license.

24.5. Issuance of Permit and/or License

The town administrator shall approve the issuance of a certificate of occupancy and the issuance of a license to an applicant within thirty (30) days after receipt of an application unless he

finds one or more of the following to be true:

(1) An applicant is under eighteen (18) years of age.

(2) An applicant or an applicant's spouse is overdue in his payment to the county or town of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

(3) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the applicant form.

(4) An applicant is residing with a person who has been denied a permit and/or license by the town or county to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(5) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

(6) The permit and/or license fee required by this ordinance has not been paid.

(7) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

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

24.6. Fees

The annual fee for a sexually oriented business permit and/or license is as set forth in the Business and Professional License Ordinance.

24.7. Inspection

24.7.1. An applicant or permittee and/or licensee shall permit representatives of the law enforcement agency, health department, fire department, zoning [planning management] department, or other town or county departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

24.7.2. A person who operated a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

24.8. Expiration of Permit and/or License

24.8.1. Each permit and/or license shall expire December 31 of the year in which it is issued and may be renewed only by making application as provided in Section 24.5

24.8.2. When the town administrator denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the town administrator finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90)days have elapsed since the date denial became final.

24.9. Suspension

The town administrator shall suspend a permit and/or license for a period not to exceed thirty (30) days if he determines that a permittee and/or licensee or an employee of a permittee and/or licensee has:

(1) Violated or is not in incompliance with any section of this ordinance;

(2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;

(3) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;

(4) Knowingly permitted gambling by any person on the sexually oriented business premises;

(5) Violated any town or state nudity/indecency statute or ordinance.

24.10. Revocation

24.10.1. The town administrator shall revoke a permit and/or license if a cause of suspension in Section 24.9 occurs and the permit and/or license has been suspended within the preceding twelve (12) months.

24.10.2. The town administrator shall revoke a permit and/or license if he determines that:

(1) A permittee and/or licensee gave false or misleading information in the material submitted to the zoning [planning management] department during the application process;

(2) A permittee and/or licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;

(3) A permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;

(4) A permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;

(5) A permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises;

(6) A permittee and/or licensee is delinquent in payment to the town, county or state for any taxes for fees past due.

24.10.3. When the town administrator revokes a permit and/or license, the revocation shall continue for one year, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for one year from the date revocation became effective. If, subsequent to revocation the town administrator finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date the revocation became effective.

24.11. Transfer of Permit and/or License

A permittee and/or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

24.12. Location of Sexually Oriented Business

24.12.1. Reserved.

24.12.2. Reserved.

24.12.3. A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within eight hundred (800) feet of:

(1) A church;

(2) A public or private elementary or secondary school;

(3) A public or private nursery school or day-care;

(4) A boundary of any residential district;

(5) A public park adjacent to any residential district;

(6) The property line of a lot devoted to residential use.

(7) A public library

24.12.4. A person commits a misdemeanor if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within eight hundred (800) feet of another sexually oriented business.

24.12.5. A person commits a misdemeanor if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof or the increase of floor areas of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

24.12.6. For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, public library, or nursery school or day care or to the nearest boundary of an affected public park, residential district, or residential lot.

24.12.7. For purposes of Subsection (d) of this section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regards to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

24.12.8. Any sexually oriented business lawfully operating at the time of adoption of this ordinance that is in violation of Subsection 24.12.1 through 24.12.7 of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (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 (2) or more sexually oriented businesses are within eight hundred (800) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established businesses is nonconforming.

24.12.9. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, public or private elementary or secondary school, public park, public library, residential district, or a residential lot within eight hundred

(800) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

24.12.10. A sexually oriented business is subject to any and all town and state nudity/indecency statutes or ordinances, existing now or in the future; nothing contained herein shall be interpreted to the contrary.

24.13. Additional Regulations for Adult Motels

24.13.1. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

24.13.2. A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented permit and/or license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

24.13.3. For purposes of 24.13.1 of this section, the terms for rent or subrent means the act of permitting a room to be occupied for any form of consideration.

24.14. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

24.14.1. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of interior of the premises to an accuracy of plus or minus six (6) inches. The town administrator 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 be altered since it was

prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the town administrator or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the managers 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 which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this section.

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

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

(9) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

24.14.2. A person having a duty under Subsection 24.14.1 above commits a misdemeanor if he knowingly fails to fulfill that duty.

24.15. Exemptions

It is a defense to prosecution under Sections 24.5 and 24.12 that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school, licensed by the State of South Carolina; a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

(b) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) Where no more than one nude model is on the premises at any one time.

24.16. Injunction and Violations

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or in violation of Section 24.12 of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable as defined in Section 14.5 of this Code.

A sexually oriented business is subject to any and all town and state nudity/indecency statutes or ordinances, existing now or in the future; nothing contained herein shall be intended to allow any activities contrary to the statutes or the ordinances.

24.17 Severability

The provisions of this Ordinance are hereby declared to be severable and if any section, subsection, sentence, phrase or clause of this Ordinance shall be held or declared by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining sections, subsections, provision, sentences, clauses or phrases shall not be affected thereby.

24.18 Compliance

All businesses found to be in non-compliance with this ordinance, must be in compliance within one year of the date of enactment.