

CLAY COUNTY SEXUALLY ORIENTED BUSINESS ORDINANCE

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§ 1 PURPOSE; EXEMPTIONS.

(A) The Board of County Commissioners for Clay County is committed to protecting the general welfare of Clay County through the enforcement of laws prohibiting obscenity, indecency and sexual offenses. It seeks to reduce and eliminate the deleterious effects of sexually oriented businesses while preserving constitutionally protected forms of expression.

(B) The Board of County Commissioners for Clay County finds that sexually oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse consequences, and finds that such effects are contrary to the general welfare of Clay County.

(C) The Board of County Commissioners for Clay County recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place and manner under which sexually oriented businesses operate; and that, therefore, Clay County has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific requirements before they commence business, as provided for in this Ordinance.

(D) The Board of County Commissioners for Clay County finds that the licensing of sexually oriented business is necessary to ensure compliance with the locational requirements of such businesses.

(E) The Board of County Commissioners for Clay County finds that sexually oriented businesses in other communities have been used for unlawful sexual activities, including prostitution, and sexual encounters of a casual nature. The concern over sexually transmitted diseases is a legitimate health concern of the County.

(F) The provisions of this Ordinance shall not be construed as permitting any use, activity or structure that is otherwise prohibited, illegal or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that is subject to constitutional protection.

§ 2 AUTHORITY AND JURISDICTION.

(A) Authority. This Ordinance is established by the Clay County Board of Commissioners pursuant to the authority conferred in N.C. Gen. Stat. §§ 153A-121 (general ordinance making power), 153A-122 (territorial jurisdiction), 153A-123 (enforcement), 153A-134 (regulation of business) and 160A-181.1 (regulation of sexually oriented businesses).

(B) Jurisdiction. The provisions of this Ordinance shall apply to all unincorporated areas of Clay County lying outside the corporate limits of any municipality. The provisions of this Chapter shall apply within the extraterritorial jurisdiction of any municipality to the extent that the provisions of this Ordinance impose higher standards than any municipal ordinance applicable in the extraterritorial jurisdiction, otherwise the municipal ordinance shall control. In addition, this Ordinance shall be applicable and be effective within the boundaries of the Town of Hayesville to the extent that the governing board for the Town of Hayesville adopts a resolution permitting the same.

§ 3 DEFINITIONS.

ADULT ARCADE (also known as *PEEP SHOW*). Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically-controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images so displayed depicted or describe "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or *ADULT VIDEO STORE*. 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:

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

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

ADULT CABARET. A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as one of its principal business purposes:

- (1) Person who appear nude or semi-nude; or
- (2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) Films, motion pictures, video-cassettes, slides or other photographic reproductions which depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT MOTEL. A hotel, motel or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes;
 - (2) Offers a sleeping room for rent for a period of time that is less than ten hours;
- or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of less than ten hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where, for any form of consideration films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict "specified anatomical areas" or "specified sexual activities."

APPLICANT. The person who will operate the sexually oriented business, and shall include each of the following persons associate with that business:

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association or general partnership;
- (3) Each general partner in a limited partnership;
- (4) Each officer, director and owner of more than 10% of the stock of a

corporation; and

(5) The manager of an establishment operated by a corporation; and

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

EMPLOY, EMPLOYEE and EMPLOYMENT. Describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

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

ESCORT AGENCY. A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.

ESTABLISHMENT. Includes any of the following:

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

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

(3) The addition of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

LICENSEE. Person(s) in whose name a license to operate a sexually oriented business has been issued.

NUDE MODEL STUDIO. Any place where a person who appears semi-nude, in a state of nudity, or who 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. *NUDE MODEL STUDIO* shall not include a propriety school or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

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

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

(3) Where no more than one nude or semi-nude is on the premises at any one time.

OPERATES or CAUSES TO BE OPERATED. To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

NUDITY or a STATE OF NUDITY.

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

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

PERSON. An individual, proprietorship, partnership, corporation, association or other legal entity.

SEMI-NUDE. A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in 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 are in a state of nudity or semi-nudity.

SEXUALLY ORIENTED BUSINESS. An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing.

SPECIFIED ANATOMICAL AREAS. Human genitals in a state of sexual arousal.

SPECIFIED SEXUAL ACTIVITIES. Includes any of the following:

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

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

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) above.

TRANSFER OF OWNERSHIP OR CONTROL. For a sexually oriented business means and includes any of the following:

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

(2) Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of "applicant"; except that a mere substitution of a person as manager of an establishment shall only require filing with the County Manager as provided for in § 7.

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

§ 4 CLASSIFICATION.

Sexually oriented business are classified as follows:

(A) Adult arcades.

(B) Adult bookstores or adult video stores.

(C) Adult cabarets.

(D) Adult motels.

(E) Adult motion picture theaters.

(F) Adult theaters.

(G) Escort agencies.

(H) Nude model studios.

(I) Sexual encounter centers.

§ 5 LICENSE REQUIRED.

(A) It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business privilege license issued by the County Manager pursuant to this Ordinance.

(B) An application for a license must be made on a form prescribed by the County Manager. An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises.

(C) The applicant may request and the applicant shall provide such information as to enable the County Manager to determine whether each applicant meets the qualifications established in this Ordinance.

(D) Each applicant must be qualified under § 6 and each applicant shall be considered a licensee if a license is granted.

§ 6 ISSUANCE OF LICENSE.

(A) Within 30 days after receipt of a completed application, the County Manager will approve or deny the issuance of a license to an applicant for a sexually oriented business license. The County Manager will approve the issuance of a license to an applicant unless the Clay County Sheriff's Department finds one or more of the following to be true:

- (1) The applicant is under 18 years of age.
- (2) The license fee required by this section has not been paid.
- (3) An applicant or an applicant's spouse is overdue in payment to the County of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
- (4) An applicant has failed to provide information required in order to determine the qualifications of the applicant under this Ordinance for issuance of the license, or has falsely answered a question or request for information on the application form.
- (5) An applicant or the proposed establishment is in violation of or is not in compliance with this Ordinance.
- (6) An applicant or an applicant's spouse has been convicted of a provision of this

Ordinance, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(7) The Clay County Sheriff shall make a recommendation to the County Manager based on a check of any state, federal and/or local repository for criminal history to determine if an applicant and/or an applicant's spouse has been convicted of a crime involving any offense described in G. S. Chapter 14 (Articles 7A, 26, 26A, 27, 37 or 39); or any similar offenses to those described above under the criminal or penal code of the state, other states, the County, or other towns, cities, or other countries; or facilitation, attempt, conspiracy or solicitation to commit any of the foregoing offenses; for which:

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

(b) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement of the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses within any 24-month period.

(d) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(e) An applicant who has been convicted or whose spouse has been convicted of an offense listed above may qualify for a sexually oriented business license only when the period required by this Ordinance has lapsed.

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

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

§ 7 APPEAL.

An applicant whose application is denied, suspended or revoked by the County Manager may appeal such action in writing within 30 days to the Board of Commissioners for Clay County, who shall decide either to uphold the action or to issue the license not later than the second regular County Board meeting after receipt of the appeal. The applicant or licensee shall have the right to present evidence before the Board of Commissioners for Clay County. The decision to uphold the action of the County Manager or to issue the license shall be based solely on the criteria established in this Ordinance for the action by the County Manager. A suspension or revocation shall be stayed during the pendency of an appeal to the Board of County Commissioners for Clay County.

§ 8 FEES.

(A) Every sexually oriented business that is granted a license (new or renewal) shall pay to the County an annual nonrefundable privilege license fee of \$1,000 upon license issuance or renewal.

(B) A substitution of a manager of the business which occurs during the license year shall be filed with the County Manager within 30 days of its occurrence, and a \$100 investigation fee paid.

(C) All license applications and fees shall be submitted to the County Manager.

§ 9 LOCATION.

In order to prevent the concentration of multiple sexually oriented businesses, to promote the safety and welfare of children, and to prevent the degradation of property values in residential communities, no sexually oriented business shall be located within one thousand feet (1000'), as determined by a straight line between the nearest point between the building occupied by the sexually oriented business and the closest point of any building, structure or other improvement located on the other property, of any building structure, or improvement used by or intended for use of any of the following:

- (1) Any other sexually oriented business;
- (2) Any church or place of worship;
- (3) Any public or private school or school facility used by students;
- (4) Any day-care or pre-school facility;
- (5) Any public or government-owned park or recreation facility; or
- (6) Any residence.

§ 10 HOURS OF OPERATION.

No sexually oriented business, except for any adult motel, may remain open at any time between the hours of one o'clock a.m. and one o'clock p.m., on Sundays, except to the extent allowed by state law and regulations controlling the sale of alcoholic beverages by the business if the sexually oriented business has a State ABC permit.

§ 11 INSPECTION.

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

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

§ 12 EXPIRATION OF LICENSE.

All licenses shall expire one year from the date of issuance and may be renewed only by making application as provided in this Ordinance. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.

§ 13 SUSPENSION.

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

(A) Violated or is not in compliance with this Ordinance or with any other requirements of this code, including those relating to buildings, electricity, plumbing, fire safety and mechanical equipment;

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

(C) Permitted illegal gambling by any person on the sexually oriented business premises;
or

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

§ 14 REVOCATION.

(A) The County Manager is authorized to, and will, revoke a license if a cause for suspension in § 12 occurs and the license has been suspended within the preceding 12 months.

(B) The County Manager is authorized to, and will, revoke a sexually oriented business license if the Clay County Sheriff's Department determines that a business licensee:

(1) Gave false or misleading information in the material submitted to the County during the application process, including, but not limited to, the use of a name other than a legal name to procure a license; or

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

(3) Has allowed prostitution on the premises; or

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

(5) Has been convicted of an offense named in § 6 for which the time period required has not lapsed; or

(6) On two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime named in § 17 for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

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

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

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

(C) When the County Manager revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the County Manager finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least

90 days have elapsed since the date the revocation became effective. If the license was revoked, an applicant may not be granted another license until the appropriate number of years required under this Ordinance have elapsed.

§ 15 DENIAL.

If the County Manager denies the issuance of a license, or suspends or revokes a license, or denies an appeal, the County will send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action.

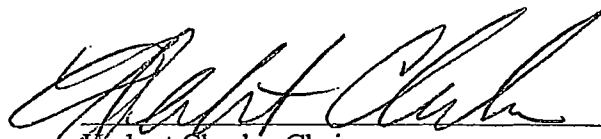
§ 16 NOTICES AND REPORTS.

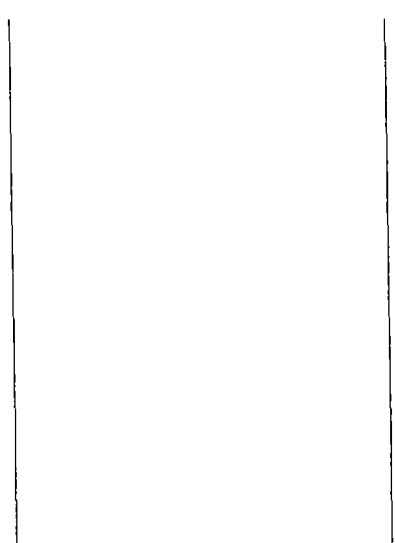
- (A) All notices, findings of fact, determinations, orders, denial of applications, suspensions and revocations shall be in writing and mailed to the applicant or licensee by certified mail to the address filed with the County Manager.
- (B) A licensee shall report to the County Manager every instance in which law enforcement officers conduct any investigation or respond to any complaints or disturbances on the premises of the sexually oriented business; every conviction of any employee of the sexually oriented business or any crime specified in § 6 of this Ordinance.

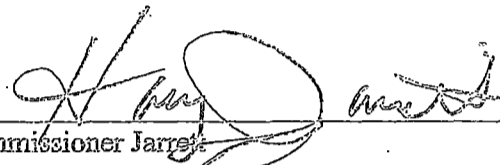
§ 17 PENALTY.

- (A) A violation of any of the provisions of this Ordinance shall be a misdemeanor subject to the penalties and enforcement provisions of N.C. Gen. Stat. § 153A-123.
- (B) Each day's continuing violation of any of the provisions of this Ordinance shall constitute a separate and distinct offense.
- (C) The provisions of this Ordinance may be enforced by any one or more of the remedies authorized in N.C. Gen. § 153A-123.


Read and approved by unanimous vote and adopted unanimously by the Clay County Commissioners, at this duly held Feb 4, 2009, Regular meeting of the Clay County Commissioners.


Herbert Cheeks, Chairman
Clay County Board of County Commissioners



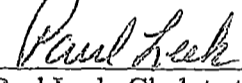


Commissioner Jarrett



Commissioner Sellers

ATTEST:



Paul Leek, Clerk to the Clay County
Board of County Commissioners

(COUNTY SEAL)