



TOWN OF FARMVILLE

CODE OF ORDINANCES

CHAPTER 32 – SEXUALLY ORIENTED BUSINESSES

Section 1 PURPOSE, EXEMPTIONS

- 1.1 The Town of Farmville is committed to protecting the general welfare of the Town 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. The Town of Farmville finds that sexually oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse consequences, and finds that such effects are contrary to the general welfare of the Town. The Town recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place and manner under which sexually oriented businesses operate; and that, therefore, the Town has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific locational requirements before they commence business, as provided for in this article. The Town finds that the licensing of sexually oriented businesses is necessary to ensure compliance with the locational and zoning requirements of such businesses. The Town 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 Town. The provisions of this article shall not be construed as permitting any use, activity or structure that is otherwise prohibited, illegal or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that is subject to constitutional protection.

Section 2 DEFINITIONS

- 2.1 Adult Arcade (also known as “peep show”)

Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically-controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe “specified sexual activities” or “specified anatomical areas.”

- 2.2 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:

- 2.3.1. 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
- 2.3.1. Instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

2.3 Adult Cabaret

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

- 2.3.1. Persons who appear nude or semi-nude; or
- 2.3.2 Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- 2.3.3 Films, motion pictures, videocassettes, slides, or other photographic reproductions which depict or describe “specified sexual activities” or “specified anatomical areas.”

2.4 Adult Motel

A hotel, motel or similar commercial establishment that:

- 2.4.1 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; or
- 2.4.2 Offers a sleeping room for rent for a period of time that is less than ten hours; or
- 2.4.3 Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of less than ten hours.

2.5 Adult Motion Picture Theater

A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe “specified sexual

activities’ or “specified anatomical areas.”

2.6 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.”

2.7 Applicant

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

- 2.7.1 The owner of a sole proprietorship;
- 2.7.2 Each member of a firm, association or general partnership;
- 2.7.3 Each general partner in a limited partnership;
- 2.7.4 Each officer, director and owner of more that ten percent of the stock of a corporation;
- 2.7.5 The manager of an establishment operated by a corporation;
- 2.7.6 Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

2.8 Town Manager

The Farmville Town Manager

2.9 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.

2.10 Escort

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

2.11 Escort Agency

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

2.12 Establishment

Includes any of the following:

- 2.12.1 The opening or commencement of any sexually oriented business as a new business; or
- 2.12.2 The conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- 2.12.3 The addition of any sexually oriented business to any other existing sexually oriented business; or
- 2.12.4 The relocation of any sexually oriented business.

2.13 Licensee

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

2.14 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 proprietary 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:

- 2.14.1 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; and
- 2.14.2 Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- 2.14.3 Where no more than one nude or semi-nude is on the premises at any one time.

2.15 Operates or Causes to be Operated

Means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that

person is an owner, part owner, or licensee of the business.

2.16 Nudity or a State of Nudity

2.16.1 The appearance of a human anus, male genitals, or female genitals; or

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

2.17 Person

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

2.18 Semi-Nude

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

2.19 Sexual Encounter Center

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

2.20 Sexual 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.

2.21 Specified Anatomical Areas

Human genitals in a state of sexual arousal.

2.22 Specified Sexual Activities

Includes any of the following:

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

2.22.2 Sex acts, normal or perverted, actual or simulated, including

intercourse, oral copulation, or sodomy; or

2.22.3 Masturbation, actual or simulated; or

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

2.23 Transfer of Ownership or Control

Of a sexually oriented business means and includes any of the following:

2.23.1 The sale, lease, or sublease of the business.

2.23.2 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 Code Enforcement Officer and Chief of Police.

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

Section 3 SEXUALLY ORIENTED BUSINESSES CLASSIFICATION

Sexually oriented businesses are classified as follows:

- 3.1 Adult arcades
- 3.2 Adult bookstores or adult video stores
- 3.3 Adult cabarets
- 3.4 Adult motels
- 3.5 Adult motion picture theaters
- 3.6 Adult theaters
- 3.7 Escort agencies
- 3.8 Nude model studios
- 3.9 Sexual encounter centers

Section 4 LICENSE REQUIRED

- 4.1 It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business privilege license approved by Code Enforcement Officer pursuant to this article.
- 4.2 An application for a license must be made on a form prescribed by the Code Enforcement Officer. An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises.
- 4.3 The applicant may request and the applicant shall provide such information as to enable the Code Enforcement Officer to determine whether each applicant meets the qualifications established in this article.
- 4.4 Each applicant must be qualified in accordance with this article and each applicant shall be considered a licensee if a license is granted.
- 4.5 Each applicant must request and receive a special use permit when required by the local zoning ordinances.

Section 5 ISSUANCE OF LICENSE

- 5.1 Within 30 days after receipt of a completed application, the Town will approve or deny the issuance of a license to an applicant for a sexually oriented business license. The Town will approve the issuance of a license to an applicant unless it finds one of more of the following to be true:
 - 5.1.1 An applicant is under 18 years of age.
 - 5.1.2 The license fee required by this section has not been paid.
 - 5.1.3 An applicant or an applicant's spouse is overdue in payment to the city taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
 - 5.1.4 An applicant has failed to provide information required in order to determine the qualifications of the applicant under this article for issuance of the license, or has falsely answered a question or request for information on the application form.
 - 5.1.5 An applicant or the proposed establishment is in violation of or is not in compliance with this article or other provisions of this

Code, including local zoning requirements.

- 5.1.6 An applicant or an applicant's spouse has been convicted of a violation of a provision of this article, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- 5.1.7 The Chief of Police shall make a recommendation to the Code Enforcement Officer based on a check of any state, federal and/or local repository for criminal history to determine if an applicant and/or an applicant's spouse has been convicted of a crime involving:
 - 5.1.7.1 Any offense described in G.S. Chapter 14 (Articles 7A, 26, 26A, 27, 37, or 39); or any similar offenses to those described above under the criminal or penal code of North Carolina, other states, Farmville, or other towns, cities, or other countries; or facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which
 - 5.1.7.2 Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - 5.1.7.3 Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - 5.1.7.4 Less than five years have elapsed since the date of the last conviction or the date of release from confinement of the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
 - 5.1.7.5 The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.
 - 5.1.7.6 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 article has lapsed.

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

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

Section 6 APPEAL

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

Section 7 FEES

- 7.1 Every sexually oriented business that is granted a license (new or renewal) shall pay to the Town of Farmville an annual nonrefundable privilege license fee of \$1,000.00 upon license issuance or renewal.
- 7.2 A substitution of a manager of the business which occurs during the license years shall be filed with the Code Enforcement Officer within 30 days of its occurrence, and a \$100.00 investigation fee paid.
- 7.3 All license applications and fees shall be submitted to the Town of Farmville.

Section 8 LOCATION

8.1 Overconcentration

No more than one (1) *sexually oriented business* is located in any two thousand (2000) foot radius (determined by a straight line and not *street* distance). *Sexually oriented businesses* which, because of their very nature, are recognized as having serious objectionable operational characteristics upon adjacent neighborhoods, particularly when they are concentrated. Special regulation of these establishments is necessary to

insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. To prevent an overconcentration of *sexually oriented businesses* and the creation of a de facto downgrading or blighting of surrounding neighborhoods; this radius requirement is necessary.

8.2 Residential Proximity

No *sexually oriented business* is located within a two thousand (2000) foot radius (determined by a straight line and not *street* distance) of any place of worship, school (public or private), specialty school, day-care facility, or any residential zoning districts or residential properties. *Sexually oriented businesses* because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when they are located near a *residential zoning district* or certain other districts which permit residential uses. Special regulation of these establishments is necessary to insure that these adverse effects will not contribute to a downgrading or blighting of surrounding *residential districts* or certain other districts which permit residential uses.

Section 9 INSPECTION

- 9.1 A business license applicant or licensee shall permit representatives of the police department or any other town, city, 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.
- 9.2 The provisions of this article do not apply to areas of an adult motel which are currently being rented by the customer for use as a permanent or temporary habitation.

Section 10 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 article. 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.

Section 11 SUSPENSION

- 11.1 The Code Enforcement Officer is authorized to, and will, suspend a sexually oriented business license for a period not to exceed 30 days if the police department and/or inspections department determines that a business licensee has:
- 11.2 Violated or is not in compliance with this article or with any other requirements of this Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment; or
- 11.3 Refused to allow an inspection of the sexually oriented business premises as authorized

by this article; or

- 11.4 Permitted illegal gambling by any person on the sexually oriented business premises; or
- 11.5 Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

Section 12 REVOCATION

- 12.1 The Code Enforcement Officer is authorized to, and will, revoke a license if a cause for suspension occurs and the license has been suspended within the preceding 12 months.
- 12.2 The Code Enforcement Officer is authorized to, and will, revoke a sexually oriented business license if the police department determines that a business licensee;
 - 12.2.1 Gave false or misleading information in the material submitted to the city during the application process, including, but not limited to, the use of a name other than a legal name to procure a license; or
 - 12.2.2 Has allowed the possession, use, or sale of controlled substances on the premises; or
 - 12.2.3 Has allowed prostitution on the premises; or
 - 12.2.4 Has operated or worked in the sexually oriented business during a period of time when the licensee's license was suspended; or
 - 12.2.5 Has been convicted of an offense named in section 4 of this ordinance for which the time period required has not lapsed; or
 - 12.2.6 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 section 4 of this ordinance for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed; or
 - 12.2.7 Has allowed any act of sexual intercourse, masturbation, oral copulation, or sodomy to occur in or on the licensed premises; or
 - 12.2.8 Is delinquent in payment to the Town of ad valorem taxes, sales taxes, or the annual license fee, or any other fee or tax related to the sexually oriented business or other business of the licensee.
 - 12.2.9 The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- 12.3 When the Code Enforcement Officer revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the Code

Enforcement Officer 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 article has elapsed.

Adopted by the Board of Commissioners on May 1, 2001.