

FILED
WILKES COUNTY
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REGISTER OF DEEDS

FILED Oct 30, 2006
AT 03:58:58 pm
BOOK 01023
PAGE 0127
INSTRUMENT # 11557

**Ordinance to Regulate
Sexually Oriented Businesses**

Wilkes County, N.C.

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WILKES COUNTY, NORTH CAROLINA

**AN ORDINANCE FOR THE REGULATION
OF SEXUALLY ORIENTED BUSINESSES
IN WILKES COUNTY, NORTH CAROLINA**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF WILKES IN REGULAR SESSION ASSEMBLED:

ARTICLE I

TITLE, PURPOSE, AUTHORITY, AND JURISDICTION

Section 1. Title.

This Ordinance shall be known and may be cited as the Wilkes County Sexually Oriented Business Ordinance.

Section 2. Purpose.

For the purpose of promoting the health, safety, morals, and general welfare of the citizenry of Wilkes County, this Ordinance is adopted by the Wilkes County Board of Commissioners to regulate sexually oriented businesses, as hereby defined, located in the County. Further, the regulations of this Ordinance have been made with reasonable consideration, among other things, as to the character of the County and its areas and their particular suitability for these businesses.

Section 3. Authority.

The Wilkes County Board of Commissioners enacts this Ordinance pursuant to its police powers, as set forth in and authorized by Sections 153A-45 through 153A-50, 160A-181.1, and 153A-135 of the North Carolina General Statutes. The Wilkes County Board of Commissioners further enacts this Ordinance pursuant to its planning and zoning powers, as set forth in and authorized by Article 18 of Chapter 153A of the North Carolina General Statutes, in order to empower the Wilkes County Board of Adjustment to hear appeals and variances under Article V below.

Section 4. Jurisdiction.

Pursuant to Section 153A-122 of the North Carolina General Statutes, this Ordinance shall be applicable to all geographical areas of Wilkes County outside the corporate limits of any municipality located within the County.

ARTICLE II

INTERPRETATION OF TERMS AND DEFINITIONS

Section 1. Interpretation of Terms.

The following provisions shall apply with respect to the interpretation of terms under this Ordinance.

- A. Words used in the present tense include the future tense.
- B. Words used in the singular number include the plural, and words used in the plural number include the singular.
- C. The word "owner," when applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant, tenants by the entirety, or other owner of all or part of such building or land.
- D. The words "parcel" and "premises" include the words "plot" and "tract."
- E. The word "building" includes the word "structure."
- F. The word "shall" is always mandatory and not merely directory.
- G. The words "located," "used," or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged, or designed to be located, used, or occupied"; provided, however, that this construction shall not apply to the provisions of Article III, Section 1.A.(1) below.

Section 2. Definitions.

For purposes of this Ordinance, the following definitions shall apply. For terms not defined below or subject to that interpretation as set forth in Section 1 above, the common usage of the term shall prevail.

Adult arcade – An establishment where, for any form of consideration, one (1) or more motion picture projectors, slide projectors, or similar machines for viewing by five (5) or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

Adult bookstore – An establishment that has as a substantial portion (twenty-five percent (25%) or more of total retail space) of its stock-in-trade, and offers for rent or sale for any consideration, any one or more of the following:

- A. Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, DVD's, slides, or other visual representations, that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or
- B. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

Adult live entertainment – Any performance of or involving the actual presence of real people wherein specified anatomical areas or specified sexual activities, as defined herein, are exhibited or performed.

Adult live entertainment business – Any business activity, club, or other establishment wherein adult live entertainment is shown for observation by patrons. Adult live entertainment business include, but are not limited to, adult theaters as defined below.

Adult motion picture theater – An establishment where, for any form of consideration, films, motion pictures, video cassettes, DVD's, slides, or similar photographic reproductions are shown, and in which a substantial portion (twenty-five percent (25%) or more of the total presentation time) is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater – A theater, concert hall, auditorium, or similar establishment characterized by activities featuring the exposure of specified anatomical areas or by specified sexual activities.

Board of Adjustment – The Wilkes County Board of Adjustment.

Board of Commissioners – The Wilkes County Board of Commissioners.

Child Care Facility – A child care facility as defined in G.S. §110-86 or any successor statute thereto.

Church – A building used on a regular basis for the primary purpose of serving as a place of public worship. This definition shall include a synagogue or other house of worship.

County – The County of Wilkes.

Dwelling Unit – A building, manufactured home, or modular home providing complete living facilities for one or more families, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Educational Facility – An elementary school, secondary school, charter school, private school, community college, college, university, or any other similar institution or facility for the education of persons, including any property owned by such facility used for educational purposes.

Massage – Any manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

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

Person – A firm, corporation, general partnership, limited partnership, limited liability company, sole proprietor, individual, individual acting on behalf of another, or any other entity of any type whatsoever.

Planning Board – The Wilkes County Joint Planning Board.

Planning Department – The Wilkes County Planning Department.

Sexually oriented business – Any business activity, club, or other establishment, within which the exhibition, showing, rental, or sale of materials distinguished or characterized by an emphasis on material depicting, describing, or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Sexually oriented businesses shall include, but are not limited to: adult arcades, adult businesses, adult bookstores, adult motion picture theaters, and adult theaters, as defined in this Section 2. A massage parlor that does not possess a license from the North Carolina Board of Physical Therapy Examiners or the North Carolina Board of Massage and Bodywork Therapy shall also be considered a sexually oriented business.

Sheriff – The duly elected Sheriff of Wilkes County or his authorized employee or agent.

Specified anatomical areas – Less than completely and opaquely covered human genitals, pubic regions, buttocks, and female breasts below a point immediately above the top of the areola.

Specified sexual activities – Any of the following:

- A. Human genitals in a state of sexual stimulation or arousal;
- B. Acts of human masturbation, sexual intercourse, or sodomy; or

- C. Fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts.

Total retail space – Any space within a building or structure that is used for the direct sale of merchandise to the public, including storage areas for those items.

ARTICLE III

REGULATION OF SEXUALLY ORIENTED BUSINESSES

Section 1. Location of Sexually Oriented Businesses.

- A. No sexually oriented business shall be permitted in or on any building or premises:
 - (1) Located within two thousand (2,000) feet in any direction from any parcel on which an occupied dwelling unit is located. For purposes of this subdivision (1), a dwelling unit shall be deemed to be occupied if it is used as a dwelling unit on a regular basis by one or more persons.
 - (2) Located within two thousand (2,000) feet in any direction from any parcel on which another sexually oriented business is located.
 - (3) Located within two thousand (2,000) feet in any direction from any parcel on which a church, synagogue, or other house of worship is located.
 - (4) Located within two thousand (2,000) feet in any direction from a parcel on which an educational facility or child care facility is located.
 - (5) Located within two thousand (2,000) feet in any direction from any parcel on which a public playground, public swimming pool, or public park (local, federal, or state-owned) is located.
- B. In order to establish permitted locations under subsection A above, measurement shall be made in a straight line, without regard to intervening structures or objects, as to the shortest distance between the parcel boundaries on which the sexually oriented business is located to the parcel boundaries on which the facility listed in subsection A above is located. Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this subsection. All measurements made hereunder shall be taken by the Planning Department, utilizing aerial photographs from

the Wilkes County Tax Mapping Office, scaled for distance, or such other method as the Planning Department determines in its discretion to be reasonable and accurate.

Section 2. Signage.

Signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the sexually oriented business.

Section 3. Exterior Portions.

- A. It shall be unlawful for an owner or operator of a sexually oriented business to allow any merchandise or activities connected with the same to be visible from a point outside the sexually oriented business.
- 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 vulgar or obscene language, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner.
- C. Perimeter buffer areas shall be established in order to create spatial separation and to lessen the possible adverse impacts upon adjacent land uses.
 - (1) Side and rear yard setbacks of thirty (30) feet shall be observed for buildings or parking.
 - (2) All parking shall be located in the front of the building. There shall be no fencing, earthen berms, landscaping materials, or any other obstruction used to block the building and parking lot from view.
- D. All parking areas and exterior entrances/exits shall be fully illuminated with night-lighting to deter criminal activities.

Section 4. Separation Requirements for Adult Live Entertainment.

It shall be unlawful for any person who engages in adult live entertainment at an adult live entertainment business which is subject to this Ordinance, at any time while engaging in the same, to fail to maintain a physical separation of at least six (6) feet from all patrons at said business. It shall further be unlawful for the owner or operator of an adult live entertainment business hereunder to knowingly permit such violation.

Section 5. Nonconforming Sexually Oriented Businesses.

Any sexually oriented business lawfully operating as of the effective date of this Ordinance that is in violation of any of the provisions hereof shall be deemed a nonconforming use. Any use which is determined to be nonconforming by application of the provisions of this Section 5 shall be permitted to continue for a period not to exceed two (2) years. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If a nonconforming use is discontinued for a period of one hundred eighty (180) days or more, it may not be reestablished. If two (2) or more sexually oriented businesses are located within two thousand (2,000) feet of one another as set forth under Section 1 above and are otherwise in a permissible location, the sexually oriented business which was first established and continually operating at its present location shall be considered the conforming use and the later established sexually oriented business shall be considered nonconforming. A sexually oriented business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of any use listed in Section 1.A. above within two thousand (2,000) feet from the sexually oriented business.

ARTICLE IV

PERMITS AND LICENSING

Section 1. Permitting Process.

A. Permits Required.

No building or other structure subject to this Ordinance shall be placed, erected, moved, added to, or structurally altered, nor shall any use of land which is subject to this Ordinance be undertaken, commenced, expanded, or enlarged, without a permit for the same having been issued by the Planning Department as set forth in this Article IV; provided, that no permit shall be required for nonconforming uses which meet the requirements of Article III, Section 5 above. The permit required under this Article IV shall be known as a "Sexually Oriented Business Permit" and is referred to herein as "permit."

B. Permitting Process.

(1) Applications.

All applications for a permit under this Article IV shall be on a form approved by the County, shall be fully completed, and shall be signed by all persons who will be the owners and operators of the sexually oriented business (collectively referred to under Sections 1, 2, 3, and 4 of this Article IV as "the applicant");

provided, that in the case of owners or operators which are corporations, limited liability companies, partnerships, or other entities having multiple ownership, the application need not be signed by any person having less than a ten percent (10%) ownership interest in the same. All applications shall be accompanied by an as-built survey showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any buildings or structures already existing; the location and dimensions of all proposed buildings, facilities, and other aspects of the operations to be conducted, or alterations thereto; and compliance with the standards of Article III. The application shall further include a description of all existing or proposed buildings or operations, or alterations thereto; a description of all existing and proposed uses of the buildings and land; a list of all persons who will be employees of the sexually oriented business, together with a copy of the license for each such person issued by the Sheriff under Section 5 below; in the case of an adult live entertainment business, a list containing the names and addresses of all persons who will be performing adult live entertainment at the same, together with a copy of the license for each such person issued by the Sheriff under Section 5 below; copies of all required permits as referenced below; and such other information as may reasonably be required by the Planning Department to determine conformance with and provide for the enforcement of this Ordinance. The application shall additionally contain certifications that:

- (i) The use for which the permit is being requested will at all times comply with the applicable regulations and standards imposed under this Ordinance and with all conditions of such permit as may be issued hereunder.
- (ii) The applicant has not constructed, maintained, operated, or modified any sexually oriented business within Wilkes County without the approval of the County.
- (iii) The applicant will not operate or allow the operation of a sexually oriented business unless every employee thereof holds a valid license issued by the Sheriff under Section 5 below, nor will the applicant operate or allow the operation of an adult live entertainment business unless every person performing adult live entertainment therein holds a

valid license issued by the Sheriff under Section 5 below.

- (iv) No permit issued to the applicant under this Ordinance, or under any successor Ordinance hereto, has been revoked within the five (5) year period preceding the date of the application.
- (v) The proposed sexually oriented business is properly permitted under and complies with, and at all times will be maintained and operated and will continue to be permitted under, all rules, regulations, and other requirements imposed by any applicable regulatory agency or governmental body.

(2) Application Fee.

All applications for a permit shall be accompanied by such fee as may have been established by the Board of Commissioners. Said fee is non-refundable.

(3) Consultation with Other Local, State, and Federal Agencies.

The Planning Department may, in its discretion, consult with other local, State, and Federal agencies following receipt of an application for a permit, when in the opinion of the Planning Department a report from such agency would be relevant in determining whether the proposed sexually oriented business is able to comply with the certification in subdivision (1)(iv) above.

(4) Issuance or Denial of Permit.

The Planning Department shall complete its review of the application and notify the applicant in writing as to what action has been taken with respect to the same. Said written notification shall be issued no later than forty-five (45) days from the later of the following to occur: receipt by the Planning Department of all information required to be submitted by the applicant under this subsection B; and receipt by the Planning Department of all information which it is authorized to obtain hereunder. Action by the Planning Department shall consist of one of the following:

- (i) If the Planning Department determines that the application or the proposed sexually oriented business, or both, fails to meet one or more of the requirements of this Ordinance, or that any one or

more of the certifications in subdivision (1) above cannot truthfully and correctly be made, the application for a permit shall be denied. Written notification of the denial from the Planning Department to the applicant shall note the reason(s) for the denial and shall refer to the specific section(s) of this Ordinance with which the application or proposed sexually oriented business does not comply. The applicant shall have sixty (60) days from receipt of said written notification to bring the application and proposed sexually oriented business into compliance, in which event the provisions of subparagraph (iii) below shall apply. If the applicant fails to do so within said period of sixty (60) days, the applicant shall be required to file a new application, or, in the alternative, the applicant may file an appeal under Section 3 below. The Planning Department shall provide written notification to the applicant as to the Planning Department's decision with regard to any attempts by the applicant to bring the application or proposed sexually oriented business into compliance.

- (ii) An application for a permit shall further be denied upon a determination by the Planning Department that said application or information submitted in connection therewith contains a material misrepresentation, either of commission or omission.
- (iii) If the Planning Department determines that the application and proposed sexually oriented business meet all of the requirements of this Ordinance, and that the application does not violate the provisions of subparagraph (ii) above, the Planning Department shall issue a permit to the applicant.
- (iv) If the Planning Department fails within the above stated period of forty-five (45) days to notify the applicant as to what action has been taken, the application shall be deemed approved and a permit shall be issued to the applicant. For purposes of this subparagraph (iv), the date of notification shall be the date on which the same is mailed, faxed, or otherwise sent or delivered to the applicant.

All permits hereunder are issued on the condition that they are and shall remain subject to the holder's continued compliance with those certifications contained in the application and with the requirements of this Ordinance. No permit may be assigned or transferred by the holder to any other person.

(5) Conditions of Permit.

Each permit approved hereunder shall be issued on condition that:

- (i) The certifications contained in the application are true and correct, and, if continuing in nature, shall at all times remain true and correct;
- (ii) The application, and information submitted in support of the same, contains no material misrepresentation, either of commission or omission;
- (iii) All buildings, structures, facilities, and other aspects of the sexually oriented business will be constructed and maintained as shown in the application and accompanying information;
- (iv) The applicant is and will at all times remain in compliance with the terms and conditions of the permit and with all requirements of this Ordinance; and
- (v) The applicant shall, during its normal business hours or at such other reasonable times as may be requested, allow entry onto the premises and into the building where a sexually oriented business is located by law enforcement officers having jurisdiction over the same who are acting in the course of their official duties, by employees or agents of the Planning Department who are charged with enforcement of this Ordinance, by government inspections personnel (including but not limited to local fire, health, and building inspectors) who are performing lawful duties incident to their office, and by emergency response personnel who are responding to a reported emergency on the premises. This condition shall be solely for the purpose of facilitating examination and inspection of the sexually oriented business to determine if the

same is in compliance with the provisions of this Ordinance, and said condition shall not authorize or permit any actions which violate the proscription against unreasonable searches and seizures under the Constitutions of North Carolina and the United States.

(6) Duration and Scope of Permit.

A permit shall be valid only for the proposed sexually oriented business as described in the application for the same and, unless revoked under Section 2 below or voluntarily surrendered by the holder thereof, shall remain valid until such time as said high impact land use has for any reason been discontinued for one hundred eighty (180) or more consecutive days. In the event of damage to a nonconforming sexually oriented business by fire, flood, or other hazard, which is not caused by the intentional conduct of the owner or operator, and which causes the high impact land use to discontinue operations for one hundred eighty (180) or more consecutive days, the owner or operator may file a request for a variance with the Board of Adjustment as set forth under Article V below for one (1) or more extensions of said one hundred eighty (180) day period, up to a combined maximum of one hundred eighty (180) additional days; provided, that the variance request shall set forth the reason(s) why repairs cannot be completed and operations resumed within the time required hereunder; provided further, that any such variance request shall be filed prior to the expiration of the preceding period during which repairs were to be completed and operations resumed.

(7) Alterations and Expansions.

Any alteration, addition to, expansion, or enlargement of a sexually oriented business shall require the application for and issuance of a new permit hereunder. For purposes of this subsection B, an alteration, addition to, expansion, or enlargement of a sexually oriented business shall be deemed to require a new permit if it is such as to require the issuance of a building permit, zoning permit, environmental health permit, watershed permit, or any other local, State, or Federal permit from a regulatory agency or governmental body as may be applicable under subdivision (1)(iv) above.

Section 2. Revocation of Permit.

The Planning Department may, after due notice to the holder of a permit under this Article IV and an opportunity to be heard, revoke such permit upon a finding that:

- A. The holder has violated any of the terms or conditions of the permit or any of the requirements of this Ordinance; or
- B. The application on which issuance of the permit was based contains a material misrepresentation, either of commission or omission.

Section 3. Appeal of Permit Denial or Revocation.

If an application for a permit under this Article IV is denied, or if such permit is revoked, the applicant or holder may appeal the action of the Planning Department to the Board of Adjustment as set forth in Article V below.

Section 4. Referral to Board of Adjustment.

The Planning Department may, at any time prior to the filing of an appeal by the applicant under Article V below, refer consideration of an application or any aspect thereof under this Article IV to the Board of Adjustment. In such cases the Board of Adjustment shall exercise all powers and authority of the Planning Department as set forth in this Article IV; provided, however, that the exercise of said powers and authority shall be limited to the specific matter referred to it by the Planning Department; provided further, that the Board of Adjustment procedures set forth in Article V below shall not apply in the case of referrals, and that the Board of Adjustment may act on a referral by simple majority vote, a quorum (three-fifths (3/5) of the total membership of the Board) being present; provided further, that any appeal from action of the Board of Adjustment taken pursuant to a referral shall be as set forth in Article V, Section 9.

Section 5. Licensing of Employees of Sexually Oriented Businesses and of Persons Engaged in the Performance of Adult Live Entertainment.

- A. No person shall be employed by a sexually oriented business in any capacity, nor shall any person engage in adult live entertainment at an adult live entertainment business which is subject to this Ordinance, unless such person shall have first applied for and received the license provided by this Section 5.
- B. The application for the license required by this Section 5 shall be upon a form approved by the Sheriff and shall be filed with his office, with a copy to be forwarded by the Sheriff to the Planning Department. Such application shall be given under oath, shall be accompanied by such fee as may have been established by the Board of Commissioners, and shall contain the following information:
 - (1) The name, age and residence address of the applicant;

- (2) A complete statement of the previous business or occupation of the applicant for the two (2) years immediately preceding the date of application, including any adult live entertainment experience or experience as an employee of a sexually oriented business;
 - (3) A complete statement of all convictions of the applicant, within the ten (10) year period preceding the date of the application, for any felony or misdemeanor or violation of a local ordinance;
 - (4) A complete statement of any revocation of any license granted by any governmental unit to the applicant to be employed by a sexually oriented business or to engage in the business or profession of adult live entertainment; and
 - (5) The date and place of the applicant's birth, the name of the applicant's parents, and the residence address or addresses of the applicant for the five (5) years immediately preceding the date of application.
- C. The applicant shall submit, as part of the application required in subsection B above, the following:
- (1) Fingerprints of the applicant taken by the Sheriff;
 - (2) Two recent photographs of the applicant's head and shoulders, of a size and quality prescribed by the Sheriff; and
 - (3) Such signed consent forms as may be reasonably and lawfully required by the Sheriff for the purpose of obtaining independent verification of the information required under subsection B above.
- D. An application in proper form shall be reviewed by the Sheriff, together with any reports required by this Section 5. The Sheriff shall approve such application if he determines:
- (1) That the applicant is at least 18 years of age;
 - (2) That the application contains no misstatement of fact;
 - (3) That the applicant has not been convicted of any crime involving sexual misconduct, including but not limited to Articles 7A, 26, 26A, or 27 of the North Carolina General Statutes or corresponding provisions of statutes in other jurisdictions, or any violation of any federal statute relating to prostitution, or for violation of any law or ordinance of any governmental unit

concerning or related to the business or profession of adult live entertainment;

- (4) That the applicant has not, for the five (5) year period preceding the date of the application, had a previously issued license for engaging in the business or profession of adult live entertainment revoked; and
- (5) That the applicant has not been previously convicted of any violation of any provision of this Ordinance.

F. Upon approval of the application by the Sheriff, he shall issue a license to the applicant hereunder. The license shall be valid for a period of one (1) year. Thereafter the applicant shall not be employed by a sexually oriented business or engage in adult live entertainment at an adult live entertainment business which is subject to this Ordinance without again applying for and obtaining a license in accordance with the requirements of this Section 5.

G. A license issued pursuant to this section shall be revoked by action of the Sheriff if he determines that:

- (1) The licensee has violated any provision of this Ordinance; or
- (2) The licensee has been convicted of any crime involving sexual misconduct, including but not limited to Articles 7A, 26, 26A, or 27 of the North Carolina General Statutes or corresponding provisions of statutes in other jurisdictions, or under any federal statute relating to prostitution, or for violation of any law or ordinance of any governmental unit related to the business or profession of adult live entertainment.

Section 6. Permittee to use Licensed Employees.

The holder of a permit under this Article IV shall not allow or permit any person to be employed by the sexually oriented business for which the permit is held or to perform adult live entertainment upon the premises operated by the permit holder unless such person holds a valid license issued to him or her hereunder. Violation of this Section 6 shall be grounds for revocation of the permit issued to such violator pursuant to this Article IV.

ARTICLE V

APPEALS AND VARIANCES

Section 1. Board of Adjustment.

The Wilkes County Board of Adjustment, as established by G.S. §153A-545, shall hear all appeals, referrals by the Planning Department, requests for variances, and all challenges to the decision or interpretation of the Planning Department under this Ordinance.

Section 2. Powers of Board of Adjustment under this Ordinance.

The Board of Adjustment shall have the following powers under this Ordinance:

- A. To hear, decide, and review appeals from any order, requirement, decision, or determination made by the Planning Department in the performance of its duties hereunder;
- B. To hear and decide applications for variances from the requirements of this Ordinance as authorized under Article IV, Section 1.B.(6) above; and
- C. To hear referrals by the Planning Department as authorized under Article IV, Section 4 above.

Section 3. Board of Adjustment Rules of Procedure.

The rules of procedure duly adopted by the Board of Adjustment shall govern all proceedings that may come before it under this Ordinance. In the event of a conflict between said rules of procedure and the procedural requirements of this Ordinance, said rules of procedure shall govern.

Section 4. Appeals.

- A. Notice of appeal from any order, requirement, decision, or determination made by the Planning Department hereunder shall be in writing, shall specifically state the grounds on which the same is based, and shall be forwarded or delivered to the Clerk to the Board of Adjustment. Said notice of appeal must be received by the Clerk within thirty (30) days following the applicant's or permit holder's receipt of the final decision of the Planning Department. Appeals not complying with the above requirements shall not be considered.
- B. Appeals shall be heard *de novo*. In presenting an appeal, the appellant shall bear the burden of proof, which shall be by the greater weight of the evidence.

- C. All evidence presented to the Board of Adjustment shall be sworn.
- D. The person acting as Chairman of the Board of Adjustment is authorized to administer oaths to any witnesses in any matter coming before said Board.
- E. The final decision of the Board of Adjustment on appeal shall be filed with the Clerk of said Board, and a copy of the same shall be forwarded by registered or certified mail, return receipt requested, to the appellant and to any other aggrieved party who has filed a written request for such copy with the Clerk of said Board at the time the appeal is heard.
- F. In addition to the foregoing procedural requirements, appeals shall be governed by the provisions of G.S. §153A-345.

Section 5. Variances.

- A. A variance may be granted by the Board of Adjustment for an extension of time under Article IV, Section 1.B.(6) of this Ordinance if authorized under the provisions thereof. The granting or denial of a variance shall be recorded in the minutes of the Board of Adjustment.
- B. All requests for variances shall be in writing, shall specifically describe the variance requested, shall demonstrate how the requirements of this Ordinance applicable to the variance requested have been satisfied, and shall be signed by the owner or operator of the sexually oriented business who is submitting the variance request. Requests for variances shall be forwarded or delivered to the Clerk to the Board of Adjustment.
- C. Following receipt of a request for variance, the Clerk to the Board of Adjustment shall schedule the same for hearing before the Board of Adjustment. Notice of the date, time, place, and subject of said hearing, together with a copy of the variance request, shall be forwarded by registered or certified mail, return receipt requested, to the owner or operator of the sexually oriented business who is submitting the variance request, and the return receipt for the same shall evidence that it was received at least ten (10) days prior to the hearing.
- D. In presenting a variance request, the applicant shall bear the burden of proof that the requirements of this Ordinance with respect to variances have been met, which shall be by the greater weight of the evidence.
- E. All evidence presented to the Board of Adjustment shall be sworn.

- F. The person acting as Chairman of the Board of Adjustment is authorized to administer oaths to any witnesses in any matter coming before the Board.
- G. The Board of Adjustment may impose reasonable conditions upon the granting of any variance in order to protect the public interest or assure compliance with the requirements of this Ordinance. Violation of any such conditions shall be a violation of this Ordinance and subject the offender to the penalties set forth in Article VI below.
- H. The final decision of the Board of Adjustment on a variance request shall be filed with the Clerk of said Board, and a copy of the same shall be forwarded by registered or certified mail, return receipt requested, to the owner or operator of the sexually oriented business who has requested the variance
- I. In addition to the foregoing procedural requirements, variance requests shall be governed by the provisions of G.S. §153A-345.

Section 6. Application of Interpretation Power.

An appeal from an order, requirement, decision, or determination of the Planning Department shall be decided by the Board of Adjustment duly supported by competent evidence. In exercising this power, the Board of Adjustment shall act in a prudent manner so that the purpose and intent of the Ordinance shall be served. No decision shall have the effect of varying the terms of the Ordinance or permitting as a matter of right any use otherwise limited or prohibited hereunder.

Section 7. Appeal Stays Further Proceedings.

An appeal to the Board of Adjustment from a decision or determination of the Planning Department stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 8, during the pendency of the appeal.

Section 8. Exceptions to Stay of Action.

An appeal to the Board of Adjustment of a decision or determination of the Planning Department shall not stay proceedings in furtherance of the decision or determination appealed from, if the Planning Director certifies to the Board of Adjustment, and the Board of Adjustment finds, either:

- A. That a stay would cause imminent peril to life or property; or
- B. That the situation subject to the appeal is transitory in nature, and therefore an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Planning Department shall set forth in the certification facts to support its conclusion, and the Board of Adjustment shall set forth findings of fact sufficient to support its determination.

Section 9. Appeals of Board Actions.

Every decision of the Board of Adjustment shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be governed by the provisions of G.S. §153A-345. The Superior Court is authorized to stay enforcement of this Ordinance during the pendency of an appeal from the decision of the Board of Adjustment upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

ARTICLE VI.

ENFORCEMENT, VIOLATIONS, AND PENALTIES

Section 1. Administration and Enforcement.

The Planning Department shall be responsible for the administration and enforcement of this Ordinance. If the Planning Department determines that any of the provisions of this Ordinance are being violated, it shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the violation to be corrected within thirty (30) days. It may order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any other action authorized by this Ordinance to insure compliance with, or to prevent violations of, the provisions hereof.

Section 2. Interference.

It shall be unlawful for any person to interfere with, hinder, or harass the employees, agents, or authorized representatives of the County in the performance of their duties under this Ordinance.

Section 3. Violations; Penalties.

- A. The violation of any provision of this Ordinance shall be a Class 3 misdemeanor.
- B. Each day's continuing violation of this Ordinance, where applicable, shall constitute a separate and distinct offense.

Section 4. Equitable Enforcement; Order of Abatement.

This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, or by an order of abatement, as provided under G. S. §153A-123(d) and (e).

Section 5. Cumulative Remedies.

The remedies and penalties for violation of this Ordinance shall be cumulative, and the election of a remedy or enforcement of a penalty by the County hereunder shall not preclude the election of any other remedy or enforcement of any other penalty by the County which may be provided under this Ordinance or by law.

Section 6. Actions for Abatement of Nuisance.

The provisions of this Article VI shall not be construed to limit, abridge, or otherwise affect the authority of the County to file an action for abatement of a nuisance under Chapter 19 of the North Carolina General Statutes.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Conflict with Other Laws.

Wherever the provisions or application of this Ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions or application of this Ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions of this Ordinance, the provisions of such other statute or local ordinance or regulation shall govern.

Section 2. Severability Clause.

Should any section or provisions of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part hereof other than the part so declared to be unconstitutional or invalid.

Section 3. Amendment Procedure.

This Ordinance may be amended from time to time by the Board of Commissioners as herein specified.

- A. Planning Board Review. No amendment shall become effective unless it shall have been either proposed by the Planning Board or submitted to the Planning Board by the Board of Commissioners for review and recommendation. The Planning Board shall have forty-five (45) days from the date an amendment is first submitted to it for review to make a recommendation to the Board of Commissioners. Said recommendation, or a proposal for an amendment by the Planning Board, as the case may be, shall be made by action of the Planning Board undertaken at a duly called meeting and recorded in the minutes of the meeting.
- B. Public Hearing. No amendment shall be adopted until the Board of Commissioners has held a public hearing on the same. Notice of the hearing shall be published in a newspaper of general circulation in the Wilkes County area at least once a week for two (2) successive calendar weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) nor less than ten (10) days prior to the hearing date. In computing the ten (10) and twenty-five (25) day periods, the date of publication is not to be counted, but the date of the hearing shall be included. Nothing herein shall be construed to prohibit the Planning Board from calling for and holding its own public hearing on the amendment prior to making a recommendation or proposal to the Board of Commissioners, which public hearing, if called for by the Planning Board, shall be held upon the same notice requirements as set forth above, except that publication of the notice shall be required only once.
- C. Effect of Amendments. A duly adopted amendment to this Ordinance shall apply only to those sexually oriented businesses, or alterations, additions to, expansions, or enlargements thereof, for which a permit application is filed after the effective date of the amendment.

Section 4. Repeal of Moratorium.

As of the effective date of this Ordinance, any moratorium then in effect which has been enacted by the County with respect to the subject matter hereof, including any extensions of such moratorium, shall be deemed repealed and of no further force or effect.

Section 5. Effective Date.

The effective date of this Ordinance shall be the date of its adoption by the Board of Commissioners.

ON MOTION OF Commissioner Luther Parks,
SECONDED BY Vice-Chairman Charles Sink, THE
FOREGOING ORDINANCE WAS READ, APPROVED, AND ADOPTED BY
THE BOARD OF COMMISSIONERS OF WILKES COUNTY, IN REGULAR
SESSION ASSEMBLED ON THE 3rd DAY OF October, 2006, BY
VOTE OF 5 IN FAVOR AND 0 OPPOSED.

WILKES COUNTY BOARD OF COMMISSIONERS

By: Zach Henderson
Zach Henderson, Chairman
Wilkes County Board of Commissioners



Alene E. Faw
Alene E. Faw, Clerk

