

ORDINANCE NUMBER: 1339-X

0-6

AN ORDINANCE TO AMEND ORDINANCE NUMBER 1313-X, THE 1999-2000 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION FOR CONSTRUCTION OF A N AVIATION HANGER FOR THE NATIONAL GYPSUM CORPORATION.

BE IT ORDAINED, by the City Council of the City of Charlotte;

Section 1. That the sum of \$905,886 is hereby estimated to be available from the Airport Excluded Centers fund balance (7404).

Section 2. That the sum of \$905,886 is hereby transferred and appropriated to Aviation Capital Project Fund 2073; 563.12 - National Gypsum Hanger.

Section 3. All ordinances in conflict with this ordinance are hereby repealed.

Section 4. This ordinance shall be effective immediately.

Approved as to form:

76 Medard P  
Sr. Dep City Attorney

CERTIFICATION

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of August, 1999, the reference having been made in Minute Book 113, and recorded in full in Ordinance Book 49, Page(s) 552.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 24th day of August, 1999.

Brenda R. Freeze, CMC  
Brenda R. Freeze, CMC, City Clerk

ORDINANCE NUMBER: 1340-X

0-7

**AN ORDINANCE TO AMEND ORDINANCE NUMBER 1313-X, THE 1999-2000 BUDGET ORDINANCE, PROVIDING AN APPROPRIATION FOR Y2K REMEDIATION OF THE POLICE CAD SYSTEM.**

BE IT ORDAINED, by the City Council of the City of Charlotte;

- Section 1. That the sum of \$313,695 is hereby estimated to be available from Asset Forfeiture Funds.
- Section 2. That the sum of \$313,695 is hereby transferred and appropriated to the General Fund (0101) Police Department Operating Budget.
- Section 3. That the existence of this program may extend beyond the end of the fiscal year. Therefore, this ordinance will remain in effect for the duration of the program and funds are to be carried forward to subsequent fiscal years until all funds are expended.
- Section 4. All ordinances in conflict with this ordinance are hereby repealed.
- Section 5. This ordinance shall be effective immediately.

75 Michael J.  
City Attorney

**CERTIFICATION**

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of August, 1999, the reference having been made in Minute Book 113, and recorded in full Ordinance Book 49, Page(s) 553.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 24th day of August, 1999.

Brenda R. Freeze, CMC  
Brenda R. Freeze, CMC, City Clerk

ORDINANCE NUMBER: 1341

AMENDING CHAPTER 6

**ORDINANCE AMENDING CHAPTER 6 OF THE CHARLOTTE CITY CODE  
ENTITLED "BUSINESSES AND TRADES"**

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WHEREAS, North Carolina General Statute 160A-174 allows a city by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens; and

WHEREAS, North Carolina General Statute 160A-194 allows a city by ordinance, subject to the general law of the State, to regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment; and

WHEREAS, North Carolina General Statute 160A-181.1 states that the General Assembly has found and determined that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties and specifically authorizes cities and counties to regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances, as necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses; and

WHEREAS, from a review of information provided by the Charlotte-Mecklenburg Police Department, as well as a review of studies conducted by other cities including, but not limited to, Tucson, Arizona (1990), Garden Grove, California (1991), Oklahoma City, Oklahoma (1992), Times Square, New York (1994), Newport News, Virginia (1996), Dallas, Texas (1997), and Kansas City, Missouri (1998), there is convincing documented evidence that sexually oriented businesses, because of their very nature, may have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing, among other adverse secondary effects, increased crime and downgrading of property values; and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, increased crime and unhealthful conduct tend to accompany, concentrate around, and be aggravated by sexually oriented businesses including, but not limited to, prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials and child pornography, possession and sale of controlled substances, and violent crimes against persons and property; and

WHEREAS, concern over sexually transmitted diseases, including syphilis, gonorrhea, chlamydia, and AIDS, is a legitimate health concern of the City of Charlotte which demands reasonable regulations of sexually oriented businesses in order to protect the health and well

being of the citizens, particularly regarding high risk sexual conduct in "peep show" movie viewing booths (adult mini motion picture theatres); and

WHEREAS, numerous courts have upheld restrictions on the configuration and viewability of the "peep show" movie viewing booths in sexually oriented businesses as a means of controlling and preventing the spread of sexually transmitted diseases and unlawful sexual conduct in such booths including, but not limited to, *Mitchell v. Comm'n on Adult Entertainment Establishments*, 10 F.3d 123 (3rd Cir. 1993); *Wall Distributors, Inc. v. City of Newport News*, 782 F.2d 1165 (4th Cir. 1986); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Berg v. Health and Hospital Corp.*, 865 F.2d 797 (7th Cir. 1989); *Scope Pictures of Missouri v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); and *Ellwest Stereo Theatres, Inc. v. Wenner*, 681 F.2d 1243 (9th Cir. 1982).

WHEREAS, some adult live entertainment businesses in the City of Charlotte have set aside "VIP rooms, VIP booths, or VIP areas" which are rooms or other areas of the businesses where topless dancers may perform private or semi-private topless dances for patrons, and experience has shown that topless dancing performed in such rooms or areas presents opportunities for illegal activity such as, but not limited to, indecent exposure and solicitation for prostitution; and

WHEREAS, the City Council desires to minimize and control the adverse secondary effects caused by sexually oriented businesses and thereby protect the health, safety, and welfare of the citizens, protect the citizens from increased crime, preserve the quality of life, preserve the property values and the character of surrounding neighborhoods and businesses, deter the spread of urban blight, and protect against the threat to health from the spread of communicable and social diseases; and

WHEREAS, the City Council has considered the decisions of the United States Supreme Court regarding local regulation of sexually oriented businesses including, but not limited to, *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976), *reh. denied* 429 U.S. 873; *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *reh. denied* 475 U.S. 1132; *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); and

WHEREAS, the City Council has determined that location criteria alone do not adequately protect the health, safety, and general welfare of the people of the City of Charlotte and thus certain requirements with respect to the ownership and operation of sexually oriented businesses is in the public interest; and

WHEREAS, Section 6-145 of this ordinance, which specifies the appeal process from a denial, suspension, or revocation of a sexually oriented business license, is currently drafted in accordance with the requirements associated with prior restraint and prompt judicial review, as set forth in the cases of *Chesapeake B & M, Inc. v. Harford County*, 58 F. 3d 1005 (4th Cir.),

*cert. denied sub nom. Harford County v. Chesapeake B & M, Inc.*, 116 S. Ct. 567 (1995) and *11126 Baltimore Blvd., Inc. v. Prince Georges County*, 58 F.3d 988 (4th Cir.), *cert. denied sub nom. Prince Georges County v. 11126 Baltimore Blvd., Inc.*, 116 S. Ct. 567 (1995), the City Council reserves the right to amend that section if and when the relevant holdings of those cases are overturned; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the adverse secondary effects of those sexually oriented businesses that may be protected by the First Amendment; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state law prohibits the distribution of obscene material and expects and encourages state enforcement officials to enforce state obscenity statutes against such illegal activities in the City of Charlotte.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Charlotte, North Carolina that:

Section 1. Chapter 6, "Businesses and Trades" of the Charlotte City Code is amended by creating Article X, entitled "Sexually Oriented Businesses," to read as follows:

#### **"ARTICLE X. SEXUALLY ORIENTED BUSINESSES**

##### **Sec. 6-134. Purpose and authority.**

It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the City of Charlotte, and to establish reasonable and uniform regulations to prevent the deleterious effects of sexually oriented businesses. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials or other expressive activities, including sexually oriented materials or activities. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to in any way condone or legitimize the distribution of obscene material or material harmful to minors. The authority for this regulation is North Carolina General Statutes 160A-174, 160A-194, and 160A-181.1.

**Sec. 6-135. Definitions.**

*Adult bookstore* means a retail establishment that has:

- (a) As one of its principal business purposes the sale or rental of, or a substantial or significant portion of its stock in trade for sale or rental:
  - (1) Publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; and/or
  - (2) Sexually oriented devices, as defined in this section.
- (b) As used in this definition, publications include, by way of illustration, books, magazines, other periodicals, movies, video tapes, and other products offered in photographic, electronic, magnetic, digital, or other imaging medium.
- (c) Any of the following shall be indicia that an establishment has as one of its principal business purposes the sale or rental of:
  - 1) publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; and/or
  - 2) sexually oriented devices, as defined in this section:
    - (1) The business advertises the sale or rental of adult publications and/or sexually oriented devices;
    - (2) Access by persons under eighteen (18) years of age to the business establishment or portions of the business establishment is restricted;
    - (3) Signs or notices are posted outside and/or inside the business establishment indicating that the material offered for sale or rental might be offensive;
    - (4) The building or portion of the building containing the business establishment does not have windows or has windows that are screened or otherwise obstructed or are situated in a manner that restricts visual access from outside the building to materials displayed within for sale or rental.

Such indicia shall be considered along with all other factors and available information.

- (d) Notwithstanding the foregoing, a general circulation video store that does not offer for sale any sexually oriented devices shall not constitute an "adult bookstore" even though it offers for sale and/or rental video tapes which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or

specified sexual activities, as defined in this section, so long as:

- (1) Such described video tapes are stocked and displayed in a room separate from the area of the business establishment where general circulation video tapes are stocked and displayed;
- (2) Access by persons under eighteen (18) years of age to the room where such described video tapes are stocked and displayed is restricted;
- (3) The square footage of the separate room where such described video tapes are stocked and displayed is no more than ten (10) percent of the square footage of the area where general circulation video tapes are stocked and displayed; and
- (4) The general circulation video tape portion of the business establishment offers a quantity and selection of new release general circulation video tapes that is typical of a general circulation video store and offers a quantity and selection of other general circulation video tapes that are organized and displayed in a manner that is typical of a general circulation video store.

*Adult live entertainer* means an employee who engages in or performs adult live entertainment.

*Adult live entertainment* means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

*Adult live entertainment business* means any establishment or business which has as one of its principal business purposes the presentation of adult live entertainment for observation by patrons.

*Adult mini motion picture booth* means any booth or partitioned area of less than one-hundred fifty (150) square feet in an adult mini motion picture theatre that is designed to hold patrons for the presentation and viewing of still or motion pictures (slides, film, video tape, laser disc, CD-ROM or other imaging media) that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section.

*Adult mini motion picture theatre* means a commercial establishment with one or more adult mini motion picture booths where:

- (a) One of the principal business purposes is the presentation and viewing of still or motion pictures in the viewing booths that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; or

- (b) A substantial or significant portion of the stock of still or motion pictures available for viewing or that are actually viewed in the viewing booths are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section.
- (c) Any of the following shall be indicia that the business establishment has as one of its principal business purposes the presentation and viewing in viewing booths still or motion pictures which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section:
  - (1) Restricted access to the business establishment or portions of the business establishment where viewing booths are located by persons under eighteen (18) years of age;
  - (2) Posted signs or notices outside and/or inside the business establishment indicating that the material offered for presentation and viewing in the viewing booths might be offensive.

Such indicia shall be considered along with all other factors and available information.

*Adult motion picture theatre* means a commercial establishment that regularly presents motion pictures which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, in an area, whether enclosed or not, of one-hundred fifty (150) square feet or greater, for observation by patrons therein.

*Applicant* means and includes the owner of a sexually oriented business.

*Chief of police* means the chief of the Charlotte-Mecklenburg Police Department, or his or her designee.

*City manager* means the city manager of the City of Charlotte, or his or her designee (who shall not be an employee of the Charlotte-Mecklenburg Police Department).

*Clothing modeling studio* means any place where, for any form of consideration or gratuity, a person agrees or offers to privately model clothing, including but not limited to lingerie, for an individual patron.

*Convicted* means an adjudication of guilt and entry of judgment following a trial or a plea of guilty or no contest in a criminal case arising under local, state, or federal law.



*Employee* describes and pertains to any person who performs any service or entertainment upon the premises of a sexually oriented business whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and regardless of whether or not the person is paid a salary, wage, or other compensation by the operator of the business. "Employee" does not include a person exclusively on the premises for any of the following:

- (a) the repair or maintenance of the premises; or
- (b) the delivery of goods to the premises; or
- (c) the delivery of services, such as legal, accounting, insurance, or other similar services provided to businesses generally.

*Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

*Operator* means and includes any person who is both present on and in charge of any sexually oriented business premises.

*Owner* means the legal owner of a sexually oriented business and includes the following:

- (a) The owner of a sole proprietorship; or
- (b) Each member of a firm, association, or general partnership; or
- (c) Each general partner in a limited partnership; or
- (d) Each officer, director, and owner of fifty (50) percent or more of the stock of a corporation.

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

*Sexually oriented business* means and includes any adult book store, adult live entertainment business, adult mini motion picture theatre, adult motion picture theatre, or clothing modeling studio, as defined in this section.

*Sexually oriented crime* means and includes any criminal offense under local, state, or federal law involving or related to rape, sex offense, sexual abuse of minors, crime against nature, incest, prostitution, indecent exposure, or this article.

*Sexually oriented devices* means, without limitation, any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities, but shall not mean any contraceptive device.

*Specified anatomical areas* means:

- (a) Less than completely and opaquely covered:
  - (1) Human genitals, pubic region; or
  - (2) Buttock; or
  - (3) Female breast below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified sexual activities* means:

- (a) Human genitals in a state of sexual stimulation or arousal; or
- (b) Sex acts, normal or perverted, actual or simulated, including human masturbation, sexual intercourse, oral copulation, or sodomy; or
- (c) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or
- (d) Excretory functions, as part of or in connection with any of the activities set forth in subsections (a) through (c), above.

*Straddle* means the following act: the straddling of the legs of one person over any part of the body of any other person, regardless of whether there is a touch or touching.

*Touch* means to touch with a portion of the human body or with any object.

**Sec. 6-136. Classifications.**

Sexually oriented businesses are classified as follows:

- (a) Adult bookstores;
- (b) Adult live entertainment businesses;
- (c) Adult mini motion picture theatres;
- (d) Adult motion picture theatres;
- (e) Clothing modeling studios;

**Sec. 6-137. License required.**

- (a) No sexually oriented business shall be permitted to operate without a valid sexually oriented business license issued by the chief of police for the particular classification of business. It shall be unlawful for any person to operate or cause to be operated a sexually oriented business without said license, or without the presence of an operator who has been disclosed pursuant to subsection (b) (9) of this section. In furtherance of the policy of the State of North Carolina, the chief of police shall not issue licenses to two (2) or more classifications of sexually oriented businesses to operate in or on the same building, premises, structure, or other facility.
- (b) An application for a license must be made by the owner of the business on a form prescribed by the chief of police, and submitted to the Charlotte-Mecklenburg Police Department Vice and Narcotics Bureau. The completed application shall contain the following information and shall be accompanied by the following documents:
  - (1) The full true name of the applicant;
  - (2) The full true name under which the sexually oriented business will be operated and, if the business will be operated in a name other than that of the applicant, a certified copy of the assumed name certificate prepared and recorded in the Mecklenburg County Register of Deeds Office pursuant to North Carolina General Statutes 66-68 et. seq;
  - (3) The type of sexually oriented business the applicant intends to operate;
  - (4) Whether the applicant intends to serve alcoholic beverages at the sexually oriented business and/or apply for an ABC permit;

- (5) The address where the sexually oriented business is to be operated and where the books and records are maintained for examination by the collector of revenue, pursuant to Section 13-27 of this Code;
- (6) If the owner of the real property upon which the sexually oriented business is to be operated is not the applicant, the name and address of the owner of the real property upon which the business is to be operated and a copy of the lease or rental agreement;
- (7) The principal telephone number to be used by the sexually oriented business;
- (8) If the applicant is an individual, the applicant shall appear in person and deliver a completed and signed application form and provide the following information:
  - (a) his or her present residence and business addresses and telephone numbers,
  - (b) a valid driver's license or other government issued picture identification, and
  - (c) social security number;

If the applicant is a partnership or corporation, the applicant shall designate one of its general partners or officers to act as its agent. Such person shall appear in person and deliver a completed and signed application form, and shall provide the following information: (a) his or her present residence and business addresses and telephone numbers, (b) a valid driver's license or other government issued picture identification, and (c) social security number;

If the applicant is a partnership: (a) the name, residence address and telephone number, and social security number of each partner, including limited partners, and (b) a copy of the partnership agreement. If one or more of the partners is a corporation, the provisions of this subparagraph pertaining to corporations shall apply;

If the applicant is a corporation: (a) a certified copy of the articles of incorporation, a certified copy of the certificate of authority, and a certified copy of the most recent annual report filed with the Secretary of State of North Carolina, and (b) the name, residence address and telephone number, and social security number of each of its current officers and directors, and of any stockholder holding fifty (50) percent or more of the stock of the corporation;

- (9) The name, residence address and telephone number, and social security number of each individual who will be an operator of the business;
- (10) A federal tax identification number assigned to the sexually oriented business and a completed tax information authorization form (IRS Form 8821) authorizing only the verification of said number;

- (11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The requirements of this paragraph shall not apply for renewal applications if the applicant adopts a sketch or diagram that was previously submitted for the license sought to be renewed and if the licensee certifies that the licensed premises has not been altered since the immediately preceding issuance of the license and that the previous sketch or diagram continues to accurately depict the layout of the licensed premises;
- (12) If the applicant wishes to operate an adult live entertainment business or an adult mini motion picture theatre, then said applicant shall comply with the application requirements stated in Sections 6-149 and 6-150.
- (c) The application shall be sworn to be true and correct by the applicant.
- (d) An applicant for a license under this section shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The applicant shall supplement the application on file with the Vice and Narcotics Bureau within thirty (30) days from the date of such change.
- (e) In the event that the Vice and Narcotics Bureau determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, it shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.
- (f) The applicant shall be required to pay a non-refundable application and investigation fee, the amount of which shall be established pursuant to Section 2-4 of the Charlotte City Code.
- (g) By applying for a license under this article, the applicant shall be deemed to have consented to the provisions of this article and to the exercise by the city manager, the chief of police, and representatives of the Charlotte-Mecklenburg Police Department of their respective responsibilities under this article, including the exercise of the inspection authority set forth in Section 6-140.
- (h) Issuance of a sexually oriented business license does not excuse a licensee from compliance with any other applicable ordinance, regulation, or statute. By issuing a sexually oriented business license, the chief of police has not determined that the

recipient is in compliance with any applicable local, state, or federal regulation or law or that the recipient is otherwise engaged in a legal activity or operating a business in a legal manner.

**Sec. 6-138. Issuance of license.**

- (a) Within thirty (30) days after receipt of a completed application, the chief of police will approve or deny the issuance of a license. Upon the expiration of the thirtieth (30th) day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the license is sought, unless and until the chief of police notifies the applicant of a denial of the application and state the reason(s) for the denial.
- (b) The chief of police shall deny the application for any of the following reasons:
  - (1) An applicant or any individual identified in the application under Section 6-137(b)(8) or (9) is under eighteen (18) years of age; or
  - (2) The application and investigation fee has not been paid; or
  - (3) An applicant or any individual identified in the application under Section 6-137(b)(8) or (9) has refused to allow an inspection of the premises as authorized by Section 6-140; or
  - (4) An applicant or any individual identified in the application under Section 6-137(b)(8) or (9) has overdue license fees associated with the operation of a sexually oriented business; or
  - (5) An applicant or any individual identified in the application under Section 6-137(b)(8) or (9) has a license under this ordinance which is suspended or revoked; or
  - (6) An applicant failed to provide the information necessary to determine the qualifications of the applicant or any individual identified in the application under Section 6-137(b)(8) or (9) for issuance of the license, or provided materially false or misleading information on the application form; or
  - (7) An applicant or any individual identified in the application under Section 6-137(b)(8) or (9) has been convicted of any sexually oriented crime and less than five (5) years have elapsed since the latter of the date of conviction or the date of release from confinement, if the conviction is for a felony, or less than two (2) years have elapsed since the latter of the date of conviction or the date of release from confinement, if the conviction is for a misdemeanor. The fact that the

conviction is being appealed shall have no effect on the denial of the license.

- (8) The application demonstrates or reveals information showing that the proposed business fails to meet the requirements of this article.
- (c) The license must be posted in the sexually oriented business in a conspicuous place at or near the entrance to the business so that it can be read easily at any time.

**Sec. 6-139. Annual license fee.**

The licensee of a sexually oriented business license shall be required to pay an annual license fee, the amount of which shall be established pursuant to Section 2-4 of the Charlotte City Code.

**Sec. 6-140. Inspection.**

An applicant or any individual identified in the application under Section 6-137(b)(8) or (9) shall permit representatives of the Charlotte-Mecklenburg Police Department to inspect the premises for the purpose of ensuring compliance with this article prior to the issuance of a license under this article. After a license has been issued to the business, a licensee, owner, operator, or employee shall permit representatives of the Charlotte-Mecklenburg Police Department to inspect the premises for the purpose of ensuring compliance with this article at any time the premises is occupied or open for business. It shall be unlawful for a licensee, owner, operator, or employee to refuse to permit or interfere with such an inspection.

**Sec. 6-141. Notices.**

Any notice required or permitted to be given by the police chief or the city manager under this article to any applicant, licensee, owner, or operator of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, to the most current address as specified in the application for the license or any notice of change of address which has been received by the chief of police. Notices mailed as above shall be deemed given upon their deposit in the United States mail and shall be presumed to have been received on the third regular postal delivery day thereafter.

**Sec. 6-142. Computation of time.**

Unless otherwise specifically set forth in this ordinance, the time within which any act required by this ordinance is to be done shall be computed by excluding the first day and including the last day, unless the last day is Saturday, Sunday, or a Federal or State of North Carolina holiday, in which case it shall also be excluded. If the day immediately following such Saturday, Sunday, or holiday is also a Saturday, Sunday, or holiday, then such succeeding day shall also be excluded.

**Sec. 6-143. Notice of violation and suspension of license.**

- (a) The chief of police shall issue a notice of violation if he or she determines that:
- (1) A licensee, owner, operator, or employee has violated or is not in compliance with any section of this article; or
  - (2) A licensee, owner, operator, or employee has refused to permit or interfered with an inspection of the premises as authorized by Section 6-140.

The notice shall specify the section(s) of this article that have been violated.

- (b) The chief of police shall suspend a sexually oriented business license for a period of thirty (30) days if the violation has not been corrected or abated within twenty (20) days after the notice of violation has been received by the licensee, owner, or operator.
- (c) A decision by the chief of police to suspend a license shall not become final until twenty (20) days after notice of the decision has been received by the licensee, owner, or operator.
- (d) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business and said person knows or should know that the business has a license which has been suspended.

**Sec. 6-144. Revocation of license.**

- (a) The chief of police shall revoke a sexually oriented business license if a suspension of the license becomes effective following a notice of violation which was issued within twelve (12) months of the effective date of a previous suspension.
- (b) The chief of police shall revoke a sexually oriented business license if he or she determines that:
- (1) An applicant or licensee provided materially false or misleading information in the material submitted in the application process; or
  - (2) A licensee, owner, or operator has knowingly allowed the possession, use, or sale of controlled substances in or on the premises; or
  - (3) A licensee, owner, operator, or employee has knowingly allowed the solicitation for prostitution or crime against nature in or on the premises; or
  - (4) A licensee, owner, operator, or employee has knowingly allowed any act of sexual



intercourse, masturbation, oral copulation, sodomy, or indecent exposure to occur in or on the premises; or

- (5) A licensee, owner, operator, or employee has served alcoholic beverage(s) to a patron or patrons in or on the premises without the premises having the proper ABC permit(s); or
- (6) A licensee, owner, or operator has been convicted of a sexually oriented crime since the license was issued. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

For the purpose of this subsection, and with respect to adult live entertainment licenses, the term "employee" shall not include an adult live entertainer.

- (c) A decision by the chief of police to revoke a license shall not become final until twenty (20) days after notice of the decision has been received by the licensee, owner, or operator.
- (d) When the chief of police revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective.
- (e) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business and said person knows or should know that the business has a license which has been revoked.

**Sec. 6-145. Appeal of denial, suspension, or revocation.**

- (a) After a denial of an application for a license, a denial of an application for renewal of a license, or a suspension or revocation of a license, the applicant or licensee may appeal the denial, suspension, or revocation in writing to the city manager within twenty (20) days after notice of the denial, suspension, or revocation has been received. The city manager shall hold a hearing on whether to issue/renew the license or uphold the denial, suspension, or revocation within five (5) business days after the receipt of the appeal. The applicant or licensee shall have the right to present evidence at said hearing. The decision to issue/renew the license or uphold the denial, suspension, or revocation shall be based solely on the criteria set forth in this article. The city manager shall render a decision on the appeal within five (5) business days after the date of the hearing.
- (b) Upon receipt by the city manager of a written appeal pursuant to subsection (a), above, a denial of an application for renewal of the license or a suspension or revocation of the license of any adult bookstore, adult live entertainment business, adult mini motion picture theatre, or adult motion picture theatre shall be stayed until a decision is rendered

by the city manager. In addition, upon receipt by the city manager of a written appeal pursuant to subsection (a), above, the denial of an initial application for a license by any adult bookstore, adult live entertainment business, adult mini motion picture theatre, or adult motion picture theatre existing prior to the effective date of this ordinance shall be stayed until a decision is rendered by the city manager.

- (c) The decision of the city manager is subject to review in the Superior Court of Mecklenburg County by proceedings in the nature of certiorari. Any petition for writ of certiorari for review shall be filed with the Clerk of Superior Court within thirty (30) days after notice of the decision has been received by the applicant or licensee. A denial of an application for renewal of the license or a suspension or revocation of the license of any adult bookstore, adult live entertainment business, adult mini motion picture theatre, or adult motion picture theatre shall be stayed until a decision is rendered by the Superior Court or the time to petition the Superior Court for a writ of certiorari has expired. In addition, the denial of an initial application for a sexually oriented business license by any adult bookstore, adult live entertainment business, adult mini motion picture theatre, or adult motion picture theatre existing prior to the effective date of this ordinance shall be stayed until a decision is rendered by the Superior Court or the time to petition the Superior Court for a writ of certiorari has expired. The following provisions shall apply to any appeal to Superior Court from a decision of the city manager:
- (1) Unless good cause exists to contest a petition for writ of certiorari, the city shall stipulate to certiorari no later than five (5) business days after the petitioner requests such a stipulation.
  - (2) The city shall transmit the record to the court no later than five (5) business days after receiving the order allowing certiorari.
  - (3) Notwithstanding the provisions of any local rule of the reviewing court which allows for a longer time period, the city shall file its brief within fifteen (15) days after it is served with the petitioner's brief. If the petitioner serves his or her brief by mail, the city shall add three (3) days to this time limit, in accordance with North Carolina General Statute 1A-1, Rule 5. If the local rule is subsequently amended to provide for a shorter time period for the filing of any brief, then the shorter time period shall control.
- (d) An appeal by an applicant or licensee from the Superior Court of Mecklenburg County shall be governed by the North Carolina Rules of Appellate Procedure but, unless a court of competent jurisdiction otherwise provides, said appeal shall not stay any action taken with regard to the license.

**Sec. 6-146. Prohibition regarding transfer of the license.**

A licensee shall not transfer a license to another person or to another premises. The transfer of a license shall automatically and immediately revoke the license.

**Sec. 6-147. Expiration of the license.**

- (a) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application, as provided in Section 6-137, and paying the annual license fee, as required in Section 6-139. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit will not be affected.
- (b) When the chief of police denies renewal of the license, the applicant shall not be issued a license under this article for one (1) year from the date of denial. If, subsequent to the denial, the chief of police determines that the basis for the denial has been corrected, the applicant shall be granted a license.
- (c) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business and said person knows or should know that the business has a license which has expired.

**Sec. 6-148. Prohibitions regarding minors and sexually oriented businesses.**

It shall be unlawful for a licensee, owner, operator, or employee of a sexually oriented business, regardless of whether or not a license has been issued for said business under this article, to knowingly, or with reasonable cause to know, permit or allow:

- (a) Admittance of a person who is under eighteen (18) years of age to the business premises; or
- (b) A person who is under eighteen (18) years of age to remain at the business premises; or
- (c) A person who is under eighteen (18) years of age to purchase goods or services at the business premises; or
- (d) A person who is under eighteen (18) years of age to work at the business as an employee.

**Sec. 6-149. Regulations pertaining to adult live entertainment businesses.**

- (a) Purpose. The private or semi-private performance of adult live entertainment in areas commonly known as "VIP rooms, VIP booths, or VIP areas" presents opportunities for illegal activity such as, but not limited to, indecent exposure and solicitation for

prostitution. The purpose of this section is to eliminate VIP adult live entertainment and to require all adult live entertainment to occur in a manner and location that freely permits management and a broad number of patrons to visually observe the entertainment so as to minimize the opportunities for adult live entertainment to lead to illegal activity. The provisions of this section shall be interpreted and applied in light of this purpose.

- (b) An adult live entertainment business, regardless of whether or not a license has been issued for said business under this article, shall be subject to the following:
  - (1) An application for a sexually oriented business license for adult live entertainment shall be accompanied by a diagram of the premises specifying Areas Where Adult Live Entertainment May Occur. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The chief of police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises and the Areas Where Adult Live Entertainment May Occur required to be designated in the diagram have not been altered since it was prepared.
  - (2) Areas Where Adult Live Entertainment May Occur must:
    - (a) Be at least 750 square feet in area. Notwithstanding the foregoing, an adult live entertainment business that, as of the effective date of this article, has as its only area where adult live entertainment occurs an area of less than 750 square feet may continue to offer adult live entertainment in that area so long as (i) the square footage of the area is not reduced; (ii) adult live entertainment does not occur in any other area of the business establishment; and (iii) the business complies with all other provisions of this article; and
    - (b) Contain one or more stages or raised areas where adult live entertainment will occur; and
    - (c) Be accessible to all patrons without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee; and
    - (d) Not contain any areas visually screened, obstructed, or separated from the majority of the patrons located in that area, which patrons are

present in that area without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee.

- (3) No alteration in the configuration of the Areas Where Adult Live Entertainment May Occur designated in the diagram required by subsection (b)(1), above, may be made without first attaining an amendment to the license by submitting and receiving approval of a new diagram.
- (4) Adult live entertainment may occur only:
  - (a) In the presence of and visually observable by an employee who is not an adult live entertainer; and
  - (b) In the presence of and visually observable by more than one patron; and
  - (c) In an area that is shown on an approved diagram as an Area Where Adult Live Entertainment May Occur; and
  - (d) In an area that is not visually screened, obstructed, or separated from the majority of the patrons located in that area, which patrons are present without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee; and
  - (e) In an area that is accessible to all patrons without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee.
  - (f) Subsections (b)(4)(d) and (e), above, do not prohibit or limit charges to patrons by adult live entertainers, or payment to, or the tipping of, such persons by the patrons.
- (c) It shall be the duty of the operator and any owner who is present on the premises to ensure that adult live entertainment is not performed in the presence of patrons in violation of subsection (b)(4), above. It shall be unlawful for any such operator or owner to knowingly fail to fulfill that duty.
- (d) It shall be unlawful for an adult live entertainer to engage in or perform adult live entertainment in violation of subsection (b)(4), above.

**Sec. 6-150. Regulations pertaining to adult mini motion picture theatres.**

- (a) An adult mini motion picture theatre, regardless of whether or not a license has been issued for said business under this article, shall be subject to the following:
- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all overhead lighting fixtures, and designating any portion of the premises in which patrons will not be permitted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The chief of police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  - (2) No alteration in the configuration or location of a manager's station may be made without prior approval of the chief of police.
  - (3) At least one (1) employee must be on duty and situated at each manager's station at all times that any patron is present in or on the premises.
  - (4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
  - (5) The entrance to each adult mini motion picture booth shall be free of any obstruction such as a door, curtain, wall, partial wall, panel, board, merchandise, display rack, or other material.
  - (6) There shall be no openings or glass of any kind between booths, and booths shall not be designed, constructed, or configured in such a manner that the interior of any booth may be visible or made to be visible from any other booth.

- (7) The interior of each booth shall be sufficiently illuminated so that the inside of the booth is visible from the manager's station(s), as set forth in subsection (a)(4), above.
  - (8) No booth shall be occupied by more than one patron at any time.
- (b) It shall be the duty of the operator and any owner or employees who are present on the premises to ensure compliance with subsections (a)(3) through (8), above. It shall be unlawful for any person having such a duty to knowingly fail to fulfill that duty.

**Sec. 6-151. Regulations pertaining to clothing modeling studios.**

- (a) A clothing modeling studio, regardless of whether or not a license has been issued for said business under this article, shall be subject to the following:
- (1) A model shall not encourage or permit a patron to expose or display his or her (the patron's) specified anatomical areas.
  - (2) A model shall not suggest or imply that a customer should or is permitted to expose or display his or her (the patron's) specified anatomical areas.
  - (3) A model shall not expose or display his or her (the model's) specified anatomical areas at anytime the model is in the presence of a patron.
  - (4) A model shall not straddle a patron.
  - (5) A model shall not offer or agree to straddle a patron.
  - (6) A model shall not intentionally touch the clothed or unclothed body of a patron at any point below the waist and above the knee of the patron.
  - (7) A model shall not encourage or permit a patron to touch the clothed or unclothed body of the model at any point below the waist and above the knee of the model.
  - (8) A model shall not encourage or permit a patron to touch the clothed or unclothed breast of the model.
  - (9) All fees and charges, including tips and gratuities, paid by a patron of a clothing modeling studio shall be paid to the model or the studio before the modeling session begins. A model shall not solicit or accept any tip, gratuity, or compensation from a patron in violation of the foregoing.

- (10) All modeling for a patron must occur in the presence of and be visually observable by an employee who is not a model.
  - (11) The entrance to each room in which modeling for a patron is being performed shall be free of any obstruction such as a door, curtain, wall, partial wall, panel, board, or other device, and the entire interior of each such room shall be visible from the aisle, walkway, or hallway leading to the room.
- (b) It shall be the duty of the operator and any owner who is present on the premises to ensure that clothing modeling is not performed in the presence of a patron in violation of subsection (a), above. It shall be unlawful for any such operator or owner to knowingly fail to fulfill that duty.
- (c) It shall be unlawful for a model to violate any of the provisions of subsection (a), above.

**Sec. 6-152. Regulations governing existing sexually oriented businesses.**

Any sexually oriented business existing prior to the effective date of this ordinance shall comply with the regulations contained herein ninety (90) days after the effective date of this ordinance.

**Sec. 6-153. Criminal penalty.**

Any person who violates any of the following provisions of this article shall be guilty of a misdemeanor as provided in North Carolina General Statute 14-4 and, upon conviction, shall be subject to a maximum fine of five hundred dollars (\$500.00), or imprisonment, or both: 6-137(a), 6-140, 6-143(d), 6-144(e), 6-147(c), 6-148, 6-149(c) and (d), 6-150(b), and 6-151(b) and (c). Each violation shall be considered a separate and distinct offense, and each day of continued violation shall be considered as a separate offense. The issuance of a notice of violation or a suspension or revocation of a sexually oriented business license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the issuance of a notice of violation or a suspension or revocation of the license.

**Sec. 6-154. Civil injunction.**

In addition to the issuance of a notice of violation, the suspension or revocation of a sexually oriented business license, or a prosecution for criminal violations, any person who violates this article may be subject to all civil and equitable remedies stated in North Carolina General Statute 160A-175.

**Sec. 6-155. Severability.**

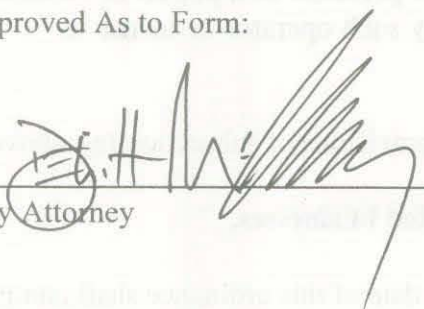
In the event that any provision of this ordinance, or any part thereof, or any application thereof to any person or circumstance, is for any reason held to be unconstitutional or otherwise invalid or



ineffective by any court of competent jurisdiction on its face or as applied, such holding shall not affect the validity or effectiveness of any of the remaining provisions of this ordinance, or any part thereof, or any application thereof to any person or circumstance or of said provision as applied to any other person or circumstance. It is hereby declared to be the legislative intent of the City Council that this ordinance would have been adopted had such unconstitutional, invalid, or ineffective provisions not been included herein."

Section 2. This ordinance shall become effective on October 15, 1999.

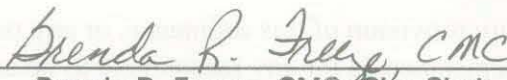
Approved As to Form:

  
\_\_\_\_\_  
City Attorney

**CERTIFICATION**

I, Brenda R. Freeze, City Clerk of the City of Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 23rd day of August, 1999, the reference having been made in Minute Book 113, and recorded in full in Ordinance Book 49, Page(s) 554-576.

WITNESS my hand and the corporate seal of the City of Charlotte, North Carolina, this the 24th day of August, 1999.

  
\_\_\_\_\_  
Brenda R. Freeze, CMC, City Clerk