

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: PRIVILEGE LICENSE TAX

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GENERAL PROVISIONS

§ 110.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. Any trade, occupation, profession, or other activity engaged in by any person or caused to be engaged in by any person or caused to be engaged in by him or her with the object of gain, profit, benefit, or advantage either direct or indirect. **BUSINESS** does not include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

(1) A person **CONDUCTS A BUSINESS** when he or she engages in 1 act of any business. If a person is listed in the yellow pages of the telephone directory issued by the telephone system serving the town, that shall be prima facie evidence the person is **CONDUCTING A BUSINESS**.

(2) A person conducts a business **WITHIN THE TOWN** when he or she maintains a business location within the town or when, either personally or through agents:

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(a) Solicits business within the town;
or

(b) Picks up or delivers goods or services within the town.

(3) A business is *SEASONAL* in nature when it is conducted for profit 6 months out of the year or fewer.

(1994 Code, § 110.01) (Ord. passed 3-6-1990)

§ 110.02 INTERPRETATION.

(A) This chapter is enacted for revenue purposes only. Therefore, it should be construed to require payment of the maximum tax permitted under its terms.

(B) Issuance of a license pursuant to this chapter does not excuse a licensee from compliance with any other applicable ordinance or statute.

(C) This chapter does not prevent the town from imposing license taxes on additional businesses, from increasing or decreasing the amount of any license tax, or from regulating any business taxed.

(1994 Code, § 110.02) (Ord. passed 3-6-1990)

§ 110.03 COMPLIANCE.

Subject to § 110.04, no person may conduct any business within the town without having paid the tax required by this chapter or without a valid privilege license issued pursuant to this chapter.

(1994 Code, § 110.03) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.04 EXEMPTIONS.

(A) If a person conducts a business as a partner in a partnership or as an officer or employee of a corporation, or as an employee or member of any other business entity, that person is not required to obtain a privilege license or pay a privilege license

tax. However, the partnership, corporation, or other business entity must obtain the license and pay the tax unless exempted by this section.

(B) Owners of real property who lease it need not obtain a privilege license or pay a privilege license tax solely for acting as lessor of that property.

(C) A person who operates a business for a religious, educational, civic, patriotic, charitable, or fraternal purpose is exempt from obtaining a privilege license or paying a privilege license tax.

(D) Blind persons and person who serve in the United States armed forces or Merchant Marine are exempt from obtaining a privilege license or paying any privilege license tax.

(E) Persons who solicit business or pick up or deliver goods or services within the town are not required to obtain a privilege license or pay a privilege license tax levied by this chapter.

(F) The following businesses are exempt from obtaining a privilege license or paying a privilege license tax as provided by the indicated section of the General Statutes. A more complete and detailed description of the exempt businesses is contained in the cited sections of the General Statutes.

(1) G.S. § 105-41 - Attorneys, physicians, land surveyors, engineers, architects, photographers, real estate brokers, accountants, morticians, and similar professionals;

(2) G.S. § 105-102.1 - Certain cooperative associations;

(3) G.S. § 105-102.4 - Persons opting for retail variety store license;

(4) G.S. § 105-116 - Utility companies (electrical power, gas, water, and sewer);

(5) G.S. § 105-120.1 - Bus companies;

(6) G.S. § 105-120.2 - Holding companies;

(7) G.S. § 105-122 - Domestic and foreign corporations;

(8) G.S. § 105-228.10 - Insurance companies and associations;

(9) G.S. § 105-130.5(b)(13) - an international banking facility.
(1994 Code, § 110.04) (Ord. passed 3-6-1990)
Penalty, see § 110.99

recent decennial census, as provided by state statute. It is the intent of this chapter that if the population changes in a subsequent census, the tax rates shall shift accordingly. The schedule of license taxes for businesses commonly found within the town is contained in Appendix A and shall be updated periodically to include new business or rate changes. (1994 Code, § 110.05) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.05 PAYMENT REQUIRED BY ALL BUSINESS OPERATORS.

(A) Except as otherwise provided in this section, all persons who conduct a business within the town shall pay a privilege license tax of \$20.

(B) The businesses described in Appendix A of this chapter may not be taxed in any amount that exceeds the statutorily established maximum. Those businesses shall pay a privilege license tax equal to the amount of the maximum fixed by statute, subject to division (C) below. If a person conducts a business that falls within more than 1 of the categories described in the appendix, he or she shall pay a privilege license tax equal to the total of the maximum amounts authorized for all the categories his or her business falls under, subject to division (C) below.

(C) If a person conducts a business that falls within 1 or more of the categories described in Appendix A also conducts business at the same location that does not fall within any of the categories described in the appendix and the amount of privilege license tax the person is required to pay (in accordance with division (B) above) for that portion of the business which falls within the described categories is less than \$20, the person shall pay a privilege license tax which, when added to the tax the person is required to pay in accordance with division (B), will equal \$20.

(D) The businesses licensed shall be subject to the maximum tax permitted therein. Whenever a tax depends upon the population of the town, the population shall be determined according to the most

LICENSES

§ 110.20 PERIOD.

(A) Unless otherwise provided in § 110.05, a license issued pursuant to this subchapter is valid for that 12-month period beginning July 1 and ending June 30. The tax is due July 1 each year; if a person begins business after July 1 in any year, the tax for that year is due before the business is begun.

(B) If, pursuant to § 110.05, a license is issued for a period of 1 day, 1 week, or some comparable period of less than a full license year, the licensee may not continue the business beyond the period for which the license is issued. The tax on the business is due not later than the day before commencement of the business.

(C) If a business is begun after January 31 and before July 1, the amount of tax due is half the amount otherwise due.

(D) If, for any reason, a licensee discontinues business during a license year, he or she is not entitled to a refund.
(1994 Code, § 110.15) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.21 APPLICATION.

(A) With respect to annual licenses, a person shall apply to the Tax Collector for the license at least 30 days before the tax is due. With respect to licenses

issued for 1 day, 1 week, or a similar period less than 1 year, application shall be made at least 10 days before the tax is due. These time limitations may be waived by the Tax Collector for good cause shown.

(B) The application, which shall be submitted on forms provided by the Tax Collector, shall contain:

(1) The name of the applicant and whether he or she or it is an individual, partnership, corporation, or other entity;

(2) The nature of the business, including the duration the business intends to operate;

(3) Where the business is conducted;

(4) An address to which may be mailed notices and statements required by this chapter;

(5) Whether the business is one regulated by a state occupational licensing board, subject to G.S. Chapter 93B, and if so, the serial numbers of the state licenses to be held by all those who are part of the applicant's business; and

(6) Any other information the Tax Collector determines to be necessary to issue the privilege license in accordance with this subchapter. (1994 Code, § 110.16) (Ord. passed 3-6-1990) Penalty, see § 110.99

§ 110.22 SEPARATE BUSINESSES; MULTIPLE BUSINESSES.

A license issued for the privilege of conducting a business is valid only for the business conducted at the place and by the licensee named therein. Every person doing business as more than 1 factory, mill, warehouse, store, stall, or stand, or other place of business, shall secure a separate license for each place of business, unless the places of business are contiguous to each other, communicate directly with and upon and to each other, and are operated as a unit.

(1994 Code, § 110.17) (Ord. passed 3-6-1990) Penalty, see § 110.99

§ 110.23 REASONS FOR REFUSAL OR REVOCATION.

The Tax Collector shall refuse to issue a license or shall revoke a license for any of the following reasons.

(A) The applicant misrepresents a fact relevant to the amount of tax due or his or her qualifications for a license.

(B) The applicant refuses to provide information necessary to compute the amount of tax due.

(C) The applicant has not obtained a certificate of occupancy when required to do so by local ordinance.

(D) The administrator charged with the enforcement of the following codes or ordinances has certified to the Tax Collector that the applicant has been found in violation of the law enforced by the administrator and either has failed to appeal that determination within the time provided or has exhausted all administrative and judicial appeal as set forth in the North Carolina State Building Code, Chapters 153 and 154 of this code, or other applicable state statute or federal law.

(1994 Code, § 110.18) (Ord. passed 3-6-1990)

§ 110.24 UNQUALIFIED APPLICANTS' RIGHT TO A CONFERENCE.

(A) After receipt of the completed application, if the Tax Collector believes a reason exists for refusing a license under § 110.23, he or she shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the Tax Collector shall, pursuant to § 110.31, give him or her a written statement of the reason for refusing the license. The applicant, within 10 days after the day of receipt of this statement, may request a conference to discuss the refusal. In the request, the applicant shall specify why his or her application for a license should not be refused. The Tax collector shall arrange the conference within a reasonable time, not to exceed 30 days.

(B) If the Tax Collector refuses to issue a license, the applicant may reapply for one at any time thereafter. If the reason for which the application was refused no longer exists, and if no other reason exists for refusing to issue a license, the Tax Collector shall issue the license.

(1994 Code, § 110.19) (Ord. passed 3-6-1990)

§ 110.25 REVOCATION.

(A) The Tax Collector shall revoke a license if a reason exists to revoke it, as set forth in § 110.23. Before the Tax Collector may revoke a license, he or she shall give the licensee written notice of the grounds for revocation, pursuant to § 110.31. The licensee, within 10 days after the day on which the notice is served, may request in writing a conference with the Tax Collector. The request shall specify the reasons why the license should not be revoked. The Tax Collector shall arrange the conference within a reasonable time, not to exceed 30 days.

(B) If the licensee fails to request a conference within 10 days after the day on which the notice is served, the Tax Collector shall revoke the license. If the licensee requests a conference, the Tax Collector may not revoke the license until after the conference.

(C) If the Tax Collector revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists, and if no other reason exists for refusing to issue a license, the Tax Collector shall issue the license.

(1994 Code, § 110.20) (Ord. passed 3-6-1990)

§ 110.26 FORM AND CONTENTS.

A license shall show the name of the person licensed, the place where the business is conducted (if it is to be conducted at 1 place), the nature of the business licensed, the period for which the license is issued and the amount of tax paid. In addition, if a

machine is licensed, the license shall show the serial number of the machine. The Tax Collector shall keep a copy of each license issued.

(1994 Code, § 110.21) (Ord. passed 3-6-1990)

§ 110.27 ASSIGNMENTS.

A license may be assigned if:

(A) A business licensed under this chapter and carried on at a fixed place is sold as a unit to any person; and

(B) The purchaser is to carry on the same business at the same place. Otherwise, each license issued under this chapter is a personal privilege and is not assignable.

(1994 Code, § 110.22) (Ord. passed 3-6-1990)

§ 110.28 CHANGES IN BUSINESS CONDUCTED BY LICENSEE DURING TAX YEAR.

(A) (1) A licensee or licensee's assignee shall report a change in the information contained in the license application to the Tax Collector within 10 days after the change occurs.

(2) If information shown on the license itself is affected thereby, the licensee or licensee's assignee shall surrender the license to the Tax Collector, when reporting the change.

(B) If there are no reasons for revoking the license under § 110.23 and the change results in the imposition of a separate or additional tax, the Tax Collector shall reissue a license reflecting the change upon payment of the separate or additional tax.

(C) If there are no reasons for revoking the license under § 110.23 and the change does not result in an imposition of a separate or additional tax, the Tax Collector shall reissue a license reflecting the change upon payment of a fee of \$5.

(D) If there is reason for revoking the license under § 110.23, the Tax Collector shall refuse to reissue a license and instead shall begin proceedings to revoke it, pursuant to § 110.25.
(1994 Code, § 110.23) (Ord. passed 3-6-1990)

§ 110.29 DUPLICATES.

Upon satisfactory proof that a license has been lost or destroyed, the Tax Collector shall furnish a duplicate for a fee of \$2.
(1994 Code, § 110.24) (Ord. passed 3-6-1990)

§ 110.30 PROVIDING NOTICE TO APPLICANT OR LICENSEE.

Whenever this chapter requires the Tax Collector to give a written statement or notice to an applicant or licensee, he or she may do so in any 1 of the following ways:

(A) By personally delivering the statement or notice to the applicant or licensee;

(B) By mailing the statement or notice by registered or certified mail, return receipt requested, to the address specified for that purpose in the license application; and/or

(C) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service or process under the North Carolina Rules of Civil Procedure, Rule 4.
(1994 Code, § 110.26) (Ord. passed 3-6-1990)

§ 110.31 REFUSAL TO ISSUE BEER AND WINE LICENSES.

(A) If an applicant for a privilege license authorizing the retail or wholesale sale of malt beverages or fortified or unfortified wines holds the corresponding ABC permit, issuance of the local license is mandatory upon proper application and payment of the prescribed tax.

(B) Notwithstanding division (A) above, the Board may refuse to issue the license if it finds the applicant committed any act or permitted any activity in the preceding year that would be grounds for suspension or revocation of the ABC permit under G.S. § 18B-104. Before denying the license, the Board shall give the applicant an opportunity to appear at a hearing before the Board and to offer evidence. At the conclusion of the hearing, the Board shall make written findings of fact based on the evidence at the hearing. The applicant may appeal the denial of a license to the Catawba County Superior Court if notice of appeal is given within 10 days of the denial.
(1994 Code, § 110.27) (Ord. passed 3-6-1990)

ENFORCEMENT; COLLECTIONS

§ 110.45 DUTY TO DETERMINE WHETHER TAX DUE.

(A) Each person has the duty to determine whether the business he or she conducts is taxed under this chapter and if so, whether that tax has been paid for the current tax year.

(B) If the Tax Collector has reason to believe that a person is conducting a business in the town in violation of this chapter, he or she shall conduct an investigation to determine the person's tax liability.
(1994 Code, § 110.40) (Ord. passed 3-6-1990)

§ 110.46 DISPUTE OF AMOUNT.

If the applicant disputes the amount the Tax Collector determines due, he or she may refuse to pay the tax and request a conference with the Tax Collector to discuss the determination, or pay the amount and request a conference to discuss the right for a refund. If a conference is requested, the Tax Collector shall arrange it in a reasonable time, not to exceed 30 days.
(1994 Code, § 110.41) (Ord. passed 3-6-1990)

§ 110.47 DUTY TO POST LICENSE.

A licensee shall post his or her license conspicuously in the place of business licensed. If he or she has no regular place of business, the license must be kept where it may be inspected at all times by the proper town officials. If a machine is licensed, the license shall be affixed to the machine.

(1994 Code, § 110.42) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.48 NOTICE OF DEFICIENCY.

(A) If the Tax Collector determines a person has not paid the full amount of tax due under this chapter, either for the current license year or a prior license year, he or she shall give the person written notice of the deficiency, pursuant to § 110.31.

(B) The notice of deficiency shall specify:

- (1) The total amount of tax due;
 - (2) The section of this chapter upon which the tax is based;
 - (3) The amount of tax paid;
 - (4) Any interest due;
 - (5) The balance owed;
 - (6) The manner and time period in which the person may respond to the notice of deficiency; and
 - (7) The consequences of the person if he or she fails to respond as specified.
- (1994 Code, § 110.43) (Ord. passed 3-6-1990)

§ 110.49 REQUEST FOR A CONFERENCE.

(A) The person identified in § 110.48, within 10 days after the day on which notice is served, may

request in writing a conference. The request shall specify the person's objections to the notice of deficiency.

(B) By way of illustration but not limitation, a person who receives notice of deficiency may object on the following grounds:

- (1) That the tax due already has been paid;
 - (2) That the Tax Collector miscalculated the amount of tax due; and/or
 - (3) That the Tax Collector based his or her calculation on incorrect or insufficient information concerning either the nature or amount of business conducted.
- (1994 Code, § 110.44) (Ord. passed 3-6-1990)

§ 110.50 DEFICIENCY TO BECOME FINAL.

If the taxpayer fails to request a conference under § 110.49, the deficiency becomes final and the Tax Collector shall proceed to collect the deficiency.
(1994 Code, § 110.45) (Ord. passed 3-6-1990)

§ 110.51 COLLECTION OF DEFICIENCY.

(A) The Tax Collector may use any of the following methods to collect a deficiency:

- (1) Criminal prosecution in accordance with § 110.99;
- (2) Civil penalties in connection with § 110.99;
- (3) Equitable relief in accordance with § 110.99;
- (4) The remedies of levy and sale and attachment and garnishment in accordance with G.S. § 160A-207; and/or

(5) The remedies of levy and sale of real and personal property of the taxpayer within the town in accordance with the provisions of G.S. § 105-109.

(B) Any person who commences or continues to conduct a business taxed under this chapter without payment of the tax is liable for the additional tax of 5% each 30 days imposed by G.S. § 105-109. (1994 Code, § 110.47) (Ord. passed 3-6-1990)

§ 110.52 APPEALS.

(A) Subject to the provisions of this section, a person may appeal to the Privilege License Tax Review Board a decision by the Tax Collector:

(1) That an applicant is not entitled to a privilege license;

(2) That a licensee's privilege license should be revoked;

(3) Concerning the amount of tax owed by an applicant; and/or

(4) That a person has not paid the amount of tax due for the current license year or any prior years.

(B) An appeal may be taken only if the applicant has properly pursued and exhausted the right to have a conference with the Tax Collector on any of the matters specified in division (A) above.

(C) An appeal is taken by filing with the Tax Collector a written notice of appeal. This notice of appeal must be filed not later than 10 days after the appellant is served with the record of the conference, as provided in § 110.30 or § 110.51.

(D) The Privilege License Tax Review Board shall hear and decide the appeal within 30 days after notice of appeal is filed, unless the hearing is continued for good cause. The appellant shall be given at least 5 working days' notice of the date and time of the hearing and shall be served with a written

copy of the Board's decision following the hearing. The burden of establishing the correctness of the Tax Collector's decision shall be on the Tax Collector.

(E) The Review Board shall consist of the Mayor and members of the Board of Alderpersons, sitting ex officio. The Board may choose its own Chairperson and adopt its own rules of procedure, except that 3 members shall constitute a quorum and decisions shall be made by a majority of those present and voting. (1994 Code, § 110.48) (Ord. passed 3-6-1990)

§ 110.99 PENALTY.

(A) A violation of § 110.03 constitutes a misdemeanor punishable as provided in G.S. § 14-4 (see § 10.99(A) of this code of ordinances). Payment of a fine imposed in criminal proceedings pursuant to that section does not relieve a person of liability for taxes imposed under this chapter.

(B) The town may seek appropriate equitable relief from a court of competent jurisdiction to prevent or redress violations of this chapter.

(C) Each day a violation of § 110.03 or § 110.47 exists after the person has been notified of the violation shall constitute a separate and distinct offense.

(D) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section. (1994 Code, § 110.99) (Ord. passed 3-6-1990)

APPENDIX A: SCHEDULE OF LICENSE TAXES

<i>Business</i>	<i>Amount</i>
Advertising - handbills	\$20
Antique and gift shop	\$20
Art supply dealers	\$20
Auto equipment dealers, wholesale*	\$15
Auto service stations*	\$3.75
Bakery, retail	\$20
Bar, tap room, lounge (in addition to alcoholic beverage license as required)	\$150
Barber shop*	\$2.50 per employee
Beauty shop	\$2.50 per employee
Beer - off premises	\$5
Bicycle dealers*	\$10
Billiard and pool tables*	Not to exceed \$25
Blank cartridge pistols*	\$50
Bookstores	\$20
Building materials	\$20
Cabarets and/or nightclubs (no dancing or floor shows)	\$150
Cabarets and/or nightclubs (with dancing)	\$300
Campground, trailer park*	\$12.50
Carpenter shop	\$20
Carpet and rug cleaners	\$20
Cartridges*	\$5
Ceramics	\$20
Chain stores*	\$50
Cigarette, cigar, tobacco dealers*	\$4
Clothing stores	\$20

<i>Business</i>	<i>Amount</i>
Collection agency*	\$50
Concrete dealers	\$20
Contractors, building*	\$10
Dairies or creameries	\$20
Day-care facilities	Same fees as state (see G.S. § 110-93)
Delivery of packages and parcels	\$20
Dental laboratory	\$20
Department store	\$20
Drug store	\$20
Dry cleaner*	\$25
Electric supply company	\$20
Engraver and lithographer	\$20
Entertainment*	\$10
Express company*	\$20
Exterminator	\$20
Fabric shop	\$20
Farm machinery	\$20
Feed store	\$20
Fertilizer dealer	\$20
Fireworks	\$20
Fish and oyster dealer	\$20
Flea market*	\$100
Floor finisher	\$20
Florist	\$20
Fortune teller, palmist, and the like	\$200
Fruit, vegetable, and produce stand	\$20
Furniture store	\$20

<i>Business</i>	<i>Amount</i>
Gas; bottled and bulk	\$20
Gasoline dealer*	\$25
Golf course	\$20
Grocery store	\$20
Hardware store	\$20
Hobby or pet shop	\$20
Hotel, motel*	\$1 per room
Ice cream dealer and manufacturer*	\$2.50
Ice dealer and manufacturer	\$20
Instruction of dance, music, or exercise	\$20
Insulating company	\$20
Interior decorating	\$20
Itinerant merchant*	\$100
Jewelry store	\$20
Knitting mill	\$50
Knives, daggers*	\$200
Laundry*	\$50
Loan company*	\$100
Locksmith	\$20
Lumber broker and agent	\$20
Machine shop	\$20
Manufacturer	\$50
Meals	\$40
Merchant, dealer (retail)	\$20
Millinery shop	\$20
Mobile home dealer	\$50
Motorcycle dealer*	\$12.50

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<i>Business</i>	<i>Amount</i>
Motor vehicle dealer*	\$20
Movie rental	\$20
Music machine	\$5 per machine
Musical instruments*	\$5
News stands	\$20
Newspaper publishing	\$20
Nursery (plants)	\$20
Office supplies	\$20
Outdoor advertising*	\$10
Painter	\$20
Peddler of fruits, vegetables, and the like*	\$12.50
Peddler on foot*	\$10
Peddler with vehicle*	\$25
Photo engraving	\$20
Pistol dealer*	\$50
Plumber, heating contractor, and electrician*	\$12.50
Printing company	\$20
Repair shop	\$20
Restaurant, café, cafeteria	\$.50 per chair, \$2.50 minimum
Roof patcher	\$20
Shoe shop	\$20
Sign painting and repair	\$20
Skating rink*	\$10
Soda fountain*	\$4
Soft drink stand and bottled drinks*	\$4
Storage warehouse	\$20
Sundries* (selling sandwiches not taxed as restaurant)	\$4

<i>Business</i>	<i>Amount</i>
Sundries* (vending machines)	\$4
Swimming pool*	\$10
Tailor	\$20
Taxicab*	\$15 per vehicle
Telegraph company	\$10
Undertaker and coffin dealer	\$25
Video game*	\$25
Welder	\$20
Wine - off premises*	\$10
NOTES TO TABLE:	
* - License tax subject to state limits	

(1994 Code, Chapter 110, App. A) (Ord. passed 3-6-1990; Am. Ord. 11-03, passed 8-5-2003)

CHAPTER 111: ALCOHOLIC BEVERAGES

Section

General Provisions

111.01 Consumption of beer in public

GENERAL PROVISIONS

§ 111.01 CONSUMPTION OF BEER IN PUBLIC.

(A) No person shall consume, serve, or drink beer, wine, whiskey, or any other alcoholic beverage or intoxicating liquor of any kind at, in, or upon the following places:

(1) Any public street, highway, alley, driveway, or other area which the public is prohibited from using leading from any public street or highway to any place of business or other place where the public is not prohibited from entering;

(2) Any parking lot or parking area which the public is not prohibited from using, specifically including parking lots and areas provided by industrial, commercial, business, and governmental establishments and agencies; or

(3) The premises of, and any area owned or controlled by, any person, firm, or industrial, commercial, business, or governmental establishment or agency, except:

(a) Residences and related places described by G.S. § 18B-300;

(b) Social establishments described in G.S. § 18B-300;

(c) Facilities used as special occasions described in G.S. § 18B-300;

(d) Restaurants and related places as described in G.S. § 18B-300; and/or

(e) Premises licensed for consumption on the premises of malt beverages and wines, as provided in G.S. Chapter 18B; provided, those exceptions shall apply only within the hours of legal consumption and under the conditions allowed by law and pursuant to lawfully issued permits for consumption of the particular beverage being consumed at the particular place and time and not otherwise.

(B) Any person violating this section, any person who aids, abets, encourages, assists or contributes to the consumption and any person who, having control of the premises where the consumption occurs in violation of this section, willfully permits or allows the consumption to occur shall be guilty of a misdemeanor.

(1994 Code, § 111.01) (Ord. passed 1-7-1975)
Penalty, see § 10.99

CHAPTER 112: COMMUNITY ANTENNA TELEVISION SYSTEMS

Section

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Franchises

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GENERAL PROVISIONS

§ 112.01 PURPOSE.

For the better protection of the public interest, health, safety, welfare, and convenience, the following rules and regulations are hereby adopted, setting forth the conditions, requirements, and limitations under which a person may construct, have constructed for him or her, operate and maintain a community antenna television system and engage in

the business of providing a community antenna television service in the town.
(1994 Code, § 112.01)

§ 112.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CATV. Community antenna television.

COMMUNITY ANTENNA TELEVISION SERVICE (CATV SERVICE). The business of providing an improved television reception service to the public for compensation, by means of a master antenna and cables. As a part of the service, AM and FM radio program material received over the air, background music, news, weather, and other information, including public service programming, and civil defense type information as required, shall be furnished to all subscribers without additional charge.

COMMUNITY ANTENNA TELEVISION SYSTEM (CATV SYSTEM). Any facility which:

(1) In whole or in part receives, directly or indirectly, over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by 1 or more television stations and AM and FM radio stations, and distributes those signals by wire or cable to all subscribers; and/or

(2) Distributes by wire or cable, news, weather, and other information, including public service programming and civil defense type

information as required, as a part of CATV to all subscribers without charge.

F.C.C. Federal Communications Commission.

FRANCHISE. Any authorization granted hereunder in terms of a franchise, privilege, permit, license, or otherwise to construct or have constructed, operate, and maintain a CATV system in the town for the purpose of providing a CATV service to citizens of the town.

GRANTEE. The person to whom or which a franchise is granted by the Board of Alderpersons under this chapter and the lawful successor, transferee, or assignee of the person.

GROSS RECEIPTS. All revenue derived directly or indirectly by a grantee, its affiliates, subsidiaries, parents, and any person in which a grantee has a financial interest, from or in connection with the operation of a CATV system in the town including, but not limited to, the compensation received by the grantee from subscribers in the town, with no deductions.

PROPERTY OF GRANTEE. All property owned or installed or used by a grantee in the operation of a CATV system or service in the town under the authority of a franchise granted pursuant to this chapter.

STREET. The surface of and space above and below any publicly owned or maintained property or right-of-way, street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, or drive, no or hereafter existing as the within the town and lawfully usable for public travel.

SUBSCRIBER. Any person or receiving, for any purpose, the CATV service of a grantee.

(1) **COMMERCIAL SUBSCRIBER.** A hotel, motel, television dealer, and repair shop.

(2) **PUBLIC SUBSCRIBER.** The town and any of its buildings use for governmental

purposes. It shall include each public or private school within the franchise area using the service.

(3) **RESIDENTIAL SUBSCRIBER.** A purchaser of service delivered to an individual dwelling unit, including residential apartment units, condominiums, townhouses, detached houses, and the like, whether purchased by the occupant, owner, or operator of the dwelling unit.

(1994 Code, § 112.02) (Ord. passed 9-4-1979)

§ 112.03 PERMITS; INSTALLATION; SERVICE.

(A) Within 30 days after acceptance of any franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, licenses, and authorizations required by duly constituted regulatory agencies having jurisdiction over the operation of CATV systems and service.

(B) Within 60 days after obtaining all necessary permits, licenses, and authorizations, the grantee shall commence construction and installation of the CATV system.

(C) Within 8 months after the commencement of construction and installation of the system, the grantee shall proceed to render service to subscribers and in the completion of the system, shall be pursued with reasonable diligence thereafter. In any event, within 1 year after the F.C.C. issues its certificate of compliance, the grantee shall extend energized trunk cable to a least 25 % of the franchise area.

(1) The cable shall be extended to at least 25 % of the area per year thereafter until not less than 90 % of the homes in the area are covered by the cable.

(2) In the event potential subscribers in a sparsely settled section of the area shall request service and the grantee shall be of the opinion that the small number of subscribers shall make it

economically unfeasible to provide the service, both the potential subscriber and the grantee shall appear before the Town Administrator and state their respective positions. The Town Administrator shall determine upon which terms the service shall be extended to the subscriber, including, if the Administrator shall so determine, the reasonable contribution from the subscriber to the cost of the extension.

(D) Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, or failure to commence rendering service to subscribers within 18 months after acceptance of the franchise, shall be grounds for termination of the franchise under and pursuant to the terms of § 112.23. The town may extend the time for the commencement and completion of construction and the installation of service for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.

(E) The grantee shall file a map with the town on or before January 31 of each year, showing the areas and locations of the town being served by the same system and the location and identification of component parts of the system, the map being accurate as to the end of the calendar year immediately before the date of filing.
(1994 Code, § 112.03) Penalty, see § 112.99

§ 112.04 OPERATIONAL REQUIREMENTS.

(A) The grantee shall install and maintain a CATV system which shall be in accordance with the highest and best accepted standards of the industry to the end that subscribers shall receive the best possible service. In addition, the grantee shall comply with all requirements of duly constituted regulatory agencies having jurisdiction over CATV or the operator of CATV systems.

(B) When any portion of the CATV system is to be installed on public utility poles and facilities, a certification that agreements for the joint use have been entered shall be filed with the Town Clerk.

(C) The grantee shall maintain a nearby office for the purpose of handling subscriber complaints and providing prompt maintenance service.
(1994 Code, § 112.04) Penalty, see § 112.99

§ 112.05 OPERATIONAL GUIDELINES.

The grantee shall abide by all federal laws and regulations relative to the operation of a CATV system.
(1994 Code, § 112.05) Penalty, see § 112.99

§ 112.06 PROGRAMMING.

The grantee will provide as many off-air signals of programming as are permitted by F.C.C. regulations and will provide as many channels of service as are required by F.C.C. regulations.
(1994 Code, § 112.06) Penalty, see § 112.99

§ 112.07 CONFLICT OF LAWS.

Where a conflict exists between the provisions of this chapter and regulations of the F.C.C. respecting the operations of the grantee, the latter will control.
(1994 Code, § 112.07) Penalty, see § 112.99

§ 112.08 VIOLATIONS.

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise with any part of a franchised CATV system within this town for the purpose of taking or receiving television signals, radio signals, pictures, programs, or sound.

(B) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised CATV system within this town for the purpose of enabling himself, herself, or others to receive any television signal, radio signal, picture, program, or sound without payment to the owner of the system.

(C) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs, or sound.

(1994 Code, § 112.08) Penalty, see § 112.99

§ 112.09 RIGHTS RESERVED TO TOWN.

(A) The town hereby reserves the right to amend any section or part of this chapter.

(B) At all reasonable times, the grantee shall permit any duly authorized representative of the town:

(1) To examine any and all financial records maintained by or under the control of the grantee, relating to all revenue obtained by it from its operations under the franchise; and

(2) To inspect any and all installations owned, maintained, or used by the grantee in its operation under its permit including all towers, cables, and other components of the grantee's CATV system.

(C) The grantee shall indemnify and save harmless the town, its officers and employees from and against any and all claims, demands, actions, suits, and proceedings by others and against all liability to others arising out of the exercise or enjoyment of its franchise, including but not limited to any liability for damages by reason of or arising out of any failure of the grantee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the grantee's CATV system and against any loss, cost, expense, and damages resulting therefrom, including reasonable attorney's fees.

(D) Concurrently with the filing of the written acceptance, as required in § 112.21, the grantee shall file with the Town Clerk and at all times thereafter maintain in full force and effect for the term of the permit or any renewal thereof a good, sufficient liability insurance policy providing \$300,000 coverage for personal injuries to each person, \$500,000

coverage for all personal injuries in each accident, and \$300,000 coverage for all property damage in each accident. The policy shall name the town as an additional insured and shall be for the purpose of insuring the town against any and all legal liability, court costs, and costs of defense for any action, including attorney fees, cause of action, claim or demand for personal injury, death or property damage arising out of the operations of the grantee under this chapter or its permit.

(E) Concurrently with the filing of the written acceptance, as required by § 112.21, the grantee shall file with the Town Clerk, and at all times thereafter maintain in full force and effect for the term of the franchise or any renewal thereof, cash bond (deposit) in the amount of \$1,000 or good and sufficient bond in the penal sum of \$1,000, executed by a surety company authorized and qualified to do business in the state. This bond shall be conditioned upon the faithful performance by the grantee of the obligations imposed by the provisions of this chapter and the franchise. This requirement is in addition to and not in lieu of the requirements of division (D) above.

(F) The grantee shall pay to the town a sum of money sufficient to reimburse it for all publication expenses, including costs of printing ordinances in this code, incurred by it in connection with the granting of a franchise pursuant to the provisions of this chapter. The payment shall be made within 30 days after the town furnishes the grantee with a written statement of the expenses.

(1994 Code, § 112.09) Penalty, see § 112.99

FRANCHISES

§ 112.20 REQUIRED; APPLICATION.

(A) It shall be unlawful for any person to engage in or otherwise participate in the operation or maintenance of a CATV system in the town unless the person or the person for whom the work is being done first shall have obtained and shall hold a currently

valid franchise granted pursuant to the provisions of this chapter. It also shall be unlawful for any person to engage in the business of providing a CATV service in the town unless the person first shall have obtained and shall hold a currently valid franchise granted pursuant to the provision of this chapter. This chapter shall not apply to any person who provides only master antenna service to property owned or leased by the person.

(B) A person seeking issuance of a franchise hereunder shall file a written application, in duplicate, with the Town Administrator. The application shall contain the following information:

(1) The name and address of the applicant. If the applicant is a partnership, the name and address of each partner. If the applicant is a corporation, the application also shall state the names and addresses of its directors and officers and shall include a certified copy of the articles of incorporation;

(2) A statement showing the applicant's experience, if any, in establishing a CATV system and in providing a CATV service;

(3) A statement showing the applicant's financial ability to complete the construction and installation of the proposed CATV system and to provide a CATV service. All financial data submitted in compliance with the requirement of this division (B)(3) shall be confidential and shall not be regarded as public information;

(4) A statement and description of the CATV system proposed to be constructed, installed, maintained, or operated by the applicant, the manner in which the applicant proposed to construct, install, maintain, and operate it and particularly the extent and manner in which existing or future poles or other facilities of other public utilities will be used for the system;

(5) A copy of any arrangement, agreement, or contract, if existing, between the applicant and any public utility providing for the use of facilities of the public utility, such as poles, lines, cables, or conduits;

(6) A statement setting forth all agreements and understandings, whether written, oral, or implied, existing between the applicant and any person, firm, or corporation with respect to the ownership, control, or transfer of the proposed franchise or the proposed CATV system and service. If a franchise is granted to a person posing as a front or as the representative of another person and the information is not disclosed in the original application, the franchise shall be deemed void and of no force and effect;

(7) A statement or schedule of proposed rates and charges to residential and commercial subscribers for installation and services; and

(8) A statement setting forth details as to service the applicant proposes to furnish to public subscribers.

(C) Each application shall be accompanied by a non-refundable case fee of \$500, which shall be paid to the Town Finance Director.

(D) Upon consideration of any application, the town shall determine the applicant qualifications to construct, operate, and maintain a CATV system and to provide a CATV service in accordance with the provision of this chapter, using the following criteria.

(1) *Installation plan.* Preference may be given an installation plan that would provide flexibility needed to adjust to new developments, maintenance practices, and services that would be available to the subscriber and the community immediately and in the future.

(2) *Rate schedule.* Preference may be given to applicants with the most reasonable installation and subscriber rate schedule.

(3) *Financial soundness and capability.* The evidence of financial ability required in the applicant's proposal shall be so as to assure ability to complete the entire system within a minimum of 5 years of the date the franchisee receives the F.C.C. certificate of compliance.

(4) *Demonstrated experience in operating a CATV system under town franchise.* Preference may be given upon evidence of the applicant's experience in operating a CATV system under town franchise, where the evidence would show or tend to show or confirm the ability of the applicant to furnish sufficient and dependable service to the potential public and private users.

(E) If the town determines the applicant is so qualified it may, by ordinance, grant a nonexclusive franchise to the applicant.

(1994 Code, § 112.20) Penalty, see § 112.99

§ 112.21 ACCEPTANCE; INDEMNIFICATION; EFFECTIVE DATE.

(A) Within 60 days after the town has taken final action to approve the granting of a franchise, the grantee shall file a written acceptance of the franchise, acknowledged before a notary public, with the Town Clerk. The acceptance shall acknowledge that the grantee agrees to be bound by and to comply with the provisions of this chapter and the franchise and shall be in the form and content as to be satisfactory to and approved by the Town Attorney.

(B) Concurrently with the filing of the written acceptance, the grantee shall file with the Town Clerk the bond and insurance policies as required by § 112.09.

(C) The effective date of the franchise shall be the date on which the grantee files the acceptance, bond, and insurance policies as required herein.

(1994 Code, § 112.21) Penalty, see § 112.99

§ 112.22 REMUNERATION TO TOWN.

(A) Upon acceptance of a franchise and in consideration of the rights and privileges granted thereunder, the grantee shall pay to the town an initial franchise fee equal to \$25 per month for each month or major fraction of a month remaining between the date of acceptance of the franchise and the next June 30. Thereafter, during the life of the franchise, the

grantee shall pay to the town on or before July 1 each year a franchise fee to cover the 12-month period beginning July 1 and ending the following June 30, the amount of the franchise fee to be \$200 or 3% of the grantee's gross receipt derived from its operation in the town for the grantee's most recent fiscal year ending on or before April 15, whichever is greater. The fee for the last year of the grantee's franchise shall be computed on the same basis even though the term of the franchise is due to expire during the year.

(B) Within 120 days after the expiration of the grantee's fiscal year, the grantee shall file with the town a financial statement prepared by a certified public accountant or other person satisfactory to the town, showing in detail the gross receipts, as defined herein, of the grantee during the fiscal year. The payment of this fee is in addition to any ad valorem taxes which the town may be entitled to receive by reason of the existence of the grantee's real and personal property.

(C) At any time during the 3 fiscal years following the payment of the annual fee, the town shall have the right to inspect the grantee's records showing the gross receipts from which these payments are computed and the right of audit and recomputation of any and all amounts under this chapter. Acceptance of payments hereunder shall not be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable under this chapter or for the performance of any other obligations hereunder.

(1994 Code, § 112.22) Penalty, see § 112.99

§ 112.23 DURATION; TERMINATION; TRANSFER.

(A) The franchise shall be nonexclusive and shall be for a term not to exceed 15 years from the effective date thereof, as specified in § 112.21.

(B) Except for a mortgage or assignment to secure a loan or loans to construct and operate the system, the grantee shall not sell or transfer its system and the franchise granted herein without first securing approval of the town for the sale or transfer.

(C) In the event the use or any part of the CATV system is discontinued for any reason, or the franchise has been terminated, canceled, or has expired, the grantee promptly shall remove from the streets or public places all property and poles of the system, other than those which the Town Administrator may permit to be abandoned in place, and as directed by the Town Administrator shall either restore the street or pay the town for restoring the street or other area from which the property has been removed to a condition for public use acceptable to the Town Administrator. Any property remaining in place 6 months after the discontinuance, termination, or expiration of the franchise shall be considered permanently abandoned and may be appropriated by the town or removed by it at the expense of the grantee.

(1994 Code, § 112.23) Penalty, see § 112.99

§ 112.24 AUTHORITY GRANTED; DUTIES.

(A) The grantee of any franchise issued pursuant to the provisions of this chapter, subject to conditions and restrictions set out in this subchapter, shall be authorized to construct or have constructed, operate, and maintain a CATV system and to engage in the business of providing a CATV service in the town and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, over, on, under, upon, across, and along any public street the poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenance to the CATV system; and, so to use, operate and provide similar facilities or properties lawfully rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the town.

(B) It shall be unlawful for any telephone, telegraph, or power company or any other public utility company or person operating in the town to lease or otherwise make available to any other person any poles, lines, facilities, equipment, or other property for use in connection with the operation of a

CATV system or service unless the other person holds a currently valid franchise granted pursuant to the provision of this chapter.

(C) The grantee may make a charge to subscribers for installation or connection to its CATV system and a fixed monthly charge for service in accordance with the schedule of rates and charges filed with the town. No increase in rates and charges may be made unless the grantee has filed a schedule of the charges with the Town Clerk at least 60 days in advance of the effective date thereof and the Board of Alderpersons has approved the increase.

(D) The grantee shall not engage in the sale, service, repair, rental, or leasing of television receivers, radio receivers, parts or accessories and shall not require or attempt to influence its subscribers to deal with any particular person in regard thereto.

(E) Construction and maintenance of the CATV system, including house connections, shall be in accordance with the provision of the National Electrical Safety Code of the American Insurance Association and shall be in accordance with all applicable ordinances and regulations of the town.

(F) The grantee shall not have the authority to engage in offering pay television or other service for additional charges without further authorization and for an amendment of the franchise to be granted by the Board of Alderpersons at the time the need and desire for the services shall be proven to exist.

(G) (1) The grantee shall provide, without charge, 1 outlet to each town-owned building, fire station, police station, and public and private school that is passed by its cable. If more than 1 outlet is requested at any of the locations, the grantee shall install the additional outlet or outlets at the cost of time and materials only. There will be no monthly service charge at those locations.

(2) The grantee shall make its studio facilities, including color cameras and other equipment, available for use by public and private schools for local origination program and for closed

circuit educational films, subject to reasonable rules and regulations pertaining to the use by the grantee, and in that manner as not to unduly interfere with the cable television operations of the grantee.

(H) The grantee shall provide, free of charge, at least 1 dedicated noncommercial public access channel to be available on a nondiscriminatory basis.

(I) The grantee shall reserve at least 1 channel solely for educational use on a developmental basis and upon completion of the basic trunk line, for the next 5 years thereafter, at least 1 channel will be made available free of charge for those purposes.

(J) The grantee shall reserve at least 1 channel solely for use by state and local governments on a development basis, and upon completion of the basic trunk line, for the next 5 years thereafter, at least 1 channel will be made available free of charge of that use.

(K) The grantee shall make available to the town a local government access channel and no charge shall be made of the construction and operation of the coaxial cable between the town studio and the CATV system head-end. There shall be no charge to the town for those services.

(L) All equipment installed by the grantee shall be as advanced as the current state of production technology will allow. The grantee thereafter shall upgrade its facilities, equipment, and service so its system remains as advanced as is practicable.

(M) The grantee shall not make or grant any preferences or advantages to any subscriber or other person to any prejudice or disadvantage.

(1) This provision shall not prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof, nor shall it prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming with the classification shall be entitled.

(2) All promotional campaigns to be used during the first year following the granting of the franchise shall be set out in the applicant's application or filed with the Town Clerk within 30 days following grant of the franchise. A statement as to the terms of all other promotional campaigns shall be filed with the Town Clerk before the effective date of the offering of the promotional rates.

(N) All of the terms, conditions, and requirements of this chapter shall be deemed an integral part of each and every franchise granted hereunder, to the same extent as though set forth in full therein.

(1994 Code, § 112.24) Penalty, see § 112.99

§ 112.25 USE OF STREETS.

(A) There is hereby granted the right, privilege, and authority to a grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses, permits, and franchises within the corporate limits of the town and to use the towers, poles, lines, cables, and other equipment and facilities, subject to all existing and future ordinances and regulations of the town.

(B) The installation of lines, including service drops to subscribers, shall be made underground in areas where telephone and power lines are underground. The underground installation shall be made through use of conduits, openings, pipes, cables, or other installations which have been made already by other utilities and without making new excavations or taking up or disturbing any pavement, sidewalks or other improvement of any street, except to the extent it is absolutely necessary to install service drops to subscribers and the installation shall be done in a manner approved by the Town Administrator.

(C) The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place or remove from the street or other public place any property of the grantee when required by the town by reason of traffic conditions,

public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines or any other type of structures or improvements and the town shall not be liable for any disturbance of the grantee's installation resulting therefrom. The grantee shall carry out the instructions and directions of the Town Administrator whenever it is necessary to raise or remove any of the grantee's wires or cables temporarily, for the purpose of moving or removing buildings or structures on the public streets of the town and shall perform tree trimming or other maintenance work as shall be required or as shall be directed by the Town Administrator, all at the grantee's expense.

(D) Whenever a grantee takes up or disturbs any pavement, sidewalk, or other improvement of any street, it shall be replaced and the surface restored in as good condition as before entry, all in accordance with town ordinances, regulations, technical standards, and fee schedules.

(1) The conditions of the replacement and restoration shall be guaranteed for a period of 1 year following completion of the work and in the event any of the work shall fail within the period of 1 year, it again shall be replaced.

(2) Any opening or obstruction in the streets shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which shall be clearly designated by warning lights of approved types.
(1994 Code, § 112.25) Penalty, see § 112.99

§ 112.99 PENALTY.

The violation of any provision of this chapter shall be a misdemeanor punishable by a fine of \$50 and imprisonment of up to 30 days. The existence of this penalty is exclusive of civil remedies for enforcement as otherwise provided by law.
(1994 Code, § 112.99)

CHAPTER 113: MASSAGE ESTABLISHMENTS

Section

General Provisions

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GENERAL PROVISIONS

§ 113.01 PURPOSE; EXEMPTIONS.

(A) To protect the public health, safety, welfare, and morals, the following privilege license provisions and regulations are ordained for the privilege of carrying on the business, trades, or professions commonly known as massage parlors, health salons, physical culture studios, or similar establishments wherein massage or physical manipulation of the human body is carried on or practiced.

(B) The provisions of this chapter shall not apply to a regularly established and licensed hospital, sanitarium, or nursing home, nor to an office or clinic operated and regularly used by a duly qualified and licensed medical practitioner, osteopath, or chiropractor in connection with the practice of medicine, chiropractic, or osteopathy.
(1994 Code, § 113.01)

§ 113.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS or PROFESSION OF MASSAGE.

The massage or treatment of any person for a fee or in expectation of a gratuity from the person massaged.

MASSAGE. Manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping by hand or mechanical device.

MASSAGE BUSINESS.

(1) Any establishment or business wherein massage is practiced or any establishment which offers in the form of massage, exercise, or similar services in combination to club members or to the public for a charge.

(2) The term does not include:

(a) Hospitals, nursing homes, medical clinics, or the offices or quarters of a physician, surgeon, or chiropractor;

(b) Exercise clubs exclusively for members or clientele of 1 sex alone where the service without massage in any form is performed by persons of the same sex as members of the clientele; and/or

(c) Barber shops and beauty salons.

MASSAGIST. Any person engaged in the business or profession of massage.

PRIVATE PARTS. The penis, scrotum, mons veneris, vulva, or vaginal area.
(1994 Code, § 113.02)

§ 113.03 MASSAGE OF PRIVATE PARTS FOR HIRE PROHIBITED.

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire.

(1994 Code, § 113.03) Penalty, see § 113.99

§ 113.04 TREATMENT OF OPPOSITE SEX RESTRICTED.

(A) The treatment of persons of the opposite sex under and by virtue of the granting of a license for massage parlors, health salons, and related businesses shall be restricted.

(B) (1) It shall be unlawful for any person holding a license under and by virtue of this chapter to treat a person of the opposite sex except upon the signed order of a licensed physician, chiropractor, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments not to exceed 10.

(2) The date and the hour of each treatment given and the name of the operator shall be entered on the order by the establishment where the treatments are given and shall be subject to inspection by the Sheriff at any reasonable time.

(1994 Code, § 113.04) Penalty, see § 113.99

§ 113.05 PATRONAGE BY MINORS; HIRING OF MINORS.

(A) No person licensed as a masseur or masseuse under this chapter shall massage or treat any person under the age of 18 years upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, the order being dated and in the possession of the masseur or masseuse giving the massage or treatment. A violation of this division (A) shall be grounds for revocation of any license issued to the violator pursuant to this chapter.

(B) No person, corporation, partnership, or association licensed under this chapter shall allow, permit, or condone the massage or treatment of any person under the age of 18 years upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, the order being dated, and a true copy of it being in the possession of the licensee before administration of any massage or treatment. A violation of this division (B) shall be grounds for revocation of any license issued to the violator, pursuant to this chapter.

(C) No person, corporation, partnership, or association licensed pursuant to this chapter shall employ any person under the age of 18 years in the operation of a massage business.
(1994 Code, § 113.05) Penalty, see § 113.99

§ 113.06 HOURS OF OPERATION.

(A) No person licensed as a massagist hereof shall massage or treat any person, or engage in the business or profession of massage, before 9:00 a.m. or after 11:00 p.m., prevailing time.

(B) No person, corporation, partnership, or association licensed under this chapter shall admit customers or prospective customers, or remain open for business, or allow, permit, or condone any massage or treatment of any person upon the premises before 9:00 a.m. or after 11:00 p.m., prevailing time.

(C) No person in charge of managing a massage business upon the premises shall allow, permit, or condone any massage or treatment of any person before 9:00 a.m. or after 11:00 p.m. prevailing time. (1994 Code, § 113.06) Penalty, see § 113.99

LICENSES

§ 113.20 REQUIRED FOR ALL MASSAGE BUSINESS OPERATORS.

(A) No person, partnership, corporation, or association shall operate a massage business within the corporate limits of the town unless the person, partnership, corporation, or association first has applied for and received the privilege license provided by this section.

(B) Every application for the privilege license prescribed herein shall be upon a form approved by the Town Administrator and shall be filed in the office of the Town Clerk. Each application shall be made under oath and shall contain the following information:

(1) If the applicant is a person, the name and residence address of the person; if the applicant is a partnership, corporation, or association, the name and residence address of all persons having any legal or beneficial interest in the application;

(2) The address of the premises where the massage business shall be located;

(3) A complete statement of all convictions of any person whose name is required to be given in division (B)(1) above for any felony, prostitution, or any violation of any law relative to prostitution;

(4) A complete statement of any revocation, by any governmental unit, of any license to operate a massage business or to engage in the business or profession of massage held by any person whose name is required to be given in division (B)(1) above;

(5) A complete statement of any conviction of any person whose name is required to be given in division (B)(1) above, for violation of any statute, law, ordinance, or regulation of any government concerning the operation of a massage business or the business or profession of massage;

(6) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in division (B)(1) above wherein the business or profession of massage is carried on; and

(7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(C) The Town Administrator shall transmit a copy of the application to the Police Chief for an investigative report, to the Building Inspector to determine compliance with all zoning and building regulations and ordinances and to the Fire Chief to determine compliance with any law relating to fire protection. Within 45 days, these parties shall report the results of their examinations to the Town Administrator.

(D) An application in proper form, accompanied by all reports required by this section, shall be submitted to the Board of Alderpersons, which shall approve the application if the Board determines:

(1) The application contains no misstatement of fact;

(2) The applicant, or any person having legal or beneficial ownership interest in the applicant, has not been convicted of any crime involving sexual misconduct, including but not limited to G.S. §§ 14-177 through 14-202.1, (offenses against public morality and decency), and G.S. §§ 14-203 through 14-208, (prostitution), or of any federal statute relating to prostitution, or of any violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage;

(3) The applicant conforms to all requirements of applicable zoning, building, and fire prevention codes; and

(4) The applicant or any person having a legal or beneficial ownership interest in the applicant has not, for the 3-year period preceding the application, had a previously issued license revoked for engaging in the business or profession of massage.

(E) Upon approval of the application by the Board of Alderpersons and upon receipt of a \$100 license fee, the Tax Collector shall issue a privilege license to the applicant.

(F) A license issued pursuant to this section shall be revoked by action of the Board of Alderpersons if the Board determines:

(1) The licensee has violated any provision of this chapter;

(2) The licensee, or any agent of the licensee, employs or permits to be on the premises of the applicant's massage business any person practicing the business or profession of massage who has not been issued the privilege license required by this chapter or whose license under this chapter has been revoked;

(3) The licensee or the legal or beneficial owner of any interest in the licensee is convicted of any crime involving sexual misconduct, including, but not limited to, G.S. §§ 14-177 through 14-208;

(4) Any employee of the licensee is convicted of any felony in connection with his or her employment or is convicted of any crime involving sexual misconduct, including but not limited to G.S. §§ 14-177 through 14-202.1, and G.S. §§ 14-203 through 14-208, or any ordinance related to the massage business; or

(5) The licensee violates any zoning, building, or fire prevention ordinance.

(G) A license issued pursuant to this chapter is void if the licensee moves or ceases operating a massage parlor at the location required to be stated in the application for license pursuant to this chapter. (1994 Code, § 113.15) Penalty, see § 113.99

§ 113.21 REQUIRED FOR MASSAGISTS.

(A) No person shall engage in the business or profession of massage unless he or she first has applied for and received the privilege license provided by this section.

(B) The application for the license required by this section shall be upon a form approved by the Town Administrator and shall be filed with the office of the Town Clerk. It shall be given under oath 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 2 years immediately preceding the date of application, including any massage establishment experience;

(3) A complete statement of all convictions of the applicant for a 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 engage in the business or profession of massage; and

(5) The date and place of applicant's birth, the name of the applicant's parents, and the residence address or addresses of the applicant for the 5 years immediately preceding the date of application.

(C) (1) The applicant shall submit, as part of the application required in division (B) above, the following:

(a) Fingerprints of the applicant taken by the Police Chief;

(b) Two recent photographs of the applicant's head and shoulders, of a size and quality prescribed by the Town Administrator; and

(c) A medical certificate signed by a physician, licensed to practice in North Carolina, within 7 days of the date of the application. The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free of communicable disease.

(2) The additional information required by this division shall be provided at the applicant's expense.

(D) The Town Administrator shall transmit a copy of the application to the Police Chief for an investigative report. The Police Chief shall, within a reasonable time, not to exceed 45 days, report the results of the investigation to the Town Administrator.

(E) An application, in proper form, shall be submitted to the Board of Alderpersons, together with all reports required by this section. The Board shall approve the application if it determines:

(1) The applicant is at least 18 years of age;

(2) The application contains no misstatements of fact;

(3) The applicant has not been convicted of any crime involving sexual misconduct, including, but not limited to, G.S. §§ 14-177 through 14-202.4, and G.S. §§ 14-203 through 14-208, or of any federal statute relating to prostitution, or violation of any law or ordinance of any governmental unit related to the business or profession of massage;

(4) The applicant, for the 3-year period proceeding the application, has not had revoked a previously issued license for engaging in the business or profession of massage;

(5) The applicant is free from communicable disease as proven by the medical certificate required herein; and

(6) The applicant has not been convicted previously of any violation of any provision of this chapter.

(F) Upon approval of the application by the Board of Alderpersons and upon receipt of a \$50 license fee, the Town Clerk shall issue a privilege license to the applicant.

(G) (1) The Board of Alderpersons shall have authority to direct any person licensed under this section to submit to a medical examination by a licensed physician approved by the Board of Alderpersons.

(a) This authority shall be exercised only when the Board has reason to believe the person has contracted a communicable disease.

(b) Refusal to submit to the examination shall be grounds for revocation of the license, as provided in division (H) below.

(2) Notwithstanding the provisions of this division, every person licensed under this section shall file and continue to file with the Town Administrator a new medical certificate with each application for renewal of the license prescribed by this section. Failure to file those updated certificates shall be grounds for revocation of the license, as provided in division (H) below.

(H) A license issued pursuant to this section shall be revoked by action of the Board of Alderpersons if the Board determines:

(1) The licensee has violated any provision of this chapter;

(2) The licensee is afflicted with a communicable disease;

(3) The licensee has failed to be examined by a licensed physician when required by the Board of Alderpersons pursuant to division (G) above or has failed to file any medical certificate required by division (G) above; or

(4) The licensee has been convicted of a felony or any crime involving sexual misconduct, including, but not limited to, G.S. §§ 14-177 through 14-202.1, Art. 26 (offenses against public morality and decency), and G.S. §§ 14-203 through 14-208, Art. 27 (prostitution), 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 massage.

(1994 Code, § 113.16) Penalty, see § 113.99

§ 113.22 REQUIRED FOR ALL EMPLOYEES.

No person, corporation, partnership, or association licensed under this chapter shall allow or permit any person to massage or treat any person upon the premises operated by the licensee unless the person giving the massage or treatment has complied with all requirements of licensing under this subchapter, including periodic medical examinations by a licensed physician. Violation of this section shall be grounds for revocation of the license.

(1994 Code, § 113.17) Penalty, see § 113.99

§ 113.23 POSTING.

(A) Every massagist shall post the license required by this chapter in his or her work area.

(B) Every person, corporation, partnership, or association licensed under this chapter shall display the license in a prominent place.

(1994 Code, § 113.18) Penalty, see § 113.99

§ 113.24 NOTICE; HEARING.

Before the Board of Alderpersons revokes a license issued pursuant to this chapter, or if the Board

determines reasonable grounds exist to deny an application for a license pursuant to this subchapter, it shall cause a written notice to be sent by certified mail to the licensee affected or applicant affected, at the address stated in the license or application. The notice shall advise the affected party of a right to appear before the Board, with or without legal counsel, at a stated time and place, for the purpose of presenting any evidence relevant to the revocation or denial, and for the purpose of hearing all evidence submitted and examining or cross-examining any person providing the evidence.

(1994 Code, § 113.19) Penalty, see § 113.99

§ 113.25 ANNUAL PRIVILEGE.

The licenses required under this subchapter are annual privilege licenses. They shall be due and payable in the same manner and as prescribed for other privilege licenses issued by the town.

(1994 Code, § 113.20) Penalty, see § 113.99

§ 113.99 PENALTY.

Any person convicted of violating any provisions of this chapter shall be punished by a fine or imprisoned as provided by G.S. § 14-4 (see § 10.99). (1994 Code, § 113.99)

CHAPTER 114: SOLICITORS

Section

- 114.01 Definitions
- 114.02 Exceptions
- 114.03 Permission of homeowner or occupant to enter premises
- 114.04 Refusal to leave premises
- 114.05 Harassment
- 114.06 Posting of signs
- 114.07 Enforcement
- 114.08 Record of permits issued; violations to be recorded
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- 114.17 Badge to be worn
- 114.18 Exhibition of permit upon request
- 114.19 Revocation; notice and hearing
- 114.20 Appeal of decisions

- 114.99 Penalty

§ 114.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGENT. A person engaged in telephone canvassing or solicitation, or in a house-to-house canvass demonstrating or taking orders for any goods, wares, or merchandise, or taking orders from samples where goods are to be delivered later.

CANVASSER or SOLICITOR. Any individual, whether or not a resident of the town, soliciting by telephone or traveling, either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from state to state, taking or attempting to take orders for sale of goods, wares, or merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed at certain times, or in the future, whether or not the individual has, carries, or exposes for sale a sample of the subject for sale or whether he or she is collecting advance payments on sales or not. Provided, however, that this definition shall include any person who, for himself or herself or for another person, firm, or corporation, hires, leases, uses, or occupies any building, structure, tent, boat, hotel room, lodging house, apartment, shop, or any other place within the town for the sole purpose of exhibiting samples and taking orders for future delivery.

GOODS, WARES, and MERCHANDISE. Includes, but is not to be restricted to, a photograph and coupons to tickets good in whole or in part for a photograph, magazine article, or other merchandise.

ITINERANT PEDDLER or HAWKER. A nonresident of the town, who, by telephone sales or by going from house to house or place to place, exposes for sale and sells goods, wares, and merchandise under the conditions and circumstances stated for a peddler.

PEDDLER. A person who solicits by telephone or who brings goods, wares, and merchandise from outside the town or state, or where the goods, wares, or merchandise are manufactured in the town for sale

at retail and is in this state at the time that all negotiations prior to and at the sale thereof are had, and the goods, wares, or merchandise are not sold in the original packages in interstate commerce, but at retail in small quantities by means of telephone solicitation or house to house, or place to place canvass. Goods ordered or in transit which were so ordered without reference to particular sales shall be deemed to be in the state.

(1994 Code, § 114.01)

§ 114.02 EXCEPTIONS.

Any nonprofit organization, upon petition to the Board of Alderpersons, may be granted a waiver of any of the provisions of this chapter by a majority vote of the Board. The organization shall be restricted in the manner as the Board may direct, but in no event will any restrictions be more than those restrictions contained in this chapter.

(1994 Code, § 114.02)

§ 114.03 PERMISSION OF HOMEOWNER OR OCCUPANT TO ENTER PREMISES.

It shall be unlawful for any person regulated by this chapter to enter upon any private premises without permission or invitation from the occupant or homeowner.

(1994 Code, § 114.03) Penalty, see § 114.99

§ 114.04 REFUSAL TO LEAVE PREMISES.

It shall be unlawful for any solicitor or peddler to refuse or fail to leave any private premises in the town upon being requested by the owner, occupant, or person in charge of the premises.

(1994 Code, § 114.04) Penalty, see § 114.99

§ 114.05 HARASSMENT.

No solicitor or peddler shall vex, annoy, harass, any person by importuning the person to purchase or look at his or her goods or wares.

(1994 Code, § 114.05) Penalty, see § 114.99

§ 114.06 POSTING OF SIGNS.

No solicitor or peddler shall enter in or upon any house, building, or other structure upon any land or property without the prior consent of the owner or occupant thereof where there is placed or posted on the premises in a conspicuous position, at or the usual means of ingress, a sign or other form of notice stating or indicating that owner or occupant forbids or otherwise does not desire persons engaged in soliciting or any similar activity to enter upon premises.

(1994 Code, § 114.06) Penalty, see § 114.99

§ 114.07 ENFORCEMENT.

It shall be the duty of any police officer of the town to enforce the provisions of this chapter against any person found to be soliciting and to require any person seen soliciting or canvassing to produce a solicitor's or canvasser's license if the person is not known by the officer to be duly licensed.

(1994 Code, § 114.08) Penalty, see § 114.99

§ 114.08 RECORD OF PERMITS ISSUED; VIOLATIONS TO BE RECORDED.

(A) The Clerk shall maintain a record of the permits issued and record the reports of any applicable actions therein.

(B) The Chief of Police shall report to the Town Clerk all convictions for violations of this chapter, which shall be entered into the record described in division (A) of this section.

(1994 Code, § 114.09)

§ 114.09 PERMIT REQUIRED.

It shall be unlawful for any solicitor, canvasser, peddler, hawker, itinerant merchant, transient vendor of merchandise, agent to engage in the businesses within the town without first obtaining a permit in compliance with the provisions of this chapter.

(1994 Code, § 114.10) Penalty, see § 114.99

§ 114.10 APPLICATION; FEE FOR INVESTIGATION.

(A) Applicants for permits under this chapter must file with the Town Clerk a sworn application in writing, in duplicate, which shall give the following information:

- (1) Name and description of applicant;
- (2) Permanent home address and full local address of applicant;
- (3) A brief description of the nature of the business and the goods to be sold;
- (4) If employed, the name and address of their employer, together with credentials establishing the exact relationship;
- (5) The length of time in which the right to do business is desired;
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where the goods or products are located at the time the application is filed, and the proposed method of delivery;
- (7) A photograph of the applicant taken within 60 days immediately prior to the date of the filing of the application; the photograph shall be 2 by 2 inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (8) A statement as to whether the applicant has been convicted of any crime, misdemeanor, or violation of this code or any other ordinances of the town, the nature of the offense, and the punishment of assessed therefor; and

(B) At the time an applicant requests permission to solicit within the town, a fee, as established by the Board of Alderpersons, for each applicant shall be paid to the Town Clerk to cover the cost of the

investigation of the facts stated therein, but in no event shall the application fee be refunded.
(1994 Code, § 114.11)

§ 114.11 INVESTIGATION.

Upon receipt of the completed application by the Town Clerk under § 114.10, the original shall be referred to the Chief of Police who shall cause an investigation of the applicant's business and moral character to be made as he or she deems necessary for the protection of the public good. A minimum of at least 10 days shall be allowed for the investigation.
(1994 Code, § 114.12)

§ 114.12 DENIAL OF PERMIT.

If, as a result of the investigation, the applicant's character is found to be unsatisfactory, the Chief of Police shall endorse on the application his or her disapproval and his or her reasons for the same and return the application to the Town Clerk who shall notify the applicant that his or her application is disapproved and that no permit will be issued.
(1994 Code, § 114.13)

§ 114.13 ISSUANCE; IDENTIFICATION CARD.

(A) If, as a result of the investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his or her approval. The application, signed by the Chief of Police or his or her designated subordinate, along with a permit (such as identification card), shall be returned by the Chief of Police to the Town Clerk. The Clerk shall, upon payment of the prescribed license fee, if any, deliver to the applicant his or her permit (such as identification card).

(B) The permit (such as identification card) shall contain the following:

- (1) A photograph of the applicant;

(2) The fingerprints of the applicant;

(3) The date of issuance and the date of expiration;

(4) The name and address of the applicant and the business which the applicant is representing;

(5) A statement that the permit may be revoked at the discretion of the Clerk or the Board of Alderpersons;

(6) A statement that the permit is not transferable;

(7) A statement that the permit may be carried on the person and shown upon request;

(8) A statement that the solicitor may not go to back or rear doors; and

(9) A statement that the issuance of the permit is not an endorsement of the bearer of the merchandise, the service offered, nor the business methods used in selling the merchandise;

(10) The signature of the Clerk.
(1994 Code, § 114.14)

§ 114.14 FEE; ADJUSTMENT BY TOWN.

(A) The fee for a permit under this chapter shall be as established by the Board of Alderpersons from time to time.

(B) None of the fees provided for under this section shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a fee is believed, by an applicant for a permit, to place an undue burden upon interstate commerce, he or she may apply to the town for an adjustment of the fee so that it shall not be discriminatory as to interstate commerce. The application may be made before, at, or within 6 months after payment of the prescribed fee. The applicant shall, by affidavit and supporting testimony, show his or her method of business and the

gross volume or estimated gross volume of business and the other information as the town may deem necessary in order to determine the extent, if any, of the undue burden on interstate commerce.

(1) The town shall then conduct an investigation comparing the applicant's business with other businesses of like nature, and shall make findings of fact from which the town shall determine whether the fee fixed under this section is unfair, unreasonable, or discriminatory as to the applicant's business, and shall fix as the fee for the applicant an amount that is fair, reasonable, and nondiscriminatory. If the fee has already been paid, the town shall order a refund of the amount over and above the fixed fee.

(2) In fixing the fee to be charged, the town shall have the power to base the fee upon a percentage of the gross sales, or any other method which will assure that the fee assessed shall be uniform and in agreement with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fee as established by the Board of Alderpersons.

(3) Should the town determine the gross sales measure of fee to be the fair basis, the town may require the applicant to submit, either at the time of the termination of the applicant's business in the town or at the end of each month period, a sworn statement of gross sales and to pay the amount of the fee therefor; provided that no additional fee during any 1 calendar year shall be required after the permittee shall have paid an amount equal to the annual fee as prescribed by the Board of Alderpersons.
(1994 Code, § 114.15)

§ 114.15 APPLICANT TO FILE BOND.

Every applicant for a permit under this chapter not a resident of the town or who, being a resident of the town, represents a firm whose principal place of business is located outside the state, shall file with the Town Clerk a surety bond running to the town in the amount of \$1,000 with surety acceptable to and

approved by the Town Attorney. The bond shall be contingent upon the applicant's full compliance with all the provisions of this code and any other applicable ordinances, regulations, and rules of the town. The bond shall further guarantee to any citizen of the town that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor and that the property purchased shall be delivered according to the representations of the solicitor. Action on the bond may be brought in the name of the town for the use or benefit of an aggrieved person.

(1994 Code, § 114.16) Penalty, see § 114.99

§ 114.16 EXPIRATION.

All permits issued under this chapter shall expire on September 30 of each year.

(1994 Code, § 114.17)

§ 114.17 BADGE TO BE WORN.

The Town Clerk may issue to each permittee under this chapter, at the time of the delivery of his or her permit, a badge which shall contain the words "Licensed Solicitor," the period for which the permit is issued, and the number of the permit in letters and figures easily discernible from a distance of 10 feet. The badge shall, during the time the permittee is engaged in soliciting, be worn constantly by the permittee on the front of his or her outer garment in a way as to be conspicuous.

(1994 Code, § 114.18) Penalty, see § 114.99

§ 114.18 EXHIBITION OF PERMIT UPON REQUEST.

Solicitors, canvassers, hawkers, itinerant merchant vendors of merchandise are required to exhibit their permits at the request of any police officer, deputy sheriff, or any person being solicited.

(1994 Code, § 114.19) Penalty, see § 114.99

§ 114.19 REVOCATION; NOTICE AND HEARING.

(A) Permits issued under the provisions of this chapter may be revoked by the Chief of Police after notice and hearing for any of the following causes:

(1) Fraud, misrepresentation, or false statement contained in the application for a permit;

(2) Fraud, misrepresentation, or false statement made in the course of carrying on his or her business of solicitor, canvasser, agent, peddler, hawker, itinerant merchant, or transient vendor;

(3) Any violation of this chapter;

(4) Conviction of any crime or misdemeanor involving moral turpitude; or

(5) Conducting the business of solicitor, canvasser, or peddler in an unlawful manner as to constitute a breach of peace or a menace to the health, safety, or general welfare of the public.

(B) Notice of hearing for the revocation of permits shall be given in writing setting forth specifically the ground of complaint and the time and place of the hearing. The notice shall be mailed, postage prepaid, to the permittee at his or her last known address at least 5 days prior to the date set for a hearing.

(1994 Code, § 114.20)

§ 114.20 APPEAL OF DECISIONS.

(A) Any person aggrieved by the action of the Chief of Police or the Town Clerk in the denial of a permit as provided in § 114.12, the revocation by the Town Clerk as provided in § 114.19, or the action of the town in the assessing of the fee as provided in § 114.14, shall have the right of appeal to the Town Board of Alderpersons. The appeal shall be taken by filing, with the Board within 14 days after the notice of the action complained of has been mailed to the person's last known address, a written statement setting for the grounds for the appeal.

(B) The Board of Alderpersons shall set a time and place for the appeal and notice of the hearing shall be given to the applicant in the same manner as provided in § 114.19 for notice of hearing on revocation. The decision and order of the Board of Alderpersons on the appeal shall be final and conclusive.

(1994 Code, § 114.21)

§ 114.99 PENALTY.

Any person who shall be convicted of any violation of the provisions of this chapter or of any fraud, cheating, or misrepresentation whether through himself or herself or any employee while acting as a solicitor, peddler, or the like in the town or who shall barter, sell, or peddle any goods or merchandise other than those specified in his or her application for permit shall be fined not more than \$500 or imprisoned for not more than 30 days or both. In addition, he or she shall have the permit revoked at the discretion of the court.

(1994 Code, § 114.99)

Statutory reference:

*Violation of local ordinances a misdemeanor,
see G.S. § 14-4(a)*

CHAPTER 115: TAXICABS

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GENERAL PROVISIONS

§ 115.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CERTIFICATE. A Certificate of Public Convenience and Necessity, issued by the Board of Alderpersons, licensing the operation of taxicabs.

CRUISING. The movement of a taxicab, unoccupied except for the driver, over the public streets in search of or soliciting prospective passengers for hire. A taxicab proceeding to answer a telephone call for taxicab service from an intended passenger or a taxicab returning to the garage where it is housed or to its depot or terminal nearest to the place of discharge of the passenger is not **CRUISING**.

DRIVER. Any person who drives a taxicab.

INSPECTOR. The Town Taxicab Inspector.

MANIFEST. A daily record, prepared by the driver, of all trips made by the taxicab which he or she operates, showing the time and place of origin and destination of each trip and the amount of fare.

MEMORANDUM CERTIFICATE. The card issued by the Inspector to a taxicab owner for display within a taxicab, indicating it has been granted a Certificate of Public Convenience and Necessity.

OWNER. Any person to whom a Certificate of Public Convenience and Necessity for the operation of a taxicab has been issued.

TAXICAB. Any motor vehicle seating 9 or fewer passengers including the driver, operating upon any street on call or demand, accepting or soliciting passengers indiscriminately for hire between points along the streets and highways as may be directed by the passengers being transported. **TAXICAB** shall not include motor vehicles or motor carriers, as defined in G.S. §§ 62-259 through 62.279. (1994 Code, § 115.01)

§ 115.002 STATE REGISTRATION AND LICENSES REQUIRED.

No person shall operate a motor vehicle as a taxicab until it has been registered in accordance with state requirements and all proper licenses have been obtained therefor.

(1994 Code, § 115.02) Penalty, see § 10.99

§ 115.003 GENERAL OPERATING REQUIREMENTS.

(A) Every taxicab shall be operated in accordance with the laws of the state and applicable town ordinances, and with due regard to the safety, comfort, and convenience of the passengers, the safe and careful transportation of property and the safety of the general public.

(B) No taxicab shall be operated at a rate of speed greater than that established by state law or town ordinances, without proper regard for the traffic, surface, and width of the highway and the hazards at intersections and other conditions then existing; nor shall it be operated in the manner or condition as to endanger or be likely to endanger the safety of passengers, pedestrians, vehicles, or the person and property of others.

(1994 Code, § 115.03) Penalty, see § 10.99

§ 115.004 INSURANCE OR OTHER SECURITY REQUIRED BY OWNER OR OPERATOR.

(A) Every owner or operator of a taxicab engaged in the business of transporting passengers for hire in the town, other than those operated under the jurisdiction of the state Utilities Commission, shall secure and keep in effect for each taxicab so operated a policy of liability and property damage insurance in a company duly authorized to do business in the state or, in lieu thereof, deposits of cash or approved securities or surety bond with sureties who are residents of the state or duly authorized to transact business therein, whose solvency, at all times, shall be subject to the approval of the Board of Alderpersons, in the sum of not less than \$100,000 for death or injury to 1 person in case of 1 accident, \$300,000 for death and injury of more than 1 person in case of 1 accident and \$50,000 for property damage in cases of 1 accident, and conditioned upon the operator or owner of the taxicab responding in damages for any liability incurred on account of death or any injury to person or damage to property resulting from the negligent operation of the taxicab.

(B) The owner or operator of any taxicab in the town shall deposit evidence of compliance with this section with the Town Administrator before beginning the operation of any taxicab.

(1994 Code, § 115.04) Penalty, see § 10.99

§ 115.005 INFORMATION TO BE FILED BY OWNER AND OPERATOR.

Every owner and operator of a taxicab shall file with the Taxicab Inspector his or her name, business and home addresses, business and home telephone numbers, a list showing the serial numbers and makes of all taxicabs owned and operated by him or her, and the names of all drivers and their permit numbers and addresses. Within 48 hours after any changes in connection therewith, the owner and operator shall report the change to the Inspector.

(1994 Code, § 115.05) Penalty, see § 10.99

§ 115.006 OPERATOR TO MAKE REPORTS WHERE MORE THAN 1 OWNER OPERATES UNDER THE SAME NAME.

In case more than 1 owner operates under the same name, the operator shall make all reports required by this chapter in behalf of all owners operating under his or her name.

(1994 Code, § 115.06) Penalty, see § 10.99

§ 115.007 SEATS; DOORS; FLOOR MATS; SAFETY GLASS.

No vehicle shall be operated as a taxicab in the town unless it conforms with the following provisions.

(A) *Seats.* All taxicab bodies shall have 2 seats.

(B) *Doors.* The doors of all taxicabs shall be so constructed that they may be opened from the inside and outside and shall be constructed with a double or safety lock.

(C) *Floor mats.* Removable floor mats of rubber or other nonabsorbent and washable material shall be provided for all taxicabs.

(D) *Safety glass.* The windshield and all windows in taxicabs shall be of non-shatterable or safety glass.

(1994 Code, § 115.07) Penalty, see § 10.99

§ 115.008 IDENTIFICATION OF VEHICLE.

(A) (1) Each taxicab operated in the town shall have the name of the company operating it and the taxicab number painted, with permanent paint, on both sides and the rear thereof, with letters and numbers at least 4 inches high on the sides and at least 6 inches high on the rear.

(2) Colors shall be contrasting, so as to be easily visible at a reasonable distance.

(B) No banner, card, or other advertising matter shall be displayed on either side or the rear of a taxicab in a manner so as to cover or obscure the lettering required by this section.

(1994 Code, § 115.08) Penalty, see § 10.99

§ 115.009 TRANSPORTATION OF INTOXICANTS.

No person shall transport whiskey, gin, rum, or any other intoxicant in a vehicle which is being operated as a taxicab unless the whiskey, gin, rum, or other intoxicant is the property of and in the possession of a bona fide passenger for hire.

(1994 Code, § 155.09) Penalty, see § 10.99

§ 115.010 TERMINAL OR DEPOT ON PRIVATE PROPERTY REQUIRED.

No taxicab shall operate in the town unless it shall have a depot or terminal on private property.

(1994 Code, § 115.10) Penalty, see § 10.99

§ 115.011 RECORDS AND REPORTS OF ACCIDENTS INVOLVING TAXICABS.

(A) All accidents from or in connection with the operation of taxicabs shall be reported immediately to the Police Department.

(B) It shall be the duty of the Police Department to investigate and keep proper records of all accidents in which taxicabs are involved.

(1994 Code, § 115.11) Penalty, see § 10.99

ADMINISTRATION AND ENFORCEMENT**§ 115.025 OFFICE OF TAXICAB INSPECTOR ESTABLISHED; INSPECTOR APPOINTED.**

There is hereby created the Office of Taxicab Inspector, who shall be appointed by the Police Chief and approved by the Town Administrator. The Inspector, with the Administrator's approval, may hold the position in conjunction with any other town office or position.

(1994 Code, § 115.20)

§ 115.026 DUTIES OF INSPECTOR.

(A) The Taxicab Inspector is charged with the duties required under this chapter and, in general, shall be responsible for the inspection of taxicabs and shall make all investigations relative to licensing of drivers thereof.

(B) The Inspector shall advise the Town Administrator and Board of Alderpersons with respect to matters covered or incidentally involved in the operation or administration of this chapter.

(C) The Inspector shall make recommendations with respect to the adequacy of taxicab service and whether or not there are too many or too few taxicabs to serve the public's convenience and necessity.

(D) The Inspector shall make other reports and furnish other information to the Town Administrator and Board of Alderpersons as, from time to time, may be requested.

(1994 Code, § 115.21)

§ 115.027 RIGHT OF ENTRY.

The Taxicab Inspector or the Inspector's agent shall have the right, at any time after displaying proper identification, to enter into or upon any taxicab being operated under the provisions of this chapter for the purpose of reinspecting or ascertaining compliance with this chapter or other town ordinances.

(1994 Code, § 115.22)

METERS; RATES**§ 115.040 METERS AND RATES REQUIRED.**

(A) *Meters.* Every taxicab operated under the provisions of this chapter shall have affixed thereto, in a position visible to the driver and passenger, a taximeter, which shall conform to the following specifications.

(1) A taximeter is a mechanical instrument or device by which the charge for hire of a taxicab is mechanically calculated for distance traveled, for waiting time or for both, and upon which the charge shall be indicated by means of legible figures which are electrically lighted each time the taximeter flag is thrown from the non-earning to earning position.

(2) Taximeters must register upon visual counters the following items:

- (a) Total miles;
- (b) Paid miles;
- (c) Number of units; and
- (d) Number of trips.

(3) No person shall use or permit to be used upon any taxicab a taximeter which is in such a condition as to be more than 5% incorrect to the prejudice of the owner or an passenger.

(4) No certificate shall be issued for a taxicab until the taximeter attached thereto shall have been inspected and found accurate.

(5) No person shall use or permit to be used or driven for hire a taxicab equipped with a taximeter with an unsealed case and which does not have its cover and gear intact.

(6) No driver of a taxicab equipped with a taximeter while carrying passengers or under employment, shall display the signal affixed to it in a position as to denote it is not employed or in a position to denote it is employed at a rate of fare different from that to which the operator is entitled under the provisions of this chapter. It shall be the duty of the driver to call the attention of passengers to the amount registered and the taxicab flag shall not be changed to the vacant position until after the fare is paid. If demanded by the passenger, the driver in charge of a taxicab shall give the person paying for the hiring of it, at the time of payment, his or her name, permit number, taxicab number, and the name of the owner.

(7) No person shall drive a taxicab to which is attached a taximeter that has not been duly inspected and approved. It shall be unlawful to change the size of the wheels or tires of a taxicab in a manner that would cause 5% tolerance to be exceeded or to change the gears operating the taximeter from 1 taxicab to another, unless the taximeter is retested and approved by the Taxicab Inspector.

(B) *Rates.* No person owning, operating, or controlling a taxicab shall charge a rate therefor in excess of the following provisions; the rate shall take effect at the time the passenger enters the taxicab.

(1) One dollar and thirty cents for the first 1/8 mile, plus \$.10 for each 1/8 mile thereafter. A driver may stop at 1 or more points on the trip and pick up additional passengers to be transported in accordance with these rates; provided, the original or any other passenger shall not be charged for any distance traveled beyond the direct line of his or her destination.

(2) Waiting time caused by the passenger shall be charged at the rate of \$.20 for each minute or fraction thereof.

(3) The driver may charge, in addition to the above rates, \$.25 per trip for handling of any parcels by the taxicab operator. A passenger who can enter or exit the taxicab and handle his or her parcels, without undue delay, will not be charged. Where assistance is needed in order to prevent an unusual delay, the taxicab operator shall assist and shall, therefor, make the above charge.

(1994 Code, § 115.30) Penalty, see § 10.99

§ 115.041 CHARGING OR PAYING OTHER THAN PRESCRIBED RATES; FAILURE TO PAY RATES.

It shall be unlawful for the driver, owner, or operator of a taxicab to charge rates not in accordance with those provided in § 115.040 or for any passenger to pay rates not in accordance therewith or to refuse to pay the fares as may be charged in accordance therewith.

(1994 Code, § 115.31) Penalty, see § 10.99

§ 115.042 DISPLAY OF RATES.

Every taxicab operated within the town at all times shall have displayed prominently, so as to be visible to the passengers therein, the rates charged for the use of the taxicab.

(1994 Code, § 115.32) Penalty, see § 10.99

INSPECTIONS

§ 115.055 BY TOWN.

(A) No person owning, operating, or controlling any motor vehicle within the town shall cause or suffer it to be operated as a taxicab, unless he or she first shall submit it to the Taxicab Inspector for inspection and obtain a written statement from the

Inspector to the effect that the vehicle conforms to the requirements of this chapter and all other ordinances of the town. The Inspector shall examine the taxicab, particularly, on the following points:

- (1) Foot brakes and hand or parking brakes;
- (2) Front and rear bumper;
- (3) Spare tire properly inflated;
- (4) Heater sufficient to heat the interior of the cab;
- (5) Rear view mirror for driver;
- (6) Speedometer in good order;
- (7) Dual windshield wiper; and
- (8) Lights, as approved by the state Division of Motor Vehicles, and a passenger compartment light with an accessible switch.

(B) Any taxicab which is found, after an inspection authorized by this section, to be unsafe or in any way unsuitable, or to be operated in violation of any of the provisions of this chapter may be ordered out of service immediately by the Inspector and, before again being placed in service, shall be reinspected and approved.

(1994 Code, § 115.40) Penalty, see § 10.99

§ 115.056 BY OWNER OR OPERATOR.

(A) Every taxicab owner or operator shall make an inspection, at least once each week, of all taxicabs owned and operated by him or her and shall keep all taxicabs in proper repair and sanitary condition at all times.

(B) Any taxicab found by the owner or operator to be unsafe or unsanitary shall have the repairs, alterations, and cleaning as may be necessary and shall not be operated until safe and sanitary.

(1994 Code, § 115.41) Penalty, see § 10.99

***CERTIFICATES OF PUBLIC CONVENIENCE
AND NECESSITY***

§ 115.070 REQUIRED.

No person shall operate any taxicab in the town without first having obtained a Certificate of Public Convenience and Necessity from the Board of Alderpersons authorizing the operation.
(1994 Code, § 115.50) Penalty, see § 10.99

§ 115.071 APPLICATION REQUIRED.

Any person desiring a certificate for the operation of a taxicab shall file with the Board of Alderpersons a sworn application, in triplicate, on a form provided by the Board and shall furnish information the Board, in its discretion, may require.
(1994 Code, § 115.51)

§ 115.072 ACTION ON APPLICATION.

(A) No certificate applied for under this subchapter shall be granted until the Board of Alderpersons, after a hearing, declares by resolution that public convenience and necessity require the proposed taxicab service.

(B) In determining whether public convenience and necessity require the operation of a taxicab for which application for a certificate is made, the Board shall consider and investigate:

(1) Whether the demand of the public requires additional taxicab service;

(2) The adequacy of existing mass transportation and taxicab service;

(3) The financial responsibility and experience of the applicant;

(4) The ability of the applicant to earn a fair return on the capital invested;

(5) The number, kind, and type of equipment and the color scheme to be used;

(6) The effect additional taxicab service may have upon traffic congestion and parking;

(7) Whether the additional taxicab service will result in a greater hazard to the public; and

(8) Other relevant facts as the Board may deem advisable or necessary.
(1994 Code, § 115.52)

§ 115.073 FEE.

The owner of each taxicab which is granted a certificate under this subchapter shall pay into the general treasury of the town \$15 for each taxicab covered thereby. The fee shall be in addition to, and not in lieu of, any other license fees and charges established by proper authority and applicable to taxicabs in this town.
(1994 Code, § 115.53) Penalty, see § 10.99

§ 115.074 ISSUANCE.

Having declared that public convenience and necessity require the proposed taxicab service, the Board of Alderpersons shall grant to every person who has filed application therefor, as provided in this subchapter, a Certificate of Public Convenience and Necessity for the taxicab, subject to conditions the Board may deem the public convenience and necessity require, provided:

(A) The owner thereof shall have complied with all the provisions of this chapter;

(B) The vehicle for which application for a certificate is made is found in strict compliance with this chapter; and

(C) The court record of the applicant would not make it against the public interest for the application to be granted.
(1994 Code, § 115.54)

§ 115.075 ISSUANCE AND DISPLAY OF MEMORANDUM CERTIFICATE.

(A) For each taxicab for which a Certificate of Public Convenience and Necessity has been granted, a memorandum of Certificate of Public Convenience and Necessity shall be issued in a form as the Board of Alderpersons may, from time to time, prescribe.

(B) The memorandum certificate shall be displayed at all times in a conspicuous place in the taxicab for which it was issued.

(1994 Code, § 115.55)

§ 115.076 TERM.

Each Certificate of Public Convenience and Necessity issued under this subchapter shall expire on June 30 of the fiscal year during which it was granted.

(1994 Code, § 115.56)

§ 115.077 RENEWAL.

Upon application before termination of each fiscal year, the Board of Alderpersons may renew any certificate issued under this subchapter or cause a new certificate to be issued for the ensuing year, in the absence of any contrary evidence and finding of the Board regarding the continued necessity for the taxicab service.

(1994 Code, § 115.57)

§ 115.078 ASSIGNMENT OR TRANSFER.

No Certificate of Public Convenience and Necessity issued under this subchapter may be assigned or transferred, except upon written application to the Board of Alderpersons setting forth the purpose, terms, and conditions of the assignment or transfer. The Board, after investigation, shall approve or disapprove the application.

(1994 Code, § 115.58)

§ 115.079 NEW CERTIFICATES FOR REPLACEMENT VEHICLES; PERMITTING STATE LICENSE TO BE USED ON PRIVATE VEHICLE.

(A) When an owner sells or transfers title to any taxicabs for which certificates have been granted under this subchapter and retires them from use as taxicabs and, within 30 days after the sale or transfer, purchases other taxicabs, the Board of Alderpersons, as a matter of right, upon written application to the Board within 30 days of the purchase, shall issue new certificates for the operation of no greater number of taxicabs than those so sold or transferred; provided, the owner has complied with all the provisions of this chapter.

(B) Any owner whose taxicabs for which certificates have been granted, have been destroyed involuntarily or who voluntarily destroys any taxicabs will, as a matter of right, upon written application to the Board within 30 days after the destruction, be issued new certificates for the operation of no greater number of taxicabs than those destroyed, upon satisfactory evidence presented to the Board of the destruction; provided, the owner has complied with all the provisions of this chapter.

(C) No owner shall permit his or her taxicab license issued by the state to be used on any private vehicle.

(1994 Code, § 115.59) Penalty, see § 10.99

§ 115.080 SUSPENSION; REVOCATION.

(A) Certificates issued under this subchapter may be suspended or revoked by the Board of Alderpersons at any time in case:

(1) The Board finds the owner's past record to be unsatisfactory;

(2) The owner fails to operate the taxicab in accordance with the provisions of this subchapter;

(3) The owner ceases to operate any taxicab for a period of 30 consecutive days, without having obtained permission for cessation of the operation from the Board;

(4) The owner permits or authorizes the transportation of whiskey, gin, rum, or any other intoxicant in any taxicab by any driver employed by him, unless the whiskey, gin, rum, or other intoxicant is the property of and in the possession of a bona fide passenger for hire; or

(5) For any other reason deemed by the Board to warrant suspension or revocation.

(B) No certificate shall be revoked or suspended under this section unless 48-hours' notice of hearing shall have been given the holder of the certificate and the hearing is duly held thereon.

(C) Certificates which are suspended or revoked by the Board shall be surrendered and the operation of any taxicab covered by the certificates shall cease.
(1994 Code, § 115.60)

§ 115.081 AUTOMATIC REVOCATION UPON CHANGE OF VEHICLE OWNERSHIP OR TITLE.

(A) (1) Change of ownership of or title to any taxicab automatically shall revoke any certificate previously granted under this subchapter.

(2) The purchaser of any vehicle may not operate it as a taxicab until he or she has applied for and been granted a new certificate in the manner provided in this subchapter.

(B) For the purpose of this section, a change of ownership is deemed to have taken place, in addition to other methods usually employed, if the owner of any taxicab leases it to any person under any lease or other arrangement whereby the person shall have the right, upon the payment of an amount of money or other consideration, to acquire title at any future date to the taxicab or any other thing of value.
(1994 Code, § 115.61)

§ 115.082 SURRENDER OF CERTIFICATE WHEN TAXICAB RETIRED AND NOT REPLACED.

(A) Any owner who permanently retires any taxicab from service and does not replace it within 30 days thereof immediately shall surrender any certificate granted for the operation to the Board of Alderpersons.

(B) The owner may not secure an additional certificate for the operation of any taxicab, without having first made application therefor in the manner provided in this subchapter.
(1994 Code, § 115.62) Penalty, see § 10.99

§ 115.083 NUMBER OF TAXICABS REQUIRED BY PUBLIC CONVENIENCE AND NECESSITY.

For the purpose of administering this subchapter, it is hereby determined and declared that 10 taxicabs are all the public convenience and necessity require at this time and until the Board of Alderpersons shall determine that public convenience and necessity require a greater number.
(1994 Code, § 115.63)

DRIVERS

§ 115.095 CLEANLINESS; APPEARANCE.

All drivers of taxicabs shall be cleanly and neatly dressed while operating a taxicab.
(1994 Code, § 115.70) Penalty, see § 10.99

§ 115.096 PERMITTING MORE PASSENGERS THAN CAB'S SEATING CAPACITY.

(A) No taxicab shall permit more persons than the seating capacity of the taxicab, including the driver, to be carried in a taxicab in the town at any 1 time.

(B) Children in arms are exempt from the provisions of this section.

(1994 Code, § 115.71) Penalty, see § 10.99

§ 115.097 PERMITTING ADDITIONAL PASSENGERS OVER OBJECTION OF ORIGINAL PASSENGER.

When any taxicab is occupied by a passenger, the driver shall not permit any other person to occupy or ride in the taxicab if the original passenger objects thereto.

(1994 Code, § 115.72) Penalty, see § 10.99

§ 115.098 UNAUTHORIZED REFUSAL OF PASSENGER.

No taxicab driver shall refuse or neglect to convey any person upon request, unless previously engaged or unable to or forbidden by the provisions of this chapter to do so.

(1994 Code, § 115.73) Penalty, see § 10.99

§ 115.099 DECEPTION OF PASSENGER AS TO DESTINATION OR FARES.

No taxicab driver shall deceive or attempt to deceive any passenger or prospective passenger as to the destination or rate of fare to be charged.

(1994 Code, § 115.74) Penalty, see § 10.99

§ 115.100 CONVEYANCE OF PASSENGER TO DIRECTED DESTINATION.

No taxicab driver shall convey any passenger to a place other than the one directed by the passenger.

(1994 Code, § 115.75) Penalty, see § 10.99

§ 115.101 USE OF SHORTEST ROUTE.

No taxicab driver shall take a longer route to the destination directed by the passenger than necessary, unless requested to do so by the passenger.

(1994 Code, § 115.76) Penalty, see § 10.99

§ 115.102 COMPLIANCE WITH PASSENGERS' REQUESTS AS TO SPEED AND ROUTES.

All taxicab drivers shall comply with all reasonable and lawful requests of passengers as to speed and routes to be taken.

(1994 Code, § 115.77) Penalty, see § 10.99

§ 115.103 SEARCH FOR AND DISPOSITION OF LOST ARTICLES.

(A) Every taxicab driver shall thoroughly search his or her taxicab at the termination of each trip for lost articles which may be left in the cab by passengers; any article found shall be returned immediately to its rightful owner, if known.

(B) Otherwise, it should be deposited with the owner or operator of the taxicab and shall, within 24 hours, be reported and turned over to the Taxicab Inspector.

(1994 Code, § 115.78) Penalty, see § 10.99

§ 115.104 CRUISING.

No taxicab driver shall cruise in search of passengers at any time.

(1994 Code, § 115.79) Penalty, see § 10.99

§ 115.105 DUTY TO RETURN TO TERMINAL OR DEPOT WHEN CAB UNOCCUPIED.

Whenever a taxicab is unoccupied, the driver shall proceed at once, by the most direct route, to the terminal or depot.

(1994 Code, § 115.80) Penalty, see § 10.99

§ 115.106 OPERATION ALONG BUS ROUTES.

(A) No owner, operator, or driver of a taxicab shall cause or permit it to be operated along or over established bus routes for the purpose of picking up passengers who are waiting for buses.

(B) This section shall not be construed to prohibit or interfere with the response to any call for a taxicab.

(1994 Code, § 115.81) Penalty, see § 10.99

PERMITS**§ 115.120 REQUIRED.**

No person shall drive any taxicab carrying passengers for hire from place to place within the corporate limits or within a distance of 1 mile thereof, without first having applied for and obtained a taxicab driver's permit.

(1994 Code, § 115.90) Penalty, see § 10.99

§ 115.121 APPLICATION.

Application for a taxicab driver's permit shall be filed with the Taxicab Inspector, shall be made upon blanks furnished by the town for that purpose and shall state, among other things, the name, address, physical condition, physical description, former employers, present or prospective employer, court record, and state chauffeur's license number of the applicant.

(1994 Code, § 115.91)

§ 115.122 PHOTOGRAPH AND FINGERPRINTS.

The applicant for a taxicab driver's permit shall attach to the application his or her photograph, which shall constitute a part of the application, and shall impress his or her fingerprints on the back of the application.

(1994 Code, § 115.92) Penalty, see § 10.99

§ 115.123 INVESTIGATION.

The Taxicab Inspector shall investigate and confirm the facts stated in each application for a taxicab driver's permit.

(1994 Code, § 115.93)

§ 115.124 ISSUANCE OR REFUSAL.

(A) If the Taxicab Inspector shall find that the applicant for a permit required by this subchapter is of good moral character, sound physique and mind, without infirmities which might render him or her unfit for the safe operation of a taxicab, is a citizen of the United States, is not a habitual user of intoxicating liquors or narcotic drugs and has not been a habitual violator of the traffic laws, the Inspector shall, subject to the provisions of division (B) below, issue to the applicant a permit to operate a taxicab within the town.

(B) The Inspector shall refuse an application for a taxicab driver's permit if the applicant has been convicted of any of the offenses set forth in § 115.127 as grounds for suspension or revocation within a period of time before application for a permit that is the same period of time as the period of suspension or revocation set forth in § 115.127(A).

(1) In any such refusal, the Inspector shall specify the grounds for refusal and the applicant then shall have the right to appeal to the Board of Alderpersons, following the procedure set forth in § 115.127(B).

(2) Any applicant who has been convicted of any offense set forth in § 115.127(A) for which the period of suspension or revocation is listed as "permanent" and at least 5 years have passed since the conviction of the offense, and who can submit the sworn proof required by § 115.127(D) may receive a permit upon proof of the same facts set forth for restoration of a permanently revoked permit, as set forth therein. The conviction shall mean a final conviction upon appeal, if any, and the date of the conviction shall be the date upon which it became final.

(1994 Code, § 115.94)

§ 115.125 DISPLAY.

The driver of every taxicab, at all times while operating it, shall display in the cab, so as to be easily visible to the passengers therein, a current permit issued under this subchapter.

(1994 Code, § 115.95) Penalty, see § 10.99

§ 115.126 EXPIRATION; RENEWAL.

All taxicab drivers' permits then outstanding shall expire on June 30 biennially. Upon application before each expiration date, the Taxicab Inspector, upon application being filed at least 10 days before the expiration, shall renew any taxicab driver's permit then outstanding or cause a new one to be issued for the ensuing biennium. Every person holding a taxicab driver's permit on each ensuing expiration date shall be presumed, in the absence of contrary evidence and finding of the Taxicab Inspector, to have established prima facie evidence of his or her right to receive a renewal of the permit or a new permit for the ensuing biennial period.

(1994 Code, § 115.96)

§ 115.127 SUSPENSION; REVOCATION.

(A) (1) The Taxicab Inspector, at any time after the issuance of a permit to any person to drive a taxicab, shall revoke or suspend it if the permit holder shall be convicted, and that conviction is upheld, of any of the following offenses, for the periods as follows:

(a) Manslaughter by automobile - first offense, 12 months; second offense, permanent;

(b) Assault with automobile - first offense, 12 months; second offense, permanent;

(c) Speeding - first conviction, letter of warning; second conviction, 15 mph over the limit, 6 months suspension; third conviction, 15 mph over limit, 12 months suspension; any subsequent conviction 15 mph over limit, 12 months suspension for each conviction;

(d) Reckless driving - first conviction, 12 months; second offense, permanent;

(e) Violation of prohibition laws - first conviction, 12 months; second offense, permanent;

(f) Aiding and abetting in violation of prohibition laws - first conviction, 6 months; second conviction, 12 months; third conviction, 2 years. Any subsequent convictions result in a 24-month suspension for each conviction;

(g) Operation of automobile while under the influence of an intoxicant - first conviction, 12 months; second conviction, permanent;

(h) Violation of any provisions of G.S. § 14-204 in regard to prostitution and assignation - first conviction, 12 months; second conviction, 2 years; third conviction, permanent;

(i) Operating after taxicab operator's permit has been suspended or revoked and before it has been reinstated - an additional 12-month period of suspension of the taxicab operator's permit;

(j) Cruising; picking up passengers and charging less than the prescribed fares - first offense, 60 days; second offense, 12 months;

(k) Felony other than manslaughter by automobile - permanent;

(l) Conviction of violation of a federal or state statute relating to the use, possession, or sale of narcotic drugs or controlled substances and that conviction is upheld - permanent; and/or

(m) Knowingly making a false statement in an application to obtain a taxicab driver's permit - permanent.

(2) The Taxicab Inspector shall suspend or revoke the permit of any driver for the violation of any provision of this section. The Inspector shall have the right to refuse the grant of any permit or to revoke it upon the violation of any other provision of this chapter.

(B) Upon revocation or suspension by the Taxicab Inspector of a permit to drive a taxicab, the permittee shall have the right to an appeal.

(1) The appeal shall be taken within 10 days after the Inspector informs the person of the decision by filing with the Inspector and Town Administrator a notice of appeal, specifying the grounds thereof.

(2) Following receipt of the notice of appeal, the Administrator shall place the appeal on the agenda of the next regular meeting of the Board, at which meeting, or any later meeting designated by the Board, the appeal shall be heard and decision rendered by the Board thereon.

(3) In the event the appeal is decided unfavorably to the appellant, he or she may submit the matter to the Inspector for consideration and action again, but not before the lapse of 9 months next following the date of the hearing of the appeal.

(4) At the hearing, the permittee shall be entitled to submit sworn evidence he or she has not violated the provisions of this chapter, as found by the Taxicab Inspector. The permittee also shall be entitled to present evidence that the violations he or she has committed are not grounds for suspension or revocation. Unless the permittee satisfies the Board of Alderpersons that the Inspector was in error either to the violations or else in interpretation of the grounds, the action of the Inspector shall remain in effect. The same right of appeal, as set forth herein, shall apply to any applicant for permit whose permit shall be refused under § 115.124. Upon unfavorable action by the Board, the appellant shall have the right to have the matter determined by the courts, as provided by the General Statutes.

(C) If any driver holding a permit under the provisions of this division shall be convicted of any of the offenses outlined in division (A) above, and shall appeal therefrom to any superior court of the state, the Taxicab Inspector shall suspend the permit following the conviction, pending the outcome of the appeal. If the judgement or conviction shall be affirmed, the

permit shall be revoked but the period of suspension shall be included in computing the length of time set forth in division (A) above. In the event the driver is acquitted in the superior court, the suspension shall be terminated and the permit restored.

(D) (1) Any person whose permit has been revoked permanently under this section, when the revocation has been in effect for at least 5 years, make application the Inspector for restoration of the permit. The Inspector may restore the permit upon receipt of the application in writing, duly sworn to by the applicant, and upon:

(a) Proof by the applicant that the applicant has committed none of the offenses listed above as grounds for suspension or revocation from the date of the revocation until the date of the application, or if the applicant has committed the offense following the date of revocation, that the last the offense occurred at least 5 years before the date of the application; and

(b) The proof the Taxicab Inspector may require from the Police Department, State Division of Motor Vehicles, County Sheriff's Department, and any other law enforcement agency in the jurisdiction where the applicant has resided or has been during the period between the date of the revocation and the date of the application for restoration.

(2) Any permit which once has been restored under this division shall be revoked permanently upon any 1 conviction of any offense set forth in division (A) above; provided, no permit once permanently revoked ever shall be restored more than 1 time.

(1994 Code, § 115.97)

CHAPTER 116: WRECKER SERVICES USED BY TOWN

Section

- 116.01 Placement on Police Department's rotation schedule
- 116.02 Procedure for rotation
- 116.03 Compliance
- 116.04 Distance of responding wrecker from center of town
- 116.05 Constant availability
- 116.06 Minimum equipment
- 116.07 Charges
- 116.08 Operator's responsibility for cleanup at accident site
- 116.09 Storage of towed vehicles
- 116.10 Inspections

§ 116.01 PLACEMENT ON POLICE DEPARTMENT'S ROTATION SCHEDULE.

Any wrecker service falling within the guidelines of the policy and approved by the Police Chief and Town Administrator may be placed on the Police Department's rotation schedule.
(1994 Code, § 116.01) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.02 PROCEDURE FOR ROTATION.

In the event there is no available wrecker service on the town's rotation list, the Police Chief is authorized to have officers contact the Catawba County Communications Center and have it dispatch its next rotation wrecker.
(1994 Code, § 116.02) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.03 COMPLIANCE.

Failure to comply with any of the requirements of this chapter may result in removal of that company by the Police Chief from the wrecker rotation schedule and later confirmed by the Board of Alderpersons.
(1994 Code, § 116.03) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.04 DISTANCE OF RESPONDING WRECKER FROM CENTER OF TOWN.

The location of the responding wrecker must be no more than 20 minutes from the approximate center of town designated as First Avenue SW and 26th Street SW. This measure of time will be under normal traffic conditions and obeying all traffic laws.
(1994 Code, § 116.04) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.05 CONSTANT AVAILABILITY.

Each wrecker service must offer 24-hour, 7-day-a-week service. Contracts between rotation wreckers and other wrecker companies must be known to the Police Department and a copy of the contract furnished to them.
(1994 Code, § 116.05) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.06 MINIMUM EQUIPMENT.

Each rotation wrecker will have a minimum of the following equipment:

(A) Shovel, broom, and ax;

(B) Dollies;

(C) 100-foot cables;

(D) One 10 pound dry chemical fire extinguisher;

(E) Jumper cables;

(F) Three or more 30-minute flares and electric lamps or lanterns;

(G) Double boom wreckers; and

(H) No fewer than 5 gallons of clay-based oil absorbent compound.

(1994 Code, § 116.06) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.07 CHARGES.

Only a reasonable charge shall be made for tow-in services. Each wrecker service should maintain records to justify charges levied. No recommendations as to the appropriate charges will be issued from the town.

(1994 Code, § 116.07) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.08 OPERATOR'S RESPONSIBILITY FOR CLEANUP AT ACCIDENT SITE.

Operators of wreckers will be responsible for cleanup of the scene of each accident they service, including removal of all glass and debris from the roadway and right-of-way.

(1994 Code, § 116.08) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.09 STORAGE OF TOWED VEHICLES.

All rotation wrecker services will provide a secure fenced in or inside location for the storage of vehicles towed.

(1994 Code, § 116.09) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.10 INSPECTIONS.

All rotation wrecker services will allow periodic inspections by designated members of the Police Department to assure compliance with all state and local statutes and rules and regulations assuring safe and suitable service. The Police Chief will designate members of the department to conduct this inspection.

(1994 Code, § 116.10) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

CHAPTER 117: GARAGE SALES

Section

117.01 Garage sales and the like

§ 117.01 GARAGE SALES AND THE LIKE.

Garage, yard, patio, and apartment sales are permitted as accessory uses within the town. The sales shall be limited to 2 during each calendar year period, for a maximum duration of 2 days per sale. All apparatus, racks, shelves, tables, signs, and other appurtenances associated with the sale shall be removed the same day as the sale.

(1994 Code, § 117.01) Penalty, see § 10.99

CHAPTER 118: SEXUALLY-ORIENTED BUSINESS

Section

General Provisions

- 118.01 Purpose; exemptions
- 118.02 Definitions
- 118.03 Classification
- 118.04 Liability for the conduct of others
- 118.05 Effective and compliance dates

Regulations

- 118.20 License required
- 118.21 Issuance of license
- 118.22 Appeal
- 118.23 Fees
- 118.24 Inspection
- 118.25 Expiration of license
- 118.26 Suspension
- 118.27 Revocation
- 118.28 Denial
- 118.29 Transfer of license
- 118.30 Hours of operation
- 118.31 Additional regulations for escort agencies
- 118.32 Additional regulations for adult theaters, adult cabarets, and adult motion picture theaters
- 118.33 Additional regulations for adult motels
- 118.34 Additional regulations for all sexually-oriented businesses
- 118.35 Regulations pertaining to sexually-oriented businesses with viewing or other rooms

- 118.99 Penalty

Cross-reference:

Zoning Code, see Chapter 154

GENERAL PROVISIONS

§ 118.01 PURPOSE; EXEMPTIONS.

The Town of Long View Board of Alderpersons is committed to protecting the general welfare of the Town through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses. It seeks to reduce and eliminate the deleterious effects of sexually-oriented businesses while preserving constitutionally protected forms of expression. The Town Board of Alderpersons finds that sexually-oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse consequences, and finds that the effects are contrary to the general welfare of the town. The Town Board of Alderpersons recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place, and manner under which sexually-oriented businesses operate; and that, therefore, the Town Board of Alderpersons has determined that persons seeking to operate sexually-oriented businesses shall be required to observe specific locational requirements before they commence business, as provided for in this chapter. The Town Board of Alderpersons finds that the licensing of sexually-oriented businesses is necessary to ensure compliance with the locational and zoning requirements of the businesses. The Town Board of Alderpersons finds that sexually-oriented businesses in other communities have been used for unlawful sexual activities, including prostitution, and sexual encounters of a casual nature. The concern over sexually-transmitted diseases is a legitimate health

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

(Ord. 9-03, passed 5-6-2003)

§ 118.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

ADULT BOOKSTORE or ADULT VIDEO STORE. A commercial establishment:

(1) Which receives a majority of its gross income during any calendar month from the sale of or rental of any 1 or more of the following:

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

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

(2) Having as a preponderance of its books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual

representations that depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT CABARET. A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as 1 of its principal business purposes:

(1) Persons who appear nude or semi-nude;

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

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe "specified sexual activities" or "specified anatomical areas."

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

(1) Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as 1 of its principal business purposes;

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

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as 1 of its principal business purposes that depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits, or displays, as 1 of

its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict "specified anatomical areas" or "specified sexual activities."

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

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association, or limited liability company;
- (3) Each general partner in a general or limited partnership;
- (4) Each officer and director of a corporation;
- (5) The proposed manager(s) of any sexually-oriented business;
- (6) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

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

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

ESCORT AGENCY. A person or business that furnishes, offers to furnish, or advertises to furnish escorts as 1 of its principal business purposes, for a fee, tip, or other consideration.

ESTABLISHMENT. Any of the following:

- (1) The opening or commencement of any sexually-oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business;
- (3) The addition of any sexually-oriented business to any other existing sexually-oriented business; or
- (4) The relocation of any sexually-oriented business.

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

NUDE MODEL STUDIO. Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. **NUDE MODEL STUDIO** shall not include a proprietary school licensed by the State of North Carolina or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
- (2) Where in order to participate in a class a student must enroll at least 3 days in advance of the class; and
- (3) Where no more than 1 nude or semi-nude model is on the premises at any 1 time.

NUDITY or A STATE OF NUDITY.

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

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

OPERATES or CAUSES TO BE OPERATED.

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

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

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

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as 1 of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female persons and/or persons of the same sex when 1 or more of the persons is in a state of nudity or semi-nude.

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

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

SPECIFIED SEXUAL ACTIVITIES. Any of the following:

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

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

(3) Masturbation, actual or simulated; or

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

TOWN ADMINISTRATOR. The Town of Long View Town Administrator or his or her designee.

TOWN CLERK. The Town of Long View Clerk.

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

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

(2) Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of applicant; except that a mere substitution of a person as manager of an establishment shall only require filing with the Town Administrator as provided in § 118.23; or

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

(Ord. 9-03, passed 5-6-2003)

§ 118.03 CLASSIFICATION.

Sexually-oriented businesses are classified as follows:

- (A) Adult arcades;
- (B) Adult bookstores or adult video stores;
- (C) Adult cabarets;
- (D) Adult motels;
- (E) Adult motion picture theaters;
- (F) Adult theaters;
- (G) Escort agencies;
- (H) Nude model studios; and
- (I) Sexual encounter centers.

(Ord. 9-03, passed 5-6-2003)

§ 118.04 LIABILITY FOR THE CONDUCT OF OTHERS.

A licensee of a sexually-oriented business is jointly and individually liable for violations of and offenses under this chapter by the employees of the sexually-oriented business, and for all civil and criminal sanctions or remedies for the violations and offenses, including but not limited to license suspension or revocation, prescribed herein.

(Ord. 9-03, passed 5-6-2003)

§ 118.05 EFFECTIVE AND COMPLIANCE DATES.

This chapter shall be effective 5-6-2003. All sexually-oriented businesses in existence at the effective date must come into compliance with this chapter on or before 8-1-2003.

(Ord. 9-03, passed 5-6-2003)

REGULATIONS

§ 118.20 LICENSE REQUIRED.

(A) It is unlawful for any person to operate a sexually-oriented business without a valid sexually-oriented business license issued by the Town Administrator pursuant to this section.

(B) An application for a license must be made on a form prescribed by the Town Administrator and the application shall be made under oath and contain the following information:

(1) If the applicant is an individual, the name and residence address of the individual. If the applicant is a partnership (limited or general) the name and residence address of each general partner. If the applicant is a firm, association, or limited liability company, the name and residence address of each member. If the applicant is a corporation, the name and residence address of each officer and director. The names of the manager(s) of the establishment along with their residence address;

(2) The address of the premises where the establishment shall be located;

(3) A complete statement of all convictions of any persons whose name is required to be given in division (B)(1) above for any felony for prostitution or any violation of law relative to prostitution;

(4) A complete statement of any revocation by any governmental unit of any license to operate a sexually-oriented business;

(5) A complete statement of any conviction of any person whose name is required to be given in division (B)(1) above for violation of any statute, law, ordinance, or regulation of any government concerning sexually-oriented businesses;

(6) The name and address of any sexually-oriented business or other establishment owned or operated by any person whose name is required to be given in division (B)(1) above;

(7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant; and

(8) An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale with marked dimensions of the interior of the premises. For reference see § 118.35 for additional requirements for businesses with viewing or other rooms.

(C) The application may request and the applicant shall provide the information as to enable the Town Administrator to determine whether each applicant meets the qualifications established in this chapter.

(D) Each applicant must be qualified under § 118.20 and each applicant shall be considered a licensee if a license is granted.

(E) The Town Administrator shall transmit a copy of the application to the Police Department for an investigative report, to the Planning Department to determine compliance with all zoning and building regulations and ordinances, and to the Fire Department to determine compliance with any law relating to fire protection. The Police and Fire Departments and the Planning Department shall within a reasonable time report the results of their examinations to the Town Administrator.

(F) No license shall be issued for any sexually-oriented business to operate at any building, premises, structure, or other facility that contains any other kind of sexually-oriented business.
(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.21 ISSUANCE OF LICENSE.

(A) Within 30 days after receipt of a completed application, the Town Administrator will approve or deny the issuance of a license to an applicant for a sexually-oriented business license.

(B) The Town Administrator will approve the issuance of a license to an applicant unless the Town Administrator finds 1 or more of the following to be true.

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

(2) The license fee required by this section has not been paid.

(3) An applicant is overdue in payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually-oriented business.

(4) An applicant has failed to provide information required in order to determine the qualifications of the applicant under this section for issuance of the license, or has falsely answered a question or request for information on the application form.

(5) An applicant or the proposed establishment is in violation of or is not in compliance with this section or other provisions of the Town of Long View Code, including local zoning requirements.

(6) An applicant has been convicted of a violation of a provision of this section, other than the offense of operating a sexually-oriented business without a license, within 2 years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(7) An applicant has been convicted of a crime involving:

(a) Any offense described in G.S. Chapter 14, Arts. 7A, 26, 26A, 27, 37, and 39; or any similar offenses to those described above under the criminal or penal code of North Carolina, other states, Town of Long View, other cities, or other countries; or facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which:

1. Less than 2 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than 5 years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Less than 5 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of 2 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(c) An applicant who has been convicted of an offense listed above may qualify for a sexually-oriented business license only when the time period required by this section has lapsed.

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

(8) The applicant has failed to make application using a legal name or has failed to produce a valid North Carolina Driver's License or a valid North Carolina Identification Card.

(Ord. 9-03, passed 5-6-2003)

§ 118.22 APPEAL.

(A) An applicant whose application is denied (unless the applicant is an existing sexually-oriented business as of 5-6-2003, then and in that case the appeal rights for denial of a license are set out in division (B)), suspended, or revoked by the Town Administrator may appeal the action in writing within 30 days to the Town Board of Alderpersons. The Town Board of Alderpersons shall decide either to uphold the action or to issue the license no later than the second regular Town Board of Alderpersons meeting after receipt of the appeal. The applicant or licensee shall have the right to present evidence before the Town Board of Alderpersons. The decision to uphold the action of the Town Administrator or issue the license shall be based solely on the criteria established herein for the action by the Town Administrator. A suspension or revocation shall be stayed during the pendency of an appeal to the Town Board of Alderpersons. If the Town Board of Alderpersons upholds the action of the Town Administrator, the decision of the Town Board of Alderpersons shall become final within 30 days. If a licensee whose license has been suspended or revoked brings, within 30 days of the decision of the Town Board of Alderpersons, an action in any court of competent jurisdiction challenging the decision of the Town Board of Alderpersons, the action stays further action by the town to enforce the suspension or revocation until there has been a final determination by the court.

(B) If the applicant is an existing sexually-oriented business as of 5-6-2003, then the denial of the issuance of a license by the Town Administrator becomes final within 30 days unless the denial has been appealed in writing to the Town Board of Alderpersons within the 30-day period. An appeal to the Town Board of Alderpersons stays an action by the Town to enforce this section until the decision of the Town Board of Alderpersons becomes final. The Town Board of Alderpersons shall decide either to uphold the action or to issue the license no later than the second regular Town Board of Alderpersons meeting after receipt of the appeal. The applicant shall have the right to present evidence before the

Town Board of Alderpersons. The decision to uphold the action of the Town Administrator or issue the license shall be based solely on the criteria established herein for the action by the Town Administrator. If the Town Board of Alderpersons shall uphold the action of the Town Administrator, then the decision of the Town Board of Alderpersons shall become final within 30 days. If an existing sexually-oriented business (that is one existing as of 5-6-2003), brings, within 30 days of the decision of the Town Board of Alderpersons, an action in any court of competent jurisdiction challenging the decision of the Town Board of Alderpersons the action stays further action by the Town to enforce this section until there has been a final determination by the court. This division (B) shall apply to all pending applications for a license as of the day of its adoption.
(Ord. 9-03, passed 5-6-2003)

§ 118.23 FEES.

(A) Every sexually-oriented business that applies for a new license shall pay to the Town a fee of \$1,000, which shall be nonrefundable if the license is issued. If the license is denied, then ½ shall be refunded to the applicant. An application for renewal must be accompanied by a nonrefundable fee of \$500. The fee required by this section is imposed for regulatory purposes and not intended to be a tax.

(B) A substitution of a manager of the business which occurs during the license year shall be filed with the Town Administrator within 30 days of its occurrence, and a \$100 investigation fee paid.
(Ord. 9-03, passed 5-6-2003)

§ 118.24 INSPECTION.

(A) A sexually-oriented business license applicant or licensee shall permit representatives of the Police Department or any other town, county, state, or federal department, division, or agency that enforces codes, regulations, or statutes relating to human health, safety, or welfare or structural safety to

inspect the premises of a sexually-oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(B) A person who operates a sexually-oriented business or his or her agent or employee commits an offense if the person refuses to permit a lawful inspection of the premises by persons designated above.

(C) The provisions of this section do not apply to areas of an adult motel which are currently being rented by the customer for use as a permanent or temporary habitation.
(Ord. 9-03, passed 5-6-2003)

§ 118.25 EXPIRATION OF LICENSE.

All licenses shall expire 1 year from the date of issuance and may be renewed only by making application as provided in § 118.20 and paying the renewal fee as provided in § 118.23. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 before the expiration date, the expiration of the license will not be affected.
(Ord. 9-03, passed 5-6-2003)

§ 118.26 SUSPENSION.

The Town Administrator is authorized to, and will, suspend a sexually-oriented business license for a period not to exceed 30 days if the Police Department and/or Inspections Department determines that a business licensee has:

(A) Violated or is not in compliance with this chapter or with any other requirements of the Town of Long View Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment;

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

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

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

(Ord. 9-03, passed 5-6-2003)

§ 118.27 REVOCATION.

(A) The Town Administrator is authorized to, and will, revoke a license if a cause for suspension in § 118.26 occurs and the license has been suspended within the preceding 12 months.

(B) The Town Administrator is authorized to, and will, revoke a sexually-oriented business license if the Town Administrator determines that a business licensee:

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

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

(3) Has allowed prostitution on the premises;

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

(5) Has been convicted of an offense named in § 118.21(B)(6) or (B)(7) for which the time period required in § 118.21(B)(6) or (B)(7) has not lapsed;

(6) On 2 or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime named in § 118.21(B)(7) for which a conviction

has been obtained, and the person or persons were employees of the sexually-oriented business at the time the offenses were committed;

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

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

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

(D) Division (B)(7) above does not apply to adult motels as a ground for revoking the license unless the business licensee or employee allowed the act of sexual intercourse, masturbation, oral copulation, sodomy, or sexual contact to occur in a public place or within public view.

(E) When the Town Administrator revokes a license, the revocation shall continue for 1 year and the licensee shall not be issued a sexually-oriented business license for 1 year from the date revocation became effective. If, subsequent to revocation, the Town Administrator finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under the authority of division (B)(5) or (B)(6) above an applicant may not be granted another license until the appropriate number of years required under § 118.21(B)(6) or (B)(7), as the case may be, have elapsed.

(Ord. 9-03, passed 5-6-2003)

§ 118.28 DENIAL.

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

(Ord. 9-03, passed 5-6-2003)

§ 118.29 TRANSFER OF LICENSE.

Unless a new application for a license is made, a licensee shall not transfer a license to another, nor shall a business licensee operate a different classification of a sexually-oriented business than that designated in the application, or transfer ownership or control to another person(s), or operate a sexually-oriented business under the authority of a license at any place other than the address designated in the application. No sexually-oriented business shall be operated under any name or conducted under any designation or classification not specified in the license for that business.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.30 HOURS OF OPERATION.

No sexually-oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 a.m. and 6:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 10:00 a.m. on Sundays, except to the extent allowed by North Carolina law and regulations pertaining to the sale of alcoholic beverages by the business if the sexually-oriented business has a state ABC permit.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.31 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.32 ADDITIONAL REGULATIONS FOR ADULT THEATERS, ADULT CABARETS, AND ADULT MOTION PICTURE THEATERS.

(A) A person commits an offense if the person appears in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade.

(B) A licensee or employee commits an offense if the licensee or employee allows a person to appear in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.33 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

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

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually-oriented business license, the person rents or subrents a sleeping room to another and, within 10 hours from the time the room is rented, the person rents or subrents the same sleeping room again.

(C) For the purpose of division (B) above, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RENT or SUBRENT. The act of permitting a room to be occupied for any form of consideration.
(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.34 ADDITIONAL REGULATIONS FOR ALL SEXUALLY-ORIENTED BUSINESSES.

A person commits an offense if the person allows another person under the age of 18 years to enter or remain on or in the enclosed portion of a sexually-oriented business, or for a person under the age of 18 years to enter or remain on or in the enclosed portion of a sexually-oriented business.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.35 REGULATIONS PERTAINING TO SEXUALLY-ORIENTED BUSINESSES WITH VIEWING OR OTHER ROOMS.

(A) A person who operates or causes to be operated a sexually-oriented business, other than an adult motel, which either exhibits on the premises in a viewing room of less than 150 square feet of floor spaces, a film, videocassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas; or has a room or booth (excluding restrooms) of less than 150 square feet to which patrons are admitted for any reason, shall comply with the following requirements.

(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 1 or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises. The Town Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

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

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

(4) It is the duty of the owners and operator of the premises to ensure that at least 1 employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. It is the duty of the owners and operator of the premises and the employees who are present to ensure that no more than 1 person occupies a room or booth at any time, and that all other entrances to rooms, booths or viewing areas (and to the aisles, walkways, and hallways leading to rooms, booths, or viewing areas) are maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain, or other device.

(5) The interior of the premises shall be configured in 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, cameras, or any other kind of photographic equipment. If the premises have 2 or more manager's stations designated, then the interior of the premises shall be configured in a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least 1 of the manager's stations. The view required must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of all employees present in the premises to ensure that the line of sight and view area specified in division (A)(5) above remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted in the application filed pursuant to division (A)(1) above.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1 foot candle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it shall also be the duty of all employees

present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(9) No operator, owner, or employee shall allow openings of any kind to exist between rooms or booths.

(10) No person shall make or attempt to make an opening of any kind between rooms or booths.

(11) The operator or owner, shall, during each business day, regularly inspect the walls between the rooms or booths to determine if any openings or holes exist.

(12) The owner or operator shall cause all floor coverings in rooms, booths, and viewing areas to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(13) The owner or operator shall cause all wall surfaces and seating surfaces in rooms, booths, and viewing areas to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under division (A) above commits an offense if the person fails to fulfill that duty.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

(B) *Civil injunction.* Any person who violates this chapter is subject to a civil suit for injunction as well as prosecution for criminal violations and liability for licensing sanctions such as suspension or revocation.

(Ord. 9-03, passed 5-6-2003)

§ 118.99 PENALTY.

(A) *Criminal penalty.* Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of \$500, or imprisonment, or both; provided however, beginning 1-1-1995, a violation of this chapter shall be deemed to be a Class III misdemeanor and the person who violates this chapter shall be subject to a fine of \$500, or imprisonment, or both.