APPENDIX F – Sexually Oriented Businesses

F-1 PURPOSE

It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town of Siler City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town of Siler City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

F-2 DEFINITIONS

(1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing of “specified sexual activities” or “specified anatomical areas.”

(2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproduction, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or

(b) instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT
BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) persons who appear in a state of nudity or semi-nude; or

(b) live performances which are characterized by the exposure of “specified anatomical areas” or “specified sexual activities”; or

(c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(a) 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 which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”, and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

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

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or specified anatomical areas.”

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

(7) EMPLOYEE means a 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 and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(8) **ESCORT** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(9) **ESCORT AGENCY** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(10) **ESTABLISHMENT** means and includes any of the following:

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

(b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(c) the additions of any sexually oriented business to any other existing sexually oriented business; or

(d) the relocation of any sexually oriented business.

(11) **LICENSEE** means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in sexually oriented business.

(12) **NUDE MODEL STUDIO** means any place where a person who appears semi-nude, in a state of nudity, or who “specified anatomical areas” and 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:

(a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
(b) where in order to participate in a class a student must enroll at least three days in advance of the class; and

(c) where no more than one nude or semi-nude model is on the premises at any one time.

(13) **NUDITY** or a **STATE OF NUDITY** means the showing of the human male or female genitals, pubic area, vulva, anus anal cleft or cleavage with less than fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(14) **PERSON** means individual, proprietorship, partnership, corporation, association, or other legal entity.

(15) **SADOMASOCHISM CENTER** means a business or commercial enterprise wherein the practice of flagellation, torture or fettering is used or administered to an individual either by an employee of the establishment or a patron of the establishment.

(16) **SEMI-NUDE** or in a **SEMI-NUDE CONDITION** means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(17) **SEXUAL ENCOUNTER CENTER** means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(18) **SEXUALLY ORIENTED BUSINESS** means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
(19) **SPECIFIED ANATOMICAL AREAS** means:

(a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(20) **SPECIFIED CRIMINAL ACTIVITY** mean any of the following offenses:

(a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(b) for which:

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

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

(3) less than five years have elapsed since the date of last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring with 24-month period.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with applicant.

(21) **SPECIFIED SEXUAL ACTIVITIES** means any of the following:

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

(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
(c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

(22) **SUBSTANTIAL ENLARGEMENT** of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

(23) **TRANSFER OF OWNERSHIP OR CONTROL** of a sexually oriented business means and includes any of the following:

(a) the sale, lease, or sublease of the business;

(b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) 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.

**F-3 CLASSIFICATION.**

Sexually oriented businesses are classified as follows:

(1) adult arcades;

(2) adult bookstores, adult novelty stores, or adult video stores;

(3) adult cabarets;

(4) adult motels;

(5) adult motion picture theaters;

(6) adult theaters;

(7) escort agencies;

(8) nude motel studios; and

(9) sexual encounter centers.

(10) sadomasochism centers

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Appendix F-6
CONDITIONAL USE PERMIT REQUIRED

All sexually oriented business within the Town of Siler City’s planning jurisdiction shall require a conditional use permit issued by the Board of Commissioners pursuant to the normal conditional use permit process (see § 50). Permit applications shall proceed as expeditiously as possible and shall be completed within 60 days of the filing of the application. In the event a permit is denied for any reason, the applicant may appeal in the nature of certiorari to the Superior Court of Chatham County. The Town shall file the record within seven (7) days of being served with a writ of certiorari and shall request that the matter be heard at the next available term of Superior Court.

LOCATION OF SEXUALLY ORIENTED BUSINESSES

(A) Sexually oriented business may only locate within the Highway-Commercial (H-C) zoning district, as defined and described in the Unified Development Ordinance.

(B) A sexually oriented business shall be at least 500 feet from the property line of any lot(s) devoted to a residential use as defined in the UDO and/or 2000 feet from the property line of:

- A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

- A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

- A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the town which is under the control, operation, or management of the town park and recreation authorities;

- An entertainment business which is oriented primarily towards children or family entertainment; or

- A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

- Another sexually oriented business.
(C) No more than one sexually oriented business shall be operated, established, or maintained in the same building, structure, or portion thereof.

(D) For the purpose of subsection B of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B. Presence of a town, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(E) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license provided for in the Town Code, or the grant of a conditional use permit, of a use listed in subsection B of this Section within 2000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

F-6 INSPECTION

(A) The permit holder and/or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other town departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with law, at any time it is occupied or open for business.

F-7 ADDITIONAL REGULATIONS FOR ADULT MOTELS

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

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

(C) For purposes of subsection (B) of this section, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

F-8 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video
reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager’s stations 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 thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit 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 or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6”) inches. The Town of Siler City 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.

(3) No alteration in the configuration or location of a manager’s station may be made without the prior approval of the Town of Siler City.

(4) At least one licensed employee is on duty and situated in each manager’s station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager’s station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager’s stations designated, the interior of the premises shall be configured in such 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 one of the manager’s stations. The view required in this subsection must be by direct line of sight from the manager’s station.

(6) The view area specified in subsection (5) must remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this Section.

(7) No viewing room may be occupied by more than one person at any time.

(8) 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 five (5.0) foot-candles as measured at the floor level.
(9) The illumination described above is maintained at all times that any patron is present in the premises.

(10) No openings of any kind to exist between viewing rooms or booths.

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

(12) The premises shall, during each business day, be regularly inspect to insure the walls between the viewing booths to determine if any openings or holes.

(13) All floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) All wall surface and ceiling surfaces in viewing booths 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 forty eight (48”) inches of the floor.

**F-9 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES**

(A) An escort agency shall not employ any person under the age of 18 years.

**F-10 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS**

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**F-11 ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY**

(A) It shall be a violation of this ordinance for a sexually oriented business to cause, suffer or permit any of the following:

(1) allow a patron to appear in a state of nudity or depict specified sexually activities.

(2) allow a patron to appear in a semi-nude condition.

(3) allow an employee to appear in a semi-nude condition unless the employee is at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.

(4) allow an employee, while semi-nude, to touch a customer or the clothing of a customer.
F-12 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS

Person under the age of 18 years shall not be allowed on the premises of sexually oriented business.

F-13 HOURS OF OPERATION

No sexually oriented business except for an adult motel, may remain open at any time between the hours of one o’clock (1:00) A.M. and eight o’clock (8:00) A.M. on weekdays and Saturdays, and one o’clock (1:00) A.M. and noon (12:00) P.M. on Sundays.

F-14 EXEMPTIONS

(A) This ordinance shall not deemed to have been violated where a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school, licensed by the State of North Carolina; a college, junior college, or university supported entirely or partly by taxation; or

(2) by 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; and,

(3) in a structure:

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

(b) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) where no more that one nude model is on the premises at any one time

F-15 INJUNCTION

A person who operates or causes to be operated a sexually oriented business without a valid conditional use permit is subject to a suit for injunction as well as prosecution for criminal violations.

F-16 CIVIL PENALTIES

A person who violates this ordinance shall be assessed a $200.00 civil penalty. Each day that a violation continues unabated shall constitute a separate violation subjecting the person to daily civil penalties.