

COLUMBUS COUNTY CODE

DEALING WITH

ADULT BUSINESS ESTABLISHMENTS

ARTICLE I. IN GENERAL

Secs. 18-1—18-15. Reserved.

**ARTICLE II. MASSEURS, MASSAGE
PARLORS, HEALTH SALONS AND
CLUBS**

DIVISION 1. GENERALLY

Sec. 18-16. Purpose.

To protect the general health, safety, welfare and morals, the following licensing provisions hereinafter specified are ordained for the privilege of carrying on the business, trade, or profession of masseur or masseuse and for the operation or carrying on of the businesses, trades or professions commonly known as massage parlors, health salons, physical culture studios, clubs or establishments, or similar establishments by whatever name designated, wherein physical culture, massage, hydrotherapy or other physical treatment of the human body is carried on or practiced. The provisions of this article shall not apply to a regularly established and licensed hospital, sanitarium, nursing home or medical clinic, nor to the office or clinic operated by a duly qualified and licensed medical practitioner, osteopath, or chiropractor in connection with his practice of medicine, chiropractic or osteopathy; provided, however, that such office or clinic is regularly used by such medical practitioner, chiropractor or osteopath as his principal location for his practice of medicine, chiropractic or osteopathy.

(Ord. of 10-3-1977, § 1.1)

Sec. 18-17. Definition.

The following words, terms and phrases, when used in this article, shall have the

meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Masseur means a male person who applies manual or mechanical massage or similar treatment to the human body, trunk, or limbs.

Masseuse means a female person who applies manual or mechanical massage or similar treatment to the human body, trunk, or limbs.

(Ord. of 10-3-1977, § 1.2)

Sec. 18-18. Violations.

If any person shall violate any provision, rule, or regulation of this article, he shall be guilty of a misdemeanor and upon conviction, punished as prescribed by state general statutes (G.S. 14-4). Each day that any person shall continue to do any act in violation of any such provision, rule, or regulation shall be and constitute a distinct and separate offense.

(Ord. of 10-3-1977, § 2.1)

Sec. 18-19. Inducement to violate ordinances, provisions relating to sexual misconduct.

It shall be unlawful for any person to induce a licensee or employee or agent thereof to violate this article or any provision of the general statutes of the state involving sexual misconduct, including but not limited to G.S. 14-177 through 202.1, (Offenses Against Public Morality and Decency), article 26 and G.S. 14-203 through 208, article 27, (Prostitution).

(Ord. of 10-3-1977, § 2.2)

Secs. 18-20—18-32. Reserved.

DIVISION 2. LICENSE

Sec. 18-33. Application.

Any person desiring to engage in the business, trade or profession of masseur or mas-

seuse or the operation or carrying on of any of the businesses, trades, professions, occupations or callings mentioned in section 18-16 shall, before engaging in such business, trade, profession, occupation or calling, file an application for a license addressed to the County Tax Collector. Such application shall be in writing and shall set forth the following:

- (1) *Name and address of applicant.* If such applicant is a corporation, the address or addresses of such corporation and its officers.
- (2) *Qualifications.* These must be plainly stated and must be submitted together with required exhibits annexed to said application proving such qualifications.

(Ord. of 10-3-1977, § 1.3)

Sec. 18-34. Applicant qualifications.

An applicant hereunder, prior to making application for a license, must have the following qualifications:

- (1) The applicant may be male or female and shall be required to provide written recommendations showing proof of good moral character; and, in case the applicant is a corporation, such corporation must be created in or domesticated by the laws of the state; and the officers thereof shall provide written recommendations showing proof of good moral character.
- (2) Each applicant must furnish a health certificate from a medical doctor which shall accompany such application as an exhibit. Such health certificate shall be furnished for each masseur and masseuse who will be actually working under said license. Each employee who begins work as a masseur or masseuse following the original issuance of a license under this article shall likewise obtain a health certifi-

cate. A copy of the application and all certificates shall be furnished to the Sheriff of the county. Said medical doctor must be licensed to practice in the state.

(Ord. of 10-3-1977, § 1.4)

Sec. 18-35. Issuance and renewal; fees.

(a) After submission of an application and approval of such application by the County Tax Collector and upon payment to the County Tax Collector of an examination fee as established by ordinance from time to time, the County Tax Collector shall issue a license to the applicant.

(b) Each license shall be valid for the calendar year in which issued, expiring on the December 31 of the year of issue.

(c) Each license may be renewed from calendar year to calendar year by submission of the renewal application to the county Tax Collector at least 30 days prior to the expiration date of the license. After approval of said application and upon payment to the county Tax Collector of a renewal examination fee in the same amount as prescribed for initial applications, the County Tax Collector shall issue to the applicant a renewal certificate which shall validate the applicant's license for an additional calendar year. It shall be a valid basis for the denial of a license or a nonrenewal of a license if the County Tax Collector determines that the applicant or licensee has violated this article in any respect whatsoever or any other law or ordinance concerning the operation of any business, trade, profession, occupation or calling mentioned in section 18-16. Any application or renewal on such grounds shall be appealable as any other denial according to the terms of subsection (d) of this section.

(d) Approval of an application for issue or renewal of a license by the County Tax Collector shall be granted if he is satisfied as to

the qualifications of the applicant, the correctness of the information contained in his application, and the good moral character if the applicant is a corporation. If the license is denied because he is not so satisfied, the applicant shall be notified of the denial and the reason therefor and, upon his request, at the reasonable convenience of the County Board of Commissioners, the applicant shall be granted an opportunity to appear before said board and be heard in defense of his application. After such hearing the board may grant or deny the license.

(e) If the business to be licensed, pursuant to this division, is carried on at two or more separate places, a separate county license for each place or location of such business shall be required.

(f) The county license issued under this division shall be and constitute a personal privilege to conduct the profession or business named in the license and shall not be transferable to any other person, and shall be construed to limit the person named in the license to conducting the profession or business and exercising the privilege named in the license to the location specified in the license; provided, if the holder of a license under this article moves the business for which a license has been obtained to another location, a new license may be issued to the licensee at a new location, for the balance of the license year, upon surrender of the original license for cancellation.

(g) Revocation of a license shall not be cause for a refund of any fee paid for issuance or renewal of a license.

(h) It shall be unlawful willfully to make a false statement in an application for a license or request for renewal of license under the provisions of this article.

(i) Every license or renewal of license issued shall show on the face thereof the name of the licensee, the nature of the business, the location thereof, the time it was issued, and payment of the privilege tax.

(j) Licenses shall be kept posted where business is carried on. No person shall engage in any business or trade for which the issuance of a license, pursuant to this article, is required without having such license posted conspicuously at the place where such business or trade is carried on.

(Ord. of 10-3-1977, § 1.5)

Sec. 18-36. Authority to employ, train personnel.

Any applicant granted a license hereunder shall have the authority to train masseurs or masseuses under his supervision in his studio or establishment provided that the licensee shall furnish to the Sheriff of the county, there to be kept by such department, a health certificate of such employee from a medical doctor and provided that other requirements of this article are met.

(Ord. of 10-3-1977, § 1.6)

Sec. 18-37. Names of employees to be filed with sheriff of the county.

It shall be the duty of all persons holding a license hereunder to file with the Chief of the County Police or the Sheriff of the county the names of all employees, their home addresses, home telephone numbers and place of employment. Changes in the list of employees with the names of new employees must be filed with the Chief of the County Police or the Sheriff of the county within three business days from the date of such change.

(Ord. of 10-3-1977, § 1.7)

Sec. 18-38. Employment of persons convicted of certain crimes.

No establishment licensed under the provisions of this division shall employ or continue the employment of any person convicted within three years of a violation of this article or any state or local statute prohibiting prostitution, lewdness, or indecent expo-

sure or of any crime involving moral turpitude on the part of such person. Any person refused employment or discharges under the provisions of this section shall be given notice of the reason for such refusal and afforded an opportunity to be heard by the County Board of Commissioners in protest of the accuracy of a report of conviction. It shall be the duty of the Chief of the County Police or the Sheriff of the county to check all names and other identifying data of employees submitted by establishments regulated by this article against available records of convictions in courts of this and the several states in the United States and to inform such establishment of the existence of records and convictions of any of its current or prospective employees. It shall be the duty of any owner, officer, or employee to provide any reasonable identifying data, including fingerprints, to assist the Chief of the County Police or the Sheriff of the county in the performance of his duties. Failure to assist the Chief of the County Police or the Sheriff of the county is just cause for denial or revocation of a license granted under this article.

(Ord. of 10-3-1977, § 1.8)

Sec. 18-39. Enforcement and revocation of license.

(a) It shall be the duty of the Chief of the County Police or the Sheriff of the county, or his deputies, to inspect periodically, the premises licensed under this article, to determine any violations of its provisions, and to otherwise enforce said article.

(b) Upon acquiring substantial and reasonable evidence that an establishment requiring licensing under this article, or an owner, officer, or employee of such establishment, has violated a provision of this article, that a crime involving violence or moral turpitude has been committed by owners, officers, employees, customers, members, or guests on the premises of such an establishment, or

that acts defined as nuisances under state or local statute have occurred on or about the premises of such establishment, and upon acquiring information of a conviction of any owner, officer, employee, customer, member or guest of such establishment for the aforementioned violations, crimes and acts or nuisance, the Sheriff or the Chief of the County Police shall notify the Board of County Commissioners of such evidence or conviction. The County Board of Commissioners shall then determine if there is sufficient danger to the morals, public health, safety or general welfare of the citizens and residents of the county to warrant revocation of the license of the establishment concerned. Upon determination that there is probable cause for revocation and after notification to the licensee of such determination and the reasons therefor, the Board of Commissioners shall schedule a hearing at which the licensee or his representative shall be afforded an opportunity to show good cause why his license should not be revoked. Upon licensee's failure to show good cause, the County Board of Commissioners shall revoke such license.

(c) In addition to the other requirements as to health certificates herein provided for, each masseur, masseuse, or other person who actually works under said license shall have his health certificate renewed every 60 days and provide the County Tax Collector a copy thereof. Said health certificate must be signed by a medical doctor licensed to practice in the state. Any person purporting to operate under a license issued hereunder without a current health certificate as described in this subsection is guilty of a misdemeanor.

(Ord. of 10-3-1977, § 1.9)

Sec. 18-40. Hours of operation.

No masseur or masseuse or any person or party engaging in any of the businesses licensed by this article shall engage in such business, trade, profession, occupation or call-

ing except within and between the hours of 8:00 a.m. and 10:00 p.m.; nor shall any operator of a massage parlor or establishment or business enumerated in this article and not specifically expected hereunder, operate the same except within and between the aforesaid hours.

(Ord. of 10-3-1977, § 1.10)

Sec. 18-41. Unlawful practices.

It shall be unlawful for any person engaging in the business, trade, or profession of masseur or masseuse, or any officer or employee of such persons, or any customers or member of an establishment requiring licensing under the provisions of this article, to engage in the following practices on or about the premises of such an establishment:

- (1) To offer or provide a massage to any person without having a currently valid license to do so except when under the supervision, as an employee or trainee, of a person with a currently valid license.
- (2) To touch, manipulate, uncover or otherwise have physical contact with the genital organs of any person, whether directly or indirectly or whether such organs are covered or not.
- (3) To go lay about such establishment without the genital organs being covered at all times.
- (4) To provide or accomplish massages or any treatment offered by the establishment in private areas, which, for the purpose of this provision are defined as areas:
 - a. Designated to accommodate only a single customer or member and a single masseur or masseuse; and
 - b. In which the activities of such persons cannot be seen by a supervisor"without opening a door

or window or using a peephole or some similar device denying normal vision.

- (5) To operate or maintain an establishment requiring a license under the provisions of this article without posting, in readable print in permanent places inside the establishment, notice of the practices which are declared unlawful under this section and section 18-42.
 - (6) Treatment of persons of opposite sex restricted. It shall be unlawful for any person holding a license under this article to treat a person of the opposite sex except upon the signed order of a licensed physician, osteopath, chiropractor, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments, not to exceed ten. The date and hour of each treatment given and the name of the operator shall be entered on such order by the establishment where such treatments are given and shall be subject to inspection by deputies at any reasonable time. The requirements of this section shall not apply to treatments given in the residence of a patient, the office of a licensed physician, osteopath, or registered physical therapist, chiropractor, or in a regularly established and licensed hospital or sanitarium.
 - (7) It shall be unlawful for any person to perform any massage or other treatment authorized or prohibited under this article in a place licensed under this article without being fully clothed.
- (Ord. of 10-3-1977, § 1.11)

Sec. 18-42. Patronage of massage parlors by minors.

(a) *Restricted.* It shall be unlawful for any person under the age of 18 years to patronize any massage parlor or similar establishment

licensed hereunder unless such person carries with him, at the time of such patronage, a written order directing the treatment to be given by a regularly licensed physician.

(b) *Duty of operator.* It shall be the duty of the operator of such massage parlor or similar establishment licensed hereunder to determine and have verification of the age of the person patronizing such establishment, and violation of this section shall be grounds for the revocation of the license of the establishment.

(Ord. of 10-3-1977, § 1.12)

Sec. 18-43. Massages by unlicensed persons.

Massages as permitted by this article may be given by persons not holding a license as a masseur or masseuse only if such massages are given under the direct supervision of a person having a license as a masseur or masseuse who shall be in the same room where the massage is being administered during the entire time of the giving of the massage.

(Ord. of 10-3-1977, § 1.13)

Sec. 18-44. Applicability.

The provisions of this article with respect to the original issuance of license shall not apply to those engaged in the business, trade, professions, occupations, or callings enumerated in this article who have been so engaged in the county for a period of five years or more prior to the adoption of the ordinance from which this section is derived; provided, however, that the provisions of this article shall apply to all such businesses, trades, professions, occupations, or callings and shall be properly licensed as provided herein within 20 days of the effective date of the ordinance from which this section is derived.

(Ord. of 10-3-1977, § 1.14)

Secs. 18-45—18-61. Reserved.

ARTICLE III. SEXUALLY ORIENTED BUSINESSES*

Sec. 18-62. Authority and jurisdiction.

The provisions of this article are adopted by the County Board of Commissioners under authority granted by the general assembly of the state in chapter 153A, section 135 of the general statutes (G.S. 153A-135). From and after the effective date of the ordinance from which this article is derived shall apply to every building, lot, tract or parcel of land within the county exclusive of the jurisdiction of any incorporated municipality (as herein stated), and all lands under the ownership thereof.

(Ord. of 2-21-2000(amd. 1), § 6.1)

Sec. 18-63. Purpose.

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

(Ord. of 2-21-2000(amd. 1), § 6.2)

Sec. 18-64. Abrogation.

These regulations shall not repeal, impair, abrogate or interfere with any existing easements, covenants, deed restrictions, setback requirements, rules, definitions, regulations previously adopted pursuant to law in any established zoning district in the county. However, where these regulations impose greater restrictions, the provisions of these regulations shall govern.

(Ord. of 2-21-2000(amd. 1), § 6.3)

*State law reference—Regulation of sexually oriented businesses, G.S. 160A-181.1.

Sec. 18-65. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means an establishment where, for any form of consideration, one or more motion picture projectors, slide projectors or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas as defined hereinafter.

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

- (1) Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, videocassettes, slides or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

Adult business means any business activity, club or other establishment which permits its employees, members, patrons or guests on its premises to exhibit any specified anatomical areas before any other person.

Adult motion picture theater means an establishment where, for any form of consideration, films, motion pictures, videocas-

settes, slides or similar photographic reproductions are shown, and in which a substantial portion, 25 percent of the total presentation time, is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.

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

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

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

Sexually oriented business means any business activity, club or other establishment, within which the exhibition, showing, rental or sale of materials distinguished or characterized by an emphasis on material depicting, describing or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Sexually oriented businesses shall include, but are not limited to: adult arcades, adult bookstores, adult motion picture theaters, adult theaters and massage parlors, as defined by this section.

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

Specified sexual activities refers to:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, sodomy; or

- (3) Fondling or other exotic touching of human genitals, pubic regions, buttocks or female breasts.

Total retail space means any space within the structure that is used for the direct sale of merchandise to the public and storage areas for those items.

(Ord. of 2-21-2000(amd. 1), § 6.4)

Sec. 18-66. Scope and provisions.

(a) *Adult business.*

- (1) An adult business shall be defined as specified in section 18-65.
- (2) No adult business shall be permitted in any building:
 - a. Located within 3,000 feet in any direction from a building used as a dwelling.
 - b. Located within 3,000 feet in any direction from a building in which an adult business or a sexually oriented business is located.
 - c. Located within 5,000 feet in any direction from a building used as a church, synagogue or other house of worship.
 - d. Located within 5,000 feet any direction from a building used as a public school or as state-licensed day care center.
 - e. Located within 5,000 feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.

(b) *Sexually oriented business further defined.*

- (1) A sexually oriented business shall be further defined as any business activity, club or other establishment, within which the exhibition, showing, rental or sale of materials distinguished or

characterized by an emphasis on material depicting, describing or exhibiting specified anatomical areas or relating to specified sexual activities is permitted. Regulated businesses shall include, but are not limited to, adult arcades, adult bookstores, adult motion picture theaters, adult theaters, and massage parlors, as defined in section 18-65.

(2) No sexually oriented business shall be permitted in any building:

- a. Located within 3,000 feet in any direction from a building used as a dwelling.
- b. Located within 3,000 feet in any direction from a building in which an adult business or a sexually oriented business is located.
- c. Located within 5,000 feet in any direction from a building used as a church, synagogue or other house of worship.
- d. Located within 5,000 feet in any direction from a building used as a public school or as state-licensed day care center.
- e. Located within 5,000 feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.

(c) *Nonconforming adult business and sexually oriented adult business.* An adult business or sexually oriented business lawfully operating on February 21, 2000, that is in violation of this article shall be deemed a nonconforming use. Any use which is determined to be nonconforming by application of the provisions of this section shall be permitted to continue for a period not to exceed two years. Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a con-

forming use. If a nonconforming use is discontinued for a period of 180 days or more, it may not be reestablished. If two or more adult businesses or sexually oriented adult businesses are within 1,000 feet of one another and otherwise in a permissible location, the business which was first established and continually operating at its present location shall be considered the conforming use and the later established business shall be considered nonconforming. An adult business or sexually oriented adult business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of a dwelling, church, house of worship, day care center, school, playground, public swimming pool or public park within 5,000 feet of the adult business or sexually oriented business.

(Ord. of 2-21-2000(amd. 1), § 6.5)

Sec. 18-67. Interpretation of terms and definitions.

The interpretation of terms and definitions in this article are as follows:

- (1) Words used in the present tense include the future tense.
- (2) Words used in the singular number include the plural and words used in the plural number include the singular.
- (3) The word "person" includes an owner, firm, joint venture, association, organization, partnership, corporation, trust and company, as well as an individual.
- (4) The word "owner," when applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by entirety of the whole or part of such building or land.
- (5) The word "lot" includes the words "plot" or "parcel."
- (6) The word "building" includes the word "structure."
- (7) The word "shall" is always mandatory and not merely directory.
- (8) The words "located," "used," or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be located, used or occupied."
- (9) The word "dwelling" means a structure or portion thereof which is used exclusively for human habitation.

(Ord. of 2-21-2000(amd. 1), § 6.6)

Sec. 18-68. Enforcement.

(a) Any person who violates this article shall be guilty of a misdemeanor and upon conviction shall be punished in accordance with section 14-4(a) of the North Carolina General Statutes (G.S. 14-4(a)).

(b) This article may be enforced against any person who is in violation by an appropriate equitable remedy issuing from a court of competent jurisdiction as provided for in section 153A-123(d) of the North Carolina General Statutes (G.S. 153A-123(d)).

(c) This article may be enforced against any person who is in violation by injunction and order of abatement as provided for in section 153A-123(e) of the North Carolina General Statutes (G.S. 153A-123(e)) against any person who is in violation.

(d) Each day's continuing violation of this article by any person is a separate and distinct offense.

(e) As used herein the term "person" shall include:

- (1) The agent in charge of the building, premises, structure or facility.
- (2) The owner of the building, premises, structure or facility, when such owner

knew or reasonably should have known the nature of the business located therein.

- (3) The owner of the business or the manager of the business.

(Ord. of 2-21-2000(amd. 1), § 6.8)

Secs. 18-69—18-84. Reserved.

ARTICLE IV. PRECIOUS METALS DEALERS

Sec. 18-85. Purpose.

The purpose of this article is to protect the public health, safety and welfare by regulating the trade in precious metals within the county.

(Ord. of 2-2-1981, § 1)

Sec. 18-86. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Precious metals means gold, silver or platinum.

Precious metals dealer means a person, partnership, corporation, association, or firm engaged in the business of purchasing precious metals from noncommercial sources; however, the term "precious metals dealer" does not include a person, partnership, corporation, association or firm engaged exclusively in the business of purchasing coins or currency.

(Ord. of 2-2-1981, § 2)

Sec. 18-87. Permit required.

(a) No person shall operate a precious metals dealership as herein defined unless such person shall have first applied for and received the permit provided by this article.

(b) Every application for the permit prescribed herein shall be upon a form approved by the County Tax Collector and shall be filed with the Tax Collector. Every such application shall be made under oath and shall contain the following information:

- (1) If the applicant is a person, the name, fingerprints, photograph, date of birth, social security number, and address of such person. If the applicant is a partnership, corporation, association or firm, the name, fingerprints, photograph, date of birth, social security number, address and residence of all persons having any legal or beneficial interest in such applicant.
- (2) The address of the premises where the precious metals dealership shall be located.
- (3) A complete statement of all convictions and arrests of any person whose name is required to be given in subsection (b)(1) of this section, for any felony or any crime involving fraud, theft or the receiving or processing of stolen property.
- (4) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.
- (5) A list of the names, addresses, home telephone numbers, dates of birth, social security numbers, and other places of employment of all employees of the applicant; said list shall be updated whenever new employees are hired.
- (6) A photographic copy of a receipt from the state department of agriculture consumer standards division showing that all scales and weights to be used by the precious metals dealer in the establishment are approved.