

TITLE XI: BUSINESS REGULATIONS

Chapter

110. BUSINESS LICENSES AND TAXATION

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CHAPTER 110: BUSINESS LICENSES AND TAXATION

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Statutory reference: Municipal regulation and licensing of businesses, trades, etc., G.S. 160A-194; privilege license taxes on trades, professions, etc., G.S. 160A-211 and G.S. 105-33 et seq.; taxation, G.S. 160A-206 et seq. and G.S. 105.

PRIVILEGE LICENSE TAXES; LEVY

§ 110.00 WHO MUST PAY?

(A) A person who engages in a business activity within the town is subject to this chapter. A person is conducting a business activity, if either personally or through agents he:

- (1) Maintains a business location within the town;
- (2) Solicits business within the town;
- (3) Performs services within the town.

(B) A person “conducts a business” when he engages in one act of any business. A person or business listed in the yellow pages of the telephone directory issued by the telephone system serving the town shall be prima facie evidence that the person or business is conducting a business within the meaning of this chapter.

(Prior Code, § 8-1)

§ 110.01 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 authorized to promote, represent, and/or sell for an agency or business.

BUSINESS. Any trade, occupation, profession or other activity engaged in by any person or caused to be engaged in by any person with the object of gain, profit, benefit, or advantage, either direct or indirect, tax under this chapter.

FEE SCHEDULE. The Schedule of Fees approved by the Town Council as part of the annual budget process. The Fee Schedule may be amended from time to time.

FISCAL YEAR. The period beginning with July 1 and ending on June 30.

GROSS RECEIPTS. Total receipts from sales or services as indicated on the federal income tax return for that business.

LICENSEE. A person who has paid the privilege license tax levied by this Ordinance and obtained a privilege license.

PERSON. Includes any individual, trustee, executor, other fiduciary, corporation, association, partnership, sole proprietorship, company, firm or other legal entity.

TAX COLLECTOR. Means the individual(s) in the office of the Granite Falls Town Hall who is charged with the responsibility of administering this Ordinance.

TOWN. Means Town of Granite Falls.

§ 110.02 CONSTRUCTION

(A) The intent of this chapter is to raise funds for general municipal purposes. Therefore, it should be understood the town will require payment of the maximum tax permitted for the privilege of carrying on a business, trade, profession, calling or occupation within the corporate limits of the town.

(B) A license issued pursuant to this chapter reflects that the appropriate tax has been paid. Issuance of a license does not constitute regulatory approval and does not excuse a licensee from compliance with any other applicable local ordinance, state statute or state or federal regulations. Therefore, issuing a license, does not reflect that the recipient is engaged in a legal activity or operating a business in a legal manner.

(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.

(Prior Code, § 8-2)

§ 110.03 LICENSE AND PAYMENT OF TAX REQUIRED

Except as provided in §110.04, it shall be unlawful for any person or his agent to engage in or carry on a business within this town whereupon a privilege license tax is imposed by this chapter. A license tax is hereby levied on every business within this town, in the amounts set forth in the current fee schedule. Any person so engaged in business shall be responsible for making certain that the applicable license tax is paid. A violation, of this chapter, shall constitute a misdemeanor, and each day, shall be a separate offense. A conviction under this section does not relieve a person of his liability for the license tax or taxes imposed by this chapter. In addition, every license issued under this chapter shall be a personal privilege and shall not be transferable.

State law reference: Unlawful to operate without license, G.S. 105-103. Obtaining license and paying tax, G.S. 105-109. Every day's failure a separate offense, G.S. 105-235.

(Prior Code, 8-3) Penalty, see § 110.99

§ 110.04 EXEMPTIONS

(A) Except as otherwise provided for in this section or by state law, no person is exempt from the payment of a privilege license tax levied by this chapter.

(B) Owners of real property who lease that property 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) The following businesses are exempt from obtaining a privilege license or paying a privilege license tax as provided by the indicated section of the North Carolina General Statutes. A more complete and detailed description of the exempt businesses is contained in the cited sections of the North Carolina General Statutes

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(1) Occupations and Professionals:

Accountants	Non-Profit/Charitable
Architects	Oculists
Attorneys-at-law	Ophthalmologists
Auctioneers	Opticians
Banks –banking associations, national bank, etc	Optometrists
Bail Bondsmen	Osteopaths
Burglar Alarm dealers	Physicians/Surgeons
Bus companies	Pharmacists
Chiropodists	Photographers
Chiropractors	Physicians
Dentists	Private Detectives
Embalmers/Morticians	Railway Companies
Engineers	Real Estate Agents/Brokers
Exterminators/Pest control	Real Estate Appraisers
Healing	Real Estate Mortgage companies
Home Inspectors	Savings & Loan Associations
Insurance companies/agents	Telephone companies
Land Surveyors	Trucking companies
Landscape Architects	Users of Newsprint
Massage Therapists	Veterinarians
Mortgage companies	Wineries

(2) Household Appliances / Office Machines: (selling or renting)

10-Key – for office use
 Burglar Alarm – Servicing and monitoring
 Billing machines– for office use
 Calculators – for office use
 Cash Registers
 Check Processors
 Computer Hardware – for office use
 Copiers – for office use
 Fax machines – for office use
 Printers – for office use
 Refrigerators – for home use
 Sewing machines – for home use
 Typewriters – for office use
 Vacuum cleaners – for home use
 Washing machines – for home use

(3) Miscellaneous Businesses:

- Breweries
- Lighting Systems
- Motion Picture distributors
- Manufacturing Motion Pictures
- Merchandising machines (over 5 of like kind)
- Motor Fuels - distributors/wholesaler
- Natural Gas Supplier
- Telecommunication Services (taxed under GS 105-164.4 (a)(4c)
- Vending Merchandising machines (5 of same type)
- Video Programming (taxed under GS 105-164.4(a)(6)
- Wineries

(Prior Code, § 8-4)

§ 110.05 SCHEDULE OF LICENSE TAXES

The amount of any Privilege License Taxes shall be calculated using the current fee schedule. Privilege License Taxes shall be imposed based on the following schedules:

- Schedule A: Privilege License Taxes Based on Gross Receipts
- Schedule B: Privilege Tax Statutory Categories
- Schedule C: Privilege License Taxes Limited by Town Fee Schedule

The imposition of taxes based on the gross receipts basis does not prevent or prohibit the application of Privilege License Taxes under Schedule B and C.

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LICENSING PROVISIONS

§ 110.12 PERIOD OF LICENSE

(A) Unless otherwise provided in the current fee schedule, a license issued pursuant to this chapter is valid for the 12-month period beginning July 1 and ending June 30. The tax is due July 1 of each year. However, if a person begins business after July 1, the tax for that year is due and payable before the business begins.

(B) A person may not commence a business conducted within the town, which is taxed pursuant to this chapter, until the license tax due is paid, and may not continue such business beyond the period for which the license is issued.

(C) No license tax shall be reduced nor shall any refund of any part thereof be made in any case where the licensee fails to begin operations, surrenders the license, discontinues business or is revoked before the end of the period for which such license was issued.

(Prior Code, § 8-8 & § 110.20)

§ 110.13 APPLICATION

(A) Every person desiring to obtain a license for the privilege of engaging in a business within this town shall make application in writing to the Tax Collector prior to beginning operations. The information shall be submitted on an application provided by the Tax Collector and shall contain the following information

- (1) The name of the applicant and whether the applicant is an individual, partnership, corporation, or some other entity;
- (2) The nature of the business, including the duration the business intends to operate;
- (3) The address where the business is conducted;
- (4) An address to which may be mailed notices and statements required by this chapter;
- (5) All telephone numbers applicable to the business;
- (6) The gross receipts of the business for the most recently completed tax year, if applicable;
- (7) Any other information the Tax Collector determines to be necessary to issue the privilege license in accordance with this chapter.

(B) Each applicant has the responsibility to comply with other sections of this chapter concerning health, police, building standards, and/or fire department requirements, before the license shall be issued.

(Prior Code, § 8-9 and § 110.21)

§ 110.14 SEPARATE BUSINESSES; MULTIPLE BUSINESSES

(A) A separate license is required and a separate tax must be paid for each separate place of business operated by the same person.

(B) If two (2) or more separate taxable business activities are operated at the same location by the same owner, the Tax Collector may issue one (1) privilege license upon the payment of the total amount of taxes due for all the businesses.

(Prior Code, § 8-10)

§ 110.15 TAX BASED ON GROSS RECEIPTS.

(A) **REQUIREMENT.** If a license tax required by this chapter is based upon the gross receipts, an applicant for a business privilege license shall be required to submit the exact amount of its gross receipts as reported on their most recent completed federal tax return, in such detail and in such manner as the Tax Collector may require.

(B) **PROCEDURES.** When a license tax required under this chapter is based on gross receipts, the licensee will compute its license tax by applying all gross receipts per location to the rate established in this chapter and purchase a license per location. The licensee, however, may be subject to additional license taxes, which the state authorizes the town to levy, depending on the licensee's business. (See § 110.14) If the licensee is required to obtain multiple classifications, these revenues may be deducted from the total gross receipts. New businesses and/or businesses that have not been in business 12 months must give a

good-faith 12-month projection of their gross receipts. If necessary, the Tax Collector or designee shall estimate gross receipts for the business on the basis of gross receipts of comparable businesses, or any other information that the Tax Collector considers useful.

(C) **DEFINITIONS.** The term "gross receipts," as used in this chapter, shall mean all earnings, receipts, fees, rentals, commissions, broker's charges and income whatsoever arising from or growing out of the conduct of the business, occupation or profession licensed under this chapter during the previous tax year immediately following the license tax year for which the tax is being computed, without any deduction whatsoever, unless otherwise expressly provided. (See (B) above: i.e. paying additional licenses.)

(D) **CONFIDENTIALITY of INFORMATION.** All information regarding gross receipts or other information furnished or secured under the authority of this chapter shall be kept in strict confidence by the Administration, its officials and employees, and shall not be subject or open to public inspection, except as provided in this chapter. The aforementioned shall be utilized solely by the Administrative Office, its officials and employees for administering the provisions of this chapter. However, summaries of such information may be shared with appropriate town officials and employees for purposes of research and analysis.

(E) **FALSE STATEMENTS.** Any person who willfully makes a false statement on a license application shall be guilty of a misdemeanor.

§ 110.16. ABILITY TO PRODUCE ADDITIONAL FACTS

If the Tax Collector or designee requires additional proof before rendering a determination of a person's tax liability, the Tax Collector or designee may require a sworn statement of sales or other proof as needed prior to making that decision.

§ 110.17. REQUESTED INFORMATION BY THE TAX COLLECTOR

Each person who conducts business in the town must give information to the Tax Collector when information is requested. The Tax Collector may request a business owner to provide the following:

- (A) Information that identifies a taxpayer.
- (B) Information needed to determine the tax liability of a taxpayer.
- (C) Information that enables the Tax Collector to collect a tax.
- (D) Other information needed to perform the duties as a tax collector.

State law reference: G.S. 105-251

§ 110.18. INVESTIGATIONS BY THE TAX COLLECTOR

If the Tax Collector has a reason to believe that a person is conducting a business in violation of this chapter, the Tax Collector shall conduct an investigation to determine the person's tax liability.

§ 110.19. DUTY TO PERMIT INSPECTIONS

Each person who conducts business in the town shall permit the Tax Collector or designee to inspect the business premises during normal business hours to determine the nature of the business conducted there and to examine the books and records to determine the nature and amount of business transacted.

§ 110.20. DUTY TO KEEP BOOKS

Each person who conducts a business taxed under this chapter shall keep all records and books necessary to compute the tax liability. If a person fails to keep books and records as required, the Tax Collector or designee shall make a determination of the applicant's tax liability from the information available.

§ 110.21. DECISIONS BY THE TAX COLLECTOR

The Tax Collector shall assess a tax on an estimation of receipts based upon the best information available to determine a person's tax liability.

§ 110.22. PENALTIES

(A) All license taxes imposed by this chapter, excluding beer, wine, shall be due and payable in advance of July 1 nevertheless no later than July 31. If any person conducts any business without first paying such tax and obtaining a license by that date, there shall be assessed an additional tax equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof until paid, not to exceed 25 percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00). Beer and wine licenses must be paid in advance by May 1, however will be considered delinquent as of May 31; and if delinquent; the above described penalty will apply.

(B) No license shall be granted until the license tax plus the additional tax assessed has been paid. All licenses imposed on a new business shall be paid prior to the beginning of such business. If not paid within 30 days, the penalties provided in subsections (A) and (B) of this section shall apply from the date such business began.

§ 110.23 REASONS FOR REFUSAL OR REVOCATION OF LICENSE

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; and/or

(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 to be in violation of the law enforced by the Administrator and has either failed to appeal that determination within the time provided or has exhausted all administrative and judicial appeals: North Carolina State Building Code, Zoning Ordinance, Subdivision Ordinance, and/or the town code.

(Prior Code, § 8-11)

§ 110.24 UNQUALIFIED APPLICANTS; RIGHTS TO A CONFERENCE

(A) After receipt of the completed application, if the Tax Collector believes that a reason exists for refusing a license under § 110.23 above, the Tax Collector shall refuse to accept payment of the tax and shall not issue the license.

(B) At the applicant's request, the Tax Collector shall, pursuant to § 110.23, give a written statement of the reason for refusing the license. The applicant may, within 10 days after receiving this statement, request a conference to discuss the refusal. In the request, it shall specify why the application for a license should not be refused. The Tax Collector shall arrange the conference within a reasonable time, not to exceed 30 days.

(C) If the Tax Collector refuses to issue a license, the applicant may reapply for a license 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 pursuant to § 110.25.

(Prior Code, § 8-12)

§ 110.25 TAX COLLECTOR TO ISSUE LICENSE; PAYMENT OF TAX A PREREQUISITE

After receipt of the completed application, if the Tax Collector believes that no reason exists for refusal of a license under § 110.23, the Tax Collector shall determine the amount of tax due and notify the applicant of that amount. The Tax Collector shall not issue a license until the tax is paid.

(Prior Code, § 8-13)

§ 110.26 AMOUNT OF TAX DISPUTED

If the applicant disputes the amount of the tax that the Tax Collector determines to be due, he may either 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 his rights for a refund. If a conference is requested, the Tax Collector shall arrange it in a reasonable time, not to exceed 30 days.

(Prior Code, § 8-14)

§ 110.27 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 shall give the licensee written notice of the grounds for revocation, pursuant to § 110.23.

(1) The licensee may, within 10 days after the day on which the notice is served, request in writing a conference with the Tax Collector.

(2) The request shall specify the reasons why the license should not be revoked.

(3) 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 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 pursuant to § 110.25.

(Prior Code, § 8-15)

§ 110.28 FORM AND CONTENT OF LICENSE

- (A) A license shall show:
- (1) The name of the person licensed;
 - (2) The place where the business is conducted (if it is to be conducted at 1 place);
 - (3) The nature of business licensed;
 - (4) The period for which the license is issued; and
 - (5) The amount of tax paid.
- (B) In addition, if a machine is licensed, the license shall show the serial number of the machine.
- (C) The Tax Collector shall keep a copy of each license issued.
- (Prior Code, § 8-16)

§ 110.29 ASSIGNMENTS

Each license issued under this chapter is a personal privilege and is not assignable.

(Prior Code, § 8-17)

§ 110.30 CHANGES IN BUSINESS CONDUCTED BY LICENSEE DURING TAX YEAR

- (A) A licensee or his assignee shall report a change in the information contained in the license application to the Tax Collector within 10 days after the change occurs. If information shown on the license itself is affected thereby, the licensee or his 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 shall instead begin proceedings to revoke the license pursuant to § 110.27.
- (Prior Code, § 8-18)

§ 110.31 TAX COLLECTOR TO FURNISH DUPLICATES

Upon satisfactory proof that a license has been lost or destroyed, the Tax Collector shall furnish a duplicate for a fee of \$5.00.

(Prior Code, § 8-19)

§ 110.32 RECORD OF CONFERENCES

- (A) The Tax Collector shall maintain for 3 years a record of each conference held pursuant to this subchapter. The record shall contain the applicant or licensee's name, the date of the conference, and a brief statement of the issues discussed and the result reached. A copy of this record shall be served upon the applicant or licensee in the manner provided by § 110.33.
- (B) After 3 years, the Tax Collector shall dispose of the record pursuant to G.S. § 121-5.
- (Prior Code, § 8-20)

§ 110.33 PROVIDING NOTICE TO AN APPLICANT OR LICENSEE

Whenever this subchapter requires the Tax Collector to give a written statement or notice to an applicant or a licensee, he or she may do so in any one (1) of three (3) 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; 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 Rule 4, North Carolina Rules of Civil Procedure.
(Prior Code, § 8-21)

§ 110.34 NOTICE TO TAXPAYER PRESUMED

Each person who conducts a business may be subject to a business license. It is the duty of the taxpayer to verify what his or her requirements are. If licenses are not paid, the proceedings allowed by law may be taken against such business. This notice shall be conclusively presumed, whether or not such persons have actual notice.

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 shall conduct an investigation to determine the person's tax liability.
(Prior Code, § 8-26)

§ 110.46 DUTY TO POST LICENSE

- (A) Every license issued by the town must be displayed conspicuously in the place of business licensed. Failure to post this license shall raise the presumption of not being in compliance.
- (B) If there is no regular place of business, the licensee must keep the license wherever the business is being operated where it may be inspected at all times by the proper town officials.
- (C) If a machine or other item of personal property is licensed, the license shall be affixed to the machine or item.
(Prior Code, § 8-27) Penalty, see § 110.99

§ 110.47 NOTICE OF DEFICIENCY

(A) If the Tax Collector determines that a person has not paid the full amount of tax due under this chapter, either for the current license year or for a prior license year, he shall give the person written notice of the deficiency, pursuant to § 110.33.

(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 to the person if he or she fails to respond as specified.

(Prior Code, § 8-28)

§ 110.48 REQUEST FOR A CONFERENCE

(A) The person may, within 10 days after the day on which notice is served, request in writing a conference. The request shall specify the person's objections to the notice of deficiency.

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

- (1) That the tax due has already been paid;
- (2) That the Tax Collector miscalculated the amount of tax due; 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.

(Prior Code, § 8-29)

§ 110.49 DEFICIENCY TO BECOME FINAL

If the taxpayer fails to request a conference under § 110.48, the deficiency becomes final and the Tax Collector shall proceed to collect the deficiency.

(Prior Code, § 8-30)

§ 110.50 CONFERENCE HELD

(A) If the taxpayer requests a conference, the Tax Collector shall not proceed to collect the deficiency until he or she hears the taxpayer's objections and determines that the deficiency should become final.

(B) The Tax Collector shall maintain for 3 years record of each conference held pursuant to § 110.48.

- (1) The record shall contain:
 - (a) The name of the taxpayer;
 - (b) The date of the conference; and
 - (c) A brief statement of the issues discussed and the results of the discussion.

(2) A copy of this record shall be served upon the taxpayer in the manner provided by § 110.33.

(C) After 3 years, the Tax Collector shall dispose of the record pursuant to G.S. 121-5.

(Prior Code, § 8-31)

§ 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(A);

(2) Civil penalties in accordance with § 110.99(B);

(3) Equitable relief in accordance with § 110.99(C);

(4) The remedies of levy, garnishment and attachment 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 the same manner and to the same extent as apply to taxes levied by the State as stated in G.S. 105-109(d) & (e) and as per the provisions of G.S. 105-242.

(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% for each month or a part thereof imposed by G.S. 105-236.

(Prior Code, § 8-32)

§ 110.52 APPEALS

(A) Subject to the provisions of this chapter, a person may appeal a decision by the Tax Collector to the Finance Director:

(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 his or her 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 §§ 110.49 or 110.50.

(D) The Finance Director shall hear and decide the appeal within 30 days after notice of appeal is filed, unless the hearing is continued for good cause.

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(1) The appellant shall be given at least 5 working days' notice of the date and time of hearing and shall be served with a written copy of the Finance Director's decision following the hearing.

(2) The burden of establishing the correctness of the Tax Collector's decision shall be on the Tax Collector.

(Prior Code, § 8-33)

§ 110.99 PENALTIES

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

(B) A violation of §§ 110.03 or 110.46 shall subject the offender to a civil penalty of \$50.

(1) If the offender does not pay the penalty within 10 days after he has been cited for a violation, the town may attempt to recover the penalty by filing a civil action in the nature of debt.

(2) Payment of this civil penalty does not relieve a person of his or her liability for taxes imposed under this chapter.

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

(D) Each day that a violation of §§ 110.03 or 110.46 exists after the person has been notified of the violation shall constitute a separate and distinct offense.

(E) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(Prior Code, § 8-34)

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§ 111.01 PURPOSE AND EXEMPTIONS.

(A) To protect public health, safety, welfare, and morals, the following privilege license provisions and regulations are ordained for the privilege of:

(1) Carrying on the business, trade, or profession of massagist; or

(2) For the operation of carrying on businesses, trades, or professions commonly known as massage parlors, health salons, physical culture studios, bath parlors, 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, 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, chiropractics or osteopathy, nor will they apply to any treatment given in the residence of a patient if administered by a licensed physician, osteopath, or registered physical therapist or chiropractor.

(Prior Code, § 8-51)

Massage Parlors

§ 111.02 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings.

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. The manipulation of body muscles or tissue by rubbing, stroking, kneading, or tapping by hand or mechanical device on any part of the body.

MASSAGE BUSINESS. Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, and massage studios.

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

PRIVATE PARTS. The penis, scrotum, mons veneris, vulva, or vaginal area.
(Prior Code, § 8-52)

§ 111.03 LICENSING OF MASSAGE BUSINESS OPERATORS.

(A) No person, partnership, corporation, or association shall operate a massage business as defined in § 111.02 unless that person, partnership, corporation, or association shall have first applied for and received a privilege license provided by this section.

(B) Every application for the privilege license prescribed in this section shall be upon a form approved by the Town Manager and shall be filed with the Town Clerk and the 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;
- (2) 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 applicant;
- (3) The address of the premises where the massage business shall be located;
- (4) A complete statement of all convictions of any person whose name is required to be given in division (B)(1) above, for any felony or prostitution or any violation of any law relative to prostitution;

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(5) 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;

(6) 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;

(7) 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

(8) 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 Clerk shall transmit a copy of the application to the Police Department for an investigative report, to the Town Planner to determine compliance with all zoning 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 Town Planner shall within a reasonable time report the results of their examinations to the Town Clerk.

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

(1) The application contains no misstatement of fact, including, but not limited to, use of any name other than a legal name to procure an application or privilege license.

(2) The applicant or any person having any legal or beneficial ownership interest in the applicant has not been convicted of any crime involving sexual misconduct, including but not limited to:

(a) G.S. §§ 14-177 through 14-199, Article 26 (Offenses Against Public Morality Indecency);

(b) G.S. §§ 14-203 through 14-208, Article 27 (Prostitution); and/or

(c) Any federal statute relative 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.

(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 for engaging in the business or profession of massage revoked.

(E) The applicant must furnish the following proof of training:

(1) A diploma or certificate of graduation from an institute or school of massage whose curriculum is approved by the American Massage Therapy Association;

(2) A diploma, transcript, or certificate of completion from a school or other institution of learning, or a workshop/seminar. The applicant must show proof that he or she has successfully completed no less than 500 classroom hours of instruction in the area of massage therapy and/or must show successful completion of the program of a period of no less than 6 months of professional training in the area of massage therapy;

(3) Any license or certificate required by the state;

(4) A state license to work as a licensed practical nurse or registered nurse in North Carolina, which will permit that individual from practicing massage therapy if that person is currently enrolled in a school of massage and has completed a minimum of 300 hours of classroom training and produces evidence that he or she will work as an apprentice under the supervision of a certified massage therapist until completion of the required 500 hours. This individual must produce proof of his or her:

(a) License as either a licensed practical nurse or registered nurse in the state, or any license or certificate received from the National Certification Board for Therapeutic Massage and Body Work; and/or

(b) Any other national licenses for massage therapy or therapeutic massage and body work produced by the applicant.

(5) In addition to division (E)(4) above, all applicants shall have submitted 2 written, notarized recommendations from 2 members in good standing with the American Massage Therapy Association or from 2 persons or instructors from other schools or institutions of learning, attesting to the qualifications and good standing of any applicant for a license under this chapter.

(6) A valid state drivers license or valid state identification card.

(F) The town reserves the right to request submission of any additional information deemed necessary to process any application.

(G) Upon approval of the application by either the Town Clerk's office or the Town Council and upon receipt of a license fee as fixed from time to time by the Town Council, the Town Collections Office shall issue a privilege license to the applicant.

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

(1) The licensee has violated any provisions 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 as required by this section or whose license under this chapter has been revoked;

(3) The licensee or the legal or beneficial owner of an interest in the licensee is convicted of any crime involving sexual misconduct;

(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; and/or

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

(I) A license issued pursuant to this section 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 division (B)(3) above.

(Prior Code, § 8-53)

§ 111.04 LICENSING OF MASSAGISTS.

(A) No person shall engage in the business or profession of massage unless that person shall have first applied for and received a 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 Manager and shall be filed with the Town Clerk. The application 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 any felony, 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/or

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

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

(1) Fingerprints of the applicant taken by the Police Department;

(2) Two recent photographs of the applicant's head and shoulder of the size and quality prescribed by the Town Manager;

(3) The applicant must furnish the following proof of training:

(a) A diploma or certificate of graduation from an institute or school of massage whose curriculum is approved by the American Massage Therapy Association;

(b) A diploma, transcript, or certificate of completion from a school or other institution of learning, or a workshop/seminar. The applicant must show proof that he or she has successfully completed no less than 500 classroom hours of instruction in the area of massage therapy and/or must show successful completion of the program of a period of no less than 6 months of professional training in the area of massage therapy; and/or

(c) Any license or certificate required by the state.

(4) In addition to division (C)(3)(b) above, all applicants shall have submitted 2 written, notarized recommendations from 2 members in good standing with the American Massage Therapy Association or from 2 persons or instructors from other schools or institutions of learning, attesting to the qualifications and good standing of any applicant for a license under this section.

(5) The town reserves the right to request submission of any additional information deemed necessary to process any application.

(D) The Town Clerk shall transmit a copy of the application to the Police Department for an investigative report. The Police Department shall within a reasonable time report the results of its investigation to the Town Clerk.

(E) An application in proper form shall be submitted to the Town Council together with all reports required by this section. The Town Council shall approve the application if the Town Council determines:

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

(2) That the application contains no misstatement of fact, including, but not limited to, the use of any name other than a legal name to procure the application or privilege license;

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(3) That the applicant has not been convicted of any crime involving sexual misconduct or any federal statute relating to prostitution or a violation of any law or ordinance of any governmental unit concerning or relating to business or profession of massage;

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

(5) The applicant must furnish the following proof of training:

(a) A diploma or certificate of graduation from an institute or school of massage whose curriculum is approved by the American Massage Therapy Association;

(b) A diploma, transcript, or certificate of completion from a school or other institution of learning, or a workshop/seminar leader, which indicates the subjects studied and number of hours of hands-on experience and classroom hours taken; and/or

(c) Any license or certificate required by the state.

(6) In addition to division (E)(5)(a) above, all applicants shall have submitted 2 written, notarized recommendations from 2 members in good standing with the American Massage Therapy Association or from 2 persons or instructors from other schools or institutions of learning, attesting to the qualifications and good standing of any applicant for a license under this section;

(7) A valid state driver's license or valid state identification card;

(8) The town reserves the right to request submission of any additional information deemed necessary to process any application; and

(9) That the applicant has not been previously convicted of any violation of any provision of this section.

(F) Upon approval of the application by the Town Council and upon receipt of a license fee as fixed from time to time by the Town Council, the Town Collections Office shall issue a privilege license to the applicant.

(G) The Town Council shall have authority to direct that any person licensed under this section submit to a medical examination by a licensed physician approved by the Town Council.

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

(2) Refusal to submit to the examination 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 Town Council if the Town Council determines:

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

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

(3) The licensee is found not to have the required diploma or certificate of graduation or required number of hours and length of courses; and/or

(4) The licensee has been convicted of a felony or any crime involving sexual misconduct.
(Prior Code, § 8-54)

§ 111.05 EMPLOYER TO USE ONLY LICENSED MASSAGISTS.

No person, corporation, partnership, or association licensed under § 111.04 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 § 111.04. Violation of this section shall be grounds for revocation of the license issued to the violator pursuant to this chapter.
(Prior Code, § 8-55)

§ 111.06 POSTING OF LICENSE.

(A) Every massagist shall post the license required by § 111.04 in his or her work area.

(B) Every person, corporation, partnership, or association licensed under § 111.03 shall display the license in a permanent place.
(Prior Code, § 8-56)

§ 111.07 NOTICE AND HEARINGS.

(A) If the Town Council revokes a license issued pursuant to this chapter or if the Council determines reasonable grounds exist to deny an application or license pursuant to this chapter, the Council 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.

(B) The notice shall advise the affected party of the right to appear before the Council 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.
(Prior Code, § 8-57)

§ 111.08 HOURS OF OPERATION.

(A) No person licensed as a massagist under this section shall massage or treat any person or engage in the business or profession of massage before 7:00 a.m. or after 10:00 p.m.

(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 7:00 a.m. or after 10:00 p.m.

(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 7:00 a.m. or after 10:00 p.m.
(Prior Code, § 8-58)

§ 111.09 PATRONAGE BY, AND EMPLOYMENT OF, MINORS.

(A) No person licensed as a massagist under this section shall massage or treat any person under the age of 18 upon the licensed premises except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, or upon receiving written consent from the minor's parents and the orders or consents being dated and in the possession of the massagist giving the massage or treatment.

(B) No person, corporation, partnership, or association licensed under this section shall allow, permit, or condone the massage or treatment of any person under the age of 18 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 the order being in the possession of the licensee before administration of any massage or treatment or a copy of the written parental consent being in the possession of the licensee before administration of any massage or treatment.

(C) No person, corporation, partnership, or association licensed under this chapter shall employ any person under the age of 18 in the operation of a massage business.
(Prior Code, § 8-59) Penalty, see § 111.99

§ 111.10 MASSAGE OF PRIVATE PARTS PROHIBITED.

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire. The provisions of this section shall not apply to licensed medical practitioners, osteopaths, chiropractors, or persons operating at their direction in connection with the practice of medicine, chiropractics, or osteopathy.

(Prior Code, § 8-60) Penalty, see § 111.99

§ 111.11 MASSAGE OF PERSONS OF THE OPPOSITE SEX RESTRICTED.

(A) It shall be unlawful for any person to massage a person of the opposite sex without holding the required licenses and diplomas as required by this chapter and without complying with any and all requirements for an application in this chapter.

(B) The requirements of this chapter shall not apply to massages given in the office of a licensed physician, osteopath, chiropractor, or registered physical therapist, or in a regularly established and licensed hospital or sanitarium. Nor shall it apply to any treatment given in the residence of a patient if administered by a licensed physician, osteopath, registered physical therapist or chiropractor.

(C) Failure to abide by this chapter shall give rise to all available criminal and civil penalties.
(Prior Code, § 8-61) Penalty, see § 111.99

§ 111.12 FEES.

Every massage establishment shall pay to the town Collections Office an annual non-refundable privilege license fee upon license issuance or renewal based on the current fee schedule.
(Prior Code, § 8-62)

§ 111.13 PRIVILEGE LICENSE ANNUAL.

(A) The licenses required under this chapter are annual privilege licenses.

(B) The licenses shall be due and payable in the same manner as other privilege licenses issued by the town.
(Prior Code, § 8-63)

§ 111.14 LIABILITY FOR THE CONDUCT OF OTHERS.

A licensee under this chapter is jointly and individually liable for violations of and offenses under this chapter by the employees of the massage establishment and for all civil and criminal sanctions or remedies for violations and offenses, including but not limited to license suspension or revocation prescribed in this chapter.
(Prior Code, § 8-64)

§ 111.99 PENALTIES.

(A) Any person convicted of violation of any provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of \$500 or imprisonment or both.
(Prior Code, § 8-65)

(B) Any person who violates this chapter is subject to a civil suit or injunction as well as prosecution for criminal violation and liability for licensing sanctions such as suspension or revocation.
(Prior Code, § 8-66)

(C) Violation of § 111.09(A) and (B) shall be grounds for revocation of any license issued to the violator pursuant to this chapter.
(Prior Code, § 8-59)

CHAPTER 112: SEXUALLY ORIENTED BUSINESSES

Section

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*GENERAL PROVISIONS***§ 112.01 PURPOSE AND EXEMPTIONS.**

(A) The Granite Falls Town Council 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.

(B) The Town Council 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.

(C) The Town Council 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 Council 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.

(D) The Town Council finds that the licensing of sexually oriented businesses is necessary to ensure compliance with the locational and zoning requirements of the businesses.

(E) The Town Council finds that sexually oriented businesses in other communities have been used for unlawful sexual activities, including prostitution, and sexual encounters of a casual nature.

(F) The concern over sexually transmitted diseases is a legitimate health concern of the town.

(G) 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 are subject to constitutional protection.

(Prior Code, § 17-1)

§ 112.02 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise, the following words and phrases shall have the following meanings.

ADULT ARCADE. Also known as **PEEP SHOWS.** 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 which:

(1) 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) Has 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"; and/or

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

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 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.

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

- (1) Persons who appear in a state of nudity or semi-nude; or
- (2) Live performances that expose or depict “specified anatomical areas” or “specified sexual activities”.

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

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association, general partnership, or limited liability company;
- (3) Each general partner in a limited partnership;
- (4) Each officer, director and owner of more than 10% of the stock of a corporation;
- (5) The manager of an establishment operated by a corporation; and/or
- (6) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

EMPLOY, EMPLOYEE and EMPLOYMENT.

(1) 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.

(2) 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.

(1) A person who, for tips or any other form of consideration, agrees or offers to act as a date for another person; or

(2) 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 one 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.

(1) 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.

(2) **NUDE MODEL STUDIO** shall not include:

- (a) A proprietary school licensed by the State of North Carolina
- (b) A college, junior college or university supported entirely or in part by public taxation;
- (c) 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.

(1) To cause to function or to put or keep in operation.

(2) 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:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex;
or

(2) 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; or

(2) Sex acts, normal or perverted, actual or simulated, including:

(a) Intercourse;

(b) Oral copulation;

(c) Sodomy;

(d) Masturbation, actual or simulated; or

(e) Excretory functions as part of, or in connection with, any of the activities set forth in (1) above.

TOWN CLERK. The Granite Falls Town Clerk.

TOWN MANAGER. The Granite Falls Town Manager or his or her designee.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS.

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 Manager as provided in § 112.07(D).

(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.
(Prior Code, § 17-2)

§ 112.03 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; or

(I) Sexual encounter centers.

(Prior Code, § 17-3)

§ 112.04 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 Manager pursuant to this section.

(B) An application for a license must be made on a form prescribed by the Town Manager and the application shall be made under oath and 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, limited liability company, or association, the name and residence address of all persons having any legal or beneficial interest in the applicant;

(2) The name of the manager(s) of the establishment along with their residence address;

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

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

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

(6) 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;

(7) 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; and

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

(C) 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.

(1) 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.

(2) For reference see § 112.29 for additional requirements for businesses with viewing or other rooms.

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

(E) Each applicant must be qualified under this section and each applicant shall be considered a licensee if a license is granted.

(F) The Town Manager 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 Manager.

(G) 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. (Prior Code, § 17-4) Penalty, see § 112.99

§ 112.05 ISSUANCE OF LICENSE.

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

(B) The Town Manager will approve the issuance of a license to an applicant unless the Town Manager 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 chapter has not been paid;

(3) An applicant is overdue in payment to the town 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 chapter 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 chapter or other provisions of the Granite Falls Town 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. Ch. 14 Articles 7A, 26, 26A, 27, 37, or 39;

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(b) Any similar offenses to those described above under the criminal or penal code of North Carolina, other states, Granite Falls, other cities, or other countries; and/or

(c) 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.

(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.

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

(D) 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.

(E) 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.

(F) 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.

(Prior Code, § 17-5)

§ 112.06 APPEAL.

(A) An applicant whose application is denied, suspended, or revoked by the Town Manager may appeal the action in writing within 30 days to the Granite Falls Town Council, which shall decide either to uphold the action or to issue the license no later than the second regular Town Council meeting after receipt of the appeal.

(B) The applicant or licensee shall have the right to present evidence before the Town Council.

(C) The decision to uphold the action of the Town Manager or issue the license shall be based solely on the criteria established herein for the action by the Town Manager.

(D) A suspension or revocation shall be stayed during the pendency of an appeal to the Town Council.

(Prior Code, § 17-6)

§ 112.07 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 non-refundable if the license is issued.

(B) If the license is denied then 1/2 shall be refunded to the applicant.

(C) An application for renewal must be accompanied by a non-refundable fee of \$500. The fee required by this section is imposed for regulatory purposes and not intended to be a tax.

(D) A substitution of a manager of the business which occurs during the license year shall be filed with the Town Manager within 30 days of its occurrence, and a \$100 investigation fee paid.

(Prior Code, § 17-7)

§ 112.08 INSPECTION.

(A) A sexually oriented business license applicant or licensee shall permit representatives of the Police Department or any other city, 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.

(Prior Code, § 17-8)

§ 112.09 EXPIRATION OF LICENSE.

(A) All licenses shall expire 1 year from the date of issuance and may be renewed only by making application as provided in § 112.04 and paying the renewal fee as provided § 112.07.

(B) Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected. (Prior Code, § 17-9)

§ 112.10 SUSPENSION.

The Town Manager 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 Granite Falls Town 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 law-abiding manner thus necessitating action by law enforcement officers. (Prior Code, § 17-10)

§ 112.11 REVOCATION.

(A) The Town Manager is authorized to, and will, revoke a license if a cause for suspension in § 112.10 occurs and the license has been suspended within the preceding 12 months.

(B) The Town Manager is authorized to, and will, revoke a sexually oriented business license if the Town Manager 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 § 112.05(B)(5) or (B)(6) above for which the time period required in § 112.05(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 § 112.05(B)(6) 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;

(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) Section 112.11(B)(7) of this chapter 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 Manager 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.

(1) If, subsequent to revocation, the Town Manager 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.

(2) If the license was revoked under the authority of § 112.11(B)(5) or (B)(6) above an applicant may not be granted another license until the appropriate number of years required under § 112.05(B)(6) or division A above, as the case may be, have elapsed.
(Prior Code, § 17-11)

§ 112.12 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.

(Prior Code, § 17-12)

§ 112.13 TRANSFER OF LICENSE.

(A) 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.

(B) 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.
(Prior Code, § 17-13)

§ 112.14 HOURS OF OPERATION.

(A) 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.

(B) No sexually oriented business, except for an adult motel, may be open at any time on Sundays.
(Prior Code, § 17-14)

§ 112.15 LIABILITY FOR THE CONDUCT OF OTHERS.

A license 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.
(Prior Code, § 17-22) Penalty, see § 112.99

SPECIFIC BUSINESSES; ADDITIONAL REGULATIONS**§ 112.25 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.
(Prior Code, § 17-15)

§ 112.26 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.
(Prior Code, § 17-16)

§ 112.27 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 purposes of division (B) above of this section, the terms *RENT* or *SUBRENT* mean the act of permitting a room to be occupied for any form of consideration.
(Prior Code, § 17-17)

§ 112.28 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.
(Prior Code, § 17-18)

§ 112.29 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) A manager's station may not exceed 32 square feet of floor area.

(b) The diagram shall also designate the place at which the license will be conspicuously posted, if granted.

(c) 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.

(d) The Town Manager 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 Manager 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.

(a) 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

(b) 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.

(a) Restrooms may not contain video reproduction equipment, cameras, or any other kind of photographic equipment.

(b) If the premises have 2 or more managers 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 managers stations.

(c) The view required in this division 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) of this section.

(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 1.0 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 non-porous, 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, non-porous, easily cleanable material.

(14) 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.

(Prior Code, § 17-19)

§ 112.99 PENALTIES.

(A) 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.

(Prior Code, § 17-20)

(B) 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.

(Prior Code, § 17-21)

CHAPTER 113: YARD SALES

Section

113.01 Yard sale policy

§ 113.01 YARD SALE POLICY.

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

YARD SALE. An occasional sale at which surplus and primarily used household goods and/or clothing are sold. In cases where the sales are conducted on the same property more than 4 days per calendar year or in cases when new or used merchandise purchases for resale, are resold, it shall be deemed a flea market and not a yard sale.

(B) It shall be unlawful for any person to conduct or permit to be conducted on his or her property in the Town of Granite Falls more than 4 yard sales per calendar year in any residential district, with each yard sale limited to one 24 hour day.

(C) A permit must be issued to the property owner by the town and must be posted in a highly visible place at the yard sale.

(D) All apparatus, racks, shelves, tables, signs and other appurtenances associated with the sale shall be removed the same day as the sale.

(E) Flea markets are not permitted.

(F) All directional and advertisement signs must be removed the day of the sale.
(Prior Code, § 54-1) (Ord. 145, passed 6-3-1996; Am. Ord. passed 6-2-2001) Penalty, see § 10.99

