

CHAPTER 110: ADULT ENTERTAINMENT

Section

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Statutory reference:

Abatement of lewd and obscene matter as nuisances, see G.S. Chapter 19, Article I

§ 110.01 DEFINITIONS.

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

COUNTY. Includes any place inside the county not within a city except as authorized by the city pursuant to G.S. § 153A-21 2.

KNOWLEDGE. Having knowledge of the contents, nature, and character of the patently offensive sexual conduct which appears in the lewd film or publication.

LEWD FILM and OBSCENE PUBLICATIONS. Respectively, any motion picture film or any publication;

(1) Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and

(2) Which depicts or describes patently offensive sexual conduct by representations or descriptions of:

(a) Ultimate sexual acts, normal or perverted, actual or simulated;

(b) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;

(c) Masochism or sadism; or

(d) Sexual acts with a child or animal.

(3) Nothing herein contained is intended to include or prescribe any film or publication which, when considered as a whole, and in the context in which it is used, possesses serious

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literary, artistic, political, or scientific value.

MOTION PICTURE FILM. Shall include any:

- (1) Film or plate negative;
- (2) Film or plate positive;
- (3) Film designed to be projected on a screen for exhibition;
- (4) Films, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen; and
- (5) Videotape, CD, DVD or any other medium used to electronically reproduce images on a screen

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PERSON. Any individual, partnership, firm, association, corporation, or other legal entity.

PLACE. Includes, but is not limited to, any building, structure, or place, or any separate part or portion thereof, whether permanent or not, or the ground itself.

PUBLIC EXHIBITION. The showing of a motion picture film, as defined herein, to any member of the public whether for consideration paid or not, or the providing of the same for viewing by any member of the public, whether for consideration paid or not.

PUBLICATION. Includes any book, magazine, pamphlet, writing, printing, illustration, picture sound recording, or motion picture film which is offered for sale or exhibited in a coin-operated machine.

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SALE. Includes, but is not limited to, any ordinary sale, or any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, a lewd film or obscene publication.
(Ord. passed 7-21-75; Am. Ord. passed 12-4-23)

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§ 110.02 PURPOSE AND EFFECT.

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The County Commissioners find that the crass commercial exploitation of explicit sexual conduct through the public exhibition of lewd films and the sale of obscene publications constitutes a debasement and distortion of a sensitive key relationship of human existence central to family life, community welfare, and the development of human personality; is indecent and offensive to the senses and public morals and interferes with the comfortable enjoyment of life and property, in that such interferes with the interest of the public in the quality of life and total community environment, the tone of commerce in the county, property value, and the public safety and morals; and that the continued operation of the activities is detrimental to the best health, safety, convenience, good morals, and general welfare of the county, and of the residents, citizens, inhabitants, and business thereof.

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Therefore, pursuant to Article II, § 24 of the North Carolina Constitution; and G.S. §§ 153A-3, 153A-4, 153A-121, 153A-122, 153A-123, 153A-134, and 153A-135, the County Commissioners declare such activities to be a public nuisance, and herein establish procedures for the abatement thereof. This chapter shall apply to existing establishments which are presently engaged in the type of activity herein declared to be a public nuisance. (Ord. passed 7-21-75; [Am. Ord. passed 12-4-23](#))

§ 110.03 LEWD FILMS AND THEATERS.

(A) Any and every place in the county where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition, is a public nuisance.

(B) Any and every place in the county where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition, is a public nuisance.

(C) Any and every lewd film which is publicly exhibited or possessed for such purpose in the county is a public nuisance per se.

(D) From and after service on the theater, or its manager, or acting manager, or person then in charge of the place, of a certified copy of this chapter and a certified copy of the resolution and order of a summary abatement provided for in § 110.05 hereof, or a certified copy of a court order of abatement, all monies thereafter paid as admission prices for such exhibitions are also declared to be a public nuisance, as is personal property used in conducting and maintaining a declared public nuisance.

(E) Upon receiving notice through service of a certified copy of this chapter and a certified copy of the resolution and order of summary abatement provided for in § 110.05 hereof, or a certified copy of a court order of abatement, every person who shall own, legally or equitably, lease, maintain, manage, conduct, or operate a place in the county which is declared to be a public nuisance as set forth and stated in § 110.03(A) or (B), is deemed to be a person who has knowledge of the nuisance for the purpose of this chapter, and is, thereafter responsible for its maintenance, and shall be liable therefor.

(F) The places and subject matter declared to be public nuisances under § 110.03(A) through (D) shall be abated pursuant to Article II, § 24 of the State Constitution and G.S. § 153A-3, 153A-4, 153A-121, 153A-122, 153A-123, 153A-134, and 153A-135, as provided for herein. (Ord. passed 7-21-75; [Am. Ord. passed 12-4-23](#))

§ 110.04 OBSCENE PUBLICATIONS.

(A) Any and every place in the county in which obscene publications constitute the principal or substantial part of the stock in trade is a public nuisance.

(B) Any and every obscene publication possessed in such place of business is a public

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nuisance per se.

(C) From and after service on the place of business, or its manager, or its acting manager, or person then in charge of the place, of a certified copy of this chapter and a certified copy of the resolution and order of summary abatement provided for in § 110.05 hereof, or a certified copy of a court order of abatement, all monies thereafter paid as purchase price for such obscene-publication sales are also declared to be a public nuisance, as is personal property used in conducting and maintaining a declared public nuisance.

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(D) Upon receiving notice through service of a certified copy of this chapter and a certified copy of the resolution and order of summary abatement provided for in § 110.05 hereof, or a certified copy of a court order of abatement, any and every person who shall own, legally or equitably, lease, maintain, manage, conduct, or operate a place in the county which is declared to be a public nuisance as set forth and stated in § 110.04(A), is deemed to be a person who has knowledge of the nuisance for the purpose of this chapter and is, thereafter, responsible for its maintenance, and shall be liable therefor.

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(E) The places and subject matter declared to be public nuisances under § 110.04(A) through (C) shall be abated pursuant to Article II, § 24 of the State Constitution and G.S. § 153A-3, 153A-4, 153A-121, 153A-122, 153A-123, 153A-134, and 153A-135, as provided for herein.

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(Ord. passed 7-21-75; Am. Ord passed 12-4-23)

§ 110.05 ACTION TO BE TAKEN BY COUNTY COMMISSIONERS.

(A) Upon a specific finding that a public nuisance, as defined in either § 110.03 or § 110.04 of this chapter, exists in the county, the Board of Commissioners, in applying the provisions of this chapter to the nuisance, shall provide for the following by resolution:

- (1) Declare the fact that the nuisance exists.
- (2) Set forth the legal description and street address of the real property which constitutes the nuisance.

(3) Set forth the evidentiary facts considered by the Board of Commissioners in arriving at its factual determination that lewd film or films or obscene publications publicly exhibited or sold, or possessed for exhibition or sale, at such real property are public nuisances, including a recitation of the particular sexual conduct and acts depicted which the Board of Commissioners finds are patently offensive.

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(4) Order all persons named in § 110.03(E) or § 110.04(E) of this chapter to summarily abate the public nuisances immediately, by terminating the exhibition or sales of the lewd film or films or obscene publications or causing the same to be terminated voluntarily surrendering possession of the same to the court having jurisdiction of the legal proceeding brought pursuant to this chapter and notifying the Board of Commissioners of compliance therewith by sworn affidavit.

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(5) Order the County Attorney to proceed as directed in § 110.07 of this chapter and do all

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things necessary to abate the public nuisance through judicial proceeding and to conclude the proceedings as expeditiously as is permissible under the law, including the request to advance the proceedings on the calendar of the court.

(6) Inform and give notice to persons named in § 110.03(E) or § 110.04(E) that:

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(a) The Board of Commissioners has determined that a public nuisance presently exists at such address and that, under § 110.03(E) or § 110.04(E) of this chapter, they are deemed to have knowledge thereof and are responsible therefor;

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(b) The Board of Commissioners has ordered the County Attorney to commence legal proceedings naming such persons as defendants in a civil action to abate the same judicially and that under § 110.06(A) and (B) of this chapter, the costs of abatement of the civil abatement action filed under the above statutes, including investigative costs, court costs, attorney's fees, and other expenses, are made a special assessment against the parcel of land upon which the nuisance is being maintained, and upon their determination in such court action will, by separate ordinance, be made a lien against such property and a personal obligation against the property owner and the theater or business operator;

(c) All films and/or publications being used in conducting and maintaining such public nuisance are contraband and the subject of forfeiture; and

(6) From and after service on the theater or place of business or its manager or acting manager or person then in charge of the place of a certified copy of this chapter and a certified copy of the resolution, any and all monies paid as admission price to such exhibitions or paid as purchase price for such sales are a public nuisance, as personal property used in conducting and maintaining the nuisance, and, as such, are the subject of forfeiture.

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(7) Order that a certified copy of the resolution and a certified copy of this chapter be delivered in any manner normally used to effectuate personal service of process as directed in the General Statutes and Rules of Civil Procedure adopted thereunder, to all persons of record having any legal or equitable interest in the real property, and to the regular or acting manager or persons in charge of the place therein declared a public nuisance.

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(B) In addition to the procedure provided in § 110.05(A), an abatement proceeding may be commenced in the General Court of Justice by any citizen of the county in the name of the county upon the relation of such citizen, to abate the nuisance declared in this chapter in the same manner as provided in Chapter 19, Article 1, of the General Statutes. In an abatement proceeding as provided herein, the citizen may seek the relief set forth in § 110.07 of this chapter, in addition to any other equitable relief deemed proper by the court hearing the matter. (Ord. passed 7-21 -75; Am. Ord. passed 12-4-23)

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§ 110.06 ACTION BROUGHT PURSUANT TO ADULT ENTERTAINMENT REGULATIONS.

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(A) Upon judgment against the owners or operators of the theater or place of business in legal

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receive notice of the finding by the Board of Commissioners that the public nuisance exists, and a declaratory judgment that such monies are a public nuisance under this chapter.

(5) An order that all admission price monies derived from the showing of the named lewd film or films and all purchase price monies derived from the sale of the named obscene publications and enumerated in the court-ordered accounting be forfeited to the General Fund of the county as contraband.

(6) An injunction enjoining and restraining all persons guilty of maintaining the nuisance from exhibiting in public the named lewd films or selling the named obscene publications at any time in the future in the county.

(7) An order that all positive prints of the named lewd films and all copies of the named obscene publications be forfeited as contraband under this chapter.

(8) An order directing the removal from the building or place of all fixtures, furniture, films, projection equipment, screens, publications, and movable property used in conducting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and directing the effectual closing of the building or place against its use for any purpose for a period of one year, unless sooner released as provided for in G.S. §§ 19-5, 19-6, and 19-7.

(9) Judgment for the county for all costs therein expended, including investigative costs, court costs, reasonable attorney's fees, costs for moving and selling movable property, and such other expenses as are provided for herein.

~~(10) All other relief as the court may deem proper.~~

(B) File a notice of the pendency of the action in the Office of the Register of Deeds of the County pursuant to North Carolina Statutes on Civil Procedure, giving the names of the parties, the object of the action, and a description of the property thereby affected. (Ord. passed 7-21 -75; Am. Ord. passed 12-4-23)

100.08 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE

This revised ordinance revises and supplants the ordinance in Chapter originally adopted July 21, 1975, and all subsequent amendments, and shall be effective on and after December 4, 2023.

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