

636.3 No use permitted under this section shall be located within 500 feet of any school (public or private), park, or child daycare use. The distance shall be measured in a straight line from the zoning lot line of the proposed establishment to the nearest point of the lot line for the school (public or private), park, or child daycare use, whether such use is located within the City of Asheboro jurisdiction or not.

636.4 No use permitted under this section shall be located within 1,000 feet of any other such use or adult establishment general. The distance shall be measured in a straight line from the zoning lot of the proposed establishment line to the nearest point of the lot line for the Adult Establishment with Live Entertainment and On Premise Consumption of Alcoholic Beverages.

636.5 No use permitted under this section shall be located on the same zoning lot as any other such use or Adult Establishment General.

636.6 Reserved for Future Use

SETBACKS

636.7 Minimum setbacks as per Table 200-1

BUILDING DESIGN

636.8 Building design requirements apply to principal and accessory structures. In addition to the provisions of this section, all other design and performance standards applicable to the zoning district in which the use is located shall apply.

636.9 The minimum gross floor area shall be 1,500 square feet.

636.10 Prohibited Materials: Materials specifically disallowed as primary siding materials include, but are not limited to: vinyl and aluminum siding, unfinished wood, concrete block (except split-faced block). In addition, materials prohibited in Sections 316A (for Industrial uses), 317A (for Commercial uses) and 318A (for Residential uses) of this ordinance are prohibited.

636.11 All windows, doors, openings, entrances, etc., shall be located, covered, screened, or otherwise treated so the views into the interior of the establishment are not possible from any street, public right-of-way, or public vehicular area. Windows shall not be covered with any of the following:

i. Unfinished wood, concrete block (except split-faced block), vinyl siding, metal panels, metal painted panels and any metal panel with "rib" or "u" configuration.

ii. Laminated, composite or press board wood type materials (composed of layers of firmly united wood materials - made by bonding or impregnating superposed layers with resin and compressed under heat).

iii. Metal panels with galvanized, aluminum, or aluminum zinc finishes (except metal laminated architectural materials (such as Alucobond®) are a permitted material).

636.1 Fences: No fence, except where required for buffer or screening, shall be permitted any closer to the public right-of-way than the front of the principal structure.

LANDSCAPING

636.13 Property Lines Not Abutting a Street: Screen D shall be provided in accordance to Article 304A, with the exception that a wooden fence or berm and planting combination is not permitted.

636.14 Property Lines Abutting a Street: A staggered row of evergreen trees no more than 10 feet apart on center and no less than six feet in height at the time of planting shall be required in addition to standard landscaping requirements of Article 300A.

SIGNS

636.15 Ground Signs: All lots (both corner and interior) on which an adult establishment is located upon shall be limited to one (1) Free-Standing (Monument) sign not to exceed six (6) feet in height. In no case shall the size of the sign exceed seventy-five (75) square feet.

636.16 Wall Signs: A one square foot sign may be placed on the door to state hours of operation and admittance to adults only. Otherwise, no wall signs shall be permitted on buildings within which an adult establishment is located.

636.17 No nude images or depictions of obscenity (defined by North Carolina statutory and case

law) shall be displayed in any area including window areas, where they can be viewed from any sidewalk or street.

636.18 No sign shall be colored or treated in high intensity colors (for example, pink, blue, green, purple, yellow, red, orange, etc.) florescent, or metallic colors Earth color tones shall be considered acceptable.

636.19 The exterior signage permitted for an Adult Establishment General is strictly limited to the ground sign and wall sign described above.

LIGHTING

636.20 A. Glare: The direct light from any source of outdoor lighting shall not be visible from outside the zoning lot.

B. In addition to the above, the following specific regulations shall apply:

1. Wall mounted lighting shall consist of full cut-off fixtures (in which no light from the fixture occurs above 90 degrees).

2. Pole mounted lighting shall consist of full cut-off fixtures.

3. Canopy lighting shall consist of full cut-off fixtures.

4. Parking lot lighting shall consist of full cut-off fixtures or an architectural fixture utilizing a diffuse light source.

C. The entire property shall be uniformly lit at no less than one (1) foot-candle and no more than two (2) foot-candles. All applicants must submit a professionally prepared lighting plan.

D. No colored exterior lighting shall be permitted.

PARKING

636.21 Off-street parking and loading shall be provided in accordance with Article 400.

636.22 Parking shall be located only in front and/or to the side of the building within which an adult establishment is located

CHANGE OF USE

636.23 Notwithstanding any other provision of this ordinance, a land use application for any use permitted under this section shall constitute a change of use. This provision shall apply to a single use and/or structure and multi-uses and/or structures.

Article 1100 – Language and Definitions

Adult Establishments

~~Business dealing in any activity which exhibits specified sexual activities or specific anatomical areas. The display of specific of sexual activities or specific anatomical areas are not the primary function of the establishment. Such as, but not limited to, Adult Cabaret, Adult Lounge, Adult Bar, Adult Nightclub, Adult Carwash.~~

Adult Uses

~~Adult Bookstore. An establishment which has a substantial portion of its stock in trade in books, magazines or other periodicals and which excludes minors by reason of age.~~

~~Adult Picture Theater. An enclosed building or portion thereof with a capacity of more than 50 persons used for showing movies, slide shows, closed circuit TV or similar offerings and from which minors are excluded by reason of age.~~

~~Adult Mini-Picture Theaters. An enclosed building or part thereof with a capacity of 50 persons or less used for showing movies, slide shows, closed circuit TV or similar offerings and from which minors are excluded by reason of age.~~

~~Adult Drive-in Theater. A drive-in theater for the showing of movies, slide shows, closed circuit TV~~

~~or similar offerings and from which minors are excluded by reason of age.~~

~~Adult Cabaret. An establishment which features go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainments and from which minors are excluded by reason of age.~~

~~Adult Massage Parlor. An establishment in which body massages are offered as a service and from which minors are excluded by reason of age.~~

Adult Nightclub/ Bar

~~An establishment where alcoholic beverages may be obtainable within or thereon and where such beverages are consumed on the premises and where any activity displaying specified anatomical areas or specified sexual activities occurs. If the facility also sells food and the sale of food products represent more than fifty percent of the facility's total sales, the facility shall be considered an Eating Establishment-Adult.~~

Article 1100 – Language and Definitions

Adult bookstore means a bookstore:

a. Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or

b. Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section.

c. That advertises or holds itself out in any forum as a "XXX," "adult," "sex," type bookstore

Adult Establishment General means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, sex shop, or adult live entertainment business as defined in this section.

Adult live entertainment means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

Adult live entertainment business means any establishment or business wherein adult live entertainment is shown for observation by patrons.

Adult motion picture theatre means an enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein. "Adult motion picture theatre" does not include any adult mini motion picture theatre as defined in this section.

Adult mini motion picture theatre means an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein.

Sex shop means any establishment offering goods for sale or rent and that meets any of the following tests.

a. The establishment offers for sale or rent items from any two of the following categories: (a) publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, (b) lingerie, or (c) leather goods marketed or presented in a context to suggest their use for specified sexual activities; and the combination of such items constitutes a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its stock and trade.

b. A preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its stock and trade consists of sexually oriented devices.

c. A preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its gross floor area is devoted to the display of sexually oriented devices.

Sexually oriented devices means without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

Specified anatomical areas means:

a. Less than completely and opaquely covered: (i) human genitals, pubic region, (ii) buttock, or (iii) female breast below a point immediately above the top of the areola; or

b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

a. Human genitals in a state of sexual stimulation or arousal;

b. Acts of human masturbation, sexual intercourse or sodomy; or

c. Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts.

(b) Amendment of Chapter 113 of the Code of Asheboro.

Mr. Neely presented the amendments of Chapter 113 of the Code of Asheboro and noted that certain clerical errors have been corrected since the Council's regular April meeting. If adopted, this ordinance would be effective as of June 1, 2010.

Upon motion by Dr. Fountain and seconded by Mr. Burks, Council voted unanimously to adopt the following ordinance by reference.

28 ORD 5-10

AN ORDINANCE AMENDING CHAPTER 113 OF THE CODE OF ASHEBORO

WHEREAS, during a public hearing held on April 8, 2010, the Asheboro City Council received testimony from an experienced appraiser, the city's assistant chief of police, and planning department staff that reviewed various studies and anecdotal evidence of the impacts of sexually oriented businesses on neighborhoods where such businesses are located; and

WHEREAS, the Asheboro City Council has concluded that the studies referenced by the city staff members and expert witnesses are relevant to Asheboro and have identified adverse secondary impacts associated with sexually oriented businesses that pose potential threats to the health, safety, and welfare of the patrons of such businesses as well as, more generally, to the citizens of the City of Asheboro; and

WHEREAS, the City Council expressly finds that, in the absence of careful and constitutionally mindful regulation of sexually oriented businesses through the Asheboro Zoning Ordinance and the city's general police power, these businesses (sometimes referred to as "adult businesses") have negative secondary impacts in the form of decreased adjoining property values and increased incidents of crime, which may or may not be formally reported to law enforcement authorities due to the nature of some of the crimes as so called "victimless crimes" and due to the fact that a significant number of patrons of sexually oriented businesses may want to preserve their anonymity to the maximum degree possible; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve property values for businesses and residential properties alike; protect the character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, the City Council has determined that locational and other traditional land use regulations under the Asheboro Zoning Ordinance in combination with a regulatory framework involving the licensing of sexually oriented or adult businesses under the city's general police power provides the best option for the City Council in its efforts to balance the protection of the public health, safety, and general welfare with the constitutional rights afforded to individuals; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the negative secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Asheboro as follows:

Section 1. Chapter 113 of the Code of Asheboro is hereby rewritten to provide as follows:

§ 113.01 DEFINITIONS.

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

~~**ADULT BOOK STORE.** A bookstore having as a preponderance of its publication books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or rating to specified sexual activities or specified anatomical areas.~~

~~**ADULT MOTION PICTURE THEATER.** An enclosed building with a capacity of 50 or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.~~

~~**ADULT MINI MOTION PICTURE THEATER.** An enclosed building with a capacity for less than 50 persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.~~

~~**DEPARTMENT.** Police Department of the city.~~

~~**INTERESTED PARTY.** Any person, partnership or corporation which is an applicant for a license or who is an employee of an applicant for a license, any person who is a partner in a partnership which is an applicant for a license and any person, partnership or corporation which is an officer, director or principal stockholder of a corporation which is an applicant for a license.~~

~~**SEXUALLY EXPLICIT MATERIALS or ACTIVITIES.** Those materials or activities showing specified anatomical areas or specified sexual activities.~~

~~**SPECIFIED ANATOMICAL AREAS.** Less than completely and opaquely covered: human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and the human male genitals in a discernible turgid state, even if completely and opaquely covered.~~

~~**SPECIFIED CRIMINAL ACT.** Any felony or soliciting for prostitution, pandering, prostitution, keeping a house of ill fame, lewd and lascivious behavior, exposing minors to harmful materials, distributing obscene materials, possession of obscene materials, transporting obscene materials, or sale or possession of a controlled substance or narcotic.~~

~~**SPECIFIED SEXUAL ACTIVITIES.** Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast.~~

§ 113.02 LICENSE REQUIRED; APPLICATION; INVESTIGATION; ISSUANCE; REVOCATION.

~~(A) No interested party shall operate a business dealing primarily in sexually explicit materials or activities unless such party shall have first applied for and received the privilege license provided for by this section.~~

~~(B) Every application for the privilege license prescribed herein shall be upon a form approved by the City Manager and shall be filed with the City Clerk. Every such application shall be made under oath and shall contain the following information:~~

~~(1) The name, age and residence of any interested party.~~

~~(2) The address of the premises where the business shall be located.~~

~~(3) The proposed hours of operation of the business.~~

~~(4) A complete statement of all convictions of any interested party of any specified criminal act.~~

~~(5) The name and address of any business dealing primarily in sexually explicit materials or activities operated by any interested party.~~

~~(6) A description of any other business to be operated on the same premises or an adjoining premises owned or controlled by the applicant.~~

~~(C) The City Clerk shall transmit a copy of the application to the Police Department for an investigative report; to the Building Department to determine compliance with all building regulations; to~~

~~the Planning Department to determine compliance with all zoning regulations; and to the Fire Department to determine compliance with any laws relating to fire protection. The above departments shall within a reasonable time, not to exceed 45 days, report the results of their examinations to the City Clerk.~~

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

- ~~(1) The application contains no misstatement of fact.~~
- ~~(2) That any interested party has not been convicted of any specified criminal act.~~
- ~~(3) The applicant conforms to all requirements of applicable zoning, building and fire prevention codes.~~
- ~~(4) The applicant or any interested party has not had revoked a previously issued license for engaging in a business dealing primarily in sexually explicit materials or activities.~~

~~(E) Upon approval of the application by the City Council and upon receipt of a license fee of \$100, the City Clerk shall issue a privilege license to the applicant.~~

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

- ~~(1) The licensee has violated any provision of this chapter.~~
- ~~(2) The licensee or any interested party is convicted of any specified criminal act.~~
- ~~(3) The licensee violates any zoning, building or fire prevention ordinance of the city.~~

~~(G) A license issued pursuant to this chapter shall become void if the licensee moves or ceases to operate at the location required to be stated in the application for the license, pursuant to division (B) (2) of this section.~~

~~§ 113.03 DISPLAY OF LICENSE REQUIRED.~~

~~It shall be the responsibility of all interested parties to ensure that the license required by this chapter be prominently displayed within the business.~~

~~§ 113.04 NOTICE AND HEARING PRIOR TO REVOCATION OR DENIAL.~~

~~(A) Before the City Council revokes a license issued pursuant to this chapter, or if the City Council determines that reasonable grounds exist to deny an application for a license pursuant to this chapter, the City Council shall cause a written notice to be sent by certified mail to the licensee or applicant affected at the address stated in the license or application.~~

~~(B) The notice shall advise the affected party of a right to appear before the City Council, with or without legal counsel, at a stated time and place, for the purpose of presenting any evidence relevant to such revocations or denial and for the purpose of hearing all evidence submitted and examining or cross-examining any person providing such evidence.~~

~~§ 113.05 LICENSE IS ANNUAL; WHEN DUE AND PAYABLE.~~

~~The licenses required under this chapter are annual privilege licenses. Such licenses shall be due and payable in the same manner as is prescribed for other privilege licenses issued by the city pursuant to the license and privilege tax ordinance of the city.~~

~~§ 113.99 PENALTY.~~

~~Any person convicted of violating any provision of this chapter shall be punished by a fine or imprisoned as provided by G.S. § 14-4.~~

§ 113.01 PURPOSE AND FINDINGS.

Purpose: It is the purpose of this Chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the city and to establish reasonable and uniform regulations to prevent the deleterious effects of sexually oriented businesses. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials or other expressive activities, including sexually oriented materials or activities.

Similarly, it is not the intent or effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to in any way condone or legitimize the distribution of obscene material or material harmful to minors.

§ 113.02 DEFINITIONS.

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

Adult bookstore means a retail establishment that has:

(1) As one of its principal business purposes, the sale or rental of, or a substantial or significant portion of its stock in trade for sale or rental of, the following items:

- a. Publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; and/or
- b. Sexually oriented devices, as defined in this section.

(2) As used in this definition, publications include, by way of illustration, books, magazines, other periodicals, movies, videotapes, and other products offered in photographic, electronic, magnetic, digital, or other imaging medium.

(3) Any of the following shall be indicia that an establishment has as one of its principal business purposes the sale or rental of: (i) publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; and/or (ii) sexually oriented devices, as defined in this section: Such indicia shall be considered along with all other factors and available information.

- a. The business advertises the sale or rental of adult publications and/or sexually oriented devices.
- b. Access by persons under 18 years of age to the business establishment or portions of the business establishment is restricted.
- c. Signs or notices are posted outside and/or inside the business establishment indicating that the material offered for sale or rental might be offensive.
- d. The building or portion of the building containing the business establishment does not have windows or has windows that are screened or otherwise obstructed or are situated in a manner that restricts visual access from outside the building to materials displayed within for sale or rental.

(4) Notwithstanding the foregoing, a general circulation video/DVD store that does not offer for sale any sexually oriented devices shall not constitute an "adult bookstore" even though it offers for sale and/or rental videotapes which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section, so long as:

- a. Such described videotapes/DVDs are stocked and displayed in a room separate from the area of the business establishment where general circulation videotapes are stocked and displayed;
- b. Access by persons under 18 years of age to the room where such described videotapes/DVDs are stocked and displayed is restricted;
- c. The square footage of the separate room where such described videotapes/DVDs are stocked and displayed is no more than ten percent of the square footage of the area where general circulation videotapes/DVDs are stocked and displayed; and
- d. The general circulation videotape/DVD portion of the business establishment offers a quantity and selection of new release general circulation videotapes/DVDs that are typical of a general circulation video/DVD store and offers a quantity and selection of other general circulation videotapes/DVDs that are organized and displayed in a manner that is typical of a general circulation video/DVD store.

Adult live entertainer means an employee who engages in or performs adult live entertainment.

Adult live entertainment means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.

Adult live entertainment business means any establishment or business which has as one of its principal business purposes the presentation of adult live entertainment for observation by patrons.

Adult mini-motion-picture booth means any booth or partitioned area of less than 150 square feet in an adult mini-motion-picture theater that is designed to hold patrons for the presentation and viewing of still or motion pictures (slides, film, videotape, laser disc, CD-ROM or other imaging media) that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section.

Adult mini-motion-picture theater means a commercial establishment with one or more adult mini-motion-picture booths where:

(1) One of the principal business purposes is the presentation and viewing of still or motion pictures in the viewing booths that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; or

(2) A substantial or significant portion of the stock of still or motion pictures available for viewing or that are actually viewed in the viewing booths are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section.

(3) Any of the following shall be indicia, which shall be considered with all other factors and available information, that the business establishment has as one of its principal business purposes the presentation and viewing in viewing booths still or motion pictures which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section:

a. Restricted access to the business establishment or portions of the business establishment where viewing booths are located to persons less than 18 years of age.

b. Posted signs or notices outside and/or inside the business establishment indicating that the material offered for presentation and viewing in the viewing booths might be offensive.

Adult motion-picture theater means a commercial establishment that regularly presents motion pictures which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, in an area, whether enclosed or not, of 150 square feet or greater for observation by patrons therein.

Applicant means and includes the owner of a sexually oriented business.

Chief of police means the chief of the Asheboro Police Department, or his designee.

City manager means the Asheboro City Manager, or his designee (who shall not be an employee of the Asheboro Police Department).

Clothing modeling studio means any place where, for any form of consideration or gratuity, a person agrees or offers to privately model clothing, including, but not limited to, lingerie, for an individual patron.

Convicted means an adjudication of guilt and entry of judgment following a trial or a plea of guilty or no contest in a criminal case arising under local, state, or federal law.

Employee describes and pertains to any person who performs any service or entertainment upon the premises of a sexually oriented business, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and regardless of whether or not the person is paid a salary, wage, or other compensation by the operator of the business. The term "employee" does not include a person exclusively on the premises for any of the following:

(1) The repair or maintenance of the premises;

(2) The delivery of goods to the premises; or

(3) The delivery of services, such as legal, accounting, insurance, or other similar services provided to businesses generally.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

Operator means and includes any person who is both present on and in charge of any sexually oriented business premises.

Owner means the legal owner of a sexually oriented business and includes the following:

(1) The owner of a sole proprietorship;

(2) Each member of a firm, association, or general partnership;

(3) Each general partner in a limited partnership;

(4) Each manager in a limited liability company; or

(5) Each officer, director, and owner of 50 percent or more of the stock of a corporation.

Person means an individual, proprietorship, partnership, limited liability company, corporation, association, or other legal entity.

Sexually oriented business means and includes any adult bookstore, adult live entertainment business, adult mini-motion-picture theater, adult motion-picture theater, or clothing modeling studio, as defined in this section.

Sexually oriented crime means and includes any criminal offense under local, state, or federal law involving or related to rape, sex offense, sexual abuse of minors, crime against nature, incest, prostitution, indecent exposure, or this Chapter.

Sexually oriented devices means, without limitation, any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities, but does not mean any contraceptive device.

Specified anatomical areas means:

(1) Less than completely and opaquely covered:

a. Human genitals, pubic region; or

b. Buttock; or

c. Female breast below a point immediately above the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

(1) Human genitals in a state of sexual stimulation or arousal:

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

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

(4) Excretory functions, as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition.

Straddle means the straddling of the legs of one person over any part of the body of any other person, regardless of whether there is a touch or touching.

Touch means to touch with a portion of the human body or with any object.

§ 113.03 CLASSIFICATIONS.

Sexually oriented businesses are classified as follows:

(1) Adult bookstores.

(2) Adult live entertainment businesses.

(3) Adult mini-motion-picture theaters.

(4) Adult motion-picture theaters.

(5) Clothing modeling studios.

§ 113.04 LICENSE REQUIRED.

(A) No sexually oriented business shall be permitted to operate without a valid sexually oriented business license issued by the chief of police for the particular classification of business. It shall be unlawful for any person to operate or cause to be operated a sexually oriented business without the license or without the presence of an operator who has been disclosed pursuant to subsection (B)(9) of

this section. The chief of police shall not issue licenses to two or more classifications of sexually oriented businesses to operate in or on the same building, premises, structure, or other facility.

(B) An application for a license must be made by the owner of the business on a form prescribed by the chief of police and submitted to the Asheboro Police Department. The completed application shall contain the following information and shall be accompanied by the following documents:

(1) The full true name of the applicant.

(2) The full true name under which the sexually oriented business will be operated and, if the business will be operated in a name other than that of the applicant, a certified copy of the assumed name certificate prepared and recorded in the office of the county register of deeds pursuant to G.S. 66-68 et seq.

(3) The type of sexually oriented business the applicant intends to operate.

(4) Whether the applicant intends to serve alcoholic beverages at the sexually oriented business and/or apply for an ABC permit of any kind.

(5) The physical address where the sexually oriented business is to be operated.

(6) If the owner of the real property upon which the sexually oriented business is to be operated is not the applicant, the name and address of the owner of the real property upon which the business is to be operated and a copy of the lease or rental agreement.

(7) The principal telephone number to be used by the sexually oriented business.

(8) If the applicant is:

a. An individual, the applicant shall appear in person and deliver a completed and signed application form and provide the following information:

1. His present residence and business addresses and telephone numbers; and
2. A valid driver's license or other government-issued picture identification.

b. A partnership, limited liability company, or corporation, the applicant shall designate one of its partners, managers, or officers to act as its agent. Such person shall appear in person and deliver a completed and signed application form and shall provide the following information:

1. His present residence and business addresses and telephone numbers; and
2. A valid driver's license or other government-issued picture identification.

c. In the case of a partnership or limited liability company, if one or more of the partners or managers is a corporation, the provisions of subsection (8)d shall apply. Additionally, the following information shall be provided for the partnership or limited liability company:

1. The name, residence address, and telephone number of each partner or manager; and
2. A copy of the partnership agreement or operating agreement for the limited liability company.

d. In the case of a corporation:

1. A certified copy of the articles of incorporation, a certified copy of the certificate of authority, and a certified copy of the most recent annual report filed with the secretary of state; and
2. The name, residence address, and telephone number of each of its current officers and directors and of any stockholder holding 50 percent or more of the stock of the corporation.

(9) The name, residence address, and telephone number of each individual who will be an operator of the business.

(10) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The requirements of this subsection shall not apply for renewal applications if the applicant adopts a sketch or diagram that was previously submitted for the license sought to be renewed and if the licensee certifies that the licensed premises has not been altered since

the immediately preceding issuance of the license and that the previous sketch or diagram continues to accurately depict the layout of the licensed premises.

(11) A copy of a valid zoning compliance letter/certification issued by the City of Asheboro Planning Department within three (3) calendar months preceding the date of application for a license under this chapter to operate a sexually oriented business. Such a letter/certification must document full compliance by the applicant's proposed land use with the Asheboro Zoning Ordinance as of the date of the issuance of the zoning compliance letter/certification. No fees shall be charged by the City of Asheboro Planning Department for zoning compliance letters/certifications requested by an applicant for the sole purpose of complying with the provisions of this chapter.

(12) If the applicant wishes to operate an adult live entertainment business or an adult mini-motion-picture theater, the applicant shall comply with the application requirements stated in sections 113.15 and 113.16.

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

(D) An applicant for a license under this section shall have a continuing duty to promptly supplement application information required by this section if such information changes in any way from what is stated on the application. The applicant shall supplement the application on file with the police department within 30 days from the date of such change.

(E) If the police department determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, it shall promptly notify the applicant of such fact and allow the applicant ten days to properly complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

(F) Issuance of a sexually oriented business license does not excuse a licensee from compliance with any other applicable ordinance, regulation, or statute. By issuing a sexually oriented business license, the chief of police has not determined that the recipient is in compliance with any applicable local, state, or federal regulations or laws or that the recipient is otherwise engaged in a legal activity or operating a business in a legal manner.

§ 113.05 ISSUANCE AND POSTING OF LICENSE.

(A) Within 30 days after receipt of a completed application for a license required under this Chapter, the chief of police will approve or deny the issuance of a license. Upon the expiration of the 30th day, the applicant shall be permitted to begin operating the business for which the license is sought unless and until the chief of police notifies the applicant of a denial of the application and states the reason for the denial.

(B) The chief of police shall deny the application for any of the following reasons:

(1) An applicant or any individual identified in the application under section 113.04(B)(8) or (9) is under 18 years of age;

(2) An applicant or any individual identified in the application under section 113.04(B)(8) or (9) has refused to allow an inspection of the premises as authorized by Section 113.07;

(3) An applicant or any individual identified in the application under section 113.04(B)(8) or (9) has a license under this Chapter which is suspended or revoked;

(4) An applicant failed to provide the information necessary to determine the qualifications of the applicant or any individual identified in the application under section 113.04(B)(8) or (9) for issuance of the license, or provided materially false or misleading information on the application form;

(5) An applicant or any individual identified in the application under section 113.04(B)(8) or (9) has been convicted of any sexually oriented crime and less than five years have elapsed since the latter of the date of conviction or the date of release from confinement, if the conviction is for a felony, or less than two years have elapsed since the latter of the date of conviction or the date of release from confinement, if the conviction is for a misdemeanor. The fact that the conviction is being appealed shall have no effect on the denial of the license; or

(6) The application demonstrates or reveals information showing that the proposed business fails to meet the requirements of this chapter.

(C) The license must be posted in the sexually oriented business in a conspicuous place at or near the entrance to the business so that it can be read easily at any time.

§113.06 ANNUAL PRIVILEGE LICENSE TAX

The licensee under this chapter shall be required to pay the prescribed annual privilege license tax or taxes in accordance with chapter 110 of the Code of Asheboro.

§ 113.07 INSPECTION

An applicant or any individual identified in the application under section 113.04(b)(8) or (9) shall permit representatives of the Asheboro Police Department to inspect the premises for the purpose of ensuring compliance with this chapter prior to the issuance of a license.

§ 113.08 NOTICES.

Any notice required or permitted to be given by the chief of police or the city manager under this chapter to any applicant, licensee, owner, or operator of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, to the most current address as specified in the application for the license or any notice of change of address actually received by the chief of police. Notices mailed as provided in this section shall be deemed given upon their deposit in the United States mail and shall be presumed to have been received on the third regular postal delivery day thereafter.

§ 113.09 NOTICE OF VIOLATION AND SUSPENSION OF LICENSE.

(A) The chief of police shall issue a notice of violation if he determines that a licensee, owner, operator, or employee has violated or is not in compliance with any section of this Chapter. The notice shall specify the section of this Chapter that has been violated.

(B) The chief of police shall suspend a sexually oriented business license for a period of 30 days if the violation has not been corrected or abated within 20 days after the notice of violation has been received by the licensee, owner, or operator.

(C) A decision by the chief of police to suspend a license shall not become final until 20 days after notice of the decision has been received by the licensee, owner, or operator.

(D) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business when such person knows or should know that the business has a license which has been suspended.

§ 113.10 REVOCATION OF LICENSE.

(A) The chief of police shall revoke a sexually oriented business license if a suspension of the license becomes effective following a notice of violation which was issued within 12 months of the effective date of a previous suspension.

(B) The chief of police shall revoke a sexually oriented business license if he determines that:

(1) An applicant or licensee provided materially false or misleading information in the material submitted in the application process;

(2) A licensee, owner, or operator has knowingly allowed the possession, use, or sale of controlled substances in or on the premises;

(3) A licensee, owner, operator, or employee has knowingly allowed the solicitation for prostitution or a crime against nature in or on the premises;

(4) A licensee, owner, operator, or employee has knowingly allowed any act of sexual intercourse, masturbation, oral copulation, sodomy, or indecent exposure to occur in or on the premises;

(5) A licensee, owner, operator, or employee has served alcoholic beverages to a patron in or on the premises without the premises having the proper ABC permit; or

(6) A licensee, owner, or operator has been convicted of a sexually oriented crime since the license was issued. The fact that a conviction is being appealed shall have no effect on the revocation of the license. For the purpose of this subsection, and with respect to adult live entertainment licenses, the term "employee" shall not include an adult live entertainer.

(C) A decision by the chief of police to revoke a license shall not become final until 20 days after notice of the decision has been received by the licensee, owner, or operator.

(D) When the chief of police revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective.

(E) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business when such person knows or should know that the business has a license which has been revoked.

§ 113.11 APPEAL OF DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(A) After a denial of an application for a sexually oriented business license, a denial of an application for renewal of a sexually oriented business license, or a suspension or revocation of a sexually oriented business license, the applicant or licensee may appeal the denial, suspension, or revocation in writing to the city manager within 20 days after notice of the denial, suspension, or revocation has been received. The city manager shall hold a hearing on whether to issue/renew the license or uphold the denial, suspension, or revocation within five business days after the receipt of the appeal. The applicant or licensee shall have the right to present evidence at the hearing. The decision to issue/renew the license or uphold the denial, suspension, or revocation shall be based solely on the criteria set forth in this Chapter. The city manager shall render a decision on the appeal within five business days after the date of the hearing.

(B) Upon receipt by the city manager of a written appeal pursuant to subsection (A) of this Section, a denial of an application for renewal of the license or a suspension or revocation of the license of any sexually oriented business shall be stayed until a decision is rendered by the city manager.

(C) The decision of the city manager is subject to review in the superior court of the county by proceedings in the nature of certiorari. Any petition for a writ of certiorari for review shall be filed with the clerk of superior court within 30 days after notice of the decision has been received by the applicant or licensee. A denial of an application for renewal of the license or a suspension or revocation of the license of any sexually oriented business shall be stayed until a decision is rendered by the superior court or the time to petition the superior court for a writ of certiorari has expired. The following shall apply to any appeal to superior court from a decision of the city manager:

(1) Unless good cause exists to contest a petition for a writ of certiorari, the city shall stipulate to certiorari no later than five business days after the petitioner requests such a stipulation.

(2) The city shall transmit the record to the court no later than five business days after receiving the order allowing certiorari.

(3) Subject to the provisions of any local rule of the reviewing court which provides for a shorter time period, the city shall file its brief within 15 days after it is served with the petitioner's brief. If the petitioner serves his brief by mail, the city shall add three days to this time limit.

(D) An appeal by an applicant or licensee from the superior court of the county shall be governed by the North Carolina Rules of Appellate Procedure but, unless a court of competent jurisdiction otherwise provides, such appeal shall not stay any action taken with regard to the license.

§ 113.12 TRANSFER OF LICENSE.

A licensee shall not transfer a sexually oriented business license to another person or to other premises. The transfer of a sexually oriented business license shall automatically and immediately revoke the license.

§ 113.13 EXPIRATION OF LICENSE.

(A) Each sexually oriented business license shall expire one year from the date of issuance and may be renewed only by making application, as provided in Section 113.04. Application for renewal shall 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.

(B) When the chief of police denies renewal of the license, the applicant shall not be issued a license under this article for one year from the date of denial. If, subsequent to the denial, the chief of police determines that the basis for the denial has been corrected, the applicant shall be granted a license.

(C) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business when such person knows or should know that the business has a license which has expired.

§ 113.14 PROHIBITIONS REGARDING MINORS.

It shall be unlawful for a licensee, owner, operator, or employee of a sexually oriented business, regardless of whether or not a license has been issued for the business under this Chapter, to knowingly, or with reasonable cause to know, permit or allow:

(1) Admittance of a person who is under 18 years of age to the business premises;

(2) A person who is under 18 years of age to remain at the business premises;

(3) A person who is under 18 years of age to purchase goods or services at the business premises; or

(4) A person who is under 18 years of age to work at the business as an employee.

§ 113.15 ADULT LIVE ENTERTAINMENT BUSINESSES.

(A) The private or semiprivate performance of adult live entertainment in areas commonly known as VIP rooms, VIP booths, or VIP areas presents opportunities for illegal activity such as, but not limited to, indecent exposure and solicitation for prostitution. The purpose of this section is to eliminate VIP adult live entertainment and to require all adult live entertainment to occur in a manner and location that freely permits management and a broad number of patrons to visually observe the entertainment so as to minimize the opportunities for adult live entertainment to lead to illegal activity. This section shall be interpreted and applied in light of this purpose.

(B) An adult live entertainment business, regardless of whether or not a license has been issued for the business under this Chapter, shall be subject to the following:

(1) An application for a sexually oriented business license for adult live entertainment shall be accompanied by a diagram of the premises specifying areas where adult live entertainment may occur. 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 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 to an accuracy of plus or minus six inches. The chief of police may waive the diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises and the areas where adult live entertainment may occur required to be designated in the diagram have not been altered since it was prepared.

(2) Areas where adult live entertainment may occur must:

a. Be at least 750 square feet in area.

b. Contain one or more stages or raised areas where adult live entertainment will occur.

c. Be accessible to all patrons without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee; and

d. Not contain any areas visually screened, obstructed, or separated from the majority of the patrons located in that area, which patrons are present in that area without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee.

(3) No alteration in the configuration of the areas where adult live entertainment may occur, as designated in the diagram required by subsection (B)(1) of this Section, may be made without first obtaining an amendment to the license by submitting and receiving approval of a new diagram.

(4) Adult live entertainment may occur only:

a. In the presence of and visually observable by an employee who is not an adult live entertainer;

b. In the presence of and visually observable by more than one patron;

c. In an area that is shown on an approved diagram as an area where adult live entertainment may occur;

d. In an area that is not visually screened, obstructed, or separated from the majority of the patrons located in that area, which patrons are present without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee; and

e. In an area that is accessible to all patrons without payment of any charge other than the charge, if any, for entry into the premises, such as a cover charge or membership fee.

f. It is unlawful for an adult live entertainer, while engaging in or performing adult live entertainment, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to the employee.

g. It shall be unlawful for an adult live entertainer, while engaging in or performing adult live entertainment, to knowingly and intentionally touch a customer or the clothing of a customer.

h. When adult live entertainment is occurring, it is unlawful for any person, other than an adult live entertainer who is at least six feet from any patron or customer and on a stage that is raised a minimum of two feet from the floor, to knowingly or intentionally exhibit specified sexual activities or specified anatomical areas as defined in this chapter.

(C) It shall be the duty of the operator and any owner who is present on the premises to ensure that adult live entertainment is not performed in the presence of patrons in violation of subsection (B)(4) of this section. It shall be unlawful for any such operator or owner to knowingly fail to fulfill that duty.

(D) It shall be unlawful for an adult live entertainer to engage in or perform adult live entertainment in violation of subsection (B)(4) of this section.

§ 113.16 ADULT MINI-MOTION PICTURE THEATERS.

(A) An adult mini-motion-picture theater, regardless of whether or not a license has been issued for such business under this chapter, shall be subject to the following:

(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 one or more manager's stations, the location of all overhead lighting fixtures, and designating any portion of the premises in which patrons will not be permitted. 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 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 to an accuracy of plus or minus six inches. The chief of police may waive the 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) No alteration in the configuration or location of a manager's station may be made without prior approval of the chief of police.

(3) At least one employee must be on duty and situated at each manager's station at all times that any patron is present in or on the premises.

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

(5) The entrance to each adult mini-motion-picture booth shall be free of any obstruction such as a door, curtain, wall, partial wall, panel, board, merchandise display rack, or other material.

(6) There shall be no openings or glass of any kind between booths, and booths shall not be designed, constructed, or configured in such a manner that the interior of any booth may be visible or made to be visible from any other booth.

(7) The interior of each booth shall be sufficiently illuminated so that the inside of the booth is visible from the manager's station as set forth in subsection (A)(4) of this section.

(8) No booth shall be occupied by more than one patron at any time.

(B) It shall be the duty of the operator and any owner or employees who are present on the premises to ensure compliance with subsections (A)(3) through (8) of this section. It shall be unlawful for any person having such a duty to knowingly fail to fulfill that duty.

§ 113.17 CLOTHING MODELING STUDIOS.

(A) A clothing modeling studio, regardless of whether or not a license has been issued for such business under this chapter, shall be subject to the following:

(1) A model shall not encourage or permit a patron to expose or display the patron's specified anatomical areas.

(2) A model shall not suggest or imply that a customer should or is permitted to expose or display the patron's specified anatomical areas.

(3) A model shall not expose or display the model's specified anatomical areas at any time the model is in the presence of a patron.

(4) A model shall not straddle a patron.

(5) A model shall not offer or agree to straddle a patron.

(6) A model shall not intentionally touch the clothed or unclothed body of a patron at any point below the waist and above the knee of the patron.

(7) A model shall not encourage or permit a patron to touch the clothed or unclothed body of the model at any point below the waist and above the knee of the model.

(8) A model shall not encourage or permit a patron to touch the clothed or unclothed breast of the model.

(9) All fees and charges, including tips and gratuities, paid by a patron of a clothing modeling studio shall be paid to the model or the studio before the modeling session begins. A model shall not solicit or accept any tip, gratuity, or compensation from a patron in violation of this subsection.

(10) All modeling for a patron must occur in the presence of and be visually observable by an employee who is not a model.

(11) The entrance to each room in which modeling for a patron is being performed shall be free of any obstruction such as a door, curtain, wall, partial wall, panel, board, or other device, and the entire interior of each such room shall be visible from the aisle, walkway, or hallway leading to the room.

(B) It shall be the duty of the operator and any owner who is present on the premises to ensure that clothing modeling is not performed in the presence of a patron in violation of subsection (A) of this section. It shall be unlawful for any such operator or owner to knowingly fail to fulfill that duty.

(C) It shall be unlawful for a model to violate any of the subsections of subsection (A) of this section.

§ 113.18 HOURS OF OPERATION.

No sexually oriented business regulated by this chapter may remain open for business at any time between the hours of 2:30 a.m. and 7:00 a.m.

§ 113.19 CRIMINAL PENALTY.

Any person who commits an act declared to be unlawful by this chapter shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00. Each violation shall be considered a separate and distinct offense, and each day of continued violation shall be considered as a separate offense. The issuance of a notice of violation or a suspension or revocation of a sexually oriented business license shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the issuance of a notice of violation or a suspension or revocation of the license.

§ 113.20 CIVIL INJUNCTION.

In addition to the issuance of a notice of violation, the suspension or revocation of a sexually oriented business license, or a prosecution for criminal violations, any person who violates this chapter may be subject to all civil and equitable remedies stated in G.S. 160A-175.

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall be in full force and effect upon and after the 1st day of June, 2010.

This ordinance was adopted by the Asheboro City Council in open session during a regular meeting that was held on the 6th day of May, 2010.

s/ David H. Smith
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

NEW BUSINESS:

6. RZ -10-05: Request to rezone from R10 (Medium-Density Residential) to O&I (Office and Institutional). The property of Carolina Bank is located along the west side of Browers Chapel Road, approximately 800 feet south of East Dixie Drive (U.S. Highway 64), and consists of approximately 0.64 of an acre of land. Randolph County Parcel Identification Number 7760378417 more specifically identifies the property.

Mayor Smith opened the public hearing on the following request.

Mr. Neely presented the staff's analysis of the request by Carolina Bank to rezone the above-referenced property from R10 (Medium Density) to O&I (Office and Institutional). The Planning Board recommended approval of the requested rezoning because the Board concurred with the analysis provided by the planning department staff. The staff's analysis is as follows:

"Analysis of this request is complex. The property is designated by the Land Development Plan 'Proposed Land Use Map' as neighborhood residential. The Land Development Plan 'Proposed Land Use Map' was adopted prior to the creation of the O&I zoning district, which was designated as a transitional zoning district to be placed between more intensive commercial uses and residential uses. . . .The property is also located on a minor thoroughfare, increasing the validity of the request.

The requested Office and Institutional (O&I) zoning district is generally the least intensive non-residential zoning district, and prohibits more intensive commercial uses (i.e. retail, eating establishments, hotels, sales of motor vehicles, etc.) that are permitted in other commercial zoning districts. Considering the character of Browers Chapel Road, which exhibits a pattern of progressively less intensive uses between heavier commercial uses to the north (at East Dixie Drive) and single-family residential uses to the south, the Office and Institutional District is an appropriate transitional zoning that is supported by the text of the Land Development Plan. Considering these factors, staff believes this request is within the public interest in supporting a reasonable use of the property."

Mr. H.R. Gallimore presented comments in support of the request.

Mr. Thomas Johnson, a neighboring property owner, was concerned that the transition from residential to commercial would be detrimental to the surrounding properties. Mr. Johnson felt that the rezoning would not be in harmony with the surrounding residential area.

There being no further comments, Mayor Smith closed the public hearing.

Upon motion by Mr. Moffitt and seconded by Mr. Baker, Council unanimously followed the recommendation of the Planning Board and approved the requested rezoning.

7. Public hearing concerning the City's efforts to update the City of Asheboro 10 year Comprehensive Solid Waste Management Plan.

Mayor Smith opened the advertised public hearing regarding the City's efforts to update the City of Asheboro ten-year Comprehensive Solid Waste Management Plan. In compliance with the applicable laws, the city updates this comprehensive plan every three years.

Mr. Kermit D. Williamson, the city's Sanitation Superintendant, presented the ten-year solid waste management plan for the City of Asheboro. A copy of the plan will be posted to the city's website for public inspection and is also available for inspection in the City Clerk's office.

There being no comments from the public, Mayor Smith closed the public hearing.

A final draft of the ten-year solid waste management plan will be considered by the Council at its regular June meeting.

8. Public comment period.

Ms. Carolyn Pyrtle presented a signed petition reflecting signatures of church members within the community opposing adult entertainment facilities within the City of Asheboro. Ms. Pyrtle relayed to the Council that these church members strongly oppose adult entertainment facilities within the city. The petition submitted by Ms. Pyrtle is on file in the City Clerk's office.

No other members of the public offered comments during this portion of the meeting.

9. Consideration of the purchase of approximately 3.529 acres of land adjacent to city-owned property at Lake Bunch for the purpose of watershed buffer and soil erosion protection.

(a) Report from public works committee.

Mr. Baker, Chairperson of the Public Works Committee, reported that the Public Works Committee met on Wednesday, May 5, 2010 and recommended to the Council that the city buy approximately 3.529 acres of land located adjacent to city-owned property at Lake Bunch for the purpose of watershed buffer and soil erosion protection.

(b) Consideration of a resolution authorizing an offer to purchase the real property.

Upon motion by Mr. Baker and seconded by Mr. Burks, Council voted unanimously to adopt the following resolution by reference.

16 RES 5-10

RESOLUTION AUTHORIZING AN OFFER BY THE CITY OF ASHEBORO TO PURCHASE CERTAIN REAL PROPERTY

WHEREAS, J.B. Davis and wife, Claire Davis; Jerry Bullins and, wife Carol Bullins; and Charles Edward Kinney and wife, Betty Kinney own a 3.529 acre, more or less, parcel of land that is located within the watershed in Back Creek Township, Randolph County, North Carolina and is more specifically identified by Randolph County Parcel Identification Number 7741767214 (this parcel of land is hereinafter referred to as the "Watershed Parcel"); and

WHEREAS, the City of Asheboro would like to foster water quality enhancement by protecting the existing natural vegetative buffer in the general vicinity of Lake McCrary and Lake Bunch by removing the Watershed Parcel from the inventory of land available for future development and land disturbing activities; and

WHEREAS, the owners of the Watershed Parcel have expressed a willingness to convey the lot to the City of Asheboro in fee simple in consideration of the payment of a purchase price of twenty thousand and no/100 dollars (\$20,000.00); and

WHEREAS, the Asheboro City Council has concluded that the proposed purchase price is reasonable and the acquisition of this land is consistent with the Council's goals.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Asheboro that the OFFER TO PURCHASE AND CONTRACT attached to this resolution as EXHIBIT 1 and incorporated herein by reference is hereby approved; and

BE IT FURTHER RESOLVED that the Mayor and the city's appointed officials are hereby authorized to execute any and all documents and instruments necessary for the acquisition of the Watershed parcel in accordance with the terms and conditions of the approved OFFER TO PURCHASE AND CONTRACT.

This resolution was adopted by the Asheboro City Council in open session during a regular meeting held on the 6th day of May, 2010.

s/ David H. Smith
David H. Smith, Mayor

ATTEST:

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

EXHIBIT 1

STATE OF NORTH CAROLINA

OFFER TO PURCHASE AND CONTRACT

COUNTY OF RANDOLPH

The CITY OF ASHEBORO (hereinafter referred to as the "Buyer"), a North Carolina municipal corporation, hereby contracts and agrees to purchase and J.B. DAVIS and wife, CLAIRE DAVIS; JERRY BULLINS and wife, CAROL BULLINS; and CHARLES EDWARD KINNEY and wife, BETTY KINNEY (hereinafter collectively referred to as the "Seller") hereby contract and agree to sell and convey to Buyer a 3.529 acre, more or less, parcel of land that is located in Back Creek Township, Randolph County, North Carolina. This parcel of land is more specifically identified by Randolph County Parcel Identification Number 7741767214.

The purchase price for the above-described parcel of land is twenty thousand and no/100 dollars (20,000.00).

This offer from the Buyer is subject to the following terms and conditions which, if accepted by the Seller, shall be deemed to be the terms and conditions of sale:

1. The Buyer shall be responsible for obtaining a title examination and any other studies deemed appropriate in the sole discretion of the Buyer. If the results or findings of any such studies or examinations are not acceptable to the Buyer, written notice shall be provided to the Seller. The parties shall make a reasonable effort to resolve any unsatisfactory matters disclosed by said studies or examinations. If such unsatisfactory matters cannot be resolved prior to the closing date referenced below, the Buyer may terminate its offer without any penalty or cost to itself, and the parties shall have no further rights or obligations regarding the sale of the above-described property.
2. The Seller shall be responsible for the payment of the following expenses: (i) The recording fees charged by the Office of the Register of Deeds for Randolph County, North Carolina in order to record any instrument(s) deemed necessary by the Buyer for the conveyance of title to the above-described parcel of land from the Seller to the Buyer in accordance with the terms and conditions of this offer; (ii) Any excise or revenue stamps associated with the conveyance of the real property from the Seller to the Buyer; and (iii) Ad valorem taxes prorated to the date of closing.
3. The Buyer shall be responsible for the preparation of the North Carolina General Warranty Deed specified herein and for the payment of closing costs not otherwise assigned to the Seller by this agreement.
4. All deeds of trust, liens, and other charges against the property must be paid and cancelled by the Seller prior to or at closing.
5. Title must be delivered by the Seller at closing by means of a North Carolina General Warranty Deed and must be fee simple marketable title, free of all encumbrances and exceptions other than those specifically approved by the Buyer.
6. Closing shall be completed on or before **June 1, 2010, TIME BEING OF THE ESSENCE WITH REGARD TO SAID DATE.**
7. This contract contains the entire agreement of the parties and there are no representations, inducements, or other provisions other than those expressed herein. All changes, additions, or deletions hereto must be in writing and signed by both parties.

DATE OF OFFER: _____

CITY OF ASHEBORO ("BUYER"):

By: _____
David H. Smith, Mayor

ATTEST: _____
Holly H. Doerr, City Clerk

This instrument has been preaudited in the manner prescribed by the Local Government Budget and Fiscal Control Act.

Deborah P. Reaves, Finance Officer

DATE OF ACCEPTANCE: _____

J.B. DAVIS AND WIFE, CLAIRE DAVIS; JERRY BULLINS AND WIFE, CAROL BULLINS; AND CHARLES EDWARD KINNEY AND WIFE, BETTY KINNEY ("SELLER"):

J.B. Davis (SEAL)

Claire Davis (SEAL)

Jerry Bullins (SEAL)

Carol Bullins (SEAL)

Charles Edward Kinney (SEAL)

Betty Kinney (SEAL)

10. Consideration of the temporary closure of the South end of Anns Court on Saturday, May 8, 2010 from 6:00 p.m. until 10:00 p.m.

Upon motion by Mr. Moffitt and seconded by Mr. Bell, Council voted unanimously to temporarily close the South end of Anns Court on Saturday, May 8, 2010 from 6:00 p.m. until 10:00 p.m.

A diagram of the specific area to be temporarily closed is on file in the City Clerk's office.

11. Notification of dates for the Council's annual planning retreat on Thursday, May 13th, 2010 and Friday, May 14th, 2010.

Mayor Smith announced that the Council's annual planning retreat will be held on Thursday, May 13, 2010 and Friday, May 14, 2010 at the Hampton Inn in Asheboro.

12. Discussion of items not on the agenda.

- Friday, May 7, 2010 at 2:00 p.m. – rededication of mural on the corner of Fayetteville Street and Sunset Avenue.
- Friday, May 7, 2010 – Concert in Bicentennial Park
- Saturday, May 8, 2010 – Art-May-Ham
- Saturday, May 8, 2010 at 10:00 a.m. – Tour of the Old City Cemetery

There being no further business, the meeting was adjourned at 8:14 p.m.

s/ Holly H. Doerr
Holly H. Doerr, City Clerk

s/ David H. Smith
David H. Smith, Mayor