

CHAPTER 110: ADULT ENTERTAINMENT

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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-212.

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; or

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

(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 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.

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.

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)

§ 110.02 PURPOSE AND EFFECT.

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 city, 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. Therefore, pursuant to Article II, § 24 of the North Carolina Constitution; and G.S. §§ 153A-3, 153A-4, 153A-45, 153A-121, 153A-122, 153A-123, 153A-124, 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)

§ 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 commission price 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) and (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-5, 153A-121, 153A-122, 153A-123, 153A-124, 153A-134, and 153A-135, as provided for herein.
(Ord. passed 7-21-75)

§ 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 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.

(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.

(E) The places and subject matter declared to be public nuisances under § 110.04(A) through (D) shall be abated pursuant to Article II, § 24 of the State Constitution and G.S. § 153A-3, 153A-4, 153A-5, 153A-121, 153A-122, 153A-123, 153A-124, 153A-134, and 153A-135, as provided for herein.

(Ord. passed 7-21-75)

§ 110.05 ACTION TO BE TAKEN BY COUNTY COMMISSIONERS.

(A) Upon a specific finding that a public nuisance, as defined in either § 110.03 and/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.

(4) Order all persons named in § 110.03(E) and/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.

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

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

(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

(d) 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.

(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 State 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.

(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 I, 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)

§ 110.06 ACTION BROUGHT PURSUANT TO ADULT ENTERTAINMENT REGULATIONS.

(A) Upon judgement against the owners or operators of the theater or place of business in legal proceedings brought pursuant to this chapter and applicable General Statutes, an accounting shall be made by the defendants of all monies received by them which have been declared to be a public nuisance under § 110.03(D) and/or § 110.04(D) of this chapter. Such monies or their equivalent shall be forfeited to the General Fund of the county.

(B) The cost of abatement shall include the following:

(1) Investigative costs.

(2) Court costs.

(3) Reasonable attorney's fees arising out of preparation for, and trial of, the cause and appeals therefrom.

(4) Printing costs of trial and appellate briefs, and all other papers filed in the proceedings.

(C) Such costs of abatement is made a special assessment against the parcel of land upon which the nuisance is maintained. Upon its determination in a civil action, the costs of abatement shall, by special ordinance, be made a lien against the property and a personal obligation against the property owner and the theater or business operator and shall be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary county taxes. All laws, applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to the special assessment.

(Ord. passed 7-21-75)

§ 110.07 ACTION TO BE TAKEN BY COUNTY ATTORNEY.

Upon a specific finding by resolution of the Board of Commissioners of the fact that a public nuisance, as defined herein, exists at a particular location, the County Attorney shall:

(A) Immediately institute legal proceedings under this chapter and under G.S. Chapter 19, Article 1, seeking the following relief:

(1) A declaratory judgement that the motion picture or pictures or publications named by the Board of Commissioners are lewd films or obscene publications.

(2) A declaratory judgement that the films or publications found to be lewd or obscene are public nuisances under this chapter and such resolution.

(3) A declaratory judgment that the place named by the Board of Commissioners where the film or films or publications are being exhibited or sold are a public nuisance under this chapter and such resolution.

(4) An accounting of all monies paid as admission or purchase price to the operators of the theater or business from and after the time the persons maintaining the nuisance 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 tendency 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)