




WATAUGA COUNTY

Department of
Planning & Inspections

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Memorandum

Date: October 22, 2021
To: Board of Commissioners, County Manager
From: Joe Furman, Director 
RE: Additional required amendments to Planning & Development Ordinance

Session Law 2021-138, ratified August 25, 2021 and signed into law September 2, 2021 contains a provision in Part XIII that “decriminalizes” local ordinances, and takes effect December 1, 2021. Here the link to a UNC School of Government blog describing the law: [Legislature Decriminalizes Local Ordinances - Coates' Canons Coates' Canons \(unc.edu\)](#). The law requires the County to amend the Planning & Development Ordinance to remove all references to using criminal enforcement procedures. The law does not affect the County’s ability to use civil penalties. As a practical matter, we almost exclusively use civil penalties when any penalties are necessary. I request that these amendments be considered during the previously scheduled November 16, 2021 public hearing to consider other amendments to that ordinance. Reference is made to misdemeanors and criminal penalties on the following pages and must be removed/replaced: Table of Contents p. v, and pp. 20, 97, 98, 100, 101, 111, 113, 173, 175, 176, 177, 179, 180, 182, 183. These pages are attached and changes are indicated by strike-throughs and red ink.

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electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

Article IV Remedies

Subject to the provisions of the development regulation, any development regulation adopted pursuant to authority conferred by N.C.G.S. 153A-121 or N.C.G.S. 160D, or any State law delegated to the County for enforcement purposes in lieu of the State may be enforced by any remedy provided by N.C.G.S. 160A-175 or N.C.G.S. 153A-123. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of any development regulation or other regulation made under authority of the cited statutes, the County, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

Article V Penalties

Any person, firm or corporation who violates any provision of any article of this ordinance, or NCGS 160D, Article 11; or who shall violate or fail to comply with any order made there under; or who shall continue to work upon any structure after having received written notice from the Ordinance Administrator or Building Inspector to cease work, ~~shall, upon conviction, be guilty of a misdemeanor and shall be punishable by a fine not to exceed fifty (\$50.00) dollars, or imprisonment not to exceed thirty days. Each day such violation shall be permitted to exist shall constitute a separate offense. Notice of violation shall be sufficient if directed to the owner, the agent of the owner, or the contractor and left at his known place of residence or place of business. In lieu of or in addition to the criminal penalties outlined above,~~ a person violating this ordinance may be subject to a civil penalty, under N.C.G.S. 153A-123(c), in the discretion of the Board of County Commissioners, not to exceed \$100.00. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it may be considered a separate offense. If the violator does not

Section 2. Willful Resistance, Delay or Obstruction.

No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

Section 3. Notice of Violation.

If the County determines that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. Any person who fails to comply within the time specified is subject to additional civil ~~and criminal~~ penalties for a continuing violation as provided in G.S. 113A-64 and this chapter.

Section 4. Investigation.

The County shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

Section 5. Statements and Reports.

The County shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Article XVIII Stop Orders

Wherever land-disturbing activity is being undertaken in a manner which is in violation of this chapter, the Watauga County Department of Planning and Inspection may order the work that is in violation to be immediately stopped. The stop order shall be in writing and directed to the person responsible for the violation, and shall state the specific work to be stopped,

the specific reasons for the stoppage, and the conditions under which the work may be resumed. Appeals from a stop order shall be made as prescribed in [Article XVI](#) of this chapter. Pending the ruling on the appeal, no further work may take place in violation of a stop order. ~~Violation of a stop order constitutes a misdemeanor.~~

In addition, in accordance with N.C.G.S. 160D-404(b), the Watauga County Building Inspectors are authorized to issue stop orders for building permits where violations of this ordinance are taking place in connection with construction authorized by the building permit.

Article XIX Revocation of Grading Permits

The Watauga County Department of Planning and Inspections may revoke and require the return of any permit by giving written notice to the permit holder, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application or plans and specifications, for refusal or failure to comply with the requirements of any applicable State or local laws or local ordinances or regulations, or for false statements or misrepresentations made in securing the permit. A permit mistakenly issued in violation of an applicable State or local law or local ordinance or regulation also may be revoked.

Article XX Building Permits

No permits for any building or structure shall be issued upon any land requiring submission of a soil erosion control plan and issuance of a grading permit until such plan is submitted and permit issued.

Article XXI Security Required

The applicant for a permit may, prior to commencing any land-disturbing activity, be required to file with Watauga County an improvement security in the form of an escrow account, surety bond, irrevocable letter of credit, or other undertaking satisfactory to the County Attorney, in an amount deemed sufficient by the Watauga County Department of Planning and Inspections, to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this chapter. Such security shall remain in force until the improvements are completed in accordance with the approved plan and said improvements are finally inspected and approved as set out in paragraph below.

Upon completion of the improvements as required by this chapter, written notice thereof shall be given by the applicant to the Department of Planning and Inspections and the Department shall cause an inspection of the

either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the County (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.

- (D) Final Decision: The final decision on contested assessments shall be made by the Board of Commissioners in accordance with this ordinance.
- (E) Appeal of Final Decision. Appeal from the final decision of the Board of Commissioners shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the Board of Commissioners.
- (F) Collection. If payment is not received within 60 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (G) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each County for the prior fiscal year.

[In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

Section 2. Criminal Penalties:

~~Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for~~

~~which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.~~

Article XXIII Injunctive Relief

Section 1. Violation of Local Program.

Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the County for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

Section 2. Abatement of Violation.

Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any ~~civil or criminal~~ penalty prescribed for violations of this chapter.

Article XXIV Restoration After Non-Compliance

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other ~~civil or criminal~~ penalty or injunctive relief authorized under this chapter.

Article XXV Effective Date

February 20, 2019

Article IV, Section 4(B)(2), in order to administer the provisions of this ordinance.

- (L)** When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Article IV, Section 2, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (M)** When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file,
- (N)** Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (O)** Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- ~~**(P)**~~ Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. ~~Violation of a stop-work order constitutes a misdemeanor~~
- (Q)** Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false

- (3) that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (C) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this chapter, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred-eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (D) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator and the Clerk to the Board of Adjustment within thirty (30) days following issuance of the final binding order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- ~~(E)~~ Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the Board of Adjustment following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court **subject to civil penalties as set forth in Chapter 5 of this ordinance.**

Section 5. Variance Procedures.

- (A) The Board of Adjustment as established by Watauga County, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this chapter.
- (B) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (C) Variances may be issued for:
- 1) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum

the premises of a sexually oriented business for the purpose of insuring compliance with the law.

A person who operates a sexually oriented business or his agent or employee ~~commits a misdemeanor~~ **shall be subject to civil penalties** if he refuses to permit such lawful inspection of the premises at any time.

Article VII Expiration of License

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in [Article III](#). Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the license will expire.

When the County Official denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

Article VIII Suspension

The County Official shall suspend a license for a period not to exceed thirty (30) days if he/she determines that a licensee or an employee of a licensee has:

- (A) violated or is not in compliance with any section of this chapter;
- (B) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to address shown on the application.

Article IX Revocation

Section 1. Previous Suspension

The County Official shall revoke a license if a cause of suspension in [Article VIII](#) occurs and the license has been suspended within the preceding twelve (12) months.

Article XI Location of Sexually Oriented Businesses

Section 1. Residential Structures.

A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business within 660 feet of any residential structure.

Section 2. Non-Residential Structures.

~~A person commits a misdemeanor if the person operates or causes to be operated a~~ **No** sexually oriented business **shall be operated** within 1500 feet of:

- (A) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- (B) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.
- (C) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the county which is under the control, operation, or management of the county park and recreation authorities;
- (D) A fire department
- (E) An entertainment business which is oriented primarily towards children or family entertainment; or
- (F) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

Section 3. Proximity to Existing Sexually Oriented Business.

~~A person commits a misdemeanor if that~~ **No** person **shall** ~~causes~~ or ~~permits~~ the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1500 feet of another sexually oriented business.

Section 4. Highway.

~~A person commits a misdemeanor if that~~ No person shall causes or permits the operation or establishment of a sexually oriented business on any road in Watauga County other than a federal aid primary system highway as designated by the federal government.

Section 5. Existing Sexually Oriented Business

~~A person commits a misdemeanor if that~~ No person shall causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

Section 6. Measurement to Property Line.

For the purpose of [Section 2](#) of this Article, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in [Section 2](#). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

Section 7. Measurement to Structure.

For purposes of [Section 1](#) & [3](#) of this Article, the distance between a residence and a sexually oriented business or between two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each residence or business is located.

Section 8. Applicably to Other Ordinances.

Nothing herein is intended to or shall be construed to preempt, modify, or repeal any other land use regulation applicable to any property or its use in the County, but instead this Ordinance is intended to and shall be in addition thereto.

Article XII Additional Regulations For Adult Motels

Section 1. Adult Motel.

Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

Section 2. Penalties.

A person ~~commits a misdemeanor~~ **shall be subject to civil penalties or other appropriate remedies** if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

Section 3. Word Interpretation.

For purposes of Section 2 of this Article, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Article XIII Regulation Pertaining To Exhibition of Sexually Explicit Films, Videos or Live Entertainment

Section 1. Requirements.

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (A)** 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 and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted.

- (J) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (K) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (L) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (M) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

Section 2. Maintenance.

It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

Section 3. Penalties.

A person having a duty under Section 1 or 2 above ~~commits a misdemeanor~~ shall be subject to civil penalties or other appropriate remedies if he knowingly fails to fulfill that duty.

Article XIV Additional Regulations

Section 1. For Escort Agencies.

- (A) An escort agency shall not employ any person under the age of 21 years.
- (B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 21 years.

Section 2. For Nude Model Studios.

- (A) A nude model studio shall not employ any person under the age of 21 years.
- (B) A person under the age of 21 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 21 years was in a restroom not open to public view or visible to any other person.
- (C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in

an area of a nude model studio premises which can be viewed from the public right of way.

- (D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Section 3. Concerning Public Nudity.

- (A) It shall be a ~~misdemeanor~~ **violation** for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- (B) It shall be a ~~misdemeanor~~ **violation** for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.
- (C) It shall be a ~~misdemeanor~~ **violation** for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- (D) It shall be a ~~misdemeanor~~ **violation** for an employee, while semi-nude, to touch a customer or the clothing of a customer.

Article XVII Prohibition Against Youth in a Sexually Oriented Business

A person commits a misdemeanor if the person allows a person under the age of 21 years on the premises of a sexually oriented business.

Article XVIII Prohibition Of Sale or Consumption of Alcohol

Sale or consumption of alcohol on the premises of sexually oriented business shall be prohibited. ~~Violations shall be a misdemeanor.~~

Article XIX Exterior Portions of Sexually Oriented Businesses

Section 1. Visibility.

It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

road right-of-way. Lists of recommended plantings are available from the Planning and Inspection Department.

(B) Walls, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved by County Official. Considerations include but are not limited to:

(1) Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms, and/or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link fencing is not acceptable in meeting the performance criteria of this ordinance.

(2) Installation of supplemental vegetation and/or site features may be required if existing vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.

Section 6. Maintenance

The sexually oriented business licensee shall be responsible for proper maintenance of parking and buffer areas required by this ordinance.

Section 7. Penalties.

Any violation of this Section shall be a misdemeanor. ...

Article XX Signage

~~It shall be a misdemeanor for the~~ **No** owner or operator of any sexually oriented business or any other person ~~to~~ **shall** erect, construct, or maintain any sign for the sexually oriented business other than as permitted in the sign regulations of Watauga County.

Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.

Article XXI Hours of Operation

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, or during the period from eleven o'clock (11:00) P.M. Saturday until eight o'clock (8:00) A.M. Monday.

Article XXII Exemptions

It is a defense to prosecution under [Article XIV Section 2](#) that a person appearing in a state of nudity did so in a modeling class operated:

- (A) by a proprietary school, licensed by the State of North Carolina; a college, junior college, or university supported entirely or partly by taxation;
- (B) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (C) in a structure:
 - (1) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (2) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - (3) where no more than one nude model is on the premises at any one time.

Article XXIII Injunction

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this chapter is subject to a suit for injunction as well as ~~prosecution for criminal violations.~~ Pursuant to ~~NC General Statute 14-4,~~ each violation of any requirement of this chapter shall be a crime, which shall be punishable by a fine of \$500.00 or thirty (30) days imprisonment. **civil penalties of \$100.00.** Each day any such violation continues or occurs in is a separate offense or violation.

Notwithstanding the foregoing, licensing decisions including issuance, revocation, and suspension, based upon violations of this chapter, shall be made by the County Official based upon a preponderance of the evidence.