**CHAPTER 4: AMUSEMENTS AND ENTERTAINMENT**

**CHAPTER** **4:** **AMUSEMENTS AND ENTERTAINMENT**

Section

***Article I. In General***

4‑1 Penalty

4‑24‑29 Reserved

***Article II. Carnivals and Exhibitions***

4‑30 Definitions

4‑31 License required

4‑32 Condition of license

4‑33 License fees

4‑34 Insurance

4‑35 Supervision

4‑36 Licensee responsible

4‑37 Revocation of licenses

4‑384‑70 Reserved

***Article III. Temporary Entertainment***

4‑71 Definitions

4‑72 Application, approval

4‑73 Location

4‑74 Security

4‑75 Other requirements

4‑76 Authorizations, permits required

4‑77 Settlement of disputes

4‑784‑95 Reserved

***Article IV. Amusement Devices***

4‑96 Definitions

4‑97 Enforcement

4‑98 License required; application; issuance

4‑99 Falsification of application

4‑100 Fees

4‑101 Denial of license

4‑102 Expiration and renewal of license; transfer

4‑103 Employees and agents

4‑104 Operation

4‑105 Billiards and pool tables

***Cross-reference:***

*Amusements and failure to pay admission fee, see  26‑73*

***Statutory references:***

*License taxes, see G.S.  105‑33 et seq.*

*Regulation of places of amusement, see G.S.  160A‑181*

***ARTICLE I. IN GENERAL***

**4‑1 PENALTY.**

Any violation of this chapter subjects the offender to a civil penalty of $500, as outlined in  1‑6.

(2001 Code,  4‑1)

**4‑24‑29 RESERVED.**

***ARTICLE II. CARNIVALS AND EXHIBITIONS***

***Statutory reference:***

*Authority to regulate places of amusement, see G.S.  160A‑181*

**4‑30 DEFINITIONS.**

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

***CARNIVAL.*** Amusement activities, rides, merry‑go‑rounds, booths for the conduct of games of skill, food dispensing facilities and sideshows. A ***CARNIVAL*** shall not include gambling devices, games of chance, lotteries, punch boards or other activities in violation of town ordinances.

***EXHIBITION.*** Circuses, menageries, carnivals, side shows and other similar amusement enterprises which are open to the public and for admission to which a fee is charged.

(2001 Code,  4‑30)

***Cross-reference:***

*Definitions generally, see 1‑2*

**4‑31 LICENSE REQUIRED.**

It shall be unlawful to conduct or operate within the town limits any exhibition or carnival which is open to the public without first securing a license; however, this section shall not be held to apply to those amusements or exhibitions which are specifically licensed on other sections of this article or other articles in this chapter.

(2001 Code,  4‑31)

**4‑32 CONDITION OF LICENSE.**

(A) In addition to other requirements set forth in this article, the applicant shall first make application to the Board of Commissioners before a license is issued by the Town Clerk. The following information shall be submitted to the Board of Commissioners:

(1) The name of the local civic group;

(2) The week and time of opening; and

(3) The location of the site and written approval from the property owner.

(B) It shall be understood that the sponsor and operator of the carnival or exhibition shall be wholly responsible for maintaining order, and for keeping the site clean, free of trash, papers and other debris. Trash containers in adequate number shall be placed in convenient locations for the use of the public. A security deposit amount as set from time to time and included in the annual budget ordinance is required for trash and debris removal. Proceeds will be refunded within 30 days after the event after the town deducts any applicable removal expenses.

(C) No ride shall be placed in operation for public use until it has been inspected for mechanical, structural, electrical and other hazards by the Building Inspector, Electrical Inspector and other officers or employees of the town having jurisdiction. Adequate safeguards shall be placed to protect both operators and the general public from inadvertently coming into contact with moving parts, belts, motor gears, electrical switches and other possible or potential hazards.

(2001 Code,  4‑32)

**4‑33 LICENSE FEES.**

Upon satisfactory application being made and approved by the Board of Commissioners, the Town Clerk shall issue the applicant a license for an amount as set from time to time and pursuant to G.S.  105‑37.1 and 105‑40, as provided in the annual budget ordinance; provided, the applicant has first secured state and county licenses.

(2001 Code,  4‑33)

**4‑34 INSURANCE.**

No license shall be issued for conducting an exhibition or carnival until the applicant has placed on file with the Town Clerk a certificate of insurance indicating that there is in effect public liability insurance covering any damages arising out of the use and operation of any and all devices and facilities operated in connection with the carnival or exhibition. The insurance shall be in the minimum amounts as set from time to time and on file at the Town Clerks office, as set forth in the annual budget ordinance.

(2001 Code,  4‑34)

**4‑35 SUPERVISION.**

For the purpose of preserving and maintaining order, a sufficient number of police officers shall be admitted to the exhibitions free of charge. All costs associated with providing adequate police protection are the duty of the licensee.

(2001 Code,  4‑35)

**4‑36 LICENSEE RESPONSIBLE.**

The acts and conduct of the agents and employees of the licensee in the conduct of the business shall be deemed to be the acts and conduct of the licensee.

(2001 Code,  4‑36)

**4‑37 REVOCATION OF LICENSES.**

(A) A violation by a licensee or his or her agent or employee for any violation of any provision of this article shall, by operation of law, constitute an automatic revocation of the license of the licensee. In addition, the Board of Commissioners may, at any time, for cause, and after a hearing, of which the licensee shall be given reasonable notice as the Board of Commissioners may direct, revoke any license issued pursuant to this article.

(B) Any denial or revocation of a license must first be appealed in writing within ten days of the denial/revocation to the Board of Commissioners. If, after a hearing, the Board maintains its original decision, the applicant has ten days to file a written appeal with the Superior Court.

(2001 Code,  4‑37)

**4‑384‑70 RESERVED.**

***ARTICLE III. TEMPORARY ENTERTAINMENT***

**4‑71 DEFINITIONS.**

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

***TEMPORARY.*** Any length of time that does not contemplate a year-round operation at a proposed site.

***TEMPORARY ENTERTAINMENT.*** A carnival, circus, animal menagerie, pony rides or any other event that is provided on a temporary basis for an admission charge and is held in an outdoor setting such as a park, field or residential or commercial lot.

(2001 Code,  4‑71) (Ord. 1997‑05, passed 5‑13‑1997)

***Cross-reference:***

*Definitions generally, see 1‑2*

**4‑72 APPLICATION, APPROVAL.**

Any person or organization, whether for profit or non-profit, wishing to sponsor, conduct or operate temporary entertainment in the zoning authority shall apply through the Town Board and must receive approval from that Board prior to the event.

(2001 Code,  4‑72) (Ord. 1997‑05, passed 5‑13‑1997)

**4‑73 LOCATION.**

(A) The location of a temporary entertainment cannot be placed within 1,500 feet in any direction of a residential area.

(B) Prior to the Town Boards hearing the request, the proposed location for the temporary entertainment must be posted; and the hearing must be publicized in the same means and guidelines as required in this article for other public hearings.

(C) The additional costs for posting and publication of the request shall be paid by the applicant. Any other fees required by this code shall remain in effect and be paid prior to approval of the event.

(2001 Code,  4‑73) (Ord. 1997‑05, passed 5‑13‑1997)

**4‑74 SECURITY.**

The applicant for a license under this article shall assure proper security is provided and paid at his or her expense. The applicant shall also post a bond as determined by the Town Board for cleaning the area. The bond will be returned upon inspection of the area by a town representative and acknowledgment that the area has been properly cleaned.

(2001 Code,  4‑74) (Ord. 1997‑05, passed 5‑13‑1997)

**4‑75 OTHER REQUIREMENTS.**

All other requirements specified by the state, county or town shall be in effect. This section does not nullify any other requirement for an event under this article.

(2001 Code,  4‑75) (Ord. 1997‑05, passed 5‑13‑1997)

**4‑76 AUTHORIZATIONS, PERMITS REQUIRED.**

No temporary entertainment shall be conducted in the zoning districts without the needed authorizations and permits. No permits shall be issued until all requirements are met.

(2001 Code,  4‑76) (Ord. 1997‑05, passed 5‑13‑1997)

**4‑77 SETTLEMENT OF DISPUTES.**

Any disputes over the applicability of this article to a type of entertainment event shall be decided by the Zoning Administrator. The decision shall be appealable within ten days in writing to the Board of Commissioners. The Board shall set the hearing within a reasonable amount of time.

(2001 Code,  4‑77) (Ord. 1997‑05, passed 5‑13‑1997)

**4‑784‑95 RESERVED.**

***ARTICLE IV. AMUSEMENT DEVICES***

**4‑96 DEFINITIONS.**

(A) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

***AMUSEMENT DEVICE.*** Any bowling alley, pinball machine or mechanical or electronic amusement device which is or may be operated for or upon the payment of money, trade‑token or slug, either directly or indirectly, and which operates or may be operated by retail patrons as a game or contest of skill or amusement of any kind or description, and which contains no automatic payoff device for the return of money, trade‑token or slug, or for which no provision whatever is made for the return of money to the player.

***MECHANICAL OR ELECTRONIC AMUSEMENT DEVICE.***

(a) Any machine which, upon insertion of a coin, trade‑token or slug or upon other activation for payment or promise of payment in money, operates or may be operated by retail patrons as a game or contest of skill or amusement of any kind or description, and which contains no automatic payoff device for the return of money or trade‑token or slug, or which makes no provision whatsoever for the return of money to the player.

(b) A ***MECHANICAL OR ELECTRONIC AMUSEMENT DEVICE*** is further defined as any machine, apparatus or contrivance which is used or which may be used as a game of skill and amusement wherein or whereby the player initiates, employs or directs any force, action or image generated by or on or in the machine.

***OPERATION.*** The keeping or maintaining for use or play by retail patrons of an amusement device or the maintenance or management of a place of amusement.

***PLACE OF AMUSEMENT.*** Any premises where one or more amusement devices are kept or maintained for retail patrons.

(B) Any table, alley, machine or other game or device which would otherwise fall within the definition of amusement device or mechanical or electronic amusement device in subsection (A) of this section shall not be exempted therefrom by reason of arrangements or provisions whereby a player may from time to time win, earn or be awarded, prizes, money, free or reduced cost play of the game or device or other incentives or remuneration for or by reason of playing the game or device.

(2001 Code,  4‑96) (Ord. 2000‑04, passed 4‑11‑2000)

***Cross-reference:***

*Definitions generally, see 1‑2*

**4‑97 ENFORCEMENT.**

(A) *Inspection.* Any place of amusement shall be subject to periodic inspection during regular hours of operation by officers of the Police Department, or other designee of the Town Manager, to ensure compliance with the provisions of this article. During these periodic inspections, the licensee agent or employee shall provide access to all areas of the establishment on all floors of the building, including those areas not generally available for public use.

(B) *Criminal penalties.*

(1) Any person who shall violate this article or any provision of this article shall be guilty of a misdemeanor and shall be subject to a $500 fine or imprisonment as provided by G.S.  160A‑175 and 14‑4.

(2) Each day or portion thereof during which a violation of this article occurs shall be considered a separate and distinct offense. Likewise, the operation of each amusement device at a place of amusement in violation of this article shall be considered a separate and distinct offense.

(3) Any violation of this article shall be cause to immediately revoke and nullify the license issued under this article unless the violation is remedied within 24 hours of notification.

(C) *Civil penalties.* If any person shall violate this article or any portion of this article, he or she shall be subject to a civil penalty in the amount of $100 for each day or portion thereof for each unlicensed amusement device operated or made available for use in violation of this article after five days written notice of a violation has been given by the Town Manager. Notice shall be given by certified mail, return receipt requested, or by personal delivery to the operator of the place of amusement or the manager thereof or to the owner or operator of the amusement device. If, upon presentation of the certified mail by the post office, the certified mail is refused, the refusal of the certified mail shall be considered proper notification. This civil penalty may be recovered or collected by the town in a civil action as for a debt if payment is not made in accordance with this article as provided by G.S.  160A‑175(c).

(D) *Equitable relief.* Pursuant to G.S.  160A‑175(d) and (e), this article may be enforced by any appropriate equitable remedy available from and through the general court of justice, Superior Court Division.

(E) *Revocation.*

(1) In addition to any criminal or civil penalty imposed, the Town Board may, upon recommendation of the Town Manager, revoke any license issued pursuant to this article for any violation of this article or of any applicable ordinance or law.

(2) No license issued under this article shall be revoked except after five days written notice of a recommendation or proposed recommendation of the Town Manager to that effect has been given to the licensee and the licensee has been given an opportunity to be heard by the Town Board; except that, a license may be temporarily revoked, pending hearing, prior to notice and hearing if the Town Manager finds that the violations of this article pose or may pose an immediate and serious danger to the public health, safety or welfare. Any notice required under this article shall be given by certified mail, return receipt requested, to the licensee at the address listed in the application for license or by personal delivery. If, upon presentation of the certified mail by the post office, the certified mail is refused, the refusal of the certified mail shall be considered proper notification.

(F) *Multiple remedies.* The town may exercise any or all of the remedies available under this section to secure enforcement of this article, and the exercise or nonexercise of any one or more of the available remedies shall not preclude or waive the right of the town to exercise any other available remedies at any time.

(G) *Responsibility for enforcement.* It shall be the responsibility of the Police Department and the Town Manager to enforce the terms of this article and specific additional authorization of the Town Board shall not be required.

(2001 Code,  4‑97) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑98 LICENSE REQUIRED; APPLICATION; ISSUANCE.**

(A) It shall be unlawful for any person to maintain or make available for use by retail patrons any amusement device, except in accordance with a license issued therefor by the town and in accordance with the provisions of this article.

(B) An application for a license shall be made upon forms provided by the Town Clerk and shall contain information as shall be necessary to determine the capacity of the applicant for compliance with the provisions of this article including, but not limited to, the name and address of the applicant; the kind of nature of the amusement device for which a license is sought; the address and name of the place at which the amusement device is proposed to be located; the name and address of the owner or lessor of the amusement device; and a sketch or diagram of the place where the amusement device is proposed to be located, which sketch shall, at minimum, indicate the proposed location of the amusement device, the location of restroom facilities and the location of all entrances and exits.

(C) An application for a license under this article shall be submitted to the Town Clerk at least 30 days prior to the requested effective date of the license.

(D) Licenses for the operation of amusement devices shall be issued by the Town Board upon receipt of a properly submitted application therefor and after an affirmative determination that the applicant is or can come into compliance with the provisions of this article, as provided in this article.

(E) Every license issued pursuant to this article shall be issued to the operator of a place of amusement for one specified location. Licenses issued shall specify, at minimum, the kind or nature of the amusement device licensed, the name and address of the place of amusement, for which the amusement device is licensed to be located and the number of devices licensed for use at that location as of the date and time of issuance, the name of the operator of the place amusement, the name of the owner or lessor of the amusement device and the date upon which the license is effective and shall expire. One license shall be issued for each device licensed. The license shall be placed in a conspicuous place in the place of amusement.

(F) In connection with the issuance of any license under this article, the Town Board of Commissioners may, in its discretion, after hearing and the finding of facts to the effect that immediate compliance with the specific terms of the provisions of this article would work an unreasonable hardship upon the applicant, grant as a condition of the issuance of the license a grace period of up to 90 days for the applicant to come into full compliance with all of the terms and provisions of this article.

(2001 Code,  4‑98) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑99 FALSIFICATION OF APPLICATION.**

Any person who shall submit inaccurate, misleading or incomplete information in an application for a license under this article shall be guilty of a violation of this article and subject to penalties therefor as provided in this article. Any license issued pursuant to such an application shall be null and void.

(2001 Code,  4‑99) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑100 FEES.**

A nonrefundable processing fee, as set forth in the annual budget ordinance, and all other applicable fees required for a conditional use hearing shall accompany each license application pursuant to this article.

(2001 Code,  4‑100) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑101 DENIAL OF LICENSE.**

No license shall be issued for the operation of any amusement device if the owner or lessor thereof or the owner, operator or manager of the place of amusement in which the amusement device is to be installed:

(A) Has been convicted or pleaded guilty or no contest to any criminal offense involving moral turpitude or the unlawful possession, sale, distribution or use of any alcoholic beverage or controlled substance within five years preceding the date of the application; and/or

(B) Is not a resident of the state or does not have a registered agent in the state who is authorized to accept service or process.

(2001 Code,  4‑101) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑102 EXPIRATION AND RENEWAL OF LICENSE; TRANSFER.**

(A) Licenses under this article shall expire on June 30 of each year. No license shall be renewed without a review of the license by the Town Board at a formal meeting of the Board. It shall be the duty of each license holder to reapply for renewal. The application fees listed within this article shall apply to the renewal application. Determination for renewal shall be based on findings presented to the Board by the Police Department, the Town Manager and the applicant pertaining to the operation of the establishment and compliance with this article. Failure to apply for a new license will act as the establishments notification to the town that the establishment no longer wishes to operate a place of amusement.

(B) No license issued under this article shall be transferred from one person to another. However, once a license is issued for the operation of a specific kind of amusement device at a specific location, any device which complies with the provisions of the license issued may be operated in that location.

(2001 Code,  4‑102) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑103 EMPLOYEES AND AGENTS.**

The acts, conduct and omissions of the agents and employees of the licensee under this article shall be deemed to be the acts of the licensee for the purposes of this article.

(2001 Code,  4‑103) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑104 OPERATION.**

(A) No play or use of an amusement device shall be allowed between the hours of 11:00 p.m. and 8:00 a.m each day, Sunday through Thursday, and 12:00 midnight and 8:00 a.m. Saturday, and 12:00 midnight and 1:00 p m. Sunday mornings. The Saturday and Sunday morning times mean no amusement device shall be played or used after midnight Friday and Saturday nights.

(B) Places of amusement are specifically prohibited in the 100 and 200 block of North Patterson Street (Highway 71 North) and the 200 block of McCaskill Street.

(C) No amusement device shall be operated, nor a license issued, for the operation thereof unless the place of amusement where the device is to be located is equipped with adequate, well-lighted and ventilated toilet facilities plainly lettered and marked for each sex, which facilities shall be maintained in a sanitary condition and separated by full and substantial walls.

(D) No amusement device shall be operated at any place at which there is suffered or permitted on the premises any gambling, sale or use of any racing, football or other sport or parlay cards, gambling boards or sheets, or the attachment to or placement, on any pool or billiard table or any Kooly board, keno board or any similar board or device.

(E) No owner, operator or employee of the place of amusement shall:

(1) Suffer or permit the place of amusement to become disorderly or permit any profane, obscene or indecent language therein; and/or

(2) Employ in carrying on the business any person who within the five years preceding the effective date of the license, has been convicted of any crime of moral turpitude or of unlawfully possessing, selling or using any alcoholic beverage or controlled substance.

(F) Any place of amusement shall be operated only on the ground floor of a building and any amusement device shall be located within the place of amusement so that a clear view of the amusement device can be had from the main entrance at all times. Any place of amusement shall have windows of the front of the structure housing the place of amusement that allow clear view into the building at all times. No curtains, blinds or any other covering may be placed on the windows that prohibit a clear view into the place of amusement. No partitions, screens or other obstructions forming rooms or enclosures where persons other than those actually playing or using the amusement device can congregate shall be permitted. This restriction shall not be construed so as so as to prohibit the maintenance of closets or storage rooms to which public access is prohibited or of restrooms. However, any closet, storage room or office area not generally provided to the public is still subject to periodic and random inspection by the Police Department or the Town Manager.

(G) No amusement device shall be operated except in a place of amusement which is in compliance with the provisions of the land use and zoning ordinances of the town and which otherwise complies with all applicable local, county, state and federal laws and regulations.

(H) Any place of amusement shall, whenever open, be supervised and operated by a person over 18 years of age who has not, within the five years preceding the effective date of the license, been convicted of any crime of moral turpitude or of unlawfully possessing, selling or using any alcoholic beverage or controlled substance.

(2001 Code,  4‑104) (Ord. 2000‑04, passed 4‑11‑2000)

**4‑105 BILLIARDS AND POOL TABLES.**

Pool tables, billiards or any other similar tables are specifically prohibited under this article. Any other ordinance currently in force in the town governing the tables is not affected by enactment of the ordinance from which this article is derived.

(2001 Code,  4‑105) (Ord. 2000‑04, passed 4‑11‑2000)