

AN ORDINANCE REGULATING THE ESTABLISHMENT OF EXOTIC ENTERTAINMENT

Revised 9/20/09

1.0 ORDINANCE FOR EXOTIC ENTERTAINMENT RESTRICTION

1.1 In accordance with Chapter Seven, Article One, Section 3jj of the West Virginia Code, it is desirable and necessary to regulate businesses offering exotic entertainment and to promote the safety and general welfare of the citizens of Brooke County by establishing reasonable and uniform regulations controlling businesses offering exotic entertainment within the County of Brooke.

1.2 The Brooke County Commission is concerned that businesses offering exotic entertainment may increase crime and decrease property values in areas of their operation and county citizens have expressed their concerns about the adverse impact that these types of businesses will have on the value of their property and their retail trade and the quality of life in the County of Brooke.

1.3 It is recognized that businesses offering exotic entertainment, due to their nature, have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby downgrading the quality of life in the adjacent area.

1.4 The Brooke County Commission 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; and preserve the property values and character of surrounding neighborhoods.

1.5 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 that addresses the secondary effects of businesses offering exotic entertainment. It is not the intent of the Brooke County Commission to condone or legitimize the distribution of obscene materials and the Brooke County Commission expects and encourages state and county law enforcement officials to enforce statutes against any such illegal activities in the county.

1.6 The Brooke County Commission enacts this ordinance to apply to the unincorporated areas of the county not situated within the limits of municipal corporations.

1.7 The Brooke County Planning Commission is tasked with the responsibility of enforcing this ordinance through its Permit Officer, and may seek injunctive relief through the Brooke County Court system.

2.0 DEFINITIONS

9/20/09

AN ORDINANCE REGULATING THE ESTABLISHMENT OF EXOTIC ENTERTAINMENT

Revised 9/20/09

2.1 The intent of this ordinance is to regulate "Adults Only Establishments", which includes Adults Only Bookstores, Adults Only Entertainment Establishments, Adults Only Motion Picture Theaters or "similar Adults Only Establishments."

2.2 **Adult Arcade:** Any place to which the public is permitted or invited wherein coin-operated, slug operated, or for any form of consideration, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the live images so displayed are distinguished or characterized as exotic entertainment.

2.3 **Adult Bookstore:** A bookstore, novelty store, or video store which regularly features literature or videos showing nudity, seminudity, or promotions or live performances which are characterized as exotic entertainment.

2.4 **Adult Cabaret:** A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- a) Persons who appear in a state of nudity or semi-nudity; or
- b) Live performances which are characterized as exotic entertainment.

2.5 **Adult Theater:** A theater, concert hall, auditorium, motion picture theatre, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized as exotic entertainment.

2.6 **Establishment:** Includes:

- 2.6.1 The opening or commencement of any exotic entertainment business as a new business;
- 2.6.2 The conversion of an existing business, whether or not originally an exotic entertainment business, to any exotic entertainment business;
- 2.6.3 The addition of any exotic entertainment business to any other existing exotic entertainment business; or
- 2.6.4 The relocation of any exotic entertainment business.

2.7 **Exotic Entertainment:** Live entertainment, dancing or other services conducted by persons while nude or semi-nude in a commercial setting or for profit. Semi-nude means the appearance of the

- 2.7.1 The female breast below a horizontal line across the top of the areola at its highest point, including the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast exhibited by a

AN ORDINANCE REGULATING THE ESTABLISHMENT OF EXOTIC ENTERTAINMENT

Revised 9/20/09

dress, blouse, shirt, leotard, bathing suit or other wearing apparel provided that the

areola is not exposed, in whole or in part;

2.7.2 A human fully bare buttock, anus, anal cleft or cleavage, pubic area, male

genitals, female genitals or vulva, with less than a fully opaque covering; or

2.73 A human male genital in a discernibly turgid state even if completely and opaquely covered.

2.8 Person: An individual, proprietorship, partnership, corporation, association, or other legal entity.

2.9 Substantial Enlargement: An increase of 25% or more of the floor area occupied by a business that would be regulated by this ordinance but which was already in existence on the date this ordinance takes effect; or such increase in floor area of a business permitted under this ordinance.

2.10 Territorial Limits means land within the county not situated within the limits of municipal corporations in the county. The ordinance applies within county "territorial limits."

3.0 CLASSIFICATION

3.1 Exotic entertainment businesses are classified as follows:

3.1.1 Adult arcades;

3.1.2 Adult cabarets;

3.1.3 Adult theaters,

3.1.4 Adult bookstores, novelty stores, or video stores, or

3.1.5 Adult motion picture theaters, or

3.1.6 Other licensed premises which includes adult entertainment as part of its product or services.

4. LOCATION OF EXOTIC ENTERTAINMENT BUSINESSES & ASSOCIATED PARKING

4.1 This ordinance prohibits any person, entity or business from establishing, operating, or causing to be operated, an exotic entertainment business within 2,500 feet of:

4.1.1 A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

4.1.2 A public or private education facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary

AN ORDINANCE REGULATING THE ESTABLISHMENT OF EXOTIC ENTERTAINMENT

Revised 9/20/09

schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, colleges and universities. The term schools includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school;

4.1.3 A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, natural trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land;

4.1.4 A restaurant or entertainment business which is oriented primarily toward children or family entertainment;

4.1.5 A licensed premises, which is licensed pursuant to the Alcoholic Beverage Control (ABC) regulations of the State of West Virginia;

4.1.6 A hotel, motel, campground; or bed and breakfast;

4.1.7 Another business offering exotic entertainment; or

4.1.8 A residential dwelling.

4.1.9 Any county-owned property.

4.2 This ordinance also prohibits the causing or permitting of the operation, establishment or maintenance of more than one exotic entertainment business in the same building, structure or portion thereof or the increase of floor area of any exotic entertainment business in any building, structure or portion thereof containing another exotic entertainment business.

4.3 For the purpose of this section, measurement shall be made in a straight line, without regard to any intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where an exotic entertainment business is conducted, to the nearest property line of the premises of a use listed in Section 3.0. 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.

4.4 For purposes of this section, the distance between any two exotic entertainment 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 business is located.

4.5 An existing exotic entertainment business operating lawfully at the time of adoption of this ordinance is not rendered in violation of this ordinance by its location.

4.6 In the event of the partial or total loss of any existing permitted business structure due to fire, flood, accident or any other unforeseen act, that business structure may be repaired or replaced and the business use of that structure may continue notwithstanding the existence of this ordinance. Any such repair or replacement will be limited to restoring or replacing the damaged or lost structure with a building reasonably

AN ORDINANCE REGULATING THE ESTABLISHMENT OF EXOTIC ENTERTAINMENT

Revised 9/20/09

similar to, or smaller than the damaged structure, as measured in square footage; and any substantial enlargement of the business structure will subject the entire structure and operation to this ordinance as if applying for a new permit.

4.7 This ordinance shall not apply to or affect any municipal corporation that either:

4.7.1 Has adopted and has in effect an ordinance restricting the location of exotic entertainment or substantially similar businesses pursuant to the authority granted in Articles twelve or twenty-four, Chapter eight of the West Virginia Code;

4.7.2 Adopts an ordinance to exempt itself from this ordinance.

4.8 Parking:

4.8.1 Statement of Intent: It is the purpose of this section of the Ordinance to ensure that every Adults Only Establishment maintains sufficient space on site to meet its parking needs and to accommodate vehicular traffic that it generates.

4.8.2 Parking Requirements: Every Adults Only Establishment shall provide and maintain on the site thereof one (1) parking space for every one hundred square feet of the improvement in which the Adults Only Establishment operates or proposes to operate.

4.8.3 Parking Space: For purposes of this section of the Ordinance, a parking space shall have dimensions no less than eight and one half feet (8 1/2') wide and no less than eighteen feet (18') long; and be paved and delineated with stripes.

4.8.4 Traffic. No parking lot servicing an Adults Only Establishment shall be designed, constructed or maintained in such a manner as to permit motor vehicles to reverse or back into a public or private road, alley, street, or highway.

4.9 Signs:

4.9.1 Statement of Intent: It is the purpose of this section of the Ordinance to protect property values by encouraging visually appealing, non-distracting signs, to permit such signs that will not, by reason of its size, location, or manner of display, detract from the economic visibility of other persons and establishments in the vicinity; to prevent signs from causing an annoyance or disturbance to a substantial number of persons; and to promote a healthy and business-friendly environment in which signs relating to an Adults Only Establishment contribute to and encourage rather than detract from the economic visibility of other persons and establishments in the vicinity.

4.9.2 No person shall erect, structurally alter or relocate any sign to advertise or promote any Adults Only Establishment except in conformance with the Ordinance. It shall be unlawful for any person to erect, structurally alter or relocate any sign or improvement supporting a sign on or off the premises of the Adults Only Establishment without first obtaining a Certificate of Compliance based on an Application therefor.

4.9.3 The application for the approval of a sign shall be made upon forms that the Planning Commission shall prepare and provide and shall include, without limitation, an accurate scaled sketch or drawing of the proposed sign; its proposed location and the content of the proposed signed.

EXOTIC ENTERTAINMENT

Revised 9/20/09

4.9.4 After a sign is constructed or installed based on the application therefor, the applicant shall provide a letter to the Planning Commission certifying that the sign was designed (including content), fabricated, sized, constructed or installed according to the application as approved.

4.9.5 Any sign promoting an Adults Only Establishment shall be flat and mounted to the wall of the improvement in which the Adults Only Establishment is located.

4.9.6 No merchandise or depictions of Adults Only matter, including, without limitation, depictions of nude or seminude men or women, shall be displayed on any sign advertising or promoting an Adult Only Establishment, nor in any windows or any other area that may be viewed from a public street, alley, sidewalk or public way.

4.9.7 The size of any sign promoting an Adults Only Establishment shall not exceed more than one (1) square foot per one (1) lineal foot of street frontage of the property on which an Adults Only Establishment is located.

4.9.8 No Adults Only Establishment shall erect or display any portable or movable sign on the premises thereof. No Adults Only Establishment shall erect nor maintain more than one sign advertising or promoting an Adults Only Establishment on the premises thereof.

4.9.9 If any sign promoting an Adults Only Establishment is abandoned, such sign shall be deemed a nuisance misleading the public & affecting or endangering surrounding property values and shall be deemed detrimental to the public health, safety, and general welfare of the community and shall be abated.

5. LICENSE AND APPLICATION FEE REQUIREMENTS

5.1 License. An exotic entertainment business must obtain a valid business license issued by the State of West Virginia.

5.2 **Building Permit.** The Applicant will also be responsible for applying to the Assessor for a Building Permit of \$1,000.00. The initial permit is only valid for six (6) months and is non-transferable.

5.3 Application to Build. Every exotic entertainment business located in Brooke County, West Virginia shall submit their plans to build along with an Application, and a Brooke County Commercial and Industrial Improvement fee of \$500.00.

5.3.1 The individual or business may submit a Brooke County Application Package to the Brooke County Planning Commission consisting of the following attachments: Applicant's State Business License, a copy of the Building Permit, engineering drawings for the facility, adjacent parking, and signage, and an affidavit reflecting the Fire Marshall's approval of said schematics and blue-prints.

5.3.2 The Application Package shall be reviewed and a GO/NO GO decision rendered by the Brooke County Planning Commission to assure compliance with Land Use, Comprehensive Plan, and associated county Ordinances within 90 days from the date of receipt.

AN ORDINANCE REGULATING THE ESTABLISHMENT OF EXOTIC ENTERTAINMENT

Revised 9/20/09

5.4. An approved application is only valid for six (6) months and is non-transferable.

5.5 In the event an exotic entertainment business ceases operation for more than six months, or ownership changes hands, then a Application to Build will be required according to the provisions of this ordinance.

6. INSPECTION AND REVOCATION

6.1. During the construction period, the Permit Officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with all applicable laws and ordinances.

6.2 In the event the Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by the applicant, the Permit Officer shall be responsible for notifying the party in writing of the violation. The notification will include a description of the violation, the action needed to correct same, and a time period for corrective action. In the event that the violation is not corrected within the prescribed time-frame, the Ordinance shall be enforced by revoking the building permit and reporting such fact to the Planning Commission for whatever additional action it considers necessary.

6.3 The Permit Officer may impose a monetary fine not to exceed \$1,000 a day against any person or persons who violate the Ordinance, or any order or notice issues thereunder.

7. APPEALS AND PENALTIES

7.1 **Appeals:** Whenever any person is aggrieved by a decision of the Permit Officer with respect to the provisions of this Ordinance, it is the right of that person to appeal to the Brooke County Planning Commission. Such appeal must be filed, in writing, within thirty (30) days after the determination by the Permit Officer. Upon receipt of such appeal, the Planning Commission shall set a hearing time and place within a period not less than ten (10) nor more than forty (40) days. An appeal may be made by an aggrieved person from a decision or ruling of the Planning Commission to the circuit court pursuant to the provisions of Chapter 8A, Article 9 of the West Virginia Code.

7.2 **Penalties:** Any person who fails to comply with any of the requirements or provisions of this Ordinance or direction of the Permit Officer or any other authorized employee of the County shall be guilty of an offense and, upon conviction, shall pay a fine to the Brooke County Commission of \$1000.00 plus cost of prosecution subject to civil contempt charges. (In the default of such payment, such person may be incarcerated for a period not to exceed 30 days. Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties, the Brooke County Planning Commission, through its President or other officer, is authorized to seek a temporary restraining order or a permanent injunction or both in the Circuit Court of Brooke County to restrain a person or legal entity from violating the provisions of this Ordinance. The imposition of a fine or penalty for any violation, or noncompliance with this Ordinance shall not excuse the violation or

AN ORDINANCE REGULATING THE ESTABLISHMENT OF EXOTIC ENTERTAINMENT

Revised 9/20/09

noncompliance, or permit it to continue; and all such persons shall be required to correct or remedy such violation or noncompliance within a reasonable time.

7.3 Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this Ordinance may be declared a public nuisance by the Planning Commission and abatable as such.

8. SEVERABILITY AND COUNTY LIABILITY

8.1 **Severability:** If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

8.2 **County Liability:** The granting of a permit or approval of a development plan or site plan shall not constitute a guarantee or warranty of any kind by the Brooke County Commission or Planning Commission or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Brooke County Commission or Planning Commission, its officials or employees.

END

2-10
Dawn A. Tran (County Comm.)
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Marty Bantz Jr