

ORDINANCE
EXOTIC ENTERTAINMENT RESTRICTION
WOOD COUNTY COMMISSION

In accordance with Senate Bill 104 (said official code citation to be added at a later date), it is desirable and necessary to regulate businesses offering exotic entertainment to promote the safety and general welfare of the citizens of Wood County by establishing reasonable and uniform regulations controlling businesses offering exotic entertainment within the County of Wood.

The Wood 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 these types of businesses will have on the value on their property and their retail trade and the quality of life in the County of Wood.

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.

The Wood 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.

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 Wood County Commission to condone or legitimize the distribution of obscene materials and the Commission recognizes that state and federal laws prohibit the distribution of obscene materials and expects and encourages state and county law enforcement officials to enforce statutes against any such illegal activities in the county.

SECTION 1. DEFINITIONS

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 images so displayed are distinguished or characterized as exotic entertainment.

Adult Bookstore, Adult Novelty Store, Or Adult Video Store- a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration, any one or more of the following: (a) books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized as exotic entertainment or (b) instruments, devices or paraphernalia which are designed for use in connection with exotic entertainment. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing exotic entertainment and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized as exotic entertainment.

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; (b) live performances which are characterized as exotic entertainment; (c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized as exotic entertainment.

Adult Motion Picture Theater- a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized as exotic entertainment.

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

Employee- a person who performs any service on the premises of an exotic entertainment business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

Establishment- includes (a) the opening or commencement of any exotic entertainment business as a new business; (b) the conversion of an existing business, whether or not an exotic entertainment business, to any exotic entertainment business; (c) the additions of any exotic entertainment business to any other existing exotic entertainment business, or (d) the relocation of any exotic entertainment business.

Exotic Entertainment- live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting or for profit. Semi-nude means the appearance of (a) 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 dress, blouse, skirt, leotard, bathing suit or other wearing apparel provided the areola is not exposed, in whole or in part; (b) a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals or vulva, with less than a fully opaque covering; (c) a human male genital in a discernibly turgid state even if completely and opaquely covered.

Licensee- a person in whose name a license to operate an exotic entertainment business has been issued, as well as the individual, listed as an applicant on the application for a license and in the case of any employee, a person in whose name a license has been issued authorizing employment in an exotic entertainment business.

Person- an individual, proprietorship, partnership, corporation, association, or other legal entity.

Substantial Enlargement- the increase in floor areas occupied by the business by more than twenty-five percent (25%) as the floor areas exist on the date this ordinance takes effect.

Transfer of Owner of Control- (a) the sale, lease or sub-lease of the exotic entertainment business; (b) the transfer of securities which constitute a controlling interest in the exotic entertainment business, whether by sale, exchange or similar means; or (c) the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the exotic entertainment business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership of control.

SECTION 2. CLASSIFICATION

Exotic entertainment businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores, adult novelty stores or adult video stores;
- (3) adult motion picture theaters;
- (4) adult cabarets; and
- (5) adult theaters.

SECTION 3. LOCATION OF EXOTIC ENTERTAINMENT BUSINESSES

This statute prohibits any person, entity or business from establishing, operating, or causing to be operated, an exotic entertainment business within 2,000 feet of:

- (1) a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
- (2) a public or private education 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. The term schools include the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school;
- (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) the property line of a lot devoted to a residential use;
- (5) a restaurant or entertainment business which is oriented primarily towards children or family entertainment;
- (6) licensed premises, which is licensed pursuant to the alcoholic beverage control regulations of the State of West Virginia;
- (7) hotel, motel, campground, bed and breakfast.

This ordinance also prohibits the causing or permitting of the operation, establishment, substantial enlargement or transfer of ownership or control of an exotic entertainment business within 2,000 feet of another exotic entertainment business.

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 in floor area of any exotic entertainment business in any building, structure or portion thereof containing another exotic entertainment business.

For the purpose of this section, 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 an exotic entertainment business is conducted, to the nearest property line of the premises of a use listed in Section III. 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.

For purposes of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects of political boundaries, from the closest exterior wall of the structure in which each business is located.

An exotic entertainment business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the exotic entertainment business license, of a use listed in this section within 2,000 feet of the exotic entertainment business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or been revoked.

SECTION 4. LICENSE REQUIRED

It is unlawful for any person to operate an exotic entertainment business without a valid business license issued by the State of West Virginia. An application for a business license must be made on a form provided by the Secretary of State of West Virginia. If a person wishes to operate an exotic entertainment business, the person must sign the application for a license as applicant.

If a new building is required to house the exotic entertainment business, a building permit shall be required from the office of the Wood County Commission.

License Fee- A \$2,000.00 annual license fee renewable every July 1 and \$500.00 one time application fee.

ADOPTED THIS 25TH DAY OF JULY, 2002

THE COUNTY COMMISSION OF WOOD COUNTY

Robert K. Tebay, President

Rick Modesitt, Commissioner

K.D. Merritt, Commissioner