

Land Use Ordinance for Locating Video Lottery Establishments 2004

Section 1 General

Section 1.1 Title

The Ordinance shall be known as the “Land Use Ordinance for Locating Video Lottery Establishments 2004.”

Section 1.2 Findings. In considering the enactment of the Ordinance, the County Commission makes the following findings of fact:

WHEREAS, the County has a substantial government interest in protecting the public health, safety, and welfare of its citizens; and

WHEREAS, Video Lottery Establishments, by their very nature, have objectionable operational characteristics, particularly when they are located proximately to each other, thereby contributing to blight and the degradation of the quality of life in adjacent areas; and

WHEREAS, the regulation of the location of Video Lottery Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, a tendency to attract an undesirable number of transients; to deflate real property values; to blight residential and commercial areas; and to impede the development of business and residences; and

WHEREAS, the Cities of Parkersburg, Vienna, and Williamstown, Wood County, West Virginia, have recently enacted or are considering the enactment of an ordinance that would regulate the location of Video Lottery Establishments within those jurisdictions; and

WHEREAS, the County benefits from enacting an ordinance complementary with that of the Cities of Parkersburg, Vienna, and Williamstown.

Section 1 Purpose

It is the purpose of the Ordinance to regulate the location of Video Lottery Establishments within Territorial Limits to curtail the secondary effects thereof in accordance with community standards and to implement a permanent land use ordinance with respect to the location of Video Lottery Establishment upon due notice to the citizens pursuant to W.Va. §8-24-40 through 47.

It is not the purpose of the Ordinance to permanently bar any Video Lottery Establishment that is an Existing Use within the Territorial Limits, or to regulate the number of Video Lottery Establishments within the Territorial Limits.

Section 2 Authority

Section 2.1 Grant of Power

The authority to enact the Ordinance is established under W.Va. Code § 8-24-1 *et seq.*, and the laws of the State of West Virginia.

Section 2.2 Territorial Limits.

The Ordinance shall apply to and be effective within the Territorial Limits.

Section 3 Definitions. For purposes of the Ordinance, the following words or terms shall have the meanings ascribed to them thereafter except when the context suggests other:

Section 3.1 “Abandonment” or “Abandoned” shall mean that the use with respect to a Premises, regardless of the intent of the user, has ceased or has discontinued for a period of more than sixty (60) consecutive days, or an explicit declaration by the user of a Premises that it has ceased a use with respect to the Premises that is nonconforming with the Ordinance.

Section 3.2 “Applicant” shall mean a person who has any legal or beneficial interest in a Premises who submits an Application to the Planning Officer in an attempt to obtain or re-obtain a Certificate of Compliance with respect to the Premises.

Section 3.3 “Application” shall mean the form of forms provided by the Planning Office and completed by an Applicant, together with all required documents and items that the Planning Committee requires, by which the Applicant seeks to obtain a Certificate of Compliance.

Section 3.5 “Certificate of Compliance” shall mean a written document or renewals or amendments thereto based on an Application issued to an Applicant with respect to a Premises by the Planning Officer that evidences that such person and the Premises comply or conform with the provisions of the Ordinance.

Section 3.6 “County” means the County of Wood, West Virginia.

Section 3.7 “Effective Date” means May 26 2004, on which the Ordinance becomes effective.

Section 3.8 “Existing Use” means the use or uses as a Video Lottery Establishment to which a parcel or parcels or land (or part thereof) within the Territorial Limits, or part or all of any Improvement thereon, that are lawfully pursued by a Video Lottery Permittee under local, State and Federal law and that exist before the Effective Date, or, if not lawfully pursued under local State and Federal law before the Effective Date, the use or uses as a Video Lottery Establishment to which a parcel or parcels of land (or part thereof) within the Territorial Limits, or part or all of any Improvement thereon before the Effective Date if such use or uses as a Video Lottery Establishment have been authorized for a Video Lottery Permittee for a particular Improvement within the Territorial Limits by the State Lottery Commission under W.Va. Code § 29-22B-101 before the Effective Date.

Section 3.9 “Improvement” means any structure or building with the designated use being a Video Lottery Establishment, whether or not existing, on the Effective Date located or, if there is a vested right to erect such structure or building with the designated use being a Video Lottery Establishment, to be located within the Territorial Limits.

Section 3.10 “Person” means any natural person or any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

Section 3.11 “Planning Committee” shall mean the public body of persons established by the County Commission under W.Va. Code § 8-24-6.

Section 3.12 “Planning Director” means the person whom the County Commission has charged with the enforcement of the subdivision, location improvement and zoning ordinances of the County.

Section 3.13 “Responsible Person” shall mean the individual person whom an Applicant has designated to attest to the truthfulness and accuracy of the contents of an Application.

Section 3.14 “Territorial Limits” shall mean those portions of land or area within the boundaries of the County that are not situated within the limits of municipal corporations within the County.

Section 3.15 “Video Lottery” means an electronically simulated game of chance that is approved, owned and controlled by the State Lottery Commission under W.Va. Code § 29-22B-101 *et seq.*, and which is further defined under W.Va. Code § 29-22B-332.

Section 3.17 “Video Lottery Establishment” means any Improvement existing or to be constructed together with the lot, tract or parcel on which it is situate within the Territorial Limits that contains or is intended by a Video Lottery Permittee to contain one or more Video Lottery Terminals for public or private use.

Section 3.18 “Video Lottery Permittee” means any licensed person, including an operator or a video lottery retailer, that has a permit to own, lease or operate for profit or otherwise Video Lottery Terminals issued under W.Va. Code § 29-22B-1101 through 29-22B-1113.

Section 3.19 “Video Lottery Terminal” means a State Lottery Commission-approved machine or device that is compatible with the State Lottery Commission’s central computer system and that is used for the purpose of playing video lottery games authorized by the State Lottery Commission by no more than one player at a time.

Section 4 Land Use Provisions.

On and after the Effective Date, it shall be unlawful for any person to locate or establish a Video Lottery Establishment in or on any Improvement (or part thereof) within 1000 horizontal feet, structure to structure by a straight line measurement, of any church, school, playground, park, recreational area, residence (excepting a residence owned by the Applicant, permitting all other provisions of the Ordinance are met), hotel, library, state highway interchange or corridor or any other state facility except if such person is a Video Lottery Permittee with a license or licenses to operate Video Lottery Terminals in or on a specific Improvement or Improvements within the Territorial Limits before the Effective Date.

The measurement for playground, park, recreational area shall be from the outermost bounds of said playground, park, and recreational area closest to the proposed Video Lottery to the structure of the proposed Video Lottery.

The prescribed distance shall be measured along a straight, horizontal line beginning at the point on the structure of the Video Lottery Establishment closest to the closest point on the structures (or bounds in the case of a playground, park or recreational area) adjacent thereto.

In the case of a multiple-use structure, the distance shall be from the closest point on that portion of the multiple-use structure leased (or owned) for the purpose of doing business as a proposed Video Lottery Establishment to the closest point on the structures (or bounds in the case of a playground, park, or recreational area) adjacent thereto.

Section 5 Administration and Enforcement.

Section 5.1 It shall be the duty of the Planning Director, or his/her duly authorized agent, to administer and enforce the provisions of the Ordinance, except as otherwise expressly provided in the Ordinance.

Section 5.2 It shall be the duty of the Planning Director to:

- (a) Receive and process any Application; and
- (b) Issue a Certificate of Compliance upon an Application; and
- (c) Conduct investigations as necessary to determine compliance with or violation of the Ordinance;
- (d) Abate any violation of the Ordinance;
- (e) Seek the assistance of the office of the Sheriff of the County or the Office of the Prosecuting Attorney of the County, as the case may be, to abate or prosecute any violation of the Ordinance;
- (f) Assist law enforcement officer to abate or prosecute any violation of the Ordinance; and
- (g) Provide information about the Ordinance upon request of citizens and Public agencies.
- (h) Pursue enforcement of the Ordinance as the Ordinance and other law provides; and
- (i) Administer the Ordinance in all respects.

Section 6 Application.

Section 6.1 Any person who desires to obtain a Certificate of Compliance shall designate a Responsible Person who shall make an Application to the Planning Director, or his or her designated agent, in accordance with the Ordinance.

An application shall include, without limitation, a copy of the site plan of the Premises and the existing or proposed Improvement or Improvements, together with a letter describing the proposed Video Lottery Establishment.

The site plan shall be drawn to a scale of one-inch (1") equals fifty feet or larger and shall include the following data:

- (a) Name and address of the individual who prepared the site plan; the date of preparation, north point, and scale; a metes and bounds description of the site; tax district, map and parcel number, and the names and addresses of the Applicant and the Responsible Person; and
- (b) Existing and proposed contours of the Premises; and;
- (c) Certification by a land surveyor or engineer that the dimensions and bearings on the site plan are accurately delineated and location of all easements and right-of-ways with respect to the Premises; and
- (d) Number and type of proposed Improvements on the Premises along with gross floor area of each Improvement on the Premises; and

- (e) Location, shape, exterior dimensions, and number of stories of each Improvement on the Premises; and;
- (f) Location, grade, and dimensions of paved surfaces of the Premises, and of all streets, alleys, roads, and highways abutting the premises; and
- (g) Complete traffic circulation and parking plan; and
- (h) Signage plan; and
- (i) Sediment and Erosion Control Plan by the State of West Virginia, if required; and
- (j) Drainage plan for the Premises prepared by a registered professional engineer licensed to practice in the State of West Virginia; and
- (k) Certification of distances from adjacent properties.

Section 6.2 The Planning Committee shall appoint a five-member Façade Committee to review appropriate exterior and signage for each Video Lottery Establishment. A detailed plan with the building specifications must be submitted to the Façade Committee through the Planning Director prior to licensure. The Façade committee must review the plans within 10 days of submission, and said Committee shall give written notice of its decision to the Applicant within 30 days of the date of the Application. If the Façade Committee approves the Application, the Committee shall issue a Certificate of Compliance. Failure by the Committee to approve or disapprove an application within 30 days from the date of the application, unless otherwise mutually agreed upon by the Applicant and the Committee, shall be deemed to constitute approval and the Planning Committee shall proceed to process the application without a Certificate of Compliance.

Section 6.3 The Planning Director shall accept no Application unless the Responsible Person shall attest that all of the statements contained in the Application and all documents attached thereto are true and accurate in all material respects.

Section 6.4 The fee for the Application shall be \$100.00

Section 7 Procedures for Violations

Section 7.1 Whenever a violation of the Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Planning Director. The Planning Director, or his or her designated agent, shall record properly such complaint, conduct appropriate investigation, and take action thereon as the Ordinance provides.

Section 7.2 If the Planning Director finds that any of the provisions of the Ordinance are violated, whether they are reported by citizens or by any commission, board, agency, officer or employee of the County Commission, or by his or her own observation, The Planning Director shall notify in writing the person responsible for such violation. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the last known address of the person or by personal service by the office of the Sheriff of the County.

- (a) Any such notice of a violation of the Ordinance shall include the following:
 - i. Street address of legal description of the property involved, including identification by the tax district and tax map and parcel numbers;
 - ii. A statement of the nature of the violation;
 - iii. A description of the action required to correct the violation;
 - iv. A statement of the time within which compliance with the Ordinance must be accomplished; and

- v. A statement that upon failure to comply with the requirements of the notice, the Planning Director shall take such enforcement actions as the Ordinance authorizes.
- (b) The individual responsible for the violation shall have thirty (30) days to appropriately rectify the violation and comply with all terms of the Ordinance. If said individual is in compliance with the Ordinance within the thirty day period, there shall be no penalty assessed against that individual.
 - (c) If the Planning Director may order discontinuance of any use of a parcel or parcels of land of any Improvements that does not conform to the Ordinance by issuing a written order. The Planning Director may seek other remedies provided by law, including, without limitation, injunction, abatement by judicial proceeding in the Circuit Court of the County.
 - (d) The Planning Director may impose a monetary fine not to exceed \$1,000.00 a day against any person or persons who violate the Ordinance or any order or decree issued there under.
 - (e) Nothing contained in the Ordinance shall be deemed to prevent the County Commission from pursuing other lawful actions to prevent or remedy violations of the Ordinance.

Section 8. Appeal.

Section 8.1 Any person who is aggrieved by any order, requirement, decision or determination made by any administrative officer of body charged with the enforcement of the Ordinance may appeal the same to the Planning Committee within the time and the manner prescribed by law and other similarly enacted Ordinances.

Section 9. Abandonment of Non-conforming Use.

Notwithstanding anything in the Ordinance to the contrary, if an existing use that is nonconforming with the Ordinance has been abandoned, any future use of such land or Improvement shall conform with the Ordinance.

Section 10 Severability

If any clause, paragraph, subparagraph, section or subsection of the Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, and shall remain in full force and effect.

Adopted by the County Commission of Wood County.

Rick Modesitt, President

K.D. Merritt, Commissioner

Robert K. Tebay, Commissioner