

MONONGALIA COUNTY COMMISSION

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COURTHOUSE
MORGANTOWN, WEST VIRGINIA 26505

L.W. "Bill" Bartolo, Commissioner
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AMENDED ORDINANCE EXOTIC ENTERTAINMENT RESTRICTION MONONGALIA COUNTY COMMISSION

In accordance with West Virginia Code 7-1-3jj, it is desirable and necessary to regulate businesses offering exotic entertainment to promote the safety and general welfare of the citizens of Monongalia County by establishing reasonable and uniform regulations controlling the location of businesses offering exotic entertainment within the unincorporated areas of County of Monongalia.

The Monongalia County Commission desires to 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 from the harmful secondary effects of exotic entertainment businesses.

The Monongalia County Commission, in enacting this Ordinance, is relying on evidentiary foundations set forth in court decisions finding regulation to address the secondary harmful effects of those businesses is appropriate. Those cases include, but are not necessarily limited to *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 96 S.Ct. 2440 (1976); *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925 (1986); *Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634 (4th Cir. 1999) and others.

SECTION 1: DEFINITIONS

The following definitions describe the purpose of this Ordinance:

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 (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.

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

Reasonably Similar Building: To qualify as a “reasonably similar” building under W. Va. Code § 7.1.3jj(c), any building that replaces or is repaired due to damage or destruction of the originally permitted or grandfathered building shall not exceed the square footage of the original building.

SECTION 2: LOCATION OF EXOTIC ENTERTAINMENT BUSINESSES

(A) This Ordinance prohibits any person, entity or business from establishing, operating, or causing to be operated, an exotic entertainment business within 1,500 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” includes 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, trail (including, but not limited to the rail trail), swimming pool, reservoir, athletic field, basketball or tennis court, pedestrian/bicycle path, wilderness area, or other similar public land;
- (4) the property line of a lot devoted to a residential use (including, but not limited to private lots or housing developments);
- (5) a restaurant or entertainment business which is oriented primarily towards children or family entertainment;
- (6) a premises that is licensed pursuant to the alcoholic beverage control regulations of the State of West Virginia;
- (7) a hotel, motel, campground, or bed and breakfast.

(B) The Monongalia County Commission shall make available upon request a location map showing areas where the 1,500 foot buffer is in place.

(C) This ordinance also prohibits the causing or permitting of the operation, establishment,

enlargement or transfer of ownership or control of an exotic entertainment business within 1,500 feet of another exotic entertainment business.

(D) For the purpose of this section, measurement shall be made in a straight line from the property line of the proposed location 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 this section. 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.

(E) The Monongalia County Planning Commission must be contacted to determine whether the proposed and/or existing business offering exotic entertainment is located within the West Run Planning District. Any rules and regulations of the Planning District as approved and implemented as of July 1, 2011 shall supersede this Ordinance.

(F) The West Run Planning District allows for the transfer of the existing non-restrictive zoning designation if an existing business offering exotic entertainment shall be transferred to a new owner at the same location within 12 months of the close of the original business.

(G) Any exotic entertainment business that was in existence prior to the enactment of the original Exotic Entertainment Ordinance on May 19, 2010, that does not meet the 1,500 foot limitation set forth above, and does not fall within a designated planning district may remain in operation as non-conforming use as long as the establishment is not closed for a period longer than one year.

(H) 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 total square footage of an existing building of any exotic entertainment business in any building, structure or portion thereof containing another exotic entertainment business.

(I) For purposes of this section, the distance between any two exotic entertainment businesses shall be measured from property line to property line in closest proximity to the property line of any other exotic entertainment business, without regard to intervening structures or objects of political boundaries.

(J) In the event of the partial or total loss of any existing 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 any ordinance authorized by this section. Any repair or replacement is limited to restoring or replacing the damaged or lost structure with one reasonably similar, or smaller, in size as measured in square footage, and any enlargement of the business structure subjects the structure to any existing ordinance authorized by this section.

(K) If a new building is required to house the exotic entertainment business, a building permit or a letter of exemption shall be required from the Monongalia County Flood Plain Administrator and/or the Monongalia County Planning Commission.

(L) It is unlawful for any person to operate an exotic entertainment business without first obtaining any and all permits, licenses, certificates or the like that may be required by any local, state or federal agency. A copy of said documents shall be attached to any Application for the Operation of a Business Offering Exotic Entertainment that is made to the Monongalia County Commission.

(M) Any person desiring to operate an exotic entertainment business after the effective date of this Amended Ordinance shall complete an Application for Operation of a Business Offering Exotic Entertainment and submit the same to the Commission or its designee for review and determination as to whether the proposed business meets the terms of this Ordinance. The appropriate form for said application may be obtained from the Monongalia County Commission or its designee. With the Application, the applicant shall also submit a survey demonstrating that the proposed exotic entertainment business will not be operating within the geographic limitations set forth in this Ordinance. The appropriate Application for Operation of a Business Offering Exotic Entertainment is included as Appendix A to this Ordinance.

SECTION 3: ENFORCEMENT

It shall be the duty of the Monongalia County Commission or its designee to:

- (A) Grant or deny the issuance of an Exotic Entertainment establishment within thirty (30) working days of receipt of a complete Application. An Application shall not be considered "complete" unless it contains all documents required by Sections 2(L) and 2(M) set forth above.
- (B) 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;
- (C) Provide information about the Ordinance upon the request of citizens and public agencies;

SECTION 4: SEVERABILITY

The provisions of this ordinance are severable, and if any provision or part thereof shall be declared invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this ordinance.

SECTION 5: EFFECTIVE DATE

This ordinance shall become effective on and after passage and upon adoption by the Monongalia County Commission.

PASSED by the County Commission of Monongalia County, West Virginia on FIRST READING on this 14th day of April, 2010.

A second reading and public hearing was held on the 5th day of May, 2010 after notice of a public hearing on said ordinance was published as a Class II legal advertisement and upon motion of _____, seconded by _____.

The ordinance is hereby Approved and Adopted by the Monongalia County Commission this 19th day of May, 2010.

DATED: May 19, 2010

Robert L. Bell
President

Asel Kennedy
Commissioner

Bill Bartolo
Commissioner

*2nd public hearing
March 13, 2013*

*Amendment accepted to
expand boundary to
1500 feet.*

SECTION 6: AMENDMENT APPROVAL

Amendments to the previously approved ordinance shall become effective on and after passage and upon adoption by the Monongalia County Commission.

PASSED by the County Commission of Monongalia County, West Virginia on FIRST READING on this 28th day of November, 2012.

A second reading and public hearing was held on the 19th day of December, 2012, after notice of a public hearing on said ordinance was published as a Class II legal advertisement.

Due to public concern with the distance being considered, the Monongalia County Commission reconsidered the distance and further revised the Amendment to reflect a 1,500 foot buffer. After proper notice was given of an additional public hearing, the Commission reconsidered the amendment and hereby Approved and Adopted the second amendment this 13th day of March, 2013.

DATED: *March 13, 2013*



Eldon A. Callen
President



L. W. Bartolo
Commissioner



Tom Bloom
Commissioner

Attachment: Appendix A