

ORDINANCE

**An Ordinance of the County Commission of Preston County, West Virginia,
Regulating the Location of Businesses Offering Exotic Entertainment
Pursuant to the Authority of West Virginia Code
Chapter 7, Article 1, Section 3jj**

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

The Preston 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 of their property, their retail trade and the quality of life in the County of Preston.

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 Preston County Commission, by the enactment of this Ordinance restricting the location of businesses offering exotic entertainment, 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 by reasonably restricting the location of such businesses. The Commission recognizes that state and federal law prohibits 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 I: Definitions.

For purposes of this ordinance:

- (1) “Exotic entertainment” means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting or for profit.
- (2) “Seminude” 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; or
- (C) A human male genital in a discernibly turgid state even if completely and opaquely covered.

Section II: Classification.

Exotic entertainment businesses are classified as follows:

Any business which offers exotic entertainment as defined in Section 1 of this Ordinance.

Section III: Location of Exotic Entertainment Businesses.

This ordinance prohibits the operation, or causing or permitting of the operation of an exotic entertainment business within, half mile (1/2) of:

- (1) a church, synagogue, mosque, temple or other 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 terms 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, 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 residential use: or half mile of any residence other than the operators if they live within the business building;

(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) a motel, campground or bed and breakfast.

This ordinance prohibits the causing or permitting of the operation, establishment, substantial enlargement or transfer of ownership or control of an exotic entertainment business within ½ mile 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 of 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 the intervening structures or objects or 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 non-conforming use by its location, subsequent to the grant or renewal of the exotic entertainment business license, of a use listed in this section within ½ miles 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 IV: Location Permit Required. After the effective date of this Ordinance:

- (A) It shall be unlawful for any person to establish a business offering exotic entertainment without first obtaining a valid location permit issued by the Preston County Commission.
- (B) Application for a permit must be made to the Office of the Preston County Commission by the intended operator of the enterprise. Applications must be submitted by hand delivery to the Office of the Preston County Commission during regular working hours. The application must be accompanied by a site plan. Such site plan must be prepared by a licensed land surveyor or professional engineer. The plat shall be drawn on durable paper in ink or by plotter, measuring a minimum of 8.5” x 14”.

The site plan shall contain the following information:

1. The bearings and distances of the boundary lines and all existing easements, railroad and utility rights-of-way.
2. North arrow, scale, date of survey and seal of the licensed land surveyor or professional engineer.

3. The names of adjoining property owners, including tax parcel information.
Distance from the adjoining property lines and/or any of the places designated in Section III of this Ordinance, and the site of the proposed business offering exotic entertainment which must be clearly annotated.
4. Locations, widths and names of all streets and roads.
5. Any areas delineated by the Corps of Engineers or the Federal Emergency Management Agency as flood hazard areas including 100-year floodplains.

Section V: Revocation.

The Preston County Commission shall revoke a location permit if it determines that:

- (A) a permittee gave false or misleading information in the materials submitted during the application process;
- (B) a permittee had operated the business offering exotic entertainment during a period of time when the permittee did not have a valid permit to operate such business;

(C) a permittee has failed to pay the original location permit fee or the annual renewal fee and has remained in default for a period of thirty (30) days.;

(D) there was a change of ownership for which a transfer application was not timely filed.

When the Preston County Commission revokes a location permit, the revocation shall continue for a period of one year and the permittee and/or any person listed on the original application form shall not be issued a new location permit for one year from the date the revocation became effective. Any reapplication shall be considered a new application and shall be required to comply with all location standards applicable at that time.

Section VI: Transfer of Location Permit.

(A) A permittee shall not transfer his permit to another, nor shall a permittee operate a business offering exotic entertainment under the authority of a permit at any place other than the address designated in the application.

(B) Any sale or transfer of any interest from one individual to another shall require the application for a new permit to be issued by the Preston County Commission and accompanied by a new application fee.

Section VII: Location Permit Fee.

The location permit fee for a business offering exotic entertainment is Five Hundred Dollars (\$500.00) for a new application and One Hundred Dollars (\$100.00) for each annual renewal application. The location permit must be renewed on the annual anniversary of the issuance. The only requirement of the renewal shall be the timely payment of the renewal fee when it becomes due. This fee is to be used for the costs of the administration and enforcement of this Ordinance.

Section VII: Exclusions.

- (1) This Ordinance is made subject to the provisions of Section 50, Article 24, Chapter 8 of the West Virginia Code:

“Provided, that 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 this ordinance. Any such repair or replacement will be 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 will subject the structure to the provisions of this ordinance.”

- (2) This Ordinance does not apply to or affect any municipal corporation that either: (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 this code; or (2) adopts an ordinance to exempt itself from any county ordinance enacted pursuant to West Virginia Code §7-1-3jj.

Section VIII: Injunction.

Any person who operates or causes to be operated a business offering exotic entertainment without a valid location permit or otherwise violates this Ordinance is subject to a suit for injunction before the Circuit Court of Preston County, West Virginia, for appropriate equitable relief, and is subject to all suspension and revocation powers of the Preston County Commission for non-compliance with the provisions of this Ordinance.

Section IX: Severability.

If any section, sub-section, or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of any remaining sections, subsections and clauses shall not be affected thereby.

Section X: Judicial Review.

Any person adversely affected by any provisions of this Ordinance is entitled to seek direct Judicial review before the Circuit Court of Preston County, West Virginia, with regard as to whether this Ordinance impermissibly burdens his or her right to establish a business offering exotic entertainment.

This Ordinance shall be effective from the date of its enactment.

This Ordinance is read and adopted this 18th day of August, 2003, at a regular meeting of the Preston County Commission.

This Ordinance passed by a vote of 3 yea, 0 nay, and 0 abstaining.

Preston County Commission

By _____
L. Darwin Wolfe, President

Victoria A. Cole, Commissioner

Dave Price, Commissioner

SEAL ATTEST:

Nancy Reckart, County Clerk