

**GREENBRIER COUNTY COMMISSION
ORDINANCE 2009**

AN ORDINANCE REGULATING THE LOCATION OF SEXUALLY ORIENTED BUSINESSES.

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the County; and

WHEREAS, West Virginia Code Section 7-1-3jj provides that the County Commission may by order entered of record, adopt an ordinance that limits the areas of the county in which a business may offer "exotic entertainment", as is defined in this ordinance and West Virginia Code Section 7-1-3jj, **as amended June, 2009.**

WHEREAS, the County Commission finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the Supreme Court has held that a governmental entity may "reasonably rely on the evidentiary foundation set forth in *Renton* and *American Mini Theatres* to the effect that secondary effects are caused by the presence of even one adult entertainment establishment" in a community, see *City of Erie v. Pap's A.M.*, 529 U.S. 277,297 (2000); and

WHEREAS, the United States Court of Appeals for the Fourth Circuit, citing *California v. LaRue*, explained in 1999 that, "In fact, nude and topless barroom dancing have a long history of spawning deleterious effects. They encourage prostitution and the criminal abuse and exploitation of young women," *Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634 (4th Cir. 1999) (noting that hundreds of police calls to local adult businesses "involved not simply lascivious conduct but drunken driving, larcenies, assaults, and narcotics use. The First Amendment does not foreclose communities from taking modest precautions against the secondary maladies of nude or topless barroom dancing."); and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and other adverse effects; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the 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; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the County recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the County and the County Commission accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and West Virginia Constitutions, West Virginia Revised Code, and the West Virginia Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U. S. Constitution or analogous provisions of the West Virginia State Constitution, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses.

THEREFORE, BE IT ORDAINED BY THE GREENBRIER COUNTY COMMISSION, being duly assembled, with a quorum present and voting as follows:

Section 1. Purpose and Findings.

- (A) Purpose. It is the purpose of this ordinance to regulate exotic entertainment businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including exotic entertainment. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to exotic entertainment protected by the First Amendment, or to deny access by the distributors and exhibitors of exotic entertainment to their intended market.
- (B) Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Commission, and on findings incorporated in the cases of *Pap's A.M v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S.50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S.109 (1972); *City of Erie v. Pap's A.M.* 529 U.S. 277 (2000); *Giovani Carandola Ltd. v. Bason*, 303 F.3d 507 (4th Cir. 2002); *Allno Enters. v. Baltimore County*, 2001 U.S. App. LEXIS 11522 (4th Cir. 2001); *Steakhouse, Inc. v. City of Raleigh* 2001 U.S. App. LEXIS 1544 *Mom N Pops, Inc. v. City of Charlotte*, 1998 U.S. App. LEXIS 20272; *D. G. Restaurant Corp v. Myrtle Beach*, 953 F.2d 140 (1992); *Hart Book Stores, Inc. v.*

Edmisten, 612 F.2d 821 (4th Cir. 1979); and other cases; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona-1984; Minneapolis, Minnesota-1980; Houston, Texas-1997; Indianapolis, Indiana-1984; Amarillo Texas; Garden Grove California- 1991 Los Angeles, California-1977; Whittier, California-1978; Austin, Texas-1986; Seattle, Washington- 1989; Oklahoma County, Oklahoma-1986; Cleveland, West Virginia-; and Dallas, Texas-1997; St. Croix County, Wisconsin-1993; Bellevue Washington-1998; Newport News, Virginia-1996; New York Times Square study-1994; Phoenix, Arizona-1995-98; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, January 12, 2000, and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Commission finds

- (1) Sexually oriented businesses are often associated with crime and illicit sexual activity.
- (2) Sexually oriented businesses, because of their nature and their operational characteristics, can have adverse impacts on the aesthetics and the property values in the area in which they locate, especially when such businesses locate close to one another.
- (3) The Commission incorporates all of the relevant findings from the reports cited in the above paragraph, as well as the cases cited in the Preamble to this ordinance. These documents establish that secondary effects can be caused by the presence of even one sexually oriented business in a community
- (4) Land use regulations, including location restrictions, for sexually oriented businesses are a reasonable regulatory response to control and prevent the adverse impacts of sexually oriented businesses in the community.
- (5) The general welfare, health, morals and safety of the citizens of the County will be promoted by the enactment of this ordinance

Section 2. Definitions.

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

E. Exotic Entertainment.

"Exotic entertainment" means live entertainment dancing or other services conducted by persons while nude or seminude in a commercial setting or for profit.

E2. Establish or Establishment.

"Establish or Establishment" shall mean and include any of the following:

- a. The opening or commencement of any sexually oriented business as a new business;
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- c. The addition of any sexually oriented business to any other existing sexually oriented business: or
- d. The relocation of any sexually oriented business.

O. Operate or Cause to be Operated or Operator.

"Operate or Cause to Operate" shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the Business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

P. Person.

"Person" shall mean individual proprietorship, partnership, corporation, association, or other legal entity.

S. Seminude.

"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 3. Classification

Businesses which offer exotic entertainment as is defined by this ordinance and West Virginia Code Section 7-1-3jj shall be subject to the location restrictions set forth in Section 4.

Section 4. Location.

It shall be unlawful to hereafter establish, operate, or cause to be operated an exotic entertainment business within:

- (1) two thousand (2,000) feet of another exotic entertainment business;
- (2) two thousand (2,000) feet of a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities.
- (3) two thousand (2,000) feet of a boundary of a residential subdivision or the property line of a lot devoted to residential use.
- (4) two thousand (2,000) feet of a premises license pursuant to the alcoholic beverage control regulations of the State West Virginia.
- (5) two thousand (2,000) feet of the following businesses oriented toward family entertainment: movie theaters, amphitheatres, swimming pools, public parks, public playgrounds, or public campgrounds, skating rinks, or public bike trails.
- (6) two thousand (2,000) feet of a public or private educational facility as follows: child day care facility, nursery, preschool, kindergarten, elementary school, intermediate or junior high school, vocational school, secondary or high school, continuation school, special education school, college, or university school includes the entire school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.

For the purpose of this article, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an exotic entertainment business is to be established.

Notwithstanding any other provisions to the contrary, exotic entertainment businesses shall be considered permitted uses in the zoning districts where exotic entertainment businesses are allowed to locate under current regulations in force in the County, and shall not be subject to procedural standards applied to special or conditional uses.

Section 5. Penalties and Enforcement

A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be civilly fined not to exceed \$500. Each day the violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such. The Prosecuting Attorney is hereby authorized to institute proceedings necessary for the enforcement of this Chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the County, provided, however, that nothing in this section and no action taken thereunder, shall be held to exclude such criminal proceedings as may be authorized by other provisions of the County code, or any of the laws or ordinances in force in the County or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

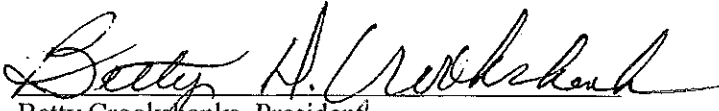
Section 6. Construction and Severability

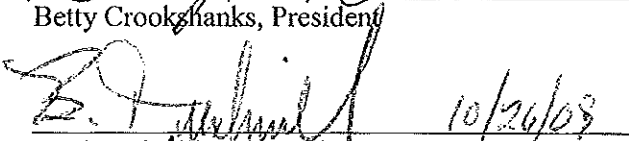
This Ordinance shall be narrowly construed to prevent conflict with the constitution and laws of both the State of West Virginia and the United States. Each and every section and provision of this ordinance are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

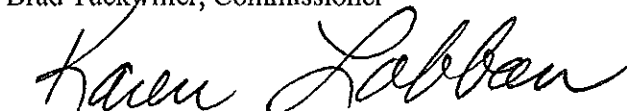
PASSED and ADOPTED, by the County Commission of Greenbrier County, West Virginia, the 5th day of May, 2003.

Readopted with clarifying amendments pursuant to Senate Bill No. 1010, passed by the West Virginia Legislature at the First Special Session of 2009 on the 2nd day of June, 2009. Re-adoption effective by vote of the Greenbrier County Commission on the 13th day of October, 2009

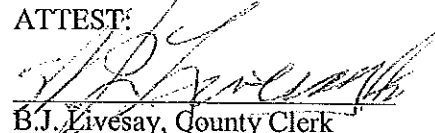
The County Commission of Greenbrier County


Betty Crookshanks, President


Brad Tuckwiller, Commissioner 10/26/09


Karen Lobban, Commissioner

ATTEST:


B.J. Livesay, County Clerk

Date:

Oct. 27, 2009