

Adults Only Establishment Location Ordinance of 2003

Section 1 Title; Findings.

Section 1.1 Title.

The Ordinance shall be known as the Adults Only Establishment Location Ordinance of 2003.

Section 1.2 Findings.

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

WHEREAS, the County finds that Adults Only Establishments require special supervision from public safety agencies to protect and preserve the health, safety and welfare of the employees, patrons and neighbors of Adults Only Establishments and the citizens of the County; and

WHEREAS, the County finds that there is convincing documented evidence that Adults Only Establishments, because of their very nature, have deleterious effects on existing and future business establishments and residential areas, causing increased crime and the deterioration of property values; and

WHEREAS, the County finds that Adults Only Establishments, because of their very nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to blight and downgrading the quality of life in adjacent areas; and

WHEREAS, the County finds that the regulation of the location of Adults Only Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, a tendency to attract an undesirable quantity of transients; to adversely affect real property values; to cause an increase in crime; to contribute to the blighting of residential and commercial areas; and to impede the development of businesses and residences; and

WHEREAS, the County, through enactment of a land use ordinance, desires to minimize and control these adverse secondary 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 adjacent areas; and deter the spread of blight; and

WHEREAS, the County, although concerned about these adverse effects, upholds constitutionally protected speech and expression and does not desire to infringe on constitutionally protected speech and expression; and

WHEREAS, the County wishes to enact a content neutral ordinance that addresses only the secondary effects of Adults Only Establishments within the Territorial Limits.

Section 2 Authority.

Section 2.1 Grant of Power.

The authority to enact the Ordinance is established under chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended, 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 Purpose.

The purpose of the Ordinance is to regulate the location of Adults Only Establishments in the Territorial Limits on and after the Effective Date.

Section 4 Definitions.

Section 4.1 "Abandonment" and **"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 non-conforming with the Ordinance.

Section 4.2 "Adult" shall mean an individual person who is aged twenty-one (21) years or older.

Section 4.3 "Adults Only Establishment" shall mean an Adults Only Bookstore, an Adults Only Entertainment Establishment, an Adults Only Motion Picture Theatre or similar Adults Only establishment.

Section 4.4 "Adults Only Bookstore" shall mean a commercial establishment that has as a substantial or significant portion of its stock in trade or derives a substantial or significant portion of its revenues or devotes a substantial or significant portion of its interior business or advertising to any one or more of books, magazines, periodicals or other printed matter, or photographs, films for sale or viewing on the Premises by use of motion picture or video devices or other coin-operated means, and other materials that are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise); bestiality; or sadomasochistic activity; or instruments, devices or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for bestiality or sadomasochistic use by patrons on or off the Premises.

Section 4.5 "Adults Only Entertainment Establishment" shall mean either an Exotic Entertainment Establishment or a commercial establishment in which individual persons who depict explicit sexual conduct or activity are explicitly or implicitly encouraged or tolerated.

Section 4.6 "Adults Only Motion Picture Theatre" shall mean part or all of a Premises used regularly and routinely for presenting Adults Only material, including moving pictures, videos, or films, distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity, for observation or viewing by patrons on the Premises.

Section 4.7 "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 4.8 "Application" shall mean the form or forms provided by the Planning Office and completed by an Applicant, together with all required documents and items that the Ordinance requires, by which the Applicant seeks to obtain a Certificate of Compliance.

Section 4.9 "Board of Appeals" shall mean the public body of persons established by the County Commission under chapter eight, article twenty-four, section fifty-one of the Code of West Virginia of 1931, as amended.

Section 4.10 "Certificate of Compliance" shall mean a written document and renewals or amendments thereto based on an Application issued to an Applicant (or retained by his or its successor or assign) with respect to a Premises by the Planning Officer that evidence that such person and the Premises comply or conform with the provisions of the Ordinance.

Section 4.11 "Comprehensive Plan" shall mean the document entitled "A Comprehensive Development Plan for Kanawha County, West Virginia," dated October 2000, as amended, together with all maps, exhibits, schedules and addenda attached thereto or incorporated by reference thereto.

Section 4.12 "County" shall mean the County of Kanawha, State of West Virginia.

Section 4.13 "Effective Date" shall mean the date on which the Ordinance is enacted by the County Commission of the County, or a subsequent date that is fixed in the Ordinance as the effective date thereof.

Section 4.14 "Existing Use" shall mean the use or uses to which any part or all of a Premises, or part or all of any Improvement thereon, before the Effective Date are lawfully pursued as a matter of right under local, State and Federal law.

Section 4.15 "Exotic Entertainment" means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting.

Section 4.16 "Exotic Entertainment Establishment" means part or all of a Premises on which Exotic Entertainment occurs.

Section 4.17 "Improvement" shall mean any structure or building whether or not existing on the Effective Date located on a Premises or, if there is a vested right to erect such structure or building, to be located within or upon a Premises.

Section 4.18 "Person" shall mean any individual, or any corporation, limited liability company, general partnership, limited partnership, joint venture, limited liability partnership, trust, estate or any other legal entity that is duly organized or existing and authorized to transact business in the State of West Virginia.

Section 4.19 "Planning Commission" shall mean the public body of persons established by the County Commission under chapter eight, article twenty-four, section six of the Code of West Virginia of 1931, as amended.

Section 4.20 "Planning Officer" shall mean the individual whom the County Commission has charged with the enforcement of any ordinances of the County enacted pursuant to Chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended.

Section 4.21 "Premises" shall mean a tract or tracts of land, whether containing existing or proposed Improvements, within the Territorial Limits that are identified as a parcel or parcels on a tax district map or maps on file with the office of the Assessor of the County.

Section 4.22 "Residence" shall mean a detached or un-detached dwelling for one or more persons and in which there is not a predominating commercial or non-housing use, and shall not mean a motel, hotel, inn or other lodging facility for transient persons.

Section 4.23 "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 4.24 "Sodomasochistic Activity" shall mean flagellation or torture by or upon a nude person; a person clad in undergarments, or a mask or costume or a condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator or the recipient.

Section 4.25 "Seminude" shall mean the appearance of at least

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; or

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 discemibly turgid state even if completely and opaquely covered.

Section 4.26 "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 in part or whole within the County.

Section 5. Land Use Regulation.

On and after the Effective Date, no person shall locate and operate an Adults Only Establishment except in compliance or conformance with the Ordinance. An Applicant who desires to locate and operate an Adults Only Establishment upon an Application therefore shall obtain a Certificate of Compliance with respect thereto in accordance with the Ordinance.

Section 6 Location of Adults Only Establishments.

Section 6.1 In the Territorial Limits, no public entrance to an Adults Only Establishment shall be located within two thousand (2,000) feet of any property on which is situated any of the following:

(a) A public or private child daycare facility, kindergarten, elementary, grade, middle, junior, senior, secondary or vocational school; or

(b) A public or private institution of higher education; or

(c) A public or private business school or college; or

(d) A public park or recreational facility; including but not limited to a park, a playground, nature trail, swimming pool, athletic field, basketball court, tennis court, wilderness area or other similar public land within the Territorial Limits or otherwise; or

(e) A public library; or

(f) A church, mosque, temple or synagogue or other building used as a place of religious worship or instruction; or

(g) A Federal, state, county or municipal office building; or

(h) Another Adults Only Establishment; or

(i) An establishment that is licensed to serve alcoholic beverages; or

(j) A residence.

Section 6.2 Each of the prescribed distances in Section 6.1 to a public entrance of an Adults Only Establishment shall be measured along a straight line from the nearest property line of the tract from which the measurement is to be made.

Section 7 Parking.

Section 7.1 Statement of intent. It is the purpose of this section of the Ordinance to ensure that every Adults Only Establishment maintains sufficient space on site to meet its parking needs and to accommodate vehicular traffic that it generates.

Section 7.2 Parking requirements. Every Adults Only Establishment shall provide and maintain on the site thereof one (1) parking space for every one hundred square feet of the Improvement in which the Adults Only Establishment operates or proposes to operate.

Section 7.3 Parking space. For purposes of this section of the Ordinance, a parking space shall have dimensions of no less than eight and one half feet (8-1/2') wide and no less than eighteen feet (18') long; be paved and delineated with stripes.

Section 7.4 Traffic. No parking lot serving an Adults Only Establishment shall be designed, constructed or maintained in such a manner as to permit motor vehicles to reverse or back into a public or private road, alley, street or highway.

Section 8 Signs.

Section 8.1 Statement of intent. It is the purpose of this section of the Ordinance to protect property values by encouraging visually appealing, non-distracting signs; to permit such signs that will not, by reason of their size, location or manner of display, to detract from the economic viability of other persons and establishments in the vicinity; to prevent signs from causing an annoyance or disturbance to a substantial number of persons; and to promote a healthy and business-friendly environmental in which signs relating to an Adults Only Establishment contribute to and encourage rather than detract from the economic viability of other persons and establishments in the vicinity.

Section 8.2 On and after the Effective Date, no person shall erect, structurally alter or relocate any sign to advertise or promote any Adults Only Establishment except in conformance with the Ordinance. It shall be unlawful for any person to erect, structurally alter or relocate any sign or Improvement supporting a sign on or off the Premises of an Adults Only Establishment without first obtaining a Certificate of Compliance based on an Application therefor.

Section 8.3 The application for the approval of a sign shall be made upon forms that the Planning Officer shall prepare and provide and shall include, without limitation, an accurate scaled sketch or drawing of the proposed sign; its proposed location and the content of the proposed sign.

Section 8.4 After a sign is constructed or installed based on the application therefor, the applicant shall provide a letter to the Planning Officer certifying that the sign was designed (including content), fabricated, sized, constructed or installed according to the application as approved.

Section 8.5 Any sign promoting an Adults Only Establishment shall be flat and mounted to the wall of the Improvement in which the Adults Only Establishment is located.

Section 8.6 No merchandise or depictions of Adults Only matter, including, without limitation, depictions of nude or seminude men or women, shall be displayed on any sign advertising or promoting an Adults Only Establishment or otherwise nor in any windows or any other area that may be viewed from a public street, alley, sidewalk or public way.

Section 8.7 The size of any sign promoting an Adults Only Establishment shall not exceed more than one (1) square foot per one (1) lineal foot of street frontage of the property on which an Adults Only Establishment is located. Notwithstanding anything herein to the contrary, no sign promoting an Adults Only Establishment shall have a dimension that exceeds three times any other dimension or contain a maximum aggregate area that exceeds thirty (30) square feet. The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem or figure, together with any frame or other material or color forming an integral party of the display or used to differentiate a sign from the background against which it is placed. If a sign is painted on a wall, and includes background colors or graphics, and if the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically separated and measured separately from the background graphics, the background graphic scheme shall not be computed in the sign size.

Section 8.8 No Adults Only Establishment shall erect or display any portable or movable sign on the Premises thereof. No Adults Only Establishment shall erect nor maintain more than one sign advertising or promoting an Adults Only Establishment on the Premises thereof.

Section 8.9 No sign promoting an Adults Only Establishment shall contain lights or animated parts that incorporate in any manner flashing or moving lights or any other visible moving or revolving part, except for a sign indicating time, temperature or date.

Section 8.10 No sign promoting an Adults Only Establishment shall project more than eighteen (18) inches from the wall.

Section 8.11 Upon receipt of written notice an applicant, the Planning Officer shall inspect the sign after it is completed and, upon a demonstration that such sign complies or conforms with the Ordinance, issue a Certificate of Compliance to the applicant, or if the Planning Officer determines that such sign does not comply or conform with the Ordinance, issue a written denial of the application therefor that shall include a written statement of the reason or reasons for the denial.

Section 8.12 If any sign promoting an Adults Only Establishment is abandoned, such sign shall be deemed a nuisance misleading the public and affecting or endangering surrounding property values and shall be deemed detrimental to the public health, safety and general welfare of the community and shall be abated.

Section 9 Application.

Section 9.1 Any person who desires to obtain a Certificate of Compliance shall designate a Responsible Person who shall make an Application in accordance with the Ordinance to the Planning Officer.

Section 9.2 The Planning Officer shall accept no Application unless the Responsible Person shall attest that all of the statements contained therein and the documents attached thereto are true and accurate in all material respects.

Section 9.3 The Application shall include, without limitation, a copy of a site plan of the existing or proposed Improvement or Improvements, the parcel or parcels of land of which it or they are situate and all appurtenances and rights of way related to or affecting the site, together with a letter describing the proposed Adults Only Establishment.

Section 9.4 The site plan shall be drawn to a scale of one-inch (1") equals fifty feet (50') or larger and shall include the following data:

- a) Name and address of the person 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 identification numbers; and the names and mailing 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 the proposed Improvements on the Premises; 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 showing dimensions, entrance and exit drives, planters and similar improvements with respect to the Premises; and
- h) Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screening with respect to the Premises; and
- i) Signage plan; and
- j) If required by another governmental authority, State of West Virginia Sediment and Erosion Control Plan by the State of West Virginia; and
- k) Drainage plan for the Premises prepared by a registered professional engineer licensed to practice in the State of West Virginia; and
- l) Certification of distances from properties on which uses set forth in Section 6.1 are found as of the date of the Application on forms that the Planning Office shall provide to the Applicant.

Section 9.4 The application fee shall be \$ 300.00

Section 10 Administration and enforcement.

Section 10.1 It shall be the duty of the Planning Officer or his duly authorized agent to administer and enforce the provisions of the Ordinance, except as otherwise expressly provided in the Ordinance.

Section 10.2 It shall be the duty of the Planning Officer to

- a) Receive and process any Application; and
- b) Issue a Certificate of Compliance upon an Application therefor; and
- c) Conduct investigations as necessary to determine compliance or conformance with or violation of the Ordinance; and
- d) Abate any violation of the Ordinance; and
- 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; and
- f) Assist law enforcement officers to abate or prosecute any violation of the Ordinance; and
- g) Provide information about the Ordinance upon the request of citizens and public agencies; and
- h) Pursue enforcement of the Ordinance as the Ordinance and other law provides; and
- i) Administer the Ordinance in all respects.

Section 10.3 Certificates of occupancy. No certificate of occupancy nor similar certificate shall be issued by the County to any person to occupy or use any Premises as an Adults

Only Establishment until the Planning Officer shall issue a Certificate of Compliance therefor or determine that a Certificate of Compliance shall remain in force and effect.

Section 11 Procedures for Violations.

Section 11.1 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 Officer. The Planning Officer shall record properly such complaint, conduct appropriate investigation, and take action thereon as the Ordinance provides.

Section 11.2 If, after a Certificate of Compliance is issued to any Applicant, the Planning Officer finds that any part of the Application on which the Certificate of Compliance was issued was false in any material respect, or that the Premises for which the Certificate of Compliance was issued does not comply or conform with the Ordinance, then the Planning Officer shall revoke the Certificate of Compliance by issuing a written notice thereof to the Applicant, and the Applicant or subsequent holder of a Certificate of Compliance therefor shall immediately cease and desist the use or uses for which the Certificate of Compliance was issued.

Section 11.3 If the Planning Officer finds that any of the provisions of Ordinance are violated, whether reported by any person or by any commission, board, agency, officer or employee of the County Commission, or by his own observation, he 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.

Section 11.4 Any such notice of a violation of the Ordinance shall include the following:

- a) Street address or legal description of the Premises, including identification by the tax district and tax map and parcel numbers; and
- b) A statement of the nature of the violation; and
- c) A description of the action required to correct the violation; and
- d) A statement of the time within which compliance with the Ordinance must be accomplished; and
- e) A statement that upon failure to comply with the requirements of the notice, the Planning Officer shall take such enforcement actions as the Ordinance authorizes.

Section 11.5 The Planning Officer may order the discontinuance of any use of a parcel or parcels of land or any Improvements that does not conform to the Ordinance by issuing a written notice. The Planning Officer may seek other remedies provided by law, including, without limitation, injunction, abatement by judicial proceeding in the Circuit Court of the County.

Section 11.6 The Planning Officer 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 notice issued thereunder.

Section 11.7 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 11.8 The regulated aspects of an Adults Only Establishment subject to the Ordinance shall be subject to periodic inspections for the purpose of verifying compliance with the terms and conditions of the Ordinance.

Section 12 Appeal.

Section 12.1 Any person who is aggrieved by any order, requirement, decision or determination made by the Planning Officer, administrative officer or body charged with the enforcement of the Ordinance may appeal the same to the Board of Appeals within the time and the manner prescribed by law.

Section 12.2 In addition to the right of appeal described in Section 11.1, any person who is aggrieved by any order, requirement, decision or determination made by the Planning Officer, administrative officer or body charged with the enforcement of the Ordinance may seek such other redress or relief as state law provides.

Section 13 Existing uses safeguarded.

The Ordinance shall not prohibit the continuance of the Existing Use of any tract of land or Improvement for the purpose for which such tract of land or Improvement is used on the Effective Date. The Ordinance shall not prohibit the alteration or replacement of any Improvement for the purpose for which such Improvement is used on the Effective Date, except that the use shall not be expanded or enlarged unless it shall conform to the Ordinance.

Section 14 Abandonment of a non-conforming use.

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

Section 15 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, by shall remain in full force and effect.