

HARRISON COUNTY COMMISSION
HARRISON COUNTY, WEST VIRGINIA

ORDINANCE NUMBER 2005-2

**AN ORDINANCE TO RESTRICT THE
LOCATION OF BUSINESSES OFFERING
EXOTIC ENTERTAINMENT IN HARRISON
COUNTY, WEST VIRGINIA**

WHEREAS, pursuant to West Virginia Code, including but not limited to section three-jj, article one, chapter seven (§7-1-3jj), and consistent with section fifty, article twenty-four, chapter eight (§8-24-50), the County Commission of Harrison County, West Virginia (hereafter Commission) has the authority to provide for the restriction in the location of businesses offering exotic entertainment; and

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

WHEREAS, the Commission finds that such establishments require additional supervision from public safety agencies to protect and preserve the health, safety and welfare of the employees, patrons and citizens; and

WHEREAS, the Commission finds that such establishments have serious operational characteristics, particularly if located in close proximity to each other, thereby contributing to blight and downgrading the quality of life in adjacent areas; and

WHEREAS, the Commission finds that the regulation of the location of such establishments is necessary to prevent undesirable secondary effects on surrounding areas, including but not limited to, a tendency to attract undesirable quality of transients; to adversely affect real property values; to cause an increase in crime; to contribute to the blight of residential and commercial areas; and to impede the development of businesses and residences; and

WHEREAS, the Commission, 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 Commission desires to enact a content neutral ordinance that addresses only the secondary effects of such establishments within Harrison County, West Virginia.

SECTION 1 - APPLICABILTY

Section 1.1 The provisions of this Ordinance apply to all areas of Harrison County. Notwithstanding any other provision of the West Virginia Code to the contrary, this Ordinance will 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 the West Virginia code; or (2) adopts an ordinance to exempt itself from any county ordinance enacted pursuant to this section.

SECTION 2 – DEFINITIONS AS USED IN THIS ORDINANCE

For the purpose of this ordinance the following definitions shall apply

Section 2.1 (1) "Exotic entertainment" means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting or for profit.

Section 2.2 (2) "nude" means having no clothing; naked. Permitting or featuring full exposure of the body

Section 2.3 (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 3 – INTERPRETATIONS AND APPLICATION

Section 3.1 This Ordinance is to be interpreted and applied consistent with the West Virginia Code, as amended, and any and all other local, state and/or federal statutes, rules and/or regulations.

SECTION 4 – LOCATION OF EXOTIC ENTERTAINMENT

Section 4.1 Pursuant to this Ordinance the public entrance to any establishment offering exotic entertainment shall not be located within two thousand five hundred (2,500) feet of any property on which is situated any of the following:

- (a) A public or private child daycare facility; or
- (b) A public or private elementary or secondary educational facility; or
- (c) A public or private institution of higher education or any post-secondary educational facility; or
- (d) A public park or recreational facility, including but not limited to a park, playground, nature trail, rail trail, swimming pool, athletic field, basketball court, tennis court, or other similar public land within Harrison County; or
- (e) A public library; or
- (f) A building utilized as a place of religious worship, instruction or services, including but not limited to a church, mosque, temple or synagogue; or
- (g) A federal, state, county or municipal office building; or
- (h) An establishment that is licensed to serve alcoholic beverages; or
- (i) A structure that is classified as a residence and/or dwelling; or
- (j) Another establishment that is governed by the provisions of this Ordinance.
- (k) In addition, the public entrance to any exotic entertainment establishment governed by the Ordinance shall not be less than two thousand five hundred (2,500) feet from the property line or right-of-way line of U.S. Highway 50, or Interstate 79.

Section 4.2 Each of the prescribed distances in Section 4.1 to a public entrance of an exotic entertainment establishment that is governed by the provision of this Ordinance shall be measured along a straight line from the nearest property line of the tract from which the measurement is to be made.

SECTION 5 – PARKING AND SIGNAGE

- Section 5.1 The owner(s) of any such establishment shall maintain and ensure sufficient space on site to meet any parking needs and to accommodate vehicular traffic that will be generated. No parking area shall be designed, constructed and/or maintained in such a manner as to permit vehicles to reverse or back into a public or private road, alley, street or highway.
- Section 5.2 The owner(s) of any such establishment shall provide and maintain on the site at least one (1) parking space for every one hundred (100) square feet of space to be utilized in operation of the establishment. For the purposes of this Ordinance, a parking space shall have dimension of no less than eight and one-half (8 ½) feet wide and no less than eighteen (18) feet long, be paved and delineated with stripes.
- Section 5.3 In an effort to protect the values of adjoining property, the signage for any such establishment shall be flat and mounted to the wall of the facility. Such signage shall not contain lights or animated parts that incorporate in any manner flashing or moving lights or any other visible moving or revolving parts. The size of any sign promoting such establishment shall not exceed more than one (1) square foot per one (1) lineal foot of road frontage of the property on which the establishment is located. There shall be no portable or temporary signage nor shall there be more than one permanent sign for any such establishment.
- Section 5.4 If any signage promoting such establishment is abandoned, such sign shall be deemed a nuisance in misleading the public, affecting surrounding property values, detrimental to the public safety and welfare and shall be abated by the County, without recourse by the owner(s) thereof.

SECTION 6 - APPLICATION

- Section 6.1 Any person who desires to operate and exotic entertainment establishment shall make application for a building permit per the requirements established by the Harrison County Planning Commission. A copy of which is on file with the Harrison County Planning Commission.
- Section 6.2 Any person making application for a building permit pursuant to section 6.1, shall submit with said application, a survey and/or site plan, to the Harrison County Planning Commission, showing or certifying compliance with the provision of Section 4 and 5 of this ordinance.

SECTION 6 – EFFECTIVE DATE

Passed first reading on the 4th day of August, 2005.

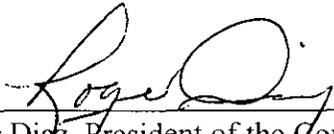
Passed second reading on the 18th day of August, 2005.

Public hearing held on the 1st day of September, 2005.

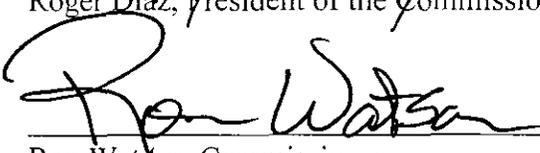
Enacted and passed on the 1st day of September, 2005.

This Ordinance is effective and adopted thirty (30) days after passing.

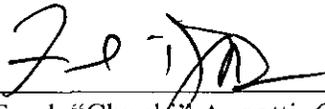
HARRISON COUNTY COMMISSION



Roger Diaz, President of the Commission



Ron Watson, Commissioner



Frank "Chunk" Angotti, Commissioner

Attest:



Clerk of the County Commission