

At a regular session of the County Commission of Cabell County, West Virginia, held at the Courthouse thereof on the ____ day of _____, 2003, the following Order was made and entered:

**IN THE MATTER OF THE ADOPTION OF A RESOLUTION ENACTING
AN ORDINANCE RESTRICTING THE LOCATION OF AND REGULATING
ADULT ONLY ESTABLISHMENTS OFFERING EXOTIC ENTERTAINMENT**

The following resolution was offered by:

_____, _____:

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 on Adults Only Establishments within Territorial Limits.

NOW, THEREFORE, BE IT RESOLVED that the Cabell County Commission does hereby adopt the following Ordinance:

**AN ORDINANCE RESTRICTING THE LOCATION
OF AND REGULATING ESTABLISHMENTS
OFFERING EXOTIC ENTERTAINMENT**

ARTICLE 1

ENACTMENT AND SCOPE

Section 1.1. Title.

This Ordinance shall be known as the Cabell County Adults Only Establishment Location and Regulation Ordinance.

Section 1.2. Grant of Power.

This Ordinance is being adopted pursuant to the provisions of the West Virginia Code, as amended, including, but not limited to, Chapter Eight, Article Twenty-Four, Section One, et seq. and Chapter Seven, Article One, Sections 3(jj) and 3(kk).

Section 1.3 Territorial Limits.

This Ordinance shall apply to and be effective within the Territorial Limits as hereinafter defined.

Section 1.4 Purpose.

The purpose of this Ordinance is to establish regulations governing, among other things, application for certificate of compliance, signage, parking, physical location, administration, enforcement and appellate process for the operation of Adult Only Establishments offering exotic entertainment.

Section 1.5 Effective Date.

This Ordinance takes effect upon final adoption by the Cabell County Commission.

ARTICLE 2

DEFINITIONS

Section 2.1 “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 at least thirty (30) 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 2.2 “Adult” shall mean an individual person who is aged twenty-one (21) years or older.

Section 2.3 “Adults Only Entertainment” shall mean an Adults Only Bookstore, an Adults Only Entertainment Establishment, an Adults Only Motion Picture Theater or similar Adults Only establishment.

Section 2.4 “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 2.5 “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 2.6 “Adults Only Motion Picture Theater” 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 2.7 “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 renew a Certificate of Compliance with respect to the Premises.

Section 2.8 “**Application**” shall mean the 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 2.9 “**Certificate of Compliance**” shall mean a written document and renewals or amendments thereto, issued by the Planning Commission or Planning Officer based upon the implementation of the Permit in compliance with the provisions of the Ordinance wherein the issuer certifies that the Adults Only Establishment is in compliance with the Ordinance.

Section 2.10 “**County**” shall mean the County of Cabell, State of West Virginia.

Section 2.11 “**County Commission**” shall mean the Cabell County Commission, State of West Virginia.

Section 2.12 “**Effective Date**” shall mean the date on which the Ordinance is enacted by the County Commission.

Section 2.13 “**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/or federal law.

Section 2.14 “**Exotic Entertainment**” means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting.

Section 2.15 “**Exotic Entertainment Establishment**” means part or all of a Premises on which Exotic Entertainment occurs.

Section 2.16 “**Improvement**” shall mean any building or structure, excluding fence, 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 2.17 “**Permit**” shall mean a written document issued by the Planning Commission or Planning Officer to an Applicant based upon the Application, wherein the issuer certifies that the Application complies with the provisions of the Ordinance.

Section 2.18 “**Person**” shall mean any individual, 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 2.19 “**Planning Commission**” shall mean the public body of persons established by the Cabell County Commission under chapter eight, article twenty-four, section six of the Code of West Virginia of 1931, as amended.

Section 2.20 “**Planning Officer**” shall mean the individual whom the County Commission or Planning Commission has designated to be responsible for the administration of the terms of the Ordinance enacted pursuant to chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended.

Section 2.21 “**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 County Assessor.

Section 2.22 “**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 2.23 “**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 2.24 “**Sadomasochistic Activity**” shall mean flagellation or torture by or upon a person who is nude, seminude or clad in undergarments, 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 2.25 “**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;

(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 2.26 “**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.

ARTICLE 3

LAND USE REGULATION

Section 3.1 Land Use Regulation. On and after the Effective Date, no person shall locate and/or 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 shall obtain and maintain a valid Certificate of Compliance with respect thereto in accordance with the Ordinance.

Section 3.2 Existing Uses. 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 3.3 Abandonment. Notwithstanding anything in the Ordinance to the contrary, if an existing use is non-conforming with the Ordinance and has been Abandoned, any future use of such land, Premises or Improvement(s) shall conform with the Ordinance.

ARTICLE 4

LOCATION

Section 4.1 Location. 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;
- (b) A public or private institution of higher education;
- (c) A public or private business school or college;
- (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;
- (e) A public library;

- (f) A church, mosque, temple or synagogue or other building used as a place of religious worship or instruction;
- (g) A Federal, state, county or municipal office building;
- (h) Another Adults Only Establishment;
- (i) An establishment that is licensed to serve alcoholic beverages; or
- (j) A residence.

Section 4.2 Method of Measurement. Each of the prescribed distances in Section 4.1 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.

ARTICLE 5

LANDSCAPING AND SCREENING

Section 5.1 Statement of Intent. It is the purpose of this section of the Ordinance to protect property values and economic viability of other persons and/or establishments in the vicinity; to prevent annoyance or disturbance to a substantial number of persons; to minimize nuisances such as noise and glare; to moderate heat, wind and other local climatic effects; and to promote a healthy and business-friendly environment where Adults Only Establishments contribute to and encourage rather than detract from the economic viability of other persons or establishments in the vicinity.

Section 5.2 General Provisions. The provision of required landscaping and/or screening is a continuing obligation of the Applicant or his, her or its successor and/or assignee, and shall be maintained for the use, enjoyment and privacy of the occupants and customers, as well as for the protection of adjoining properties. Landscaping and screening shall be provided for new structures and changes or expansions in land use or Improvements thereon, and shall be provided for an escrow fund or performance bond shall be established to provide the required

landscaping and screening before final inspection and approval is completed by the Planning Officer.

Section 5.3 Requirements. The landscape plan and screening design shall meet the following property development standards:

- (a) The landscape shall incorporate low maintenance plants and allow for continuous maintenance;
- (b) The maximum height of the Improvement(s) shall be forty-five (45) feet, and for accessory structures shall be twenty-five (25) feet;
- (c) The Premises shall consist of a buffer yard with a natural vegetative screen or opaque fence no less than twenty (20) feet from each side of the common property line;
- (d) Trees comprising a vegetative screen shall be set ten (10) feet apart, may be placed within the twenty (20) foot buffer yard and shall not be nearer than ten (10) feet from the property line;
- (e) In the buffer yard, the exterior width beyond the vegetative screen or opaque fence shall be planted with grass or ground cover;
- (f) A vision field shall be provided at every street intersection. It shall be a triangular area at the street intersection or corner lot, the space being defined by a line across the corner of the lot, the ends of which are on the street lines twenty (20) feet from the corner and containing no plantings, walls, structures, landfills or temporary or permanent vision obstruction from two and one-half (2 1/2) feet in height above the street level, except retaining walls or chain link fences with no additional sight obstructions, such as slats or vines, attached. Tree trunks or ports may penetrate the vision field;
- (g) The buffer yard shall include a fence or dense screen planting of trees, shrubs and/or other plant material to the full length of the lot line to serve as a barrier to visibility, glare or noise. Such screening shall meet the following requirements:
 - (1) Vegetative screening shall be of an evergreen variety and must be set in a minimum of two (2) rows with staggered placement of the vegetation. At the time of planting, the vegetation shall be at least four (4) feet in height and its mature size shall be considered when determining if it is appropriate for the planting area;

- (2) It shall be the responsibility of the Applicant or his, her or its successors and/or assignees to replace any trees that die and shall be so noted on the site plan;
- (3) Screen planting shall be a maximum of ten (10) feet apart;
- (4) No structure, fence, planting or other obstruction shall be permitted which would interfere with traffic visibility or violate the vision field provision in the preceding subsection;
- (5) Existing vegetation, structures, fence, topography or other screening may be considered as alternatives to the requirements if existing conditions meet the intent of this section; and
- (6) Fences shall be a minimum of seven (7) feet in height;
- (h) The dominant feature of a landscaped area shall be living plants; vegetative ground cover shall constitute a minimum of fifty percent (50%), by area;
- (i) The minimum tree size shall be a fifteen (15) gallon size, and there shall be a minimum of one (1) tree per each five hundred (500) square feet of lot area not covered by Improvements or impermeable surfaces;
- (j) The minimum shrub size shall be a five (5) gallon shrub size, and there shall be a minimum of two (2) shrubs per each three hundred (300) square feet of lot area not covered by Improvements or impermeable surfaces; and
- (k) Garbage collection areas shall be screened from view.

Section 5.4 Maintenance. All landscaping materials shall be installed and maintained according to accepted nursery industry procedures. The owner of the property and/or Applicant/ successor/assignee shall be responsible for the continued maintenance of all screening and landscaping materials, and shall keep them in a proper, neat and orderly appearance, free from refuse and debris at all times. All unhealthy or dead plant material shall be replaced within one (1) year, or by the next planting period, whichever comes first, by plant material similar in size and type to that which was removed.

ARTICLE 6

PARKING

Section 6.1 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 6.2 Parking Requirements. Every Adults Only Establishment shall provide and maintain on the site thereof one (1) parking space for every three (3) seats within the Adults Only Establishment or for every one hundred (100) square feet of the gross floor area of the Improvement in which the Adults Only Establishment operates or proposes to operate, whichever is greater.

Section 6.3 Parking Space. For purposes of this section of the Ordinance, a parking space shall have dimensions of no less than nine (9) feet wide and no less than eighteen (18) feet long, exclusive of access drives or aisles; and shall be paved and delineated with stripes.

Section 6.4 Traffic. No parking lot serving an Adults Only Establishment shall be designed, constructed or maintained in such a manner as to cause motor vehicle drivers to reverse or back into a public or private road, alley, street or highway.

ARTICLE 7

ROAD ACCESS

Section 7.1 Statement of Intent. It is the purpose of this section of the Ordinance to provide safe and convenient road access and to provide efficient travel on roads. The standards listed in this section shall be enforced along with the West Virginia Department of Highways' Rules and Regulations for Constructing Driveways on State Highway Rights-of-Way.

Section 7.2 Location. Driveways shall be located so that vehicles entering and leaving the property will not interfere with the free movement of traffic or create a hazard on the road.

Section 7.3 Width. The width of the driveway shall be a minimum of twenty-four (24) feet and shall consist of two (2) lanes.

Section 7.4 Traffic Impact Study. To protect the health, safety and welfare of the public, the Planning Commission or Planning Officer may require that a traffic impact study be prepared by a licensed traffic engineer where the premises gains access onto roads that have a high volume capacity, have a high accident rate or have been identified by the Planning Commission or Planning Officer as needing off-site improvements including, but not limited to, a turn lane, warning lights or interchange lights.

ARTICLE 8

DRAINAGE AND STORM SEWERS

Section 8.1 General Requirements. The Planning Commission or Planning Officer shall not issue a Permit or Certificate of Compliance for an Adults Only Establishment that fails to make adequate provisions for storm or flood water runoff by use of channels or basins. An Adults Only Establishment shall comply at all times with the following provisions:

- (a) Adequate provisions shall be made for storm or flood water runoff by use of channels or basins based on a twenty-five (25) year frequency for storm drains with an overflow designed at a fifty (50) year frequency;
- (b) In areas that are experiencing stormwater problems, a stormwater management facility shall be provided to accommodate a post-development storm with a ten (10) year, twenty-four (24) hour frequency, to be released at a rate not to exceed the pre-development discharge for a storm with a two (2) year, twenty-four (24) hour frequency;
- (c) A stormwater management facility with a maximum of a ten (10) foot total water depth shall have the as-built facility certified by a registered professional engineer as to design, specifications and construction to meet the requirements of this Article and the design standards of the United States Natural Resources Conservation Service as found in the "Natural Resources Conservation Technical Guide, Standards and Specifications for Ponds," January 1988;
- (d) A stormwater management facility that exceeds a ten (10) foot total water depth shall have the as-built facility certified by a licensed geotechnical engineer as to design, specifications and construction to meet the requirements of this Article and the design standards of the United States Natural Resources Conservation Service as found in the "Natural Resources Conservation Technical Guide, Standards and Specifications for Ponds," January 1988;
- (e) A stormwater management facility shall be constructed on a common area on the Premises and shall be maintained by the Adults Only Establishment;
- (f) The stormwater drainage system shall be separate and independent of any sanitary sewer system. Storm sewers, where required, shall be designed by a West Virginia registered professional engineer by the method approved by the Planning Commission or Planning Officer, and a copy of the design computations shall be submitted along with plans; and

- (g) Inlets shall be provided so that surface water is not carried across or around any intersection, nor for a distance of more than six hundred (600) feet in the gutter. When calculations indicate that curb capacities are exceeded at a point, no further allowance shall be made for flow beyond that point and basins shall be used to intercept flow at that point. Surface water drainage patterns shall be shown for each and every lot and block.

Section 8.2 Nature of Storm Water Facilities.

- (a) **Location.** The Applicant may be required by the Planning Commission or Planning Officer to carry away by pipe or open ditch any spring or surface water that may exist either previously to, or as a result of the construction of an Adults Only Establishment. Such drainage facilities shall be located in the road right-of-way where feasible, or in perpetual unobstructed easements of appropriate width, and shall be constructed in accordance with the construction standards and specifications. Junction boxes and/or drop inlets may be required, if warranted.
- (b) **Accessibility to Public Storm Sewers.** Where a public storm sewer is accessible, the Applicant shall install storm sewer facilities, or if no outlets are within a reasonable distance, adequate provision shall be made for the disposal of storm waters, subject to the specifications of the Planning Commission or Planning Officer. Where a future connection to a public storm sewer is probable, because such a system is currently in the planning stages, the Applicant shall make arrangements for future storm water disposal by a public utility system at the time the site plan receives final approval. Provisions for such connection shall be incorporated by inclusion in the performance bond required for the site plan.
- (c) **Accommodation of Upstream Drainage Areas.** A culvert or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire upstream drainage area. The Applicant shall employ a registered professional engineer to determine the necessary size of the facility, based on the provisions of the construction standards and specifications assuming conditions of maximum potential watershed development.
- (d) **Effect on Downstream Drainage Areas.** The Applicant's engineer shall also study the effects the site plan may have on existing downstream drainage facilities outside the area of the site plan. County drainage studies together with such other appropriate studies shall serve as a guide to needed improvements. Where it is anticipated that the additional runoff incident to the development of the site plan may overload an existing downstream drainage facility, the Planning Commission or Planning Officer may withhold issuance of Permit or Certificate of Compliance, or revoke said issuance if applicable, until provisions are made for

the improvement of said potential condition in such sum as the Planning Commission or Planning Officer shall determine. No site plan shall be approved unless adequate drainage will be provided to an adequate drainage watercourse or facility.

- (e) **Areas of Poor Drainage.** Whenever a site plan is submitted for an area which is subject to flooding, the Planning Commission or Planning Officer may approve the site plan provided that the Applicant fills the affected area of said site plan to an elevation sufficient to place the elevation of streets and lots above the FEMA one hundred (100) year base flood elevation or known flooding elevations. The site plan shall provide for an overflow zone along the bank of any stream or watercourse, in a width which shall be sufficient in times of high water to contain or move the water, and no fill shall be placed in the overflow zone nor shall any structure be erected or placed therein. The boundaries of the overflow zone shall be subject to approval by the Planning Commission or Planning Officer. Development of areas of extremely poor drainage shall be discouraged. The Applicant's engineer shall design the site plan so that drainage from undeveloped lots shall not be directed onto developed lots.
- (f) **Floodplain Areas.** The Applicant shall comply with all requirements of the Floodplain Management Program Ordinance of the County.
- (g) **Wetlands.** Developments which have a negative impact on wetlands shall be discouraged. The existence of wetlands shall be determined by the appropriate federal, state or local agency.

Section 8.3 Drainage Easements.

- (a) **General Requirements.** Where a site plan is traversed by a watercourse, drainageway, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of such watercourse, and of such width and construction or both as will be adequate for the purpose. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks and adequate width reserved for discharge of the base flood.
- (b) **Drainage Easements.** Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road rights-of-way, perpetual unobstructed easements at least fifteen (15) feet in width for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the road. Easements shall be indicated on the site plan. Drainage easements shall be carried from the road to a natural watercourse

or to other drainage facilities. A ten (10) foot drainage easement for lot drainage shall be required on lot lines (five (5) feet on each side) when not being used as a part of the drainage plan improvements.

- (1) When a proposed drainage system will carry water across private land outside the Premises, appropriate drainage rights must be secured and indicated on the site plan.
- (2) The Applicant shall dedicate, either in fee or by drainage or conservation easement of land on both sides of existing watercourses, to a distance to be determined by the Planning Commission or Planning Officer, which shall be at a minimum the distance from the top of the slope of the stream bank to the center of the channel.
- (3) Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication, shall be preserved and retained in their natural state as drainage ways. Such land or lands subject to periodic flooding shall not be computed in determining the average density nor for computing the area requirement of any lot.

Section 8.4 Certification. The Applicant's engineer shall inspect the Premises after the provisions of this Article have been fulfilled and, upon a demonstration of compliance herewith, issue a letter to the Planning Officer certifying compliance with this Article.

ARTICLE 9

SIGNS

Section 9.1 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 environment 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 9.2 Erection, Alteration or Relocation. 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 9.3 Form of Application. 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. The Planning Officer may require that the location of a proposed sign be based on a survey by a registered land surveyor or engineer, at the expense of the Applicant.

Section 9.4 Certification. After a sign is constructed or installed based on the Application, the Applicant shall provide a letter to the Planning Officer certifying that the sign was designed (including content), fabricated, sized, constructed and installed according to the Application as approved. The letter of certification shall be submitted to the Planning Officer prior to the Applicant receiving a Certificate of Compliance to operate the business.

Section 9.5 Location. 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, and shall be mounted so that no part of the sign extends beyond the height of the Improvement on which it is displayed.

Section 9.6 Display. 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, Improvement exterior or fence advertising or prompting 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 9.7 Size. 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; however, at no time shall the maximum aggregate area of the sign exceed 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 part 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 9.8 Prohibitions. No Adults Only Establishment shall erect or display the following:

- (a) Any portable or movable sign on the Premises thereof;
- (b) Any sign advertising or promoting an Adults Only Establishment at an off-Premises location;
- (c) Any flashing sign or animated sign which incorporates in any manner flashing or moving lights or any other visible moving or revolving part, except for the time, temperature or date sign;
- (d) Any commercial banner, pennant, flag, spinner or streamer;
- (e) Any sign that obstructs or impairs the vision of drivers, or obstructs or detracts from the visibility or, or resembles any traffic sign or traffic control device on a public street or road, by reason of size, shape, location, color illumination;
- (f) Any sign that makes use of such words as “STOP,” “LOOK,” “DANGER” or other similar words, phrases, symbols or characters in such a manner as to imply the need or requirement of stopping or the existence of danger;
- (g) Any sign that obstructs free ingress or egress from a door, window, fire escape or other exit way;
- (h) Any sign determined by the Planning Officer or Planning Commission to contain subject matter defined within the Ordinance related to anatomical areas listed within the definition of “Seminude” and/or sexual activities involving human genitals in a state of sexual stimulation or arousal; human masturbation; sexual intercourse; sodomy; fondling, erotic display or erotic touching of human genitals, public region, buttock or breast, even if completely and opaquely covered; bestiality; or sadomasochism;
- (i) Any sign that no longer advertises a bona fide business, activity, campaign, service or product; or
- (j) Any sign advertising or promoting a business that has been Abandoned.

Section 9.9 Quantity. No Adults Only Establishment shall erect or maintain more than one (1) sign advertising or promoting an Adults Only Establishment on the Premises thereof.

Section 9.10 Lights; Animation. 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 9.11 Projection. No sign promoting an Adults Only Establishment shall project more than eighteen (18) inches from the wall.

Section 9.12 Issuance; Denial. The Planning Officer shall inspect the sign after it is completed and, upon a demonstration that such sign complies or conforms with the Ordinance, may issue a Certificate of Compliance to the applicant. If the Planning Officer determines that the sign does not comply or conform with the Ordinance, the Planning Officer shall issue a written denial of the Application therefor, and shall include a written statement of the reason(s) for denial.

Section 9.13 Removal; Reparations. The Planning Officer may inspect signs to determine whether they are detrimental to the public health, safety and welfare. If so deemed detrimental by the Planning Officer, the Applicant/successor/assignee shall remove or repair the sign within five (5) days following the Planning Officer's determination. The Planning Officer may grant additional time for the removal or repair if a good faith effort is made of working toward compliance by said Applicant/successor/assignee.

Section 9.14 Abandonment. 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 immediately.

ARTICLE 10

APPLICATION

Section 10.1 Responsible Person. 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 10.2 Attestation. 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 10.3 Content. The Application shall include, without limitation, the following:

- (a) A copy of a site plan of the existing and proposed Improvement(s);

- (b) The parcel number as assigned by the office of the County Assessor of the land on which the Improvement(s) is situated;
- (c) A list of all appurtenances and rights of way related to or affecting the site;
- (d) A letter describing the proposed Adults Only Establishment;
- (e) A soils test and similar information if deemed necessary by the Planning Officer to determine the feasibility of the proposed development;
- (f) A Sediment Control Plan approved by the West Virginia Soil Conservation District if the construction activity, including clearing, grading and excavation is less than the minimum requirements for a West Virginia NPDES permit;
- (g) A West Virginia NPDES permit approved by the West Virginia Division of Environmental Protection, Office of Water Resources, if the construction activity meets the minimum requirements for said permit;
- (h) An access permit issued by the West Virginia Division of Highways, if applicable;
- (i) A letter of approval by the appropriate agency, utility service provider and/or health department certifying that the plan for a public or individual sewage disposal system has been approved;
- (j) A drainage analysis and drainage plan prepared by a registered professional engineer licensed to practice in West Virginia; and
- (k) Application fee.

Section 10.4 Site Plan. 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;
- (b) Existing and proposed contours of the Premises;
- (c) Certification by a land surveyor or engineer that the dimensions and bearings on the site plan are accurately delineated and the location of all easements and rights-of-way with respect to the Premises;

- (d) Total number and type of the proposed Improvements on the Premises, the gross floor area of each Improvement on the Premises, the estimated number of employees, the number of seats and other information necessary to determine off street parking requirements;
- (e) Location, shape, exterior dimensions and number of stories of each Improvement on the Premises;
- (f) Location, grade and dimensions of paved surfaces of the Premises, and of all streets, alleys, roads and highways abutting the Premises;
- (g) Complete traffic circulation and parking plan showing dimensions, entrance and exist drives, planters and similar improvements with respect to the Premises;
- (h) Location of landscaped areas (to be detailed on landscape plan), yard setbacks, fences, walls and other screening with respect to the Premises;
- (i) Soils test and similar information if deemed necessary by the Planning Officer to determine the feasibility of the Adults Only Establishment;
- (j) State of West Virginia Sediment and Erosion Control Plan or State of West Virginia NPDES;
- (k) Drainage plan for the Premises prepared by a registered professional engineer licensed to practice in the State of West Virginia;
- (l) Signage plan; and
- (m) Certification of distances from properties on which uses set forth in Section 4.1 are found as of the date of the Application on forms that the Planning Office shall provide to the Applicant.

Section 10.5 Fee. The application fee shall be _____ Dollars (\$_____).

ARTICLE 11

ADMINISTRATION AND ENFORCEMENT

Section 11.1 General. It shall be the duty of the Planning Officer or his or her duly authorized agent to administer and enforce the provisions of the Ordinance, except as otherwise expressly provided in the Ordinance.

Section 11.2 Duties. At minimum, the Planning Officer shall perform the following duties:

- (a) Receive and process any Application;
- (b) Grant or deny the issuance of an Adults Only Establishment Permit within ten (10) working days of receipt of a complete Application;
- (c) Grant, deny or revoke the issuance of a Certificate of Compliance;
- (d) Conduct investigations as necessary to determine compliance or conformance with or violation of the Ordinance;
- (e) Abate any violation of the Ordinance;
- (f) 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;
- (g) Assist law enforcement officers to abate or prosecute any violation of the Ordinance;
- (h) Provide information about the Ordinance upon the request of citizens and public agencies;
- (i) Pursue enforcement of the Ordinance as the Ordinance and other law provides; and
- (j) Administer the Ordinance in all respects.

Section 11.3 Prohibition. No commission, board, agency, officer or employee of the County shall issue, grant or approve any permit, license, certificate or any other authorization for any construction, reconstruction, alteration, enlargement or relocation of any building or structure, or for any use of land or building, that does not comply with the provisions of the Ordinance.

Section 11.4 Fractions. In administering the Ordinance, the standard rule of rounding numbers to the nearest whole shall apply. When the unit of measurement results in a fraction less than one-half or less than .5, the fraction shall be disregarded. When the unit of measurement results in a fraction of one-half or more, or .5 or over, the number shall be rounded up to the next nearest whole number.

Section 11.5 Variances. The Planning Commission or Planning Officer may waive any requirement of the Ordinance where the purposes of the provisions of the Ordinance may be served by an alternative proposal.

ARTICLE 12

VIOLATIONS

Section 12.1 Inspections. The regulated aspects of an Adults Only Establishment subject to the Ordinance shall be subject to periodic inspections by the Planning Officer or Planning Commission or designated agent for the purpose of verifying compliance with the terms and conditions of the Ordinance.

Section 12.2 Complaint. Whenever a violation of the Ordinance occurs, or is alleged to have occurred, any person may file a written complaint with the Cabell County Planning Officer. The complaint must state fully and clearly the causes and basis thereof. The Planning Officer shall record properly such complaint, conduct appropriate investigation and take action thereon as the Ordinance provides.

Section 12.3 Notice. 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 or her own observation, he shall notify in writing the Person responsible for the Adults Only Establishment. 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 County Sheriff. The notice shall include the following:

- (a) The street address or legal description of the property involved;
- (b) A statement indicating the nature of the violation and the specific section of the Ordinance that has been violated;
- (c) A description of the action required to correct the violation;
- (d) A statement indicating the time within which compliance with the Ordinance must be accomplished; and
- (e) A statement advising that upon failure to comply with the requirements within said time, the County shall take such enforcement procedures as may be required by the Ordinance, including but not limited to a revocation of the Certificate of Compliance.

Section 12.4 Remedies. The Planning Officer and/or Planning Commission are authorized to take any of the following actions:

- (a) Order the discontinuance of illegal use of land or Improvements;
- (b) Order the removal of illegal Improvements or structures of illegal additions, alternations or structural changes;
- (c) Order the discontinuance of any illegal work being done;

- (d) Revoke the Certificate of Compliance by issuing a written notice of revocation to the Applicant who shall immediately cease and desist the use(s) for which the Certificate of Compliance was issued;
- (e) Any other action authorized by the Ordinance to ensure compliance with its provisions; and
- (f) Any other remedies provided by law, including, without limitation, injunction or abatement by judicial proceeding in the County Circuit Court. Nothing contained in the Ordinance shall be deemed to prevent the Planning Officer, Planning Commission or County Commission from pursuing other lawful actions to prevent or remedy violations of the Ordinance.

Section 12.5 Fines. The Planning Officer may impose a monetary fine of not less than Ten Dollars (\$10.00) nor more than Three Hundred Dollars (\$300.00) against any person or persons who violate the Ordinance or any order or notice issued thereunder. Each day during which any violation of the Ordinance continues constitutes a separate offense.

ARTICLE 13

APPEAL

Section 13.1 General Procedure. Any person who is aggrieved by any order, requirement, decision or determination made by the Planning Officer may appeal the decision to the Planning Commission. The appeal shall be filed on forms prescribed by the Planning Commission. The appeal shall specify the reasons for the appeal and shall be filed within thirty (30) calendar days of the original action in question. The appeal form shall also include the names and addresses of all recorded landowners of real property located within two hundred fifty (250) feet of any part of the Premises. If said real property includes a lot within a subdivision, the name and address of the president of that subdivision's homeowners association shall also be included.

Section 13.2 Notice. The Planning Commission shall give an opportunity to any interested persons to examine or comment upon the appeal request. Upon receipt of the appeal request, the Planning Officer shall submit a notice for publication in one newspaper of general circulation to be published at least thirty (30) days prior to the meeting. At the same time the notice is submitted for newspaper publication, a notice shall be sent to all recorded landowners whose real property is situated within two hundred fifty (250) feet of any part of the Premises. If said real property includes a lot within a subdivision, a notice shall also be sent to the president for that subdivision's homeowners association. Whenever a public hearing involves property located within two hundred fifty (250) feet of a municipality, written notice shall also be sent by certified mail to the clerk of the municipality. Copies of the application, evidence of Ordinance violation and any other relevant material shall be maintained and filed by the Office of Planning and Infrastructure for public review prior to the meeting.

Section 13.3 Hearing. The Planning Commission shall hold a duly scheduled public hearing on the appeal. If the Planning Commission decides to uphold the administrative decision, the administrative decision stands and the appeal is denied. The Office of Planning and Infrastructure shall then formally notify, in writing, the Applicant of the decision and of the right to appeal to the County Circuit Court within thirty (30) days of the decision by the Planning Commission. If the Planning Commission reverses or modifies the administrative decision, the appeal stands as approved by the Planning Commission. The Office of Planning and Infrastructure shall then formally notify the Applicant of the decision in writing.

Section 13.4 Appealed. Any person adversely affected by an Ordinance enacted pursuant to the authority hereinabove granted is entitled to seek direct judicial review with regard to whether the ordinance impermissibly burdens his or her right to establish a business offering exotic entertainment.

The adoption of the foregoing resolution having been moved by: _____,
_____, and duly seconded by: _____, _____,
the vote thereon was as follows:

Nancy Cartmill, President _____

Bob Bailey, Commissioner _____

L. D. Egnor, Commissioner _____

Whereupon, Nancy Cartmill, President, declared said resolution duly adopted, and it is therefore **ADJUDGED** and **ORDERED** that said resolution be, and the same is hereby adopted as so stated above.

Nancy Cartmill, President

Bob Bailey, Commissioner

L. D. Egnor, Commissioner

Amendment to Adults Only Establishments Ordinance

Section 2.26 "Territorial Limits" shall mean those portions of land or area within the boundaries of the County including municipal corporations that have not adopted an ordinance restricting the location of exotic entertainment or substantially similar business pursuant to the authority granted in articles 12 or twenty-four, chapter eight of the West Virginia Code, or has not adopted an ordinance to exempt itself from any county ordinance enacted pursuant to the provisions of West Virginia Code Sections 7-1-3jj and 7-1-3kk and any other relative statutes pertaining thereto.