

TOWN OF BATH ORDINANCE 2004-05

EXOTIC ENTERTAINMENT RESTRICTION

In accordance with Chapter Seven, Article One, Section 3jj of the West Virginia Code it is desirable and necessary to regulate businesses offering exotic entertainment and to promote the safety and general welfare of the citizens of the Town of Bath by establishing reasonable and uniform regulations controlling businesses offering exotic entertainment within the Town of Bath.

The Town of Bath Council is concerned that businesses offering exotic entertainment may increase crime and decrease property values in areas of their operation and Town of Bath citizens have expressed their concerns about the adverse impact these types of businesses will have on the value of their property and their retail trade and the quality of life in the Town of Bath.

It is recognized that businesses offering exotic entertainment, due to their nature, have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby downgrading the quality of life in the adjacent area.

The Town of Bath Council desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods.

It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment but to enact a content neutral ordinance that addresses the secondary effects of businesses offering exotic entertainment. It is not the intent of the Town of Bath Council to condone or legitimize the distribution of obscene materials and the Council expects and encourages state, county and town law enforcement officials to enforce statutes against any such illegal activities in the town.

SECTION I DEFINITIONS

Adult Arcade – any place to which the public is permitted or invited wherein coin-operated, slug operated, or for any form of consideration, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the live images so displayed are distinguished or characterized as exotic entertainment.

Adult Cabaret – a nightclub, bar, restaurant or similar commercial establishment which regularly features (a) persons who appear in a state of nudity or semi-nudity; or (b) live performances which are characterized as exotic entertainment.

Adult Theater – a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized as exotic entertainment.

Establishment – includes (a) the opening or commencement of any exotic entertainment business as a new business; (b) the conversion of an existing business, whether or not originally an exotic entertainment business, to any exotic entertainment business; (c) the addition of any exotic entertainment business to any other existing exotic entertainment business; or (d) the relocation of any exotic entertainment business.

Exotic Entertainment – live entertainment, dancing or other services conducted by persons while nude or semi-nude in a commercial setting or for profit. Semi-nude 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, shirt, leotard, bathing suit or other wearing apparel provided that the areola is not exposed, in whole or in part; (b) a human fully 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.

Person – an individual, proprietorship, partnership, corporation, association, or other legal entity.

Substantial enlargement – an increase of 25% or more of the floor area occupied by a business that would be regulated by this ordinance but which was already in existence on the date this ordinance takes effect; or such increase in floor area of a business permitted under this ordinance.

SECTION II CLASSIFICATION

Exotic entertainment businesses are classified as follows:

- 1) adult arcades;
- 2) adult cabarets; and
- 3) adult theaters.

SECTION III LOCATION OF EXOTIC ENTERTAINMENT BUSINESSES

This statute prohibits any person, entity or business from establishing, operating, or causing to be operated, an exotic entertainment business within 2,000 feet of:

- 1) a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- 2) a public or private education facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. The term schools includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school;
- 3) a public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, natural trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas or other similar public land;
- 4) a restaurant or entertainment business which is oriented primarily towards children or family entertainment;
- 5) a licensed premises, which is licensed pursuant to the alcoholic beverage control regulations of the State of West Virginia;
- 6) a hotel, motel, campground; or bed and breakfast; or
- 7) another business offering exotic entertainment.

This statute prohibits any person, entity or business from establishing, operation, or causing to be operated, an exotic entertainment business within 1,000 feet of:

- 1) a residential dwelling.

This ordinance also prohibits the causing or permitting of the operation, establishment or maintenance of more than one exotic entertainment business in the same building, structure or portion thereof or the increase of floor area of any exotic entertainment business in any building, structure or portion thereof containing another exotic entertainment business.

For the purpose of this section, measurement shall be made in a straight line, without regard to any intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where an exotic entertainment business is conducted, to the nearest property line of the premises of a use listed in Section III. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculation and applying the distance requirements of this section.

For purposes of this section, the distance between any two exotic entertainment businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

An existing exotic entertainment business operating lawfully at the time of adoption of this ordinance is not rendered in violation of this ordinance by its location.

In the event of the partial or total loss of any existing permitted business structure due to fire, flood, accident or any other unforeseen act, that business structure may be repaired or replaced and the business use of that structure may continue notwithstanding the existence of this ordinance. Any such repair or replacement will be limited to restoring or replacing the damaged or lost structure with a building reasonably similar to, or smaller than the damaged structure, as measured in square footage; and any substantial enlargement of the business structure will subject the entire structure and operation to this ordinance as if applying for a new permit.

This ordinance shall 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 this ordinance.

SECTION IV INSPECTION & REVOCATION

During the construction period, the Permit Officer or other authorized official may inspect the premises to determine that the work is progressing in compliance with all applicable laws and ordinances. In the event the Permit Officer discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been false statement or misrepresentation by the applicant, the Permit Officer shall revoke the building permit and report such fact to the Town Council for whatever action it considers necessary.

SECTION V LICENSE & APPLICATION FEE REQUIREMENTS

An exotic entertainment business must obtain a valid business license issued by the Town of Bath.

SECTION VI APPEALS & PENALTIES

Appeals:

Whenever any person is aggrieved by a decision of the Permit Officer with respect to the provisions of this Ordinance, it is the right of that person to appeal to the Town of Bath Council. Such appeal must be filed, in writing, within thirty days after the determination by the Permit Officer. Upon receipt of such appeal, the Town Council shall set a hearing time and place within a period not less than ten (10) nor more than forty (40) days. An appeal may be made by an aggrieved person from a decision or ruling of the Town Council to the circuit court pursuant to the provisions of Chapter 8A, Article 9 of the West Virginia Code.

Penalties:

Any person who fails to comply with any of the requirements or provisions of this Ordinance or direction of the Permit Officer or any other authorized employee of the Town of Bath shall be guilty of an offense and, upon conviction, shall pay a fine to the Town of Bath of not less than \$100 or more than \$500 plus costs of prosecution subject to civil contempt charges. (In the default of such payment such a person shall be imprisoned in county prison for a period not to exceed 30 days.) Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties, the Town Council, through its Mayor or other officer, is authorized to seek a temporary restraining order or a permanent injunction or both in the Circuit Court of Morgan County to restrain a person or legal entity from violating the provisions of this Ordinance. The imposition of a fine or penalty for any violation, or noncompliance with this Ordinance shall not excuse the violation or noncompliance, or permit it to continue; and all such persons shall be required to correct or remedy such violation or noncompliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this Ordinance may be declared a public nuisance by the Town Council and abatable as such.

SECTION VII
SEVERABILITY &
TOWN LIABILITY

Severability:

If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Town Liability:

The granting of a permit or approval of a development plan or site plan shall not constitute a guarantee or warranty of any kind by the Town of Bath or Bath Town Council or by any official or employee thereof of the practicability or safety of the proposed use, and shall create no liability upon the Town of Bath, its officials or employees.