

Chapter 58 SEXUALLY ORIENTED BUSINESSES

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ARTICLE I. IN GENERAL

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ARTICLE II. EXOTIC ENTERTAINMENT RESTRICTIONS ^[1]

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Sec. 58-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means 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 means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity or semi-nudity; or
- (2) Live performances which are characterized as exotic entertainment.

Adult theater means 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 means and includes:

- (1) The opening or commencement of any exotic entertainment business as a new business;

- (2) The conversion of an existing business, whether or not originally an exotic entertainment business, to any exotic entertainment business;
- (3) The addition of any exotic entertainment business to any other existing exotic entertainment business; or
- (4) The relocation of any exotic entertainment business.

Exotic entertainment means live entertainment, dancing or other services conducted by persons while nude or semi-nude in a commercial setting or for profit. The term "semi-nude" means the appearance of:

- (1) 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;
- (2) 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
- (3) A human male genital in a discernibly turgid state even if completely and opaquely covered.

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

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

(Ord. No. 2004-05, § I, 10-2004)

Sec. 58-20. Classification.

Exotic entertainment businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult cabarets; and
- (3) Adult theaters.

(Ord. No. 2004-05, § II, 10-2004)

Sec. 58-21. Location of exotic entertainment businesses.

- (a) This article 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,

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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;
 - (6) Hotel, motel, campground; or bed and breakfast; or
 - (7) Another business offering exotic entertainment.
- (b) This article prohibits any person, entity or business from establishing, operating, or causing to be operated, an exotic entertainment business within 1,000 feet of a residential dwelling.
 - (c) This article 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.
 - (d) 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 subsection (a) of this section. 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.
 - (e) 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.
 - (f) An existing exotic entertainment business operating lawfully at the time of adoption of the ordinance from which this article is derived is not rendered in violation of this article by its location.
 - (g) 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 article. 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 article as if applying for a new permit.

(Ord. No. 2004-05, § III, 10-2004)

Sec. 58-22. Inspection and revocation of permit.

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.

(Ord. No. 2004-05, § IV, 10-2004)

Sec. 58-23. License and application fee requirements.

An exotic entertainment business must obtain a valid business license issued by the town.

(Ord. No. 2004-05, § V, 10-2004)

Sec. 58-24. Appeals and penalties.

- (a) *Appeals.* Whenever any person is aggrieved by a decision of the permit officer with respect to the provisions of this article, it is the right of that person to appeal to the town council. Such appeal must be filed, in writing, within 30 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 days nor more than 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.
- (b) *Penalties.* Any person who fails to comply with any of the requirements or provisions of this article or direction of the permit officer or any other authorized employee of the town shall be guilty of an offense and, upon conviction, shall pay a fine to the town of not less than \$100.00 or more than \$500.00 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 article continues shall constitute a separate offense. In addition to the penalties set forth in this subsection, 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 the county to restrain a person or legal entity from violating the provisions of this article. The imposition of a fine or penalty for any violation or noncompliance with this article 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 article may be declared a public nuisance by the town council and abated as such.

(Ord. No. 2004-05, § VI, 10-2004)

Sec. 58-25. 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 or 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, its officials or employees.

(Ord. No. 2004-05, § VII, 10-2004)

FOOTNOTE(S):

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State Law reference— Municipal authority concerning location of exotic entertainment businesses, W. Va. Code, § 8-12-5c; municipality shall issue license to person to whom state alcohol beverage control commissioner has granted a license, W. Va. Code, § 60-4-23(f).