

ORDINANCE

MERCER COUNTY, WEST VIRGINIA

EXOTIC ENTERTAINMENT RESTRICTION

BE IT ORDAINED AND ORDERED

THE COUNTY COMMISSION OF MERCER COUNTY, WEST VIRGINIA, A PUBLIC BODY CORPORATE OF MERCER COUNTY, WEST VIRGINIA, AS FOLLOWS:

In accordance with West Virginia Code § 7-1-3ii, it is desirable and necessary to regulate businesses offering exotic entertainment and to promote the safety and general welfare of the citizens of Mercer County by establishing reasonable and uniform regulations controlling exotic entertainment within the County of Mercer. It is further determined that Mercer County does not have a planning commission pursuant to the provisions of Chapter Eight (8), Article Twenty-four (24) of the West Virginia Code, and that by virtue of the authority granted in West Virginia Code § 7-1-3ii, allows for an order entered of record, to adopt an ordinance that limits the areas within the county in which businesses may offer "exotic entertainment" as that term is defined in said code section.

The Mercer County Commission is concerned that businesses offering exotic entertainment may increase crime and decrease property values in areas of operation. County 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 quality of life in the County of Mercer.

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 surrounding areas.

The Mercer County Commission desires to minimize and control these

distribution of obscene materials and expects and encourages state and county law enforcement officials to enforce statutes against any such illegal activities in the county.

SECTION I. DEFINITIONS

for the purposes of this ordinance:

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

1. the female breast below a horizontal line across 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;
2. 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
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 the increase in floor areas occupied by the business by more than twenty-five (25%) as the floor areas exist on the date this ordinance takes effect.

“Transfer of ownership or control” means:

1. the sale, lease or sub-lease of the exotic entertainment business;
2. the transfer of securities which constitute a controlling interest in the exotic entertainment business, whether by sale, exchange, or similar means; or
3. the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the exotic entertainment business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION II. LOCATION OF

EXOTIC ENTERTAINMENT BUSINESSES

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;

a public park or recreation 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 court, pedestrian/bicycle paths, wilderness areas or other similar public land;

the property line of a lot devoted to residential use;

a restaurant or entertainment business which is oriented primarily towards children or family entertainment;

licensed premises, which is licensed pursuant to the alcoholic beverage control regulations of the State of West Virginia;

hotel, motel, campground, bed and breakfast.

s ordinance also prohibits the causing or permitting of the operation, blishment, substantial enlargement or transfer of ownership or control of an exotic rtainment business within two thousand (2,000) feet of another exotic rtainment business.

ordinance also prohibits the causing or permitting of the operation, blishment, substantial enlargement or transfer of ownership or control of an exotic rtainment business in the same building, structure or portion thereof or the ease of floor area of any exotic entertainment business in any building or structure portion thereof containing another exotic entertainment business.

urpose of this section, measurement shall be made in a straight line, without d to the intervening structures or objects, from the nearest portion of the building ructure used as the part of the premises where an exotic entertainment business nducted, to the nearest property line of the premises of a use listed in Section III. ence of a city, county or other political subdivision boundary shall be irrelevant urses of calculating and applying the distance requirements of this section.

he purpose of this section, the distance between any two exotic entertainment esses shall be measured in a straight line, without

SECTION III. ENFORCEMENT AND APPEAL

Enforcement

Enforcement of this ordinance shall be the responsibility of the County Commission of Mercer County, who shall make an initial interpretation that a violation has occurred. The County Commission shall prepare a written "Violation Notice and Directive to Cease and Desist" and shall transmit such notice and directive to the person responsible for the violation. Failure to comply with a Directive to Cease and Desist shall be cause for the County Commission to declare the violation. Upon such declaration the County Commission shall instruct the assistance of the County Prosecuting Attorney and seek an injunction in the Circuit Court of Mercer County to restrain the responsible person from continuing the violation cited or seek an injunction requiring removal of structures or land uses from the property involved.

Appeal

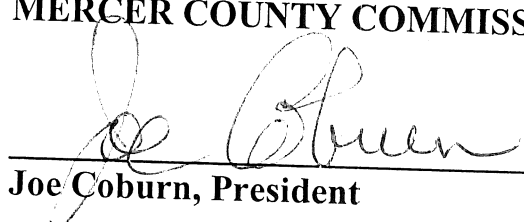
Any person adversely affected by this ordinance is entitled to seek direct judicial review with regard to whether the ordinance impermissibly burdens his or her right to establish a business offering exotic entertainment.

SECTION IV. SEVERABILITY

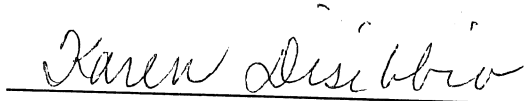
Should any section, subsection or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the ordinance as a whole or any part thereof other than the part so declared invalid or unconstitutional.

ENACTED AND ORDAINED THIS 12th DAY OF November, 2002.

MERCER COUNTY COMMISSION



Joe Coburn, President



Karen Disibbio, Commissioner