



Section 1.4                    Severability

Should any article, 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 to be invalid or unconstitutional.

ARTICLE 2.                    DEFINITIONS

Section 2.0                    Definitions

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

Seminude                                    “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.

ARTICLE 3.                    FINDINGS OF FACT AND DETERMINATIONS

Section 3.0                    Findings of Fact and Determinations

(1) It has been determined by the County Commission of Nicholas County, that Nicholas County does not have a planning commission pursuant to the provisions of Chapter Eight (8), Article Twenty-four (24) of the Code of West Virginia, and that by virtue of the authority granted in Chapter Seven (7), Article One (1) Section Three jj (3jj) of the Code of West Virginia, allows for an order entered of record, to adopt an ordinance that limits the areas of the county in which business may offer “exotic entertainment” as that term is defined in Section 2. It is the intent of the Nicholas County Commission by enacting such ordinance to prohibit businesses offering exotic entertainment

from locating in Nicholas County, and same is hereby expressly prohibited.

(2) It has been determined by the County Commission of Nicholas County, that any such ordinance shall be subject to the provisions of Chapter Eight (8), Article Twenty-four (24), Section Fifty (50) "Existing Uses Safeguarded".

(3) It has been determined by the County Commission of Nicholas County, that in the event of the partial or total loss of any existing 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 any ordinance authorized. Any such repair or replacement will be limited to restoring or replacing the damaged or lost structure with one reasonably similar, or smaller, in size as measured in square footage, and any enlargement of the business structure will subject the structure to any existing ordinance authorized.

ARTICLE 4. ENFORCEMENT AND APPEAL

Section 4.0 Enforcement

Enforcement of this ordinance shall be the responsibility of the County Commission of Nicholas 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:

- a. Seek an injunction in the Circuit Court of Nicholas 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; or
- b. Proceed by criminal warrant or information against the person in violation, or both a. and b.

Section 4.1 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.

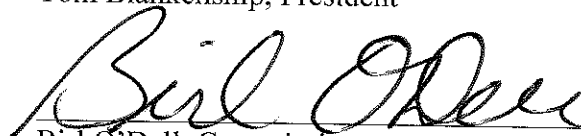
ARTICLE 5. ENACTMENT


Article 5.0 Enactment

ENACTED AND ORDAINED THIS 17 DAY OF July, 2002

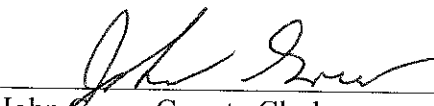
NICHOLAS COUNTY COMMISSION

  
Tom Blankenship, President

  
Birl O'Dell, Commissioner

  
Mert Myers, Commissioner

ATTEST:

  
John Greer, County Clerk

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