
**UPSHUR COUNTY ORDINANCE RESTRICTING THE
LOCATION OF BUSINESS OFFERING EXOTIC
ENTERTAINMENT AND/OR ADULTS ONLY
ESTABLISHMENT**

COUNTY COMMISSION OF UPSHUR COUNTY, WV

**AN ORDINANCE TO RESTRICT THE LOCATION OF BUSINESS OFFERING
EXOTIC ENTERTAINMENT AND/OR ADULTS ONLY ESTABLISHMENT IN
UPSHUR COUNTY, WEST VIRGINIA**

WHEREAS, pursuant to West Virginia Code, including but not limited to section 3jj, article 1, chapter 7 (§ 7-1-3jj), and consistent with section fifty, article twenty-four, chapter eight (§ 8-24-50), the County Commission of Upshur County, West Virginia (Commission) has the authority to provide for the restriction in the location of business offering exotic entertainment and/or adults only establishment (adults only bookstore, adults only entertainment, adults only motion picture theater or similar adults only establishment); and

WHEREAS, the Commission finds that it has a substantial governmental interest in protecting the public safety and welfare of its citizens; and,

WHEREAS, the Commission finds that such establishments require additional supervision from public safety agencies to protect and preserve the health, safety and welfare of the employees, patrons and citizens; and

WHEREAS, the Commission finds that such establishments have serious operational characteristics, particularly if located in close proximity to each other, thereby contributing to blight and downgrading the quality of life in adjacent areas; and,

WHEREAS, the Commission finds that the regulation of the location of such establishments is necessary to prevent undesirable secondary effects on surrounding areas, including but not limited to, a tendency to attract undesirable quality 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 Commission, 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 Commission desires to enact a content neutral ordinance that addresses only the secondary effects of such establishments within Upshur County, West Virginia.

Section 1: APPLICABILITY

Section 1.1 The provisions of this Ordinance apply to all areas of Upshur County. Notwithstanding any other provision of the code to the contrary, this Ordinance will apply to the City of Buckhannon unless: (1) the City of Buckhannon has adopted and has in effect a specific ordinance restricting the location of such establishments pursuant to the authority granted in articles twelve or twenty-four, chapter eight (§ 8-12, § 8-24); or (2) adopts an ordinance to exempt itself from this Ordinance enacted by the Commission.

Section 2: DEFINITIONS AS USED IN THIS ORDINANCE

- Section 2.1 In addition to the following and for the purpose of this Ordinance, the definitions as outlined in section 3jj, article 1, chapter 7 (§7-1-3jj) are to be considered and incorporated into the Ordinance, unless the context clearly indicates otherwise.
- Section 2.2 “Adult” shall mean an individual person who is twenty-one (21) years of age or older.
- Section 2.3 “Adult Only Bookstore” shall mean an 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 books, magazines, periodicals, other printed material, photographs, films for sale or viewing and other material that are distinguished or characterized by their principal emphasis on matters depicting describing or relating to nudity, explicit sexual content and /or items used primarily for sexual purposes.

Section 3: INTERPRETATIONS AND APPLICATION

- Section 3.1 This Ordinance is to be interpreted and applied consistent with the West Virginia Code, as amended, and any and all other local, state and/or federal statute, rule and/or regulation.

Section 4: LOCATION OF EXOTIC ENTERTAINMENT AND/OR ADULT ONLY ESTABLISHMENT

- Section 4.1 The public entrance to any such establishment shall not be located within two thousand five hundred (2,500') feet of any property on which is situated any of the following:
- (a) A public or private child daycare facility; or
 - (b) A public or private elementary or secondary educational facility; or
 - (c) A public or private institution of higher education or any post-secondary education facility; or

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- (d) A public park or recreational facility, including but not limited to a park, playground, nature trail, swimming pool, athletic field, basketball court, tennis court, or other similar public land within Upshur County; or
 - (e) A public library; or
 - (f) A building utilized as a place of religious worship, instruction or services, including but not limited to a church, mosque temple or synagogue; or
 - (g) A federal, state county and/or municipal office building; or
 - (h) An establishment that is licensed to serve alcoholic beverages; or
 - (i) A structure that is classified as a residence and/or dwelling; or
 - (j) Another establishment that is governed by the provisions of this Ordinance.
 - (k) In addition, the public entrance to such an establishment shall not be less than two thousand five hundred (2500') feet from the property line or right-of-way of US Highway 33 (Corridor H).

Section 4.2 Each of the prescribed distances in Section 4.1 to a public entrance of an establishment that is governed by the provisions of this Ordinance shall be measured along a straight line from the nearest property line of the tract from which the measurement is to be made.

Section 5: PARKING AND SIGNAGE

Section 5.1 The owner(s) of any such establishment shall maintain and ensure sufficient space on site to meet any parking needs and to accommodate vehicular traffic that will be generated. No parking area shall be designed, constructed and/or maintained in such a manner as to permit vehicles to reverse or back into a public or private road, alley street or highway.

Section 5.2 The owner(s) of any such establishment shall provide and maintain on the site at least one (1) parking space for every one hundred (100) square feet of space to be utilized in the operation of the establishment. For the purposes of this Ordinance, a parking space shall have dimensions of no less than eight and one-half feet (8 ½') wide and no less than eighteen feet (18') long, be paved and delineated with stripes.

Section 5.3 In an effort to protect values of adjoining property, the signage for any such establishment shall be flat and mounted to the wall of the facility. Such signage shall not contain lights or animated parts that incorporate in any manner flashing or moving lights or any other visible moving or revolving part. The size of any sign promoting such establishment shall not exceed more than one (1) square foot per one (1) lineal foot of road frontage of the property on which the establishment is located. There shall be no portable or temporary signage nor shall there be more than one permanent sign for any such establishment.

Section 5.4 If any signage promoting such establishment is abandoned, such sign shall be deemed a nuisance in misleading the public, affecting surrounding property values, detrimental to the public safety and welfare and shall be abated.

Section 6: APPLICATION

Section 6.1 Any person who desires to operate such an establishment shall make application for a permit per the requirements of the Upshur County Building Permit Ordinance, a copy of which is on file in the Office of the Upshur County Commission. In addition to any and all requirements imposed by said Upshur County Building Permit Ordinance, the applicant shall provide the following information to the Upshur County Permit Officer.

- (a) Name and address of the person who prepared the site plan, date of preparation, north point, scale, metes & bounds description of the site, tax district, map & parcel identification numbers, the names and address of owner(s) and applicant if different from owner(s); and
- (b) Existing and proposed contours of the premises and site; and
- (c) Certification by a land surveyor or registered engineer that the dimensions and bearings on the site plan are accurate delineating the location of all easements and right-of-ways; and

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- (d) Location, shape, exterior dimensions and number of stories for each building; and
 - (e) Location, grade and dimensions of paved surfaces and all streets, alleys, roads and highways abutting the site; and
 - (f) Complete traffic circulation plan, parking plan, signage plan, landscaped areas, fences, walls or other screening; and
 - (g) Drainage plan and/or sediment erosion plan as required by the State of West Virginia; and
 - (h) Certification of distances from properties on which uses set forth in Section 4.1 are found as of the date of the application.

Section 7 AMENDMENTS, CONFLICTS WITH OTHER LAWS, VALIDITY

Section 7.1 Amendment - By lawful procedure, the Commission may, from time to time, amend, supplement or change the provisions of this Ordinance.

Section 7.2 Conflict with Other Laws - Where the provisions of this Ordinance impose greater restrictions than those of any other ordinance or regulation, the provision of this Ordinance shall be controlling. Where the provision of any statute, other ordinance or regulation imposes greater restrictions than this Ordinance, the provisions of such statute, ordinance or regulations shall be controlling.

Section 7.3 Validity - If any article, section, subsection, paragraph, clause or provision of this Ordinance shall be declared by a court of competent jurisdiction to be invalid, such decisions shall not affect the validity of this Ordinance as a whole or any other part thereof.

Section 8 PENALTIES AND ENFORCEMENT

Section 8.1 It is unlawful for any person to violate this Ordinance. When it appears that a violation of this Ordinance has occurred, the responsible party shall be notified by the Upshur County Permit Officer or other authorized agent or official of Upshur County.

After thirty (30) days of non-compliance from the time of written notification, the violation of any section of this Ordinance shall be deemed a misdemeanor punishable by a fine of not to exceed five hundred dollars (\$500.00). Each day a violation continues shall constitute a separate offense.

Section 8.2 The Commissioner reserves the right to initiate necessary actions to compel compliance with this Ordinance through a court of competent jurisdiction.

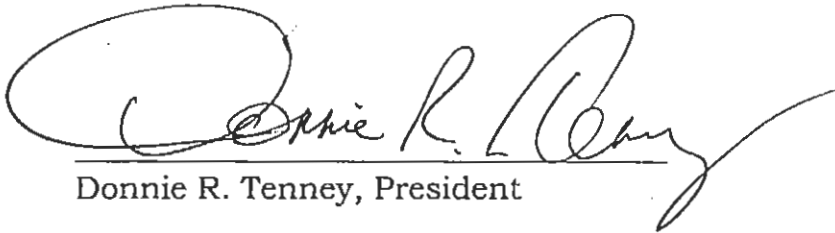
Section 9 ADOPTION AND SIGNATURES

Section 9.1 Any and all pending applications as of the date of the first reading will be held until final adoption of this Ordinance.

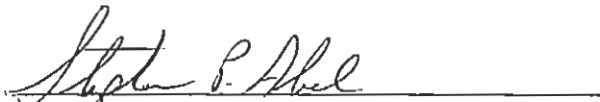
First Reading this 3rd day of MARCH, 2005.

Adopted this 10th day of MARCH, 2005.

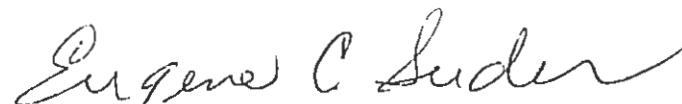
COUNTY COMMISSION of UPSHUR COUNTY, WEST VIRGINIA



Donnie R. Tenney, President



Stephen P. Abel, Commissioner



Eugene C. Suder, Commissioner