

At a regular session of the County Commission of Wayne County, West Virginia, held at the Courthouse thereof on the 24th day of April, 2006, the following Order was made and entered:

**IN THE MATTER OF THE ADOPTION OF A RESOLUTION ENACTING AN
ORDINANCE RESTRICTING THE LOCATION OF AND REGULATING
ADULT ONLY ESTABLISHMENTS OFFERING EXOTIC ENTERTAINMENT**

The following resolution was offered by:

James H. Booton, Commissioner, seconded by Charles E. Sammons, Commissioner:

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

WHEREAS, the County finds that Adults Only Establishments require special supervision from public safety agencies to protect and preserve the health, safety and welfare of the employees, patrons and neighbors of Adults Only Establishments and the citizens of the County; and

WHEREAS, the County finds that there is convincing documented evidence that Adults Only Establishments, because of their very nature, have deleterious effects on existing and future business establishments and residential areas, causing increased crime and the deterioration of property values; and

WHEREAS, the County finds that Adults Only Establishments, because of their very nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to blight and downgrading the quality of life in adjacent areas; and

WHEREAS, the County finds that the regulation of the location of Adults Only Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, a tendency to attract an undesirable quantity 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 County, through enactment of a land use ordinance, desires to minimize and control these adverse secondary effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of adjacent areas; and deter the spread of blight; and

WHEREAS, The County, 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

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WHEREAS, the County wishes to enact a content neutral ordinance that addresses only the secondary effects on Adults Only Establishments within Territorial Limits.

NOW, THEREFORE, BE IT RESOLVED that the Wayne County Commission does hereby adopt the following Ordinance:

**AN ORDINANCE RESTRICTING THE LOCATION
OF AND REGULATING ESTABLISHMENTS
OFFERING EXOTIC ENTERTAINMENT**

ARTICLE 1

ENACTMENT AND SCOPE

Section 1.1. Title.

This Ordinance shall be known as the Wayne County Adults Only Establishment Location and Regulation Ordinance.

Section 1.2. Grant of Power.

This Ordinance is being adopted pursuant to the provisions of the West Virginia Code, as amended, including, but not limited to, Chapter Eight, Article Twenty-Four, Section One, et seq. and Chapter Seven, Article One, Sections 3Gj) and 3(kk).

Section 1.3 Territorial Limits.

This Ordinance shall apply to and be effective within the Territorial Limits as hereinafter defined.

Section 1.4 Purpose.

The purpose of this Ordinance is to establish regulations governing, among other things, application for certificate of compliance, signage, parking, physical location, administration, enforcement and appellate process for the operation of Adult Only Establishments offering exotic entertainment.

Section 1.5 Effective Date.

This Ordinance takes effect upon final adoption by the Wayne County Commission.

ARTICLE 2

DEFINITIONS

Section 2.1 "Abandonment" and "Abandoned" shall mean that the use with respect to a Premises, regardless of the intent of the user, has ceased or has discontinued for a period of at least thirty (30) consecutive days, or an explicit declaration by the user of a Premises that it has ceased a use with respect to the Premises that is non-conforming with the Ordinance.

Section 2.2 "Adult" shall mean an individual person who is aged twenty-one (21) years or older.

Section 2.3 "Adults Only Entertainment" shall mean an Adults Only Bookstore, an Adults Only Entertainment Establishment, an Adults Only Motion Picture Theater or similar Adults Only establishment.

Section 2.4 "Adults Only Bookstore" shall mean a commercial 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 anyone or more of books, magazines, periodicals or other printed matter, or photographs, films for sale or viewing on the Premises by use of motion picture or video devices or other coin-operated means, and other materials that are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise); bestiality; or sadomasochistic activity; or instruments, devices or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for bestiality or sadomasochistic use by patrons on or off the Premises.

Section 2.5 "Adults Only Entertainment Establishment" shall mean either an Exotic Entertainment Establishment or a commercial establishment in which individual persons who depict explicit sexual conduct or activity are explicitly or implicitly encouraged or tolerated.

Section 2.6 "Adults Only Motion Picture Theater" shall mean part or all of a Premises used regularly and routinely for presenting Adults Only material, including moving pictures, videos, or films, distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity, for observation or viewing by patrons on the Premises.

Section 2.7 "Applicant" shall mean a person who has any legal or beneficial interest in a Premises who submits an Application to the Permit Officer in an attempt to obtain or renew a Certificate of Compliance with respect to the Premises.

Section 2.8 "Application" shall mean the forms provided by the Permit Officer and completed by an Applicant, together with all required documents and items that the Ordinance requires, by which the Applicant seeks to obtain a Certificate of Compliance.

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Section 2.9 "Certificate of Compliance" shall mean a written document and renewals or amendments thereto, issued by the Permit Officer based upon the implementation of the Permit in compliance with the provisions of the Ordinance wherein the issuer certifies that the Adults Only Establishment is in compliance with the Ordinance.

Section 2.10 "County" shall mean the County of Wayne, State of West Virginia.

Section 2.11 "County Commission" shall mean the Wayne County Commission, State of West Virginia.

Section 2.12 "Effective Date" shall mean the date on which the Ordinance is enacted by the County Commission.

Section 2.13 "Existing Use" shall mean the use or uses to which any part or all of a Premises, or part or all of any Improvement thereon, before the Effective Date are lawfully pursued as a matter of right under local, state and/or federal law.

Section 2.14 "Exotic Entertainment" means live entertainment, dancing or other services conducted by persons while nude or seminude in a commercial setting.

Section 2.15 "Exotic Entertainment Establishment" means part or all of a Premises on which Exotic Entertainment occurs.

Section 2.16 "Improvement" shall mean any building or structure, excluding fence, whether or not existing on the Effective Date located on a Premises or, if there is a vested right to erect such structure or building, to be located within or upon a Premises.

Section 2.17 "Permit" shall mean a written document issued by the County Commission or Permit Officer to an Applicant based upon the Application, wherein the issuer certifies that the Application complies with the provisions of the Ordinance.

Section 2.18 "Person" shall mean any individual, corporation, limited liability company, general partnership, limited partnership, joint venture, limited liability partnership, trust, estate or any other legal entity that is duly organized or existing and authorized to transact business in the State of West Virginia.

Section 2.19 "Permit Officer" shall mean the individual whom the County Commission has designated to be responsible for the administration of the terms of the Ordinance enacted pursuant to chapter eight, article twenty-four of the Code of West Virginia of 1931, as amended.

Section 2.20 "Premises" shall mean a tract or tracts of land, whether containing existing or proposed Improvements, within the Territorial Limits that are identified as a parcel or parcels on a tax district map or maps on file with the office of the County Assessor.

Section 2.21 "Residence" shall mean a detached or un-detached dwelling for one or more persons and in which there is not a predominating commercial or non-housing use, and shall not mean a motel, hotel, inn or other lodging facility for transient persons.

Section 2.22 "Responsible Person" shall mean the individual person whom an Applicant has designated to attest to the truthfulness and accuracy of the contents of an Application.

Section 2.23 "Sadomasochistic Activity" shall mean flagellation or torture by or upon a person who is nude, seminude or clad in undergarments, mask or costume; or a condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator or the recipient.

Section 2.24 "Seminude" shall mean the appearance of at least

(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.

Section 2.25 "Territorial Limits" shall mean those portions of land or area within the boundaries of the County including municipal corporations that have not adopted an ordinance restricting the location of exotic entertainment or substantially similar businesses pursuant to the authority granted in articles 12 or twenty-four, chapter eight of the West Virginia Code, or has not adopted an ordinance to exempt itself from any county ordinance enacted pursuant to the provisions of West Virginia Code Sections 7-1-3jj and 7-1-3kk and any other relative statutes pertaining thereto.

ARTICLE 3

LAND USE REGULATION

Section 3.1 Land Use Regulation. On and after the Effective Date, no person shall locate and/or operate an Adults Only Establishment except in compliance or conformance with the Ordinance. An Applicant who desires to locate and operate an Adults Only Establishment shall obtain and maintain a valid Certificate of Compliance with respect thereto in accordance with the Ordinance.

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Section 3.2 Existing Uses. The Ordinance shall not prohibit the continuance of the Existing Use of any tract of land or Improvement for the purpose for which such tract of land or Improvement is used on the Effective Date. The Ordinance shall not prohibit the alteration or replacement of any Improvement for the purpose for which such Improvement is used on the Effective Date, except that the use shall not be expanded or enlarged unless it shall conform to the Ordinance.

Section 3.3 Abandonment. Notwithstanding anything in the Ordinance to the contrary, if an existing use is non-conforming with the Ordinance and has been Abandoned, any future use of such land, Premises or Improvement(s) shall conform with the Ordinance.

ARTICLE 4

LOCATION

Section 4.1 Location. In the Territorial Limits, no public entrance to an Adults Only Establishment shall be located within two thousand (2,000) feet of any property on which is situated any of the following:

- (a) A public or private child daycare facility, kindergarten, elementary, grade, middle, junior, senior, secondary or vocational school;
- (b) A public or private institution of higher education;
- (c) A public or private business school or college;
- (d) A public park or recreational facility; including but not limited to a park, a playground, nature trail, swimming pool, athletic field, basketball court, tennis court, wilderness area or other similar public land within the Territorial Limits or otherwise;
- (e) A public library;
- (t) A church, mosque, temple or synagogue or other building used as a place of religious worship or instruction;
- (g) A Federal, state, county or municipal office building;
- (h) Another Adults Only Establishment;
- (i) An establishment that is licensed to serve alcoholic beverages; or
- G) A residence.

Section 4.2 Method of Measurement. Each of the prescribed distances in Section 4.1 to a public entrance of an Adults Only Establishment shall be measured along a straight line from the nearest property line of the tract from which the measurement is to be made.

ARTICLE 5

LANDSCAPING AND SCREENING

Section 5.1 Statement of Intent. It is the purpose of this section of the Ordinance to protect property values and economic viability of other persons and/or establishments in the vicinity; to prevent annoyance or disturbance to a substantial number of persons; to minimize nuisances such as noise and glare; to moderate heat, wind and other local climatic effects; and to promote a healthy and business-friendly environment where Adults Only Establishments contribute to and encourage rather than detract from the economic viability of other persons or establishments in the vicinity.

Section 5.2 General Provisions. The provision of required landscaping and/or screening is a continuing obligation of the Applicant or his, her or its successor and/or assignee, and shall be maintained for the use, enjoyment and privacy of the occupants and customers, as well as for the protection of adjoining properties. Landscaping and screening shall be provided for new structures and changes or expansions in land use or Improvements thereon, and shall be provided for an escrow fund or performance bond shall be established to provide the required landscaping and screening before final inspection and approval is completed by the Permit Officer.

Section 5.3 Requirements. The landscape plan and screening design shall meet the following property development standards:

- (a) The landscape shall incorporate low maintenance plants and allow for continuous maintenance;
- (b) The maximum height of the Improvement(s) shall be forty-five (45) feet, and for accessory structures shall be twenty-five (25) feet;
- (c) The Premises shall consist of a buffer yard with a natural vegetative screen or opaque fence no less than twenty (20) feet from each side of the common property line;
- (d) Trees comprising a vegetative screen shall be set ten (10) feet apart, may be placed within the twenty (20) foot buffer yard and shall not be nearer than ten (10) feet from the property line;
- (e) In the buffer yard, the exterior width beyond the vegetative screen or opaque fence shall be planted with grass or ground cover;

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- (f) A vision field shall be provided at every street intersection. It shall be a triangular area at the street intersection or corner lot, the space being defined by a line across the corner of the lot, the ends of which are on the street lines twenty (20) feet from the corner and containing no plantings, walls, structures, landfills or temporary or permanent vision obstruction from two and one-half (2 1/2) feet in height above the street level, except retaining walls or chain link fences with no additional sight obstructions, such as slats or vines, attached. Tree trunks or posts may penetrate the vision field;
- (g) The buffer yard shall include a fence or dense screen planting of trees, shrubs and/or other plant material to the full length of the lot line to serve as a barrier to visibility, glare or noise. Such screening shall meet the following requirements:
- (1) Vegetative screening shall be of an evergreen variety and must be set in a minimum of two (2) rows with staggered placement of the vegetation. At the time of planting, the vegetation shall be at least four (4) feet in height and its mature size shall be considered when determining if it is appropriate for the planting area;
 - (2) It shall be the responsibility of the Applicant or his, her or its successors and/or assignees to replace any trees that die and shall be so noted on the site plan;
 - (3) Screen planting shall be a maximum often (10) feet apart;
 - (4) No structure, fence, planting or other obstruction shall be permitted which would interfere with traffic visibility or violate the vision field provision in the preceding subsection;
 - (5) Existing vegetation, structures, fence, topography or other screening may be considered as alternatives to the requirements if existing conditions meet the intent of this section; and
 - (6) Fences shall be a minimum of seven (7) feet in height;
- (h) The dominant feature of a landscaped area shall be living plants; vegetative ground cover shall constitute a minimum of fifty percent (50%), by area;
- (i) The minimum tree size shall be a fifteen (15) gallon size, and there shall be a minimum of one (1) tree per each five hundred (500) square feet of lot area not covered by Improvements or impermeable surfaces;

- (j) The minimum shrub size shall be a five (5) gallon shrub size, and there shall be a minimum of two (2) shrubs per each three hundred (300) square feet of lot area not covered by Improvements or impermeable surfaces; and
- (k) Garbage collection areas shall be screened from view.

Section 5.4 Maintenance. All landscaping materials shall be installed and maintained according to accepted nursery industry procedures. The owner of the property and/or Applicant! successor/assignee shall be responsible for the continued maintenance of all screening and landscaping materials, and shall keep them in a proper, neat and orderly appearance, free from refuse and debris at all times. All unhealthy or dead plant material shall be replaced within one (1) year, or by the next planting period, whichever comes first, by plant material similar in size and type to that which was removed.

ARTICLE 6

PARKING

Section 6.1 Statement of Intent. It is the purpose of this section of the Ordinance to ensure that every Adults Only Establishment maintains sufficient space on site to meet its parking needs and to accommodate vehicular traffic that it generates.

Section 6.2 Parking Requirements. Every Adults Only Establishment shall provide and maintain on the site thereof one (1) parking space for every three (3) seats within the Adults Only Establishment or for every one hundred (100) square feet of the gross floor area of the Improvement in which the Adults Only Establishment operates or proposes to operate, whichever is greater.

Section 6.3 Parking Space. For purposes of this section of the Ordinance, a parking space shall have dimensions of no less than nine (9) feet wide and no less than eighteen (18) feet long, exclusive of access drives or aisles; and shall be paved and delineated with stripes.

Section 6.4 Traffic. No parking lot serving an Adults Only Establishment shall be designed, constructed or maintained in such a manner as to cause motor vehicle drivers to reverse or back into a public or private road, alley, street or highway.

ARTICLE 7

ROAD ACCESS

Section 7.1 Statement of Intent. It is the purpose of this section of the Ordinance to provide safe and convenient road access and to provide efficient travel on roads. The standards listed in this section shall be enforced along with the West Virginia Department of Highways' Rules and Regulations for Constructing Driveways on State Highway Rights-of-Way.

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Section 7.2 Location. Driveways shall be located so that vehicles entering and leaving the property will not interfere with the free movement of traffic or create a hazard on the road.

Section 7.3 Width. The width of the driveway shall be a minimum of twenty-four (24) feet and shall consist of two (2) lanes.

Section 7.4 Traffic Impact Study. To protect the health, safety and welfare of the public, the Permit Officer may require that a traffic impact study be prepared by a licensed traffic engineer where the premises gains access onto roads that have a high volume capacity, have a high accident rate or have been identified by the Pennit Officer as needing off-site improvements including, but not limited to, a turn lane, warning lights or interchange lights.

ARTICLE 8

DRAINAGE AND STORM SEWERS

Section 8.1 General Requirements. The Permit Officer shall not issue a Permit or Certificate of Compliance for an Adults Only Establishment that fails to make adequate provisions for storm or flood water runoff by use of channels or basins. An Adults Only Establishment shall comply at all times with the following provisions:

- (a) Adequate provisions shall be made for storm or flood water runoff by use of channels or basins based on a twenty-five (25) year frequency for stonn drains with an overflow designed at a fifty (50) year frequency;
- (b) In areas that are experiencing storm water problems, a storm water management facility shall be provided to accommodate a post-development storm with a ten (10) year, twenty-four (24) hour frequency, to be released at a rate not to exceed the pre-development discharge for a storm with a two (2) year, twenty-four (24) hour frequency;
- (c) A storm water management facility with a maximum of a ten (10) foot total water depth shall have the as-built facility certified by a registered professional engineer as to design, specifications and construction to meet the requirements of this Article and the design standards of the United States Natural Resources Conservation Service as found in the "Natural Resources Conservation Technical Guide, Standards and Specifications for Ponds," January 1988;
- (d) A storm water management facility that exceeds a ten (10) foot total water depth shall have the as-built facility certified by a licensed geotechnical engineer as to design, specifications and construction to meet the requirements of this Article and the design standards of the United States Natural Resources Conservation Service as found in the "Natural Resources Conservation Technical Guide, Standards and Specifications for Ponds," January 1988;

- (e) A storm water management facility shall be constructed on a common area on the Premises and shall be maintained by the Adults Only Establishment;
- (t) The storm water drainage system shall be separate and independent of any sanitary sewer system. Storm sewers, where required, shall be designed by a West Virginia registered professional engineer by the method approved by the Permit Officer, and a copy of the design computations shall be submitted along with plans; and
- (g) Inlets shall be provided so that surface water is not carried across or around any intersection, nor for a distance of more than six hundred (600) feet in the gutter. When calculations indicate that curb capacities are exceeded at a point, no further allowance shall be made for flow beyond that point and basins shall be used to intercept flow at that point. Surface water drainage patterns shall be shown for each and every lot and block.

Section 8.2 Nature of Storm Water Facilities.

- (a) Location. The Applicant may be required by the Permit Officer to carry away by pipe or open ditch any spring or surface water that may exist either previously to, or as a result of the construction of an Adults Only Establishment. Such drainage facilities shall be located in the road right-of-way where feasible, or in perpetual unobstructed easements of appropriate width, and shall be constructed in accordance with the construction standards and specifications. Junction boxes and/or drop inlets may be required, if warranted.
- (b) Accessibility to Public Storm Sewers. Where a public storm sewer is accessible, the Applicant shall install storm sewer facilities, or if no outlets are within a reasonable distance, adequate provision shall be made for the disposal of storm waters, subject to the specifications of the Permit Officer. Where a future connection to a public storm sewer is probable, because such a system is currently in the planning stages, the Applicant shall make arrangements for future storm water disposal by a public utility system at the time the site plan receives final approval. Provisions for such connection shall be incorporated by inclusion in the performance bond required for the site plan.
- (c) Accommodation of Upstream Drainage Areas. A culvert or other drainage facility shall in each case be large enough to accommodate potential runoff from its entire upstream drainage area. The Applicant shall employ a registered professional engineer to determine the necessary size of the facility, based on the provisions of the construction standards and specifications assuming conditions of maximum potential watershed development.
- (d) Effect on Downstream Drainage Areas. The Applicant's engineer shall also study the effects the site plan may have on existing downstream drainage facilities

outside the area of the site plan. County drainage studies together with such other appropriate studies shall serve as a guide to needed improvements. Where it is anticipated that the additional runoff incident to the development of the site plan may overload an existing downstream drainage facility, the Permit Officer may withhold issuance of Permit or Certificate of Compliance, or revoke said issuance if applicable, until provisions are made for the improvement of said potential condition in such sum as the Permit Officer shall determine. No site plan shall be approved unless adequate drainage will be provided to an adequate drainage watercourse or facility.

- (e) **Areas of Poor Drainage.** Whenever a site plan is submitted for an area which is subject to flooding, the Permit Officer may approve the site plan provided that the Applicant fills the affected area of said site plan to an elevation sufficient to place the elevation of streets and lots above the FEMA one hundred (100) year base flood elevation or known flooding elevations. The site plan shall provide for an overflow zone along the bank of any stream or watercourse, in a width which shall be sufficient in times of high water to contain or move the water, and no fill shall be placed in the overflow zone nor shall any structure be erected or placed therein. The boundaries of the overflow zone shall be subject to approval by the Permit Officer. Development of areas of extremely poor drainage shall be discouraged. The Applicant's engineer shall design the site plan so that drainage from undeveloped lots shall not be directed onto developed lots.
- (f) **Floodplain Areas.** The Applicant shall comply with all requirements of the Floodplain Management Program Ordinance of the County.
- (g) **Wetlands.** Developments which have a negative impact on wetlands shall be discouraged. The existence of wetlands shall be determined by the appropriate federal, state or local agency.

Section 8.3 Drainage Easements.

- (a) **General Requirements.** Where a site plan is traversed by a watercourse, drainageway, channel or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of such watercourse, and of such width and construction or both as will be adequate for the purpose. Wherever possible, it is desirable that the drainage be maintained by an open channel with landscaped banks and adequate width reserved for discharge of the base flood.
- (b) **Drainage Easements.** Where topography or other conditions are such as to make impractical the inclusion of drainage facilities within road rights-of-way, perpetual unobstructed easements at least fifteen (15) feet in width for such drainage facilities shall be provided across property outside the road lines and with satisfactory access to the road. Easements shall be indicated on the site plan.

Drainage easements shall be carried from the road to a natural watercourse or to other drainage facilities. A ten (10) foot drainage easement for lot drainage shall be required on lot lines (five (5) feet on each side) when not being used as a part of the drainage plan improvements.

- (1) When a proposed drainage system will carry water across private land outside the Premises, appropriate drainage rights must be secured and indicated on the site plan.
- (2) The Applicant shall dedicate, either in fee or by drainage or conservation easement of land on both sides of existing watercourses, to a distance to be determined by the Permit Officer, which shall be at a minimum the distance from the top of the slope of the stream bank to the center of the channel.
- (3) Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication, shall be preserved and retained in their natural state as drainage ways. Such land or lands subject to periodic flooding shall not be computed in determining the average density nor for computing the area requirement of any lot.

Section 8.4 Certification. The Applicant's engineer shall inspect the Premises after the provisions of this Article have been fulfilled and, upon a demonstration of compliance herewith, issue a letter to the Permit Officer certifying compliance with this Article.

ARTICLE 9

SIGNS

Section 9.1 Statement of Intent. It is the purpose of this section of the Ordinance to protect property values by encouraging visually appealing, non-distracting signs; to permit such signs that will not, by reason of their size, location or manner of display, to detract from the economic viability of other persons and establishments in the vicinity; to prevent signs from causing an annoyance or disturbance to a substantial number of persons; and to promote a healthy and business-friendly environment in which signs relating to an Adults Only Establishment contribute to and encourage rather than detract from the economic viability of other persons and establishments in the vicinity.

Section 9.2 Erection, Alteration or Relocation. On and after the Effective Date, no person shall erect, structurally alter or relocate any sign to advertise or promote any Adults Only Establishment except in conformance with the Ordinance. It shall be unlawful for any person to erect, structurally alter or relocate any sign or Improvement supporting a sign on or off the Premises of an Adults Only Establishment without first obtaining a Certificate of Compliance based on an Application therefor.

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Section 9.3 Form of Application. The application for the approval of a sign shall be made upon forms that the Permit Officer shall prepare and provide and shall include, without limitation, an accurate scaled sketch or drawing of the proposed sign; its proposed location and the content of the proposed sign. The Permit Officer may require that the location of a proposed sign be based on a survey by a registered land surveyor or engineer, at the expense of the Applicant.

Section 9.4 Certification. After a sign is constructed or installed based on the Application, the Applicant shall provide a letter to the Permit Officer certifying that the sign was designed (including content), fabricated, sized, constructed and installed according to the Application as approved. The letter of certification shall be submitted to the Permit Officer prior to the Applicant receiving a Certificate of Compliance to operate the business.

Section 9.5 Location. Any sign promoting an Adults Only Establishment shall be flat and mounted to the wall of the Improvement in which the Adults Only Establishment is located, and shall be mounted so that no part of the sign extends beyond the height of the Improvement on which it is displayed.

Section 9.6 Display. No merchandise or depictions of Adults Only matter, including, without limitation, depictions of nude or seminude men or women, shall be displayed on any sign, Improvement exterior or fence advertising or prompting an Adults Only Establishment or otherwise nor in any windows or any other area that may be viewed from a public street, alley, sidewalk or public way.

Section 9.7 Size. The size of any sign promoting an Adults Only Establishment shall not exceed more than one (1) square foot per one (1) lineal foot of street frontage of the property on which an Adults Only Establishment is located; however, at no time shall the maximum aggregate area of the sign exceed thirty (30) square feet. The permitted maximum size of a sign shall apply to the entire area enclosing the extreme limits of writing, representation, emblem or figure, together with any frame or other material or color forming an integral part of the display or used to differentiate a sign from the background against which it is placed. If a sign is painted on a wall, and includes background colors or graphics, and if the sign is an integral part of the overall graphic scheme, the entire wall shall be considered a sign and its measurement computed as such. If a sign is painted on a wall, and the sign can be logically separated and measured separately from the background graphics, the background graphic scheme shall not be computed in the sign size.

Section 9.8 Prohibitions. No Adults Only Establishment shall erect or display the following:

- (a) Any portable or movable sign on the Premises thereof;
- (b) Any sign advertising or promoting an Adults Only Establishment at an off-Premises location;

- (c) Any flashing sign or animated sign which incorporates in any manner flashing or moving lights or any other visible moving or revolving part, except for the time, temperature or date sign;
- (d) Any commercial banner, pennant, flag, spinner or streamer;
- (e) Any sign that obstructs or impairs the vision of drivers, or obstructs or detracts from the visibility or, or resembles any traffic sign or traffic control device on a public street or road, by reason of size, shape, location, color illumination;
- (t) Any sign that makes use of such words as "STOP," "LOOK," "DANGER" or other similar words, phrases, symbols or characters in such a manner as to imply the need or requirement of stopping or the existence of danger;
- (g) Any sign that obstructs free ingress or egress from a door, window, fire escape or other exit way;
- (h) Any sign determined by the Permit Officer to contain subject matter defined within the Ordinance related to anatomical areas listed within the definition of "Seminude" and/or sexual activities involving human genitals in a state of sexual stimulation or arousal; human masturbation; sexual intercourse; sodomy; fondling, erotic display or erotic touching of human genitals, public region, buttock or breast, even if completely and opaquely covered; bestiality; or sadomasochism;
- (i) Any sign that no longer advertises a bona fide business, activity, campaign, service or product; or
- G) Any sign advertising or promoting a business that has been Abandoned.

Section 9.9 Quantity. No Adults Only Establishment shall erect or maintain more than one (1) sign advertising or promoting an Adults Only Establishment on the Premises thereof.

Section 9.10 Lights; Animation. No sign promoting an Adults Only Establishment shall contain lights or animated parts that incorporate in any manner flashing or moving lights or any other visible moving or revolving part, except for a sign indicating time, temperature or date.

Section 9.11 Projection. No sign promoting an Adults Only Establishment shall project more than eighteen (18) inches from the wall.

Section 9.12 Issuance; Denial. The Permit Officer shall inspect the sign after it is completed and, upon a demonstration that such sign complies or conforms with the Ordinance, may issue a Certificate of Compliance to the applicant. If the Permit Officer determines that the sign does not comply or conform with the Ordinance, the Permit Officer shall issue a written

denial of the Application thereof, and shall include a written statement of the reason(s) for "- denial.

Section 9.13 Removal; Reparations. The Permit Officer may inspect signs to determine whether they are detrimental to the public health, safety and welfare. If so deemed detrimental by the Permit Officer, the Applicant/successor/assignee shall remove or repair the sign within five (5) days following the Permit Officer's determination. The Permit Officer may grant additional time for the removal or repair if a good faith effort is made of working toward compliance by said Applicant/successor/assignee.

Section 9.14 Abandonment. If any sign promoting an Adults Only Establishment is abandoned, such sign shall be deemed a nuisance misleading the public and affecting or endangering surrounding property values and shall be deemed detrimental to the public health, safety and general welfare of the community and shall be abated immediately.

ARTICLE 10

APPLICATION

Section 10.1 Responsible Person. Any person who desires to obtain a Certificate of Compliance shall designate a Responsible Person who shall make an Application in accordance with the Ordinance to the Permit Officer.

Section 10.2 Attestation. The Permit Officer shall accept no Application unless the Responsible Person shall attest that all of the statements contained therein and the documents attached thereto are true and accurate in all material respects.

Section 10.3 Content. The Application shall include, without limitation, the following:

- (a) A copy of a site plan of the existing and proposed Improvement(s);
- (b) The parcel number as assigned by the office of the County Assessor of the land on which the Improvement(s) is situated;
- (c) A list of all appurtenances and rights of way related to or affecting the site;
- (d) A letter describing the proposed Adults Only Establishment;
- (e) A soils test and similar information if deemed necessary by the Permit Officer to determine the feasibility of the proposed development;

