

SUMMERS COUNTY EXOTIC ENTERTAINMENT ORDINANCE

BE IT ORDAINED AND ORDERED

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

ARTICLE 1. AUTHORITY, EFFECTIVE DATE, TITLE, PURPOSE,
JURISDICTION AND SEVERABILITY

Section 1.0 Authority

This ordinance is adopted by the virtue of the authority granted in Chapter Seven (7), Article One (1) Section Three jj (3jj) of the Code of West Virginia.

Section 1.1 Title

This ordinance shall be titled and cited as the **Summers County Exotic Entertainment Ordinance**.

Section 1.2 Purpose

The purpose of this ordinance is to prohibit businesses offering exotic entertainment from locating in Summers County.

Section 1.3 Jurisdiction

This ordinance shall apply to all properties within Summers County, West Virginia, exclusive of the incorporated towns and cities and properties of the United States Government and of the West Virginia State Government and any incorporated Town or City.

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 Summers County, that Summers 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 Summers County Commission by enacting such ordinance to prohibit businesses offering exotic entertainment from locating in Summers County, and same is hereby expressly prohibited.

(2) It has been determined by the County Commission of Summers 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 Summers 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 small, 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 Summers 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 Summers County to restrain the responsible person from continuing the violation cited or seek an injunction requiring the 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 the 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.

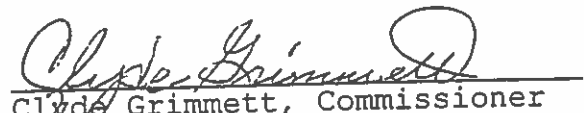
ARTICLE 5. ENACTMENT

Article 5.0 Enactment

ENACTED AND ORDAINED THIS 2nd DAY OF December, 2002.

SUMMERS COUNTY COMMISSION


Lonnie Mullins, President


Clyde Grimmert, Commissioner


Jerry Berry, Commissioner

ATTEST:


Mary E. Merritt, County Clerk