

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse, thereof, on the 5th day of January, 2006, the following order was made and entered:

Order re-ratifying the Ordinance on Locating Video Lottery Establishments 2004

WHEREAS, the Kanawha County Commission passed an Ordinance on Locating Video Lottery Establishments April 15, 2004; and

WHEREAS, it was the intention of the Kanawha County Commission to include restrictions on distances; and

WHEREAS, a draft of the ordinance was inadvertently and incorrectly attached to the previous order which omitted the distance restrictions; and

WHEREAS, the County would benefit from properly enacting the ordinance as intended.

The following motion was offered by _____, Commissioner

The County Commission of Kanawha County, West Virginia, does hereby re-ratify the Ordinance on Locating Video Lottery Establishments of 2004 to be effective which had been originally adopted on April 15, 2004. A copy of the Ordinance is attached hereto and made a part hereof.

The adoption of the foregoing motion has been moved by:

_____, Commissioner, and duly seconded by

_____, Commissioner, the vote thereon was as follows:

W. Kent Carper		
Henry C. Shores		
Dave Hardy		

Ordinance on Locating Video Lottery Establishments of 2004

Section 1 General.

Section 1.1 Title.

The Ordinance shall be known as the "Ordinance on Locating Video Lottery Establishments of 2004".

Section 1.2 Findings. In considering the enactment of the Ordinance, the County Commission makes the following findings of fact:

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

WHEREAS, Video Lottery Establishments, by their very nature, require special supervision by agencies of the County to protect and preserve the health, safety and welfare of the employees, patrons and neighbors of Video Lottery Establishments and the citizens of the County; and

WHEREAS, Video Lottery Establishments, by their very nature, have objectionable operational characteristics, particularly when they are located proximately to each other, thereby contributing to blight and the degradation of the quality of life in adjacent areas; and

WHEREAS, the regulation of the location of Video Lottery Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, a tendency to attract an undesirable number of transients; to deflate real property values; to blight residential and commercial areas; and to impede the development of businesses and residences; and

WHEREAS, the City of Charleston, West Virginia, has enacted a zoning ordinance that regulates the location of so-called "Gambling Establishments", that is, Video Lottery Establishments, within that jurisdiction, by forbidding that no Gambling Establishment shall be located within 2,000 feet of each other nor within 1,000 feet of any "church, place of worship, library, school, community center or the State Capitol complex bounded by Greenbrier Street, Kanawha Boulevard, Michigan Avenue and Piedmont Road"; and

WHEREAS, the County would benefit from enacting an ordinance that complements that of the City of Charleston.

Section 1.2 Purpose.

It is the purpose of the Ordinance to regulate the location of Video Lottery Establishments within the Territorial Limits to curtail the secondary effects thereof. It is not the purpose of the Ordinance to permanently bar any Video Lottery Establishment that is an Existing Use within the Territorial Limits.

Section 2 Authority.

Section 2.1 Grant of Power.

The authority to enact the Ordinance is established under W. Va. Code § 8-24-1 *et seq.*, and the laws of the State of West Virginia.

Section 2.2 Territorial Limits.

The Ordinance shall apply to and be effective within the Territorial Limits.

Section 3 Definitions. For purposes of the Ordinance, the following words or terms shall have the meanings ascribed to them thereafter except when the context suggests other:

Section 3.1 “Abandonment” or “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 more than sixty (60) 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 3.2 “Applicant” shall mean a person who has any legal or beneficial interest in a Premises who submits an Application to the Planning Officer in an attempt to obtain or re-obtain a Certificate of Compliance with respect to the Premises.

Section 3.3 “Application” shall mean the form or forms provided by the Planning Office 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.

Section 3.4 “Board of Appeals” shall mean the public body of persons established by the County Commission under chapter eight, article twenty-four, section fifty-one of the Code of West Virginia of 1931, as amended.

Section 3.5 “Certificate of Compliance” shall mean a written document or renewals or amendments thereto based on an Application issued to an Applicant (or retained by his or its successor or assign) with respect to a Premises by the Planning Officer that evidences that such person and the Premises comply or conform with the provisions of the Ordinance.

Section 3.6 “Comprehensive Plan” shall mean the document entitled “A Comprehensive Development Plan for Kanawha County, West Virginia,” dated October 2000, as amended, together with all maps, exhibits, schedules and addenda attached thereto or incorporated by reference thereto.

Section 3.7 “County” shall mean the County of Kanawha, West Virginia.

Section 3.8 “Effective Date” shall mean **April 15, 2004**, on which the Ordinance becomes effective.

Section 3.9 “Existing Use” shall mean the use or uses as a Video Lottery Establishment to which a parcel or parcels of land (or part thereof) within the Territorial Limits, or part or all of any Improvement thereon, that are lawfully pursued by a Video Lottery Permittee under local, State and Federal law and that exist before the Effective Date, or, if not in fact pursued before the Effective Date, the use or uses as a Video Lottery Establishment to which a parcel or parcels of land (or part thereof) within the Territorial Limits, or part or all of any Improvement thereon before the Effective Date if such use or uses as a Video Lottery Establishment have been authorized for a Video Lottery Permittee for a particular Improvement within the Territorial Limits by the State Lottery Commission under W. Va. Code § 29-22B-101 before the Effective Date

Section 3.10 “Improvement” shall mean any structure or building whether or not existing on the Effective Date located or, if there is a vested right to erect such structure or building, to be located within the Territorial Limits.

Section 3.11 “Person” shall mean any natural person or any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

Section 3.12 “Planning Commission” shall mean the public body of persons established by the County Commission under W. Va. Code § 8-24-6.

Section 3.13 “Planning Officer” shall mean the person whom the County Commission has charged with the enforcement of the subdivision, location improvement and zoning ordinances of the County.

Section 3.14 “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 Assessor of the County.

Section 3.15 “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 3.16 “Territorial Limits” shall mean those portions of land or area within the boundaries of the County that are not situated within the limits of municipal corporations within the County.

Section 3.17 “Variance” shall mean a deviation from the minimum standard of the Ordinance that may be granted by the Board of Appeals only upon its findings that the deviation (i) will not adversely affect the public health, safety or welfare, or the rights of property owners or residents adjacent to a Premises; (ii) is necessitated by from extenuating circumstances not ordinarily found or contemplated in the enforcement of the Ordinance that are not created by the person seeking it; (iii) will eliminate an unnecessary hardship and permit a reasonable use of the Premises; and (iv) will honor the intent of the Ordinance and achieve substantial justice.

Section 3.18 “Video Lottery” means an electronically simulated game of chance that is approved, owned, controlled and regulated by the State Lottery Commission under W. Va. Code § 29-22B-101 *et seq.*, and which is further defined under W. Va. Code § 29-22B-332.

Section 3.19 “Video Lottery Establishment” means any Improvement existing or to be constructed together with the lot, tract or parcel on which it is situate within the Territorial Limits that contains or is intended by a Video Lottery Permittee to contain one or more Video Lottery Terminals for public or private use.

Section 3.20 “Video Lottery Permittee” means any licensed person, including an operator or a video lottery retailer, that has a permit to own, lease or operate for profit or otherwise Video Lottery Terminals issued under W. Va. Code § 29-22B-1101 through 29-22B-1113.

Section 3.21 “Video Lottery Terminal” means a State Lottery Commission-approved machine or device that is compatible with the State Lottery Commission’s central computer system and that is used for the purpose of playing Video Lottery by no more than one player at a time.

Section 4 Land Use Regulation.

Section 4.1 On and after the Effective Date, no Person shall locate or operate a Video Lottery Establishment on any Premises except in accordance with the Ordinance.

Section 4.2 An Applicant that desires to locate and operate a Video Lottery Establishment upon an Application therefore shall obtain a Certificate of Compliance with respect thereto in accordance with the Ordinance.

Section 4.2 No commission, board, agency, officer or employee of the County Commission shall issue, grant or approve any permit, license, certificate or any other authorization for any construction, reconstruction, alteration, enlargement or relocation of any Improvement, or for any use of parcel or parcels of land, for any Video Lottery Establishment except in accordance with the Ordinance.

Section 5 Location of Video Lottery Establishments.

Section 5.1 No public entrance to a Video Lottery Establishment within the Territorial Limits shall be located within two thousand (2,000) feet of the public entrance to another Video Lottery Establishment that is either within or without the Territorial Limits.

Section 5.2 The prescribed distance in Section 5.1 shall be measured along a straight line beginning at a point or points from any public entrance of a Video Lottery Establishment existing or to exist as disclosed under any duly filed application of a Video Lottery Permittee that has a non-appealable right to establish and operate a Video Lottery Establishment.

Section 5.3

(a) In the Territorial Limits, no public entrance to a Video Lottery Establishment shall be located within two thousand (2,000) feet of any property on which is situated any of the following:

- (i) A public or private child daycare facility, kindergarten, elementary, grade, middle, junior, senior, or secondary or vocational school; or
- (ii) A public library; or
- (iii) A church, mosque, temple, or synagogue or other building used as a place of religious worship or instruction; or
- (iv) Another Video Lottery Establishment

Section 6 Duties and Powers of Planning Officer.

Section 6.1 It shall be the duty of the Planning Officer or his duly authorized agent to administer and enforce the provisions of the Ordinance, except as otherwise expressly provided in the Ordinance.

Section 6.2 It shall be the duty of the Planning Officer to

- (a) Receive and process any Application; and
- (b) Issue a Certificate of Compliance upon an Application therefore;
and
- (c) Conduct investigations as necessary to determine compliance or conformance with or violation of the Ordinance; and
- (d) Abate any violation of the Ordinance; and
- (e) Seek the assistance of the office of the Sheriff of the County or the office of the Prosecuting Attorney of the County, as the case may be, to abate or prosecute any violation of the Ordinance; and

(f) Assist law enforcement officers to abate or prosecute any violation of the Ordinance; and

(g) Provide information about the Ordinance upon the request of citizens and public agencies; and

(h) Pursue enforcement of the Ordinance as the Ordinance and other law provides; and

(i) Administer the Ordinance in all respects.

Section 7 Application.

Section 7.1 Any person who desires to obtain a Certificate of Compliance shall designate a Responsible Person who shall make an Application to the Planning Officer in accordance with the Ordinance.

Section 7.2 The Planning 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 7.3 The Application shall include, without limitation, a copy of a site plan of the Premises and the existing or proposed Improvement or Improvements, together with a letter describing the proposed Video Lottery Establishment.

Section 7.4 The site plan shall be drawn to a scale of one-inch (1") equals fifty feet (50') or larger and shall include the following data:

(a) Name and address of the person who prepared the site plan; the date of preparation, north point, and scale; a metes and bounds description of the site; tax district, map and parcel identification numbers; and the names and mailing addresses of the Applicant and the Responsible Person; and

(b) Existing and proposed contours of the Premises; and

(c) Certification by a land surveyor or engineer that the dimensions and bearings on the site plan are accurately delineated and location of all easements and right-of-ways with respect to the Premises; and

(d) Number and type of the proposed Improvements on the Premises; gross floor area of each Improvement on the Premises; and

(e) Location, shape, exterior dimensions, and number of stories of each Improvement on the Premises; and

(f) Location, grade, and dimensions of paved surfaces of the Premises, and of all streets, alleys, roads and highways abutting the Premises; and

(g) Complete traffic circulation and parking plan showing dimensions, entrance and exit drives, planters and similar improvements with respect to the Premises; and

(h) Location of landscaped areas (to be detailed on landscape plan), fences, walls, and other screening with respect to the Premises; and

(i) Signage plan; and

(j) If required by another governmental authority, State of West Virginia Sediment and Erosion Control Plan by the State of West Virginia; and

(k) Drainage plan for the Premises prepared by a registered professional engineer licensed to practice in the State of West Virginia; and

(l) Certification of distances from properties on which uses set forth in Section 5 are found as of the date of the Application on forms that the Planning Office shall provide to the Applicant..

Section 7.5 The fee for the Application shall be \$100.00

Section 7.6 Certificates of occupancy. No certificate of occupancy nor similar certificate shall be issued by the County Commission, the Planning Commission or the Planning Office to any person to occupy or use any Premises as a Video Lottery Establishment until the Planning Officer shall issue a Certificate of Compliance therefore or determine that a Certificate of Compliance shall remain in force and effect.

Section 8 Enforcement; Procedures for Violations.

Section 8.1 Whenever a violation of the Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Planning Officer. The Planning Officer shall record properly such complaint, conduct appropriate investigation, and take action thereon as the Ordinance provides.

Section 8.2 If the Planning Officer finds that any of the provisions of Ordinance are violated, whether reported by citizens or by any commission, board, agency, officer or employee of the County Commission, or by his own observation, he shall notify in writing the person responsible for such violation. Service of the written notice shall be deemed complete upon sending the notice by certified mail to the last known address of the person or by personal service by the office of the Sheriff of the County.

Section 8.3 Any such notice of a violation of the Ordinance shall include the following:

- (a) Street address or legal description of the property involved, including identification by the tax district and tax map and parcel numbers; and
- (b) A statement of the nature of the violation; and
- (c) A description of the action required to correct the violation; and
- (d) A statement of the time within which compliance with the Ordinance must be accomplished; and
- (e) A statement that upon failure to comply with the requirements of the notice, the Planning Officer shall take such enforcement actions as the Ordinance authorizes.

Section 8.4 The Planning Officer may order discontinuance of any use of a Premises or any Improvements that do not conform to the Ordinance by issuing a written order. The Planning Officer may seek other remedies provided by law, including, without limitation, injunction, abatement by judicial proceeding in the Circuit Court of the County.

Section 8.5 The Planning Officer may impose a monetary fine not to exceed \$1,000.00 a day against any person or persons who violate the Ordinance or any order or decree issued there under.

Section 8.6 Nothing contained in the Ordinance shall be deemed to prevent the County Commission from pursuing other lawful actions to prevent or remedy violations of the Ordinance.

Section 9 Appeal; Variance; Other redress.

Section 9.1 Any person who is aggrieved by any order, requirement, decision or determination made by the Planning Officer, administrative officer or body charged with the enforcement of the Ordinance may appeal the same to the Board of Appeals within the time and the manner prescribed by law.

Section 9.2 Any person who is affected by the by any order, requirement, decision or determination made by the Planning Officer, administrative officer or body charged with the enforcement of the Ordinance may seek a Variance.

Section 9.3 In addition to the right of appeal described in Section 9.1, any person who is aggrieved by any order, requirement, decision or determination made by the Planning Officer, administrative officer or body charged with the enforcement of the Ordinance may seek such other redress or relief as state law provides.

Section 10 Existing uses safeguarded.

The Ordinance shall not prohibit the continuance of the Existing Use of any land or Improvement (or part thereof). The Ordinance shall not prohibit the alteration or replacement of any Improvement for the purpose for which the Improvement is used on the Effective Date, except that the use shall not be expanded or enlarged, including the installation and operation of additional Video Lottery Terminals, unless it shall conform to the Ordinance.

Section 11 Abandonment of a non-conforming use.

Notwithstanding anything in the Ordinance to the contrary, if an Existing Use that is non-conforming with the Ordinance has been abandoned, any future use of such land or Improvement shall conform with the Ordinance.

Section 12 Severability.

If any clause, paragraph, subparagraph, section or subsection of the Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby, by shall remain in full force and effect.

WHEREUPON, _____, President, declared said motion duly adopted and it is therefore **ADJUDGED** and **ORDERED** that motion be and the same is hereby adopted.

W. Kent Carper,

Henry C. Shores,

Dave Hardy,

County Attorney