

**RALEIGH COUNTY
VIDEO LOTTERY ESTABLISHMENT ORDINANCE**

Adopted 9/2/2008

Amended

03-02-2010

01-24-2012

12-06-2016

VIDEO LOTTERY ESTABLISHMENT ORDINANCE
TABLE OF CONTENTS

ARTICLE 1 GENERAL

SECTION 1.1 TITLE ----- 3
SECTION 1.2 FINDINGS ----- 3
SECTION 1.3 INTERPRETATION ----- 3

ARTICLE 2 AUTHORITY

SECTION 2.1 GRANT OF POWER AND TERRITORIAL LIMITS ----- 4
SECTION 2.2 ADMINISTRATION OF ORDINANCE ----- 4
SECTION 2.3 DUTIES AND POWERS OF PLANNING COMMISSION ----- 4

ARTICLE 3 LAND USE REGULATIONS

SECTION 3.1 ORDINANCE COMPLIANCE ----- 5
SECTION 3.2 LOCATIONS OF VIDEO LOTTERY ESTABLISHMENTS ----- 5
SECTION 3.3 NON-CONFORMING USES ----- 6
SECTION 3.4 ABANDONMENT OF A NON-CONFORMING USE ----- 6
SECTION 3.5 EXEMPTIONS ----- 6
SECTION 3.6 EXISTING USES SAFEGUARDED ----- 6

ARTICLE 4 APPLICANT APPROVAL PROCESS ----- 6

ARTICLE 5 SIGNAGE REGULATIONS ----- 7

ARTICLE 6 DEFINITIONS

SECTION 6.1 TERMS NOT DEFINED ----- 8
SECTION 6.2 DEFINITIONS ----- 8

ARTICLE 7 PROCEDURES FOR VIOLATIONS; ENFORCEMENT

SECTION 7.1 PROCEDURE FOR VIOLATIONS ----- 10
SECTION 7.2 ENFORCEMENT ----- 11

ARTICLE 8 APPEALS; OTHER REDRESS; VARIANCE

SECTION 8.1 APPEALS; OTHER REDRESS ----- 11
SECTION 8.2 VARIANCE ----- 12

ARTICLE 9 SEVERABILITY ----- 12

APPENDIX A GUIDELINES FOR VIDEO LOTTERY ESTABLISHMENT ----- 13

RALEIGH COUNTY VIDEO LOTTERY ESTABLISHMENT ORDINANCE

ARTICLE 1 GENERAL

SECTION 1.1 TITLE

The Ordinance shall be known as the "Video Lottery Establishment Ordinance".

SECTION 1.2 FINDINGS

This ordinance is enacted to improve health, safety and welfare of the citizens of Raleigh County, as permitted by Chapter 8A of the WV Code. The purpose is to:

A. Protect the health, safety and general welfare of the present and future population of Raleigh County, West Virginia.

B. 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

C. The regulation of the location of Video Lottery Establishments is necessary to prevent undesirable secondary effects on surrounding areas, including, without limitation, to deflate real property values; and to impede the development of businesses and residences.

D. 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 1.3 INTERPRETATION

The provisions of this ordinance shall be held to be minimum requirements. Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions, or covenants, the most restrictive or that imposing the higher standard, shall govern.

ARTICLE 2 AUTHORITY

SECTION 2.1 GRANT OF POWER AND TERRITORIAL LIMITS

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

The Ordinance shall apply to and be effective within the Territorial Limits of Raleigh County, West Virginia.

SECTION 2.2 ADMINISTRATION OF ORDINANCE

The Raleigh County Commission designates the Raleigh County Planning and Zoning Commission to administer applications for Video Lottery Establishments.

SECTION 2.3 DUTIES AND POWERS OF PLANNING COMMISSION

- A. Administer and enforce the Ordinance in all respects.
- B. Provide information about the Ordinance upon the request of citizens and public agencies; and
- C. Receive and process any Application; and
- D. Conduct investigations as necessary to determine compliance or non-compliance of the Ordinance; and
- E. Abate any violation of the Ordinance; and
- F. Seek the assistance of the office of the Sheriff or the office of the Prosecuting Attorney, as the case may be, to abate or prosecute any violation of the Ordinance; and
- G. Assist law enforcement officers to abate or prosecute any violation of the Ordinance; and
- H. Issue an Order of Compliance upon an Application meeting all the requirements of the Ordinance.

ARTICLE 3 LAND USE REGULATIONS

SECTION 3.1 ORDINANCE COMPLIANCE

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.

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 3.2 LOCATIONS OF VIDEO LOTTERY ESTABLISHMENTS
(amended 1/24/2012) (12/6/2016)**

A. Video Lottery Establishments located within the Territorial Limits of Raleigh County shall be permitted provided that:

1. The Video Lottery Establishment shall only be located within a (B1) Commercial or (I1) Industrial zone.

2. The Video Lottery Establishment shall not be located within Three Hundred (300) feet of any property on which is situated any of the following:

(a) A public or private child daycare facility, kindergarten, elementary, middle, secondary or vocational school; or

(b) A church or other building used as a place of religious worship; and

(c) No Video Lottery Establishment shall be within 150 feet of another licensed premises and no two license retailers within the common structure (WV Code 29-22B-1202).

B. The prescribed distance in Section 3.2 shall be measured in a straight line, without regard to intervening structures or objects, between the nearest exterior wall of each structure. on property listed in Section 3.2(A1a-c). WV Code 29-22B-1202(1)

SECTION 3.3 NON-CONFORMING USES (amended 1/24/2012)

Any business lawfully operating prior to the effective date of this ordinance (September 2, 2008) that is in violation of the location or structural configuration requirements of this ordinance shall be deemed a non-conforming use.

SECTION 3.4 ABANDONMENT OF A NON-CONFORMING USE

Notwithstanding anything in the Ordinance to the contrary, if an Existing Use that is non-conforming has been abandoned for more than One-Hundred Twenty (120) days, any future use of such land or Improvement shall conform to the Ordinance.

SECTION 3.5 EXEMPTIONS (amended 1/24/2012)

The following establishments are exempt from the Video Lottery Establishment Ordinance:

A. Establishments licensed through the West Virginia Alcohol Beverage Commission prior to the adoption of the ordinance (September 2, 2008).

**SECTION 3.6 EXISTING USES SAFEGUARDED (amended 1/24/2012)
(12/1/2016)**

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 of this ordinance (September 2, 2008).

ARTICLE 4 APPLICANT APPROVAL PROCESS

A. An Applicant that desires to locate and operate a Video Lottery Establishment upon an Application therefore shall obtain approval from the Raleigh County Planning and Zoning Commission with respect thereto in accordance with the Ordinance.

B. Any person who desires to establish a Video Lottery shall designate a Responsible Person who shall make an Application to the Planning Commission in accordance with the Ordinance. The Responsible Person shall attest that all of the statements contained in the documents attached thereto are true and accurate.

C. The Application shall include, without limitation, a copy of a site plan of the Premises with the existing and proposed Improvement or Improvements of the proposed Video Lottery Establishment.

D. 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:

1. Name and address of the person who prepared the site plan; the date of preparation, scale; tax map and tax parcel identification numbers; and the names and mailing addresses of the Applicant and the Responsible Person; and
2. 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
3. All streets, alleys, roads and highways abutting the Premises; and
4. Parking plan; and
5. Certification of distances from properties on which uses set forth in Section 3 are found as of the date of the Application.
6. The fee for the Application shall be \$100.00

ARTICLE 5 SIGNAGE REGULATIONS (amended 12/6/2016)

A. Notwithstanding any other county ordinance, code or regulation to the contrary, it shall be unlawful for the owner or operator of any Video Lottery Establishment or any other person to erect, construct or maintain any sign for the Video Lottery Establishment other than the one (1) primary sign and one (1) secondary sign, as provided herein.

The signs shall not use the words "video lottery" in the name or in any directions or advertising visible from outside the retail establishment. (WV Code 29-22B-702(14))

B. Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

1. Not contain any flashing lights; and

2. Be a flat plane, rectangular in shape; and
3. Not exceed seventy-five (75) square feet in area; and
4. Not exceed ten (10) feet in height or ten (10) feet in length.

C. Secondary signs shall have only one (1) display surface. Such display surface shall:

1. Be a flat plane, rectangular in shape; and
2. Not exceed twenty (20) square feet in area; and
3. Not exceed five (5) feet in height and four (4) feet in width; and
4. Be affixed or attached to any wall or door of the enterprise.

ARTICLE 6 DEFINITIONS (amended 12/6/2016)

SECTION 6.1 TERMS NOT DEFINED

Where terms are not defined, they shall have their ordinarily accepted meaning, or such as the context may imply.

SECTION 6.2 DEFINITIONS

Abandonment or Abandoned - the use with respect to a premise, regardless of the intent of the user, has ceased or discontinued for a period of more than One-Hundred Twenty (120) consecutive days.

Applicant - a person who has any legal or beneficial interest in a premises who submits an application to the Planning and Zoning Commission in an attempt to obtain or re-obtain an approved use with respect to the premises.

Application - the form or forms provided by the Planning and Zoning Commission and completed by an Applicant, together with all required documents and items that the Ordinance requires, by which the Applicant seeks to obtain approval.

Existing Use - 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 permitted as a Video Lottery establishment under local, State and Federal law and that exist before the Effective Date of this ordinance.

Fence - An enclosure, barrier or screen constructed of materials or consisting of plantings, natural objects or other appropriate means approved by the commission and located, placed or maintained so as effectively to screen at all times the establishment from view of persons passing upon the public roads of Raleigh County and West Virginia.

Occupied Private Residence - A private residence that is occupied for at least six months each year.

Person - an individual, proprietorship, partnership, corporation, association or other legal entity.

Planning Commission - the Planning and Zoning Commission of Raleigh County, West Virginia

Premises - 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.

Responsible Person - the individual person whom an Applicant has designated to attest to the truthfulness and accuracy of the contents of an Application.

Territorial Limits - 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.

Video Lottery - 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.

Video Lottery Establishment - includes any of the following:

- A. The opening or commencement of any Video Lottery business as a new business;
- B. The conversion of an existing business, whether or not an Video Lottery business, to any Video Lottery business;
- C. The additions of any Video Lottery business to any other existing Video Lottery business; or
- D. The relocation of any Video Lottery business.

Video Lottery Permittee - 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.

Video Lottery Terminal - 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.

ARTICLE 7 PROCEDURES FOR VIOLATIONS; ENFORCEMENT

SECTION 7.1 PROCEDURE FOR VIOLATIONS

A. Whenever a violation of this 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 Commission. The Planning Commission shall record properly such complaint, conduct appropriate investigation, and take action thereon as the Ordinance provides.

B. If the Planning Commission finds that any of the provisions of the Ordinance are violated, they 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.

C. Any such notice of a violation of the Ordinance shall include the following:

1. Street address or legal description of the property involved, including identification by the tax district and tax map and parcel numbers; and
2. A statement of the nature of the violation; and
3. A description of the action required to correct the violation; and
4. A statement of the time within which compliance with the Ordinance must be accomplished; and
5. A statement that upon failure to comply with the requirements of the notice, the Planning Commission shall take such enforcement actions as the Ordinance authorizes.

SECTION 7.2 ENFORCEMENT

A. The Planning Commission may order discontinuance of any use of a Premise or any Improvements that do not conform to the Ordinance. The Planning Commission may seek other remedies provided by law, including, without limitation, injunction, abatement by judicial proceeding in Raleigh County Circuit Court.

B. The Planning Commission 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.

C. 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.

ARTICLE 8 APPEALS; VARIANCE; OTHER REDRESS

SECTION 8.1 APPEALS; OTHER REDRESS

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

In addition to the right of appeal described in Section 8.1, any person who is aggrieved by any order, requirement, decision or determination made by the body charged with the enforcement of the Ordinance may seek such other redress or relief as state law provides.

SECTION 8.2 VARIANCE

Any person who is affected by any order, requirement, decision or determination made by the body charged with the enforcement of the Ordinance may seek a Variance from the Raleigh County Board of Zoning Appeals.

ARTICLE 9 SEVERABILITY

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

Amended this 6th day of December, 2016.

David Tolliver, President

Linda K. Epling, Commissioner

Byrd White III, Commissioner

Attest: _____
Clayton Terry

APPENDIX A GUIDELINES FOR VIDEO LOTTERY ESTABLISHMENT

**GUIDELINES FOR VIDEO LOTTERY ESTABLISHMENT APPROVAL
RALEIGH COUNTY, WEST VIRGINIA**

Adopted 09/2/2008
Amended 11/21/2016

Property owners must submit a signed petition, all necessary attachments and requested supplements to the Raleigh County Planning Commission.

After review, the Planning and Zoning Commission's report will be delivered to the Applicant.

The following items are required to constitute a complete application:

- A.** Petition, with filing fee of \$100.00 (Form VL-1)
- B.** Copy of Deed of Petition area.
- C.** Plot Plan Map (Form VL-2).
- D.** Description of proposed use of property (Form VL-3).
- E.** Appropriate Certificates of Approval (See Form VL-4).
- F.** Deed Examination that property is not restricted.

CHECKLIST FOR ZONING AMENDMENT

_____ Petition, with Filing Fee of \$ 100.00 (Form VL-1)
_____ Copy of Deed of Petition Area
_____ Plot Plan Map (Form Z-2)
_____ Description and Plan of Proposed Use (Form VL-3)
_____ Certificates of Approval (Form VL-4)
_____ Deed Examination

Form VL-1 PETITION FOR VIDEO LOTTERY ESTABLISHMENT

TO THE PLANNING COMMISSION OF RALEIGH COUNTY

DATE _____

PROPERTY OWNER _____ TELEPHONE _____
ADDRESS _____

RESPONSIBLE PERSON _____ Telephone _____
RESPONSIBLE PERSON ADDRESS _____

PROPERTY ADDRESS AND LOCATION _____

PROPERTY TAX ID DISTRICT _____ MAP _____ PARCEL (S) _____

TOTAL AREA (in acres) _____ CURRENT ZONING _____

LEGAL DESCRIPTION OF PROPERTY Deed Book Number _____
Page Number _____

Copy of deed of property must accompany this application.

PROPOSED USE OF PROPERTY _____

I certify that the information supplied on this petition and other information provided is accurate and true to the best of my knowledge.

SIGNATURE OF OWNER _____

SIGNATURE OF RESPONSIBLE PERSON _____

Taken, subscribed and sworn to before the undersigned authority this the _____ day of _____, 20____.

My commission expires _____

NOTARY PUBLIC

Form VL-2 PLOT PLAN MAP REQUIREMENTS

A site plan map, clearly showing the following, shall accompany the application:

A. 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:

- 1.** Name and address of the person who prepared the site plan; the date of preparation, scale; tax district, tax map and tax parcel identification numbers; and the names and mailing addresses of the Applicant and the Responsible Person; and
- 2.** 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
- 3.** All streets, alleys, roads and highways abutting the Premises; and
- 4.** Parking plan; and
- 5.** Certification of distances from properties on which uses set forth in Section 3 are found as of the date of the Application.
- 6.** Existing and proposed structures and utilities. If use of septic tank, must show location of tank with seepage fields.
- 7.** Title Block and Date.

Form VL-3 DESCRIPTION OF PROPOSED USE OF PROPERTY

In narrative form below, precisely describe the proposed use of the property covered by this petition request. Unless otherwise requested and approval given in writing, approval of this petition will allow for only that use described below. Any change of use, without prior approval from the commission, would constitute a violation of this petition. Failure to comply fully with this section will result in enforcement action being taken to the extent allowed by applicable laws of the State of West Virginia.

In addition to the narrative description for the proposed use, include a site plan showing all proposed improvements and sufficient construction plans of all proposed buildings and structures.

Narrative Description

Form VL-4 APPROPRIATE CERTIFICATES

- A.** Appropriate certificates of approval (entrance permits) from the West Virginia Department of Highways.
- B.** Appropriate certificates of approval from State and/or local health authorities concerning water/sewer systems.
- C.** Appropriate agreements between the County Public Service District (if applicable) and the developer.
- D.** Appropriate certificates of approval from the State Division of Natural Resources, if applicable.
- E.** Letter stating new construction or improvements will meet the Federal Americans with Disability Act (ADA).
- F.** If demolition is required, letter from appropriate agencies that the removal meets all environmental regulations relating to asbestos, clean air act, etc.
- G.** Letter from Emergency Operations Center that compliance with Street Naming and Physical Addressing is met.
- H.** Certification from Attorney that the property is not restricted for the proposed use.