

ORDINANCE NO. 423

ADULT ORIENTED BUSINESS REGULATIONS

AN ORDINANCE OF THE COMMISSIONERS OF ST. MICHAELS AMENDING THE CODE OF THE TOWN OF ST. MICHAELS, TO ADD CHAPTER 75 (ADULT-ORIENTED BUSINESS REGULATIONS) TO PROVIDE FOR THE REGULATION OF ADULT ORIENTED BUSINESSES, INCLUDING DEFINING ADULT ORIENTED BUSINESS, ADULT ENTERTAINMENT OR MATERIAL AND OTHER SPECIFIC TERMS; PROVIDING THAT CERTAIN ACTIVITIES BE RESTRICTED OR PROHIBITED; PROVIDING FOR CERTAIN OPERATIONAL REQUIREMENTS FOR ADULT ORIENTED BUSINESSES; PROVIDING FOR CERTAIN CIVIL PENALTIES; PROVIDING THAT THIS TITLE BE DEEMED A FAIR SUMMARY OF THIS ORDINANCE FOR ALL PURPOSES; AND ALL MATTERS RELATING GENERALLY TO ADULT ORIENTED BUSINESSES, ENTERTAINMENT, AND MATERIAL IN THE TOWN OF ST. MICHAELS, TALBOT COUNTY, MARYLAND

WHEREAS, the Commissioners of St. Michaels are concerned with the potential adverse secondary effects of an Adult Oriented Business that might elect to locate within the Town; and

WHEREAS, the Commissioners of St. Michaels directed the Town Attorney for the Town of St. Michaels: (1) to investigate the adverse secondary effects of Adult Oriented Businesses that have been reported in studies prepared by or for other local governments and in reported opinions from the various jurisdictions of the United States; (2) to provide pertinent information about the adverse secondary effects to the Commissioners of St. Michaels; (3) to develop business regulations that would regulate against the adverse secondary effects associated with Adult Oriented Businesses, but that would accommodate the constitutional rights of Adult Oriented Businesses that have been recognized by the courts; and (4) to draft an ordinance that would enact such business regulations; and

WHEREAS, this Ordinance has been enacted in conjunction with Ordinance 420, allowing Adult Oriented Businesses in the Central Commercial District under certain circumstances and Ordinance No. 422 Massage Establishments as part of a comprehensive program to address the potential adverse secondary effects of Adult Oriented Businesses that might elect to locate within the Town; and

WHEREAS, based on the information reviewed and provided in the studies and cases referenced herein below, the Commissioners propose adopting regulations to govern the Adult Oriented Businesses; and

WHEREAS, the Commissioners are also amending Chapter 340 (Zoning) of the Town Code to address Adult Oriented Businesses; and

WHEREAS, the Commissioners believe that the Ordinance as proposed provides reasonable channels of communication while at the same time address the adverse secondary effects of Adult Oriented Businesses; and

WHEREAS, the Commissioners, in an effort to further prevent and address the adverse secondary effects typically associated with unregulated Adult Oriented Businesses have had this Ordinance drafted for the purpose of protecting and promoting the safety, health, morals, and general welfare of the citizens of St. Michaels, and have determined that the nature of the adverse secondary effects at unregulated Adult Oriented Businesses requires the enactment of the provisions set forth in this Ordinance; and

WHEREAS, in conjunction with identifying a zoning district where an Adult Oriented Business could be located, the Commissioners of St. Michaels directed the Town Attorney: (1) to investigate the adverse secondary effects of Adult Oriented Businesses that have been reported in studies prepared by or for other local governments and in reported opinions from the various jurisdictions of the United States; (2) to provide pertinent information about the adverse secondary effects to the Town Council; (3) to develop business regulations that would regulate against the adverse secondary effects associated with Adult Oriented Businesses, but that would accommodate the constitutional rights of Adult Oriented Businesses that have been recognized by the courts; and (4) to draft an ordinance that would enact such business regulations; and

WHEREAS, this Ordinance is being enacted in conjunction with Ordinance No. 420 and Ordinance No. 422 (Massage Establishments) as part of a comprehensive program to address the potential adverse secondary effects of Adult Oriented Businesses that might elect to locate within the Town; and

WHEREAS, the Planning Commission, the Commissioners of St. Michaels and the Town Attorney obtained and had an opportunity to review and consider the following studies:

1. The Ellicottville, New York Study dated January 1998;
2. The Cleburne, Texas Study dated October 27, 1997;
3. The Hamilton County and City of Chattanooga, Tennessee Study dated May 1997;
4. The Dallas, Texas Study dated April 29, 1997;
5. The Houston, Texas Study dated January 7, 1997;
6. The American Center for Law and Justice Study dated March 31, 1996;
7. The Newport News, Virginia Study dated March 1996;
8. The New York City, New York Study dated November 1994;
9. The Times Square, New York Study dated April 1994;
10. The St. Croix County, Wisconsin Study dated September 1993;
11. The Oklahoma City, Oklahoma Study dated June 1992;
12. The Garden Grove, California Study dated October 23, 1991;
13. The Houston, Texas Study dated January, 1991;
14. The Tucson, Arizona Study dated May 1, 1990;
15. The New Hanover County, North Carolina Study dated July 1989;
16. The Seattle, Washington Study dated March 24, 1989;
17. The Adams County, Colorado Study dated April 1988, updated June 20, 1991;
18. The St. Paul, Minnesota Study dated April 1988 (Supp. to 1987 Study);
19. The Bellevue, Washington Study dated February 1988;
20. The Manatee County, Florida Study dated June 1987;

21. The El Paso, Texas Study dated September 26, 1986;
22. The Austin, Texas Study dated May 19, 1986;
23. The Oklahoma City, Oklahoma Study dated March 3, 1986;
24. The Houston, Texas Study dated March 5, 1986;
25. The Des Moines, Washington Study dated August 1984;
26. The Houston, Texas Study dated November 30, 1983;
27. The Beaumont, Texas Study dated September 14, 1982;
28. The Minneapolis, Minnesota Study dated October 1980;
29. The Islip, New York Study dated September 23, 1980;
30. The Phoenix, Arizona Study dated May 25, 1979;
31. The Las Vegas, Nevada Study dated March 15, 1978;
32. The Whittier, California Study dated January 9, 1978;
33. The Amarillo, Texas Study dated September 1977;
34. The Cleveland Ohio Study dated August 24, 1977;
35. The Los Angeles, California Study dated June 1977;
36. The Summary prepared by the National Law Center for Children and Families of the above listed studies (© 2002);
37. Indianapolis, Indiana – February 1984;
38. Minnesota – June 6, 1989;
39. Rome [Georgia] City Commission March 6, 1995;
40. City of St. Mary's, Georgia July 1996;
41. The Toledo, Ohio Study dated August 26, 2002;
42. Greensboro [N.C.] December 15, 2003 (Richard McCleary, Ph.D.);
43. Report of Richard McCleary, Ph.D. in *People ex rel. Deters v. The Lion's Den*, Effingham County, Illinois No. 04-CH-26;
44. Report to the City Attorney on Crime-Related Secondary Effects, by Richard McCleary, Ph.D., in *Reliable Consultants, Inc., et al v. City of Kennedale, Texas*, (U.S. Dist. Ct., N.D. Tex.) No. 4:05-CV-166-A;
45. Centralia City [Wash.] February 28, 2004 (Richard McCleary, Ph.D.);
46. Evaluating Potential Secondary Effects of Adult Cabarets in Daytona Beach, Florida, Report of Daniel Linz, Randy D. Fisher and Mike Yao dated April 7, 2004;
47. Report to the City of Toledo, Ohio, A Methodical Critique of the Linz-Yao Report dated May 15, 2004;
48. Survey of Appraisers Fort Worth and Dallas, Effects of Land Uses of Surrounding Property Values submitted to the City of Fort Worth, Texas dated September 2004;
49. Study of Police Activity in Milford: Testing for Negative Secondary Effects, Addendum, Report by Daniel Linz dated October 2004;
50. Report to the City Attorney on Crime-Related Secondary Effects, by Richard McCleary, Ph.D., in *Alameda Books v. City of Los Angeles, California* (U.S. Dist. Ct., C.D. Ca.) No. CV 95-7771 dated May 6, 2007; and
51. Report to the County Attorney, Palm Beach County, Florida on Crime-Related Secondary Effects, by Valerie Jenness, Ph.D., Richard McCleary, Ph.D. and James W. Meeker, JD, PH.D dated August 15, 2007; and

WHEREAS, the Town Attorney considered the information reported in many First Amendment and constitutional cases relative to Adult Oriented Businesses, including but not limited to: *City*

of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *Giovani Carandola Ltd. v. Wright*, 470 F.3d 1074 (4th Cir. 2006); *Pack Shack v. Howard County*, 377 Md. 55 (2003); and *104 West Washington Street II Corp. v. Hagerstown*, 173 Md. App. 553 (2007); and *McDoogal's East, Inc. v. County Commissioners of Caroline County*, 341 Fed. Appx. 918 (2009); and

WHEREAS, the Town has only approximately 1,200 residents; and

WHEREAS, the Town is primarily a residential community, with a business core consisting of restaurants, retail and services, and two museums located within the Town; and

WHEREAS, the Town has never, to the recollection of the Commissioners of St. Michaels, had an Adult Oriented Business; and

WHEREAS, there currently is no adult oriented business located within the Town; and

WHEREAS, the Town is located in a largely rural and agricultural part of Talbot County; and

WHEREAS, the Town is only approximately 746 acres in size and is surrounded by low density residential and agricultural properties, with a commercial strip to the south of Town; and

WHEREAS, there are no night clubs, lounges or similar establishments within the Town and the Town does not have a history of economically supporting such establishments; and

WHEREAS, the Town lacks sufficient population or sufficient interest to support an Adult Oriented Business (there is no video rental store or shopping center within the Town); and

WHEREAS, the Town has a school complex that serves pre-K through 12 and houses a day care center, which services not only residents of the Town but also the residents of the surrounding rural communities; and

WHEREAS, the Town houses several day care centers in addition to several parks, a recreation complex that contains a playground for children, a recreation building and ball fields that serve not only the residents of the Town but also the residents of surrounding rural communities and are areas where children and youth regularly congregate; and

WHEREAS, the Town, including the elementary school, the parks and recreation complex, the local churches and other civic organizations, attracts many families and children who desire to enjoy familial and rural fellowship and recreation in a quiet and peaceful environment; and

WHEREAS, the children and young people who congregate in the Town and use the public facilities within the Town would serve as prime targets for sexual predators; and

WHEREAS, adult oriented businesses are known to attract patrons from outside of the community that have no connection to the community, are unconstrained by social or economic ties to the community, are prone to engage in acts that defile the surrounding community, are prone to engage in criminal acts, and often do not comport themselves with civility and decency; and

WHEREAS, adult oriented business are know to attract patrons who engage in unhealthy sexual practices and who carry and transmit sexually transmitted diseases; and

WHEREAS, adult oriented businesses are known to attract sexual predators; and

WHEREAS, adult oriented businesses are known to attract under aged workers and workers who engage in unhealthy and illegal sexual practices and who carry and transmit sexually transmitted diseases; and

WHEREAS, the owners of an adult oriented business that locates in the Town will not rely on the community for support and, therefore, will have no economic motivation to control the lewd and lascivious behavior or the criminal behavior of their patrons and employees beyond the confines of activity within the public portions of their establishments; and

WHEREAS, adult oriented businesses are known to encourage or to lower the inhibition of patrons so that such patrons become more disposed to commit sexual crimes and other crimes; and

WHEREAS, when alcohol or other controlled dangerous substances, which often are closely associated with adult oriented businesses, combine with the goods and services marketed by adult oriented businesses, the propensity for patrons to engage in criminal behavior increases; and

WHEREAS, the Commissioners of St. Michaels, in an effort to further prevent and to address the adverse secondary effects typically associated with unregulated adult oriented businesses, including massage establishments, have had this Ordinance drafted for the purpose of protecting and promoting the safety, health, morals, and general welfare of the citizens of the Town and visitors to the Town.

SECTION 1. NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that the Commissioners of St. Michaels make the following findings:

Findings, Intent and Purpose

A. Findings:

1. The Commissioners of the Town of St. Michaels has no knowledge of any Adult Oriented Business (as that term is defined in this Chapter) in the Town of St.

Michaels at the time of enactment of this Ordinance and there is credible evidence that no Adult Oriented Business has ever existed in the Town of St. Michaels.

2. In light of the testimony presented at the public hearings before the Town Commissioners, the studies considered by the Town Commissioners, the recommendation of the Planning Commission, the small population of the Town, and the future growth projections for the Town, if an adult oriented business is established in the Town of St. Michaels, its economic survival will be dependent upon transients who have few if any ties to the Town. Those studies and cases that document the adverse secondary effects inherent where transients with no ties to the community are the primary customers of a business that operates as an Adult Oriented Business and where business owners with no reason to worry about community perception impacting their economic survival own such an Adult Oriented Business, in addition to the other studies and case law referenced in the Recitals, evidence and depict the adverse secondary effects that are likely to exist in the event an Adult Oriented Business locates in the Town of St. Michaels.
3. There is convincing documentation in the record that an Adult Oriented Businesses attracts and is often supported by a transient population with no ties to the community and who, therefore, would have no inherent motivation to refrain from defiling the community or otherwise engaging in criminal conduct and odious behavior in the community in which such businesses are located.
4. There is convincing documentation in the record that an Adult Oriented Business often could attract sexual predators.
5. There is convincing documentation in the record that Adult Oriented Businesses featuring live entertainment often attract and take advantage of underage women and women with addictions and other psychological disorders;
6. There is convincing documentation in the record that Adult Oriented Businesses are associated with and increase the spread and the rate of profusion of sexually transmitted diseases;
7. There is convincing documentation in the record that an Adult Oriented Businesses have other adverse health and welfare affects.
8. There is convincing documentation in the record that Adult Oriented Businesses are associated with and lead to the proliferation of sex crimes, property crimes, crimes against women and children and addiction related crimes. Several of the studies further indicate that violent crimes can increase as the result of Adult Oriented Businesses, particularly when such businesses are located in close proximity to places allowing the on-site consumption of alcoholic beverages.
9. There is convincing documentation in the record that Adult Oriented Businesses devalue surrounding residential and commercial properties.

10. There is convincing documentation in the record that public and semi-public places such as any parking area on public property (including school yards and parks and recreation areas), churches and church parking areas, social club parking areas and other open air expanses in the vicinity of an Adult Oriented Business could become used for illicit purposes, thereby driving away legitimate users and community members.
11. There is convincing documentation in the record that when multiple venues operated as Adult Oriented Businesses are located in close proximity to one another, particularly in a non-urban environment, the harmful secondary effects associated with such businesses are greater than when such businesses are not in close proximity to one another.

B. Intent and Purpose:

1. This Ordinance has been developed to serve as a constitutionally permissible means to minimize certain harmful secondary effects associated with Adult Oriented Businesses while not infringing on constitutionally protected communication for those interested in engaging in adult oriented communication protected by the federal and State constitutions.
2. It is the intent of the Commissioners of St. Michaels in adopting this Ordinance to enact constitutionally permissible restrictions to combat the harmful secondary effects of Adult Oriented Businesses. It is not the intent of the Commissioners of St. Michaels to suppress any speech protected by the First Amendment to the United States Constitution or Article 40 of the Maryland Declaration of Rights, or to otherwise infringe on any constitutionally protected rights.

SECTION 2. NOW THEREFORE, BE IT FURTHER ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that Chapter 75 (Adult Oriented Business Regulations) be and is hereby enacted to read as follows, with the new language shown in italics and underlined.

CHAPTER 75 ADULT ORIENTED BUSINESS REGULATIONS

§75-1 Definitions.

Adult book or video store - means an activity a principal purpose or use of which is the selling, renting, transferring, loaning, disseminating, or distributing or adult entertainment or material, including but not limited to, any book, magazine, newspaper, video, DVD, CD, or sound recording.

Adult cabaret - means any nightclub, bar, restaurant, or any other commercial establishment, regardless of whether alcoholic beverages are served, which features persons who appear nude or semi-nude.

Adult entertainment or material - means any performance or depiction or text that is intended to cause or provide, or which reasonably may be expected to cause or provide, sexual stimulation, sexual excitement, or sexual gratification; and

1. in which an individual or individuals appear in a state of nudity or partial nudity; or
2. that consists, in whole or in part, of action, activity, poses, portrayal, depiction, or description of:
 - a. human genitalia in a discernable state of sexual stimulation or arousal; or
 - b. any act, whether real or simulated, of masturbation, sexual intercourse, anal intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female breasts, pubic area, or genital area, sadomasochistic activity, physical contact or attempted contact with clothed or unclothed genitalia, pubic areas, buttocks, anus, or female breasts; or
3. that consists of contact with animals or inanimate objects.

Adult Oriented Business - means any business, operation, or activity, a significant amount of which consists of:

1. the conduct, promotion, delivery, provision, or performance of adult entertainment or material; including, but not limited to, that occurring in, at, or in connection with a cabaret, lounge, night club, modeling studio, bar restaurant, club or lodge, or other establishment; or
2. the sale, provision, rental, or promotion of adult entertainment or material, in any format, form, or medium, including, but not limited to, books, magazines, videos, DVDs, CDs, movies, photographs, and/or coin operated or pay-per-view viewing devices, including, but not limited to, the operation of an adult book or video store or viewing booth.

Influential interest – means having an ownership interest of 10% or more, or being part of a control or management group.

Live Viewing Booth -- means any booth, cubicle, stall or room of less than six hundred (600) square feet of floor space or area to which patrons may gain admittance, wherein the following are regularly featured:

1. persons who appear in a state of semi-nudity; and/or
2. live entertainment characterized by the depiction or description of specified.

Nudity - means:

1. the showing of the human male or female genitalia, pubic area, or buttocks with less than fully opaque covering;
2. the showing of the female breast with less than a fully opaque covering over any part below the top or uppermost part of the areola; or
3. the depiction of covered male genitalia in a discernibly turgid or erect state.

Partial nudity - means a state of dress which reveals:

1. the human male or female buttocks; or

2. the female breasts below the top or uppermost part of the areola, excluding portions of the human female cleavage exhibited by a dress, or other apparel, provided the areola is not exposed in whole or in part.

Sadomasochistic activity – means:

1. flagellation or torture, whether real or simulated, by or upon an individual;
2. the condition of being, or causing oneself or another to be, fettered, bound, or otherwise physically restrained.

Significant amount – means:

1. at least 20% of the stock in the establishment or on display consists of adult entertainment material or houses or contains devices depicting, describing, or relating to adult entertainment or material; or
2. at least 20% of the usable floor area is used for the display or storage of adult entertainment or material or houses or contains devices depicting, describing, or relating to adult entertainment or material; or
3. at least 20% of the gross revenue is, or may reasonably be expected to be, derived from the provision of adult entertainment or material; or
4. any provision of live adult entertainment or material.

Specified Anatomical Areas - means human genitals, anus, cleft of the buttocks, or the female breast.

Specified Criminal Activity - means any of the following specified crimes for which there has been a conviction, guilty plea, plea of nolo contendere or probation before judgment:

1. rape or sex offenses of any degree and all other sexual crimes specified in Maryland Annotated Code, Criminal Law, § 3-301, et. seq. as may from time to time be amended;
2. prostitution and all related crimes as specified in Maryland Annotated Code, Criminal Law, § 11-301, et. seq. as may from time to time be amended;
3. offenses regarding adult sexual displays and all related crimes as specified in Maryland Annotated Code, Criminal Law, § 11-101, et. seq. as may from time to time be amended;
4. offenses relating to obscene matters or materials and all related crimes as specified in Maryland Annotated Code, Criminal Law, § 11-201, et. seq. as may from time to time be amended;
5. child abuse and all related crimes as specified in Maryland Annotated Code, Criminal Law, § 3-601, et. seq. as may from time to time be amended;
6. controlled dangerous substance offenses as specified in Maryland Annotated Code, Criminal Law, § 5-401, et. seq. as may from time to time be amended; or
7. any offense committed in another jurisdiction that, had the predicate acts been committed in Maryland, would constitute any of the foregoing specified Maryland offenses.

Specified Sexual Activities - means any of the following:

1. Sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or
2. Excretory functions as a part of or in connection with any of the activities described in subsection a. above.

Viewing booth - means any booth, cubicle, stall, or compartment that is designed, constructed, or used to hold or seat patrons and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital, or other means or media (including but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines, or periodicals) for observation by patrons therein. A viewing booth shall not mean a theater, movie house, playhouse, or a room or enclosure or portion thereof that contains more than 600 square feet.

§75-2. Adult Oriented Businesses License

- A. Adult Oriented Businesses. It shall be unlawful for any person to operate an Adult Oriented Business in the Town of St. Michaels without a valid Adult Oriented Business License.
- B. Application for License. An applicant for an Adult Oriented Business License shall comply with the following:
 1. An applicant for an Adult Oriented Business License shall file in person with the Town Manager's office a completed application made on a form provided by the Town. The application shall be signed by all persons required to sign under this Section and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in subsections 1 through 7 below, accompanied by the appropriate fee identified herein:
 - a. The applicant's full true name and any other names used by the applicants in the preceding five (5) years.
 - b. Current business address or another mailing address of the applicant.
 - c. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
 - d. The business name, location, mailing address and phone number of the Adult Oriented Business.
 - e. The name and business address of the statutory agent or other agent authorized to receive service of process.
 - f. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
 - g. A statement of whether any Adult Oriented Business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- D. License Fees. The initial license and annual renewal fees for Adult Oriented Business licenses shall be as set forth on the Administrative Fee Schedule as amended periodically by the Commissioners of St. Michaels.
- E. Inspection. Adult Oriented Businesses shall permit the Zoning Inspector/Codes Enforcement Officer or his designee to inspect, from time to time on an occasional basis, the portions of the Adult Oriented Business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the Adult Oriented Business is occupied by patrons or is open to the public.
- F. Expiration of license.
1. Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided herein.
 2. Application for renewal should be made pursuant to the procedures set forth herein at least ninety (90) days before the expiration date.
- G. Suspension and Revocation.
1. The Zoning Inspector/Codes Enforcement Officer may suspend or revoke a license if:
 - a. The applicant or licensee does not pay a fee required by this Chapter;
 - b. The premises of the Adult Oriented Business fails an inspection required by this Chapter, the licensee or an employee of the licensee refuses to allow an inspection of the Adult Oriented Business as provided for by this Section.
 - c. The applicant or licensee fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
 - a) The applicant or licensee fraudulently or deceptively uses a license;
 - b) The applicant or licensee pleads guilty or nolo contendere with respect to, receives probation before judgment with respect to, or is convicted of a violation of:
 - i. This Chapter, other than operating an Adult Oriented Business without a license; or
 - ii. Any specified criminal activity as defined herein.
 - c) In the 2 years before the suspension or revocation, the licensee, the licensee's spouse, or an individual with whom the licensee resides, pleaded guilty or nolo contendere with respect to, received probation before judgment with respect to, or was convicted of a violation of:
 - i. This Chapter, other than operating an adult bookstore without a license; or
 - ii. Any specified criminal activity as defined herein.
 2. In addition to the authority granted by this Section, the Town may suspend or revoke a license if:
 - a) A licensee or an employee of the Adult Oriented Business has knowingly allowed on the premises the possession, use, or sale of a controlled dangerous substance listed in Maryland Annotated Code, Criminal Law, §

- 5-401 et. seq., as may be amended from time to time;
- b) A licensee or an employee of the Adult Oriented Business has knowingly allowed prostitution on the premises;
 - c) A licensee or an employee of the Adult Oriented Business has knowingly allowed a sexual act on the premises;
 - d) A licensee or an employee of the licensee has knowingly operated the Adult Oriented Business when the license was suspended; or
 - e) In the preceding year 2 or more employees of the Adult Oriented Business have pleaded guilty or nolo contendere with respect to, received probation before judgment with respect to, or been convicted of a violation of any specified criminal activity as defined herein.
- B. Appeal. A decision by the Zoning Inspector to deny, suspend, or revoke a license may be appealed to a court of competent jurisdiction per the provisions providing for judicial review of administrative agency decisions found in Maryland Rule 7-201 et. seq.
- C. Transfer of license. A licensee shall not transfer his or her license to another, nor shall a licensee operate an Adult Oriented Business under the authority of a license at any place other than the address designated in the Adult Oriented Business license application.

§75-3 Nudity and Partial Nudity Restricted.

- A. Other than during a performance in accordance with any provisions herein, it shall be unlawful for any person, including patrons and visitors, at or in any Adult Oriented Business to perform, work, dance, or appear in any state, condition, or appearance of nudity or partial nudity.
- B. When performing an artistic or expressive dance, performance, display, or exercise, an employee, agent, independent contractor, performer, dancer, or show person at or in the employ of an Adult Oriented Business where such performances are customarily given, may appear, while performing, in a state or condition of partial nudity.

§75-4. Certain Physical Contact Prohibited.

- A. It shall be unlawful for any person on, in, or about the interior or exterior of an Adult Oriented Business, while in any state, condition, or appearance of nudity or partial nudity, or while performing or engaging in an artistic or expressive dance, performance, display or exercise, to be, at any time, within a distance of six feet of any other person, whether or not such other person is an employee, agent, independent contractor, performer, dancer, or show person at, or in the employ of, an Adult Oriented Business, or a customer, patron, or visitor of, at, or in any Adult Oriented Business. This prohibition includes, but is not limited to, any form of person-to-person touching or contact, whether directly by actual physical touching or indirectly by the employment of any item or device.

- B. No person in a state of nudity or partial nudity on, in or about the interior or exterior of an adult oriented business shall touch any other person, whether directly by actual physical touching or indirectly by the employment of any item or device, for the purpose of sexual arousal, sexual stimulation, sexual excitement, or sexual gratification.

§75-5. Other Prohibited Conduct or Activities.

- A. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to encourage or permit any person to touch, caress, fondle or stimulate, whether directly by actual physical touching or indirectly by the employment of any item or device, the breasts, buttocks, anus, or genitals of another, including the person so encouraging or permitting, the person being encouraged or permitted or any other person, while in, on or about the interior or exterior of the adult oriented business.
- B. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to touch, caress, fondle or stimulate, whether directly by actual physical touching or indirectly by the employment of any item or device, their own breasts, buttocks, anus, or genitals while in the view of any other person, or for purposes of sexual arousal, sexual stimulation, sexual excitement, or sexual gratification.
- C. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to participate in, or encourage or allow another to participate in, any act of sexual intercourse, anal penetration, sodomy, bestiality, masturbation, fellatio, cunnilingus or sadomasochistic abuse, whether actual or simulated.
- D. It shall be unlawful for any person in, on or about the interior or exterior of any adult oriented business to wear, use or employ any device or covering exposed to view which stimulates the breast, genitals, anus, pubic hair or any part or portion thereof.
- E. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to expose or encourage or permit any person to expose the breasts, buttocks, anus, or genitals of another, including the person so encouraging or permitting, the person being encouraged or permitted, or any other person.
- F. It shall be unlawful for an owner or operator of an Adult Oriented Business to encourage, allow, or permit any person in, on, or about the interior or exterior of the Adult Oriented Business to commit or participate in any of the acts prohibited under this Section.

§75-6. Required Conditions of Operation.

- A. An Adult Oriented Business shall ensure that at least one employee is on duty at each management station required pursuant to this Chapter at any time any not-on-duty employee or any customer, patron, or visitor is within the premises of the Adult Oriented Business.

- B. An Adult Oriented Business shall ensure that all lighting required pursuant to this Chapter and/or the Zoning Ordinance, Chapter 340, is illuminated at any time any person other than an on-duty employee is within the premises.
- C. An Adult Oriented Business shall not allow or permit any condition or state to exist with respect to such business in violation of the requirements of this Chapter, the Zoning Ordinance, or of any other provision of this Code.
- D. An Adult Oriented Business.:
1. Shall have at least one management station in each building.
 2. Shall have an interior arranged or configured such that all areas of the interior of the building or structure open to the public (excluding restrooms) are visible by direct sight from a management station at all times and not visible merely by camera, mirror or other device.
 3. Shall be equipped with overhead or comparable lighting of sufficient intensity to light or illuminate all areas of the building or structure at an illumination of at least five foot candles measured at floor level.
 4. Shall have lighting illuminated in all places open or available to the public or any customer, patron, or visitor at any time any person other than an on-duty employee is in the building.
 5. Shall provide or cause to be provided for all exterior areas, including, but not limited to, parking lots or areas, loading docks, and sidewalks sufficient lighting to illuminate the exterior areas of the business to an illumination level of not less than two (2) footcandles and shall be equipped with video surveillance devices that monitor the exterior portions of the premises from a management station.
 6. Shall not be equipped with or maintain or allow on the premises a viewing booth having any curtain, door, or other covering that allows the viewing booth to be screened from the view of an employee, the management station, or anyone standing outside of the viewing booth.
 7. Shall ensure that each viewing booth is separated from other viewing booths and other rooms or adjacent areas by a solid wall or solid partition such that a person in one viewing booth cannot have any physical contact with a person in any other viewing booth or area of the premises (except as required by the immediately preceding item (F)).
 8. Shall construct, configure and maintain its premises in such a way that all activities of all persons other than on-duty employees may be viewed from a management station at all times.
 9. In the case of an Adult Book or Video Store, shall arrange its displays of merchandise, including, but not limited to, books, magazines, newspapers, photographs, movies, videos, DVDs, CDs, other audio/video recordings, or other electronic recordings, or, in the form of objects, items or devices, in such a manner that such merchandise is not visible in any way or manner, or to any degree, from outside the building.
 10. In the case of Adult Oriented Business other than an Adult Book or Video Store, and, to the extent not regulated under Article 2B of the Annotated Code of Maryland (or successor provisions thereof), shall be constructed and maintained

in such manner that the conduct, promotion, delivery, provision, or performance of Adult Entertainment or Material is not visible in any way or manner, or to any degree, from outside the building.

11. Shall post appropriate signage prohibiting parking at the premises for persons other than patrons of the business and prohibiting the use of the exterior of the premises for other than ingress, egress, parking, or solid waste deposit/processing by bonafide employees and patrons of the business.
 12. An Adult Oriented Business shall not alter or permit to be altered the configuration of any management station required pursuant to this Chapter 34075 and depicted on an approved site plan without the submittal to, and approval by the county of a new site plan.
- E. No Adult Oriented Business may be conducted on the same parcel as, in the same building as, or in conjunction with any hotel, motel, bed-and-breakfast, country inn, marina, or in any structure or portion thereof not generally open to the public and freely accessible to patrons at all times.
- F. An Adult Oriented Business shall, at all times that it is open, have at least one manager on duty who is responsible for maintaining compliance with all of the conditions and requirements of this Chapter and Chapter 340.
- G. An Adult Oriented Business shall be responsible for maintaining compliance with all of the conditions and requirements of this Chapter and Chapter 340 at all times that it is open for business. An Adult Oriented Business shall maintain a current name, phone number, street address and e-mail address of at least one individual who resides in Talbot County or maintains an office that is open at least five days a week, legal holidays excluded, for the acceptance of any civil citation issued pursuant to Section ___ of this Chapter 340 with the Zoning Inspector/Building Official. As a condition to doing business in the Town of St. Michaels, an Adult Oriented Business agrees that service of any civil citation or legal process on it shall be deemed to have been accomplished if a copy of such citation is:
1. Left at any management station of such Adult Oriented Business; or
 2. Left at the office of any person so designated by such Adult Oriented Business pursuant to this Subsection; or
 3. Served on the resident, posted on the door of the address of the resident, or left in the mailbox of the resident designated by such Adult Oriented Business; or
 4. Such Adult Oriented Business had actual knowledge of such civil citation or legal process because a call was made and a message left at the phone number of the individual designated above or an e-mail was sent to the individual designated by such Adult Oriented Business.

§75-6. Penalties.

- A. Each violation of any provision of this Chapter 75 shall constitute a separate violation and a civil citation in the amount of up to \$1,000 may issue for each such violation to any, and to each and every, person who engages in such violation, including but not

limited to the adult oriented business, the on-duty manager of the Adult Oriented Business, and any employee or agent of the Adult Oriented Business who participated in such violation or otherwise took no action to stop or deter such violation from occurring or from continuing.

- B. In addition to the foregoing provisions of Subsection A of this Section, any Adult Oriented Business at, in, or on which any violations of this Chapter 75 have occurred on five (5) different days within any twelve (12) month period shall be deemed to be a public nuisance and the certificate of occupancy of such Adult Oriented Business may be withdrawn.

§75-7. Inspections.

- A. Periodic Inspections. The Building Official or his authorized designee shall periodically inspect the premises of every Adult Oriented Business to ensure compliance with this Chapter.
- B. Entry. The Building Official, the Town of St. Michaels Police Chief, or their duly authorized designees, who shall exhibit proper credentials upon request, may enter any Adult Oriented Business without consent of the owner, operator or occupant at any time during business or operating hours, and at such other times as may be necessary in any situation reasonably believed to pose an immediate threat to life, property or public safety, for the purpose of enforcing the provisions of this Chapter.

§75-8. Preemption.

To the extent the provisions of this Chapter 75 are pre-empted by any otherwise applicable provision of Article 2B of the Annotated Code of Maryland, or any rule or regulation issued pursuant thereto, or preempted by any other otherwise applicable law, rule, or regulation of the State of Maryland, such other applicable law, rule, provision, or regulation shall apply. Unless specifically required by law, conduct prohibited by this Chapter 75 shall not be preempted by any criminal statute and the violations of the provisions of this Chapter 75 are and shall be deemed to be civil infractions.

§75-9. Severability.

Should any section or provision of this Chapter be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part declared to be unconstitutional or invalid.

SECTION 3. SEVERABILITY. Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a Court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. AND BE IT FURTHER ORDAINED AND ENACTED, that this Ordinance shall take effect twenty (20) days from the date of its enactment, having been read at two (2) meetings of The Commissioners of St. Michaels and having been passed by a yea and nay vote of The Commissioners of St. Michaels.

HAVING BEEN INTRODUCED, read for the first time and ordered posted on the Town bulletin board at the Public Meeting of The Commissioners of St. Michaels held on the 10th day of November, 2010, at 5:00 o'clock p.m., in the meeting room at the Town Office, St. Michaels, Maryland.

 (SEAL)
CHERIL S. THOMAS
Town Clerk\Manager

HAVING BEEN READ for the second time and passed by a yea and nay vote of The Commissioners of St. Michaels at a Public Meeting of The Commissioners of St. Michaels held on this 15th day of December, 2010, at 6:30 o'clock p.m., in the meeting room of the Town Office, St. Michaels, Maryland.


Brady	-	<u>yea</u>
Clark	-	<u>yea</u>
duPont	-	<u>yea</u>
HUNT	-	<u>yea</u>
VLAHOVICH	-	<u>yea</u>

I HEREBY CERTIFY that the above Ordinance No. 423 was passed by a yea and nay vote of The Commissioners of St. Michaels on the 15th day of December, 2010.

ATTEST:


Cheril S. Thomas, Town Clerk\Manager

THE COMMISSIONERS OF ST. MICHAELS

By:  (Seal)
Michael W. Brady, President

I HEREBY CERTIFY that an exact copy of this Ordinance was posted from the 16th day of December, 2010, at 6:30 o'clock p.m. to the 4th day of January, 2011, at 4:30 o'clock p.m., on the bulletin board at the Town Office in St. Michaels, Maryland, and that a summary of the aforesaid Ordinance No. 423, the date of its passage, its effective date and the fact that the entire text of the Ordinance may be read on the bulletin board of the Town Office, St. Michaels, Maryland, for at least twenty (20) days following the passage, has been published at least once each week for two (2) consecutive weeks following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: January 5, 2011

 (Seal)
Cheril S. Thomas, Town Clerk\Manager