

CITY OF SALISBURY
ORDINANCE NO. 2048

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SALISBURY TO AMEND THE ZONING CODE TO
ESTABLISH REGULATION AND OPERATIONAL
STANDARDS FOR ADULT ENTERTAINMENT BUSINESSES.

WHEREAS, the Mayor and City Council of Salisbury, Maryland find that adult entertainment businesses, as hereinafter defined, exist or may exist within The City of Salisbury; and

WHEREAS, Article 66B of the *Maryland Annotated Code* empowers the Mayor and City Council of Salisbury, Maryland to regulate and restrict the use of buildings, signs, structures, and land to promote the health, safety, morals, or general welfare of the community; and

WHEREAS, the Mayor and City Council of Salisbury, Maryland find that there is a substantial body of knowledge about the adverse secondary effects of adult entertainment businesses on the public health, safety, general welfare, and property, and that this knowledge should be used to develop reasonable regulations that will protect the public health, safety and general welfare; and

WHEREAS, the Department of Planning and Zoning, the Mayor and the City Council of Salisbury, Maryland 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 September 12, 1991/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. Rome [Georgia] City Commission March 6, 1995;
38. City of St. Mary's, Georgia July, 1996;
39. Centralia City [Wash.] February 28, 2004 (Richard McCleary, Ph.D.);
40. Greensboro [N.C.] December 15, 2003 (Richard McCleary, Ph.D.);
41. Indianapolis, Indiana - February 1984;

WHEREAS, the City Attorney considered the information reported in many First Amendment and constitutional cases relative to Adult Entertainment Businesses, including but not limited to: *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425

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(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); *Pack Shack v. Howard County*, 377 Md. 55 (2003); and *104 West Washington Street II Corp. v. Hagerstown*, 173 Md. App. 553 (2007); *Landover Books, Inc. v. Prince George's County*, 81 Md. App. 54 (1989); and

WHEREAS, the Mayor and City Council of Salisbury, Maryland find that studies from other jurisdictions in the United States have demonstrated that adult entertainment businesses, especially when located in a particular area, are associated with increased crime, depreciation of property values, increased urban blight, and lower quality of life; and

WHEREAS, the Mayor and City Council find that alcohol consumption in adult entertainment businesses increases the likelihood of crime and other secondary effects, and encourages undesirable behavior that is detrimental to the public health, safety and welfare; and

WHEREAS, the Mayor and City Council find that such secondary effects are particularly acute when adult entertainment businesses are located in close proximity to one another; and

WHEREAS, the Mayor and City Council find that the City of Salisbury has a substantial interest in protecting the quality of life of its citizens by reducing the secondary effects of adult entertainment businesses; and

WHEREAS, the Mayor and City Council find that adult entertainment businesses are subject to the zoning laws and other provisions of this Code; and

WHEREAS, the Mayor and City Council find that adult entertainment businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate; and

WHEREAS, the Mayor and City Council find that this Legislation is a fair and reasonable means of achieving, and substantially advances, the governmental interests set forth herein, and has been drafted to provide the controls necessary to accomplish such governmental interests.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the council of the City of Salisbury, Maryland, that Title 17 of the Salisbury Municipal Code shall be amended as follows:

1. That Section 17.04.120 be amended to add the following definitions:

“Adult Arcade” means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.

“Adult Cabaret” means any bar, dance hall, restaurant, or other place of business which features dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or waiters or waitresses that engage in Specified Sexual Activities or display Specified Anatomical Areas, or any such business establishment, the advertising for, or a sign identifying which, uses the words, "adult,"

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"topless," "nude," "bottomless," or other words of similar import. Any establishment in which employees perform Straddle Dances is considered an adult cabaret.

“Adult Entertainment Business” means an Adult Arcade, Adult Cabaret, Adult Motion Picture Theater, Adult Photographic and Modeling Studio, Adult Retail Store, Adult Theater, Sexual Encounter Center, or any other business establishment whose primary business stock in trade is dependent upon the activities relating to Specified Sexual Activities, Specified Anatomical Areas, Private Performances or Straddle Dances. An Adult Entertainment Business does not include a modeling class operated by a proprietary school, licensed by the State of Maryland, a college, junior college, or university supported entirely or partly by taxation, or a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

“Adult Motion Picture Theater” means any commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

“Adult Photographic and Modeling Studio” means any commercial establishment which offers or advertises, as its primary business stock in trade, the use of its premises for the purpose of photographing or exhibiting Specified Sexual Activities or Specified Anatomical Areas, or modeling of apparel that exhibits Specified Anatomical Areas, or modeling, demonstrating, or presenting any product or service for sale, in a private

performance setting, in which the model or sales representative exhibits Specified Anatomical Areas.

“Adult Retail Store” means a commercial establishment that offers for sale or rental for any form of consideration a significant amount of any one or more of the following:

- (a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations, that depict or describe Specified Sexual Activities or Specified Anatomical Areas; or
- (b) novelty items, games, greeting cards, instruments, devices, or paraphernalia that are designed for use in connection with Specified Sexual Activities.

“Adult Theater” means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a State of Nudity, and/or live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

“Nudity or State of Nudity” means the visibility or exposure of 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 a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

“Private Club” means an association for civic, social, cultural, religious, literary, fraternal, political, recreational, or like activities, which is operated for the benefit of its members and not open to the general public

“Private Performance” means the modeling, posing, or display or exposure of any Specified Anatomical Area by an employee of an Adult Entertainment Business to a person other than another employee, while the person is in an area not accessible during such display to all other persons in the establishment, or while the person is in an area in which the person is totally or partially screened or partitioned during such display from the view of persons outside the area.

“Sexual Conduct” means any and all acts or conduct which include, involve, or which display, exhibit, or simulate the following:

- (a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;
- (b) The touching, caressing, and/or fondling of the breast, buttocks, anus, or genitals; or
- (c) The displaying of the breasts, buttocks, pubic hair, anus, vulva or genitals.

“Sexual Encounter Center” means a commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

- (b) activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity.

“Specified Anatomical Areas” means the following:

- (a) Less than completely or opaquely covered:
 - (1) Human genitals or pubic region;
 - (2) Entire cleft of the male or female buttocks. Attire which is insufficient to comply with this requirement includes, but is not limited to, G-strings, T-backs, and thongs;
 - (3) That portion of the human female breast below a point immediately above the top of the areola; this definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not so exposed.
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“Significant Amount” means the following:

- (a) At least 20% of the stock in the establishment or on display consists of Adult Entertainment or Material; or
- (b) 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

- (c) At least 20% of the gross revenue is, or may reasonably be expected to be, derived from the provision of Adult Entertainment or Material.

“Specified Sexual Activities” means the following:

- (a) Human genitals in a state of sexual stimulation or arousal or tumescence; or
- (b) Acts of analingus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, masturbation, necrophilia, pederasty, pedophilia, sadism, sadomasochism, sapphism, sexual intercourse, sodomy, urolagnia or zoerasty; or
- (c) Fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breast; or
- (d) Excretory functions as part of, or in connection with, any of the activities set forth in subsections (a) through (c) of this definition.

“Straddle Dance” means the following:

- (a) The use by an employee of an adult entertainment business of any part of his or her body to directly or indirectly touch the genital or pubic area of a person, excluding another employee, while at the adult entertainment business, in exchange for a tip, donation, gratuity, or other thing of value, regardless of whether the

employee is displaying or exposing any Specified Anatomical Area; or

- (b) The straddling of the legs of an employee of an adult entertainment business over any part of the body of a person, excluding another employee, regardless of whether there is any touching.

A straddle dance is also known as a "lap dance," "table dance," or "face dance."

- 2. That Chapter 17.36 of the Salisbury Municipal Code be amended by the addition of new Section 17.36.045 to read as follows:

Section 17.36.045 Prohibited Uses. Adult Entertainment Businesses, as defined in this Title, shall be prohibited.

- 3. That Title 17 of the Salisbury Municipal Code be amended by the addition of new Chapter 17.166 to read as follows:

Chapter 17.166

ADULT ENTERTAINMENT USES AND STANDARDS

Sections:

- 17.166.010 Purpose.**
- 17.166.020 Permit required.**
- 17.166.030 Location Restrictions.**
- 17.166.040 Non-Conforming Uses.**
- 17.166.050 Variance.**
- 17.166.060 Exterior Portions of Adult Entertainment Businesses**
- 17.166.070 Exception**

Section 17.166.010 Purpose.

A. Purpose.

1. The purpose of this Chapter is to promote the health, safety, and general welfare of the citizens of the City of Salisbury through the establishment of reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment businesses within the City of Salisbury.

2. The intent of this Section is to create a content-neutral mechanism to minimize the harmful secondary effects of adult entertainment businesses; it is not the intent of this Section to suppress any speech protected by the First Amendment to the United States Constitution or Article 40 of the Maryland Declaration of Rights or otherwise infringe on any constitutionally protected rights.

3. It is neither the purpose nor the effect of this Section to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is neither the intent nor the effect of this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

4. It is neither the purpose nor the effect of this Section to condone or legitimize the distribution of obscene materials.

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17.166.020 Permit required.

A. No adult entertainment business may operate within the City of Salisbury unless and until said business has obtained an adult entertainment permit from the City in accordance with this Chapter. Permits shall be renewed on an annual basis on or before March 1st of each year.

B. Permit applications shall be provided by the Director of the Department of Building, Permits, and Inspections. The permit application shall include the street address of the proposed adult entertainment business, the names and addresses of all owners, as hereinafter described, and any other information deemed necessary by the Director.

1. If the owner is a corporation, the permit application shall provide the names and residence addresses of all officers of the corporation, and names and residence addresses of all shareholders or members with an interest of ten percent (10%) or greater;

2. If the owner is a partnership, the permit application shall provide the names and residence addresses of all partners with an interest of ten percent or greater;

3. If the owner is any other form of unincorporated association, the permit application shall provide the names and residence addresses of all principals with an interest of ten percent or greater;

4. If the owner is an individual person, the permit application shall provide the name and address of that individual person.

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5. If none of the persons listed in paragraphs 1 through 6 hereinabove has an address in this State, the permit application also shall provide the name and address of a person who resides within the state and who is authorized to accept service of process on behalf of the owner(s) and who shall be designated as a responsible, local party or agent, both for purposes of notification in the event of an emergency affecting the public health, safety or welfare and as herein authorized and in connection herewith.

C. Each application for an adult entertainment permit shall also include the following:

1. A certification by a licensed surveyor or licensed engineer showing distances from the nearest portion of the structure to be used for an adult entertainment business to the nearest property line of the premises of a church, school, park, day care center, residential zoning district or other residential use, or another adult entertainment business, as those terms are defined in Title 17 of this Code; and

D. Permit Fees. The application fee for an adult entertainment permit shall be One Hundred (\$100.00) Dollars.

E. Processing a Permit Application for an Adult Entertainment Business

1. The adult entertainment permit shall be approved or denied in writing within ten (10) working days after the application is filed and determined to be complete, unless additional time is needed to review structural issues

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unrelated to the use of the adult entertainment business, in which case the generally applicable time period relating to issuance of a building permit shall apply.

2. If the adult entertainment permit is not approved or denied within the time period established in this Section, the application shall be deemed approved.
3. In order to guarantee prompt judicial review of any adult entertainment application, and in recognition of the restrictions on the City of Salisbury's authority to require courts in Maryland or the federal circuits to take action within any given time period, a temporary zoning certificate shall be issued if:
 - (a) the adult entertainment permit is denied, and
 - (b) the applicant brings a timely action for administrative review by the Board of Zoning Appeals and/or judicial review, as defined in the rules of procedure for the court in which the application is brought, and
 - (c) the proposed adult entertainment business is not located in a residential zoning district.
4. A temporary adult entertainment permit issued pursuant to this Section expires when a final judicial determination is made relating to the application. If the applicant prevails, and the City does not seek additional

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review, then a permanent adult entertainment permit shall be issued within five (5) working days after the applicant notifies the Director of the Department of Building, Permits and Inspections of the reviewing body's decision; If the applicant does not prevail, the temporary adult entertainment permit becomes null and void, and the applicant shall bring the premises into compliance with this Code within ten (10) working days after the final judicial decision is rendered.

17.166.030 Location Restrictions

A. An adult entertainment business may not be operated within:

1. 1,000 feet of a church or place of religious assembly;
2. 1,000 feet of a public or private school, college or university;
3. 1,000 feet of a public park;
4. 1,000 feet of a day care center or hospital;
5. 1,000 feet of a residential zoning district, a residential use located in any other zoning district or the residential component of a mixed use project in any zoning district; or
6. 1,000 feet of another adult entertainment business.

B. An adult entertainment business may not be operated in the same building, structure, or portion thereof containing another adult entertainment business.

C. For the purpose of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or

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structure used as a part of the premises where an adult entertainment business is conducted, to the nearest property line of the premises of a church or school, or to the nearest boundary of an affected public park with active recreation uses, a residential zoning district or component as further described in this Section, or a child day care center.

D. For purposes of this Section, the distance between any two (2) adult entertainment businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

17.166.040 Non-Conforming Uses

A. Any adult entertainment business lawfully operating as of the effective date of this Section in violation of the locational requirements set forth in Section 17.166.030 above is a non-conforming use. If two or more adult entertainment businesses are located within one thousand feet (1,000) feet of one another and otherwise in permissible locations, the adult entertainment business that was first established and continually operated at a particular location is the conforming use and any later established adult entertainment business is non-conforming.

B. An adult entertainment business is not rendered non-conforming by the later establishment of any of the uses set forth in Section 17.166.030(A) above.

17.166.050 Variance

A. Applicability

The Board of Zoning Appeals may authorize variances to the provisions of Section 17.166.030 of this Chapter in accordance with the criteria set forth in subsection B of this

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Section. The granting of a variance does not exempt the applicant from any provisions of this Section other than modifying the locational restrictions set forth in Section 17.166.030.

B. Decision-making Criteria, Variances for Adult Entertainment Businesses. The Board may authorize a variance only upon specific findings that:

1. A sufficient physical barrier separates the adult entertainment business from any of the protected uses set forth in Section 17.166.030, so as to substantially fulfill the purpose of the distance requirement. Such physical barriers may include, but are not limited to, limited access streets or highways, walls, and natural or manmade waterways; and
2. The strict application of the provisions of these regulations will create an undue hardship unique to the applicant for a particular location; and
3. All other applicable provisions of this Chapter will be observed.

17.166.060 Exterior Portions of Adult Entertainment Businesses

A. An owner or operator of an adult entertainment business shall not allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

B. An owner or operator of an adult entertainment business shall not allow the exterior portion of the adult entertainment business to have flashing lights, or any drawing, photograph, phrase or other matter considered obscene as that term is defined in the Criminal Law Article of the Maryland Annotated Code.

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C. An owner or operator of an adult entertainment business shall not allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to an adult entertainment business if the following conditions are met:

1. The establishment is a part of a commercial multi-unit center; and
2. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

D. Nothing in this Section shall be construed to require the painting of an otherwise unpainted exterior portion of an adult entertainment business.

E. Notwithstanding any other City ordinance, code or regulation to the contrary, no person may erect, construct or maintain for any adult entertainment business any sign containing any drawing, photograph, phrase or other matter considered obscene as that term is defined in the Criminal Law Article of the Maryland Annotated Code.

17.166.070 Exception

Notwithstanding any other provision of this Chapter, movies rated G, PG, PG-13, or R by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this Section.

17.166.080 Violations-penalties

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A. Any person found in violation of the provisions of this Chapter shall be guilty of a municipal infraction and shall be subject to a fine not to exceed five hundred dollars (\$500) per violation. Each day a violation remains uncorrected is a separate violation subject to an additional citation and fine.

B. Any adult entertainment business at, in, or on which any violation of this Chapter or Chapter 5.08 of this Code have occurred on five different days within any twelve month period shall be deemed to be a public nuisance and the adult entertainment permit of such adult entertainment business may be revoked by the Department of Building, Permits and Inspections.

AND BE IT FURTHER ENACTED AND ORDAINED by the Council of the City of Salisbury, Maryland, that this Ordinance shall take effect from and after the date of its final passage.

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THIS ORDINANCE was introduced and read at the meeting of the Council of the City of Salisbury held on the _____ day of _____, 2008, and having been published as required by law, in the meantime, was finally passed by the Council at its meeting on the _____ day of _____, 2008.

Brenda J. Colegrove
City Clerk

Louise Smith,
President of the City Council
of the City of Salisbury

Approved by me this
day of _____, 2008.

Barrie P. Tilghman
Mayor of the City of Salisbury