

**CITY OF SALISBURY**  
**ORDINANCE NO. 2049**

AN ORDINANCE of the City of Salisbury to amend Chapter 5.08 of Salisbury Municipal Code to enact additional regulation of adult entertainment businesses and to make the terminology and definitions consistent with those employed in Title 17 of the Code.

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

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 (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 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, in regular session, that Chapter 5.08 of the Salisbury Municipal Code shall be amended as follows:

## **Chapter 5.08**

### **~~ADULT-ORIENTED ENTERTAINMENT ESTABLISHMENTS~~ BUSINESSES**

#### **Sections:**

**5.08.010 Definitions.**

**5.08.020 General requirements.**

**5.08.030 Responsibilities of operators and employees.**

~~5.08.040 Responsibility of owners.~~

~~5.08.050~~ 5.08.040 **Violations—Penalties.**

~~5.08.060~~ 5.08.050 **Severability.**

~~5.08.070~~ 5.08.060 **Enforcement.**

### **5.08.010 Definitions.**

For the purpose of this chapter, the following words and phrases shall mean:

~~“Adult bookstore” means an establishment having as its stock in trade, for sale, rent, lease, inspection or viewing, books, films, video cassettes, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specific sexual activities or specified anatomical areas as defined below and, in conjunction therewith, have facilities for the presentation of adult oriented entertainment, as defined below, including adult-oriented films or movies for observation by patrons therein.~~

~~“Adult oriented entertainment” means the exhibition of any motion pictures, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, actual or simulated specified sexual activities or specified anatomical areas, as defined below, or the removal of articles of clothing or appearing partially or totally nude.~~

~~“Adult oriented entertainment establishment” includes, but is not limited to, adult bookstores, and further means any premises to which public patrons or~~

~~members are invited or admitted and which are so physically arranged so as to provide booths, rooms, cubicles, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented entertainment, whether or not such adult-oriented entertainment is held, conducted, operated or maintained for a profit, direct or indirect.~~

~~“Operators” means any person, partnership or corporation operating, conducting, maintaining or owning any adult-oriented entertainment establishment.~~

~~“Specified anatomical areas” means:~~

~~1. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola; or~~

~~2. Human male genitals in a discernible turgid state, even if opaquely covered.~~

~~“Specified sexual activities,” simulated or actual means:~~

~~1. Showing of human genitals in a state of sexual stimulation or arousal;~~

~~2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus; or~~

~~3. Fondling or erotic touching of human genitals, pubic region, buttock or female breasts. (Prior code § 41-29)~~

“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," "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.

“Operator” means any person, partnership or corporation operating, conducting, maintaining or owning any adult entertainment business.

“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.

“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 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.

“Specified Sexual Activities” means the following:

(a) Human genitals in a state of sexual stimulation or arousal or tumescence; or

(b) Acts of anilingus, 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."

#### **5.08.020 General requirements.**

A. Any ~~adult-oriented entertainment establishment~~ business having available for customers, patrons or members any booth, room, cubicle, compartment or stall for private viewing of any pictures, films, videotapes or other images ~~adult-oriented entertainment~~ must comply with the following requirements:

A.1. Access. Each such booth, room, cubicle, compartment or stall shall be accessible solely from aisles and public areas of the ~~adult-oriented entertainment establishment~~ business and shall be unobstructed by any door, curtain or any other control device.

B.2. Construction. Every such booth, room, cubicle, compartment or stall shall meet the following construction requirements:

1.a. It shall be separated by walls from adjacent booths, rooms, cubicles, compartments or stalls and any other nonpublic area;

2.b. It shall be located within the ~~establishment~~ premises of the adult entertainment business so as to provide a totally unobstructed view from a location where the employee, operator or owner is stationed and can monitor the activities within every booth, room, cubicle, compartment or stall within the establishment;

~~3.c.~~ It shall have the side facing the public room totally open and unobstructed from view at all times by anyone in such public room;

~~4.d.~~ Every video screen shall be positioned within the booth, room, cubicle, compartment or stall in a manner so as to be hidden from view from persons in the public area;

~~5.e.~~ The lighting of the public room shall be a minimum of twenty (20) footcandles at all times, as measured from the floor;

~~6.f.~~ All walls within each booth, room, cubicle, compartment or stall shall be solid and without openings, extended from the floor a minimum of six feet and be light-colored, nonabsorbent, smooth-textured and easily cleanable;

~~7.g.~~ All floors within each booth, room, cubicle, compartment or stall shall be light-colored, nonabsorbent, smooth-textured and easily cleanable;

~~€.3.~~ Occupants. Only one individual shall occupy a booth, room, cubicle, compartment or stall at any time.

~~D.B.~~ Prohibited Conduct, Contact or Activities.

~~1. It is unlawful for any occupant of a booth, room, cubicle, compartment or stall to engage in any type of sexual activity, cause any bodily discharge or litter while in the booth, room, cubicle, compartment or stall.~~



~~2. It is unlawful for any person to damage or deface any portion of the booth, room, cubicle, compartment or stall.~~

~~3. It is unlawful for any employee, operator or owner of such adult-oriented entertainment establishment to engage in any of the acts enumerated in subsection (D)(1) or (D)(2) of this section or allow any person to engage in any activity set forth in subsection (D)(1) or (D)(2) of this section. (Prior code § 41-30)~~

### 1. Nudity

a. Other than during a performance in accordance with subsection (B)(1)(b) below, it shall be unlawful for any person, including patrons and visitors, at or in any adult entertainment business to perform, work, dance, or appear in any state, condition, or appearance of 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 entertainment business where such performances are customarily given, may appear, while performing, in a state or condition of partial nudity.

### 2. Certain physical contact prohibited.

a. It shall be unlawful for any person on, in, or about the interior or exterior of an adult entertainment business while in any state, condition, or appearance of nudity, whether performing or engaging in an artistic or expressive dance, performance, display, exercise or otherwise, 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 entertainment business, or a customer, patron, or visitor of, at, or in any adult entertainment 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 the state of nudity on, in, or about the interior or exterior of an adult entertainment 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.

3. Other prohibited conduct or activities.

a. It shall be unlawful for any person in, on, or about the interior or exterior of any adult entertainment 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 entertainment business.

b. It shall be unlawful for any person, in, on, or about the interior or exterior of any adult entertainment 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 entertainment 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 entertainment business to wear, use, or employ any device or covering exposed to view which simulates the breast, genitals, anus, public hair, or any part or portion thereof.

e. It shall be unlawful for any owner or operator of an adult entertainment business to encourage, allow, or permit any person, in, on, or about the interior or exterior of an adult entertainment business to commit or participate in any of the acts prohibited under this Chapter.

f. It shall be unlawful for any adult entertainment business to allow in, on, or about its premises any person under the age of eighteen years.

#### **5.08.030 Responsibilities of operators and employees.**

A. Every act or omission by an employee of an adult-oriented entertainment establishment ~~business~~, constituting a violation of the provisions of this chapter, shall be deemed to be the act or omission of the operator of that adult-oriented entertainment ~~establishment~~ business. The operator shall be punishable for any such act or omission in the same manner as one who has committed the act or caused the omission.

~~B. No employee, operator, owner or agent of an adult-oriented entertainment establishment shall allow any minor to enter, to loiter around or to frequent such establishment or allow any minor to view any adult-oriented entertainment.~~

~~C.~~B. The operator shall maintain the premises in a clean and sanitary manner at all times.

~~D.~~C. The operator shall see that the proper illumination is maintained at all times within the adult-oriented entertainment ~~establishment~~ business.

~~E.D.~~ The operator shall ensure compliance of the establishment and its patrons with the provisions of this chapter. (Prior code § 41-31)

**~~5.08.040~~ Responsibility of owners.**

~~Any violation of this chapter perpetrated by any employee or operator of an adult-oriented entertainment establishment shall be deemed to be an action of the owner and subject the owner to the fines and penalties set forth herein. (Prior code § 41-32)~~

**~~5.08.050~~ 5.08.040 Violations—Penalties.**

A. Any person, partnership or corporation who is found to have violated this chapter shall be guilty of a misdemeanor and fined a sum not exceeding one thousand dollars (\$1,000.00) or be imprisoned for a period not to exceed six months, or both.

B. Each violation of this chapter shall be considered a separate offense and any violation continuing more than one day shall be considered a separate offense. (Prior code § 41-33)

**~~5.08.060~~ 5.08.050 Severability.**

The invalidity of any portion of this chapter will not affect the validity of the other portions of this chapter. (Prior code § 41-34)

**~~5.08.070~~ 5.08.060 Enforcement.**

The city of Salisbury police department shall have the authority to enter any adult-oriented entertainment establishment business at all reasonable times, including but not limited to normal business hours, to inspect the premises and enforce this chapter. (Prior code § 41-35)

AND BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, that this Ordinance shall take effect upon final passage.

THIS ORDINANCE was introduced and read at a 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 on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Brenda J. Colegrove, City Clerk

\_\_\_\_\_  
Louise Smith, President  
Salisbury City Council

Approved by me, this \_\_\_\_\_  
day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Barrie P. Tilghman,  
Mayor of the City of Salisbury