

ORDINANCE NO: 405

A BILL TO DEFINE "ADULT ORIENTED BUSINESSES" AND TO ADOPT A TEMPORARY MORATORIUM UPON PROCESSING APPLICATIONS, SITE PLANS, BUILDING PERMITS, AND APPROVALS OF ADULT ORIENTED BUSINESSES IN THE INCORPORATED LIMITS OF THE TOWN OF ST. MICHAELS FOR A PERIOD OF NINE MONTHS PENDING CONSIDERATION AND ADOPTION OF SUCH LEGISLATION AS THE COMMISSIONERS OF ST. MICHAELS MAY CONSIDER ADVISABLE TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE TOWN OF ST. MICHAELS

WHEREAS, the Commissioners of St. Michaels (the "Commissioners") are authorized by Maryland Annotated Code Article 23A §2(a) to enact such ordinances as it deems necessary to assure the good government of the Town, and to protect the health, comfort and convenience of the citizens of the Town; and

WHEREAS, the Commissioners are authorized by Maryland Annotated Code Article 66B §4.01(b) to develop and adopt zoning restrictions to promote the health, safety, morals or general welfare of the community, including the location and use of buildings, signs, structures and land; and

WHEREAS, the Commissioners recognize the significant planning, zoning, property and secondary effects surrounding or arising from the location and operation of Adult Oriented Businesses; and

WHEREAS, the Town's current Zoning Regulations (Chapter 340) makes no specific or particular provisions for Adult Oriented Businesses; and

WHEREAS, the Commissioners are currently in the process of revising the Implementation Documents associated with the adoption of the Town's Comprehensive Plan and prefers to delay textual amendments to Chapter 340 (Zoning) pending the completion of that process; and

WHEREAS, current and planned growth within the Town and its environs may necessitate textual amendments to Chapter 340 that accommodate the health, safety and welfare impacts inherent in such growth and the secondary effects inherent in Adult Oriented Businesses; and

WHEREAS, the Town requires time to ensure that the appropriate study and desired public input can be obtained before establishing text amendments to Chapter 340 and/or other regulations of the Town; and

WHEREAS, the acceptance, consideration, review or approval of applications, site plans, permits, or certificates of occupancy for Adult Oriented Businesses under Chapter 340 at this time would frustrate the Town's ability to review Chapter 340 and any related Code provisions; would frustrate the Town's ability to enact meaningful ordinances and regulations to address the secondary effects of Adult Oriented Businesses in the Town, and would be adverse to the orderly development of the Town; and

WHEREAS, the Commissioners have determined that a temporary moratorium, for a term of nine (9) months, is necessary and in the interest of the present and future residents of the Town whose health, safety and well-being may be compromised by the unregulated operation of Adult Oriented Businesses within the Town; and

WHEREAS, the Commissioners believe that nine (9) months is a reasonable length of time for the completion and adoption of any revisions to Chapter 340 necessary to implement zoning regulations of Adult Oriented Businesses.

SECTION 1. NOW, THEREFORE, BE IT ENACTED BY THE COMMISSIONERS, that:

- A. A temporary moratorium on the application or site plan for, consideration of, approval of, construction of, expansion of, permits for, or certificates of occupancy for any Adult Oriented Business in the incorporated areas of the Town of St. Michaels hereby imposed for a period of nine (9) months.
- B. During the moratorium, the Town (including the Zoning Inspector, the Planning Commission, the Board of Appeals, and the Town staff) shall not accept, process, consider, review, or approve any application, permit, certificate of occupancy, site plan or other approval under Chapter 340 for an Adult Oriented Business.
- C. The moratorium shall apply to any applications currently pending before the Town, as well as to any application(s) filed during the pendency of this temporary moratorium.
- D. This moratorium is adopted to allow sufficient time for the Town to accomplish the following:
 - i. Consider any revisions to Chapter 340 or any other law or regulations as necessary to adequately address Adult Oriented Business uses in the Town;
 - ii. Obtain expert advice and assistance as necessary;
 - iii. Obtain such other studies and reports as necessary to identify and address the impacts of Adult Oriented Businesses in the Town;
 - iv. Consider all such other matters as the Commissioners shall deem appropriate; and
 - v. Adopt appropriate zoning text and map amendments as may be necessary to protect and promote the public health, safety, and welfare.
- E. For purposes of this ordinance, the terms "Adult Oriented Business," "Adult Entertainment or Material" "Nudity," "Partial Nudity," "Adult book or video store," and "Significant amount," are defined as follows:

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

- i. 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
- ii. 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.

"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

- i. in which an individual or individuals appear in a state of nudity or partial nudity; or

- ii. 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;
 - b. any act, whether real or simulated, or 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
 - c. consists of contact with animals or inanimate objects.

"Nudity" means

- i. the showing of the human male or female genitalia, pubic area, or buttocks with less than full opaque covering;
- ii. the showing of the female breast with less than a full opaque covering over any part below the top or uppermost part of the areola; or
- iii. the depiction of covered male genitalia in a discernibly turgid or erect state.

"Partial nudity" means a state of dress which reveals:

- i. the human male or female buttocks; or
- ii. 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.

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

"Significant amount" means;

- i. 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;
- ii. 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;
- iii. 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
- iv. any provision of live adult entertainment or material.

- F. The Commissioners shall have and reserve the right to extend or modify this moratorium on Adult Oriented Businesses for such additional period or periods and on such terms and conditions as it deems necessary for the health, safety and welfare of the citizens of the Town of St. Michaels.

SECTION 2: BE IT FURTHER ENACTED, that if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance or declared severable.

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Adopted 10/28/09

SECTION 3: 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 23rd day of September, 2009, at 6:30 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 28th day of October, 2009, at 6:30 o'clock p.m., in the meeting room of the Town Office, St. Michaels, Maryland.


Clark	-	<u>yea</u>
Brady	-	<u>yea</u>
Dinkel	-	<u>yea</u>
Hunt	-	<u>yea</u>
Snyder	-	<u>yea by absentee ballot</u>

I HEREBY CERTIFY that Ordinance No. 405 was passed by a yea and nay vote of the Commissioners of St. Michaels on this 28th day of October, 2009 at 6:30 o'clock p.m. in the meeting room of the Edgar M. Bosley, Jr. Building, 300 Mill Street, St. Michaels, Maryland.

ATTEST:


THE COMMISSIONERS OF ST. MICHAELS


Cheril S. Thomas, Town Clerk/Manager

By:  (SEAL)
Michael W. Brady, President

I HEREBY CERTIFY that an exact copy of this Ordinance was posted from the 29th day of October, 2009, at 8:30 o'clock a.m. to the 17th day of November, 2009, 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. 408, 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: Nov. 18, 2009

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