

## Prince George's County Council Agenda Item Summary

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**Meeting Date:** 9/9/2009  
**Reference No.:** CB-028-2009  
**Draft No.:** 3  
**Proposer(s):** Dernoga, Bland, Campos, Olson, Dean  
**Sponsor(s):** Dernoga, Bland, Campos, Olson, Dean, Knotts  
**Item Title:** An Ordinance concerning Adult Book Stores and/or Adult Video Stores for the purpose of revising the definition of adult book store and/or adult video store; establishing certain timeframes and administrative procedures for processing adult book store and adult video store use and occupancy permit applications; extending the time period that adult book stores and adult video stores may continue in operation; continuing to permit adult book stores and adult video stores by right in the I-2 Zone, under certain circumstances; making additional legislative findings regarding adult book stores and adult video stores; increasing certain requirements for adult book stores and adult video stores; and generally relating to adult book stores and/or adult video stores.

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**Drafter:** Kathleen H. Canning, Legislative Officer  
**Resource Personnel:** Anne C. Magner, Associate County Attorney  
Tom Matzen Deputy Director, Department of Environmental Resources

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### LEGISLATIVE HISTORY:

<b>Date Presented:</b>	6/23/2009	<b>Executive Action:</b>	
<b>Committee Referral:</b>	6/23/2009 - PZED	<b>Effective Date:</b>	10/26/2009
<b>Committee Action:</b>	7/15/2009 - FAV(A)		
<b>Date Introduced:</b>	7/21/2009		
<b>Public Hearing:</b>	9/9/2009 - 1:30 PM		
<b>Council Action (1)</b>	9/9/2009 - ENACTED		
<b>Council Votes:</b>	MB:A, WC:A, SHD:A, TD:A, CE:-, AH:A, TK:A, EO:A, IT:A		
<b>Pass/Fail:</b>	P		
<b>Remarks:</b>			

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### AFFECTED CODE SECTIONS:

27-107.01, 27-229, 27-248, 27-473, 27-901, 27-902, 27-903, 27-904, 27-905

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### COMMITTEE REPORTS:

#### PZED Committee Report

**Date 7/15/2009**

Committee Vote: Favorable with amendments, 5-0 (In favor: Council Members Dean, Olson, Bland, Dernoga and Exum)

The committee discussed CB-28-2009 and CB-29-2009 simultaneously due to their related subject matter. CB-28-2009 amends the Zoning Ordinance to provide for the regulation of adult book stores and/or adult video stores. CB-29-2009 provides for the licensing of adult book stores and/or adult video stores.

The Council members heard testimony about secondary effects of adult book stores and/or adult video stores including but not limited to: prostitution and other sex related offenses, drug use and dealing, health risks through the spread of AIDS and other sexually transmitted diseases, crime and blight.

Further, the Council members heard adult business testimony regarding City of Littleton, Colorado v Z.J. Gifts D-4, LLC, a limited liability company, dba Christal's, 541 U.S. 774, 124 S.Ct. 2219 (2004) , Marlowe Height's Periodicals, Inc. v. Prince George's County, Court of Special Appeals of Maryland, No. 1348, September 2000, Filed August 20, 2003, and The Pack Shack, Inc. v. Howard County, Maryland, No. 55, September Term 2001, Filed September 10, 2003.

The Legislative Officers indicated that the purpose of this bill is to provide reasonable regulations for adult book stores and/or adult video stores without unreasonably infringing upon protected expressive activities. The bill specifically addresses a suitable timeframe for issuance of a use and occupancy permit based by the timelines set forth in Littleton which were upheld by the U.S. Supreme Court.

The Committee Director summarized written referral comments that were received. The Office of Law reviewed CB-28-2009 and determined that it is in proper legislative form with no legal impediments to its adoption. The Planning Board supports CB-28-2009 with suggested amendments as follows:

- (1) Throughout the bill, where there is a reference to the words "Adult Book Store or Adult Video Store" add the word "and/" in front of the word "or." In places in the bill where the word "and" is behind the words "Adult Book Store" add the word "/or" behind the word and." These changes clarify that either the adult book store use or the adult video store use or a combination of both uses must comply with the regulations in the bill.
- (2) Language should be added to the bill which would define a standard for the maximum gross floor area permitted for the uses.
- (3) On page 8, lines 2-3, delete the words "or the subsequent location of another adult book store or adult video store within five hundred (500) feet". The language is not needed because the language is already stated on page 7, line 28 of the bill.
- (4) On page 9, lines 7-8, the words "written documentation" should be deleted and replaced with the words "an approval or denial." This change clarifies that M-NCPPC will provide a recommendation of permit approval or documentation of non-approval when the permit is denied because of non-compliance with zoning regulations.

The Board of Appeals Administrator suggested an amendment concerning language on page 9, lines 20-22, that refers to the Board of Administrative Appeals. Since the new Code sections proposed in CB-28-2009 would be incorporated into the Zoning Ordinance, appeals should be to the Board of Zoning Appeals pursuant to Section 27-231(b) of the Zoning Ordinance (the Board being authorized to hear such appeals pursuant to Section 27-229(a)(2)).

Bill Hunt, Senior Legislative Auditor, representing the Office of Audits and Investigations, addressed the committee to inform them that enactment of CB-28-2009 will not have any significant or material measureable fiscal impact on the County.

Dale Hutchison, M-NCPPC Information Management Division Chief, addressed the committee providing an overview of maps identifying I-1 and I-2 zoned land in the County as well as locations of existing adult book stores and adult video stores based on historical data provided by the Department of Environmental Resources.

Major Robert Liberati and Detective A. Hayes, Prince Georges County Police Department, discussed the data concerning existing locations, with Detective Hayes commenting that based on his site visits to those businesses on the list, there are only 14 businesses in operation. Council Member Dean requested an updated list and map of these locations.

Major Dwayne Preston, District VI Commander, informed the committee that his district includes a business located on Harford Avenue in Beltsville. Major Preston did not have the specific number, however, he noted that his District has received calls for service related to this location in Beltsville. Council Member Exum requested that Major

Preston submit documentation of the number of calls to be included in the legislative file for this bill. Similarly, at the request of Council Chairperson Bland, the Chief of Police will be asked to provide this information for all Districts throughout the County.

Roger Horwitz, representing Marlow Heights Video, addressed the committee regarding his concerns with the legislation indicating that the business has been operating on St. Barnabas Road since 1976 and there have been no issues or problems related to its operation.

Eva Murphy, representing Maryland Coalition Against Pornography; Art McKnew, and Rosetta Agres spoke in support of CB-28-2009.

The committee voted favorable on the legislation including amendments (1) and (4) suggested by the Planning Board as well as the amendment on page 9, lines 20-22, suggested by the Board of Appeals Administrator, to change "Board of Administrative Appeals" to "Board of Zoning Appeals".

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**BACKGROUND INFORMATION/FISCAL IMPACT:**

(Includes reason for proposal, as well as any unique statutory requirements)

The proposed legislation amends the Zoning Ordinance to provide for the regulation of adult book stores and adult video stores. The purpose of this bill is to provide reasonable regulations for adult book stores and adult video stores without unreasonably infringing upon protected expressive activities. This bill does not place unreasonable regulation on the expressive activities of an adult book store and an adult video store. The amendment to the Zoning Ordinance is focused on the secondary effects of adult businesses by providing adequate alternative avenues of communication. This bill sets a definitive timeline for the application process for a use and occupancy permit for adult book stores and adult video stores as required in *Marlowe Heights Periodicals, Inc., v. Prince George's County, Court of Special Appeals of Maryland, No. 1348, September Term, 2000, Filed August 20, 2003.*

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**CODE INDEX TOPICS:**

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**INCLUSION FILES:**

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