

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL
2010 Legislative Session

Bill No. CB-46-2010
Chapter No. 45
Proposed and Presented by Council Member Dean
Introduced by Council Members Dean, Olson, Turner, Dernoga, Harrison and Bland
Co-Sponsors _____
Date of Introduction July 13, 2010

ZONING BILL

1 AN ORDINANCE concerning

2 Use and Occupancy Permits

3 For the purpose of amending the definitions, and amending the requirements, and enforcement
4 procedures for certain commercial or industrial uses in Commercial and Industrial Zones, and
5 amending the enforcement procedures for violations of use and occupancy permit requirements.

6 BY repealing and reenacting with amendments:

7 Sections 27-107.01, 27-253, 27-264, 27-264.01, 27-461,
8 27-473, and 27-568,

9 The Zoning Ordinance of Prince George's County, Maryland,
10 being also

11 SUBTITLE 27. ZONING.

12 The Prince George's County Code
13 (2007 Edition, 2009 Supplement, as amended by CB-19-2010).

14 BY adding:

15 Section 27-475.06.06,
16 The Zoning Ordinance of Prince George's County, Maryland,
17 being also

18 SUBTITLE 27. ZONING.

19 The Prince George's County Code
20 (2007 Edition, 2009 Supplement).

1 BY repealing:

2 Section 27-352,
3 The Zoning Ordinance of Prince George’s County, Maryland,
4 being also
5 SUBTITLE 27. ZONING.
6 The Prince George’s County Code
7 (2007 Edition, 2009 Supplement).

8 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
9 Maryland, sitting as the District Council for that part of the Maryland-Washington Regional
10 District in Prince George's County, Maryland, that Sections 27-107.01, 27-253, 27-264, 27-
11 264.01, 27-461, 27-473, and 27-568 of the Zoning Ordinance of Prince George's County,
12 Maryland, being also Subtitle 27 of the Prince George's County Code, be and the same are
13 hereby repealed and reenacted with the following amendments:

14 **SUBTITLE 27. ZONING.**

15 **PART 2. GENERAL.**

16 **DIVISION 1. DEFINITIONS.**

17 **Sec. 27-107.01. Definitions.**

18 * * * * *

19 (7.1) **Adult Entertainment:** Adult Entertainment means any exhibition,
20 performance or dance of any type conducted in a premise where such exhibition, performance or
21 dance involves a person who:

22 (A) Is unclothed or in such attire, costume or clothing as to expose to
23 view any portion of the breast below the top of the areola or any portion of the pubic region,
24 anus, buttocks, vulva or genitals; or

25 (B) Touches, caresses or fondles the breasts, buttocks, anus, genitals or
26 pubic region of another person, or permits the touching, caressing or fondling of his/her own
27 breasts, buttocks, anus, genitals or pubic region by another person, with the intent to sexually
28 arouse or excite another person.

29 [(7.1)] (7.2) **Adult Rehabilitation Center:** An establishment, owned and operated by a
30 bona fide nonprofit organization within the County, that provides on-site support for a service
31 population, and also provides facilities for the refurbishing and resale of donated goods to the

1 public by the resident service population. The term shall not include a "Group Residential
2 Facility," "Congregate Living Facility," or "Adult Day Care Center."

3 * * * * *

4 (21.1) **Auditorium:** A room or building used for the gathering of people seated
5 as an audience; open to the general public, with or without an admission charge, and used
6 primarily for public speaking, theatrical production; excluding any form of patron dancing or
7 adult entertainment.

8 [(21.1)] (21.2) **Aviation Policy Area (APA):** A defined land area adjacent to an
9 airport, where regulations in Part 10B modify zoning standards and requirements.

10 * * * * *

11 (42.1) **Catering Establishment:** An establishment that specializes in the
12 preparation of food or beverages for social occasions; such as weddings, banquets, parties, or
13 other gatherings; with or without banquet facilities for these private prearranged occasions that
14 are not open to impromptu attendance by the general public; excluding adult entertainment.

15 * * * * *

16 (49) **Club or Lodge, Private:** An establishment providing facilities for
17 entertainment or recreation for only bona fide members and guests, and not operated for profit,
18 excluding adult entertainment.

19 * * * * *

20 (81.2) **Eating or Drinking Establishment:** An establishment that provides food
21 or beverages for consumption on or off premise, which may be developed freestanding, on a pad
22 site or attached to another building, or located within another building or located within a group
23 of buildings, which may include a drive-through service, carryout, outdoor eating and live
24 entertainment, excluding adult entertainment uses.

25 * * * * *

26 (192) **Recreational or Entertainment Establishment of a Commercial Nature:**
27 An establishment which provides entertainment, recreation, or amusement for profit. This term
28 shall not include an "Amusement Arcade," "Reducing/Exercise Salon or Health Club," or a
29 "Massage Establishment but shall include any form of a "Rental Hall" or "Dance Hall" not
30 sanctioned by another special exception or private club.

31 * * * * *

32 [(200) **Restaurant, Fast-Food:**

1 (A) An establishment used for the preparation and sale of food products which
2 are:

3 (i) Generally packaged in paper or served on (in) disposable plates,
4 wrappers, or containers; and

5 (ii) Intended for ready consumption either inside the building at tables, on
6 a patio, on the premises in parked cars, or off the premises.

7 (B) The operation may or may not involve service directly to patrons in their
8 motor vehicles.

9 (C) The term does not include:

10 (i) A retail outlet selling food items primarily for home preparation and
11 consumption; or

12 (ii) A restaurant which serves food primarily on nondisposable tableware,
13 but provides incidental carryout service, where the space used for carryout service does not
14 exceed five percent (5%) of the total patron seating area or eighty (80) square feet (whichever is
15 less).]

16 **SUBTITLE 27. ZONING.**

17 **PART 3. ADMINISTRATION.**

18 **DIVISION 7. BUILDING GRADING, AND USE AND OCCUPANCY PERMITS.**

19 **SUBDIVISION 1. GENERAL.**

20 **Sec. 27-253. Use and occupancy permits.**

21 * * * * *

22 (g) The Chief of Police, [and] the Fire Chief, and the Director of the Department of
23 Environmental Resources are authorized to direct the Police Department, [and] the
24 Fire/Emergency Medical Services Department, and the Department of Environmental Resources,
25 respectively, to take all immediate reasonable and necessary action to cease and desist the
26 operation of any activity requiring a use and occupancy permit when a use and occupancy permit
27 has been issued and is not in compliance with the provisions of this Section and all applicable
28 use and occupancy provisions of the Zoning Ordinance.

29 * * * * *

30 **SUBTITLE 27. ZONING.**

31 **PART 3. ADMINISTRATION.**

32 **DIVISION 8. ENFORCEMENT.**

1 **Sec. 27-264. Enforcement procedures.**

2 * * * * *

3 (c) **Repeated violation.**

4 * * * * *

5 (2) Notwithstanding the provisions of Subtitle 28, Section 28-111 of the County
6 Code, repeated violations for operating outside the scope of a valid use and occupancy permit
7 shall be subject to a fine not to exceed One Thousand Dollars (\$1,000.00).

8 * * * * *

9 **Sec. 27-264.01. Expedited enforcement procedures.**

10 (a) The Chief of Police, [and] the Fire Chief, and the Director of the Department of
11 Environmental Resources shall establish policies, rules, and procedures to implement this
12 Division.

13 (b) Notwithstanding the provisions of Section 27-264, when the Chief of Police, [or] the
14 Fire Chief, or the Director of the Department of Environmental Resources determine that a
15 violation of Section 27-253 or Section 27-260 has occurred with respect to the use of any
16 building, structure, or land, or there is a failure to obtain a use and occupancy permit, the Chief
17 of Police, [or] the Fire Chief, and the Director of the Department of Environmental Resources
18 are authorized to direct the Police Department, [and] the Fire/Emergency Medical Services
19 Department, and the Department of Environmental Resources, respectively, to issue a written
20 violation notice directing that the violation cease and that all activities in the building, structure,
21 and on the land cease pending a hearing before the Zoning Hearing Examiner in accordance with
22 Section 27-264.01(g).

23 (c) The Chief of Police, [and] the Fire Chief, and the Director of the Department of
24 Environmental Resources shall provide the written violation notice, issued pursuant to Section
25 27-264.01, to one (1) of the following: the owner, general agent, or lessee of the building,
26 structure, or land; the person, firm, or corporation conducting the activities; or any person in the
27 building, structure or on the land that directs, manages, or is in control or is in apparent control
28 or management of the activity or activities set forth in Section 27-253 or Section 27-260. In the
29 event that no person or no person representing entities set forth in this Section are present or any
30 person or any person representing entities set forth in this Section flees when the activity or
31 activities take place and the written violation notice is being issued, the written violation notice
32 shall be posted on the building, structure or on the land in which or upon which the activity or

1 activities took place, directing that the violation cease and that all activities in the building,
 2 structure, or on the land cease pending a hearing before the Zoning Hearing Examiner in
 3 accordance with Section 27-264.01(g). Posting of the issued written notice shall be deemed to
 4 be constructive notice to the owner, general agent, or lessee of the building, structure, or land;
 5 the person, firm, or corporation conducting the activities; or any person in the building, structure
 6 or on the land that directs, manages, or is in control or is in apparent control or management of
 7 the building, structure or on the land in which or upon which the activity or activities took place.

8 (d) For violations of Section 27-253(f), (g), and (h) or Section 27-260(f), (g), and (h) of the
 9 Zoning Ordinance, the owner, general agent, or lessee of the building, structure, or land, the
 10 person, firm, or corporation conducting the activities; or any person in the building, structure or
 11 on the land that directs, manages, or is in control or is in apparent control or management of the
 12 building, structure or on the land in which or upon which the activity or activities took place may
 13 request a hearing before the Zoning Hearing Examiner. The Zoning Hearing Examiner shall
 14 commence a hearing within four (4) days following receipt of the request for a hearing.

15 (e) The Zoning Hearing Examiner shall provide a hearing on the record.

16 (f) The enforcement action of the Police Department, [or] the Fire/Emergency Medical
 17 Services Department, or the Department of Environmental Resources shall not be stayed during
 18 the pendency of the hearing.

19 (g) The Zoning Hearing Examiner shall render a decision on the enforcement action within
 20 two (2) days after the conclusion of the hearing on the record. The decision shall include the
 21 following findings of fact: whether a use and occupancy permit has been issued for the use
 22 alleged to be in violation; whether the activity in the building, structure or on the land in which
 23 the activity took place is in compliance with any existing use and occupancy permits; whether
 24 there was an imminent danger and threat to the public health, safety and welfare, and whether the
 25 activity constitutes a continuing threat to the public health, safety and welfare.

26 (h) The Zoning Hearing Examiner may reverse, modify or remand the decision of the
 27 Police Department, [or] the Fire/Emergency Medical Services Department or the Department of
 28 Environmental Resources, respectively, only if the decision of the Police Department, [or] the
 29 Fire/Emergency Medical Services Department, or the Department of Environmental Resources,
 30 respectively, is clearly erroneous, or arbitrary and capricious, or unsupported by any substantial
 31 evidence.

1 (i) The enforcement action of the Police Department, [or] the Fire/Emergency Medical
2 Services Department, or the Department of Environmental Resources, respectively, shall
3 terminate or continue according to the determination of the Zoning Hearing Examiner.

4 (j) Any party aggrieved by a decision of the Zoning Hearing Examiner may appeal the
5 decision to the Circuit Court for Prince George's County, Maryland. The appeal shall proceed in
6 accordance with the provisions of Title 7 of the Maryland Rules of Procedure.

PART 6. COMMERCIAL ZONES.

DIVISION 3. USES PERMITTED.

Sec. 27-461. Uses permitted.

(b) TABLE OF USES I.

USE	ZONE					
	C-O	C-A	C-S-C	C-W	C-M	C-R-C
(1) COMMERCIAL:						
(A) Eating or Drinking Establishments[:]						
[Drive-in restaurant]	[X]	[SE]	[SE]	[X]	[SE]	[X]
[Fast-food restaurant:]						
[(i) Within a wholly enclosed shopping mall, or department, variety, or drug store]	[X]	[X]	[P]	[X]	[X]	[P]
[(ii) Within an office building]	[PA]	[X]	[P]	[X]	[PA]	[X]
[(iii) Within a hotel]	[X]	[X]	[PA]	[X]	[PA]	[X]
[(iv) Accessory to, and as an integral part of, an allowed recreational facility]	[P]	[P]	[P]	[PB]	[P]	[X]
[(v) Within, and sharing the same points of vehicular access as, an integrated shopping center having six individual businesses (including the fast-food restaurant) and a minimum 50,000 square foot gross floor area ¹⁰]	[X]	[X]	[P]	[X]	[X]	[X]
[(vi) Provided that the fast-food restaurant is part of an integrated shopping center, is not attached to a gas station, is limited to a maximum 2,000 square foot gross floor area, no more than 20 seats, and no drive-in or delivery service ¹⁶]	[X]	[X]	[P]	[X]	[P]	[X]
[(vii) All others]	[X]	[SE]	[SE]	[SE]	[SE]	[X]
Eating or drinking establishment, with [full] drive-through service	X	X	P ²⁴	X	P ²⁴	X
Eating or drinking establishment, excluding [full] drive-through service	P ^[24]	P	P ^[24]	P	P ^[24]	P

USE	ZONE					
	C-O	C-A	C-S-C	C-W	C-M	C-R-C
Eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 A.M., excluding adult-oriented uses	X	X	SE	SE	SE	X
Eating or drinking establishment of any type providing [live] adult-oriented performances	X	X	X	X	P ^{24,51}	X
* * * * *	*	*	*	*	*	*
(5) Recreational/Entertainment/Social/Cultural:						
<u>Adult Entertainment</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
* * * * *	*	*	*	*	*	*
<u>Auditorium</u>	X	X	<u>P</u> ⁵⁶	X	<u>P</u> ⁵⁶	X
* * * * *	*	*	*	*	*	*
<u>Catering Establishment</u>	X	X	<u>P</u>	X	<u>P</u>	X
* * * * *	*	*	*	*	*	*

* * * * *

24 Subject to Detailed Site Plan approval in accordance with Part 3, Division 9, of this Subtitle. Any fast-food restaurant operating pursuant to an approved Special Exception as of the effective date of CB-49-2005 shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Such fast-food restaurants and their underlying special exceptions may be modified pursuant to the existing provisions relating to revisions or amendments to special exceptions generally and fast-food restaurants specifically as they exist in the Zoning Ordinance.

* * * * *

56 Businesses with a valid use and occupancy permit issued prior to May 1, 2010, may continue as a matter of right and shall not be deemed nonconforming if the use does not include any form of adult entertainment.

**PART 7. INDUSTRIAL ZONES.
DIVISION 3. USES PERMITTED.**

Sec. 27-473. Uses permitted.

(b) TABLE OF USES

USE	ZONE				
	I-1 ³³	I-2 ³³	I-3	I-4	U-L-I
(1) COMMERCIAL:					
(A) Eating or Drinking Establishments[:]					
[(i) Accessory to, and within the same building or group of attached buildings as, any permitted use except a hotel or motel]	[P]	[P]	[X]	[PA]	[SP ²⁵]
[(ii) Within a hotel]	[SE ^{5, 10}]	[SE ⁵]	[P ⁶]	[X]	[SE]
[(iii) Within a motel]	[SE ⁵]	[SE ⁵]	[X]	[X]	[SE]
[(iv) Within an office building:]					
[(aa) Fast-food restaurant]	[P]	[P]	[PA ⁶]	[X]	[SE]
[(bb) Other than fast-food restaurant]	[P]	[P]	[P ⁶]	[X]	[SE]
[(v) Within an industrial park:]					
[(aa) Of at least 100 acres, fast food restaurant]	[SE]	[SE]	[SE ³⁰]	[SE]	[SE]
[(bb) Of at least 100 acres, all others]	[SE]	[SE]	[P ²⁹]	[SE]	[SE]
[(cc) Of between 25 and 100 acres, excluding a fast-food restaurant]	[SE]	[SE]	[P]	[SE]	[SE]
[(dd) Of less than 25 acres, except as provided above]	[SE]	[SE]	[SE ¹¹]	[SE]	[SE]
[(ee) Approved with a hotel component]	[X]	[X]	[P]	[X]	[X]
[(ff) Of between 25 and 100 acres, including a fast-food restaurant]	[SE ¹⁰]	[SE]	[SE]	[SE]	[SE]
[(vi) Other than fast-food restaurant on property abutting a minimum of 20 acres of C-S-C zoned land]	[P]	[SE]	[SE]	[SE]	[SE]

USE	ZONE				
	I-1 ³³	I-2 ³³	I-3	I-4	U-L-I
[(vii) Within an existing retail center with net leasable building space of less than 26,000 square feet]	[P ⁴¹]	[X]	[X]	[X]	[X]
[(viii)All others]	[SE]	[SE]	[SE ¹¹]	[SE]	[SE ¹¹]
<u>(i) Eating or drinking establishment, with drive-through service</u>	<u>P⁵⁴</u>	<u>P⁵⁴</u>	<u>P⁵⁴</u>	<u>P⁵⁴</u>	<u>SP</u>
<u>(ii) Eating or drinking establishment, excluding drive-through service</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>(iii) Eating or drinking establishment of any type, including music and patron dancing past the hours of 12:00 A.M., excluding adult-oriented uses</u>	<u>SE</u>	<u>SE</u>	<u>P⁵⁴</u>	<u>SE</u>	<u>SP</u>
* * * * *	*	*	*	*	*
(D)Services:					
<u>Auditorium</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Catering establishment</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
(6) RECREATIONAL/ENTERTAINMENT/SOCIAL/CULTURAL:					
<u>Adult Entertainment, in accordance with Section 27-475.06.06</u>	<u>X</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
* * * * *	*	*	*	*	*

54 Subject to Detailed Site Plan approval with Part 3, Division 9 of this Subtitle. Any fast-food restaurant operating pursuant to an approved Special Exception as of the effective date of CB-49-2005 shall remain valid, be considered a legal use, and shall not be deemed a nonconforming use. Such fast-food restaurants and their underlying special exceptions may be modified pursuant to the existing provisions relating to revisions or amendments to special exceptions generally and fast-food restaurants specifically as they exist in the Zoning Ordinance.

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SUBTITLE 27. ZONING.
PART 11. OFF STREET PARKING AND LOADING.
DIVISION 2. PARKING FACILITIES.
SUBDIVISION 3. MINIMUM REQUIREMENTS.

Sec. 27-568. Schedule (number) of spaces required, generally.

(a) In all zones (except the M-X-T Zone), the minimum number of required off-street parking spaces for each type of use shall be as listed in the following schedule. In the schedule, each "employee" means each employee on the largest shift.

TYPE OF USE	NUMBER OF SPACES	UNIT OF MEASUREMENT
(4) RECREATIONAL/ENTERTAINMENT/SOCIAL/CULTURAL:		
<u>Adult Entertainment</u> * * * * *	<u>1.0</u>	<u>80sq. ft of GFA</u> * * * * *
<u>Catering Establishment with food prep only</u>	<u>1.0</u>	<u>500 sq. ft. of GFA</u>
<u>Catering with Seating</u> * * * * *	<u>1.0</u>	<u>4 seats</u> * * * * *
Theater, auditorium, or stadium * * * * *	1.0	4 seats * * * * *
(5) COMMERCIAL TRADE (GENERALLY RETAIL)/SERVICES:		
(D) Miscellaneous:		
[Drive-in or fast-food restaurant] <u>Eating or Drinking Establishment (including drive-through service)</u>	<u>1.0</u> +1.0	<u>3 seats</u> 50 sq. ft. of GFA (excluding any area used exclusively for storage or patron seating, and exterior patron service area)
Eating or drinking establishment (not including drive-[in] through service [or fast-food restaurant]) * * * * *	1.0	3 seats * * * * *

1 SECTION 2. BE IT FURTHER ENACTED that Section 27-475.06.06 of the Zoning
2 Ordinance of Prince George’s County, Maryland, being also Subtitle 27 of the Prince George’s
3 County Code, be and the same is hereby added:

4 **SUBTITLE 27. ZONING**

5 **PART 7. INDUSTRIAL ZONES.**

6 **DIVISION 5. ADDITIONAL REQUIREMENTS FOR SPECIFIC USES.**

7 **Sec. 475.06.06. Adult Entertainment.**

8 (A) The hours of operation shall be limited to 5:00 P.M to 3:00 A.M.

9 (B) The establishment shall be located at least one thousand (1,000) feet from any school, or
10 any other building or use providing adult-oriented performances and at least one thousand (1,000)
11 feet from any residential zone or land used for residential purposes in any zone.

12 (C) Any establishment providing adult-oriented performances lawfully established,
13 operating and having a validly issued use and occupancy permit prior to the effective date of this
14 section must conform to the permitted use and location requirements on or before
15 May 1, 2013.

16 SECTION 3. BE IT FURTHER ENACTED that Section 27-352 of the Zoning Ordinance of
17 Prince George’s County, Maryland, being also Subtitle 27 of the Prince George’s County Code, be
18 and the same is hereby repealed:

19 **[Sec. 27-352. Eating or drinking establishment.]**

20 [(a) Except in the C-M and C-S-C Zones, an eating or drinking establishment may be
21 permitted, subject to the following:]

22 [(1) The proposed use shall be located in an area which is (or will be) developed with a
23 concentration of industrial or office uses;]

24 [(2) The size and location of, and access to, the establishment shall be oriented toward
25 meeting the needs of the neighborhood;]

26 [(3) The applicant shall show a reasonable need for the use in the neighborhood; and]

27 [(4) The proposed use shall not unduly restrict the availability of land, or upset the
28 balance of land use, in the area for industrial uses.]

29 [(b) Notwithstanding the requirements of Subsection (a), an eating or drinking establishment
30 may be permitted in the C-W Zone, subject to the following:]

31 [(1) The proposed use shall be located at least one hundred (100) feet from mean high
32 tide so as to maintain any existing vegetative buffer between the use and the water; and]

33 [(2) There shall be no similar uses within the general vicinity of the subject property.]

34 [(c) An eating or drinking establishment permitting live entertainment or patron dancing,
35 with hours of operation that extend beyond 11:00 P.M., and with parking abutting land used for
36 residential purposes, except hotel lounges, may be permitted subject to the following:]

37 [(1) A sight-tight fence or wall, at least six (6) feet in height, shall be located along the
38 perimeter of all abutting residential property;]

39 [(2) Special consideration shall be given to lighting, parking, hours of operation, and
40 other aspects of the operation to assure that the health, safety and general welfare of the
41 community will be protected.] **Reserved.**

42 SECTION 4. BE IT FURTHER ENACTED that the provisions of this Act are hereby
43 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
44 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
45 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining words,
46 phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this Act, since
47 the same would have been enacted without the incorporation in this Act of any such invalid or
48 unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

49 SECTION 5. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five
50 (45) calendar days after its adoption.

Adopted this 7th day of September, 2010.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

BY: _____
Thomas E. Dernoga
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.