

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2009 Legislative Session

Bill No. CB-29-2009

Chapter No. 21

Proposed and Presented by Council Members Dernoga, Bland, Campos, Olson and Dean

Introduced by Council Members Dernoga, Bland, Campos, Olson, Dean and Knotts

Co-Sponsors _____

Date of Introduction July 21, 2009

BILL

1 AN ACT concerning

2 Adult Book Stores and/or Adult Video Stores

3 For the purpose of providing a declaration of findings and policies regarding adult book stores
4 and/or adult video stores; providing for the purpose and intent of this legislation; requiring adult
5 book store and/or adult video store licenses; providing for the contents of an adult book store
6 and/or adult video store license application; establishing certain timeframes and administrative
7 procedures for processing adult book store and/or adult video store licenses; providing for
8 certain zoning compliance; providing for the approval and denial of an adult book store and/or
9 adult video store license; providing for the suspension and revocation of an adult book store
10 and/or adult video store license, providing for appeals; and generally relating to adult book store
11 and/or adult video store licensing.

12 BY adding:

13 SUBTITLE 5. BUSINESSES AND LICENSES.

14 Sections 5-2701,

15 5-2702,

16 5-2703,

17 5-2704,

18 5-2705,

19 5-2706,

20 5-2707,

21 The Prince George's County Code

(2007 Edition, 2008 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that Sections 5-2701, 5-2702, 5-2703, 5-2704, 5-2705, 5-2706 and 5-2707 of the Prince George's County Code be and the same are hereby added:

SUBTITLE 5. BUSINESSES AND LICENSES.

**DIVISION 27. ADULT BOOK STORE AND/OR ADULT VIDEO STORE
LICENSING AND REGULATION.**

Sec. 5-2701. Declaration of findings and policy.

(a) Based on public testimony and other evidence before it, including information, court decisions from this jurisdiction and court decisions from other jurisdictions, the Prince George's County Council makes the following legislative findings and statement of policy:

(1) The County Council recognizes that some activities that occur in connection with adult-oriented businesses are protected as expressive speech and does not intend to suppress or infringe upon expressive activities protected by the First Amendment of the United States Constitution and by the Maryland Constitution, but instead desires to enact reasonable time, place and manner regulations that address the adverse secondary effects of adult-oriented businesses.

(2) The County Council recognizes that First Amendment rights are among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights. This ordinance is not intended to interfere with legitimate expression but to avoid and mitigate the secondary effects enumerated below.

(3) The County Council recognizes that the United States Supreme Court upheld the Littleton adult business ordinance in *Littleton, Colorado v. Z.J. Gifts D-4, L.L.C., a limited liability company, dba Christal's*, 541 U.S. 774, 124 S.Ct. 2219 (2004). This legislation is patterned after and comports with the licensing statute upheld in *Littleton v. Z.J. Gifts*. The District Council has reviewed the decision in *Littleton v. Z.J. Gifts* wherein the Supreme Court upheld the statutory scheme for adult businesses for a Colorado city enacted adult business ordinance that (1) required businesses such as adult bookstores to (a) have "adult business" licenses, and (b) comply with local zoning rules; (2) listed specific circumstances under which the city would deny a license; (3) set forth time limits (typically amounting to 40 days) within which city officials were required to reach a final licensing decision; and (4) provided that the

1 final decision could be appealed to a state court pursuant to the state’s civil procedure rules. This
 2 legislation is patterned after the statutes upheld by the United States Supreme Court in *Littleton*.

3 (4) The County Council finds that adult oriented businesses may and do generate
 4 secondary effects which are detrimental to the public health, safety and welfare. Among those
 5 secondary effects are:

6 (A) Prostitution and other sex related offenses;

7 (B) Drug use and dealing; and

8 (C) Health risks through the spread of AIDS and other sexually transmitted
 9 diseases.

10 (5) The County Council finds that licensing of persons who own, operate and manage
 11 adult book stores and/or adult video stores will further the goals of the ordinance by enabling the
 12 County to ascertain critical information enabling the County to allocate law enforcement
 13 resources effectively and otherwise protect the community.

14 (6) The County Council finds that Prince George's County continues to experience an
 15 increased demand for public safety services at and adjacent to adult business premises.

16 (7) The County Council finds that certain activities occurring on premises of adult
 17 book stores and/or adult video stores are disruptive to commercial and residential communities
 18 that they adjoin, and are otherwise detrimental to the public health, safety, and general welfare of
 19 the citizens and residents of the County.

20 (8) The County Council finds that it has substantial public interest in preserving
 21 societal order by the regulation of adult book stores and/or adult video stores.

22 (9) The County Council finds that the fee established for a license in this ordinance is
 23 based on the estimated cost of implementation, administration and enforcement of the licensing
 24 program.

25 **Sec. 5-2702. Purpose and intent.**

26 (a) The purpose and intent of this Division is to establish reasonable and uniform
 27 regulations to regulate adult book stores and adult video stores and to promote the health, safety,
 28 morals and general welfare of the citizens and residents of the County.

29 (b) The provisions of the Prince George’s County Code and the Prince George’s County
 30 Zoning Ordinance have neither the purpose nor effect of imposing a limitation or restriction on
 31 the content of any communicative materials, including adult materials. Similarly, it is not the

1 intent nor effect of the Prince George's County Code or the Prince George's County Zoning
 2 Ordinance to restrict or deny access by adults to adult materials protected by the First
 3 Amendment or the Maryland Constitution, or to deny access by the distributors and exhibitors of
 4 adult entertainment to their intended market. Neither is it the intent nor effect of the Prince
 5 George's County Code or the Prince George's County Zoning Ordinance to condone or
 6 legitimize the distribution of obscene material.

7 **Sec. 5-2703. License required; fee.**

8 (a) No person shall operate an adult book store and/or an adult video store without first
 9 having obtained an adult book store and/or an adult video store license from the
 10 Department of Environmental Resources.

11 (b) Each license shall expire three years from the date of issuance. A new license must be
 12 obtained by making an application pursuant to this Division.

13 **Sec. 5-2704. License application.**

14 (a) All applicants for an adult book store and/or adult video store license shall file an
 15 application for such license on forms provided by the Department of Environmental Resources.
 16 In addition, all applicants shall provide a photocopy of the use and occupancy permit for an adult
 17 book store and/or adult video store issued by the Department of Environmental Resources. Each
 18 principal owner and all managers and employees shall be named in the application form.

19 (b) The completed application shall contain, but is not limited to, the following
 20 information and shall be accompanied by the following documents:

21 (1.) If the applicant is:

22 (a.) An individual, the individual shall state his or her legal name and any
 23 aliases, shall submit their mailing address and residential address, and shall submit satisfactory
 24 proof that he or she is eighteen (18) years of age;

25 (b.) A partnership, the partnership shall state its complete name, the
 26 names of all partners, the mailing address and residential address of all partners, whether the
 27 partnership is general or limited, and a copy of the partnership agreement, if any;

28 (c.) A corporation, the corporation shall state its complete name, its
 29 mailing address and residential address, information regarding the resident agent, the date of its
 30 incorporation, evidence that the corporation is in good standing under the statutes of the State, or
 31 in the case of a foreign corporation, evidence that it is currently authorized to do business in the

1 State, the names and capacity of all officers, directors and principal owners, and the name of the
2 registered corporate agent and the address of the registered office for service of process;

3 (d.) A limited liability company shall state its complete name, its mailing
4 address and residential address, the date of filing of the articles of incorporation and operating
5 agreement, the names of all managers and members.

6 (2.) Whether the applicant or any individual listed under subsection (a) of this
7 Section has worked under, or currently works under, an adult book store license and/or adult
8 video store license under the County Code.

9 (3.) Whether the applicant or any individual listed under subsection (a) of this
10 Section has worked under, or currently works under, an adult book store license and/or adult
11 video store license under an adult business ordinance from this State, another state, municipality
12 or county which has been denied, suspended or revoked, including the name and location of the
13 adult business for which the permit was denied, suspended or revoked, as well as the date of the
14 denial, suspension or revocation.

15 (4.) The location of the proposed adult book store and/ or adult video store
16 including the street address and telephone number(s), if any.

17 (5.) Proof of the applicant's right to possession of the premises wherein the
18 adult book store and/or adult video store is to be operated.

19 (6.) A photocopy of the driver's license or other government issued identification
20 card for the individuals listed in subsection (a) of this Section.

21 (7.) A photocopy of the use and occupancy permit for an adult book store and/or
22 adult video store issued by the Department of Environmental Resources.

23 (c) If the applicant is an individual, he/she must sign the application for a license. If the
24 applicant is a corporation it must be signed by the president or vice president and attested to by
25 the secretary or assistant secretary. If the applicant is a general or limited partnership it must be
26 signed by a general partner. If the applicant is a limited liability company it must be signed by
27 the manager.

28 (d) If an omission or error is discovered by the Department of Environmental Resources,
29 the application will be returned to the applicant for completion or correction without further
30 action by the Departmental of Environmental Resources. Any application rejected due to an
31 omission or error shall be accepted only when the omission or error has been remedied. For

1 purposes of this Division, the date that the Department of Environmental Resources accepts an
 2 application which is complete shall be the date the application is accepted by the Department of
 3 Environmental Resources.

4 (e) In the event that the Department of Environmental Resources determines that an
 5 applicant has improperly completed the application, it shall promptly notify the applicant and
 6 allow the applicant thirty (30) days to properly complete the application. The time period for
 7 granting or denying a license shall be stayed during the period in which the applicant is allowed
 8 an opportunity to properly complete the application.

9 (f) Applicants for a license under this Division and license holders shall have a continuing
 10 duty to promptly supplement application information required by this Section in the event that
 11 said information changes in any way from what is stated on the application. The failure to
 12 comply with said continuing duty within thirty (30) days from the date of such change, by
 13 supplementing the application of file with the Department of Environmental Resources, shall be
 14 grounds for the suspension or revocation of an adult book store or adult video store license.

15 **Sec. 5-2705. Approval/Denial of License.**

16 (a) The license application of any applicant shall be approved or denied by the Department
 17 of Environmental Resources within fourteen (14) business days of the date the application is
 18 filed with the Department of Environmental Resources. The Department of Environmental
 19 Resources shall deny a license if:

20 1. The applicant is under the age of eighteen (18) years; or

21 2. The applicant has made a false statement upon the application or has given false
 22 information in connection with an application; or

23 3. The applicant or any holder of any class of stock, or a director, officer, partner or
 24 principal of the applicant has had an adult book store or adult video store license revoked or
 25 suspended anywhere within the state within one year prior to the application; or

26 4. A corporate applicant is not in good standing or authorized to do business in the
 27 State; or

28 5. The applicant is overdue in the payment of County taxes, fees, fines or penalties
 29 assessed against him/her or imposed against him/her in relation to an adult book store or adult
 30 video store.

31 (b) The Department of Environmental Resources may deny a license upon other legal

1 grounds.

2 (c) In the event that the Department of Environmental Resources denies a license
 3 application, the Department of Environmental Resources shall, in writing, state the reasons for
 4 the denial, and a copy of such decision shall be sent to the applicant by first class mail to the
 5 address provided by the applicant.

6 (d) If the Department of Environmental Resources fails to render a timely decision
 7 pursuant to the terms of this Division, then the Department of Environmental Resources shall be
 8 deemed to have approved or consented to the approval of the adult book store and/or adult video
 9 store license.

10 **Sec. 5-2706. Suspension or revocation of license.**

11 (a) The Department of Environmental Resources may suspend a license for a period
 12 not to exceed six (6) months or revoke any license granted pursuant to this Division upon a
 13 finding of any of the following facts:

14 1. The licensee or employees thereof have offered for sale or knowingly
 15 allowed to be consumed or possessed upon the licensed premises, or upon any parking areas,
 16 sidewalks, walkways, accessways or grounds immediately adjacent to the licensed premises,
 17 narcotics, dangerous drugs or fermented malt, malt, and vinous or spirituous beverages;

18 2. The licensee, manager or employee has allowed or has done nothing to
 19 prevent patrons from engaging in public displays of indecency as set forth in State and County
 20 law or has allowed patrons or employees to engage in acts of prostitution or negotiation for acts
 21 of prostitution within the licensed establishment or upon any parking areas, sidewalks,
 22 accessways or grounds immediately adjacent to the licensed adult book store or adult video store,
 23 when the licensee, manager or employee knew or should have known such displays or acts were
 24 taking place;

25 3. The licensee or manager made a false statement or gave false information in
 26 connection with an application for a license or a renewal of a license;

27 4. The manager or employee of the licensed adult book store and/or the adult
 28 video store is under the age of eighteen (18) years;

29 5. The licensee, in the case of a corporation, is not in good standing or
 30 authorized to do business in the State;

31 6. The licensee or an employee knowingly operated any aspect or facilities of

1 the adult book store and/or adult video store during a period of time when the adult book store or
 2 adult video store license was suspended;

3 7. The licensee is delinquent in the payment of County taxes, fees, fines or
 4 penalties assessed against him/her or imposed against him/her in relation to an adult book store
 5 or adult video store; or

6 8. The licensee, manager or employee has knowingly allowed any act of
 7 sexual intercourse, sodomy, oral copulation or masturbation, to occur within the licensed
 8 premises.

9 (b) Nothing in this Division shall prohibit the County from taking any other enforcement
 10 action provided by the County Code, County Zoning Ordinance, and the laws of the State or of
 11 the United States.

12 (c) When the Department of Environmental Resources revokes a license, the revocation
 13 shall continue for one year, and the licensee shall not be issued an adult book store or adult video
 14 store license for one year from the date the revocation became effective.

15 **Sec. 5-2707. Appeals.**

16 (a) An applicant may appeal to the Board of Administrative Appeals from a final decision
 17 of the Department of Environmental Resources for an adult book store and/or adult video store
 18 license pursuant to Section 4-121 of the County Code.

19 (b) Any party aggrieved by a decision of the Director with respect to the denial,
 20 suspension, revocation, or refusal to renew a license shall have the right to appeal any such
 21 decision to the Board of Administrative Appeals for Prince George's County, Maryland, within
 22 ten (10) calendar days after receipt of a denial, suspension, revocation or refusal to renew
 23 decision rendered by the Director. Appeals to the Board of Administrative Appeals from denial,
 24 suspension, revocation, or refusal to renew decision of the Director shall be on the record of the
 25 hearing before the Director.

26 (c) Any party aggrieved by a final decision by the Board of Administrative Appeals, shall
 27 be entitled to file an appeal within thirty (30) days to the Circuit Court for Prince George's
 28 County, Maryland. Such appeals shall be governed by the provisions of the Maryland Rules
 29 pertaining to administrative appeals.

30 SECTION 2. BE IT FURTHER ENACTED that the provisions of this Act are hereby
 31 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,

1 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
2 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
3 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
4 Act, since the same would have been enacted without the incorporation in this Act of any such
5 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

6 SECTION 3. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
7 calendar days after it becomes law.

Adopted this 9th day of September, 2009.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Marilynn M. Bland
Chairperson

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____

BY: _____
Jack B. Johnson
County Executive