

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

2003 Legislative Session

Bill No. CB-86-2003

Chapter No. 81

Proposed and Presented by Council Member Hendershot and
The Chairman (by request - County Executive)

Introduced by Council Members Hendershot, Shapiro, Dean and Exum

Co-Sponsors _____

Date of Introduction October 28, 2003

BILL

1 AN ACT concerning

2 Adult Entertainment Clubs

3 For the purpose of regulating the adult entertainment industry by establishing license
4 requirements and penalties for violators and amending the provisions of the Code to clarify the
5 use of the terms "public place" and "place open to the public."

6 BY repealing and reenacting with amendments:

7 SUBTITLE 1. GENERAL PROVISIONS.

8 Sections 1-102, and

9 SUBTITLE 14. MORALS AND CONDUCT.

10 Section 14-139.02,

11 The Prince George's County Code

12 (1999 Edition, 2002 Supplement).

13 BY adding:

14 SUBTITLE 5. BUSINESSES AND LICENSES.

15 Sections 5-350, 5-351, 5-352, 5-353, 5-354, 5-355,

16 5-356, 5-357, 5-358, 5-359, 5-360, 5-361, 5-362,

17 5-363, 5-364, and 5-365,

18 The Prince George's County Code

19 (1999 Edition, 2002 Supplement).

20 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
21 Maryland, that Sections 1-102 and 14-139.02 of the Prince George's County Code be and the

same are hereby repealed and reenacted with the following amendments:

SUBTITLE 1. GENERAL PROVISIONS.

Sec. 1-102. Rules of Code construction; definitions.

(a) In the construction of this Code and all ordinances the following rules of construction and definitions shall be observed unless inconsistent with the manifest intent of the Council or the context clearly requires otherwise:

* * * * *

(25) **Personal Property** means any money, goods, movable chattels, things in action, evidence of debt, all objects and rights which are capable of ownership, and every other species of property except real property.

(25.1) **Place open to the public** means any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment, regardless of whether a charge for admission or entry is made.

(26) **Preceding** and **following** mean next before and next after, respectively.

(27) **Public local laws** mean and include all acts, ordinances, and legislative acts of the Council.

(28) **Public place** means any park, lake, stream, stadium, athletic field, playground, school yard, street, avenue, plaza, square, bus, train or railroad depot, station, terminal, cemetery, open space adjacent thereto, or any other place commonly open to the public.

* * * * *

SUBTITLE 14. MORALS AND CONDUCT.

DIVISION 5. OFFENSES AGAINST PUBLIC SAFETY AND MORALS.

Sec. 14-139.02. Public Indecency.

(a) For the purposes of this Section, the term "nudity" shall mean the showing of the human male or female genitals or pubic area, with less than a fully opaque covering.

(b) It is unlawful for any person to knowingly or intentionally, in a public place or a place open to the public:

- (1) Engage in sexual intercourse;
- (2) Appear in a state of nudity; or
- (3) Fondle one's own genitals or those of another person.

(c) Except as otherwise provided in Subtitle 5, Division 26 Adult Entertainment Clubs, it is unlawful for any person to dance or otherwise perform in a state of nudity in a place open to the public within six feet of any patron, to intentionally touch any patron, or to permit any patron to touch the person in a state of nudity.

[(c)] (d) Any person who violates any provision of this Section shall be guilty of a misdemeanor punishable by a fine not exceeding One Thousand Dollars (\$1,000) or by imprisonment not exceeding six (6) months, or both.

SECTION 2. BE IT FURTHER ENACTED that Sections 5-350, 5-351, 5-352, 5-353, 5-354, 5-355, 5-356, 5-357, 5-358, 5-359, 5-360, 5-361, 5-362, 5-363, 5-364, and 5-365 of the Prince George's County Code be and the same are hereby added:

SUBTITLE 5. BUSINESSES AND LICENSES.

DIVISION 26. ADULT ENTERTAINMENT CLUBS.

Sec. 5-350. Declaration of findings and policy.

It is hereby declared by the County Council of Prince George's County, Maryland, that the County continues to experience a high demand for public safety services from adult entertainment type activities. Certain activities occurring on premises offering adult entertainment is not conducive to the family-oriented communities that they adjoin, and are otherwise detrimental to the public health, safety, and general welfare of the citizens and residents of the County. The Council is mindful of legal principles relating to regulation of adult entertainment businesses 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. The Council also finds that it has substantial public interest in preserving societal order, and such conduct must be regulated as provided herein.

Sec. 5-351. Definitions.

The following definitions apply in this Division:

(a) **Adult Entertainment** means any exhibition, performance or dance of any type conducted in a premises where such exhibition, performance or dance involves a person who:

(1) is unclothed or in such attire, costume or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva

1 or genitals; or

2 (2) touches, caresses or fondles the breasts, buttocks, anus, genitals or pubic region of
 3 another person, or permits the touching, caressing or fondling of his/her own breasts, buttocks,
 4 anus, genitals or pubic region by another person, with the intent to sexually arouse or excite
 5 another person.

6 (b) **Adult entertainment premises** means any premises to which the public, patrons or
 7 members are invited or admitted and wherein an entertainer provides adult entertainment to the
 8 public, a patron, or a member.

9 (c) **Department** means the Prince George's County Department of Environmental
 10 Resources.

11 (d) **Director** means the Director of Environmental Resources or the Director's designee.

12 (e) **Employee** means any and all persons, including managers, entertainer and independent
 13 contractor, who work in or at or render any services directly related to, the operation of adult
 14 entertainment premises.

15 (f) **Entertainer** means any person who provides adult entertainment within any adult
 16 entertainment premises as defined in this Section, whether or not a fee is charged or accepted for
 17 entertainment.

18 (g) **Entertainment** means any exhibition or dance of any type, pantomime, modeling or
 19 any other performance.

20 (h) **Manager** means any person who manages, directs, administers, or is in charge of, the
 21 affairs and/or conduct of any portion of any activity involving adult entertainment occurring at
 22 any adult entertainment premises.

23 (i) **Natural person** means any individual.

24 (j) **Operator** means any person operating, conducting or maintaining an adult
 25 entertainment business.

26 (k) **Person** means any individual, partnership, corporation, trust, incorporated or
 27 unincorporated association, marital community, joint venture, governmental entity, or other
 28 entity or group of persons however organized.

29 (l) **Public place** means any area generally visible to public view and includes streets,
 30 sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, and automobiles whether
 31 moving or not.

(m) Reckless or recklessly means a person knows or should know of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Sec. 5-352. Adult entertainment premises license.

(a) Beginning January 1, 2004, it shall be unlawful for a person to operate or maintain an adult entertainment premises in Prince George's County unless the owner, operator or lessee thereof has obtained from the Director a license to do so, to be designated an "adult entertainment premises".

(b) Beginning January 1, 2004, it shall be unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of, an unlicensed adult entertainment premises.

(c) Each license issued pursuant to this Section shall expire on December 31 of the year in which it was issued.

Sec. 5-353. License for managers and entertainers.

(a) Beginning January 1, 2004, it shall be unlawful for any person to work as an entertainer or manager at an adult entertainment premises without having first obtained from the Director a license to do so, to be designated as an "adult entertainer's license" or an "adult entertainment manager's license", respectively.

(b) Each license issued pursuant to this Section shall expire on December 31 of the year in which it was issued.

Sec. 5-354. License fees.

The license year for all fees required under this Division shall be from January 1st to December 31st. All license fees shall be payable on an annual basis, which fees shall be as follows:

(a) Adult entertainment premises license, Six Hundred Fifty Dollars (\$650.00) per year;

(b) Adult entertainer's license, Seventy-Five Dollars (\$75.00) per year;

(c) Adult entertainment manager's license, Seventy-Five Dollars (\$75.00) per year.

Sec. 5-355. License applications.

(a) Adult entertainment premises license. All applications for an adult entertainment premises license shall be submitted in the name of the person proposing to conduct such adult entertainment on the premises and shall be signed by such person and notarized or certified as

1 true under penalty of perjury. All applications shall be submitted on a form supplied by the
 2 Director, and shall require the following information:

3 (1) The name, residence address, home telephone number, date and place of birth of
 4 the applicant;

5 (2) The business name, address and telephone number of the establishment;

6 (3) The names, residence addresses, residence telephone numbers, and dates of birth
 7 of any partners, corporate officers and directors;

8 (4) Such other and further information as the Director may require concerning the
 9 identity of corporate shareholders;

10 (5) Addresses of the applicant for the five (5) calendar years immediately prior to the
 11 date of the application;

12 (6) A description of the adult entertainment or similar business history of the
 13 applicant; whether such person or entity, in previously operating in this or another city, county or
 14 state, has had a business license revoked or suspended, the reason therefor, and the activity or
 15 occupation subjected to such action, suspension or revocation;

16 (7) A description of the business, occupation, or employment of the applicant for the
 17 three (3) calendar years immediately preceding the date of the application;

18 (8) Such license application shall include the name of at least one (1) natural person
 19 whose name and mailing address, which shall be an address located within the State of
 20 Maryland, shall appear on the adult entertainment premises license and who shall receive notices
 21 from the Department.

22 (9) Any failure to provide the information required in this Subsection will constitute
 23 an incomplete application and will not be processed.

24 (10) An affidavit of mailing in a form and manner as required for an informational
 25 mailing required by Section 27-125.01 for a Special Permit.

26 (b) Manager's or Entertainer's License.

27 All applications for an adult entertainment manager's license or adult entertainer's license
 28 shall be signed by the applicant and notarized or certified as true under penalty of perjury. All
 29 applications shall be submitted on a form supplied by the Director, and shall require the
 30 following information:

31 (1) The applicant's name, home address, home telephone number, date and place of

1 birth and any stage names or nicknames used in entertaining;

2 (2) The name and address of each business at which the applicant intends to work as
3 a manager or entertainer;

4 (3) The applicant shall present documentation that he or she has attained the age of
5 eighteen (18) years. Any of the following shall be accepted as documentation of age:

6 (A) A motor vehicle operator's license issued by any state bearing the applicant's
7 photograph and date of birth;

8 (B) A state-issued identification card bearing the applicant's photograph and date
9 of birth;

10 (C) An official passport issued by the United States of America;

11 (D) An immigration card issued by the United States of America;

12 (E) Any other picture identification bearing the applicant's photograph and date
13 of birth issued by a governmental agency; or

14 (F) Such other form of identification as the Director deems, as a matter of
15 administrative policy, to be acceptable.

16 (4) Failure to provide information required by this Subsection will constitute an
17 incomplete application and will not be processed.

18 **Sec. 5-356. License-Applicant investigation.**

19 The Director shall investigate an application for a license required in Subsection (a) of
20 Section 5-353 by requesting criminal records and a confirmation of zoning compliance from
21 appropriate County agencies. The Director shall investigate an application for a license required
22 in Subsection (b) of Section 3-353 by requesting criminal records from appropriate County
23 agencies.

24 **Sec. 5-357. License-Other County approvals.**

25 Applicants for an adult entertainment premises license must also submit the following for
26 County approval with their completed application materials:

27 (a) Approval of a security plan;

28 (b) Approval of a traffic management and parking plan;

29 (c) Approval for a parking lot lighting plan; and

30 (d) An approved life safety evaluation of the space involved by a fire protection engineer if
31 the calculated occupant load exceeds Two Hundred Fifty (250) persons.

Sec. 5-358. Issuance of licenses.

After an investigation, the Director shall issue the applicable license or licenses authorized by this Division if the Director finds:

(a) That the business for which a license is required herein will be conducted in a building, structure and location which complies with the requirements and meets the standards of the applicable health, zoning, building, fire and safety laws of the State and applicable County ordinances, as well as the requirements of this Division;

(b) That the applicant, his or her employees, agents, partners, directors, officers, stockholders or managers have not knowingly made any false, misleading or fraudulent statement of material fact in the application for a license, or in any report or record required to be filed with the Director; and

(c) That the applicant, and all employees, agents, partners, directors, officers, or managers of the applicant have attained the age of eighteen (18) years.

Sec. 5-359. Standards of conduct and operation.

(a) The following standards of conduct must be adhered to by employees of any adult entertainment premises:

(1) No employee or entertainer shall be unclothed, clothed in less than opaque attire, or shall move or remove such attire, or allow such attire to be moved or removed so as to expose to view any portion of the breast below the top of the areola, except upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest patron.

(1.1) No employee or entertainer shall be unclothed, clothed in less than opaque attire, or shall move or remove such attire, or allow such attire to be moved or removed so as to expose to view any portion of the pubic hair, anus, vulva or genitals.

(2) No employee or entertainer shall perform acts of or acts which simulate:

(A) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;

(B) The touching, caressing or fondling of the breasts, buttocks or genitals; or

(C) The displaying of the pubic region, anus, vulva or genitals.

(3) No employee or entertainer mingling with the patrons shall be unclothed or in less than opaque and complete attire, costume or clothing as described in Subsection (a) of this

1 Section.

2 (4) No employee or entertainer shall knowingly:

3 (A) Touch, caress or fondle the breasts, buttocks, anus, genitals or pubic region
 4 of another person; or

5 (B) Permit the touching, caressing or fondling of his or her own breasts,
 6 buttocks, anus, genitals or pubic region by another person; or

7 (C) Permit any person upon the premises to touch, caress, or fondle the breasts,
 8 buttocks, anus, genitals or pubic region of another person.

9 (5) No manager or operator shall knowingly permit any person upon the premises to
 10 touch, caress, or fondle the breasts, buttocks, anus, genitals or pubic region of another person.

11 (6) No employee or entertainer shall wear or use any device or covering exposed to
 12 view which simulates the breast below the top of the areola, vulva or genitals, anus, buttocks, or
 13 any portion of the pubic region.

14 (7) No employee or entertainer shall use artificial devices or inanimate objects to
 15 depict any of the prohibited activities described in this Section.

16 (8) No entertainer of any adult entertainment premises shall be visible from any
 17 public place during the hours of his or her employment, or apparent hours of his or her
 18 employment, on the premises.

19 (9) No entertainer shall solicit, demand or receive any payment or gratuity from any
 20 patron for any act prohibited by this chapter.

21 (10) No entertainer shall demand or collect any payment or gratuity from any patron
 22 for entertainment before its completion.

23 (11) A sign shall be conspicuously displayed in the common area of the premises, and
 24 shall read as follows:

25 "THIS ADULT ENTERTAINMENT ESTABLISHMENT IS REGULATED BY
 26 PRINCE GEORGE'S COUNTY, MARYLAND. ENTERTAINERS ARE:

27 (1) Not permitted to engage in any type of sexual conduct;

28 (2) No employee or entertainer shall be unclothed, clothed in less than opaque attire,
 29 or shall move or remove such attire, or allow such attire to be moved or removed so as to expose
 30 to view any portion of the breast below the top of the areola, except upon a stage at least eighteen
 31 inches (18") above the immediate floor level and removed at least six feet (6') from the nearest

1 patron.

2 (3) Not permitted to demand or collect any payment or gratuity from any patron for
 3 entertainment before its completion."

4 (b) At any adult entertainment premises, the following are required:

5 (1) Neither the performance nor any photograph, drawing, sketch or other pictorial or
 6 graphic representation thereof displaying any portion of the breasts below the top of the areola
 7 outside of the adult entertainment premises.

8 (2) Sufficient lighting shall be provided in and about the parts of the premises which
 9 are open to and used by the public so that all objects are plainly visible at all times.

10 (3) No entertainment shall be provided in any areas from which any other person may
 11 be prevented from entering, whether by a locking door or in any other manner.

12 (4) Good order must be maintained within a perimeter established by the licensing
 13 authority not to exceed Five Hundred (500) feet from the establishment, including but not limited
 14 to litter cleanup within the designated perimeter.

15 (5) Each establishment shall provide private security during operating hours for the
 16 safety of the patrons of the establishment.

17 (6) The use of pyrotechnics in a licensed establishment is prohibited.

18 (7) Noise levels shall not exceed Fifty (50) decibels at the closest part of any
 19 residential property that is adjacent to the facility between the hours of 11 p.m. and 7 a.m.

20 (8) The dance license requirements in Division 14 of this Subtitle shall apply if an
 21 establishment allows public dancing.

22 (c) This chapter shall not be construed to prohibit protected expression, such as:

23 (1) Plays, operas, musicals, or other dramatic works that are not obscene;

24 (2) Classes, seminars and lectures held for serious scientific or educational purposes
 25 that are not obscene; or

26 (3) Exhibitions, performances, expressions or dances that are not obscene.

27 (d) For purposes of this Division, an activity is "obscene" if:

28 (1) Taken as a whole by an average person applying contemporary community
 29 standards the activity appeals to a prurient interest in sex;

30 (2) The activity depicts patently offensive representations, as measured against
 31 community standards, of:

1 (A) Ultimate sexual acts, normal or perverted, actual or simulated; or

2 (B) Masturbation, fellatio, cunnilingus, bestiality, excretory function, or lewd
 3 exhibition of the genitals or genital areas; or violent or destructive sexual acts, including but not
 4 limited to human or animal mutilation, dismemberment, rape or torture; and

5 (3) The activity taken as a whole lacks serious literary, artistic, political, or scientific
 6 value.

7 (e) No manager, owner, entertainer or employee shall operate or maintain any warning
 8 procedures or device, or any nature or kind, for the purposes of warning any other person that
 9 police officers or County health, fire, licensing or building inspectors are approaching or have
 10 entered the adult entertainment premises.

11 (f) It is unlawful for any person to violate any of the provisions of this Section.

12 **Sec. 5-360. License-Posting and display.**

13 (a) Every adult entertainer shall post his or her license in his or her work area so it is
 14 readily available for inspection by County authorities responsible for enforcement of this
 15 Division.

16 (b) Every person, corporation, partnership, or association licensed under this Division as
 17 an adult entertainment premises or adult entertainment manager shall post such license in a
 18 conspicuous place and manner on the licensed premises.

19 (c) Each manager and/or operator shall be responsible for maintaining a daily log, on a
 20 form provided by the Director, of all employees, entertainers, and managers working at the adult
 21 entertainment premises each day. The log shall list the employee's entertainer's and manager's
 22 name as it is listed on his or her license, license number, stage name, if any, the time he or she
 23 arrived at the adult entertainment premises, and the time he or she left the adult entertainment
 24 premises. Each employee, entertainer and manager shall sign his or her name in the daily log
 25 each time he or she arrives and leaves the adult entertainment premises.

26 (d) It is unlawful for any person to violate any of the provisions of this Section.

27 **Sec. 5-361. Manager on premises.**

28 (a) A licensed manager shall be on duty at an adult entertainment premises during the
 29 adult entertainment premises' hours of operation. The name of the manager on duty shall be
 30 prominently posted during business hours.

31 (b) Any adult entertainment premises found to be operating without a manager on duty

1 shall be immediately closed until a licensed manager arrives for duty at the adult entertainment
 2 premises pursuant to Subsection (a) of this Section.

3 (c) The manager shall verify that each entertainer performing while the manager is on duty
 4 possesses a current and valid entertainer's license, as required by this chapter. The manager shall
 5 verify that such adult entertainment license is posted in the manner required by Section 3-357.

6 **Sec. 5-362. Hours of operation.**

7 It is unlawful for any adult entertainment premises to be conducted, operated, or otherwise
 8 open to the public between the hours of two-thirty a.m. (2:30 a.m.) and ten a.m. (10:00 a.m.).

9 **Sec. 5-363. Persons under twenty-one (21) years of age prohibited.**

10 (a) It is unlawful for any person under the age of twenty-one (21) years to be in or upon
 11 any premises for which an adult entertainment premises license is required. Only the following
 12 types of identification will be accepted as proof of age:

13 (1) A motor vehicle operator's license issued by any state, bearing the applicant's
 14 photograph and date of birth;

15 (2) A state-issued identification card bearing the applicant's photograph and date of
 16 birth;

17 (3) An official passport issued by the United States of America;

18 (4) An immigration card issued by the United States of America; or

19 (5) Any other picture identification bearing the applicant's photograph and date of
 20 birth by a governmental agency.

21 (b) It is unlawful for any owner, operator, manager, or other person in charge of a premises
 22 for which an adult entertainment premises license is required, to knowingly permit or allow any
 23 person under the age of twenty-one (21) years to be in or upon such premises.

24 **Sec. 5-364. Suspension or revocation of premises license.**

25 In addition to the reasons set forth in this Division as now or hereinafter amended, an adult
 26 entertainment premises license may be suspended or revoked upon a finding that:

27 (a) The licensee permitted or authorized his or her employees, agents, entertainers or
 28 managers to violate any of the provisions of this chapter; or

29 (b) The adult entertainment manager permitted or authorized any violation of any of the
 30 provisions of this chapter by any person.

31 **Sec. 5-365. Enforcement and Penalties.**

1 (a) Any person who owns, operates, or promotes a facility or event required to be licensed
2 under this Division without first having obtained an adult entertainment premises license shall be
3 deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed
4 One Thousand Dollars (\$1,000.00) or six (6) months in jail, or both such fine and imprisonment.

5 (b) In lieu of a violation notice, the Director, the Director's designees, or any sworn
6 County police officer may issue a civil citation pursuant to Subtitle 28, Division 3, to any person
7 who owns, operates, or promotes any event or facility in violation of this Division. The citation
8 shall serve as notification to the person that he or she has committed a civil violation and must
9 pay to the County a monetary fine, subject to his or her right to trial under Section 28-257 of the
10 County Code.

11 (c) The person issued the civil citation shall be subject to a monetary fine of Five Hundred
12 Dollars (\$500.00) for each violation of this Division.

13 (d) Each day a violation continues is deemed a separate offense and is subject to an
14 additional citation and fine.

15 SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby
16 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
17 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
18 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
19 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
20 Act, since the same would have been enacted without the incorporation in this Act of any such
21 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.
22

1 SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect forty-five (45)
2 calendar days after it becomes law.

Adopted this 25th day of November, 2003.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Peter A. Shapiro
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____ BY: _____
Jack B. Johnson
County Executive

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