

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND

1995 Legislative Session

Bill No. CB-99-1995
 Chapter No. 60
 Proposed and Presented by Council Member Maloney
 Introduced by Council Member Maloney
 Co-Sponsors _____
 Date of Introduction October 17, 1995

BILL

AN ACT concerning

Viewing Booths

For the purpose of prohibiting the construction, use, operation and management of certain enclosed exhibition booths used to view sexually explicit material in order to prevent the spread of sexually communicable diseases.

BY adding:

SUBTITLE 14. MORALS AND CONDUCT.

Sections 14-178, 14-179, 14-180, and 14-181,

The Prince George's County Code

(1991 Edition, 1994 Supplement)

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, that the following findings are made and adopted:

(1) It is hereby found that there are within Prince George's County commercial premises, buildings and structures, or parts thereof, which, by reason of the design and use of such premises, buildings or structures, are conducive to the spread of communicable diseases of danger to persons frequenting such premises, buildings or structures, and to the public health, safety and welfare of the community.

(2) The health, safety and welfare of all persons in Prince George's County must be protected through the application and enforcement of standards regulating such premises, buildings and structures, in order to eliminate the possibility of the spread of, or infection by,

contagious disease.

(3) The sexually transmittable disease of Acquired Immune Deficiency Syndrome ("AIDS"), currently found to be irreversible and uniformly fatal, is found to be of particular danger. The risk factors for obtaining or spreading the disease are associated with high-risk sexual conduct. The commercial premises, buildings and structures where persons are placed at risk of infection from this disease or other communicable disease facilitated by their design or use for high-risk sexual conduct are in need of regulation, and of establishment of minimal standards for the prevention of the spread of this disease and other communicable diseases for the protection of the public health, safety and welfare.

SECTION 2. BE IT FURTHER ENACTED that Sections 14-178, 14-179, 14-180 and 14-181 of the Prince George's County Code be and the same are hereby added:

SUBTITLE 14. MORALS AND CONDUCT.

DIVISION 16. HIGH RISK SEXUAL CONDUCT.

Sec. 14-178. Definitions.

(a) **High risk sexual conduct** means:

- (1) fellatio;
- (2) anal intercourse;
- (3) vaginal intercourse.

(b) **Hazardous site** means any commercial premises, building or structure, or any part thereof, which is a site of high risk sexual conduct.

(c) **Booths, stalls, or partitioned portions of a room or individual rooms** means:

(1) enclosures specifically offered to persons for a fee or as a place to perform high risk sexual conduct; or

(2) enclosures which are part of a business operated on the premises which offers movies or other entertainment to be viewed within the enclosure, including enclosures wherein movies or other entertainment is dispensed for a fee. **Booths, stalls or partitioned portions of a room or individual room** does not mean enclosures which are private offices used by the owners, managers, or persons employed on the premises for attending to the tasks

of their employment, and which are not held out to the public for hire or for a fee or for the purpose of viewing movies or other entertainment for a fee, and are not open to any persons other than employees.

(d) **Doors, curtains or portal partitions** means full, complete, nontransparent closure devices through which one cannot see or view activity taking place within the enclosure.

(e) **Open to an adjacent public room so that the area inside is visible to persons in the adjacent public room** means either the absence of any door, curtain or portal partition or a door or other device which is made of clear, transparent material meeting building code and safety standards, which permits the activity inside the enclosure to be viewed or seen by persons outside the enclosure.

Sec. 14-179. Building standards.

(a) No commercial building, structure, premises, or part thereof, or facilities therein, shall be so constructed, used, designed or operated for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct.

(b) No person shall own, operate, manage, rent, lease or exercise control of any commercial building, structure, premises, or part thereof, which contains:

(1) Partitions between subdivisions of a room, portion or part of a building, structure, or premises having an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partition.

(2) Booths, stalls, or partitioned portions of a room, or individual rooms, used for the viewing of motion pictures or other forms of entertainment, having doors, curtains or portal partitions, unless such booths, stalls, partitioned portions of a room, or individual rooms so used shall have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. Such areas shall be lighted in a manner that the persons in the area used for viewing motion pictures or other forms of entertainment are

visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.

(c) The standards as set forth in this Section shall not apply to buildings, structures or premises which are lawfully operating as hotels, motels, rooming houses or dwellings.

Sec. 14-180. Inspections; enforcement.

(a) The Director of the Department of Environmental Resources, or his designee, shall have full power and authority to inspect or cause to be inspected, and to issue violation notices regarding a violation of this Division by any commercial building, structure or premises, or any part thereof, which may be a site of high risk sexual conduct. If the Director determines that a hazardous site exists, he shall declare it to be a public nuisance and shall then:

(1) Notify the management, owner or tenant of the premises that the Director has reasonable belief that the building, structure, premises, or part thereof, is a hazardous site.

(2) Issue warnings to the management, owner or tenant of the premises stating the reasons for the Director's belief that the building, structure or premises, or part thereof, is a hazardous site.

(b) Once such notice and warnings have been issued, the Director shall proceed as follows:

(1) After the management, owner or tenant has been notified in writing as to the basis of the Director's determination, the management, owner or tenant shall have ten (10) days to request a hearing before a Hearing Officer designated by the Director for a determination as to the existence of such hazardous site. If the management, owner or tenant does not request a hearing within ten (10) days of the notice, the Director shall then cause the building, structure or premises to be posted with a warning advising the public that the premises have been declared a hazardous site. The Director shall cause orders to be issued to

the management, owner or tenant to take corrective measures to prevent high risk sexual conduct from taking place within the premises.

(2) If the management, owner or tenant requests a hearing in writing, the hearing shall be held before the Hearing Officer no more than thirty (30) days after the request. After considering all evidence, the Hearing Officer shall make a recommendation to the Director as to whether the building, structure, premises, or parts thereof, constitute a hazardous site. The Director shall then issue a decision. If the Director determines that the building, structure, premises, or parts thereof, constitute a hazardous site, the Director shall then issue an order and cause the building, structure, or premises to be posted with a warning advising the public that the building, structure or premises have been declared a hazardous site.

(d) If, within thirty (30) days from the issuance of the orders to the management, owner or tenant of the hazardous site, the Director determines that such corrective measures have not been undertaken, then the Director may order the abatement of the hazardous site as a public nuisance, which shall be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction; or may secure a court order for the closure of the premises constituting the "hazardous site" until the premises, building, or structure is in compliance with the standards set forth in this Division.

Sec. 14-181. Penalty.

(a) Any person who owns, operates, manages, rents, leases, or exercises control of any commercial building, structure, premises, or portion thereof, which is in violation of this Division shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to a fine not exceeding One Thousand Dollars (\$1,000.00) or imprisonment not exceeding six months, or both such fine and imprisonment. Each day such violation is committed shall constitute a separate violation.

(b) Any person who removes, destroys, or defaces warnings posted on premises shall

be deemed guilty of a misdemeanor, and upon conviction shall be subject to a fine not exceeding Two Hundred Dollars (\$200.00) for a first offense and Five Hundred Dollars (\$500.00) for each subsequent offense or imprisonment not exceeding ten days, or both such fine and imprisonment.

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

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

Adopted this 7th day of November, 1995.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY:

Anne T. MacKinnon
Chairwoman

ATTEST:

Joyce T. Sweeney
Clerk of the Council

APPROVED:

DATE: _____

BY:

Wayne K. Curry
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.