

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2009 Legislative Session, Legislative Day No. : July 28, 2009

Bill No.: 1166

Expiration Date: October 1, 2009

Introduced by: Mr. Duncan, Mr. Foster

A BILL TO DEFINE “ADULT ORIENTED BUSINESSES” AND TO ADOPT A TEMPORARY MORATORIUM UPON PROCESSING APPLICATIONS, SITE PLANS, BUILDING PERMITS, AND APPROVALS OF ADULT ORIENTED BUSINESSES IN THE UNINCORPORATED AREAS OF THE COUNTY FOR A PERIOD OF NINE (9) MONTHS PENDING CONSIDERATION AND ADOPTION OF SUCH LEGISLATION AS THE COUNTY COUNCIL MAY CONSIDER ADVISABLE TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE

By the Council July 28, 2009

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, August 25, 2009 at 2:00 p.m. at the Bradley Meeting Room, Talbot County Courthouse, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order _____
Susan W. Moran, Secretary

A BILL TO DEFINE “ADULT ORIENTED BUSINESSES” AND TO ADOPT A TEMPORARY MORATORIUM UPON PROCESSING APPLICATIONS, SITE PLANS, BUILDING PERMITS, AND APPROVALS OF ADULT ORIENTED BUSINESSES IN THE UNINCORPORATED AREAS OF THE COUNTY FOR A PERIOD OF NINE (9) MONTHS PENDING CONSIDERATION AND ADOPTION OF SUCH LEGISLATION AS THE COUNTY COUNCIL MAY CONSIDER ADVISABLE TO PROMOTE THE PUBLIC HEALTH, SAFETY AND WELFARE

1 WHEREAS, the County is authorized by Article 25A § 5, Md. Ann. Code, to enact such
2 ordinances as it deems necessary to assure the good government of the County, and to protect the
3 health, comfort and convenience of the citizens of the County; and

4 WHEREAS, the County is authorized by Article 25A § 5 (X), Md. Ann. Code, to enact and
5 administer a zoning ordinance, which ordinance is Chapter 190 of the Talbot County Code, and to
6 develop and adopt zoning restrictions, including regulations and restrictions upon the location and
7 use of buildings, signs, structures and land to promote the health, safety, morals, and general
8 welfare of the community; and

9 WHEREAS, the County Council recognizes the significant planning, zoning, property and
10 secondary effects surrounding or arising from the location and operation of Adult Oriented
11 Businesses; and

12 WHEREAS, the County’s current Zoning Ordinance makes no specific or particular
13 provisions for Adult Oriented Businesses; and

14 WHEREAS, the County desires to consider and adopt appropriate zoning regulations for
15 Adult Oriented Businesses, which is anticipated to include revising the County’s zoning text
16 and/or maps, to define and regulate Adult Oriented Businesses and thereby accommodate the

17 health, safety and welfare of County citizens and provide appropriate regulation of the secondary
18 impacts and effects inherent in Adult Oriented Businesses; and

19 WHEREAS, the County requires time to ensure that the appropriate study and desired
20 public input can be obtained before establishing text amendments to the Zoning Ordinance and/or
21 other regulations of the County; and

22 WHEREAS, the acceptance, consideration, review or approval of applications, site plans,
23 permits, or certificates of occupancy for Adult Oriented Businesses under the Zoning Ordinance at
24 this time would frustrate the County's ability to revise the Zoning Ordinance and any related Code
25 provisions; would frustrate the County's ability to enact meaningful ordinances and regulations to
26 address the secondary effects of Adult Oriented Businesses in the County, and would be adverse to
27 the orderly development of the County; and

28 WHEREAS, the County Council has determined that a temporary moratorium, for a term
29 of nine (9) months, is necessary and in the interest of the present and future residents of the County
30 whose health, safety and well-being may be prejudiced by the unregulated operation of Adult
31 Oriented Businesses within the County; and

32 WHEREAS, the County Council believes that nine (9) months is a reasonable length of
33 time for the completion and adoption of any revisions to the Zoning Ordinance and/or maps
34 necessary to implement zoning regulations of Adult Oriented Businesses.

35 NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL, that:

36 SECTION 1. A temporary moratorium on the application or site plan for, consideration
37 of, approval of, construction of, expansion of, permits for, or certificates of occupancy for any

38 Adult Oriented Business in the unincorporated areas of the County is hereby imposed for a period
39 of nine (9) months.

40 SECTION 2. During the moratorium, the County (including the Planning Office, the
41 Department of Permits and Inspections, the Planning Commission, the Board of Appeals, and the
42 County staff) shall not process, consider, review, or approve any application, permit, certificate of
43 occupancy, site plan or other approval under the County Zoning Ordinance or County Building
44 Code for an Adult Oriented Business.

45 SECTION 3. The moratorium shall apply to all applications currently pending before the
46 County, as well as to any application(s) filed during the pendency of this temporary moratorium.

47 SECTION 4. This moratorium is adopted to allow sufficient time for the County to
48 accomplish the following:

- 49 a. Consider any revisions to the Zoning Ordinance or any other law or
50 regulation as necessary to adequately address Adult Oriented Business uses
51 in the County;
- 52 b. Obtain expert advice and assistance as necessary;
- 53 c. Obtain such other studies and reports as necessary to identify and address
54 the impacts of Adult Oriented Businesses in the County; and
- 55 d. Consider all such other matters as the County Council, Planning and Zoning
56 Commission, and County staff deem appropriate.
- 57 e. Adopt appropriate zoning text and map amendments as may be necessary to
58 protect and promote the public health, safety, and welfare.

59 SECTION 5. For purposes of this ordinance, the terms “Adult Oriented Business,”
60 “Adult Entertainment or Material,” “Nudity,” “Partial Nudity,” “Adult book or video store,” and
61 “Significant amount,” are defined as follows:

62 **Definitions**

63 For the purposes of this Bill the following terms shall have the meanings set forth herein:

64 **“Adult Oriented Business”** means any business, operation, or activity, a significant amount of
65 which consists of:

66 (i) the conduct, promotion, delivery, provision, or performance of adult entertainment
67 or material; including, but not limited to, that occurring in, at, or in connection with
68 a cabaret, lounge, night club, modeling studio, bar restaurant, club or lodge, or
69 other establishment; or

70 (ii) the sale, provision, rental, or promotion of adult entertainment or material, in any
71 format, form, or medium, including, but not limited to, books, magazines, videos,
72 DVDs, CDs, movies, photographs, and/or coin operated or pay-per-view viewing
73 devices, including, but not limited to, the operation of an adult book or video store.

74 **“Adult entertainment or material”** means any performance or depiction or text that is intended
75 to cause or provide, or which reasonably may be expected to cause or provide, sexual stimulation,
76 sexual excitement, or sexual gratification; and

77 (i) in which an individual or individuals appear in a state of nudity or partial nudity; or

78 (ii) that consists, in whole or in part, of action, activity, poses, portrayal, depiction, or
79 description of:

80 (a) human genitalia in a discernable state of sexual stimulation or arousal; or

- 81 (b) any act, whether real or simulated, of masturbation, sexual intercourse, anal
82 intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female
83 breasts, pubic area, or genital area, sadomasochistic activity, physical contact or
84 attempted contact with clothed or unclothed genitalia, pubic areas, buttocks, anus,
85 or female breasts; or
- 86 (iii) consists of contact with animals or inanimate objects.

87 **“Nudity”** means:

- 88 (i) the showing of the human male or female genitalia, pubic area, or buttocks with
89 less than fully opaque covering;
- 90 (ii) the showing of the female breast with less than a fully opaque covering over any
91 part below the top or uppermost part of the areola; or
- 92 (iii) the depiction of covered male genitalia in a discernibly turgid or erect state.

93 **“Partial nudity”** means a state of dress which reveals:

- 94 (i) the human male or female buttocks; or
- 95 (ii) the female breasts below the top or uppermost part of the areola, excluding portions
96 of the human female cleavage exhibited by a dress, or other apparel, provided the areola is not
97 exposed in whole or in part.

98 **“Adult book or video store”** means an activity a principal purpose or use of which is the selling,
99 renting, transferring, loaning, disseminating, or distributing of adult entertainment or material,
100 including but not limited to, any book, magazine, newspaper, video, DVD, CD, or sound
101 recording.

102 **“Significant amount”** means:

- 103 (i) at least 20% of the stock in the establishment or on display consists of adult
104 entertainment material or houses or contains devices depicting, describing, or
105 relating to adult entertainment or material; or
- 106 (ii) at least 20% of the usable floor area is used for the display or storage of adult
107 entertainment or material or houses or contains devices depicting, describing, or
108 relating to adult entertainment or material; or
- 109 (iii) at least 20% of the gross revenue is, or may reasonably be expected to be, derived
110 from the provision of adult entertainment or material; or
- 111 (iv) any provision of live adult entertainment or material.

112
113 SECTION 6. The County Council shall have and reserves the right to extend or modify this
114 moratorium on Adult Oriented Businesses for such additional period or periods and on such terms
115 and conditions as it deems necessary for the health, safety and welfare of the citizens of the
116 County.

SECTION TWO: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

SECTION THREE: AND BE IT FURTHER ENACTED, That if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1166 having been published, a public hearing was held on Tuesday, August 25, 2009 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

BY THE COUNCIL

Read the third time.

ENACTED: August 25, 2009

By Order _____
Susan W. Moran, Secretary

Foster	-	Aye
Pack	-	Aye
Duncan	-	Aye
Bartlett	-	Aye
Harrison	-	Aye