

ORDINANCE NO. 2320

AN ORDINANCE OF THE CITY OF SALISBURY TO AMEND SALISBURY MUNICIPAL CODE SECTIONS 17.04.120 DEFINITIONS AND 17.166.040 NONCONFORMING USES FOR THE PURPOSE OF AMENDING THE DEFINITION OF SIGNIFICANT AMOUNT, AND TO ADD SECTIONS 17.166.090 AND 17.166.100 FOR THE PURPOSE OF ALLOWING INSPECTIONS AND ADMINISTRATIVE SEARCH WARRANTS BY THE CITY, AND; STATING CERTAIN FINDINGS; PROVIDING FOR THE APPLICATION OF THE ORDINANCE; AND GENERALLY RELATING TO ADULT ENTERTAINMENT BUSINESS.

WHEREAS, the City previously passed ordinances to regulate the location of adult entertainment businesses; and

WHEREAS, at that time, the City found that, in order to protect the health, safety and welfare of the City's citizens, it was necessary to allow suitable locations for certain adult entertainment businesses while limiting their adverse secondary effects on the community; and

WHEREAS, the City further found that adult entertainment businesses are associated with increased crime and decreased property values, and adversely impact the quality of life in surrounding areas; and

WHEREAS, many land use studies have documented the adverse secondary effects of certain adult entertainment businesses; and

WHEREAS, in order to lessen and control these effects and to limit exposure of these businesses to children, the City found that it was necessary to place certain restrictions on the location and arrangement of adult entertainment businesses; and

WHEREAS, similar ordinances have withstood legal challenge; and

WHEREAS, the City now finds that certain refinements are needed to that portion of the Code relating to adult entertainment businesses in order to more effectively regulate the location of such businesses and prevent the subversion of the Code's purposes.

NOW, THEREFORE, be it enacted and ordained by the City of Salisbury that Chapters 17.04.120 and 17.166.040 of the Salisbury Municipal Code be Amended and that Chapters 17.166.090 and 17.166.100 be added as follows:

17.04.120 – Definitions

“Significant amount” means the following:

1. At least ~~twenty~~ fifteen (2015) percent of the stock in the establishment or on display consists of adult entertainment or material;
2. At least ~~twenty~~ fifteen (2015) percent of the ~~usable floor~~ area used for the display or storage of merchandise on the floor, walls, or vertical display area of the cabinets, shelves or racks which rise from the floor (or any combination thereof which is at least fifteen (15) percent of the area used for display or storage) is used for the display or storage of adult entertainment or material or houses or contains devices depicting, describing, or relating to adult entertainment or material; or
3. At least ~~twenty~~ fifteen (2015) percent of the gross revenue is, or may reasonably be expected to be, derived from the provision of adult entertainment or material.

17.166.040 – Nonconforming uses.

- A. Any adult entertainment business lawfully operating ~~as of the effective date of this section~~ in violation of the locational requirements set forth in Section 17.166.030 ~~above~~ is a nonconforming use and may continue to operate as such only until [two years after the effective date of this ordinance]. On or after that date, all such businesses shall comply with Chapter 17.166. If two or more adult entertainment businesses are located within one thousand (1,000) feet of one another and otherwise in permissible locations, the adult entertainment business that was first established and continually operated at a particular location is the conforming use and any later established adult entertainment business is nonconforming.
- B. An adult entertainment business is not rendered nonconforming by the later establishment of any of the uses set forth in Section 17.166.030(A) above.

17.166.090 – Inspection of premises.

After the city receives a complaint about a business alleged to be in violation of the code regarding adult entertainment business, the city may inspect the place of business and financial records of such business. Inspections may also be initiated as a result of the observations of city inspectors or as a result of a routine audit. The inspection shall occur after notice has been furnished to the owner and occupants of the place of business.

The notice shall be sent by mail or by affixing the notice to the place of business in a conspicuous location. If the city’s inspector shall be denied access to the financial records or

place of business or any part thereof that is appropriate for inspection, the inspector may obtain an administrative search warrant to gain access.

17.166.100 – Administrative search warrant.

- A. An inspector authorized by the city to inspect any place of business or financial records may apply to a judge of the District Court of Maryland or the Wicomico County Circuit Court for an administrative search warrant to enter and inspect such premises and records. The application shall be in writing, signed and sworn to by the inspector, and shall state or identify: (i) the business location to be inspected by street address and general description, (ii) the nature, scope and purpose of the inspection (i.e. business premises and/or records), and (iii) one or more dates and approximate times when the inspector proposes to conduct the inspection. In addition, the application shall specify the statutory authority for such inspection and the effort of the inspector to schedule or conduct the inspection and/or to locate the owner(s), tenant(s), or other person(s) in charge of the business and any other grounds for issuance of the search warrant.
- B. A judge of a court referred to in this section shall issue the search warrant upon finding that: (i) the inspector is authorized to make the inspection, (ii) a reasonable effort has been made to obtain access to the business to make the inspection, (iii) the owner(s), tenant(s) or other person(s) in charge of the business have denied or otherwise failed or refused to furnish access to the business premises and/or records at a reasonable time or for a reasonable period to conduct the inspection, or the inspector (or others) have been unable to locate any such person(s) after making a reasonable effort to do so, and (iv) if conducted in a reasonable manner, the inspection will not intrude unnecessarily on the operation of such business.
- C. An administrative search warrant issued under this section shall be executed and returned to the issuing judge or, in his or her absence, to the clerk of the issuing court within: (i) the time specified in the warrant, not to exceed thirty (30) days, or (ii) if no time is specified therein, fifteen (15) days from its date of issuance.
- D. This section shall not preclude or affect the power to make prompt inspection without a warrant in emergency situations.

AND BE IT FURTHER ENACTED, that this ordinance does not immediately apply to an adult entertainment business lawfully established prior to the effective date of this Ordinance. An adult entertainment business may continue to operate until two years from the effective date of this ordinance. On or after that date, all adult entertainment businesses shall conform to the requirements of this ordinance.

AND BE IT FURTHER ENACTED, that a business establishment that is not in compliance with Chapter 17.166 may continue to operate until two years from the effective date of this ordinance. On or after that date, all such business establishments shall comply with Chapter 17.166.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE CITY OF SALISBURY, that this ordinance shall take effect upon final passage.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 13th day of April, 2015, and having been published as required by law, in the meantime, was finally passed by the Council on the 27th day of April, 2015.

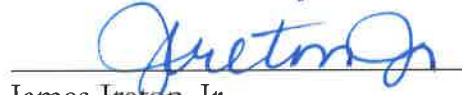
ATTEST:

  
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Kimberly R. Nichols, City Clerk

  
\_\_\_\_\_  
Jacob R. Day, City Council President

Approved by me this 6<sup>th</sup>

day of May, 2015.

  
\_\_\_\_\_  
James Ireton, Jr.,  
Mayor



# City of Salisbury – Wicomico County

DEPARTMENT OF PLANNING, ZONING AND COMMUNITY DEVELOPMENT

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TOM STEVENSON  
CITY ADMINISTRATOR

R. WAYNE STRAUSBURG  
DIRECTOR OF ADMINISTRATION

March 25, 2015

**TO:** Tom Stevenson, City Administrator  
**FROM:** John F. Lenox, AICP, Director, Salisbury/Wicomico Planning & Zoning  
**SUBJECT:** **PUBLIC HEARING – Text Amendments - Section 17.04.120, Definitions, and Section 17.166.040, Nonconforming Uses - To amend ‘Significant Amount’; and to Add Sections 17.166.090 and 17.166.100 for the purpose of allowing Inspections and Administrative Search Warrants generally relating to Adult Entertainment Businesses - Planning Commission Recommendations**

## **I. INTRODUCTION.**

On March 19, 2015, the Salisbury Planning Commission held a public hearing on the above-noted text amendments relative to Adult Entertainment Businesses. **(See Attachment A.)**

## **II. RECOMMENDATION.**

The Commission considered the staff report, public testimony by a business representative, and legal counsel from the City Solicitor. Following discussion on the proposed amendments, the Salisbury Planning Commission voted to forward a **Favorable** recommendation to the Mayor and City Council for adoption of the draft Ordinance.

As recommended in the Staff Report, the Commission concurred that these amendments would constitute a reasonable change in Definitions to further the interests of the public; that the amendments contain reasonable accommodation for existing businesses; and that the provisions regarding Premises Inspection and Administrative Search Warrants are necessary safeguards to assure compliance with City codes.

Unless you or the Mayor has further questions, please forward this memo and its attachments to the City Council.

Thank you.

### **Attachments**

cc: Mayor James Ireton, Jr.  
William Holland, Director, Building, Housing and Zoning Dept.  
Mark Tilghman, City Solicitor



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## **STAFF REPORT**

### **MEETING OF MARCH 19, 2015**

**CASE NO.:** #SP-0803-15A

**APPLICANT:** City of Salisbury

**REQUEST:** **PUBLIC HEARING – Text Amendment to Sections 17.04.120, Definitions, and Section 17.166.040, Nonconforming Uses, to amend ‘Significant Amount’, and to Add Sections 17.166.090 and 17.166.100 – Allowing Inspections and Administrative Search Warrants for the application of the Ordinance generally relating to Adult Entertainment Businesses.**

#### **I. SUMMARY OF REQUEST:**

At the City Council work sessions of January 5 and March 2, 2015, the Council discussed with the City Attorney the Administration’s initiative to modify the Adult Entertainment provisions of the City Code. Draft Ordinances have been prepared for both Zoning (Chapter 17) and Building (Chapter 5).

The change in the Adult Entertainment Ordinance would more closely regulate the type and location of such businesses in Salisbury. Existing Adult Entertainment businesses would not be grandfathered and would need to be brought into compliance with the new ordinance, within the specified 2-year amortization period. New businesses would have to meet the stricter criteria and locate in areas designated as acceptable for such operations.

Under current Code provisions, a business is considered Adult Entertainment if at least 20% of their square footage is devoted to merchandise relating to Adult Entertainment. Businesses could circumvent this by hanging merchandise on the walls and keeping it off of the floor. Under the proposed Ordinance, registration as an Adult Entertainment Business would be required if the significant amount of space devoted to adult merchandise is at least 15%. The determination would include not only floor space, but also wall space and any areas where merchandise is displayed. The new ordinance would further reduce the percentage of gross revenue received or expected to be received from the adult entertainment merchandise from 20 to 15.

In accordance with the requirements of Section 17.228 of the Salisbury Municipal Code, the Planning Commission must hold a Public Hearing on proposed Text Amendments to the Code. The Commission must forward a recommendation (within six months) to the City Council. The City Council must also hold a public hearing before granting final approval to Code text amendments (by Ordinance).

## II. BACKGROUND

Under the authority of Article 66B of the Maryland Annotated Code, the City of Salisbury is authorized to regulate and restrict land uses for a legitimate public purpose. While the use of such municipal police powers is generally well justified, many types of free speech and expression are protected under the First Amendment to the United States Constitution.

In November 2007, the City Council held a work session to discuss the regulation of Adult Entertainment Businesses. The approach was modeled generally upon the work of the Cities of Frederick and Hagerstown. Legislation was introduced and a 100-day moratorium was enacted on January 14, 2008.

At a work session with the City Council held in January 2008, the following information was reviewed:

- The compilation of forty (41) one studies conducted by other municipalities that help identify the potential secondary impacts including increased crime, depreciation of property values, increased blight, and adverse health impacts. These studies are on file with the City Clerk and the Planning Department for reference.
- Through the use of the City/County Geographic Information System (GIS), the boundary of all residential districts was established, and potential buffer areas were defined.
- Churches, schools, parks, day care establishments, and community centers were identified, and potential buffer areas were defined around these "sensitive areas".

In February of 2008, the Planning & Zoning Commission held a Public Hearing on this matter; considered the Staff report; and reviewed supplemental information regarding the secondary effects of Adult Entertainment Businesses. The Commission forwarded a favorable recommendation to the Mayor and Council.

In March 2008, the City Council adopted Ordinance #2048, which included the following:

- A complete set of definitions for the range of establishments to be addressed.
- A buffer from residential zoning districts.
- A buffer from residential developments located in non-residential districts.
- A buffer from defined sensitive areas.
- A minimum separation between establishments.
- A permitting procedure referencing specific operating standards.

### III. SALISBURY CODE ANALYSIS

Prior to 2008, the Salisbury Zoning Code (Title 17 of the Municipal Code) did not specifically address “adult uses,” which can include bookstores, movie theatres, live entertainment venues, and other similar uses that address content or activity of an adult or sexual nature.

Title 5 of Salisbury’s Municipal Code, entitled “Business Licenses and Regulations,” did contain a chapter (entitled “Adult-Oriented Entertainment Establishments”) addressing the licensing of these businesses, but these regulations did not previously determine where such a business can or cannot locate. These regulations only contained requirements of how these businesses must operate – for example, regulating the type of activity that occurs within a building and how physical improvements are arranged internally within a building.

The zoning code contains a number of residential, commercial and industrial districts which allow a range of uses. Prior to 2008, Adult uses, however, were not defined in the Code. The practice had been to match as closely as possible a proposed use with the list of uses allowed in a particular district either as a Permitted Use or as a Special Exception to determine if a use is allowed.

### IV. CITY OF SALISBURY LAND USE ANALYSIS.

A land use analysis was completed by Staff in 2007-2008 in order to assure an adequate level of available land for Adult Entertainment Businesses to locate. Case law indicates that the safest percentage of available land is anything over 5%. The Planning Department prepared its land use analysis by using Geographic Information Systems (GIS) technology. GIS has been defined as a collection of computer hardware, software, and geographic data for capturing, managing, analyzing, and displaying all forms of geographically referenced information. In order to perform the analysis for this project, various types of data was collected, created and analyzed. Emphasis was placed on the location and protection of existing sensitive land uses while also providing appropriate locations for the placement of future adult businesses.

A variety of sensitive area Buffer widths were considered for each area of concern.

#### **Sensitive Areas include:**

- Churches, places of religious assembly,
- Private non-profit places of assembly (i.e. Salvation Army),
- Public and private schools, college or university,
- Day Care centers,
- Hospitals.

#### **Analysis Results**

Each area was analyzed individually to determine accuracy, completeness of data and the impact of the various buffer widths. These areas were then combined into a single base map in order to determine the cumulative impact of various protected parcels and their associated buffers. It was determined that a 1,000 buffer from residential zones, multi-family developments, churches and places of religious assembly, private non-profit places of



assemble, public and private schools, college and university, public parks, hospitals, and day care centers, was appropriate for protection of sensitive areas.

The resulting analysis revealed lands that were not in close proximity to the sensitive lands or their recommended buffers. Therefore, these lands have been determined to be appropriate for the future placement of adult entertainment uses. This acreage was approximately 8% of the City of Salisbury and exceeded the recommended minimum amount of available lands

As requested, the Planning & Zoning staff has updated the 2008 analysis regarding the potential siting of Adult Entertainment businesses. It has been confirmed that approximately 6.2% of the land area within the City may be eligible. This exceeds the 5% minimum generally established as a case law standard.

## V. RECOMMENDATION.

The City of Salisbury has had seven years of experience with its Adult Entertainment Zoning Code. Under current provisions, a business is considered Adult Entertainment if at least 20% of their square footage is devoted to merchandise relating to Adult Entertainment. It has been demonstrated that businesses could circumvent this by hanging merchandise on the walls and keeping it off of the floor. Under the proposed Ordinance, registration as an Adult Entertainment Business would be required if the significant amount of space devoted to adult merchandise is at least 15%. The determination would include not only floor space, but also wall space and any areas where merchandise is displayed. The new ordinance would further reduce the percentage of gross revenue received or expected to be received from the adult entertainment merchandise from 20 to 15. This is a reasonable change in definitions, and furthers the interests of the public.

The change in the Adult Entertainment Ordinance would more closely regulate the type and location of such businesses in Salisbury. Existing Adult Entertainment businesses would not be grandfathered and would need to be brought into compliance with the new ordinance, within the specified 2-year amortization period. This is a reasonable accommodation for existing businesses. New businesses would have to meet the stricter criteria and locate in areas designated as acceptable for such operations.

Finally, the proposed Ordinance would include important provisions in the City Code regarding Premises Inspection and Administrative Search Warrants. These are reasonable safeguards, necessary to assure compliance with City standards.

It is recommended that the Planning Commission report favorably to the City Council and Mayor regarding the enclosed Zoning Ordinance. A separate Ordinance will be considered by the Mayor and City Council relating to Title 5 of the Salisbury Municipal Code entitled "Business Licenses and Regulations".

COORDINATOR: Jack Lenox, Director  
DATE: March 25, 2015