

ORDINANCE NO. 422

AN ORDINANCE OF THE TOWN OF ST. MICHAELS TO AMEND THE CODE OF THE TOWN OF ST. MICHAELS, CHAPTER 340, (ZONING), TO AMEND SECTION 340-108 “DEFINITIONS” TO PROVIDE FOR CERTAIN DEFINITIONS, NAMELY ADULT ORIENTED BUSINESS, MASSAGE, MASSAGE ESTABLISHMENT, MASSAGE TECHNICIAN, MASSAGE PRACTITIONER, MASSAGE THERAPIST AND MEDICAL PRACTITIONER; TO AMEND THE CODE OF THE TOWN OF ST. MICHAELS, CHAPTER 340 (ZONING), APPENDIX A “PROHIBITED USES IN ANY ZONE “ TO PROVIDE THAT MASSAGE ESTABLISHMENTS ARE PROHIBITED IN THE TOWN OF ST. MICHAELS; TO PROVIDE THAT THIS TITLE BE DEEMED A FAIR SUMMARY OF THIS ORDINANCE FOR ALL PURPOSES; AND ALL MATTERS GENERALLY RELATING TO MASSAGE ESTABLISHMENTS IN THE TOWN OF ST. MICHAELS, TALBOT COUNTY, MARYLAND.

WHEREAS, the Commissioners of St. Michaels are concerned with the potential adverse secondary effects of Massage Establishments, as that term is defined herein, that provide massages by persons other than those persons certified, registered, or specifically excluded from certification or registration, by the State of Maryland; and

WHEREAS, the Commissioners of St. Michaels are concerned that a Massage Establishment may be, and often is, operated as an Adult Oriented Business, as that term is defined herein, or in conjunction with Adult Oriented Businesses; and

WHEREAS, the Commissioners of St. Michaels are concerned with the potential adverse secondary effects of Massage Establishments and Adult Oriented Businesses in the Town of St. Michaels; and

WHEREAS, the Commissioners of St. Michaels directed the Town Attorney for the Town of St. Michaels: (1) to investigate the adverse secondary effects of Adult Oriented Businesses that have been reported in studies prepared by or for other local governments and in reported opinions from the various jurisdictions of the United States; (2) to provide pertinent information about the adverse secondary effects to the Commissioners of St. Michaels; (3) to develop business regulations that would regulate against the adverse secondary effects associated with Adult Oriented Businesses, but that would accommodate the constitutional rights of Adult Oriented Businesses that have been recognized by the courts; and (4) to draft an ordinance that would enact such business regulations; and

WHEREAS, this Ordinance is being enacted in conjunction with Ordinance No. 420, allowing Adult Oriented Businesses in the Gateway Commercial Zoning District under certain circumstances, and Ordinance No. 423 Adult Oriented Business Regulations as part of a comprehensive program to address the potential adverse secondary effects of Adult Oriented Businesses that might elect to locate within the Town;

WHEREAS, the Planning Commission, the Commissioners of St. Michaels and the Town Attorney obtained and had an opportunity to review and consider the following studies:

1. The Ellicottville, New York Study dated January 1998;
2. The Cleburne, Texas Study dated October 27, 1997;
3. The Hamilton County and City of Chattanooga, Tennessee Study dated May 1997;
4. The Dallas, Texas Study dated April 29, 1997;
5. The Houston, Texas Study dated January 7, 1997;
6. The American Center for Law and Justice Study dated March 31, 1996;
7. The Newport News, Virginia Study dated March 1996;
8. The New York City, New York Study dated November 1994;
9. The Times Square, New York Study dated April 1994;
10. The St. Croix County, Wisconsin Study dated September 1993;
11. The Oklahoma City, Oklahoma Study dated June 1992;
12. The Garden Grove, California Study dated October 23, 1991;
13. The Houston, Texas Study dated January, 1991;
14. The Tucson, Arizona Study dated May 1, 1990;
15. The New Hanover County, North Carolina Study dated July 1989;
16. The Seattle, Washington Study dated March 24, 1989;
17. The Adams County, Colorado Study dated April 1988, updated June 20, 1991;
18. The St. Paul, Minnesota Study dated April 1988 (Supp. to 1987 Study);
19. The Bellevue, Washington Study dated February 1988;
20. The Manatee County, Florida Study dated June 1987;
21. The El Paso, Texas Study dated September 26, 1986;
22. The Austin, Texas Study dated May 19, 1986;
23. The Oklahoma City, Oklahoma Study dated March 3, 1986;
24. The Houston, Texas Study dated March 5, 1986;
25. The Des Moines, Washington Study dated August 1984;
26. The Houston, Texas Study dated November 30, 1983;
27. The Beaumont, Texas Study dated September 14, 1982;
28. The Minneapolis, Minnesota Study dated October 1980;
29. The Islip, New York Study dated September 23, 1980;
30. The Phoenix, Arizona Study dated May 25, 1979;
31. The Las Vegas, Nevada Study dated March 15, 1978;
32. The Whittier, California Study dated January 9, 1978;
33. The Amarillo, Texas Study dated September 1977;
34. The Cleveland Ohio Study dated August 24, 1977;
35. The Los Angeles, California Study dated June 1977;
36. The Summary prepared by the National Law Center for Children and Families of the above listed studies (© 2002);
37. Indianapolis, Indiana – February 1984;
38. Minnesota – June 6, 1989;
39. Rome [Georgia] City Commission March 6, 1995;
40. City of St. Mary's, Georgia July 1996;
41. The Toledo, Ohio Study dated August 26, 2002;
42. Greensboro [N.C.] December 15, 2003 (Richard McCleary, Ph.D.);

43. Report of Richard McCleary, Ph.D. in *People ex rel. Deters v. The Lion's Den*, Effingham County, Illinois No. 04-CH-26;
44. Report to the City Attorney on Crime-Related Secondary Effects, by Richard McCleary, Ph.D., in *Reliable Consultants, Inc., et al v. City of Kennedale, Texas*, (U.S. Dist. Ct., N.D. Tex.) No. 4:05-CV-166-A;
45. Centralia City [Wash.] February 28, 2004 (Richard McCleary, Ph.D.);
46. Evaluating Potential Secondary Effects of Adult Cabarets in Daytona Beach, Florida, Report of Daniel Linz, Randy D. Fisher and Mike Yao dated April 7, 2004;
47. Report to the City of Toledo, Ohio, A Methodical Critique of the Linz-Yao Report dated May 15, 2004;
48. Survey of Appraisers Fort Worth and Dallas, Effects of Land Uses of Surrounding Property Values submitted to the City of Fort Worth, Texas dated September 2004;
49. Study of Police Activity in Milford: Testing for Negative Secondary Effects, Addendum, Report by Daniel Linz dated October 2004;
50. Report to the City Attorney on Crime-Related Secondary Effects, by Richard McCleary, Ph.D., in *Alameda Books v. City of Los Angeles, California* (U.S. Dist. Ct., C.D. Ca.) No. CV 95-7771 dated May 6, 2007; and
51. Report to the County Attorney, Palm Beach County, Florida on Crime-Related Secondary Effects, by Valerie Jenness, Ph.D., Richard McCleary, Ph.D. and James W. Meeker, JD, PH.D dated August 15, 2007; and

WHEREAS, the Town Attorney considered the information reported in many First Amendment and constitutional cases relative to Adult Oriented Businesses, including but not limited to: *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *Giovani Carandola Ltd. v. Wright*, 470 F.3d 1074 (4th Cir. 2006); *Pack Shack v. Howard County*, 377 Md. 55 (2003); *104 West Washington Street II Corp. v. Hagerstown*, 173 Md. App. 553 (2007); and *McDoogal's East, Inc. v. County Commissioners of Caroline County*, 341 Fed. Appx. 918 (2009); and

WHEREAS, the Town has only approximately 1,200 residents; and

WHEREAS, the Town is primarily a residential community, with a business core consisting of restaurants, retail and services, and two museums located within the Town; and

WHEREAS, the Town has never, to the recollection of the Commissioners of St. Michaels, had an Adult Oriented Business; and

WHEREAS, there currently is no Adult Oriented Business located within the Town; and

WHEREAS, the Town is located in a largely rural and agricultural part of Talbot County; and

WHEREAS, the Town is only approximately 746 acres in size and is surrounded by low density residential and agricultural properties, with a commercial strip to the south of Town; and

WHEREAS, there are no night clubs, lounges or similar establishments within the Town and the Town does not have a history of economically supporting such establishments; and

WHEREAS, the Town lacks sufficient population or sufficient interest to support an AOB (there is no video rental store or shopping center within the Town); and

WHEREAS, the Town has a school complex that serves pre-K through 12 and houses a day care center, which services not only residents of the Town but also the residents of the surrounding rural communities; and

WHEREAS, the Town houses several day care centers in addition to several parks, a recreation complex that contains a playground for children, a recreation building and ball fields that serve not only the residents of the Town but also the residents of surrounding rural communities and are areas where children and youth regularly congregate; and

WHEREAS, the Town, including the elementary school, the parks and recreation complex, the local churches and other civic organizations, attracts many families and children who desire to enjoy familial and rural fellowship and recreation in a quiet and peaceful environment; and

WHEREAS, the children and young people who congregate in the Town and use the public facilities within the Town would serve as prime targets for sexual predators; and

WHEREAS, Adult Oriented Businesses are known to attract patrons from outside of the community that have no connection to the community, are unconstrained by social or economic ties to the community, are prone to engage in acts that defile the surrounding community, are prone to engage in criminal acts, and often do not comport themselves with civility and decency; and

WHEREAS, Adult Oriented Business are know to attract patrons who engage in unhealthy sexual practices and who carry and transmit sexually transmitted diseases; and

WHEREAS, Adult Oriented Businesses are known to attract sexual predators; and

WHEREAS, Adult Oriented Businesses are known to attract under aged workers and workers who engage in unhealthy and illegal sexual practices and who carry and transmit sexually transmitted diseases; and

WHEREAS, the owners of an Adult Oriented Business that locates in the Town would not rely on the community for support and, therefore, will have no economic motivation to control the lewd and lascivious behavior or the criminal behavior of their patrons and employees beyond the confines of activity within the public portions of their establishments; and

WHEREAS, Adult Oriented Businesses are known to encourage or to lower the inhibition of patrons so that such patrons become more disposed to commit sexual crimes and other crimes; and

WHEREAS, when alcohol or other controlled dangerous substances, which often are closely associated with Adult Oriented Businesses, combine with the goods and services marketed by Adult Oriented Businesses, the propensity for patrons to engage in criminal behavior increases; and

WHEREAS, the Commissioners of St. Michaels, in an effort to further prevent and to address the adverse secondary effects typically associated with unregulated Adult Oriented Businesses, including massage establishments, have had this Ordinance drafted for the purpose of protecting and promoting the safety, health, morals, and general welfare of the citizens of the Town and visitors to the Town; and

WHEREAS, the Commissioners of St. Michaels have determined that the nature of the reported conduct and adverse secondary effects at an unregulated Massage Establishment operated as an Adult Oriented Business requires the enactment of the provisions set forth in this Ordinance.

SECTION 1. NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that the Commissioners of St. Michaels hereby make the following findings:

Findings, Intent and Purpose

A. Findings:

1. The Commissioners of the Town of St. Michaels has no knowledge of any Massage Establishment or Adult Oriented Business (as those terms are defined herein) in the Town of St. Michaels at the time of enactment of this Ordinance and there is credible evidence that no Massage Establishment or Adult Oriented Business has ever existed in the Town of St. Michaels.
2. In light of the testimony presented at the public hearings before the Town Commissioners, the studies considered by the Town Commissioners, the small population of the Town, and the future growth projections for the Town, if a Massage Establishment is established in the Town of St. Michaels, its economic survival will be dependent upon transients who have few if any ties to the Town. Those studies and cases that document the adverse secondary effects inherent where transients with no ties to the community are the primary customers of a business that operates as an Adult Oriented Business and where business owners with no reason to worry about community perception impacting their economic survival own such a Massage Establishment that is being operated as an Adult Oriented Business, in addition to the other studies and case law referenced in the Recitals, evidence and depict the adverse secondary effects that are likely to exist in the event a Massage Establishment that is operated as an Adult Oriented Business locates in the Town of St. Michaels.
3. There is convincing documentation in the record that a Massage Establishment that is operated as an Adult Oriented Businesses attracts and is often supported by a transient population with no ties to the community and who, therefore, would have no inherent motivation to refrain from defiling the community or otherwise engaging in

criminal conduct and odious behavior in the community in which such businesses are located.

4. There is convincing documentation in the record that a Massage Establishment that is operated as an Adult Oriented Business often could attract sexual predators.
5. There is convincing documentation in the record that a Massage Establishment that is operated as an Adult Oriented Business featuring live entertainment could often attract and take advantage of underage women and women with addictions and other psychological disorders;
6. There is convincing documentation in the record that a Massage Establishment that is operated as an Adult Oriented Business could be associated with and increase the spread and the rate of profusion of sexually transmitted diseases;
7. There is convincing documentation in the record that a Massage Establishment that is operated as an Adult Oriented Business could have other adverse health and welfare affects.
8. There is convincing documentation in the record that a Massage Establishment that is operated as an Adult Oriented Business could be associated with and lead to the proliferation of sex crimes, property crimes, crimes against women and children and addiction related crimes. Several of the studies further indicate that violent crimes can increase as the result of Adult Oriented Businesses, particularly when such businesses are located in close proximity to places allowing the on-site consumption of alcoholic beverages.
9. There is convincing documentation in the record that a Massage Establishment that is operated as an Adult Oriented Business could devalue surrounding residential and commercial properties.
10. There is convincing documentation in the record that public and semi-public places such as any parking area on public property (including school yards and parks and recreation areas), churches and church parking areas, social club parking areas and other open air expanses in the vicinity of a Massage Establishment that is operated as an Adult Oriented Business could become used for illicit purposes, thereby driving away legitimate users and community members.
11. There is convincing documentation in the record that when multiple venues operated as Adult Oriented Businesses are located in close proximity to one another, particularly in a non-urban environment, the harmful secondary effects associated with such businesses are greater than when such businesses are not in close proximity to one another.

B. Intent and Purpose:

1. This Ordinance has been developed to serve as a constitutionally permissible means to minimize certain harmful secondary effects associated with a Massage Establishment that is operated as an Adult Oriented Business while not infringing on constitutionally protected communication for those interested in engaging in adult oriented communication protected by the federal and State constitutions.
2. It is the intent of the Town Council in adopting this Ordinance to enact constitutionally permissible restrictions to combat the harmful secondary effects of a Massage Establishment operated as an Adult Oriented Business. It is not the intent of the Town Commissioners to suppress any speech protected by the First Amendment to the United States Constitution or Article 40 of the Maryland Declaration of Rights, or to otherwise infringe on any constitutionally protected rights.

SECTION 2. BE IT FURTHER ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that Chapter 340 (Zoning), §340-108 (Definitions) be and is hereby amended to add the following definitions, with the new language shown in italics and underlined:

§ 340-108. DEFINITIONS.

Adult Oriented Business - means any business, operation, or activity, a significant amount of which consists of:

- 1) *the conduct, promotion, delivery, provision, or performance of adult entertainment or material; including, but not limited to, that occurring in, at, or in connection with a cabaret, lounge, night club, modeling studio, bar restaurant, club or lodge, or other establishment; or*
- 2) *the sale, provision, rental, or promotion of adult entertainment or material, in any format, form, or medium, including, but not limited to, books, magazines, videos, DVDs, CDs, movies, photographs, and/or coin operated or pay-per-view viewing devices, including, but not limited to, the operation of an adult book or video store or viewing booth.*

Note: Adult Oriented Businesses are regulated under Town Code, Chapter 75 (Adult Oriented Business Regulations), wherein are located additional definitions relative to Adult Oriented Businesses.

Massage: Any method of treating, or attending to, the external parts of the human body (other than the scalp) by touching, rubbing, stroking, kneading, tapping or vibrating with the hand, arm, foot or other body part, or by instrument or device, applied by a Massage Technician, for compensation, or without compensation and in connection with or related to any other service, sale, transaction, or exchange for compensation.

Massage Establishment: Any establishment, building, structure, premise, room, or other location or site where a Massage Technician administers a Massage to another person. Massage Establishment does not include a hospital, nursing home, medical clinic or other establishment.

building, structure, premise, room, or other location or site where massages are administered by any individual who is a Medical Practitioner, a Massage Therapist, or a Massage Practitioner.

Massage Technician: An individual who administers a Massage to another individual. Massage Technician does not include:

- A. A Massage Practitioner;
- B. A Massage Therapist; or
- C. A Medical Practitioner.

Massage Practitioner: A registered massage practitioner as that term is defined by § 3-5A-01 of the Health Occupations Article of the Annotated Code of Maryland, or a person excepted from the requirement to be certified or registered before practicing massage therapy or non-therapeutic massage pursuant to an exception set forth in § 3-5A-05(A)(2) of the Health Occupations Article of the Maryland Annotated Code who is practicing massage under the limited circumstances allowed in § 3-5A-05(A)(2).

Massage Therapist: A certified massage therapist as that term is defined by § 3-5A-01 of the Health Occupations Article of the Annotated Code of Maryland.

Medical Practitioner: A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, or other similar health professional licensed and/or certified by the state.

SECTION 3. BE IT FURTHER ORDAINED AND ENACTED BY THE COMMISSIONERS OF ST. MICHAELS that Chapter 340 (Zoning), Appendix A "Prohibited Uses in Any Zone," be and is hereby amended as follows, with new language shown in italics and underlined:

Appendix A
Prohibited Uses in Any Zone

32. Massage Establishments, as that term is defined in Chapter 340 of the Code of the Town of St. Michaels, Section 108 (Definitions), are not permitted in any zoning district within the Town of St. Michaels, and no person shall operate, or be employed in or by, any Massage Establishment within the Town of St. Michaels, or act as or perform the service of a Massage Technician within the Town of St. Michaels.

SECTION 4: BE IT FURTHER ORDAINED AND ENACTED BY THE COMMISSIONERS OF THE TOWN OF ST. MICHAELS that the title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is a fair summary of this ordinance for publication and all other purposes.

SECTION 5: SEVERABILITY. Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this

Ordinance is held to be invalid or unconstitutional by a Court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. AND BE IT FURTHER ORDAINED AND ENACTED, that this Ordinance shall take effect twenty (20) days from the date of its enactment, having been read at two (2) meetings of The Commissioners of St. Michaels and having been passed by a yea and nay vote of The Commissioners of St. Michaels.

HAVING BEEN INTRODUCED, read for the first time and ordered posted on the Town bulletin board at the Public Meeting of The Commissioners of St. Michaels held on the 10th day of November, 2010, at 5:00 o'clock p.m., in the meeting room at the Town Office, St. Michaels, Maryland.

 (SEAL)
CHERIL S. THOMAS
Town Clerk\Manager

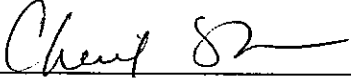
HAVING BEEN READ for the second time and passed by a yea and nay vote of The Commissioners of St. Michaels at a Public Meeting of The Commissioners of St. Michaels held on this 15th day of December, 2010, at 6:30 o'clock p.m., in the meeting room of the Town Office, St. Michaels, Maryland.

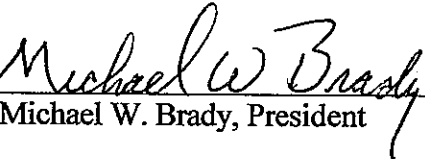
Brady	-	<u>yea</u>
Clark	-	<u>yea</u>
duPont	-	<u>yea</u>
Hunt	-	<u>yea</u>
Vlahovich	-	<u>yea</u>

I HEREBY CERTIFY that the above Ordinance No. 422 was passed by a yea and nay vote of The Commissioners of St. Michaels on the 15th day of December, 2010.

ATTEST:

THE COMMISSIONERS OF ST. MICHAELS


Cheril S. Thomas, Town Clerk\Manager

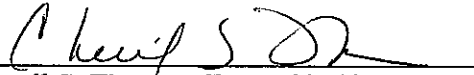
By:  (Seal)
Michael W. Brady, President

I HEREBY CERTIFY that an exact copy of this Ordinance was posted from the 16th day of December, 2010, at 8:30 o'clock a.m. to the 4th day of January, 2011, at 4:30 o'clock p.m., on the bulletin board at the Town Office in St. Michaels, Maryland, and that a summary of the aforesaid Ordinance No. 422, the date of its passage, its effective date and the fact that the entire text of the Ordinance may be read on the bulletin board of the Town Office, St. Michaels, Maryland, for at

Ordinance 422 – Massage Establishments
Adopted 12-15-10

least twenty (20) days following the passage, has been published at least once each week for two (2) consecutive weeks following the passage of said Ordinance in a newspaper having general circulation in the Town of St. Michaels.

Date: January 5, 2010

 (Seal)
Cheryl S. Thomas, Town Clerk/Manager