

**RESOLUTION ADOPTING AN ADULT USE LICENSING ORDINANCE AND
AMENDING THE MORRISON COUNTY LAND USE CONTROL ORDINANCE BY
ADDING AN ADULT USE SECTION**

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WHEREAS: The United States Supreme Court has reorganized a constitutional right for adults to access sexually oriented materials but the court has also recognized the public's equal and corresponding right to be secure from unwanted exposure to sexually oriented material; and,

WHEREAS: Morrison County also recognizes and acknowledges a responsibility to protect minors from exposure to sexually oriented material; and,

WHEREAS: sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and general welfare of the patrons of such businesses as well as the citizens of the County; and,

WHEREAS: sexually oriented businesses are frequently the site of unlawful activities, including prostitution and drug use and these businesses encourage casual sexual liaisons; and,

WHEREAS: prostitution and casual sexual relations often result in sexually transmitted diseases, which is a serious public health problem; and,

WHEREAS: licensing of sexually oriented businesses holds owners and operators accountable and helps ensure that such establishments are not used as places of illegal activity; and,

WHEREAS: there is substantial documented evidence that sexually oriented businesses have a deleterious effect on both the existing businesses and the residential areas adjacent to them, causing increased crime and the downgrading of property values; and,

WHEREAS: sexually oriented businesses, when located in close proximity to each other, contribute to area blight and downgrade the quality of life in the surrounding area; and,

WHEREAS: Morrison County wishes to minimize and control these adverse secondary effects and thereby protect the health, safety, and general welfare of the citizenry; protect the citizens from increased crime; preserve our quality of life; preserve property values and the character of surrounding neighborhoods; and deter the spread of blight; and,

WHEREAS: Morrison County has determined that limitations and restrictions based on location alone do not adequately protect the health, safety, and general welfare of the people of this County; and,

WHEREAS: it is not the intent of either the licensing ordinance or the land use ordinance related to sexually oriented businesses to suppress activity protected by the First Amendment, but to enact ordinances which address the adverse secondary effects of sexually oriented business; and,

WHEREAS: it is not the intent of the County Board of Commissioners to condone or legitimize obscene acts or the distribution of obscene material, and Morrison County expects and encourages state and local law enforcement officials to enforce state and federal obscenity statutes in the County,

NOW, THEREFORE, BE IT RESOLVED:

The County Board of Commissioners of Morrison County, Minnesota, does hereby adopt the following Findings of Fact, and effective November 3, 2003 enacts the attached Ordinance Regulating Sexually Oriented Businesses and Amendments to the Morrison County Land Use Control Ordinance including the adoption of Section 1400 and the repeal of other provisions relating to adult uses.

Motion: Wengel Second: Shilling

Ayes: 5, Nays: 0

Adopted this 21 day of October, 2003.

Eugene Young
Eugene Young, Chairman
Morrison County Board of Commissioners

ATTEST:
Timothy J. Houle
County Administrator

FINDINGS OF FACT

Based on evidence and testimony presented at a public hearing before the Morrison County Board, which included information about the negative secondary effects of adult entertainment establishments and sexually oriented businesses in other communities in the United States; and on decisions in the cases of City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); Young v. American Mini Theaters, 426 U.S. 50 (1976); City of Erie v. Pap's A.M., 120 S. Ct. 1382 (2000); California v. LaRue, 409 U.S. 109, 111 (1972); Barnes v. Glen Theater, Inc., 501 U.S. 560 (1991); Knudtson v. City of Coates, 519 N.W.2d 166 (Minn. 1994); S.O.B., Inc. v. County of Benton, 317 F.3d 856 (8th Cir., Minn, 2003); Jakes, Lt., Inc. v. City of Coates, 284 F.3d 884 (8th Cir., Minn, 2002); and Kismet Investors v. County of Benton, 617 N.W.2d 85 (Minn. App. 2000), and on the substance of and findings made or incorporated in studies accomplished in other communities and ordinances enacted in other communities (See notes section for listing of specific studies); on findings and recommendations in Everything You Always Wanted to Know About Regulating Sex Businesses, American Planning Association, Planning Advisory Service Report Number 495/496, December, 2000; along with the Board's knowledge of actual conditions within Morrison County and the surrounding counties, the Morrison County Board hereby finds:

1. Establishments exist, have existed, and may exist within the County and surrounding counties where the primary or dominant theme, of all or part of the business, is the presentation, display, depiction, or description of specified anatomical areas or specified sexual activities, as those terms are defined in the proposed amendments to Morrison County Land Use Control Ordinance. These establishments include, but are not limited to businesses:
 - i. Distinguished by an emphasis on or the promotion of dancers, entertainers, performers, or other individuals, who perform or are presented while displaying or exposing specified anatomical areas or are presented while simulating or engaging in specified sexual activities;
 - ii. Where workers dance or perform in consideration for tips, remuneration or compensation from or on behalf of those customers, or offer, solicit or contract to do the same, and the product, service or entertainment is intended to provide sexual excitement, sexual stimulation or sexual gratification to such customers;
 - iii. Where straddle dancing, lap dancing, private modeling, prostitution, unlawful drug transactions, or lewd and lascivious touching occurs between customers and workers or performers;
 - iv. Where sexually oriented media are offered for sale or rental;
 - v. Where sexually oriented adult toys or novelties are offered for sale.
2. Activities exist, have existed, or may exist within the County and surrounding counties where sexually oriented physical contact or escort services are offered for pecuniary gain. The people involved in such activities engage in physical contact or touching with customers, including acts of prostitution, or encourage or entice customers to engage in acts of lewdness.

3. The activities described in subsections (1) and (2) above, and the establishments in which they occur, are subject to regulation by the County in the interest of the health, safety, and general welfare of the people of Morrison County.
4. When the activities described in subsections (1) and (2) are present in establishments, activities which are illegal, or unhealthful tend to accompany them, concentrate around them, and be aggravated by them. Such other activities include, but are not limited to prostitution, pandering, solicitation for prostitution, lewd and lascivious behavior, exposing minors to harmful materials, possession, distribution, and transportation of obscene materials, sale or possession of controlled substances, and violent crimes against persons and property. There is a higher correlation between incidents of crime and sexually oriented businesses that involve on-premises entertainment of any kind, as compared to those that do not have on-premises entertainment.
5. When the activities described in subsection (1) and (2) are present within establishments they tend to attract an undesirable number of transients, blight neighborhoods, adversely affect neighboring businesses, lower real property values, and ultimately lead residents and businesses to move to other locations.
6. Real estate professionals believe that there is a negative impact of sexually oriented businesses on both nearby residential and business property value. There is an inverse correlation between the level of impact and the distance between the business and other uses. In addition, the impacts on residential properties are greater than on non-residential properties.
7. Areas with clusters of adult uses experience the greatest decline in property values. Spreading out adult uses will spread out the negative impact. Different types of adult uses have greater negative impacts. Live entertainment cause the greatest decline in neighboring property values as well as the greatest increase in crime incidence. Setback regulations are thereby needed for adult use businesses from other adult use businesses.
8. The establishments in which the activities described in subsections (1) and (2) occur are frequently constructed, in whole or in part, of substandard materials, and are usually maintained in a manner reflecting a disregard for the health and safety of the occupants, and have exterior appearance and/or signage that depreciates the value of adjoining real property and otherwise contributes to urban decline.
9. The concurrence of the sale and/or consumption of alcoholic beverages with the activities described in subsections (1) and (2) leads to an increase in criminal activity, decreased inhibitions, moral degradation, and disturbance of the peace and order of the County.
10. The concurrence of the sale and/or consumption of alcoholic beverages with the activities described in subsections (1) and (2) is hazardous to the health and safety of those persons in attendance, depreciates the value of adjoining real property, harms the economic welfare of the County, and adversely affects the public's interest in the quality of life in the County.

11. In order to preserve and safeguard the health, safety, morals, and general welfare of the people of the County, it is necessary and advisable for the County to prohibit the sale and consumption of alcoholic beverages at or near establishments where the activities described in subsections (1) and (2) occur.
12. Establishments at which the activities described in subsections (1) and (2) result in a higher incidence of certain types of criminal behavior than that of other establishments, including prostitution and lewdness in violation of Minnesota Statute 609 and 617.
13. Physical contact within establishments at which the activities described in subsections (1) and (2) occur between customers and those workers exhibiting specified anatomical areas or engaging in or simulating specified sexual activities poses a threat to the health of both workers and customers by promoting the spread of communicable and sexually transmittable diseases.
14. Video viewing booths, one-on-one live entertainment or any form of adult entertainment in which a customer is in an isolated, private area significantly increases the risk of masturbation and thereby the release of bodily fluids. The risk of contact with those bodily fluids by subsequent customers and/or workers at the establishment poses a significant health hazard by promoting the spread of communicable and sexually transmittable diseases. One study found sperm samples on the floors and walls of almost all video viewing booths that police inspected.
15. In order to preserve and safeguard the health, safety, and general welfare of the citizens of the County, it is necessary and advisable for the County to regulate the conduct of owners, managers, operators, agents, workers, entertainers, performers, and customers at establishments where the activities described in subsections (1) and (2) occur.
16. The potential dangers to health, safety, and general welfare of the citizens of the County posed by permitting an establishment at which the activities described in subsections (1) and (2) occur to operate without first obtaining a license and securing a land use permit under the County's licensing and land use ordinance are so great as to require the licensure and permitting of such establishments prior to their being allowed to operate. A thorough but prompt investigation and review of the license and land use applications will facilitate this public purpose. Suspension or revocation of adult entertainment licenses or land use permits at which violations of either the licensing ordinance or the land use ordinance occur, upon adequate proof at administrative proceedings of the occurrence of such acts, will serve to protect the community from such danger by deterring or ending the use of the establishment for future specified acts which are criminal or violate this ordinance. Access to prompt judicial review for a denial, suspension or revocation of a license or land use permit will protect the rights of the licensee or applicant.
17. Requiring licensees of establishments at which the activities described in subsections (1) and (2) occur to maintain information concerning current and past workers will help

reduce the incidence of criminal behavior by facilitating the identification of potential witnesses or suspects, and by preventing minors from working in such establishments.

18. Prohibiting establishments at which the activities described in subsections (1) and (2) occur, from operating within set distances of areas zoned for residential use, religious institutions, educational institutions, and parks and other areas where minors are customarily found, will serve to protect minors from the adverse secondary impacts that accompany such establishments.
19. Any form of physical contact between customers and workers or performers in a sexually oriented business poses a threat to the health of the participants and promotes or actually causes the spread of communicable and sexually transmittable diseases. Close physical contact between customers and performers at adult entertainment establishments who are displaying or exposing specified anatomical areas, facilitates and encourages the exchange of money for prostitution, lewd touching, and other illegal activity which pose a danger to the community and the participants.
20. The practice at sexually oriented businesses of requiring performers to earn their income from tips or gratuities from customers who are predisposed to desire or want sexual activity, has resulted in a high incidence of prostitution and lewd behaviors.
21. Sexually oriented businesses involve activities that are pure conduct engaged in and for the purpose of making a profit, rather than speech or expressive activity, and therefore are subject to regulation to protect the health, welfare, and safety of the community.
22. Requiring these performers at adult entertainment establishments who are displaying or exposing specified anatomical areas or who are engaging in actual or simulated specified sexual activities, to remain on stage and at least six (6) feet away from customers who are in the establishment will serve to protect the public by discouraging direct physical contact which results in incidents of lewd or lascivious touching between performers and customers.
23. Operators or workers of adult entertainment establishments who have the authority to direct or control other workers at, or the operation of, an adult entertainment establishment, should be subject to penalties for allowing violations of either the licensing ordinance or the land use ordinance to occur. This will discourage such operators from allowing or encouraging violations of these ordinances the purpose of increasing profits at the establishment to the detriment of the community and contrary to the purposes of these ordinances.
24. When reviewing applications for sexually oriented business licenses, the Public Health Director shall consider, within 30 days, all information received from other investigating or reviewing departments to protect the public and facilitate proper licensing consistent with the purposes of the sexually oriented business license ordinance on all completed applications received.

25. The purpose of the suspension and revocation proceedings in the licensing ordinance will be undermined if the suspensions or revocations are avoided by licensees being allowed to incorporate under new names or by attempts to transfer licenses or by change in control of land or establishments during a pending suspension or revocation proceeding.

These Findings of Fact are believed to be true and accurate and are adopted in support of the Resolution Adopting an Adult Use Licensing Ordinance and Amending the Morrison County Land Use Control Ordinance by adding an adult use section.

Motion: Wenzel Second: Schilling

Ayes: 5, Nays: 0

Adopted this 21 day of October, 2003.

Eugene Young
Eugene Young, Chairman

Morrison County Board of Commissioners

Timothy J. Houle
ATTEST:
Timothy J. Houle
County Administrator

NOTES:

Louisville, Kentucky; March 22, 1988. Section 9.4 Adult Entertainment Activities.

McCleary, Richard, Ph.D., James W. Meeker, J.D., Ph.D.; October 23, 1991. Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard.

New York Department of City Planning; 1994. Adult Entertainment Study: An Analysis of the Nature and Extent of Adult Uses and Their Secondary Impacts on the City=s Communities.

Newport News Department of Planning and Development; March 1996. Newport News, Virginia: Adult Use Study.

Office of Land Development Services; May 19, 1986. Report on Adult Oriented Businesses in Austin.

Planning Department City of Amarillo, Texas; September 12, 1977. A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo.

Spokane City Plan Commission; 2000. Spokane City Plan Commissions Findings, Conclusions and Recommendation on Proposed Amendment to SMC, Title Eleven Regarding Adult Retail Use Establishments.

Whittier, California; 1978. City of Whittier Staff Report Amendment to Zoning Regulations Adult Businesses in C-2 Zone with Conditional Use Permit: File No. 353-015.