

ADULT USE ORDINANCE
Benton County, Minnesota
Ordinance # 242

OFFICE OF
BENTON COUNTY RECORDER
BENTON COUNTY, MN
CERTIFIED TO BE FILED
AND/OR RECORDED ON

JUL 21 8 33 AM '94

ALICE O. ENGELMEYER
COUNTY RECORDER
Deputy

WHEREAS, the Benton County Planning Commission is concerned about the possible adverse secondary effects of Sexually Oriented Businesses on adjacent properties; and,

WHEREAS, the Benton County Planning Commission has reviewed and studied the following reports relating to Sexually Oriented Businesses, also referred to herein as Adults Uses:

Adult Entertainment, a 40-Acre Study, St. Paul, MN, Department of Planning and Economic Development (1987, Supplemented 1988); Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses, Attorney General, State of Minnesota (1989); Adult Entertainment Businesses in Indianapolis, Indiana (1984); Adult Entertainment Perspectives, Rochester/Olmsted, MN, Consolidated Planning Department (1988); Study of the Effects of the Concentration of Adult Entertainment Establishment, Los Angeles Department City Planning (1977); Adult Business Study, Planning Department, City of Phoenix, AZ (1979); Adams County, Colorado, Nude Entertainment Study, (1991); A Report on Zoning and Other Methods of Regulating Adult Entertainment Uses in Amarillo, TX; Report on Adult Oriented Businesses in Austin, TX, (1986), all of which are hereafter collectively referred to as "Reports"; and,

WHEREAS, the Planning Commission finds, based upon the Reports, that Sexually Oriented Businesses have an impact on the neighborhoods surrounding them which is distinct from the impact caused by other commercial uses; and,

WHEREAS, the Benton County Planning Commission finds, based upon the Reports completed by the cities of Phoenix, Indianapolis, and Austin, that the rate of overall crime is greater in areas near Sexually Oriented Businesses; and,

WHEREAS, because of the increased potential for criminal behavior in areas near Sexually Oriented Businesses, the Planning Commission seeks to separate such businesses from areas in which children and other persons who are particularly vulnerable to crime may be expected to frequent; and,

WHEREAS, the Benton County Planning Commission, after review of the report completed for the city of Amarillo, TX, finds that Sexually Oriented Businesses can result in traffic, glare and noise, in excess of that created by other businesses, by virtue of their hours of operation; and,

WHEREAS, the Benton County Planning Commission wishes to minimize the negative impact of traffic, glare and noise generated by the normal operation of Sexually

Oriented Businesses on adjacent properties; and,

WHEREAS, the Planning Commission finds, based upon the Reports completed for the cities of St. Paul, Austin, Los Angeles and Indianapolis, that Sexually Oriented Businesses have a potentially negative impact on the value and marketability of properties adjacent to those businesses; and,

WHEREAS, the Benton County Planning Commission seeks to minimize any potential negative impact on the value and marketability of land adjacent to Sexually Oriented Businesses; and,

WHEREAS, the Reports conclude the adverse impacts which Sexually Oriented Businesses have on surrounding areas diminish as the distance from the Sexually Oriented Businesses increases; and,

WHEREAS, the Benton County Planning Commission intends to provide space for location of Sexually Oriented Businesses in appropriately zoned districts in the county; and,

WHEREAS, on June 28, 1994, a Notice of Public Hearing and Intent to Amend Development Code was published in the official newspaper and mailed to the governing bodies of all towns and municipalities located within Benton County; and,

WHEREAS, on July 14, 1994, the Planning Commission held a public hearing thereon and recommended that the following amendment be enacted; and,

WHEREAS, on July 19, 1994, the Board of County Commissioners held a public hearing thereon, adopted the Findings and recommendations of the Planning Commission, and approved the proposed amendment,

NOW, THEREFORE, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS:

That the following text be added as Section 7.10 of the Benton County Development Code, Ordinance Number 185:

7.10 ADULT USES

7.10.1 For the purposes of this section, the following definitions shall apply:

Adult Uses. Adult uses include adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse facilities, adult enterprises, businesses or places open to some or all members of the public at or in which there is an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas" which are capable of being seen by members of the public.

Adult bookstore. A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audiotape, videotape, or motion picture film if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" or the barter, rental or sale of instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, "Substantial or significant portion of items," for purposes of this ordinance, shall mean more than fifteen (15) percent of usable floor area.

Adult cabaret. A building or portion of a building used for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age, or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult conversation/rap parlor. A conversation/rap parlor which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Adult health/sports club. A health/sports club which excludes minors by reason of age, or if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Adult massage parlor. A massage parlor which restricts minors by reason of age, or which provides the service of "massage," if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

Adult mini-motion picture theater. A building or portion of a building with a capacity for less than fifty (50) persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult motion picture theater. A building or portion of a building with a capacity of fifty (50) or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

Adult steam room/bathhouse facility. A building or portion of a building used for providing a steam bath or heat bathing room used for the purpose of pleasure, bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if such building or portion of a building restricts minors by reason of age or if the service provided by the steam room/bathhouse facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas"

Specified anatomical areas:

- (1) Less than completely and opaquely covered:
 - a. Human genitals;
 - b. Pubic region;
 - c. Buttocks; and,
 - d. Female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy; and
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

7.10.2 LOCATION REQUIREMENTS

(A) Adult Uses shall be permitted in areas zoned B, B-2, I-1, and I-2, provided the following requirements are met:

No adult use shall be located within five hundred (500) feet of:

1. Any area zoned R-1, R-2 or R-3.

2. Any school, as defined in Minnesota Statutes §120.101.
3. Any church, as defined in the Benton County Development Code.
4. Any daycare facility, as defined in the Benton County Development Code, or any residential or nonresidential program, as defined in Minnesota Statutes §245A.02.
5. Any hotel or motel.
6. Any public park.

(B) Adult uses shall not be established or maintained as a permitted, conditional or accessory use in any area other than those described in paragraph (A) above.

7.10.3 AMORTIZATION OF NONCONFORMING USES

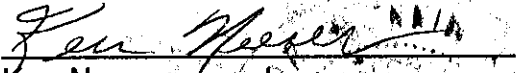
Adult uses established prior to the enactment of Benton County Ordinance 235 shall be permitted and regulated as nonconforming uses until July 31, 1998 at which time such uses shall become unlawful.

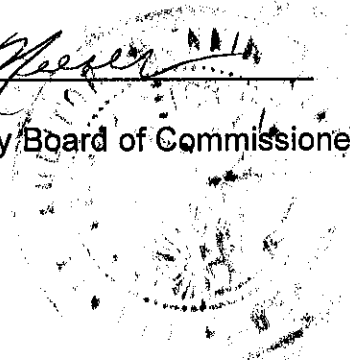
7.10.4 ADDITIONAL BUILDING PLACEMENT RESTRICTIONS

Chapter 7.10, the Adult Use Regulations of the Benton County Development Code, contains standards that are additional to those set forth in other sections of the Code. Minimum setbacks from roads, building bulk limitations, as well as minimum lot and building dimensions, shall be determined by referring to the specific standards set forth in the underlying zoning district (e.g., I-1, I-2, B, B.2). In the event of a conflict between the setbacks listed in this chapter and those listed in other appropriate sections of the Development Code, the most restrictive setback shall apply.

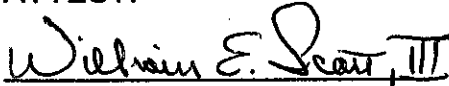
BE IF FURTHER ORDAINED that Benton County Ordinance Number 236 be repealed upon the lawful enactment and publication of this ordinance.

APPROVED AND ADOPTED by the Benton County Board of Commissioners this 19th day of July, 1994.


Ken Neeser
Benton County Board of Commissioners



ATTEST:


William E. Scott III, Clerk