

Date: September 10, 2002

Ord. #3-02

Adult Uses Ordinance

On motion of Commissioner Ellingson, seconded by Commissioner Cummings, the following Ordinance was unanimously passed and adopted by the Mower County Board of Commissioners at a meeting held September 10, 2002 at the Courthouse, Austin, Minnesota.

WHEREAS, The Mower County Board held a public hearing on September 10, 2002 and provided proper legal notice;

NOW, THEREFORE BE IT ORDAINED, that the Mower County Commissioners hereby adopts an Ordinance on adult uses.

Section 1. Background, Intent and Purpose.

(1) The Minnesota State Attorney General prepared a report entitled "Report of the Attorney General's Working Group on Regulation of Sexually Oriented Businesses," dated June 6, 1989. The Report considered evidence from studies conducted in Minneapolis and St. Paul and in other cities throughout the country relating to sexually oriented businesses, also called adult establishments.

(2) The Attorney General's Report, based upon the above referenced studies and the testimony presented to it, concluded "that sexually oriented businesses are associated with high crime rates and depression of property values." In addition, the Attorney General's Working Group ". . . heard testimony that the character of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property." The Report concluded that:

(a) adult uses have an impact on the neighborhoods surrounding them which is distinct from the impact caused by other commercial uses;

(b) residential neighborhoods located within close proximity to adult theaters, bookstores and other adult uses experience increased crime rates (sex-related crimes in particular), lowered property values, increased transiency, and decreased stability of ownership;

(c) the adverse impacts which adult uses have on surrounding areas diminish as the distance from the adult use increases;

(d) studies of other cities have shown that among the crimes which tend to increase either within or in the near vicinity of adult uses are rapes, prostitution, child molestation, indecent exposure and other lewd and lascivious behavior;

(e) the City of Phoenix, Arizona study confirmed that the sex crime rate was on the average 500 percent higher in areas with sexually oriented businesses;

(f) many members of the public perceive areas within which adult uses are located as less safe than other areas which do not have such uses;

(g) studies of other cities have shown that the values of both commercial and residential properties either are diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult uses;

(h) the Indianapolis, Indiana study established that professional real estate appraisers believe that an adult bookstore would have a negative effect on the value of both residential and commercial properties within a one to three block area of the store;

(i) the adverse impacts of adult uses are exacerbated when the uses are located near each other; and

(j) the presence of liquor establishments in the immediate vicinity of adult uses also compounds the adverse impacts on the neighborhood.

(3) The Mower County Board finds that the characteristics of Mower County are similar to those of the cities cited by the Report when considering the effects of adult uses.

(4) The Mower County Board finds, based upon the Report and the studies cited therein, that adult uses will have secondary effects upon certain pre-existing land uses within the County.

Section 2. Definitions.

(1) **Adult Establishments.** An adult establishment is any establishment in which an adult use comprises more than 10 percent of the floor area of the establishment in which it is located, or more than 20% of the gross receipts in any month for the entire business operation.

(2) **Adult Use.** An adult use is any of the activities and businesses described below:

(a) **Adult Use - Body Painting Studio:** An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to the body of a patron when such body is wholly or partially nude in terms of "specified anatomical areas."

(b) **Adult Use - Bookstore:** A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film if such building or portion of a building excludes minors by reason of age, and 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."

(c) **Adult Use - Cabaret:** A building or portion of a building for providing dancing or other live entertainment, if such building or portion of a building excludes minors by virtue of age and if such dancing or other live entertainment is distinguished or

characterized by an emphasis on the presentation, display, or depiction of "specified sexual activities" or "specified anatomical areas."

(d) Adult Use - Car Wash: A wash facility for any type of motor vehicle that allows employees, agents, independent contractors, or other persons to appear in a state of partial or total nudity in terms of "specified anatomical areas."

(e) Adult Use - Companionship Establishment: A companionship establishment which excludes minors by reason of age, and which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(f) Adult Use - Conversation/Rap Parlor: A conversation/rap parlor which excludes minors by reason of age, and 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."

(g) Adult Use - Health/Sport Club: A health or sport club which excludes minors by reason of age, if such club is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(h) Adult Use - Hotel or Motel: A hotel or motel where minors are specifically excluded from patronage by reason of age and where material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(i) Adult Use - Massage Parlor, Health Club: A massage parlor or health club which restricts minors by reason of age, and which provides the services of massage, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(j) Adult Use - Miscellaneous: Any establishment, business, or service whose products or services are substantially or significantly distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(k) Adult Use - Mini-Motion Picture Theater: A building or portion of a building with a capacity for less than 50 persons used for presenting material if such material is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas." The phrase "used for" in this definition means a regular and substantial course of conduct and not a one-time presentation of such material.

(l) Adult Use - Modeling Studio: An establishment whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in "specified sexual activities" or display "specified anatomical areas" while being observed, painted,

painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

(m) Adult Use - Motion Picture Arcade: Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas." The phrase "used for" in this definition means a regular and substantial course of conduct and not a one-time presentation of such material.

(n) Adult Use - Motion Picture Theater: A building or portion of a building with a capacity of 50 or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by reason of age and if such material is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.

(o) Adult Use - Novelty Business: A business which has as a principal activity the sale of devices which stimulate human genitals or devices which are designed for sexual stimulation.

(p) Adult Use - Sauna: A sauna which excludes minors by reason of age, or which provides a steam bath or heat bathing room used for the purpose of bathing, relaxation, or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(q) Adult Use - Steam Room/Bathroom 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/bathroom facility is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(3) Specified Anatomical Areas:

(a) Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(4) Specified Sexual Activities:

(a) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or

torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship, and any of the following sexually-oriented acts of conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zoerasty; or

(b) Clearly depicted human genitals in the state of sexual stimulation, arousal or tumescence; or

(c) Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation; or

(d) Fondling or touching of nude human genitals, pubic region, buttocks, or female breast(s); or

(e) Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons; or

(f) Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being; or

(g) Human excretion, urination, menstruation, vaginal or anal irrigation.

Section 3. Location of Adult Uses. An adult establishment may be located only in industrial zoning districts, but not less than 500 (five hundred) feet from the nearest property line of any land in a residential zone or in a planned unit development or rural service center zone developed for residential use or an existing residential use, or of any day care center, school, establishment with a liquor license, library, park, religious institution, playground or other public recreational facility in any zoning district, whether within Mower County or not. Further, no adult establishment may be located less than 500 feet from any other adult establishment, whether within the limits of Mower County or not.

Measurements shall be made in a direct line between the property lines of the premises where each use is located.

Section 4. Enforcement. The County may enforce any provision of this ordinance by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction.

BE IT FURTHER ORDAINED that the preceding Ordinance is effective immediately upon publication.