

Section 23 Adult Entertainment

AN ORDINANCE PROHIBITING PUBLIC INDECENCY AND PROVIDING A CRIMINAL PENALTY

THE COUNTY BOARD OF DODGE COUNTY ORDAINS:

2301. Purpose.

The purpose of this ordinance is to prohibit public indecency in order to deter criminal activity, to promote societal order and public health, and to protect children.

2302. Findings.

The Dodge County Board of Commissioners makes the following findings regarding the need to prohibit public indecency:

1. Public indecency can increase the incidence of criminal activity, including but not limited to prostitution, disorderly conduct and sexual assault.
2. Public indecency can expose children to an unhealthy and nurtureless environment.
3. Public indecency can present health concerns in places of public accommodation and other public settings.
4. Public indecency can have a potentially negative impact on the value and marketability of property.

2303. Definitions.

The following words and terms when used in this ordinance shall have the following meaning unless the context clearly indicates otherwise:

1. "Nudity" means:
 - a. The appearance of a human bare buttock, anus, male genitals, female genitals, female breast; or,
 - b. A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.
2. "Person" means a natural person twelve (12) years of age or older, including employees or agents of a public accommodation.

3. "Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not for profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirements, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed a public place. A public place shall not include enclosed single sex public restrooms, enclosed single sex motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospital and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor shall it include a person appearing in a state of nudity in a modeling class operated by (1) a proprietary school licensed by the state; a college or university supported entirely or partly by taxation; or (2) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation or an accredited private college.

2304. Public Indecency Prohibited.

A person who knowingly or intentionally in a public setting or place:

1. appears in a state of nudity;
2. fondles the genitals of himself or herself; or
3. fondles the genitals of another person; commits public indecency and is guilty of a misdemeanor under Minnesota law and upon conviction thereof, shall be punished by a fine of up to \$1,000 or by imprisonment for up to 90 days; or both.

2305. Exclusion.

The provisions of Section 2304.1 of this ordinance shall not apply to:

1. any theatrical production performed in a theater, by a professional or amateur theatrical or musical company, which has serious artistic merit; or,
2. a woman breastfeeding a child.

2306. Severability.

If any section, sentence, or clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The County Board hereby declares that it would have adopted the section, sentence, clause, or phrase of this ordinance irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared invalid.

2307. Application.

This Section of the ordinance shall apply to any and all unincorporated areas of Dodge County.

2308. Effective Date.

This ordinance shall be effective immediately upon its passage and publication.

ADOPTED this 17th day of December 2002, by the Dodge County Board of Commissioners.

2309. ADULT USE ORDINANCE

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

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

WHEREAS, on November 19, 2002 a Notice of Public Hearing and Intent to Amend Zoning Ordinance was published in the official newspaper located within Dodge County; and,

WHEREAS, on December 4, 2002 the Planning Commission held a public hearing thereon and recommended that the following amendment be enacted; now,

THEREFORE, BE IT RESOLVED that the Dodge County Planning Commission recommends that the following text be added as Section 23 in the Dodge County Zoning Ordinance.

2310. ADULT USES

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.

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 complete 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.

2311. LOCATION REQUIREMENTS

1. Adult Uses shall be permitted by issuing a Conditional Use Permit in areas zoned Commercial & Industrial, provided the following requirements are met:

No adult use shall be located within 1320 feet (1/4 mile) of:

- a. Any area zoned Rural Residential, Urban Expansion, or Shoreland Overlay.
- b. Any school, as defined in Minnesota Statutes §120.101.

- c. Any church, as defined in the Dodge County Zoning Ordinance.
 - d. Any daycare facility, as defined in the Dodge County Zoning Ordinance, or any residential or nonresidential program as defined in Minnesota Statutes §245A.02.
 - e. Any hotel or motel.
 - f. Any public park.
 - g. Any existing dwelling(s).
2. Adult uses shall not be established or maintained as a permitted conditional or accessory use in any area other than those described in above paragraph.

Section 23, of the Dodge County Zoning Ordinance, contains standards that are additional to those set forth in other sections of the Zoning Ordinance. 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. In the event of a conflict between the setbacks listed in this section and those listed in other appropriate sections of the Zoning Ordinance, the most restrictive setback shall apply.