

BEFORE THE BOARD OF COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

ORDINANCE NO. 421

An ordinance amending the Multnomah County Zoning Code to impose standards upon the establishment, expansion or relocation of adult entertainment businesses within the unincorporated areas of Multnomah County and declaring an emergency.

Multnomah County ordains as follows:

SECTION I. Intent, Purpose and Findings.

1. The Board intends by this amendment to ameliorate the blighting and decay-producing social effects upon residential and residentially-supportive commercial neighborhoods caused by adult entertainment businesses, as defined herein, without intending to impose upon such businesses a restriction of the communication they offer or the right of patrons to have access to such communication.

2. The Board does recognize, and hereby finds, that to regulate such businesses upon the basis of approving or not approving the content of the communication purveyed thereby or to restrict the right of citizens to have access to such communication has been held to violate the protection of free speech afforded by both the United States and Oregon Constitutions and such regulation would be suspect under the law.

3. The Board is advised, and does hereby find, that it is not necessary for the Board to await the actual occurrence of such blighting and decay to residential and residentially-supportive commercial neighborhoods from the presence of adult entertainment businesses to enact regulations of the type herein prescribed, but that the Board can rely upon findings and evidence in support thereof by other urban communities whose investigation into the subject has revealed such phenomena and the need for such regulation. Accordingly, this Board adopts the determination of the Common Council of the City of Detroit, Michigan, when it enacted legislation upheld in Young v. American Mini Theatres, found in 427 U.S. 50, 49 L.Ed.2d 310, 96 S.Ct. 2040 (1976), to the effect that adult entertainment businesses in the form of theaters offering specific adult-oriented material adversely impact the surrounding community unlike other theaters, thereby requiring different treatment under the zoning scheme applicable to the City of Detroit.

4. The Board is aware that Ordinance No. 373, enacted by the Board on April 5, 1983, creating locational standards for adult bookstores and theaters, was declared invalid by the Oregon Land Use Board of Appeals (LUBA) in LUBA No. 83-045 on October 14, 1983. The Board intends to conform this amendment to the LUBA decision concerning regulation of such land uses and others as are included hereinafter.

5. This amendment does comply with standards within the framework plan policies including No. 3 (citizen involvement), No. 9 (economic development), No. 18 (community identity) and No. 19 (community design).

6. The Board finds that adult entertainment businesses, as defined herein, commonly include movie theaters, bookstores, clubs, relaxation parlors, arcades, merchandising shops and the like, all of which in their generic form are permitted uses within specified zoning districts in the County's zoning ordinance. However, the Board finds that when such businesses offer the display of sexually explicit erotic conduct, intended to appeal to the prurient interest, including real or simulated specific sexual activities such as masturbation, intercourse, sodomy, sadomasochistic abuse or stimulated sexual organs, or the sale of materials and services intended to appeal to such interests, there is an impact upon surrounding residential and residentially-supportive commercial land uses resulting in deteriorated property values, increased antisocial and criminal incidents and exposure of residents to blighting effects on the quality of residential life.

7. The Board finds that the deleterious effects of adult entertainment businesses upon surrounding residential and residentially-supportive commercial neighborhoods will be reduced if such businesses are required to locate at distances from one another and from such other prescribed land uses as will discourage any clustering of adult entertainment businesses or the concentration thereof and minimize corresponding effects found by the Board to accompany the intensified presence of adult entertainment land uses.

8. The Board finds that the urbanized areas of unincorporated Multnomah County are substantially similar in character to areas of similar population density within the City of Portland, and that studies conducted by the City of Portland regarding the effects of adult entertainment businesses are relevant and probative in unincorporated Multnomah County.

SECTION II. Definitions.

1. "Adult entertainment business" is a term intended to cover a broad range of activities characterized by live, closed circuit, or reproduced material which has an emphasis on nudity and/or sexual activity. The term adult business also includes the full range of adult theaters and related businesses defined below. Adult businesses generally limit their patrons to persons at least 18 years of age. Adult businesses include the following types of establishments: adult bookstores, adult theaters, adult arcades, adult cabarets, adult paraphernalia shops, and other establishments which feature a combination of activities or merchandise described above which collectively make up a substantial or significant portion of the establishment's activities or merchandise. The term "adult entertainment business" also includes other uses similar to the uses listed above, presenting material for patrons to view (live, closed circuit or reproductions), and/or purchase or rent, a substantial portion of which is characterized by an emphasis on nudity and/or specified sexual activity; and limiting entrance to patrons who are over 18 years of age.

2. "Adult bookstore" is an establishment having, as a substantial or significant portion of its merchandise, such items as books, magazines, other publications, films, video tapes or video discs which are for sale, rent or viewing on premises and which are distinguished by their emphasis on matters depicting specified sexual activities.

3. "Adult theater", is an establishment used primarily for presenting material (either live, closed circuit, or pre-recorded) for observation by patrons therein, having as a dominant theme an emphasis on nudity and/or specified sexual activities.

4. "Adult Arcade" is an establishment offering viewing booths or rooms for one or more persons in which a substantial portion of the material presented (either live, closed circuit or reproduced) is characterized by an emphasis on nudity and/or specified sexual activities.

5. "Adult cabaret" is an establishment having as its primary attraction live exhibitions (either for direct viewing, closed circuit viewing, or viewing through a transparent partition) for patrons, either individually or in groups, where a substantial portion of the material presented is characterized by an emphasis on nudity and/or specified sexual activities.

6. "Adult paraphernalia shop" is an establishment offering as a substantial or significant portion of its merchandise objects which simulate human genitalia and/or objects designed to be used to substitute for or be used with human genitalia while engaged in specified sexual activities.

7. "Nudity" or "nude" means being devoid of a covering for the male or female genitalia consisting of an opaque material which does not simulate the organ covered and in the case of a female exposing to view one or both breasts without a circular covering, centered on the nipple that is at least three inches in diameter and does not simulate the organ covered.

8. "Specified sexual activities" means real or simulated acts of human sexual intercourse, human/animal sexual intercourse, masturbation, sadomasochistic abuse, sodomy or the exhibition of human sexual organs in a stimulated state or the characterization thereof in printed form.

SECTION III. Requirements.

1. No adult entertainment business shall be located within a distance closer than 500 feet from the following zoning districts and land uses:

- a. another adult entertainment business;
- b. the boundary of a residential zone;
- c. a library;
- d. a public or private elementary, junior high or high school;
- e. a park or public playground.

2. The distance referred to herein shall be measured in a straight line, without regard to intervening structures or obstructions, from the closest point of the structure or portion of the structure containing the adult entertainment business to the closest point of the protected district or use.

SECTION IV. Savings Clause.

If any article, section, subsection, subdivision, phrase, clause, sentence, or word in this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, it shall not nullify the remainder of the Ordinance, but shall be confined to the article, section, subsection, subdivision, clause, phrase, sentence or word so held invalid or unconstitutional.

SECTION V. Emergency Declared.

The Board declares an emergency to exist because of the prevalence of land uses regulated hereunder and their imminent threat to the preservation of residential and residentially-supportive commercial neighborhoods from deterioration and blight found by the Board to accompany adult entertainment businesses and therefor this Ordinance shall become effective upon passage and authentication by the County Executive, pursuant to section 5.30 of the Home Rule Charter.

ADOPTED this 26th day of June, 1984, upon the second reading thereof.

(SEAL)

BOARD OF COUNTY COMMISSIONERS

By *Annala Baska*
Presiding Officer

AUTHENTICATED this 27th day of June, 1984.

By *Norman Buchanan*
County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By *Peter Kastig*
Peter Kastig
Assistant County Counsel