

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 374

An ordinance amending Title 6 of the Multnomah County Code to provide for the annual licensing of adult bookstores and adult theaters, establishing standards, fees and the administration therefor, requiring the removal or relocation of unlicensed businesses and establishing penalties.

Multnomah County ordains as follows:

SECTION 2. FINDINGS

1. The County regularly receives a large number of complaints about adult bookstores from residents, neighborhood associations, and businesses. These complaints concern criminal activities, vandalism, public display of activities being conducted on the premises, and late night traffic and noise. The County is advised that the City of Portland receives similar complaints regarding adult theaters located in the City. There are presently no adult theaters in unincorporated Multnomah County.
2. Adult bookstores and theaters are inherently incompatible with residential zones and related uses such as schools and religious institutions because these businesses adversely affect the quality and stability of nearby residential and commercial areas.
3. It is in the best interest of the County to resolve this conflict by separating adult bookstores and theaters from residential zones and related uses. To that end, the Board has prepared, and the Planning Commission has recommended adoption of amendments of the Zoning Ordinance to regulate the location and spacing of these businesses and procedures and criteria for administrative or quasi-judicial action on new locations.
5. The concerns expressed by residents or urban neighborhoods in which adult businesses are allowed have been raised at various public hearings and have been deemed valid. The Board finds that the measures contained herein to avoid

the ill effects of uncontrolled locations and concentrations of adult businesses are a necessary response to these concerns.

6. It is in the best interest of the County to require adult bookstores that cannot meet the new requirement to relocate or cease operations within six months so as to resolve the conflicts between residential uses and these businesses. The six month amortization period has been considered reasonable in other jurisdictions as an appropriate period to allow these businesses to recoup investment costs.

SECTION 2. AMENDMENT.

Title 6 of the Multnomah County Code is amended to add the following:

6.70.10 Title. This Chapter shall be known as the Multnomah County Adult Bookstore and Adult Theater Ordinance, and may be so pleaded and referred to.

6.70.15 Definitions. As used in this Chapter, unless the context requires otherwise:

- A. "Adult Bookstore" means an establishment having as a substantial or significant portion of its merchandise, items such as books, magazines or other publications, films or video tapes which are for sale, rent or viewing on premises, and which are distinguished or characterized by their emphasis on matters depicting specified sexual activities. Any bookstore or similar establishment which bars entry by persons 17 years old or younger is an adult bookstore.
- B. "Adult Theater" means an establishment used primarily for presenting materials for observation by patrons therein, having as a dominant theme, material distinguished or characterized by an emphasis on matters depicting specified sexual activities. Any theater which bars entry by persons 17 years old or younger is an adult theater.
- C. "Specified Sexual Activities" means real or simulated acts of human sexual intercourse, masturbation sadomasochistic abuse, or sodomy; or human genitals in a state of sexual stimulation or arousal.
- D. "Clinic" is a place in which out-patients are given

health related treatment and in which one or more health related professionals practice (LUBA definition of "clinic" from the 1981 case Theland vs. Multnomah County.

6.70.20 Policy and Purpose. The Board has determined that it is necessary to provide for the annual licensing of adult businesses and adult theaters, based upon the findings of Section 1 of Ordinance No. 373 (PC 1-83, Attachment B) and Section 1 of this ordinance, and to provide for the administration and enforcement of this ordinance in order to protect the health, safety, and welfare of the people of Multnomah County and the use and values of their properties; this Chapter shall be liberally construed to those ends.

6.70.25 Administration and Enforcement.

- A. The Sheriff of Multnomah County shall be responsible for the administration and enforcement of this ordinance.
- B. The Sheriff may adopt rules necessary to the administration and enforcement of this Chapter.

6.70.30 License Required. It shall be unlawful for any person to conduct an adult bookstore or adult theater business in unincorporated Multnomah County without a current annual license.

6.70.35 Standards for Issuance of License. The Sheriff shall issue an annual license upon a finding, as a result of inspection and investigation, that:

- A. An accurate and complete application has been filed, and fees paid; and
- B. That the Director of the Department of Environmental Services has certified that the applicable requirements of Ordinance No. 373 (PC 1-83, Attachment B), and of the building, plumbing and other codes are satisfied.

6.70.40 Denial or Revocation of License

- A. The Sheriff may initiate denial or revocation of a license upon finding that a licensee fails to meet the requirements of this Chapter or is operating in violation of this Chapter or existing laws or ordinances.
- B. Any person whose license has been denied or revoked

may, after 30 days from the date of the denial or revocation, reapply upon the prepayment of a \$35 application fee. That sum shall not be credited to the applicant's annual license fee.

- C. The Sheriff shall, upon finding that a violation of this Chapter has occurred, provide written notice to the licensee of the violation, and shall demand that the violation, if continuing, be corrected within 30 days from the date of the notice. The notice shall describe with reasonable certainty, the violation and the action necessary to correct the violation.
- D. The licensee shall notify the Sheriff when corrective action under subsection (C) of this section has been taken. The Sheriff shall then make an inspection, if necessary.

6.70.45 Unlicensed Business Removal or Relocation.

- A. Any adult bookstore or adult theater remaining unlicensed for an uninterrupted period of six months after the effective date of this Chapter shall be deemed a violation of this Chapter, and shall be removed or be relocated so as to comply with the requirements of MCC 6.70.10 through 6.70.65.
- B. In the event that two or more "adult businesses" are close together and all but one are required to be removed under this Ordinance the one legally established for the longer time has superior rights to remain.

6.70.50 Fees; License Renewals.

- A. The annual license fee shall be \$180.
- B. The fee shall be due and payable upon initial license application and thereafter on the first day of April each year.
- C. The license fee shall be prorated to the full month for each full or partial month remaining until the next April first.
- D. Revenue from license fees shall be used to off-set the costs of administration and enforcement of MCC 6.70.10 through 6.70.65, and for such other purposes as the Board may determine in the budget approval process.

6.70.55 Appeals and Hearings; Review

- A. A person receiving notice of an action by the Sheriff under this Chapter may request a hearing by filing a written request for hearing with the Sheriff within 30 days of receipt of the notice. The request shall set forth reasons for the hearing and the issues to be heard.
- B. The Sheriff shall, upon receipt of request for hearing, promptly notify the Board, and the Board shall set a time and place for hearing not more than 60 days from the date of receipt of request for hearing.
- C. The Board shall give notice to the person requesting hearing as to the time and place for the hearing not less than 30 days prior to the hearing.
- D. The person requesting the hearing, and the Sheriff may make argument, cross-examine witnesses, submit testimony, rebuttal evidence and written documentation, and submit briefs on matters pertinent to the issue to be determined.
- E. All hearings shall be recorded in a manner which will allow for a written transcription to be made and all materials submitted by the person requesting hearing, and the Sheriff shall be retained by the Board for a period of at least two years.
- F. The Board shall issue its order determining the question within 30 days from the date of the hearing, or any continuance not to exceed 30 days, and shall mail a copy of the order to the person requesting the hearing.
- G. Review of the action of the Board shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 to 34.100; provided, however, that any aggrieved person may demand relief by writ of review.

6.70.60 Conformance With Other Law. This Chapter shall in no way be a substitute for, nor eliminate the necessity of conforming with any and all State laws and rules and other County ordinances which relate to the activities regulated by this Chapter.

6.70.65 Penalties. Any person convicted of a violation of MCC 6.70.10 through 6.70.60 shall be punished by a term of not more than

six months in the Multnomah County Jail, or by a fine of not more than \$1,000, or both.

6.70.70 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.

ADOPTION

This ordinance being necessary for the health, safety and general welfare of the people of Multnomah County, shall take effect on May 5, 1983, according to Section 5.50 of the Charter of Multnomah County.

Adopted this 5th day of April, 1983, being the date of its second reading before the Board of County Commissioners of Multnomah County, Oregon.

BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY, OREGON

(SEAL)

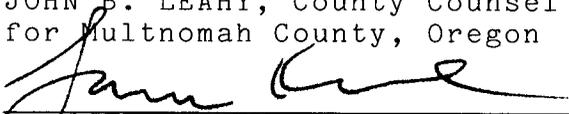
By 
Gordon Shadburne
Presiding Officer

Authenticated by the County Executive on the 6th day of April 1983.


Dennis Buchanan
County Executive

APPROVED AS TO FORM:

JOHN B. LEAHY, County Counsel
for Multnomah County, Oregon


Laurence Kressel
Chief Deputy County Counsel