

AN ORDINANCE AMENDING THE KENDALL COUNTY  
ZONING ORDINANCE PERTAINING TO  
AND REGULATING ADULT USE  
IN KENDALL COUNTY

WHEREAS, it is necessary and proper for the purpose of promoting the public health, safety, morals, comfort and general welfare of the residents of the County of Kendall, that adult uses be confined to certain categories of property; and,

WHEREAS, it is necessary and proper for maintaining and conserving the values of property throughout the County that adult uses of property be confined to certain categories of property; and,

WHEREAS, the regulation of Adult Uses is necessitated by legitimate interests concerning the proper County planning within the County of Kendall; and,

WHEREAS, the corporate authorities of the County of Kendall have been vested with the authority and power to regulate and designate the location and use of structures within the County by the legislature pursuant to Chapter 34, Paragraph 3151 of the 1983 Illinois Revised Statutes; and,

WHEREAS, it is recognized that adult uses because they generally operate twenty-four hours a day, and have high traffic volumes, especially in the late evening and early hours of the morning; and operational characteristics which make them incompatible with residential and other business uses;

WHEREAS, based upon the nature of the adult use business in Kendall County restricting adult uses to industrially zoned areas would not restrict the number of adult use establishments that could be located throughout the County; and,

WHEREAS, the typical patron of an adult use lives ten miles from and drives to such establishment and therefore, limiting adult uses to industrially zoned location would not have the effect of restricting accessibility to adult establishments; and,

WHEREAS, it is not the intent or purpose of the corporate authorities of the County of Kendall to prohibit constitutionally protected behavior within the County of Kendall; and,

WHEREAS, the designation of adult uses to certain categories of property within the County imposes only restrictions which are necessary to serve the interest of the County of Kendall in reducing the adverse effects of adult businesses; and,

WHEREAS, premises which are licensed to serve alcoholic beverages are regulated by the Alcoholic Liquor Ordinance of Kendall County, and, therefore, regulation of such adult uses is not necessary under the Kendall County Zoning Ordinance; and,

WHEREAS, the zoning regulations of adult use establishments is recognized as a valid means of land use control; and,

WHEREAS, the Illinois Supreme Court has sanctioned the application of the special use for those uses which are potentially incompatible with the permitted uses in a given zone; and,

WHEREAS, the United States Supreme Court has sanctioned an adult bookstore as comprising an establishment having as a substantial or significant proportion of its stock in trade books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" or an establishment with a segment or section devoted to the sale or display of such material; and,

WHEREAS, the United State's Supreme Court in the case of Young v. American Mini Theater, Inc., (1976) 427 U.S. 50, 96 S.Ct. 2440; 49 L.Ed. 2d, has held that ordinances which restrict the operation of any "adult" movie theater, bookstore and similar establishments to particular locations are constitutionally valid; and,

NOW, THEREFORE, BE IT ORDAINED that an Ordinance known as the Kendall County Zoning Ordinance is amended as follows to provide for the regulation of adult uses within the County:

1. The existing section 3.00 of the Kendall County Zoning Ordinance is hereby amended to include the following definitions. The following words or terms, whenever they occur in the Kendall County Zoning Ordinance shall be interpreted as herein defined, unless the context otherwise requires:

"ADULT BOOK STORE"

An establishment having a majority of its public physical floor space occupied by books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "Specified Sexual activities" or "Specified Anatomical Areas."

"ADULT MINI MOTION PICTURE THEATERS"

An enclosed building with a capacity for less than 50 persons, or an enclosed building with booths, stalls, or other fully or partially partitioned areas with an intended capacity for less than 10 persons used for presenting materials viewing devices distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" for observation by patrons therein. Adult mini motion picture theaters include but are not limited to projection booths, television monitors, television screens, coin operated video devices and other viewing devices.

"ADULT MOTION PICTURE THEATERS"

An enclosed building with a capacity of 50 or more persons having viewing devices used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" for observation by patrons therein.

"ADULT USE"

A use which involves either wholly or partially an activity distinguished or characterized by its emphasis on matters depicting, describing, relating to specified sexual activities on specified anatomical areas, including but not limited to the operation of adult bookstores, adult mini-motion picture theaters, adult motion picture theaters, adult video theaters, video arcades, massage parlors, and massage schools.

"BOOK AND STATIONARY STORE"

An establishment dealing in books, printed materials and stationary supplies which is not an Adult Book Store.

"MASSAGE"

The performance of manipulative exercises upon the human body of another by rubbing, kneading, stroking or tapping with the hand or hands, or with any mechanical or bathing device with or without supplementary aids.

"MASSAGE PARLOR"

Any place or establishment where a message is made available.

"MESSAGE SCHOOL"

Any place or establishment or facility which provides instructions in the theory, method and practice of massage.

"SPECIFIED SEXUAL ACTIVITIES" for the purpose of this section are defined as:

- a. Human genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse, fallatio or sodomy;
- c. Fondling, kissing, or other erotic touching of specified anatomical areas.

"SPECIFIED ANATOMICAL AREAS" are defined as:

- a. Less than completely or opaquely covered; (1) human genitals, (2) pubic region; (3) buttock, and (4) female breast below a point immediately above the top of the areola;
- b. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

"VIEWING DEVICE"

Any device, whether or not coin operated which projects or displays visual images of moving and stationary objects, including but not limited to magic lanterns, films or slide projector or other light projection device, and video screens, cable receivers, or any electronic device which receives electromagnetic waves or electronic signals and displays the reconverted images on a screen.

" THEATER"

An establishment used to observe films and other visual material which is neither an Adult Motion Picture Theater nor an Adult Mini-Motion Picture Theater.

2. The Kendall County Zoning Ordinance, § 4.00 et seq. is hereby amended to add as § 4.17 the following:

4.17 Regulated Uses

- a. The following uses are deemed to be regulated uses:
  - Adult Book Store
  - Adult Motion Picture Theater
  - Adult Mini-Motion Picture Theater
  - Massage Schools
  - Massage Parlors

For the purposes of determining when a regulated use is allowed as a permitted or special use under this ordinance, no regulated use shall be considered to be a retail business, service businesses, recreational or social facility, school, accessory use, or general and use.

b. Restrictions on Location of Regulated Uses.

No regulated use, either as a permitted use or as a special use, shall be maintained:

1. within 1,000 feet of the property line of another;
2. 500 feet of any of the following zoning districts of provided for under this ordinance: R-1, R-2, R-3, R-4, R-5, R-6, R-7, B-1, B-2, O, R; nor
3. within 1,000 feet of a zoned area or district lying within a municipality and zoned for any kind of residential, business or commercial office, or office-research use under an ordinance of that municipality.

3. Section 10.01 of the Kendall County Zoning Ordinance Special Uses, II- Light Industrial District, is hereby amended by adding the following:

1. Regulated Uses subject to the requirements of § 4.17.

4. Section 10.02 of the Kendall County Zoning Ordinance, Permitted Uses, General Industrial District, is hereby amended by adding the following:

1. Regulated Uses, subject to the requirement of § 4.17.

5. Section 13.07 of the Kendall County Zoning Ordinance, Ordinance Findings, is hereby amended by adding the following after the sentence "The findings shall specify the reason or reasons for granting the Special Use;"

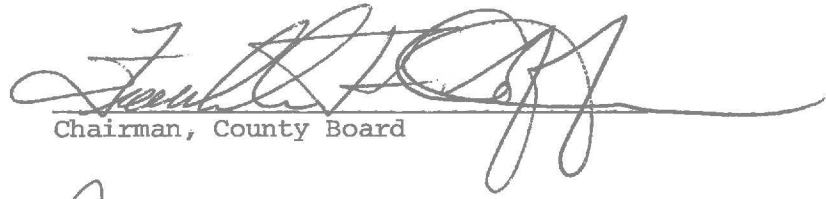
The County Board shall act to grant, deny, or amend the recommendations for every Special Use pertaining to a regulated use within 30 days of the date of those recommendations.

6. The foregoing amendments to the Kendall County Zoning Ordinance shall be subject to all provisions of that ordinance, as presently existing or as may hereafter be amended, which are not specifically amended by or in conflict with such amendments.

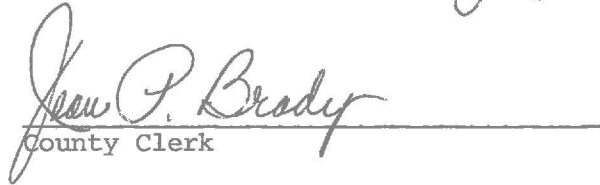
7. None of the provisions of this amendatory ordinance shall be construed to permit any use or activity which is presently or may be in the future prohibited by law.

8. This amendatory ordinance shall be in full force and effect from the date of its adaption by the County Board.

Dated at Yorkville, Illinois, this 9<sup>th</sup> day of December 1986.

  
Chairman, County Board

ATTEST:

  
County Clerk

Ayes:  
Absent:  
Nays: