CITY OF DANUBE
ORDINANCE NO. 91

OFFICIAL TITLE AND SUMMARY

I. Title. AN ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES AND ADULT USES AND AMENDING SECTION 4 OF DANUBE CITY ORDINANCE CODE ORDINANCE #47 ENTITLED "ZONING"

II. Summary. THE CITY COUNCIL OF THE CITY OF DANUBE DOES HEREBY ORDAIN AS FOLLOWS:

1) The Ordinance describes and defines Sexually Oriented Businesses or Adult Use Businesses as Adult Use-Principal and Accessory Use; adopts provisions relative to existing Sexually Oriented Businesses; and amends Danube City Ordinance #47 to allow Sexually Oriented Business and Adult Uses in compliance with Ordinances #87, # 90 , and this Ordinance.

2) This Ordinance repeals Danube City Ordinance #89, an Interim Ordinance Temporarily Prohibiting All Adult Entertainment Within the City of Danube, effective thirty (30) days after the passage and publication of this Ordinance.

III. Notice. THIS TITLE AND SUMMARY HAVE BEEN PUBLISHED TO CLEARLY INFORM THE PUBLIC OF THE INTENT AND EFFECT OF THE CITY OF DANUBE'S ORDINANCE ON THE MORATORIUM AND PROHIBITION OF ADULT ENTERTAINMENT USES AND ESTABLISHMENTS. A COPY OF THE ORDINANCE, IN ITS ENTIRETY IS AVAILABLE FOR INSPECTION BY ANY PERSON DURING REGULAR OFFICE HOURS AT THE OFFICES OF THE CITY CLERK OF THE CITY OF DANUBE, 400 MAIN STREET, DANUBE, MN 56230.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF DANUBE THE 27th DAY OF December, 1995.

Don Lothert

Don Lothert - Mayor

ATTEST:

Veva Mittlestadt

Veva Mittlestadt - City Clerk

CITY OF DANUBE

ORDINANCE NO. 91

AN ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES AND ADULT USES AND AMENDING SECTION 4 OF DANUBE CITY ORDINANCE CODE ORDINANCE #47 ENTITLED "ZONING"

THE CITY COUNCIL OF THE CITY OF DANUBE DOES ORDAIN:

Section 1. Regulation of Sexually Oriented Businesses and Adult Uses.

1.1 Purpose and Intent. The regulations of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent nor effect of this Code to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. It is the purpose of this Code to regulate Sexually Oriented Businesses and Adult Uses to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to:

(a) Prevent additional criminal activity within the City;

(b) Prevent deterioration of neighborhoods and its consequent adverse effect on real estate values of properties within the neighborhood;

(c) To locate Sexually Oriented Businesses away from schools, churches, residential properties, day care centers, parks, commercial recreational facilities for minors, and businesses selling alcoholic beverages;

(d) Prevent concentration of Sexually Oriented Businesses within certain areas of the City;

(e) Prevent the spread of sexually transmitted diseases.

1.2 General Provisions. Sexually Oriented Businesses or Adult Uses as defined in Section 2.1 of Danube City Ordinance #90 shall be subject to the following general provisions:

(a) Activities defined as obscene by Minnesota Statute §617.241 are not permitted and are prohibited.

(b) Sexually Oriented Businesses and Adult Uses, either principal or accessory, shall be prohibited from locating in any building which is also utilized for residential purposes.

(c) Sexually Oriented Businesses and Adult Uses, either principal or accessory, shall be prohibited from locating in any place which is also used to dispense, consume or sell alcoholic beverages.

(d) A Sexually Oriented Business or Adult Use which does not qualify as an accessory use shall be classified as an adult use-principal.

(e) Sexually Oriented Businesses or Adult Use classified as an adult use-principal may not locate or operate within the City without first obtaining a Sexually Oriented Businesses Adult Use Principal License as required by Ordinance #__90__ of this Code.

1.3 Adult Use - Principal.

(a) Sexually Oriented Businesses classified as adult use-principal shall be permitted uses in the Commercial District only if located at least three hundred (300) radial feet, as measured in a straight line from the closest point of the property line of the building upon which the adult use-principal is located to the property line of:

(1) Property zoned as Residential District;

(2) A licenses day care center;

(3) Public or private educational facilities including preschools, elementary, junior high or senior high schools;

(4) A public library;

(5) A public park;

(6) Another adult use, principal;

(7) Churches;

(8) Commercial recreational facilities if the majority of its customers consist of minors;

(9) Specialty schools if the majority of its students consist of minors;

(10) Businesses selling alcoholic beverages.

(b) Adult use-principal activities, as defined by this Code shall be classified as one use. Two or more Sexually Oriented Businesses or Adult Uses-Principal shall not be located in the same building or upon the same property.

(c) Sexually Oriented Businesses shall adhere to the following signing regulations:

(1) Shall comply with the requirements of size and number for the district in which they are located.

(d) Adult use-principal activities shall be prohibited at any public show, movie, caravan, circus, carnival, theatrical, or other performance or exhibition presented to the general public where minors are permitted.

1.4 Adult Uses - Accessory.

(a) Adult use-accessory shall:

(1) Comprise no more than ten (10) percent of the floor area of the establishment in which it is located.

(2) Comprise no more than twenty (20) percent of the gross receipts of the entire business operation.

(3) Not involve or include any activity except the sale or rental of merchandise.

(b) Adult use-accessory shall be restricted from and prohibit access to minors by the physical separation of such items from areas of general public access. Business owners shall make every reasonable precaution to limit access to minors and shall comply with Minnesota Statute §617.293 and any amendments thereto.

(c) Adult use-accessory shall be prohibited from both internal and external advertising and signing of adult materials and products.

1.5 Non-conforming Sexually Oriented Businesses. Adult Use-Principal or Accessory. Sexually Oriented Businesses and Adult Uses which are classified as legal non-conforming uses may continue in accordance with the provision of

this Code except that any such non-conforming use shall be terminated and become illegal twelve (12) months after the effective date of this Ordinance. To the extent possible, the City shall attempt to identify all such uses which become classified as non-conforming under the provisions of this subdivision and shall notify the property owners and operators of such uses in writing of the change in status and the terms and conditions which apply. The owner of any property or business on which an adult use is located may apply to the City Council for an extension of the termination date. Any such application shall be in writing and be received by the City at least thirty (30) days prior to the termination date. Failure to submit a timely extension application shall constitute a waiver of the right to request an extension. The extension may be granted if the applicant demonstrates that the amortization period is an unreasonable burden upon the business and does not allow adequate time to recover a reasonable return upon the business investment. The application shall have the burden of proof to demonstrate hardship with the established termination date and also the time required for an extension. In making its decision, the City Council may consider any factor relevant to the issue, including, but not limited to:

(1) The degree or magnitude of threat to the public health, safety, and general welfare posed by the secondary impacts of the operation.

(2) The length of time that the adult use has been operating.

(3) The ease by which the property could be converted to a conforming use.

(4) The nature and character of the surrounding neighborhood.

(5) The value and condition of the improvements on the property.

(6) The amount of the applicant's investment in the business.

(7) The amount of investment already realized.

(8) The cost of relocating the adult use.

Section 2. That Section 4 of Danube City Ordinance #47 entitled "Zoning" is hereby amended to read as follows:

Commercial District. Conforming Uses. In the commercial district, unless otherwise provided in this Ordinance, no building or premises shall be used, and no building shall hereafter be or erected or structurally altered except for one or more of the following uses:

(1) All uses permitted in Section 3.

(2) Retail commercial merchandising establishments such as grocery stores, dry goods and department stores, drug stores, bakeries, candy and ice cream shops, jewelry stores, and other similar enterprises.

(3) Public garages, gasoline filling stations, battery service stations, tire service stations.

(4) Licenses places of amusement, restaurants, offices, financial institutions, telephone and telegraph businesses, newspaper or job printing, book binding, dress making shops, shoe repairing or dyeing shops.

(5) Carpenter, furniture repairing or upholstery shop, electrical metal working, tinsmithing, plumbing, water, gas or steam fitting shop, paint or paper hanging shop.

(6) Mortuaries and funeral homes, but only as special permit of the village council.

(7) Any use of the same general character as the uses hereinbefore specifically permitted, provided such business or use is not obnoxious by reason of omission of dust, odor, gas, smoke or noise or by reason of being an excessive fire hazard.

(8) Creameries, milk distributing stations, bottling works, laundries.

(9) Storehouses, express and hauling office or station, ice plants, coal or lumber sales or storage yards, blacksmith shop, grain elevators and storage warehouses, railroad yards and roundhouses.

(10) Gasoline and oil bulk stations and distributing plants.

(11) Contractors' plants and accessory storage yards, but this shall not be so construed as to permit automobile or general junk yards.

(12) Sexually Oriented Businesses or Adult Uses in compliance with Danube City Ordinances #87, # 90 , and # 91 .

Section 3. Repeal of Danube City Ordinance #89, AN INTERIM ORDINANCE TEMPORARILY PROHIBITING ALL ADULT ENTERTAINMENT WITHIN THE CITY OF DANUBE. Thirty (30) days after publication of this Ordinance, Danube City Ordinance #89 is repealed.

Section 4. Effective Date. This Ordinance shall be effective thirty (30) days after its passage and publication.

Passed and adopted this 27th day of December, 1995.

Don Lothert
President - City Council

ATTEST:

Vera Mittelstadt
City Clerk

The foregoing Ordinance is approved this 27th day of December, 1995.

Don Lothert
Don Lothert, Mayor