

**CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

ORDINANCE NO. 97-198

**AN ORDINANCE ADOPTING REGULATIONS TO GOVERN SEXUALLY ORIENTED
USES IN THE CITY OF LAKE ELMO**

The City Council of the City of Lake Elmo hereby ordains that Section 1336 is hereby added to read as follows:

SECTION 1336 – ADULT ESTABLISHMENTS

1336.01 Findings and Recitals.

(A) On February 20, 2007, the City Council enacted an interim ordinance (Ordinance No. 97-189) creating a moratorium on the establishment of adult uses within the City and directing the City Staff to conduct a study to determine how best to regulate such uses. The scope of the study was to include, but not be limited to, the following:

- (1) The particular zoning districts in which adult establishments should be allowed as either permitted or conditional uses;
- (2) The density and concentration of adult uses; and,
- (3) The effect of adult uses on other uses in the surrounding area.

Upon completion of the study, the matter was to be considered by the Planning Commission for its review and recommendation to the City Council.

The study has been completed and the Planning Commission has reviewed the study and has passed its recommendation to the City Council for review. The City Council has also reviewed the staff's study and duly considered the recommendation of the Planning Commission.

(B) The staff's study contained copies of certain reports specifically including a report which was prepared by the State Attorney General entitled "Report of the Attorney General's Working Group on Regulation of Sexually Oriented Businesses", dated June 6, 1989 (the "Report"). The Report considered evidence from studies conducted in Minneapolis, St. Paul, and many other cities throughout the country relating to sexually oriented businesses. The City Staff, Planning Commission, and City Council have reviewed the Report.

(C) The Report, based upon the above referenced studies and the testimony and evidence it concluded, among other things, "... that sexually oriented businesses are associated with high crime rates and depression of property values. ..." Prior to the issuance of the Report, the State Attorney General's Working Group also heard testimony that "... the character of a neighborhood can dramatically change when there is a concentration of sexually oriented businesses adjacent to residential property." The Report found and concluded that:

- (1) Adult uses have an impact on the neighborhoods surrounding them, which is distinct from the impact caused by other commercial uses;
- (2) Residential neighborhoods located within close proximity to adult theaters, bookstores and other adult uses experience increase crime rates (sex-related crimes in particular), lowered property values, increased transiency, and decreased stability of ownership;
- (3) The adverse impacts which adult uses have on surrounding areas diminish as the distance from the adult uses increases;
- (4) Studies of other cities have shown that among the crimes which tend to increase either within or in the near vicinity of adult uses are rapes, prostitution, child molestation, indecent exposure and other lewd and lascivious behavior;
- (5) The City of Phoenix, Arizona study confirmed that the sex crime rate was on the average 500 percent higher in areas with sexually oriented businesses;
- (6) Many members of the public perceive areas within which adult uses are located as less desirable than other areas which do not have such uses;
- (7) Studies of other cities have shown that the values of both commercial and residential properties either are diminished or fail to appreciate at the rate of other comparable properties when located in proximity to adult uses; and
- (8) The Indianapolis, Indiana study established that professional real estate appraisers believe that an adult bookstore would have a negative effect on the value of both residential and commercial properties within a one to three block area of the store.

(D) The Lake Elmo City Council finds the characteristics of Lake Elmo are substantially similar to those of the cities cited by the Report when considering the affects of adult uses.

- (E) The Lake Elmo City Council finds, based upon the Report and the studies cited therein, that adult uses may have adverse secondary effects upon certain pre-existing land uses within the City, and that the public health, safety, and general welfare will be promoted if the City adopts regulations regarding adult uses.
- (F) The Lake Elmo City Council finds that the adverse secondary effects tend to diminish if adult uses in the City are regulated by locational and licensing requirements.
- (G) It is not the intent of the City to prohibit adult uses from having a reasonable opportunity to locate within the City.
- (H) The City's current zoning ordinance does not address such adult uses, which have been found by other municipalities to cause similar adverse secondary effects. Specifically, the City Council is concerned that the City's zoning ordinance may be inadequate in its scope and in its restrictions to accomplish the purpose for which it was intended.
- (I) In addition to the proper zoning classification of such uses, there are a number of significant planning and land use issues pertaining to the regulation of such uses, including the following:
 - (1) The particular zoning districts in which such uses should be allowed as either permitted or conditional uses.
 - (2) The concentration and density of such uses in the City and its neighborhoods.
 - (3) The effect of such uses on other uses in the surrounding area.

1336.02 Definitions. For the purposes of this ordinance, the following terms shall be defined as set forth below:

(A) Adult Establishment. Adult Establishment means:

- (1) Adult Patronage. Any business that is conducted exclusively for the patronage of adults and that excludes minors from patronage, either by operation of law or by the owners of the business;
- (2) Receipts; Floor Area; Types of Merchandise. Any business that (i) derives 25% or more of its gross receipts during any calendar month from, or (ii) devotes 25% or more of its floor area (not including storerooms, stock areas, bathrooms, basements, or any portion of the business not open to the public) to items, merchandise, devices or other materials distinguished or characterized by an emphasis on material depicting, exposing, describing,

discussing, or relating to Specified Sexual Activities or Specified Anatomical Areas; or

(3) Adult Usage. Any business that engages in any Adult Use.

(B) Adult Uses, Generally. "Adult Uses" include adult book stores, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult steam room/bathhouse/sauna facilities, adult companionship parlors, adult health/sport clubs, adult cabarets, adult novelty businesses, adult motion picture arcades, adult modeling studios, adult hotels/motels, adult body painting studios, and other premises, enterprises, or establishments, 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, heard, or smelled by members of the public. Activities and matters classified as obscene as defined by Minnesota Statutes 617.241 are not included as an Adult Use and are prohibited in the City of Lake Elmo. Adult Uses include but are not limited to the following:

- (1) Adult Body Painting Studio. An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of "Specified Anatomical Areas."
- (2) Adult Bookstore. A building or portion of a building used for the barter, rental or sale of items consisting of printed matter (specifically included, but not limited to, greeting cards), pictures, slides, records, audio tape, videotape or motion picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public excluding any minor by reason of age or 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.
- (3) 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.
- (4) Adult Companionship Establishment. A companionship establishment which excludes minors by reason of age, or which provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.

- (5) 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.
- (6) Adult Health/Sport Club. A health/sport 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.
- (7) Adult Hotel or Motel. Adult hotel or motel means a hotel or motel from which minors are specifically excluded from patronage by reason of age and wherein material is presented which is distinguished or characterized by an emphasis on matter depicting, describing or relating to Specified Sexual Activities or Specified Anatomical Areas.
- (8) Adult Massage Parlor, Health Club. A massage parlor or health club which restricts minors by reason of age, or which provides the services of massage, if such service is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- (9) Adult Motion Picture Theater. A building or portion of a building used for presenting material if such building or portion of a building as a prevailing practice excludes minors by reason of age, or if such material is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas for observation by patrons therein.
- (10) Adult Modeling Studio. A modeling studio which restricts minors by reason of age, or whose major business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers, or who engage in Specified Sexual Activities or display Specified Anatomical Areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.
- (11) Adult Motion Picture Arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled or operated, still or motion picture machines, projectors or other image-producing devices (including, but not limited to images from CD-ROM and/or the Internet) are maintained to show images to five or few persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing Specified Sexual Activities or Specified Anatomical Areas.
- (12) Adult Novelty Business. An establishment or business engaged in the sale of novelty items which:

- (a) Restricts minors by reason of their age; or
 - (b) Has as its principal activity the sale of devices and other products which:
 - 1. Stimulate human genitals or devices which are designed to create sexual stimulation or excitement; or,
 - 2. Are otherwise designed to stimulate or arouse sexual excitement in any manner whatsoever, specifically including, but not limited to, items such as inflatable dolls or similar devices; or,
 - 3. Is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- (13) Adult Sauna. A sauna which excludes minors by reason of age, or which provides 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 the service provided by the sauna is distinguished or characterized by an emphasis on Specified Sexual Activities or Specified Anatomical Areas.
- (14) Adult Steam Room/Bathhouse Facility. A building or portion of 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.
- (C) Specified Anatomical Areas. "Specified Anatomical Areas" are defined as follows:
- (1) Female. Less than completely and opaquely covered human genitals, pubic region, buttock, anus, or female breast(s) below a point immediately above the top of the areola; and,
 - (2) Male. Human male genitals even if completely and opaquely covered.
- (D) Specified Sexual Activities. "Specified Sexual Activities" are defined as follows:
- (1) General Sexually Oriented Acts. Actual or simulated:
 - (a) Sexual intercourse;
 - (b) Oral copulation;

- (c) Anal intercourse;
 - (d) Oral-anal copulation;
 - (e) Bestiality;
 - (f) Direct physical stimulation of unclothed genitals or the female breast;
 - (g) Flagellation or torture in the context of a sexual relationship;
 - (h) The use of excretory functions in the context of a sexual relationship; or,
 - (i) Any of the following sexually-oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty; or
- (2) Genitalia. Any clear depiction of human genitals in the state of sexual stimulation, arousal or tumescence.
- (3) Certain Uses and Activities. Use of human or animal ejaculation, sodomy, oral copulation, coitus, or masturbation.
- (4) Touching. Fondling or touching of nude human genitals, public region, buttocks, or female breast.
- (5) Nature of Clothing, or Lack Thereof. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person.
- (6) Animals. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human being.
- (7) Irrigation. Human excretion, urination, menstruation, vaginal irrigation.
- (8) Minor. An individual under eighteen (18) years of age.

1336.03 Regulation.

(A) Location Restrictions. The restrictions set forth below shall apply to the location of Adult Establishments.

- (1) No Adult Establishment shall be operated or maintained except within the BP commercial zoning district pursuant to a Conditional Use Permit.

- (2) No Adult Establishment shall be operated or maintained on a parcel within 1350 feet of any residential district, public or private school with students primarily under the age of 18, or public facilities, or religious place of worship, or within 500 feet of another adult establishment. Distance shall be measured from the closest point of the lot lines of subject uses.
 - (3) No Adult Establishment incorporating live performances shall be operated or maintained on a parcel within fifty (50) miles of another adult establishment that provides space for live performances. Distance shall be measured from the closest point of the lot lines of subject uses.
- (B) Sign Requirements. In addition to the requirements of sign regulations of the Development Ordinance (and as subsequently amended), all businesses regulated under this chapter shall comply with the following sign requirements:
- (1) All signs shall be wall signs.
 - (2) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or in any area where they can be viewed from a public street or sidewalk in front of the building.
 - (3) Window areas shall not be covered or made opaque in any way.
 - (4) No sign shall be placed in any window.
 - (5) A one square foot sign shall be placed on the door of the establishment to state hours of operation and admittance is limited to adults only.
 - (6) Sign content shall be limited to text only. Text is limited to the name of the business and its address.
 - (7) Where any provisions of this section conflict with Sign Ordinance, the provision that is more stringent shall be applied.
- (C) Physical Layout of Business. Any Adult Establishment having available for customers, patrons or members, a booth, room or cubicle for the private viewing of any Specified Anatomical Areas or Specified Sexual Activities must comply with the following requirements:
- (1) Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the Adult Establishment and shall be unobstructed by any door, lock or other control type devices.
 - (2) Every booth, room or cubicle shall meet the following construction requirements:

- (a) Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.
 - (b) Have at least one side totally open to a public lighted aisle so there is an unobstructed view at all times of anyone occupying the area.
 - (c) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, non-absorbent, smooth textured and easily cleanable.
 - (d) The floor must be light colored, non-absorbent, smooth textured and easily cleanable.
 - (e) The lighting level of each booth, room or cubicle when not in use shall be a minimum of 10 foot candles at all times, as measured from the floor.
- (3) Only one individual shall occupy a booth, room or cubicle at any time. No occupant of a booth, room or cubicle shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

(D) License Required.

- (1) From and after the effective date of this ordinance no Adult Establishment shall be operated or maintained in the City of Lake Elmo without first obtaining a license to operate issued by the City.
- (2) A license may be issued for only one Adult Establishment located at a fixed and certain place. Any person, partnership or corporation which desires to operate more than one Adult Establishment shall have a separate license for each such business.
- (3) No license or interest in a license may be transferred to any person, partnership, corporation, or other entity.
- (4) Only one licensed adult establishment may be operated:
 - (a) Within a single building; or,
 - (b) Upon a single tax parcel.
- (5) No liquor license shall be issued for an adult establishment.

(E) Application for License.

- (1) Any person, partnership or corporation desiring to secure a license shall make application to the City Clerk.
- (2) The application for a license shall be upon a form provided by the City.
- (3) An applicant shall furnish the following information:
 - (a) Names, addresses and dates of birth of applicant and spouse if any.
 - (b) Written proof that the applicant is at least eighteen years of age.
 - (c) Address of the Adult Establishment to be operated by the applicant.
 - (d) The name of the City, County and State, if any, where the applicant previously operated an Adult Establishment.
 - (e) Whether the applicant has ever been convicted of a felony involving sexual conduct, the use or distribution of controlled substances or the use or distribution of a dangerous weapon. If the answer to the last is yes, state the jurisdiction in which the offense or offenses occurred. The applicant may attach any explanation he or she deems appropriate.
 - (f) If the applicant is a corporation (partnership/LLC/trust or other business entity which is not a natural person), the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all shareholders owning more than five percent of the stock in said corporation and all officers and directors of the corporation.
- (4) Within sixty days of receiving a completed application for a license, the City Clerk shall submit the application to the City Council for approval or denial.
- (5) Failure or refusal of the applicant to give any information relative to the investigation of the application shall constitute grounds for denial of the license.

(F) Standards for Issuing Licenses.

- (1) To receive a license to operate an Adult Establishment, an applicant must meet the following standards:
 - (a) The applicant must be eighteen years of age or older.

- (b) The applicant or his or her spouse has not been denied a similar license by any other city, county or state within the preceding twelve months or has not had such a license revoked or suspended within the preceding twelve months.
- (c) All current real estate taxes have been paid on the licensed premises.
- (d) The licensed premises meets all the provisions of this Chapter as well as all building and fire codes.
- (e) The applicant or spouse has not been convicted of any felony involving moral turpitude, prostitution, obscenity or other crime of a sexual nature or involving the use or distribution of a controlled substance as defined by Minnesota laws, or the use or distribution of a dangerous weapon. The fact that a conviction may be under appeal shall not affect the disqualification of the applicant.
- (f) All license and investigation fees required by this Chapter have been paid.
- (2) For the purposes of this section the term "applicant" shall include an individual, all persons having a financial interest in a partnership or joint venture, and, in the case of a corporation (partnership/LLC/trust or other business entity which is not a natural person), all officers, directors and stockholders required to be named in the application.
- (3) All police, fire and building code investigations shall be completed within twenty-one days after the date the completed application is filed with the City Clerk. Upon a showing of good cause and reasonable diligence on the part of an investigator, the City Council may extend the investigation period for a reasonable time. Any investigation not completed within the allotted time period shall be deemed to be waived.

(G) License Fees.

- (1) The annual license fee to operate an Adult Establishment shall be determined by the City Council by resolution.
- (2) In addition to the annual license fee, an investigation fee in an amount determined by the City Council by resolution shall be paid at the time of the initial license application.
- (3) All appropriate fees shall be submitted along with the application for a new or renewal license.
- (4) If an application is denied, the license fee, but not the investigation fee, shall be refunded to the applicant.

(H) Display of License. The license shall be displayed in a conspicuous public place in the Adult Establishment.

(I) Renewal of License.

- (1) Every license issued pursuant to this chapter shall expire at 12:00 midnight on December 31st of each year unless sooner revoked by the City Council, and must be renewed before operation is allowed in the following year.
- (2) Applications for renewal must be submitted with the annual license fee to the City Clerk not later than sixty days before the license expires.
- (3) Renewal of a license may be issued by the City Clerk unless the Clerk finds cause for not renewing the license in which case the Clerk shall submit the renewal application to the City Council prior to the expiration of the license.
- (4) No license for which application for renewal has been timely made shall be deemed to expire until the City Council has rendered its decision not to renew a license. No application for renewal of a license may be denied by the City Council until after the applicant has received ten days' written notice of a public hearing before the Council. The applicant may appear with or without counsel at that public meeting and may present such evidence and witnesses, as he or she deems appropriate.

(J) Revocation of License.

- (1) The City Council shall revoke a license for any of the following reasons:
 - (a) Discovery that false or misleading information or data was given on any initial or renewal application or material facts was omitted from any such application.
 - (b) The operator or an employee of the operator violates any provisions of this chapter or any rule or regulation adopted by the Council pursuant to this Chapter, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee the penalty shall not exceed a suspension of thirty days if the Council finds that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.
 - (c) The operator becomes ineligible to obtain a license.
 - (d) Any cost or fee required to be paid by this ordinance is not paid.

- (e) Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the Adult Establishment.
- (2) The Council, before revoking or suspending any license, shall give the operator ten days written notice of the charges against him or her, and an opportunity for a public hearing before the Council at which time the operator may appear with or without counsel and may present such evidence and witnesses as he or she deems appropriate.
- (3) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.
- (4) Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an Adult Establishment for six months from the date of revocation of the license.

(K) Responsibilities of Operator.

- (1) Every act or omission by an employee constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- (2) Any act or omission of any employee constituting a violation of the provisions of this Chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.
- (3) No employee of an Adult Establishment shall allow any minor to loiter around or to frequent the Adult Establishment or to allow any minor to view Specified Anatomical Areas or Specified Sexual Activity at the Adult Establishment.
- (4) The operator shall maintain the premises in a clean and sanitary manner at all times.
- (5) The operator shall maintain at least ten-foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided,

however, at no time shall there be less than 1 foot candle of illumination in said aisles as measured from the floor.

- (6) All business transactions shall occur within the licensed building.
- (7) No employee shall have been convicted of any felony involving moral turpitude, prostitution, obscenity or other crime of a sexual nature or involving the use or distribution of a controlled substance as defined by Minnesota laws, or the use or distribution of a dangerous weapon. The fact that a conviction may be under appeal shall not affect the disqualification of the employee.
- (8) No minor may be employed by or work at an Adult Establishment.

The operator shall ensure and be responsible for the compliance of the establishment and its patrons with the provisions of this Chapter.

(L) Exclusions. All public and private schools or churches located within the City of Lake Elmo are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

(M) No Minors. No person under the age of 18 shall be permitted to be present in an Adult Establishment.

(N) Hours of Operation. The hours of operation for any business licensed under this Chapter shall be between 9:00 AM to midnight.

(O) Penalties.

(1) Any individual, partnership or corporation (partnership/LLC/trust or other business entity which is not a natural person) who is found to have violated the provisions of this Chapter shall be guilty of a misdemeanor and shall also be subject to revocation of any license.

(2) Each violation of this ordinance shall be considered a separate offense and any violation continuing more than one day shall be considered a separate offense.

(P) Enforcement. Members of the law enforcement agency providing service to the City, the Fire Marshal, or designee, the Building Official or designee and the Zoning Administrator or designee, shall have authority to enter any Adult Establishment at all reasonable times to inspect the premises for the purposes of enforcing this Chapter and all other applicable State laws, fire codes and building codes.

1336.04 Means of Enforcement. The City may enforce any provision of this ordinance by mandamus, injunction or any other appropriate civil remedy in any court of competent jurisdiction. The ordinance may also be enforced by appropriate criminal prosecution.

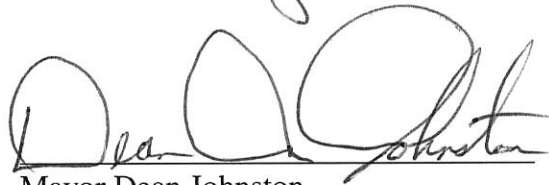
1336.05 Separability. Every section, provision or part of this ordinance is declared separable from every section, provision or part of this ordinance. If any section, provision, or part of this ordinance is adjudged to be invalid by a court of competent jurisdiction, such judgment shall not invalidate any other section, provision, or part of this ordinance.

Effective Date

This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.


Adoption Date

This Ordinance No. 97-198 was adopted on this 21st day of August, 2007, by a vote of 5 Ayes and 0 Nays.



Mayor Dean Johnston

ATTEST:



Susan Hoyt
Administrator

This Ordinance No97-198 was published on the 6th day of Sept, 2007.