

FILED

AUGUST 4, 1994

10:00AM

PERM FILE

7975

CLERK AND RECORDER BY

G L McChristian

DEPUTY No Fee

*Ordinance No 8*RESOLUTION NO. 708

WHEREAS section 45-8-201(5), MCA, passed by the Montana voters via initiative number 79 in 1978, allows local governments to adopt obscenity ordinances more restrictive than state law, and

WHEREAS numerous citizens in Ravalli County have either petitioned or requested by letter that the Board of County Commissioners pass more restrictive obscenity ordinances and the Board did not act, and

WHEREAS the BOARD OF COUNTY COMMISSIONERS have made it clear that enforcement costs or legal costs of more restrictive ordinances would be cost prohibitive to the existing budget, and

WHEREAS the United States Supreme Court decisions have primarily treated legal tests of obscenity ordinances under the rights guaranteed by the First Amendment, and

WHEREAS a proposed ordinance entitled "Harmful To Minors" has been presented to the Board of County Commissioners

BE IT THEREFORE RESOLVED, that the "Harmful To Minors" proposed ordinance as attached be sent to all registered voters and be placed on the general election ballot in November 1994 as follows:

Shall Ravalli County adopt Ordinance No. 8 - "Harmful To Minors"
YES or NO

BE IT THEREFORE RESOLVED, that since State Law is clear in Section 45-8-201 (5), MCA, that cities or towns are legally vested with the authority to adopt their own more restrictive obscenity ordinances, then if the "Harmful To Minors" issue passes, its effect by law will be exclusive to Ravalli County and not the jurisdiction of cities and towns.

Passed this 4th day of August, 1994
BOARD OF COUNTY COMMISSIONERS

Steven D. Powell, Chairman

Allen C. Horsfall Jr.
Allen C. Horsfall, Jr., Member

Jerry L. Allen
Jerry L. Allen, Member

Attest: Betty T. Senead
Clerk & Recorder

Resolution No. 708

WHEREAS, Sections 7-5-131 through 7-5-132, Montana Code Annotated, provide a method for proposing and adapting ordinances for Ravalli County, Montana; and

WHEREAS, Section 45-8-201(5) Montana Code Annotated authorizes the adoption by said county of an ordinance more restrictive as to obscenity than the existing provisions of section 45-8-201 and 45-8-202, Montana Code Annotated; and

WHEREAS, The public display of material harmful to minors constitutes a public nuisance and presents a danger to the health, safety and welfare of the citizens of Ravalli County,

Now, THEREFORE the following ordinance shall be in full force and effect in all of Ravalli County, Montana.

DISPLAYING MATERIAL HARMFUL TO MINORS

Section 1. Definitions. As used in this act the following definitions apply:

- (1) "Harmful to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole has the following characteristics:
 - (a) it has a predominant tendency to appeal to a minor's prurient interest in sex;
 - (b) it depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
 - (c) it lacks serious literary, scientific, artistic, or political value for minors.
- (2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape.
- (3) "Minor" means an unmarried person under 18 years of age.
- (4) "Negligently" means consciously disregarding a risk or existence of circumstances of which a person should be aware to the degree that the risk deviates from the conduct of a reasonable person concerning:
 - (a) the character and content of any material or performance that is reasonably susceptible to examination; and

- (b) the age of the minor. However, an honest mistake will constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of the minor.
- (5) "Newsstand" means a stand that distributes or sells newspapers or magazines.
- (6) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, the showing of any portion of the female breast below the top of the nipple with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state.
- (7) "Performance" means any motion picture, film, videotape, phonograph record, compact disk, tape recording, preview, trailer, play, show, skit, dance, or other exhibition played or performed before an audience of one or more, with or without consideration.
- (8) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.
- (9) "Reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or a governmental or educational identification card or paper rather than relying solely on the oral allegations or apparent age of the minor.
- (10) "Sexual Conduct" includes:
- (a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted;
 - (b) masturbation, excretory functions, or lewd exhibition of uncovered genitals;
 - (c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.
- (11) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Section 2. Public Display or Dissemination of Material Harmful to Minors. A person having custody, control, or supervision of any commercial establishment or newsstand may not negligently:

- (1) display material that is harmful to minors in such a way that minors, as a part of the invited public,

will be able to view the material; provided, however, that a person is considered not to have displayed material harmful to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view and the material is not accessible to minors;

- (2) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any material that is harmful to minors; or
- (3) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is harmful to minors.

Section 3. Penalties.

- (1) A person who is convicted of violating section 2 is guilty of a misdemeanor and may be fined an amount not to exceed \$500 or be imprisoned for a term not to exceed 6 months, or both.
- (2) Each day that a violation of section 2 occurs or continues constitutes a separate offense and is punishable as a separate violation.
- (3) Every act, thing, or transaction prohibited by section 2 constitutes a separate offense to each item, issue, or title involved and is punishable as a separate offense.
- (4) For purposes of section 2, multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

TO: RAVALLI COUNTY COMMISSIONERS

FROM: RAVALLI COUNTY CLERK & RECORDER/ELECTION ADMINISTRATOR

RE: RAVALLI COUNTY ORDINANCES 6, 7, 8

I, Betty T. Lund, Election Administrator of Ravalli County do hereby certify that the following is a true and accurate total of votes cast for the Ravalli County Ordinances in the November 8, 1994 General Election.

Ordinance No. 6 "Distribution Of Obscenity"

YES - 6447

NO - 5958

Ordinance No. 7 "Public Indecency"

YES - 7050

NO - 5311

Ordinance No. 8 "Harmful to Minors"

YES - 7756

NO - 4628

Dated this 9th day of November, 1994.



Betty T. Lund

Election Administrator