

PROPOSED MODIFICATIONS TO ZONING ORDINANCE

FOR DISCUSSION PURPOSES ONLY

9/19/23

New Definitions [ARTICLE 2 OF NEW ZONING ORDINANCE]:

General Retail: A business that sells retail goods, including but not limited to groceries, meats, dairy products, baked goods or other foods, dry goods, **used goods**, and hardware.

Massage Therapist, Licensed: An individual specifically trained, licensed, and certified in massage therapy. A massage therapist shall maintain a valid license through the State of Michigan under P.A. 471 of 2008 (MCL 333.16334 et seq.) and shall be a certified member of the American Massage and Therapy Association (AMTA), the American Bodywork and Massage Professionals Association (AMBP), or other recognized massage association with equivalent professional membership standards and a written and enforceable code of ethics.

Massage Therapy: A method by which a person utilizes his or her hands, feet or an instrument for treating the superficial parts of a customer's body for medical, hygienic, relaxation or therapeutic purposes by rubbing, stroking, kneading, tabbing, pounding or vibrating. Massage therapy also includes complementary methods, including the external application of Asian bodywork approaches, acupressure, water, heat, cold, lubrication, salt scrubs, body wraps, or other topical preparations; and electromechanical devices that mimic or enhance the actions possible by the hands.

Massage therapy does not include the following: (1) Persons duly licensed by the State of Michigan to practice medicine, surgery, osteopathy, chiropractic, physical therapy, nursing, or podiatry; and (2) Barbers and cosmetologists who are licensed by the State of Michigan Board of Barber Examiners or Board of Cosmetologists, except that this exemption shall apply solely to the massaging of the neck, face, scalp and hair of the customer for cosmetic or beautifying purposes.

Massage Therapy Facility, Licensed: A place of business having a source of income or compensation derived from the practice of massage therapy, as defined herein, where licensed massage therapists administer or teach massage therapy. Licensed massage therapy facilities shall be included in the definition of Personal Service Establishments, as defined herein. Licensed massage therapy facilities are further subject to the business licensing regulations of Article XII of the Code of Ordinances.

Massage Therapy Facility, Unlicensed: A place of business in which massage therapy is practiced by employees that are not licensed massage therapists, as defined herein. Unlicensed massage therapy facilities shall be considered a Regulated Use per this Ordinance.

Personal Service Establishment: An establishment or a place of business primarily engaged in the provision of services of a personal nature, which may be recurrent in nature. Uses include, but are not limited to, barber shops, beauty salons, beauty shops, **tattoo/body art shops**, **licensed massage therapy facilities**, photograph studios, dry cleaning and laundry pickup, laundromats, shoe repair, bicycle and small appliance repair, tailor and dressmaker shops.

Recreational Business, Indoor: An indoor facility for leisure, exercise, and/or entertainment, such as but not limited to: bowling alleys, skating rinks, billiard halls, indoor health and fitness centers, dance and martial arts and sports studios, climbing gyms, and other indoor recreational facilities

Tattoo/Body Art Shops: A business property licensed by the State of Michigan involving body tattoos, piercings, and similar activities. Tattoo/body art shops shall be included in the definition of Personal Service Establishments, as defined herein.

Regulated Uses. [NOTE – RECLASSIFIED AS SECTION 5.03 OF NEW ZONING ORDINANCE]

1. *Purpose of Ordinance.* In the development and execution of the amendment to this Ordinance, it is recognized that certain uses as a result of their nature have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances having a deleterious effect upon the use and enjoyment of adjacent areas. Special regulation of these uses is necessary to assure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. In connection with the adoption of this Ordinance, the planning commission and city council has received information from the community development department, the city assessor, and the police department, including information associating blight and increased crime with sexually-oriented businesses, including studies done in a number of cities. In connection with the adoption of this Ordinance, council has received further information that certain types of adult businesses, including tattoo parlors, pawnbrokers, and used goods businesses have, through studies, been found to have deleterious effect upon the use and enjoyment of adjacent areas, including information associating blight.

The regulations in this Ordinance are designed for locating these uses in areas where the adverse impact of their operation may be minimized by the separation of such uses from one another and from places of public congregation.

2. *Definitions.* As used in this section:

- (a) *Adult arcade* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, internet, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "sexually explicit activities" or "specified anatomical areas."
- (b) *Adult book store or adult video store* means a commercial establishment which as one of its principal business purposes (meaning either a substantial or significant portion of its stock in trade) offers for sale or rental, or for any form of consideration, any one or more of the following:
 - (1) Books, computer diskettes, tapes or hard drives, magazines, periodicals or other printed matter or photographs, films, motion picture, video cassettes or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas", or
 - (2) Instruments, devices, or paraphernalia, which are designed for use in connection with "specified sexual activities."

Commercial establishment may have other principal business purposes which do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specific anatomical areas" and still be categorized as "adult book store" or "adult video store". Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult book store or adult video store as long as one of its principal business purposes is the offering for sale or rental for consideration, materials depicting or describing "specified sexual activities" or "specified anatomical areas". For purposes of this section, video cassettes or films which are x-rated or unrelated but of substantially equivalent content as x-rated films, shall be considered to depict or describe "specified sexual activities" or "specified anatomical areas" notwithstanding any more restrictive definition set forth herein.

- (c) *Adult cabaret* means a nightclub, bar, restaurant or similar commercial establishment which regularly features any of the following:
 - (1) Persons who appear in a state of nudity, or
 - (2) Live performances characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", or
 - (3) Films, motion pictures, video cassettes, slides, computer presentations, or other moving-image reproductions characterized by the depiction or description of "specified sexual activities" or specified anatomical areas."
- (d) *Adult motel* means a hotel, motel, or similar commercial establishment which:
 - (1) Offer accommodations to the public for any form of consideration; provide patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or
 - (2) Permit patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electronic transmission over the World Wide Web; or
 - (3) Advertises in any way sleeping room(s) for rent for a period of time that is less than ten hours; or
 - (4) Allow a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than ten hours.
- (e) *Adult motion picture theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas."
- (f) *Adult retail store* means an establishment which sells or offers for sale any types of items, materials, gimmicks, or paraphernalia depicting, displaying, advertising or packaged, as "sexually explicit activities" or "specified anatomical areas."
- (g) *Adult theater* means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which

are characterized by the exposure of "specified sexual activities" or "specified anatomical areas."

- (h) *Escort* means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees to privately model lingerie or to privately perform a striptease for another person.
- (i) *Escort agency* means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- (j) *Establishment* means and includes any of the following:
 - (1) The opening or commencement of any sexually oriented business as a new business;
 - (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
 - (4) The relocation of any sexually oriented business.
- (k) ~~*Massage parlor, sauna and/or spa* means a massage parlor as defined in Chapter 7 of the Madison Heights Code of Ordinances.~~ Massage therapy facility, unlicensed, means an unlicensed massage therapy facility business as defined in Article 2 (Definitions) of this Zoning Ordinance.
- (l) *Nude model studio* means any place where a person appears in the state of nudity or displays "specified anatomical areas" to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by any other person who pays money, or any other form or consideration.
- (m) *Nudity or state of nudity* means the exposure of the human male or female genitals, pubic area, or buttocks with less than a fully-opaque covering, of any part of the nipple or areola, or the showing of the covered male genitals in a discernibly turgid state.
- (n) *Pawnbroker* means any person, corporation, or member or members of a co-partnership or firm, who loans money on deposit or pledge of personal property, or other valuable thing, other than securities or printed evidence of indebtedness, or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price. ~~pawnbroker businesses as defined in Chapter 7 of the Madison Heights Code of Ordinances.~~
- (o) *Person* means any individual, proprietorship, partnership, corporation, association or any other legal entity.
- ~~(p) *Pool or billiard hall* means a place providing pool or billiard tables for use on the premises to the public as defined in Chapter 4 of the Madison Heights Code of Ordinances.~~
- (q) *Semi-nude* means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast as well as portions of the body covered by supporting straps or devices.

- (r) *Sexual encounter center* means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (1) Physical contact in the form of wrestling or tumbling between persons of the same or opposite sex or any activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude or permits patrons to display or to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electronic transmission over the World Wide Web or any other media.
- (s) *Specified sexual activities* means and includes any of the following:
- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 - (3) Masturbation, actual or simulated; or
 - (4) Excretory functions as part of or in connection with any of the activities set forth in i. through iii. above.
 - (5) Any activity intended to arouse, appeal to or gratify a person's lust, passions or sexual desires.
- (t) *Regulated uses* means any of the following:
- (1) "Adult arcades";
 - (2) "Adult book stores and adult video stores";
 - (3) "Adult cabarets";
 - (4) "Adult motels";
 - (5) "Adult motion picture theaters";
 - (6) "Adult retail store";
 - (7) "Adult theaters";
 - (8) "Escort agencies";
 - (9) ~~"Massage parlors, saunas or spas";~~ "Massage therapy facility, unlicensed"
 - (10) "Nude model studios";
 - (11) "Pawnbrokers";
 - ~~(12) "Pool and/or billiard halls";~~
 - (13) "Sexual encounter centers".
 - ~~(14) "Tattoo parlors or uses";~~
 - ~~(15) "Used good uses";~~
 - (16) "Any establishment that permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specific anatomical areas" for transmission over the World Wide Web;

(17) Other sexually oriented business described herein or as determined by city council.

(u) *Specified anatomical areas* means and includes any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region or pubic hair; buttock or female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or any combination of the foregoing; or
- (2) Human genitals in a state of sexual arousal, even if opaquely and completely covered.

~~(v) *Tattoo parlors or uses* means a business or commercial establishment offering for sale or otherwise tattoos. A tattoo is defined as a permanent mark or design made on the skin by puncture, pricking and/or ingraining with pigment or by raising scars.~~

~~(w) *Used good uses* means businesses engaged with a substantial portion of their business comprising the sale of used goods, including, but not limited to, secondhand and junk dealers, as defined pursuant to Public Act 1970, No. 350, as amended, MCL 445.401 et seq., and persons engaged in substantially similar uses. Not included shall be the occasional resale of goods which is not a principal business purpose.~~

3. *Location of regulated uses:*

- (a) The establishment of a regulated use as defined under this section within 1,000 feet of another regulated use, measured from property line to property line, is prohibited.
- (b) Regulated uses shall be permitted in B-2 and B-3 Districts after special approval by city council, site plan review, if applicable, and obtaining a business license under Chapter 7, if and only if, it is determined that the regulated use meets all other criteria of B-2 and B-3 Districts under the Code of Ordinances and will not be located within 300 feet of the following:
 - (1) A church;
 - (2) A public or private elementary or secondary school;
 - (3) The boundary of a residential zoning district;
 - (4) A public park;
 - (5) The property line of a lot in residential use;
 - (6) A child care facility.

4. *Miscellaneous requirements.*

- (a) No person shall reside in, or permit any person to reside in, the premises of a regulated use.
- (b) All regulated uses shall be subject to all the same requirements of the Zoning Ordinance for the designated zoning district.