



MEMORANDUM

Date: June 15th, 2023
To: City of Madison Heights Planning Commission
From: Matt Lonnerstater, AICP – City Planner
Subject: Regulated Uses – Initial Discussion

City Council has directed the Planning Commission and staff to review the list of Regulated Uses contained within the Zoning Ordinance and determine if updates to the list are needed. Per the Zoning Ordinance, Regulated Uses are deemed to have a “*deleterious effect upon the use and enjoyment of adjacent areas*” and are typically associated with “*blight and increased crime.*” Initially, the list of Regulated Uses included sexually-oriented businesses such as cabarets, adult theaters, adult retail and book stores. Throughout the years, however, the list has been expanded to include non-sexually-oriented businesses such as tattoo parlors, pawnbrokers, used goods sales, massage parlors, and billiard halls. Regulated Uses are subject to strict siting, approval, and licensing requirements and are also regulated separately under the Business Regulations and Licenses Ordinance. This memo primarily discusses the non-sexually-oriented businesses listed as Regulated Uses.

If the Planning Commission determines that changes to the Regulated Uses zoning section are warranted, the Commission may either:

- 1) Direct staff to proceed immediately with a stand-alone zoning text amendment under the current Zoning Ordinance; or
- 2) Direct staff to incorporate changes to Regulated Uses as part of the ongoing comprehensive Zoning Ordinance rewrite project.

Examples of Regulated Uses: Sexually-Oriented (top) and Non-Sexually-Oriented (bottom)



A Brief History of Regulated Uses in Madison Heights

Section 10.502[A] – Regulated Uses – first appeared in the Madison Heights Zoning Ordinance in or around 1973. At this time, the only uses listed under the section were adult bookstores, adult motion picture theaters, and cabarets. However, separate regulations were on the books for pool and billiard halls under the Amusements Ordinance, adopted in 1958. Per the Zoning Ordinance in 1973, regulated uses required City Council approval and had to be separated from residential uses by at least 1,000 feet.

In 1999, Section 10.502[A] was replaced in its entirety. The new section expanded the list of sexually-oriented businesses and added the following into the list of Regulated Uses: massage parlors, pawnbrokers, pool/billiard halls, tattoo parlors, and used goods uses. The revised section introduced more stringent separation and location requirements, restricted Regulated Uses to the B-2 and B-3 zoning districts, and required Special Use Approval through City Council. On or around this same time, City Council adopted concurrent amendments to the Business Regulations and Licenses Ordinance pertaining to Regulated Uses.

In 2009, the definition of “massage parlor, sauna and/or spa” was modified to match that in the Business Regulations and Licenses Ordinance.

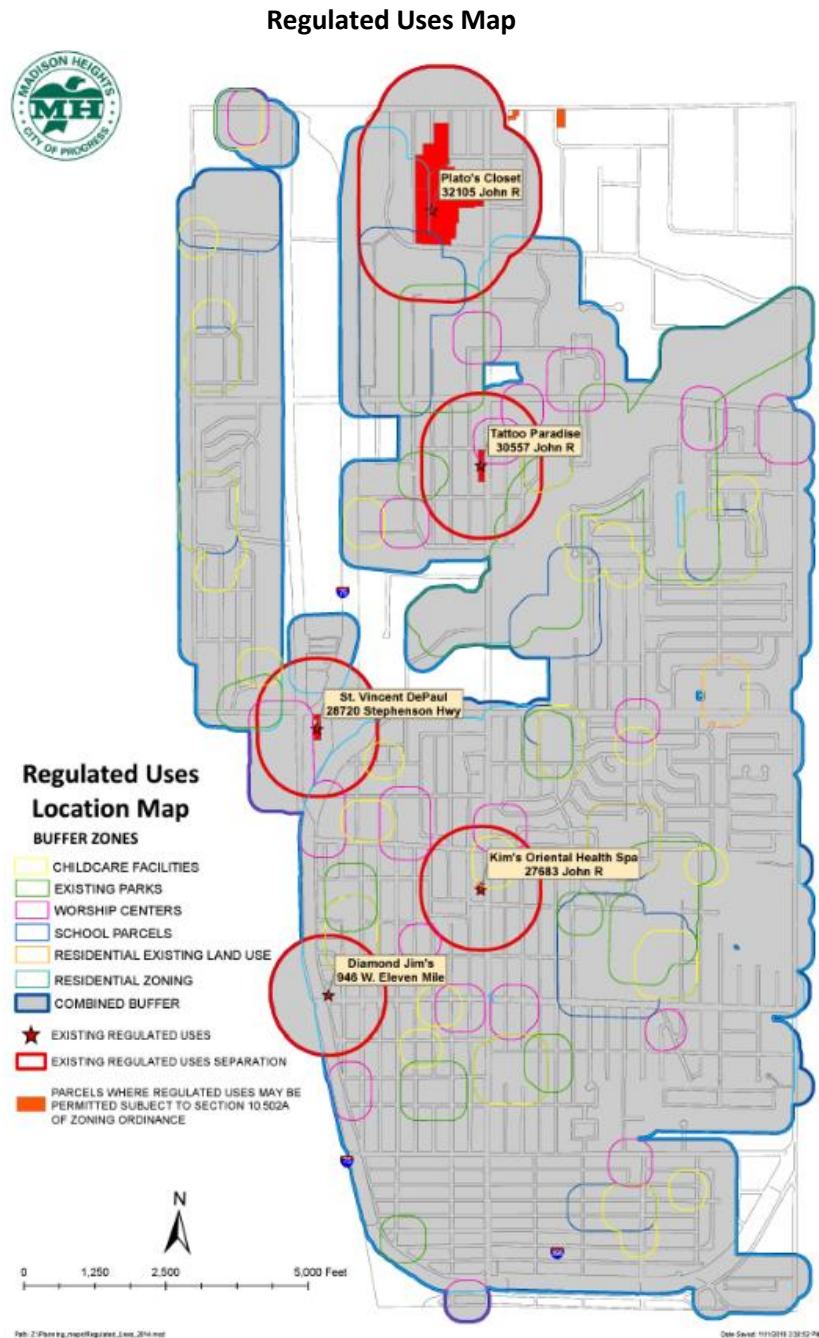
Requirements and Approval Process for Regulated Uses

As it stands today, Section 10.502[A] of the current Zoning Ordinance contains requirements and siting standards for Regulated Uses. Per the Zoning Ordinance, Regulated uses are only permitted in the B-2 (Planned Business) and B-3 (General Business) zoning districts with Special Approval through City Council, which requires a public hearing. Further, Regulated Uses shall be located at least 1,000 feet from another existing Regulated Use and at least 300 feet from any of the following: a church; a public or private elementary or secondary school; a residential zoning district; a public park; a property in residential use; or a child care facility.

The following business types are currently listed as Regulated Uses in the Zoning Ordinance:

- Adult Arcades
- Adult bookstores and adult video stores
- Adult cabarets
- Adult motels
- Adult motion picture theaters
- Adult retail stores
- Adult theaters
- Escort agencies
- Massage parlors, saunas or spas
- Nude model studios
- Pawnbrokers
- Pool and/or billiard halls
- Sexual encounter centers
- Tattoo parlors
- Used goods uses
- 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.
- Other sexually oriented business as determined by City Council

The map below depicts properties where Regulated Uses can be established (in orange). The map depicts a total of three (3) properties legally available for Regulated Uses, all near E. 14 Mile Road.



In addition to reviewing and acting upon Special Approval requests for Regulated Uses, City Council is tasked with approving the business license for each individual Regulated Use establishment. Several uses are also regulated separately under the Business Regulations and Licenses Ordinance and Amusements Ordinance.

Regulated Uses are discussed individually on the following pages.

Adult/Sexually-Oriented Businesses

All sexually-oriented businesses, such as escort agencies, adult theaters, and adult retail stores and bookstores, are classified as Regulated Uses. As part of the Zoning Ordinance rewrite, staff does not intend to modify or remove any of the sexually-oriented businesses from the list of Regulated Uses. However, staff is happy to discuss these types of uses with the Planning Commission.

Tattoo Parlors

- Ordinance Definition: *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 engraving with pigment or by raising scars.*

Tattoo parlors were added to the list of Regulated Uses in 1999. While not adult or sexually-oriented in nature, tattoo parlors were likely added to the list due to their historical connotation of being located in “gritty” areas and the general public opinion about the clientele. However, staff believes that the image of tattoo parlors has improved dramatically over the past several decades and is now more closely tied to personal service uses, such as piercing studios or hair salons, than adult/sexually-oriented businesses. Boutique tattoo parlors are common and popular in many downtown and neighborhood-scaled business districts and typically add, rather than detract, from streetscapes through unique and lively storefronts.

Over the past two years, staff has received over a half-dozen inquiries for business owners looking to open tattoo parlors within Madison Heights, with staff informing them of the Regulated Use requirements. Tattoo parlors are subject to approval from the Oakland County Health Services Department and the State of Michigan.

Tattoo Parlor Storefronts



Guiding Questions for Planning Commission:

- *Should tattoo parlors remain as a Regulated Use, or should they be removed?*
- *If removed, should tattoo parlors be classified as a “personal service” use, similar to barber shops, beauty salons, and piercing studios, or should they be regulated separately?*
- *If regulated separately, in which zoning districts should they be permitted? Should there be any supplemental regulations (e.g. separation requirements)? By Right or Special Use?*

Pool and Billiard Halls

- Ordinance Definition: *A commercial establishment where pool or billiard tables are provided for use on the premises by the public.*

Similar to tattoo parlors, pool/billiard halls were added as a Regulated Use in 1999. However, pool and billiard halls have been regulated under the City's Amusements Ordinance since 1958. The Amusements Ordinance limits the hours of operation for pool/billiards halls to between 9 a.m. and midnight and prohibits anyone under the age of 17 from entering. Also similar to tattoo parlors, staff believes that billiard halls were added to the list of Regulated Uses due to their public image as being "rough around the edges." While stand-alone billiard halls still operate in Metro Detroit, pool tables are often found as a secondary use inside restaurants, bars, arcades, bowling alleys, and other amusement uses. Similar amusement uses, such as bowling alleys and indoor recreational uses, are permitted either by right or through special approval in the City's commercial zoning districts.

Guiding Questions for Planning Commission:

- *Should pool/billiard halls remain as a Regulated Use, or should they be removed?*
- *If removed, should pool/billiard halls be classified as an "indoor recreational" use, or should they be treated separately?*
- *If regulated separately, in which zoning districts should they be permitted? Should there be any supplemental regulations (e.g. separation requirements)? By Right or Special Use?*

Used Goods Uses

- Ordinance Definition: *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.*

Used goods uses were added as a Regulated use in 1999. While this category of uses includes so called "junk dealers" which typically invokes an image of a junk yard or scrap metal sales, it also includes any business in which secondhand sales is the primary use; this would include thrift stores, consignment shops, antique shops, and boutique "vintage" shops. Note that this classification does not include pawnshops or junkyards, which are both listed as separate uses in the Zoning Ordinance and regulated separately. In addition to the Regulated Use zoning standards, secondhand dealers and junk dealers are subject to a specific section of the City's Business Regulations and Licenses Ordinance and a state licensing act which was originally adopted in 1917.

A primary question for the Planning Commission is whether or not secondhand or used goods stores should be treated and classified differently from general retail businesses, which are permitted by right in the City's business districts. Boutique and eclectic resale, antique, and "vintage" shops are common in many American downtowns and business districts. While donation drop-off areas at larger thrift stores can be a concern from an aesthetic and traffic standpoint, zoning standards can be put in place to address site planning and external impacts.

Please refer to the *Strong Towns* editorial article attached to this memorandum which overviews a particular case of a thrift store that attempted to open in a suburban Maryland community, and the hurdles they had to overcome.

Used Goods/Secondhand Sales Storefronts



Guiding Questions for Planning Commission:

- *Should Used Goods Uses/Secondhand Shops remain as a Regulated Use, or should they be removed?*
- *If removed, should Used Goods Uses be classified as general retail, or should they be treated separately?*
- *If regulated separately, in which zoning districts should they be permitted? Should there be any supplemental regulations (e.g. separation requirements, donation/sales drop-offs)? By Right or Special Use?*

Pawnbrokers

- *Ordinance Definition: 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.*

Pawnbrokers were added as a Regulated Use in 1999. While pawnbrokers and pawnshops are similar to Used Goods Uses in that they offer secondhand sales of used items, pawnbrokers also offer loans, with interest, for personal property. Some municipalities classify pawnbrokers as “alternative financial services” similar to check-cashing and payday lender businesses.

The Madison Heights Police Department has provided a brief response, summarized below, on the question of removing pawnbrokers from the list of Regulated Uses:

The Police Department is not in favor of allowing pawnshops to be removed from regulated use status or zoning requirements. Pawnshops are not the same as resale shops. Pawnshops either buy items directly from a consumer, mark them up based on their profit margins and resell the items similar to that of resale shops; unfortunately, this is not the majority of their business. Pawn Shops are well known for purchasing stolen items. Criminals that steal items go to the Pawn Shops to get their quickest pay off for the stolen items. The pawn shops, unfortunately, don't question where the merchandise came from, and the police department has had serious problems getting them to comply with requirements such as reporting all their purchases to Leads Online. Further, the pawnshops that we have had here in the past were taking merchandise that was stolen and were selling this property without notifying the police department or using the required Leads Online reporting system. Further, one business was eventually closed for failing to disclose stolen property and having property melted down without retaining it for the required amount of time under the law in case the merchandise was indeed stolen.

Further, pawnshops allow property to be pawned for loans with very high interest rates and eventually foreclose on the property that was pawned if the person is unable to repay the loan in a certain amount of time. This can be said to be similar in nature to loan advance stores but is really completely different in the fact that you are putting your personal property up as collateral for instant cash. Pawnshops are known to give very low amounts in comparison to the value of the property pawned. What we have seen is that people are addicted to drugs pawn some of their last heirlooms in order to purchase drugs and are unfortunately never able to recover them.

The police department is highly concerned that having pawnshops in our city will increase crime, it will directly bring crime into our city by having a location for stolen goods to be sold, and will increase the police department's duties to investigate more of the type of property crimes that are associated with pawnshops. Pawnshops are not like what is seen on TV in any way, shape or form. The shows are highly sensationalized and are not a true indication of what pawnshops are like.

Pawnshops are also regulated under the City's Business Regulations and Licenses Ordinance and a State licensing act, originally adopted in 1917.

Guiding Questions for Planning Commission:

- *Should Pawnshops remain as a Regulated Use, or should they be removed?*
- *If removed, should Pawnshops be classified as general retail, or should they be treated separately? Should they be classified as “alternative financial services”?*
- *If regulated separately, in which zoning districts should they be permitted? Should there be any supplemental regulations (e.g. separation requirements, hours of operation, etc.)?*

Massage Parlors

- Ordinance Definition (summarized): *Any business establishment whose principal business is the practice of massage and which has a fixed place of business where any person, firm, association or corporation carries on massage as the principal use. Does not include medical diagnosis; practice of physical therapy; high-velocity, low-amplitude thrust to a joint; electrical stimulation; application of ultrasound; or prescription of medicines.*

Massage parlors were added as a Regulated Use in 1999. However, business licensing regulations appear to have been on the books since at least 1996. Additionally, massage therapists are required to obtain a license through the State of Michigan. While official boutique massage parlors often operate in a similar manner to personal service uses such as salons and barbers, the Madison Heights Police Department has concerns regarding massage parlors in the City. The Madison Heights Police Department has provided a brief response, summarized below, on the question of removing massage parlors from the list of Regulated Uses:

Since the reopening of the Special Investigations Unit (SIU) in 2019, detectives investigated approximately 15 advertised massage businesses (apartments/houses) and 5 massage parlors (store front) after receiving tips that illicit acts were occurring at these establishments. SIU was asked to investigate massage parlors that fell outside of the Madison Heights area due to our experience in handling these types of cases.

Through these investigations, it was discovered that 3 out of the 5 massage parlors offered illicit acts and were involved in the sex trafficking industry. All the massage businesses being ran out of an apartment/house offered an illicit act as part of the massage service. In almost all cases, the subjects arrested during these investigations ended up being victims of the sex trafficking trade.

Not all massage parlors are houses of ill fame, but our ordinances may need to be revised prior to any future approvals as an extra layer of protection. Even a legitimate professional masseuse will most likely be propositioned by an aggressive client leading to the need for additional police services.

Note that a health spa, salon or fitness establishment may offer massages as an incidental use without being classified as a “Massage Parlor” if the area used for massage does not exceed 10% of the floor area and not exceed three work areas.

Massage Parlors: Franchise Chains and Individually-Owned Establishments



Guiding Questions for Planning Commission:

- *Should massage parlors remain as a Regulated Use, or should they be removed?*
- *If removed, should massage parlors be classified as a “personal service” use, similar to barber shops, beauty salons, and piercing studios, or should they be regulated separately?*
- *If regulated separately, in which zoning districts should they be permitted? Should there be any supplemental regulations (e.g. separation requirements)? By Right or Special Use?*

Next Steps

Following the discussion at the meeting, staff will look to the Planning Commissions for guidance as to which uses, if any, should be modified or removed from the list of Regulated Uses. Further, if changes are warranted, the Planning Commission should determine if staff should proceed immediately with a stand-alone zoning text amendment under the current Zoning Ordinance. Alternatively, changes may be folded into the ongoing comprehensive Zoning Ordinance rewrite project.

If the Planning Commission elects a stand-alone amendment, staff recommends introducing the text amendment at the July 18th Planning Commission meeting and scheduling a public hearing for the August 15th meeting. Staff will also coordinate with the City Clerk for concurrent amendments to the Business Regulations and Licenses Ordinance.