

Marshall, MI Code of Ordinances

CHAPTER 118: ADULT- AND SEXUALLY-ORIENTED BUSINESSES

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§ 118.01 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT-ONLY USES or **SEXUALLY-ORIENTED BUSINESSES**. Any business which primarily features sexually stimulating material and/or performances, including the following.

(a) **ADULT BOOKSTORE**. An establishment having more than 20% of its stock in trade books, magazines and other periodicals and/or photographs, drawings, slides, films, video tapes, recording tapes, paraphernalia and novelty items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” or an establishment with a segment or section devoted to the sale or display of such material which segment or

section exceeds 10% of the useable floor area of the establishment.

(b) **ADULT CABARET.**

1. **GROUP A CABARET.** An establishment which features nude or seminude entertainers, topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, nude or semi-nude waitresses or waiters or similar entertainers or an establishment which features live entertainment distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas,” for observation by patrons therein.

2. **GROUP B CABARET.** An establishment licensed by the Michigan Liquor Control Commission, which offers beer or intoxicating liquor for consumption on the premises and features nude or semi-nude entertainers, topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, nude or semi-nude waitresses or waiters, or similar entertainers, or which features live entertainment distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas,” for observation by patrons therein.

(c) **ADULT MEDIA.** Magazines, books, videotapes, movies, slides, cd-roms or other devices used to record computer images or other media that are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

(d) **ADULT MODEL STUDIO.** Any place where models who display “specified anatomical areas,” (as defined herein) are present to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by persons who pay some form of compensation or gratuity. This definition shall not apply to any accredited art school or similar educational institution.

(e) **ADULT MOTION PICTURE ARCADE** or **MINIATURE MOTION PICTURE THEATER.** Any place where motion picture machines, projectors or other image producing devices are maintained to show images to five or fewer persons per machine at anyone time, and where the images displayed depict, describe or relate to “specified sexual activities” or “specified anatomical areas.”

(f) **ADULT MOVIE THEATER** or **ADULT LIVE STAGE PERFORMING THEATER.** An enclosed building or room used for presenting motion picture films, video tapes, cable or satellite television or any other visual media having as a dominant theme, materials distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activity” or “specified anatomical areas,” for observation by patrons therein. Such an establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age.

(g) **ADULT OUTDOOR MOTION PICTURE THEATER.** A drive-in theater where at least 20% of the material presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” for observation by patrons of the theater. Such establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age.

(h) **ADULT PERSONAL SERVICE BUSINESS.**

1. A business having as its primary activity a person, while nude or while displaying “specified anatomical areas,” providing personal services for another person. Such a business includes, but is not limited to modeling studios, body painting studios, wrestling studios and conversation parlors.

2. Any establishment, club or business by whatever name designated, which offers or advertises, or is equipped or arranged to provide as part of its services; massages, body rubs, body painting, alcohol rubs, physical stimulation, baths or other similar treatment by any person.

3. An adult personal service establishment may include, but is not limited to establishments commonly known as massage parlors, health spas, sauna baths, Turkish bathhouses and steam baths. The following uses shall not be included within the definition of an adult personal service establishment:

a. Establishments that routinely provide such services by a licensed physician, a licensed chiropractor, a licensed physical therapist, a licensed nurse practitioner or any other similarly licensed or certified medical professional;

b. Establishments which offer massages performed by certified massage therapists;

c. Gymnasiums, fitness centers and health clubs;

d. Electrolysis treatment by a licensed operator of electrolysis equipment;

e. Continuing instruction in martial or performing arts or in organized athletic activities;

f. Hospitals, nursing homes, medical clinics or medical offices;

g. Barber shops, beauty parlors, hair stylists and salons which offer massages by certified massage therapists;

h. Adult photography studios whose principal business does not include the taking of photographs of “specified anatomical areas;” and

i. Tattooing and/or body piercing services.

(i) **ADULT VIDEO STORE.** An establishment having at least 20% of its stock in trade or at least 10% of useable floor area devoted to the distribution, display, storage or on-premises viewing of films, movies, motion pictures, video tapes, slides or other visual representations which are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

(j) **ESCORT.** A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(k) **ESCORT AGENCY.** 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.

(l) **MAINSTREAM MEDIA STORE.** A video store, bookstore or newsstand having less than 20% of its stock or less than 10% of useable floor area devoted to the distribution, display or storage of adult media.

(m) **SEXUAL PARAPHERNALIA STORE.** An establishment having at least 20% of its stock in trade or at least 10% of useable floor area devoted to the distribution, display or storage of instruments, devices or paraphernalia designed for use related to “specified anatomical areas” or as part of, in connection with, or related to “specified sexual activities,” or an establishment with a segment or section

devoted to the sale or display of such material.

(B) With respect to adult regulated uses or sexually oriented businesses, the following terms and phrases shall have the following meanings:

(1) ***SPECIFIED ANATOMICAL AREAS.*** Portions of the human body defined as follows: less than completely and opaquely covered:

- (a) Human genitalia and pubic region;
- (b) Buttock and anus;
- (c) Female breast below a point immediately above the top of the areola; or
- (d) Human male genitalia in a discernibly turgid state, even if completely and opaquely covered.

(2) ***SPECIFIED SEXUAL ACTIVITIES.*** The explicit display of one or more of the following:

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Fondling or other erotic touching of human genitalia, pubic region, buttocks, anus, or female breast;
- (c) Human sex acts, normal or perverted, actual or simulated including, but not limited to human masturbation, oral copulation, sexual intercourse, or sodomy;
- (d) Human excretory functions as part of, or as related to, any of the activities described above; and
- (e) Physical violence, bondage, mutilation or rape, actual or simulated, as part of or related to, any of the activities described above.

(3) ***SEXUAL INTERCOURSE.*** Fellatio, cunnilingus, anal intercourse or any other intrusion, however slight, of any part of a persons body, or of any object, into the genital or anal openings of another's body.

(4) ***SODOMY.*** Sexual bestiality.

(5) ***BUTTOCK.*** The anus and perineum of any person.

(6) ***MASSAGE PARLOR.*** An establishment wherein private massage is practiced, used or made available as a principal use and primary service of the premises.

(7) ***MASSAGE.*** The manipulation of body muscle or tissue, by rubbing, stroking, kneading, tapping or vibrating, through the use of a physical, mechanical or other device, of the body of another for a fee.

(8) ***NUDE MODELING STUDIO.*** Any building, structure, premises or a part thereof used primarily as a place which offers as its principal activity the providing of models to display specified anatomical areas for artists and photographers for a fee or other consideration.

(9) ***MASSAGE THERAPIST (CERTIFIED).*** An individual specifically trained and certified in massage therapy and the healing arts by the American Massage Therapy Association or similar organization.

(Ord. 02-01, passed 3-4-2002)

§ 118.02 AUTHORIZATION.

(A) In the preparation, enactment and enforcement of this section, it is recognized that there are some uses relating to sexual material which, because of their very nature have serious operational characteristics that have a deleterious effect upon residential, office and commercial areas. Because certain forms of expression relating to sexual material have particular functional and inherent characteristics with a high potential of being injurious to surrounding properties by depreciating the quality and value of such property, it is the intent of this chapter to provide a framework of reasonable regulatory standards which can be used for approving or disapproving the establishment of this type of use in a viable and accessible location, where the adverse impact of their operations may be minimized.

(B) It is recognized that the specified controlled uses have legitimate rights under the United States Constitution. The City of Marshall recognizes these legitimate rights and seeks to enforce the Constitution while serving its role as a protector of its residents. This chapter is so written to minimize the negative impacts of sexual oriented businesses on children, businesses and other residents and visitors, as well as on the future sale and use of land throughout the city. Special designation and regulation in the I-2 and B-2 Districts is therefore necessary to ensure that adverse effects of the uses will not contribute to the degradation of adjacent parcels and the surrounding area and to limit the visual impacts of sexually-oriented businesses in areas highly visible to the public, this chapter also instills standards for major thoroughfares and expressways. These controls are intended to provide commercially viable locations within the city, where these uses are considered more compatible and less deleterious.

(Ord. 02-01, passed 3-4-2002)

§ 118.03 USES SPECIFIED.

(A) Uses subject to these controls as defined herein as “adult-only businesses” and/or “sexually-oriented businesses” are as follows:

- (1) Adult bookstores;
- (2) Adult video stores;
- (3) Adult cabarets;
- (4) Adult motion picture arcade or miniature motion picture theater;
- (5) Adult movie theater or adult live stage performing theater;
- (6) Adult outdoor motion picture theater;
- (7) Adult model studios;
- (8) Escort and escort agencies;
- (9) Adult personal service business; and

(10) Other sexually-oriented businesses, as determined by the City Council.

(B) Any business now classified as a sexually-oriented business lawfully operating on March 4, 2002, that is in violation of division (C) below shall be deemed a non-conforming use.

(C) A lawfully operating and conforming sexually-oriented business is not rendered a non-conforming use by the location of a sexually-oriented business of any use listed in division (B) above within 1,000 feet.

(Ord. 02-01, passed 3-4-2002)

§ 118.04 SITE LOCATION PRINCIPLES.

(A) The following principles shall be utilized to evaluate the proposed location of any such use.

(B) These principles shall be applied by the Planning Commission as general guidelines to help assess the impact of such a use upon the district in which it is proposed:

(1) An adult only business shall be located as a conditional or special use in the I-2 and B-2 Districts.

(2) No adult only business shall be located within 600 feet in an I-2 District and 300 feet in a B-2 District, of a(n): residential zoning district, church, monastery, temple or similar place of worship, school, library, public park or playground, non-commercial assembly facility, public office building, licensed day care facility as defined in Public Act 116 of 1973, as amended, being M.C.L.A. §§ 722.111 *et seq.*, arcade or Marshall city limit. Measurement of the required radius shall be made from the outer most boundaries of the lot or parcel upon which the proposed adult use will be situated.

(3) No adult only business shall be permitted within a 1,000-foot radius of an existing adult only business. Measurement of the 1,000-foot radius shall be made from the outer most boundaries of the lot or parcel upon which the proposed adult use will be situated.

(4) No adult only business shall be permitted within 1,000 feet of Interstate 94 or Interstate 69, nor shall any adult only business have frontage on BL-94 (Michigan Avenue) or old U.S. 27 (Kalamazoo Avenue/ Brewer Street)

(5) A person is in violation of this chapter if he or she causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually-oriented business within 1,000 feet of another sexually-oriented business.

(6) A person is in violation of this chapter if he or she causes or permits the operation, establishment or maintenance of more than one sexually-oriented business in the same building, structure or portion thereof.

(7) A person is in violation of this chapter if he or she causes or permits the substantial enlargement of any sexually-oriented business in any building, structure or portion thereof containing another sexually-oriented business.

(Ord. 02-01, passed 3-4-2002)

§ 118.05 SITE DEVELOPMENT REQUIREMENTS.

(A) The site layout, setbacks, structures, function and overall appearance shall be compatible with adjacent uses and structures.

(B) Windows, displays, signs and decorative structural elements of buildings shall not include or convey examples of a sexual nature. All such displays and signs shall be in conformance with this chapter and shall be approved by the Planning Commission prior to their use.

(C) All building entries, windows and other such openings shall be located, covered or screened in a manner as to prevent viewing into the interior from any public or semi-public area as determined by the Planning Commission.

(D) No loud speakers or sound equipment shall be used by an adult only business that projects sound outside of the adult only business so that sound can be discerned by the public from public or semi-public areas.

(E) An adult only business shall clearly post at the entrance to the business, or that portion of the business utilized for adult only purposes, that minors are excluded.

(F) Mainstream media outlets carrying less than 20% of adult media and/or devoting less than 10% of useable floor area to adult media are not subject to the standards of sexual oriented businesses. The conditions for mainstream media outlets include: adult media in a shop to which this section is applicable shall be kept in a separate room or section of the shop, which room or section shall:

(1) Not be open to any person under the age of 18;

(2) Be physically and visually separated from the rest of the store by an opaque wall of durable material, reaching at least eight feet high or to the ceiling, whichever is less;

(3) Be located so that the entrance to it as far as reasonable practicable from media or other inventory in the store likely to be of particular interest to children;

(4) Have access controlled by electronic or other means to provide assurance that persons under age 18 will easily not gain admission and that the general public will not accidentally enter the room or section or provide continuous video or window surveillance of the room by store personnel; and

(5) Provide signage at the entrance stipulating that persons under 18 are not permitted inside.

(G) Adult cabarets are required to include a stage raised at least three feet from the viewing floor, with a barrier of at least two feet at the edge of the stage. A person is in violation of the chapter if he or she permits an entertainer off of the stage or a customer on the stage.

(Ord. 02-01, passed 3-4-2002)

§ 118.06 USE REGULATIONS.

(A) No person shall reside in or permit a person to reside in the premises of an adult-only business.

(B) No person shall operate an adult only business unless there is conspicuously placed in a room where

the business is carried on, a notice indicating the process for all services performed therein. No person operating or working at such a place of business shall solicit or accept any fees, except those indicated on any such notice.

(C) The owners, operators or persons in charge of an adult only business shall not allow entrance into the building or any portion of a building used for the use, to any minors as defined by M.C.L.A. §§ 722.51 *et seq.*, as amended.

(D) No adult only business shall possess or disseminate or permit persons therein to possess or disseminate on the premises any obscene materials as defined by M.C.L.A. §§ 752.361 *et seq.*, as amended.

(E) No person shall operate an adult personal service business without obtaining a current zoning and building occupancy permit. The licenses shall be issued by the Zoning Administrator, Building Inspector or duly appointed designee following an inspection to determine compliance with the relevant ordinances of the City of Marshall. The license shall be subject to all regulations of federal, state and local governments.

(F) No person shall lease or sublease, nor shall anyone become the lessee or sublessee of any property for the purpose of using the property for an adult entertainment business without the express written permission of the owner of the property for the use and only upon having obtained the appropriate licenses and permits from the City of Marshall, County of Calhoun and State of Michigan.

(Ord. 02-01, passed 3-4-2002)

§ 118.07 CONDITIONS AND LIMITATIONS.

Prior to the granting of any permit herein provided, the Planning Commission or City Council may impose any such conditions or limitations upon the location, construction, maintenance or operation of the establishment or regulated use, as may in its judgement, be necessary for the protection of the public interest. Failure to follow the limitation or condition will act to immediately terminate any permit or license issued.

(Ord. 02-01, passed 3-4-2002)

§ 118.08 TIME LIMITS FOR REVIEW.

The following time limits shall apply to the review of an application by the City of Marshall Planning Commission and City Council for special approval of a sexually-oriented businesses as defined herein.

(A) The Planning Commission shall publish notice and hold a public hearing as required for special approval review within 60 days of receiving a complete special approval and site plan application as required hereby for a sexually-oriented business.

(B) The Planning Commission shall rule on its recommendation regarding the special approval application for a sexually oriented business at the next regularly scheduled meeting of the Planning Commission following the public hearing held to review the application.

(C) The recommendation of the Planning Commission shall be forwarded to the City Council within 30 days of the meeting at which Planning Commission issues its recommendation. The City Council shall render its decision to grant or deny special approval of the sexually-oriented business or to grant approval with conditions as stipulated by the zoning ordinance within 45 days from the date received from the Planning Commission.

(D) Failure of the city to act within the above specified time limits shall be deemed to constitute granting of special approval to the sexually-oriented business.

(Ord. 02-01, passed 3-4-2002)

§ 118.09 REVOCATIONS.

In any case where a building permit for a regulated use is required and has not been obtained within six months after the granting of special approval by the City Council, the grant of special approval shall become null and void.

(Ord. 02-01, passed 3-4-2002)

§ 118.10 RECONSTRUCTION OF DAMAGED REGULATED USES.

Nothing in this chapter shall prevent the reconstruction, repairing or rebuilding and continued use of any building or structure, the use of which makes it subject to the controls of this chapter which is damaged by fire, collapse, explosion or act of God, provided that the expense of the reconstruction does not exceed 60% of the reconstruction cost of the building or structure at the time the damage occurred, provided that where the reconstruction, repair or rebuilding exceeds the above- stated expense, the re-establishment of the use shall be subject to all provisions of this chapter and further provided, that the re-established use complies with the off-street parking requirements hereof.

(Ord. 02-01, passed 3-4-2002)

§ 118.11 LIMIT ON REAPPLICATION.

No application for an adult use which has been denied wholly or in part shall be resubmitted for a period of one year from the date of the order of denial, except on the grounds of new evidence not previously considered or proof of a change in conditions from the original request.

(Ord. 02-01, passed 3-4-2002)

§ 118.12 ENFORCEMENT.

A violation of the provisions of this chapter shall result, in addition to the remedies provided herein, possible criminal violations.

(Ord. 02-01, passed 3-4-2002)

§ 118.13 INJUNCTION.

As an alternative to the provisions of this section, the city, at its option, may commence proceedings in the circuit court under the appropriate court rule or statute to enjoin any activity conducted by a sexually-oriented business that is deemed to be in violation of these provisions.

(Ord. 02-01, passed 3-4-2002)