

STATE OF MICHIGAN
COUNTY OF OAKLAND
CHARTER TOWNSHIP OF WATERFORD
ORDINANCE NO. 2021-Z-018

TEXT AMENDMENT TO ZONING ORDINANCE

An Ordinance to amend the Waterford Township Zoning Ordinance No. 135-A (“Zoning Ordinance”) Regulations for Adult Entertainment Uses to clarify these uses are not prohibited in C-4 zoned zoning lots and are not permitted in C-3 zoning districts.

THE CHARTER TOWNSHIP OF WATERFORD ORDAINS:

Section 1 of Ordinance

The Acceptable Zones of Adult Entertainment Uses shall be modified in Section 2-601.5 of the Zoning Ordinance to read as follows:

2-601.5. Acceptable Zones. Adult entertainment uses shall be prohibited from all zoning districts except C-4 zoned zoning lots that comply with all requirements of this Section.

Section 2 of Ordinance

The effective date of this Ordinance shall be on the 8th day after publication, or a later date as provided in the Michigan Zoning Enabling Act for when a petition for voter referendum on this Ordinance and/or a notice of intent to submit such a petition is timely filed with the Township Clerk.

CERTIFICATION

I certify that this Zoning Ordinance Text Amendment was adopted by a majority vote of the members of the Board of Trustees of the Charter Township of Waterford at a meeting duly called and held on _____, 2021.

Date

Kimberly Markee, Township Clerk

BOARD OF TRUSTEES

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DEVELOPMENT SERVICES**DEPARTMENT**

Jeffrey M. Polkowski, AICP
Superintendent of Planning &
Zoning Division

Dave Hills
Superintendent of Building
Division

MEMORANDUM

Date: November 24, 2021

To: Honorable Township Board Members

From: Jeffrey M. Polkowski, Superintendent of Planning and Zoning

RE: 2021-Z-18

Proposed Zoning Ordinance Text Amendment: Remove Adult Entertainment Uses as a possible use from the C-3, General Business Zoning District.

This proposed Zoning Ordinance Text Amendment removes the C-3 Zoning District as an acceptable Zoning District for Adult Entertainment Uses.

Currently, there are no Adult Entertainment Uses listed as Permit Principle Use or a Permitted Use after Special Approval under Section 3-705 of the Zoning ordinance. Planning Staff believes that the C-3 Zoning District is erroneously listed in Section 2-601.4 of the Zoning Ordinance and is proposing this language to be removed for clarification.

Section 1-007 of the Zoning Ordinance defines Adult Entertainment Uses as:

ADULT ENTERTAINMENT USE. Any use of land, whether vacant or combined with buildings, structures, or vehicles thereon by which said property is devoted to displaying or exhibiting material for entertainment, a significant portion of which includes matter, actions depicting, describing or presenting specified sexual activities or specified anatomical areas. The following meanings shall be applied throughout this definition of adult entertainment use:

Adult Novelty Items. Adult novelty items means any object, substance, instrument, paraphernalia, item or device offered for sale which is distinguished, designed, or characterized by an emphasis on matters relating to "Specified Sexual Activities", or sexual stimulation or arousal of "Specified Anatomical Areas".

Display. Any single motion or still picture, presentation, dance or exhibition, live act or placing of materials or engaging in activities on or in a newsstand, display rack, window, showcase, display case or similar place so that the material or activity is easily visible to the general population whether for free or otherwise.

Sexually Explicit Materials. Sexually explicit material means any book, magazine, periodical, slide, picture, photograph, drawing, sculpture, software, video cassettes or discs, video reproductions, or motion picture film, activity or other printed, electronic, recorded or visual representation or image which has as a significant portion of its content or exhibit matter of actions depicting, describing, or relating to "Specified Sexual Activities" or "Special Anatomical Areas", such as but not limited to, depiction of uncovered or less than opaquely covered human or animal genitals or pubic areas, human sexual intercourse, human or animal masturbation, oral or anal intercourse, human-animal intercourse, excretory functions, physical stimulation or touching of genitals or pubic areas, or flagellation or torture by or upon a person who is nude or clad in revealing costumes in the context of sexual stimulation. The materials shall be judged without regard to any covering which may be affixed or printed over the material or activity in order to obscure genital areas in a depiction which otherwise would fall within the definitions of this Section. Works of artistic, anthropological, scientific, library or medical significance, which taken as a whole have serious literary, artistic, political or scientific value, are not intended to be included within the definitions of this subsection. This definition is intended to include material which is the product of any technology, whether that technology is available on the effective date of this article or becomes available after that date.

Significant Portion

- A. Any one or more portions of the display having continuous duration in excess of five minutes; and/or
- B. The aggregate of portions of the display having a duration equal to ten percent or more of the display; and/or
- C. The aggregate of portions of the collection of any materials or exhibits composing the display equal to ten percent or more of the display.

Specified Anatomical Areas

- A. Less than completely and opaquely covered: (a) human genitals, pubic region (b) buttocks, and (c) female breast below a point immediately above the top of the areola; and
- B. Human genitals in a discernibly turgid state, even if completely and opaquely covered

Specified Sexual Activities

- A. Human genitals in a state of sexual stimulation or arousal;
- B. Acts of human masturbation, sexual intercourse or sodomy;
- C. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast
- D. Appearing in a state of nudity

Adult entertainment uses shall include but not be limited to the following:

An Adult Motion Picture Theater is an enclosed building with a capacity of 50 or more persons used for presenting material which is depicting or relating to "Specified Sexual Activities" or "Specified Anatomical Areas" for observation by patrons therein.

An Adult Mini-Motion Picture Theater is an enclosed building with a capacity for less than 50 persons used for presenting material which has as a significant portion of any motion picture or other display depicting, describing or presenting "Specified Sexual Activities" or "Specified Anatomical Areas."

An Adult Motion Picture Arcade is any place to which the public is permitted or invited wherein coin or slug operated or electronically 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 a significant portion of images so displayed depict, describe or relate to "Specified Sexual Activities" or "Specified Anatomical Areas."

An Adult Book or Supply Store, Adult Novelty Store, or Adult Video Store defines as a commercial establishment having ten (10) percent or more of all usable interior, retail, wholesale or warehouse space devoted to the distribution, display, storage, sale, or rental of any form of sexually explicit materials or adult novelty items. Also, an establishment with a significant portion devoted to the sale or display of sexually explicit materials or adult novelty items.

An Adult Cabaret is a nightclub, theater or other establishment which features live performances by topless and/or bottomless dancers, "go-go" dancers, exotic dancers, strippers, or similar entertainers, where a significant portion of such performances show, depict or describe "Specified Sexual Activities" or "Specified Anatomical Areas."

An Adult Motel is a motel wherein matter, actions or other displays are presented which contain a significant portion depicting, describing, or relating to "Specified Sexual Activities" and "Specified Anatomical Areas."

An Adult Massage Parlor is any place where for any form or consideration or gratuity, massage, alcohol rub, administration of fomentation, electric or magnetic treatment or any other treatment or manipulation of the human body occurs as part of or in connection with "Specified Sexual Activities" or where any person providing such treatment, manipulation or service related thereto exposes "Specified Anatomical Areas."

An Adult Model Studio is any place where, for any form of consideration or gratuity, figure models who display "Specified Anatomical Areas" are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such considerations or gratuities, except that this provision shall not apply to any bona-fide art school or similar educational institution.

An Adult Personal Service Business is a business having as its principal activity a person, while nude or while displaying specified anatomical areas, providing personal services for another person. Such businesses include, but are not limited to, modeling studios, body painting studios, wrestling studios, and conversational parlors.

An Adult Sexual Encounter Center is any business, agency, or person who, for any form of consideration or gratuity, provides a place where three (3) or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in "Specified Sexual Activities" or exposing "Specified Anatomical Areas"

Planning Commission Recommendation and Findings

The Planning Commission reviewed this proposed Rezoning at the regularly scheduled meeting on November 23, 2021 and resolved unanimously, to forward a favorable recommendation to the Township Board.

Motions

Based upon the Planning Commission's favorable recommendation at the November 23, 2021 regular meeting for this zoning ordinance amendment, should the Board want to consider adopting the proposed ordinance amendment, the appropriate motion would be to introduce the attached Ordinance and schedule it for possible adoption at the November 24, 2021 meeting.

Should you have any question's please do not hesitate to reach out to this office.

- G. Entertainment establishments (See *Entertainment Establishments in Section 1-007*).
- H. Religious facilities (See *Religious Facilities in Section 1-007*).
- I. Hotels and Motels (See *Hotel And Motel in Section 1-007*).
- J. All uses identified as regulated uses in *Section 2-602*.

2-601.4. Measurement of Dispersal Distance. For the purpose of this Section, the dispersal of adult entertainment uses shall be measured by making a straight line, without regard to intervening buildings, structures, or objects, from the nearest portion of the building or structure used as a part of the premises where an adult entertainment use is conducted, to the nearest property line of any zoning lot containing such uses listed in subsection 2 above.

2-601.5. Acceptable Zones. Adult entertainment uses shall be prohibited from all zoning districts except ~~C-3 and~~ C-4 zoned zoning lots that comply with all requirements of this Section.

2-601.6. Free Standing Building Required. All adult entertainment uses shall be contained in a free standing single-use building. Enclosed malls, shopping centers, common wall buildings, and multi-uses within the same building do not constitute a free standing building.

2-601.7. Display Content. No adult entertainment use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined under *Adult Entertainment Use in Section 1-007*, from any public way or from any property not regulated as an adult entertainment use. This provision shall apply to any display, decoration, sign, show window or other opening.

SECTION 2-602. ANTI-BLIGHT REGULATION

2-602.1. Purpose and Intent. The purpose and intent of this Section is to regulate the location and operation of certain uses identified in this Section within the Township, and to minimize the negative secondary effects of such uses. Based upon studies undertaken and reported by numerous other communities in Michigan and across the United States, which have been studied by the Township and found to have relevance and application to the Township, it is recognized that the uses identified in this Section, because of their very nature, have serious objectionable operational characteristics when concentrated with certain other uses under certain circumstances thereby causing negative secondary effects upon nearby residential, educational, religious, and other similar public and private uses. The regulation of such uses is necessary to ensure that their negative secondary effects will not contribute to the blighting or downgrading of surrounding areas and will not negatively impact the health, safety, and general welfare of Township residents. The provisions of this Section are not intended to offend the guarantees of the First Amendment to the United States Constitution, or to deny access to these types of uses and their products, or to deny such uses access to their intended market. Neither is it the intent of this Section to legitimize activities that are prohibited by Township ordinance or state or federal law. If any portion of this Section relating to the regulation of the uses identified in this Section is found to be invalid or unconstitutional by a court of competent jurisdiction, the Township intends said portion to be disregarded, reduced, and/or revised so as to be recognized to the fullest extent possible by law. The Township further states that it would have passed and adopted what remains of any portion of this Section relating to regulation of the uses identified in this Section following the removal, reduction, or revision of any portion so found to be invalid or unconstitutional.

2-602.2. Regulated Uses. The following uses are considered “regulated uses” for the purposes of this Section:

- A. Flea markets (See *Resale Establishments in Section 1-007*).
- B. Massage Establishments (See *Section 1-006*).
- C. Massage schools (See *Section 1-006*).
- D. Pawn shops (See *Section 1-006*).
- E. Precious metal and gem dealers (See *Section 1-006*).

2-602.3. Dispersal Requirement. In addition to compliance with the other provisions of this Zoning Ordinance, a building containing one or more regulated uses identified in subsection 2 above shall not be located:

- A. Within one thousand (1,000) feet from the property line of any zoning lot containing another regulated use;
- B. Within five hundred (500) feet from the property line of any zoning lot containing an adult entertainment use, as defined in *Section 1-007*; and
- C. Within five hundred (500) feet from the property line of any zoning lot containing any single-family or multiple-family residential use.