

City of Ypsilanti
Notice of Adopted Ordinance
Ordinance No. 1379

An Ordinance Entitled "Adult Regulated Uses Zoning Update"

THE CITY OF YPSILANTI ORDAINS:

That the definitions for "Adult regulated uses" in Section 122-203 be amended as follows:

Adult regulated uses. The following are classified as types of adult regulated uses.

- (1) *Adult book or supply store* means an establishment having 20 percent or more of its stock in trade or its sales devoted to the distribution, display, or storage of books, magazines, and other periodicals and/or photographs, drawings, slides, films, video tapes, recording tapes, and/or novelty items which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas. Such establishment or the segment or section devoted to the sale or display of such material in 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.
- (2) *Adult mini-motion picture theater* means an enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein. 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.
- (3) *Adult motel/hotel* means a building in which lodging is provided or offered to the public for compensation and which is open to transient guests where the room charge is made by the hour, and/or in which books, magazines and other periodicals or materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, may be sold or rented, or where motion pictures or video tapes with an emphasis on specified sexual activities or specified anatomical areas are available for viewing on an in-room viewing screen or television monitor.
- (4) *Adult motion picture theater* or *adult live stage performing theater* means an enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein. 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.
- (5) *Cabaret* means an establishment which features any of the following: topless dancers and/or bottomless dancers, strippers, or topless and/or bottomless waitpersons or employees or any other form of nude or partially nude service or entertainment.
- (6) *Feature means to give prominence to a certain activity, person, or persons on a recurring, ongoing basis.*
- (6Z) *Massage parlor* or *massage establishment* means a place where manipulated massage or manipulated exercises are practiced for pay upon the human body by anyone using

mechanical, therapeutic, or bathing devices or techniques, other than the following: a duly licensed massage therapist, physician, osteopath, or chiropractor; a registered or practical nurse operating under a physician's directions; or, registered physical or occupational therapists or speech pathologists who treat patients referred by a licensed physician and operate only under such physician's direction. A massage establishment may include, but is not limited to, establishments commonly known as massage parlors, health spas, sauna baths, Turkish bathhouses, and steam baths. Massage establishments shall not include properly-licensed hospitals, offices of a duly licensed massage therapist, medical clinics, or nursing homes, or beauty salons or barbershops in which massages are administered only to the scalp, the face, the neck or the shoulders; or other establishments that offer massages performed by a duly licensed massage therapist.

(8) *Nude* means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this chapter, a "fully opaque covering" must be non-flesh colored, shall not consist of any substance that can be washed or peeled off the skin (such as paint, make-up, or latex), and shall not simulate the appearance of the anatomical area that it covers.

(9) *Partially nude* means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

(710) *Specified anatomical areas* means portions of the human body defined as follows:
(i) Less than completely and opaquely covered human genitals, pubic region, buttocks, or female breast below the point immediately above the top of the areola; and
(ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(811) *Specified sexual activities* means the explicit display of one or more of the following:
(i) Human genitals in a state of sexual stimulation or arousal.
(ii) Acts of human masturbation, sexual intercourse, or sodomy.
(iii) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.

(12) *Used for presenting* means utilized for showing the described material or performances on a recurring, ongoing basis.

That the table in Section 122-431 be amended as follows:

<i>P=Principal; A=Accessory; S/Res= Special Land Use when adjacent to R-1, CN, CN-Mid, CN-SF, or MD zoning, otherwise permitted; S=Special Land Use</i>			
USES	PMD	NOTES	SPECIFIC REGULATIONS
...			
<u>Adult Regulated Uses (1):</u> <u>Adult book or supply stores;</u> <u>Adult hotels or motels;</u> <u>Adult motion picture theatres/ adult live stage performing theaters;</u> <u>Adult mini-motion picture theaters;</u> <u>Cabarets</u>	P		<u>Section 122-512</u>
<u>Adult Regulated Uses (2) or (3):</u> <u>Massage parlors/massage establishments;</u> <u>Pawnshops</u>	S		Section 122-512
...			
Software, film, music, television and radio, and video game development & physical production	S/Res	Adult-regulated uses are special-land-uses.	

That Section 122-512 be amended as follows:

- (a) ~~In the development and execution of this section, it is recognized that there are certain uses, which by their very nature are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated in a small area, thereby having a deleterious effect on surrounding neighborhoods. Regulation of the location of these uses is necessary to ensure that the adverse effects of such businesses will not cause or contribute to the blighting or downgrading of the city's residential neighborhoods or commercial centers. It is the intent of this section to provide reasonable regulations for the establishment of adult regulated uses in a viable, accessible location where the adverse impact of their operations may be minimized.~~ Purpose. It is the purpose of this section to regulate adult regulated uses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult regulated uses within the City. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this division to restrict or deny access

by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this division to condone or legitimize the distribution of obscene material.

- (b) *Findings and Rationale*. Based on evidence of the adverse secondary effects of adult regulated uses presented in hearings and reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

Big Dipper Entertainment, LLC v. City of Warren, 641 F.3d 715 (6th Cir. 2011); *Entertainment Productions, Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *84 Video/Newsstand, Inc. v. Sartini*, 455 F. App'x 541, 552 (6th Cir. 2011); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 466 F.3d 391 (6th Cir. 2006); *Big Dipper Entm't, LLC v. City of Warren*, 658 F. Supp. 2d 831 (E.D. Mich. 2009); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (en banc); *Little Mack Entm't II, Inc. v. Twp. of Marengo*, 2008 WL 2783252 (W.D. Mich. July 17, 2008); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *City of Chicago v. Pooh Bah Enterprises, Inc.*, 865 N.E.2d 133 (Ill. 2006); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *181 South, Inc. v. Fischer*, 454 F.3d 228 (3rd Cir. 2006); *Bronco's Entm't, Ltd. v. Charter Twp. of Van Buren*, 421 F.3d 440 (6th Cir. 2005); *Charter Twp. of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003); *Jott, Inc. v. Clinton Twp.*, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353 (1995); *Gora v. City of Ferndale*, 456 Mich. 704 (1998); *Rental Property Owners Ass'n of Kent County v. City of Grand Rapids*, 455 Mich. 246 (1996); *15192 Thirteen Mile Road, Inc. v. City of Warren*, 626 F. Supp. 803 (E.D. Mich. 1985); *City of Warren v. Executive Art Studio, Inc.*, No. 197353, 1998 WL 1993022 (Mich. App. Feb. 13, 1998); *Tally v. City of Detroit*, 54 Mich. App. 328 (1974); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Kentucky Restaurant Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't*, 60 S.W.3d 572 (Ky. Ct. App. 2001); *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. Jan. 24, 2002); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Bamon Corp. v. City of Dayton*, 923

F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997), *aff'd in part, rev'd in part*, 176 F.3d 1358 (11th Cir. 1999); *In re Tennessee Public Indecency Statute*, 172 F.3d 873 (6th Cir. Jan. 13 1999)(table); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Boston*, 818 F.3d 651 (11th Cir. 2016); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Warren Gifts, LLC v. City of Warren*, No. 2:02-cv-70062, R. 26 (E.D. Mich. June 21, 2002) (denying motion for preliminary injunction); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around adult regulated uses, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); *Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 *Criminal Justice Policy Review* 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to*

the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Indianapolis / Marion County Board of Zoning Appeals Documents; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); and Strip Club-Trafficking Documents,

the City Council finds:

- (1) Adult regulated uses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects. There is documented evidence of adult regulated uses manipulating their inventory and/or business practices to avoid regulation while retaining their essentially sexually oriented, adult nature.
- (2) Adult regulated uses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult regulated uses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult regulated uses in one area.
- (3) Each of the foregoing secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. The City's interest in regulating adult regulated uses extends to preventing future secondary effects of either current or future uses subject to these regulations that may locate in the City. The City finds that the cases and documentation relied on in this section are reasonably believed to be relevant to said secondary effects. The City adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult regulated uses, including the judicial opinions and reports related to such secondary effects.

(c) Uses subject to these regulations ~~and the requirements of article V of chapter 10~~ are as follows:

(1) Adult: Adult book or supply store, adult hotels or motels, adult motion picture theater/adult live stage performing theater, ~~and~~ adult mini-motion picture theater, and cabarets.

~~(2) Cabarets.~~

~~(3)~~ Massage parlors and massage establishments.

~~(4)~~ Pawnshops.

(bd) No adult regulated use may ~~be permitted operate~~ within 1,000 feet of any other adult regulated use. Measurement of the 1,000-foot radius must be made from the ~~outermost boundaries of the lot or parcel on which the adult regulated use is proposed~~ closest part of the structure occupied by an adult regulated use to the closest part of the structure occupied by another adult regulated use. The planning commission may waive this requirement for pawnshops if the following findings are made that:

- (1) The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this article is observed.
- (2) The proposed regulated use will not enlarge or encourage the development of a "skid-row" or blighted area.
- (3) The establishment of an additional adult regulated use in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any program of urban revitalization.
- (4) All applicable regulations of this chapter will be observed.

The planning commission may not waive this locational requirement for adult uses, cabarets, massage parlors, or massage establishments.

- (ee) No adult regulated use may ~~be permitted operate~~ within 500 feet of any R1, HHS, P, MD, CN, CN-Mid and CN-SF district; nor may any adult regulated use ~~be permitted operate~~ within 500 feet of any school, park, library, playground, movie theater, licensed child care facility, or any other area or use where minor children are likely to congregate; nor may any adult regulated use ~~be permitted operate~~ within 500 feet of any religious institution. Measurement must be from the ~~outermost boundaries of the lot or parcel on which closest part of any structure occupied by~~ the adult regulated use ~~is proposed to be located to the closest boundary line or property line of the districts and uses listed above. The zoning and/or use of land in adjacent jurisdictions shall not disqualify any location within the City of Ypsilanti from being available to an adult regulated use. This prohibition may be waived if the planning commission is presented with a validated petition requesting such waiver, signed by two-thirds of all persons owning, residing in, or doing business in the area within 500 feet of the proposed adult regulated use. The circulator of the petition must sign an affidavit attesting that the circulator personally witnessed the signatures and the signatures were affixed to the petition by the person whose name appears thereon. The signatures must be validated by the community economic development department. The planning commission cannot consider the waiver of the locational requirements until the required petition has been duly filed and verified.~~ Pawnshops are not ~~be~~ subject to these locational requirements.
- (df) The building and premises must be designed and constructed so that material depicting, ~~describing, or relating to~~ specified sexual activities or specified anatomical areas, cannot be observed by pedestrians or from vehicles on any public right-of-way. ~~This provision must apply to any display, decoration, sign, show window, or other opening.~~
- (eg) No person may reside in or permit any person to reside in the premises of an adult regulated use.
- (fh) Such uses must comply with all applicable federal, state, and local licensing regulations. For massage parlors/massage establishments and for pawnshops, initial and annual proof of such compliance must be a condition of special use approval and the continuance thereof.
- (gj) Upon finding that any condition, safeguard, or requirement has been breached, the building department can revoke any occupancy permit. All operations must cease 14 days following such notification of revocation by the Building Department, unless such violations are corrected. Also, if violations are not corrected within 14 days, reinstatement of a revoked occupancy permit for a massage parlor/massage establishment or for a pawnshop must require a new special use application and approval thereof.

MADE, PASSED AND ADOPTED BY THE YPSILANTI CITY COUNCIL THIS 14th DAY OF September, 2021.

Andrew Hellenga, City Clerk

Attest

I do hereby confirm that the above Ordinance No. 1379 was published in The Washtenaw Legal News on the 23rd day of September

Andrew Hellenga, City Clerk

CERTIFICATE OF ADOPTING

I hereby certify that the foregoing is a true copy of the Ordinance passed at the regular meeting of the City Council held on the 14th day of September, 2021.

Andrew Hellenga, City Clerk

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Second Reading: September 14, 2021

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