

Proposed Medical Marijuana Zoning Ordinance Amendments
DRAFT for Public Hearing August 20, 2014

Article 2.02 Definitions (to be moved to Chapter 810 Business License and Regulations)

~~Sexually Oriented Business—An establishment that provides adult entertainment appealing to the sexual interests of its customers. Sexually Oriented Businesses and their operational characteristics are further defined as follows:~~

~~————— (1) ——— Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, internet or mechanically controlled still or motion picture machines, projectors or other image producing devices are maintained to show images and where the images so displayed are distinguished or characterized by the depicting or describing of "sexually explicit activities" or "specific anatomical areas".~~

~~————— (2) ——— Adult Bookstore or Adult Video Store means an establishment which offers for sale or rental for any form of consideration, as one of its principal business purposes, any one or more of the following:~~

~~————— (a) ——— Books, computer diskettes, tapes or hard drives, magazines, periodicals or other printed matter or photographs, films, motion pictures, video matter or photographs, cassettes or video reproductions, slides or other visual representation which depict or describe "sexually explicit activities" or "specified anatomical areas"; or~~

~~————— (b) ——— Instruments, devices or paraphernalia which are designed for use in connection with "sexually explicit activities"; or~~

~~————— (c) ——— Items, materials, gimmicks, or paraphernalia depicting, displaying, advertising or packaged as "sexually explicit activities" or depict or describe "specified anatomical areas".~~

~~————— (d) ——— For purposes of this Section, "principal business purpose" means:~~

~~————— (i) ——— The devotion of a significant or substantial portion, meaning at least twenty-five (25%) percent of its in-store inventory (either measured by display area or retail value) in the items listed above; or~~

~~————— (ii) ——— The receipt of twenty five (25%) percent of more of its revenues from the sale of the items listed above; or~~

~~————— (iii) ——— The devotion of a significant or substantial portion of its advertising expenditures to the promotion of the sale, rental or viewing, of books, magazines, periodicals or other printed matter, or photographs, film, motion pictures, video cassettes, compact discs, slides or other visual representations, items, materials, gimmicks, or paraphernalia which are characterized by the depiction, description display, advertising or packaging of "sexually explicit activities" or "specified anatomical areas".~~

~~————— (e) ——— An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "sexually explicit activities" or "specified anatomical areas", and still be characterized as an adult book store, adult novelty or retail store or adult video store. Such other business purposes will not serve to exempt such~~

establishment from being categorized as an adult bookstore, adult novelty store or adult video store, so long as the establishment falls within the definition of an adult bookstore, adult novelty store or adult video store as set forth above.

_____ (3) _____ Adult Cabaret means a nightclub, bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are sold, which features:

_____ (a) _____ persons who appear in a state of restricted nudity; or

_____ (b) _____ live performances, exhibitions, shows, dances, revues, floorshows, songs or other similar presentation which are characterized by the partial exposure of "specified anatomical areas"; or

_____ (c) _____ films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas".

_____ (d) _____ This definition does not include a theater which features occasional live nude performances with serious literary, artistic or political value and that have no adverse secondary effects.

_____ (4) _____ Adult Massage Parlor means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other 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 his or her specified anatomical areas. An Adult Massage Parlor, in contrast to a Myotherapy Establishment, is considered a sexually oriented business for purposes of these regulations.

_____ (5) _____ Adult Motel means a hotel, motel or similar commercial establishment which:

_____ (a) _____ offers accommodations to the public for any form of consideration and provide patrons with closed-circuit television transmission, films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are regularly characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas"; or which advertises the availability of this adult type of material by means of a sign, visible from the public right of way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio, internet or television; or

_____ (b) _____ permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electric transmission over the World Wide Web; or

_____ (c) _____ offer a sleeping room for rent for a period of time that is less than ten (10) hours; or

_____ (d) _____ allow a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

_____ (6) _____ Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas".

————— (7) ——— 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 anatomical areas" or by the performance of "sexually explicit activities". This definition does not include a theater which features occasional live nude performances with serious literary, artistic or political value and that have no adverse secondary effects.

————— (8) ——— Adult Use Business means an adult arcade, adult bookstore, adult novelty or retail store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio and/or a sexual encounter establishment or any business determined by the Building Official, City Manager, and/or the Chief of Police, to be an adult use, due to the activities of the business which involve characteristic of adult uses, such as nudity, semi nudity, exposure of "sexually explicit activities" and/or "specified anatomical areas". The definition of "adult use business" shall not include an establishment where a medical practitioner, psychologist, psychiatrists or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

————— (9) ——— Employee means a person who works or performs in and/or for an adult use business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

————— (10) ——— Entertainer means a person who performs some type of activity or pose with the intent of allowing others to witness that activity or pose.

————— (11) ——— Escort means a person, who for consideration in any form, agrees or offers to act as a companion guide or date for another person, or who agrees or offers to privately perform as an entertainer, including, but not limited to, the modeling of lingerie, the removal of clothing, the performance of a dance or skit, or the providing of specified sexual activities for another person. Under this definition, "privately" shall mean a performance for an individual, or that individual's guests.

————— (12) ——— 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.

————— (13) ——— Establishment means and includes any of the following:

————— (a) ——— the opening or commencement of any sexually oriented business as a new business;

————— (b) ——— the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

————— (c) ——— the location or relocation of any sexually oriented business.

————— (14) ——— Licensee means the individual listed as an applicant on the application of a sexually oriented business license, or a person whose name a license to operate an adult use business has been issued.

————— (15) ——— Licensing Officer means the Clerk of the City of Howell or his/her designee.

———— (16) ——— Manager means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees, or is otherwise responsible for the operation of the sexually oriented business.

———— (17) ——— Massage means the treating of external parts of the body for remedial or hygienic purposes, consisting of stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating with the hands or with the aid of any mechanical or electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided shall pay any consideration whatsoever therefore. For purposes of this Ordinance, the term "bodywork" shall mean massage.

———— (18) ——— Myotherapy Establishment means any individual, group of individuals, person or business which engages in the practice of massage as defined herein, and which has a fixed place of business where any person, firm, association, partnership, limited liability company or corporation carries on any of the activities as defined herein. Myotherapy establishment shall also include, but not be limited to, a Turkish bath parlor, steam bath, sauna, magnetic healing institute, health club, health spa, or physical fitness club or business that offers massages on occasion or incidental to its principal operation, as well as an individual's home where a person is engaged in the practice of massage for consideration. The definition of sexually oriented business shall not include the practice of massage in a licensed hospital, sanitarium, nursing home, medical clinic or the offices of a physician, surgeon, chiropractor, osteopath, psychologist, clinical social worker and family counselor, who are licensed to practice their respective professions in the State of Michigan, or who are permitted to practice temporarily under the auspices of an associate or an establishment duly licensed in the State of Michigan, clergymen, certified members of the American Massage and Therapy Association and certified members of the International Myomassethics Federation. A Myotherapy Establishment engaged in the practice of massage as defined herein is considered a Regulated Use but not a sexually oriented business for purposes of these regulations.

———— (19) ——— Nude Model Studio means any place where a person appears in a state of nudity or displays "specific anatomical areas", and is provided money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons. This includes modeling studios that provide for nude modeling on an occasional basis, but it does not include modeling studio whose primary function is to provide art classes as part of a college, university or educational institution and which is certified by the State of Michigan.

———— (20) ——— Operator means the owner, licensee, manager or person in charge of any premises.

———— (21) ——— Peep Booth means an adult motion picture theater with a viewing room or cubical of less than one hundred fifty (150) square feet of floor space.

———— (22) ——— Premises or Licensed Premises means any premises that requires a sexually oriented business license and that is classified as a sexually oriented business.

———— (23) ——— Principal Owner means any person owning, directly or beneficially: a) ten percent (10%) or more of a corporation's equity securities; b) ten percent (10%) or more of the membership interests in a limited liability company; or c) in the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity.

_____ (24) _____ Private Room means a room in a hotel/motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.

_____ (25) _____ 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.

_____ (26) _____ Sexual Encounter Center means a business or commercial enterprise that, as one (1) of its primary business purposes, offers a place where two (2) or more persons may congregate, associate or consort for the purpose of "sexually explicit activities" or the exposure of "specified anatomical areas" for any form of consideration, including, but not limited to:

_____ (a) _____ physical contact in the form of wrestling or tumbling between persons of the same or opposite sex; or

_____ (b) _____ activities when one or more of the persons is in a state of nudity or semi-nudity; or

_____ (c) _____ permits patrons to display or be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for recording or transmission over the World Wide Web or any other media.

_____ (27) _____ Sexually Explicit Activities means and includes any of the following:

_____ (a) _____ the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or

_____ (b) _____ sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation or sodomy; or

_____ (c) _____ masturbation, actual or simulated; or

_____ (d) _____ any activity intended to arouse, appeal to or gratify a person's lust, passions or sexual desires; or

_____ (e) _____ human genitals in a state of sexual stimulation, arousal or tumescence; or

_____ (f) _____ excretory function as part of or in connection with any of the activity set forth in (a) through (e) above.

_____ (28) _____ Sexually Oriented Business means an adult arcade, adult bookstore or adult video store, adult novelty or retail store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center or similar establishment or any place that permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electronic transmission over the World Wide Web, film, motion picture, videocassette, DVD or other photographic reproduction. "Sexually oriented" when used to describe film, motion picture, videocassette, DVD, slides, or other photographic reproductions shall mean film, movies, motion picture, videocassette, DVD, slides or other photographic reproductions that regularly depict material which is distinguished or characterized by an emphasis on matter depicting or describing "sexually explicit activities" or "specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business. The definition of "sexually oriented business" shall not

include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

____ (29) _____ Specified Anatomical Areas means and includes any of the following:

____ (a) _____ less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, or female breast or breasts of any portion thereof that is situated below a point immediately above the top of the areola, or any combination of the foregoing; or

____ (b) _____ human genitals in a state of sexual arousal, even if opaquely and completely covered.

____ (30) _____ Specified Criminal Acts means sexual crimes against children, sexual abuse, criminal sexual conduct, rape, crimes classified as sexual crimes by the State of Michigan or any other state, or crimes connected with another adult use business, including, but not limited to, the distribution of obscenity, prostitution and/or pandering.

____ (31) _____ Significant or Substantial Portion means twenty five percent (25%) or more of the term modified by such phrase.

____ (32) _____ Substantial Enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than twenty five percent (25%), as the floor area exists on the date of adoption of this ordinance.

____ (33) _____ Tenant Space — Tenant Space means a securable area separated from other area by walls and doors that are available for lease or rent within a multi-tenant building, such as tenant spaces typically found within a shopping mall or strip.

____ (34) _____ Transfer of Ownership or Control of a sexually oriented business means and includes any of the following:

____ (a) _____ the sale, lease or sublease of the business;

____ (b) _____ the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or

____ (c) _____ the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Amendments to Section 4.06 Purposes and Uses Within Zoning Districts:

- (i) B-2, General Business District.
 - (3) Special Land Uses.
 - L. Medical Marijuana Provisioning Centers subjected to the provisions of Section 6.27
- (k) I-1, Light Industrial District.
 - (3) Special Land Uses.
 - G. Medical Marijuana Provisioning Centers subject to the provisions of Section 6.27
 - H. Medical Marijuana Growing/Manufacturing Facility subject to acquiring a license from the City Clerk
- (l) I-2, General Industrial District.
 - (3) Special Land Uses.
 - D. Medical Marijuana Provisioning Centers subject to the provisions of Section 6.27
 - E. Medical Marijuana Growing/Manufacturing Facility subject to acquiring a license from the City Clerk

Amendments to Section 5.09 Home Occupations:

Home occupations that are clearly incidental and secondary to the principal residential use are permitted in specific zoning districts; however, the following conditions shall apply:

- (a) The total floor area utilized by the home occupation shall not exceed an area defined as not more than twenty-five (25) percent of the total floor area of any one (1) story of the residential premises so used.
- (b) The home occupation shall involve no employees on the premises, other than members of the immediate family residing on the premises.
- (c) All home occupation activities shall be conducted indoors, except gardening.
- (d) There shall be no outside display of any kind, or other external or visible evidence of the conduct of a home occupation. Signs advertising a home occupation are prohibited.
- (e) There shall be no vehicular traffic permitted for the home occupation, other than that which is normally generated for a one-family dwelling unit in a residential area, both as to volume and type of vehicles.
- (f) No home occupation shall be permitted which is injurious or a nuisance to the general character of the residential district or which creates a congested or otherwise hazardous traffic or parking condition.

- (g) Any uses inconsistent with the home occupation provisions of this Zoning Ordinance shall be permitted to continue, but only until there is any change in the ownership of the land so used from and after the effective date of this section.
- (h) Any uses inconsistent with the home occupation provisions of this Zoning Ordinance shall have one (1) year from and after the effective date hereof to cease and desist or to comply with this section.
- (i) All medical marijuana home occupations shall obtain a medical marijuana home occupation license from the City Clerk; if the occupant is not the owner of the premises then consent must be obtained from the property owner to ensure the owner's knowledge of the use.
- (j) Medical Marijuana Home Occupation. In addition to the requirements in Section 5.09 Medical marijuana home occupations shall be subject to the following requirements:
1. The medical use of marijuana shall comply at all times and in all circumstances with the Michigan Medical Marijuana Act and the General Rules of the Michigan Department of Community Health, as they may be amended from time to time.
 2. A registered primary caregiver operating a medical marijuana home occupation shall not be located within 1,000 feet of a school, as measured from the outermost boundaries of the lot or parcel on which the home occupation and school is located.
 3. Not more than one (1) primary caregiver per parcel shall be permitted to grow or cultivate medical marijuana.
 4. Not more than five (5) qualifying patients shall be assisted with the medical use of marijuana within any given calendar week.
 5. All medical marijuana shall be contained within an enclosed, locked facility inside a primary or accessory building.
 6. All necessary building, electrical, plumbing and mechanical permits shall be obtained for any portion of the building in which electrical wiring, lighting and/or watering devices that support the cultivation, growing or harvesting of marijuana are located.
 7. If a room with windows is utilized as a growing location, any lighting methods that exceed usual residential periods between the hours of 11pm and 7am shall employ shielding methods, without alteration to the exterior of the residence, to prevent ambient light spillage that may create a distraction for adjacent residential properties.
 8. That portion of the building where energy usage and heat exceeds typical residential use, such as grow room, and the storage of any chemicals such as herbicides, pesticides, and fertilizers shall be subject to inspection and approval by the Howell Area Fire Marshall to insure compliance with the Michigan Fire Protection Code.

9. The premises shall be open for inspection upon request by the City of Howell Building Official, the Howell Area Fire Marshal and law enforcement officials for compliance with all applicable laws and rules, during the stated hours of operation/use and as such other times as anyone is present on the premises.

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