

CITY OF HUBER HEIGHTS
STATE OF OHIO

ORDINANCE NO. 2023-O-2594

AMENDING CERTAIN SECTIONS OF PART ELEVEN, PLANNING AND ZONING CODE, OF THE CITY CODE OF HUBER HEIGHTS.

WHEREAS, the citizens of Huber Heights require City codified ordinances that are current, up to date, and reflect the current practices and processes of the City; and

WHEREAS, as part of the Ordinance Review Commission process, the Ordinance Review Commission has identified provisions within the Planning and Zoning Code that require updating or other changes; and

WHEREAS, the City Council has determined that revisions in Chapters 1103, 1109, 1171, 1121, 1123, 1172, 1175, 1181, 1185, 1199 are necessary to enhance the effective and efficient delivery of municipal services.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Huber Heights, Ohio that:

Section 1. Part Eleven, Planning and Zoning, Chapter 1103 – Definitions, Section 1103.39 - Person is hereby deleted and removed in its entirety:

~~1103.39 Person.~~

~~Person means any natural person, firm, partnership, association or corporation, but this definition does not include governmental units.~~

~~(Ord. 83 O-124, Passed 7-11-83)~~

Section 2. Part Eleven, Planning and Zoning, Chapter 1103 – Definitions, Section 1103.54(c) - Thoroughfare, Street Or Road is hereby amended to read as follows:

1103.54 Thoroughfare, street or road.

(c) *Collector street* means a thoroughfare, whether within a residential, industrial, commercial or other type of development, which primarily carries traffic from local streets to arterial streets, including the ~~principle~~ principal entrance and circulation routes within residential subdivisions.

Section 3. Part Eleven, Planning and Zoning, Chapter 1109 – Subdivision Design Standards, Section 1109.12 - Special Street Types is hereby amended to read as follows:

1109.12 Special street types.

The following requirements shall apply to special street types:

(a) Permanent dead-end streets shall not be permitted. Temporary-dead end streets shall be permitted only as part of a continuing street plan.

Permanent dead-end streets shall be allowed at the City's corporation lines for streets which were in existence at the time of incorporation. These streets are defined as roadways which would be impacted adversely if a through connection were made. These streets include:

Powell Road (East)
Jansin Place
Lehar Place
Hilgeford Drive
Harshmanville Road

(b) Dedication of new half-streets shall not be permitted. Where a dedicated or platted half-street exists adjacent to the tract being subdivided, the other half shall be platted.

(c) Where a subdivision abuts or contains an existing or proposed arterial street (82 to 120 [feet] right-of-way widths) the City Planning Commission may require marginal access streets, reverse frontage with screen planting contained in a nonaccess reservation along the rear property line, or other such treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic. There shall be no direct vehicular access from residential lots to such arterial streets or highways.

(d) Alleys shall not be approved in residential subdivisions, except where justified by extreme conditions. Alleys may be required in commercial and industrial districts if other provisions cannot be made for adequate service access. The minimum widths for alleys shall be 20 feet for the right-of-way and 18 feet for the pavement width.

(e) Gated streets shall be allowed in order to separate public streets from private streets. These streets include:

Corby Way

~~(Ord. 2012 O-1939, Passed 2-13-12)~~

Section 4. Part Eleven, Planning and Zoning, Chapter 1113 – Flood Hazard Areas, Section 1113.05 - Building Site Improvements is hereby amended to read as follows:

1113.05 Building site improvements.

(a) No subdivision or part thereof shall be approved if proposed subdivision development in a floodway will, individually or collectively, significantly increase flood flows, heights or damages.

(b) No subdivision or part thereof shall be approved for floodway or floodway fringe areas which will substantially affect the storage capacity of the flood plain.

(c) Building sites, residences, motels, resorts and similar uses for human occupation shall not be permitted in floodway areas. Sites for those uses may be permitted outside the floodway if the sites are elevated to a height at least one foot above the elevation of the regional flood or provisions otherwise made for elevating or adapting structures to achieve the same result. Required fill areas shall extend 15 feet beyond the limits of intended structures and, if the subdivision is not to be sewerred, shall include areas for waste disposal.

(d) Building sites for structures other than residences outside of floodway areas shall ordinarily be filled as provided in subsection (c) hereof. However, the City Planning Commission may allow subdivisions of areas for commercial and industrial use at a lower elevation if the subdivider agrees to protect the uses through structural flood-proofing as specified in Section 1113.10.

(e) When the Commission determines that only part of a proposed plat can be safely developed, it shall limit development to that part and shall require that the method of development is consistent with its determination.

(f) When the subdivider does not intend to develop the plat ~~himself~~, and the Commission determines that limitations are required to ensure safe development, it may require the subdivider to impose appropriate deed restrictions on the land. Such deed restrictions shall be inserted in every deed and noted on the face of the final recorded plat.

(Ord. 83-O-124, Passed 7-11-83)

Section 5. Part Eleven, Planning and Zoning, Chapter 1117 – Fees, Variances, and Enforcement, Section 1117.99 - Penalty is hereby amended to read as follows:

1117.99 Penalty.

The following penalties shall apply to the violations of these regulations:

(a) Whoever violates any rule or regulation adopted by Council for the purpose of setting the standards and requiring and securing the construction of improvements within a subdivision or fails to comply with any order pursuant thereto is creating a public nuisance and the creation thereof may be enjoined and maintenance thereof may be abated by action at suit of the County or any citizen thereof. Whoever violates these regulations shall forfeit and pay not less than \$100.00 nor more than \$1,000.00. Such sum may be recovered with costs in a civil action brought in the Court of Common Pleas of Montgomery County.

~~(b) — A County Recorder who records a plat contrary to the provisions of these regulations shall be held in violation of Ohio R.C. 711.12.~~

~~(e)~~(b) The owner or agent of the owner of any land within or without a municipal corporation who transfers any lot, parcel or tract of such land from or in accordance with a plat of a subdivision before such plat has been recorded in the office of the County Recorder, shall forfeit and pay the sum of not less than \$100.00 nor more than \$500.00 for each lot, parcel or tract of land so sold. The description of such lot, parcel or tract by metes and bounds in the deed or transfer shall not serve to exempt the seller from the forfeiture provided in this section. If such land is within a municipal corporation, such sum may be recovered in a civil action brought in the Court of Common Pleas of Montgomery County by the City Attorney in the name of the City.

~~(d)~~(c) Any person who disposes of, offers for sale or lease for a time exceeding five years any lot or any part of a lot in a subdivision before provisions of these regulations are complied with shall forfeit and pay the sum of not less than \$100.00 nor more than \$500.00 for each lot or part of a lot so sold, offered for sale or leased, to be recovered with costs in a civil action, in the name of the City Treasurer for the use of the City.

(Ord. 83-O-124, Passed 7-11-83)

Section 6. Part Eleven, Planning and Zoning, Chapter 1121 – Purpose And Interpretation, Section 1121.07 - When Effective is hereby deleted and removed in its entirety:

~~1121.07 When effective.~~

~~As provided under Ohio R. C. Chapter 713, "Upon certification by the Board of Elections, the Zoning Ordinance shall take immediate effect if the plan is so approved".~~

Section 7. Part Eleven, Planning and Zoning, Chapter 1123 – Definitions, Section 1123.951 - Sexually Oriented Businesses is hereby amended to read as follows:

1123.951 Sexually oriented businesses.

Sexually oriented businesses are those businesses defined as follows:

(a) *Adult arcade* means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(b) *Adult bookstore, adult novelty store or adult video store* means a commercial establishment which has as a significant or substantial (i.e., 50 percent or more) portion

of its stock-in trade or derives a significant or substantial (i.e., 50 percent or more) portion of its revenues or substantial (i.e., 50 percent or more) portion of its interior business or advertising to the sale or rental for any form of consideration, of any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";
- (2) Instruments, devices, or paraphernalia which is designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities".

(c) *Adult cabaret* means a nightclub, bar, restaurant, private club, juice bar or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- (1) Persons who appear nude or in a state of nudity or semi-nude state;
- (2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities";
- (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- (4) Physical contact (whether simulated or actual) of live males or females which is characterized by salacious conduct appealing to prurient interest for the observation by patrons provided that one or more of the parties appears in a state of nudity or semi-nude state. "Prurient" shall have that meaning given to it by the United States Supreme Court in *Brockton vs. Spokane*, 472 U.S. 491 (1985). "Private club" shall mean an establishment where patrons may bring in their own bottle or other container of alcohol (including beer, wine or liquor) and purchase a mixture for the same or use of a glass from the club or business.

(d) *Adult motel* means a motel, hotel or similar commercial establishment which:

- (1) Offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented 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 or television; or
- (2) Offers a sleeping room for rent for a period of time less than ten hours; or
- (3) Allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten hours.

(e) *Adult motion picture theater* means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

(f) *Adult theater* means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances that are characterized by exposure of "specified anatomical areas" or by "specified sexual activities", and which is not customarily open to the general public during such features because it excludes minors by reason of age.

(g) *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. "Escort" means a person who, for any form of 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 or to private appear in the nude or in a semi-nude state for another person.

(h) *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 treatment of manipulation of the human body which occurs as a 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". The definition of "sexually oriented businesses" shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program, nor barber shops or beauty salons in which massages are administered only to the scalp, the face, the neck or the shoulder, nor by any other individual licensed by the State of Ohio to perform massages.

(i) *Nude model studio* means any place where a person, who regularly appears in a state of nudity or displays "specified anatomical areas" for any form of consideration is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

(j) *Sexual encounter establishment* means a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration:

(1) A place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas"; or

(2) Activities between ~~male and female~~ persons ~~and/or persons of the same sex~~ when one or more of the persons is in a state of nudity or semi-nudity ~~nude~~.

The definition of "sexually oriented businesses" 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. Any of the foregoing shall be deemed a "sexually oriented business".

(Ord. 2000-O-1159, Passed 1-10-00)

Section 8. Part Eleven, Planning and Zoning, Chapter 1172 – (PR) Planned Residential District, Section 1172.01 - Principal Permitted Uses is hereby amended to read as follows:

1172.01 Principal permitted uses.

The following principal uses are permitted, provided that they are approved as provided for in this chapter:

- (a) All residential uses permitted in all other chapters of the Zoning Ordinance such as: one family dwellings, two family dwellings, multiple family dwellings, including garden apartments, row houses, quadraminiums and condominiums;
- (b) Churches and other places of worship;
- (c) Colleges, primary and secondary schools under School Board or Parochial supervision, and public libraries;
- (d) Public recreation buildings, parks, playgrounds and athletic fields under School Board, Parochial, other governmental supervision or "homeowners association" supervision; and
- (e) Uses designed solely to serve in a ~~complimentary~~ complementary way the needs of this District above.

Section 9. Part Eleven, Planning and Zoning, Chapter 1175 – (PMH) Planned Mobile Home Residential District, Section 1175.02 - Permitted Uses is hereby amended to read as follows:

1175.02 Permitted uses.

The following principal ~~principle~~ uses are permitted:

- (a) Mobile home parks.
- (1) Mobile homes (not self-propelled vehicles).
- (b) Modular or sectional homes.

(Ord. 89-O-339, Passed 2-6-89)

Section 10. Part Eleven, Planning and Zoning, Chapter 1181 – General Provisions, Section 1181.12 - Outdoor Retail Sales And Displays is hereby amended to read as follows:

1181.12 Outdoor retail sales and displays.

- (a) For the purpose of this chapter the term "outdoor sales" includes any outdoor display of merchandise. No sale may be conducted outside an enclosed building in any zoning district except retail sales in the B-1, B-2, B-3 and PC Planned Commercial Districts and A Districts, except temporary sales (garage sales, etc.) permitted under Section 1181.15, and except retail sales in an I-1 District. Within a PC Planned Commercial District, the operation of outdoor sales shall not require Planning Commission approval, but nothing in this section would permit the outdoor sales in a Planned Commercial District where such sales are expressly prohibited by a given site's basic or detailed development plan.
- (b) All such outdoor retail sales shall comply with the following conditions, requirements and time restrictions (excluding temporary sales permitted and regulated under Section 1181.15).
 - (1) Application for a Zoning Certificate shall be filed with an accompanying fee not less than ten days prior to the requested sale.
 - (2) Only the following specific types of outdoor retail sales may be permitted and only for the time periods described below:

A. Farm produce and firewood may be sold seasonally as an accessory use to an agricultural use, but only to the extent they are grown on property owned or leased by the owner of the Agricultural District land where the sales occur. Such sales of firewood shall be limited to October 1 to February 1. Sales of produce shall be limited to May 1 to October 31.

B. Garden and landscaping vegetation and materials, including but not limited to, peat moss, bark, mulch, fertilizer, marble chips, soil, sod, power lawn equipment, outdoor cooking equipment and accessories may be sold on a seasonal basis from April 1 to September 30 in B-1, B-2, B-3, PC and I-1 Districts. Power snow removal equipment may be sold on a seasonal basis from September 1 to February 28 in those same zoning districts.

C. Christmas trees, tree stands and greenery may be sold on a temporary basis between Thanksgiving and Christmas in the B-1, B-2, B-3 and PC Planned Commercial Districts and in the I-1 District.

D. Promotional sales of merchandise normally offered for sale by a City business may be conducted on the permanent building location of that business for a period not exceeding three days with a frequency of no more than two in any calendar year. Such promotional sales may occur only in the B-1, B-2, B-3 and PC Planned Commercial Districts and in the I-1 District.

E. Outdoor sales of merchandise normally offered for sale (within proper zoning districts) by a City business engaged in the sale of farm implements, automobiles, trailers or boats, or in the lumber yard, greenhouse/nursery or monument business.

(3) All cleanup of this area, including removal of merchandise, fixtures, etc., shall be completed within 48 hours after the sales activity and by the date specified on the zoning certificate otherwise no additional certificates shall be issued for 12 months after the date of the violation notice.

(4) Sales area shall allow for adequate pedestrian walkways and shall not extend into any fire lanes. The placement of the sales area shall not encroach upon any parking requirements of the district.

(5) The height of any stackable outdoor sales product(s) shall not exceed five feet. Examples include bagged mulch, soil, salt, or similar products.

(6) The outdoor sales area shall be placed so as not to interfere with traffic circulation.

(7) The outdoor sales area shall not utilize ~~consume~~ any of the required parking spaces for the business(s) for which it is located.

(8) Outdoor sales areas shall be in good order and well maintained.

(Ord. 2012-O-1939, Passed 2-13-12; Ord. 2016-O-2217, Passed 5-9-16)

Section 11. Part Eleven, Planning and Zoning, Chapter 1199 – Flood Damage Prevention, Section 1199.07 - Basis for Establishing The Areas Of Special Flood Hazard is hereby amended to read as follows:

1199.07 Basis for establishing the areas of special flood hazard.

(a) Flood Insurance Study Montgomery County, Ohio and Incorporated Areas and Flood Insurance Rate Map Montgomery County, Ohio and Incorporated Areas both effective January 6, 2005.

~~(b) Flood Insurance Study Greene County, Ohio and Incorporated Areas and Flood Insurance Rate Map Greene County, Ohio and Incorporated Areas both effective March 17, 2011.~~

~~(e)~~(b) Flood Insurance Study Miami County, Ohio and Incorporated Areas and Flood Insurance Rate Map Miami County, Ohio and Incorporated Areas both effective August 2, 2011.

~~(d)~~(c) Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard.

~~(e)~~(d) Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Huber Heights as required by Section 1199.20(f), Subdivisions and Large Developments. Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the City at 6131 Taylorsville Road, Huber Heights, Ohio 45424.

Section 12. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its Committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 13. This Ordinance shall go into effect upon its passage as provided by law and the Charter of the City of Huber Heights.

Passed by Council on the 24th day of July, 2023;
__7__ Yeas; __0__ Nays.

Effective Date: August 24, 2023

AUTHENTICATION:

Clerk of Council

Mayor

Date

Date