



**DUPAGE  
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## BUILDING & ZONING DEPARTMENT

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### MEMORANDUM

TO: AD HOC ADULT BUSINESS USE COMMITTEE

FROM: Paul J. Hoss, Planning and Zoning Administration Coordinator

DATE: February 12, 2019

RE: **2/12/19 EXCERPTS FROM CURRENT COUNTY  
REGULATIONS RELATIVE TO ADULT BUSINESS**

Attached herein please find excerpts from the DuPage County Code relative to adult business.

These codes are currently in place and used in the regulation of Adult Business.

The excerpts herein also include message licensing regulations that are no longer enforceable as the State of Illinois now regulates massage business through a state licensing program.

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#### **CHAPTER 37 DUPAGE COUNTY ZONING REGULATIONS:**

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#### 37-302: DEFINITIONS:

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**ADULT BOOKSTORE AND/OR VIDEO STORE:** An establishment having as a significant or substantial portion of its stock in trade books, magazines, or periodicals or other printed matter, and/or photographs, films, motion pictures, videocassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**ADULT BUSINESS USE:** The use of property for the operation of a massage parlor and/or bathhouse, massage school, or any use of which a significant or substantial portion involves an activity distinguished or characterized by its emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas, including, but not limited to, the operation of adult bookstore and/or video store, adult mini-motion picture theater, adult motion picture theater, adult motion picture



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arcade, adult motel, adult card and gift, or novelty store. For the purposes of this chapter an adult business use shall not be deemed a retail business, recreational or social facility, accessory use or general use.

**ADULT CARD, GIFT, OR NOVELTY STORE:** An establishment having a significant or substantial portion of its stock in trade items, such as cards, games, and novelties which are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

**ADULT MINI-MOTION PICTURE THEATER:** An enclosed building or any portion or portions thereof having a capacity from six (6) to fifty (50) persons, where, for any form of consideration (including a coin or token inserted into a coin or token operated projector, video screen, or other image producing device), patrons may view films, motion pictures, videocassettes, slides or similar photographic electronic reproductions in which a significant or substantial portion of the total presentation time is devoted to the showing of materials that are distinguished by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**ADULT MOTEL:** A hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other electronic or photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of such transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions; or
- B. Offers a sleeping room for rent for a period of time that is less than eight (8) hours; or
- C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than eight (8) hours.

**ADULT MOTION PICTURE ARCADE:** An establishment in which electronic, electrical, or mechanical still or slide projectors, motion picture projectors, video screens, closed circuit television transmissions or other image producing devices operable by insertion of a coin or token or for other consideration are maintained for presentation of images to five (5) or fewer persons at a single time per such device and where images presented are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.



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**ADULT MOTION PICTURE THEATER:** An enclosed building with a capacity of fifty (50) or more persons where, for any form of consideration, patrons may view closed circuit television transmissions, films, motion pictures, videocassettes, slides or similar electronic or photographic reproductions in which a significant or substantial portion of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting or relating to specified sexual activities of specified anatomical areas.

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### **37-416: ADULT BUSINESS USES:**

#### **37-416.1: DECLARATION OF POLICY:**

In the development and execution of these sections regulating and limiting the location of adult business uses, it is recognized that adult business uses, by virtue of their nature, have serious objectionable operational characteristics which can have a deleterious effect upon areas adjacent to them. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. The primary purpose of these regulations is to control the concentration or location of these uses to the fullest extent allowable by law, in order to eliminate such adverse effects. It is not the intent of these sections to deny adults access to sexually oriented materials and services or the providers of such materials and services their market in a manner that is inconsistent with the law. (2005 Code)

#### **37-416.2: DISTANCE REQUIREMENTS FROM WHICH AN ADULT BUSINESS USE SHALL BE LOCATED FROM PROTECTED USES:**

##### A. Distance Requirements:

1. An adult business use shall be located at least one thousand feet (1,000') from the property line of any other adult business use.
2. An adult business use shall be located at least one thousand feet (1,000') from the property line of a residential zoned property.
3. An adult business use shall be located at least one thousand feet (1,000') from the property line of a place of religious worship, daycare center, school, library or active recreational facility.



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4. An adult business use shall be located at least five hundred feet (500') from the property line of a passive recreational area or a cemetery.

B. Measuring of distances: For the purpose of this section distances shall be measured as follows:

1. By following a straight line, without regard to intervening structures, from a point on the property or the land use district boundary line from which the proposed use is to be separated.

2. Where an adult business use located on a property where there is more than one use, the distances provided for in this section shall be measured by following a straight line, from the outside wall of the building or tenant space containing the adult business use to a point on the property or the land use district boundary line from which the proposed use is to be separated. (2005 Code)

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### **37-422: THERAPEUTIC MASSAGE USES:**

A therapeutic massage use shall comply with the following standards and criteria:

- A. It shall be unlawful for any person, association, firm or corporation to practice or administer any "therapeutic massage" as defined in section 37-302 of this chapter without first complying with the requirements for therapeutic massage uses as stated in this section and complying with all other applicable standards and criteria of the DuPage County zoning ordinance or of the state of Illinois. (2005 Code)
- B. All uses that are therapeutic massage uses or uses where the practice of therapeutic massage is ancillary to a vocation and within the scope of said vocation, employment, course of study or volunteer services, "massage therapist", as defined in section 37-302 of this chapter, shall not be considered adult uses as defined under "adult business use", in section 37-302 of this chapter.
- C. It shall be unlawful for any person, association, firm or corporation to operate or conduct a therapeutic massage use or therapeutic massage business which does not conform to the requirements of the DuPage County health department and the state of Illinois department of public health.



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- D. It shall be unlawful for any person, association, firm or corporation to employ as a massage therapist any person who does not hold a current, unrevoked and unsuspended massage therapist certification as defined under "massage therapist" in section 37-302 of this chapter.
- E. It shall be unlawful for any person to advertise themselves as a massage therapist without a massage therapist certification as defined under "massage therapist" in section 37-302 of this chapter.
- F. It shall be unlawful for any person or establishment to advertise therapeutic massage in DuPage County other than by or under the supervision of a certified massage therapist as defined under "massage therapist" in section 37-302 of this chapter.
- G. It shall be the responsibility of the owner of any therapeutic massage use to prominently display at all times while providing the practice of therapeutic massage documentary certification or diploma establishing that the minimal education and/or training and testing criteria required by this section have been satisfied.
- H. It shall be the responsibility of the owner of any therapeutic massage use to first obtain and then maintain at all times a valid license as required by the DuPage County code or any other agency while providing the practice of therapeutic massage.
- I. It shall be the responsibility of the owner of any therapeutic massage use to prominently display at all times any license required by DuPage County or any other agency while providing the practice of therapeutic massage. (2005 Code)

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### **37-1001.1: PERMITTED USES:**

The following uses are permitted:

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General uses:

Adult use business uses, subject to the requirements of sections 37-416 through 37-416.2 of this chapter.

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### **37-1002.1: PERMITTED USES:**

The following uses are permitted:

\*\*\*

#### General uses:

Adult business uses, subject to the requirements of section 37-416 through 37-416.2 of this chapter.

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## **CHAPTER 3 - ALCOHOLIC LIQUOR:**

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### **3-49: - PROHIBITED CONDUCT.**

A. The following conduct on premises licensed to sell alcoholic liquor is prohibited.

1. The performance of acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts.
2. The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus, or genitals.
3. The displaying of the breasts, buttocks, pubic hair, anus, vulva, or genitals by a licensee, or the manager, employee, agent or representative of the licensee, or by any person, during, as part of, or in conjunction with, any public display, demonstration, performance, fashion show or exhibition.
4. The displaying of moving pictures or, photographic slide presentations, video presentations, video projection presentations, or any other multimedia presentation depicting acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts.

B. The licensee, his agent or his employees shall not permit any person to remain in or upon the licensed premises who:



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1. Exposes to public view his or her entire breasts or buttocks, the nipple(s) of his or her breast(s), or any part of his or her genitals, vulva or anus while on the licensed premises.
    - a. This provision shall not prohibit the incidental exposure of a person's genitals, vulva or anus while in a washroom and engaged in a urinary or excretory function.
  2. Touches, fondles or caresses his or her breasts, buttocks, anus, or genitals, or touches fondles or caresses the breasts, buttocks, anus or genitals of another person, in a lewd manner while on the licensed premises.
    - a. "Lewd manner" means an act done with the intent to arouse or satisfy the sexual desire of a person.
  3. Performs an act, or attempts to perform an act, of prostitution, solicitation for a prostitute or juvenile prostitute or pandering, as defined and prohibited in the Illinois Criminal Code, 720 Illinois Compiled Statutes 5/11-14, 11-14.1, 11014.3, and 11-14.4, while on the licensed premises.
- C. The licensee shall not, nor permit any his or her agents or employees to, consume alcohol to the point of intoxication while on the licensed premises.
- D. The licensee, and any of his or her agents or employees, shall not possess nor permit the possession of any illegal drug or intoxicating substance upon the licensed premises.

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### **CHAPTER 26 - PUBLIC NUISANCES:**

#### **26-1: - PUBLIC NUISANCES PROHIBITED.**

No person shall erect, contrive, cause, continue, maintain or permit to exist any public nuisance within DuPage County, Illinois, or within the police jurisdiction of DuPage County, Illinois.

#### **26-2: - PUBLIC NUISANCES DEFINED.**



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Generally, a public nuisance is a thing, act, occupation, condition or use of a property which shall continue for such length of time as to:

- A. Substantially annoy, injure or endanger the comfort, health, repose or safety of the public; or
- B. In any way render the public insecure in life or in the use of property; or
- C. Greatly offend the public morals or decency.

### **26-3: - PUBLIC NUISANCES OFFENDING MORALS AND DECENCY.**

The following acts, omissions, places, conditions and things are hereby specifically declared to be public nuisances offending public morals and decency, but such enumeration shall not be construed to exclude other nuisances offending public morals and decency coming within the definition of this section:

- A. All disorderly houses, bawdy houses, houses of ill fame, gambling houses and buildings or structures kept or resorted to for the purpose of prostitution, promiscuous sexual intercourse or gambling;
- B. All illegal gambling devices and slot machines;
- C. All places where intoxicating liquor or fermented malt beverages are sold, possessed, stored, brewed, bottled, manufactured or rectified without a permit or license as provided for by this code;
- D. All massage parlors, oriental bath houses, nude photo studios and health spas, excepting those massage parlors, oriental bath houses, and health spas that comply with the following provisions:
  - 1. The sexual or genital areas of patrons must be covered by towels, cloths or undergarments when in the presence of an employee, masseur or masseuse;
  - 2. It shall be unlawful for any person, in a massage establishment, knowingly, to place his or her hand upon, to touch with any part of his or her body, to fondle in any manner, or to massage a sexual or genital area of any other person;



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3. No masseur or masseuse, employee or operator shall perform, offer or agree to perform any act which would require the touching of a patron's genital area;
  4. For the purpose of this article, the sexual or genital area is defined as the genitals, pubic area, anus or perineum of any person, and the breasts of a female.
- E. Any place or premises within the County where ordinances or state laws relating to public health, safety, peace, morals, or welfare are openly, continuously, repeatedly, and intentionally violated.

END