

**THE VILLAGE OF SHEPHERD ORDAINS
SPECIAL REGULATED USES**

15.093 PURPOSE.

In the development of a community it is recognized that there are some uses which, because of their very nature, are recognized as having serious objectional operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. 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. These special regulations are itemized in this article. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one area i.e., not more than two (2) such uses within 350 feet of each other which would create effects.

Uses subject to these controls are as follows:

Group “All-Special regulated uses:

Adult bookstore.

Adult motion picture theater.

Adult mini motion picture theater.

Massage establishments.

Establishments for consumption of beer or intoxicating liquor on the premises and having adult entertainment.

Steam baths.

Health clubs.

Taxi dance halls.

Any other use which provides goods or services which are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” or which is distinguished or characterized by its emphasis on “specified sexual activities” or specified anatomical areas.” (Ordinance A effective October 3, 1963; amended effective January 24, 1990.)

ZONING

15.094 APPLICATION TO ESTABLISH A SPECIAL REGULATED USE.

Application to establish any of the special regulated uses as itemized in section 15.1308 shall be made to the office of the chief building official who shall not approve any such request unless the locational standards listed in the following sections are adhered to.

15.095**LOCATIONAL STANDARDS-RELATIONSHIP TO SIMILAR USES.**

(a) Group "A" *special regulated uses (15.093)*. An application to establish a group "A" special regulated use shall not be approved if there is already in existence two (2) or more group "A" special regulated uses within 350 feet of the boundaries of the site of the proposed regulated uses, excepting as provided for in section 15.096.

(b) Group "A" *special regulated uses (section 15.093)*. An application to establish a group "A" regulated use shall not be approved if the proposed location is within 350 feet of any residentially zoned district, trailer park, K through 12 school, park, or church, recognized day care or adult foster care homes excepting as provided for in Section 15.096.

15.096**WAIVER OF LOCATIONS STANDARDS.**

(a) *Relationship to similar uses*. The planning commission may waive the locational standards of section 15.095, limiting the location of group "A" uses as they relate to similar uses if the following findings are made:

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

(b) *Relationship to residential areas and other uses*. The planning commission may waive the locational standards of section 15.095(b); limiting the location of group "A" uses as they relate to residentially zoned districts, trailer parks, K through 12 schools, parks or churches, recognized day care adult foster care homes; provided, that a validated petition requesting such a waiver, signed by the owners or purchasers of at least fifty-one (51%) percent of the parcels of land within 350 feet of the proposed location is presented to the board.

- (1) The circulator of the petition requesting a waiver shall subscribe to an affidavit attesting to the fact that the circulator personally witnessed the signatures on the petition and the same were affixed to the petition by the person whose name appeared thereon.
- (2) The petition will be so worded that the signers of the petition will attest to the fact that they are the owners or purchasers of the parcel of land identified by the permanent parcel number opposite their signature.
- (3) For the purpose of this section, parcels of land shall equate to the parcels of land as they currently exist within the Village of Shepherd to all property within the said 350 feet.

15.097**APPLICATION TO THE PLANNING COMMISSION.**

An applicant requesting a waiver of the locational requirements of sections 15.095 shall file an application with the building inspector, however, the building inspector shall not accept an application for the waiver of locational requirements for group "A" uses as they relate to residentially zoned districts, trailer parks, K through 12 schools, parks or churches, recognized day care or adult foster care homes, section 15.095(b) until a petition as required

in section 15.096(b) has been filed with and validated by the zoning administrator. The zoning administrator shall notify the building inspector of the status of the petition within fifteen (15) days of its filing in the office of the zoning administrator.

15.098 CONDITIONS ON WAIVERS.

Prior to the granting of a waiver of locational requirement the planning commission may any conditions or limitations upon the establishment, location, construction, maintenance or operations of regulated use as may in its judgment be necessary for the protection of the public interest. Any evidence and guarantee may be required as proof that the conditions stipulated in connection therewith will be fulfilled.

15.099 DEFINITIONS FOR THE PURPOSE OF THIS ARTICLE.

Adult bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined below), or an establishment with a segment or section devoted to the sale or display of such material.

Adult motion picture theater: An enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined below), for observation by patrons therein.

Adult mini motion picture theater: An enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (as defined below), for observation by patrons therein.

Adult entertainment: Any conduct which presents material by books, films, slides or the like or by live presentation which includes services to the patron of an establishment, which material is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

Massage establishment: Any establishment where massages are administered for pay, including but not limited to massage parlors, health clubs, sauna baths, and steam baths. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon chiropractor, osteopath, or physical therapist duly licensed by the State of Michigan, nor barbershop or beauty shop in which massages are administered only to the scalp, the face, the neck or the shoulders. This definition shall not be construed to include a public or nonprofit organization such as a school, park department, YMCA or YWCA operating a community center, swimming pool or other educational, cultural, recreational facilities for residents of the area.

Residentially zoned-area: For the purpose of this article shall mean any area zoned as an R1, R-2, or R-3.

Specified sexual activities: Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Specified anatomical areas: Less than completely covered (a) human genitals, pubic region, (b) buttock, and (c) female breast below a point immediately above the top of the areola. Also, human male genitals in a discernibly turgid state, even if completely and opaquely covered.

15.100 ZONING DISTRICTS REQUIREMENTS FOR SPECIAL REGULATED USES.

The special regulated uses itemized in this article shall be limited to the following zoning districts:

- (a) C-2 Commercial.
- (b) Industrial.

Also each special regulated use shall be subject to the specific requirements of each zoning district and all other applicable regulations.

15.101

UTILITY BUILDINGS

Authorized utility buildings or structures may be erected as a part of the principal building or may be connected to it by a roofed over porch, patio, breezeway or similar structure, or may be completely detached. If attached to the principal building, an utility building or structure shall be made structurally as part of it and shall comply in all respects with the requirements applicable to the principal building. An utility building, on a permanent or a temporary foundation, not attached and not made a part of the principal building shall not be nearer than six (6) feet from the principal building.

(1) No utility building or structure may be erected or used unless the following additional requirements are complied with:

(a) No utility building or structure may be erected or used upon a lot on which there is no principal building, however, a utility building or structure may be erected in advance of the principal building by special permit to be issued through the Zoning Board of Appeals as provided in Article 4, Section 104.18 of this code.

(b) Utility buildings or structures shall not be erected in any minimum side yard setback nor in any front yard. A utility building or structure may be located no less than ten (10) feet from a side lot line nor less than five (5) feet from a rear lot line.

(c) When a utility building or structure is located on a corner lot, the side lot line of which is substantially a continuation of the front lot line of the lot to its rear, said building or structure shall not be located within a setback which is equal to the front yard setback required of the lot to the rear of such corner lot.

(d) No utility building or enclosed structure may be located in a required front yard.

(e) Utility buildings and enclosed structures shall not exceed twelve (12) feet in height and shall occupy not more than thirty (30) percent of a rear yard setback, nor more than forty (40) percent of any rear yard in excess of the rear yard setback.

(f) Repositioning of existing utility buildings and structures in place prior to the adoption of this ordinance shall not be required.

This ordinance shall take effect thirty (30) days after its adoption by the Shepherd Village Council:

Adopted: November 6, 1995

Published: November 29, 1995

Effective: December 7, 1995

15.102

SWIMMING POOLS

The term "swimming pool" shall mean any structure or container located either above or below grade designed to hold water to a depth of greater than twenty-four (24) inches, intended for swimming or bathing.

Private swimming pools are permitted in the rear and side yards of all residential districts, provided all of the following regulations are complied with:

(1) The pool shall be equipped with filtration, circulation and other systems adequate to maintain the water in a clean and healthful condition in accordance with the health requirements of the county.

(2) The discharge pipe leading from any private swimming pool shall be composed of durable material and size as approved by the county engineer. No private swimming pool shall be wholly

or partially emptied on another property, unless written permission is first obtained from the adjacent property owner. Discharged water will not be allowed to flow into the storm water system.

(3) A proper plumbing permit shall be obtained when the system is connected to a potable water system.

(4) (A) Every private swimming pool shall be completely enclosed with a permanent substantial fence with gate or gates no less than four feet in height above the ground level. No opening in such fence or gate shall be so designated or maintained as to permit access to the pool except under the supervision of the possessor or by his permission.

(B) Every private above grade swimming pool with sidewalls four (4) feet or higher in height above ground level shall have enclosures consisting of a permanent substantial fence with gate or gates no less than four (4) feet in height above the ground level surrounding any ladders or structures intended to be used for entry into the swimming pool. No opening in such fence or gate shall be so designated or maintained as to permit access to the pool except under the supervision of the possessor or by his permission.

(5) No lighting or electrical wiring shall overhang the surface of the water or be so located as to present the possibility of falling into the water. All lighting of the pool or the surrounding area shall not be so located as to reflect on adjacent property or upon adjacent buildings.

(6) A swimming pool shall be considered as an accessory building for the purposely of determining required yard spaces and maximum lot coverage. Clearances to side lot lines shall be not less than ten (10) feet. Clearances to rear lot lines shall not be less than five (5) feet.

(7) Existing pools at the time of adoption of this ordinance shall not be subject to restrictions of Item 6 of this ordinance.

This ordinance shall take effect thirty (30) days after its adoption:

Adopted: November 18, 1996
Published: December 8, 1996
Effective: December 18, 1996

15.103

**AN ORDINANCE ESTABLISHING REQUIREMENTS
FOR THE CREATION AND MAINTENANCE OF ARTIFICIAL PONDS, DITCHES, AND
DIKES IN THE VILLAGE OF SHEPHERD VILLAGE OF
SHEPHERD, MICHIGAN
Effective: January 1, 2003**

Section 1.0 Introduction

1. *Authority.*
This ordinance is adopted pursuant to authority conferred by the Michigan General Law Village Act.
2. *Findings.* The Village Council of the Village of Shepherd finds that many of the soil types throughout the Village have significant limitations for the creation of artificial ponds, ditches and dikes and that artificial ponds, ditches and dikes unregulated as to size, location and design pose safety hazards to persons and property within the Village.
3. *Purpose.* The purpose of this ordinance is to promote the public health, safety, and

general welfare by ensuring proper location, size and design of artificial ponds, ditches and dikes in the Village of Shepherd.

Section 2.0 Definitions

1. Artificial Pond. An impoundment of water created by excavating a depression in the ground that accumulates diffused surface water or groundwater or an impoundment of water created by diking banks on the ground that accumulates diffused surface water or groundwater. Artificial ponds shall not include any navigable lake, stream or impoundment under the jurisdiction of the Michigan Department of Natural Resources pursuant to Michigan Statutes.

2. Artificial Ditch. A watercourse with a definite channel and banks created by excavating a ditch or diking banks. Artificial ditch shall not include any navigable lake, stream or impoundment under the jurisdiction of the Michigan Department of Natural Resources pursuant to Michigan Statutes.

3. Artificial Dike. A water body or water course created by constructing an embankment by excavating, dredging or depositing fill which results in the retention or detention of water.

4. Enlargement. Any increase in the surface area or depth of an artificial pond, ditch or dike or any extension or increase in the cross section of an artificial ditch or dike.

Section 3.0 Applicability of Regulations

1. No artificial pond, ditch or dike shall hereafter be created except in conformity with the regulations and requirements of this Ordinance.
2. No artificial pond, ditch or dike shall hereafter be enlarged or extended except in conformity with the regulations and requirements of this Ordinance.

Section 4.0 General Requirements

1 Setbacks

- a. No part of an artificial pond or dike, including an embankment for the retention of water, shall be created or enlarged within 25 feet of a property line or habitable building or within 50 feet of a public road right-of-way or on-site sewage system.
- b. No part of an artificial pond or dike, including the embankment for the retention of water, exceeding 10,000 cubic feet of water capacity, shall be created or enlarged within 50 feet of a property line, habitable dwelling, on-site sewage disposal system, or within 75 feet of a public road right-of-way.
- c. No part of an artificial pond or dike, including the embankment for the retention of water, with an embankment height of 36 inches or more above grade shall be created or enlarged within 50 feet of a property line, habitable structure, or on-site sewage system or within 75 feet of a public road right-of-way.

2. *Side Slopes.* No artificial pond, ditch or dike shall be created, enlarge or extended with embankment side slopes or bottom slopes greater than 3 to 1. The embankment side adjacent to the water surface shall provide a two-foot shelf for every three feet of height.

3. *Artificial Ponds or Dikes over 10,000 Cubic Feet.* The creation of any artificial pond or dike exceeding 10,000 cubic feet of water capacity or the enlargement of any artificial pond or dike to more than 10,000 cubic feet of water capacity shall require plans prepared by a State of Michigan licensed civil engineer. The plans shall address seepage, subsidence, embankment strength and erosion and be certified by the engineer.

4. *Diversion of Water onto Adjacent Lands Prohibited.* No artificial pond, ditch or dike shall be created or maintained such that water is directed onto or set back upon adjacent properties through seepage or overflow.

5. *Landscaping.* The perimeter of any artificial pond or dike shall be landscaped and seeded within 90 days after completion of excavation. The full cross section of any artificial ditch shall be seeded within 90 days after completion of excavation.

6. *Fencing.* All ponds, existing or retention ponds, covered by this ordinance shall be completely enclosed by a six foot chain link fence or any other type of fencing approved by the Zoning Committee of the Village of Shepherd.

Amended as follows:

Fencing: All ponds existing or retention ponds, covered by this ordinance shall be completely enclosed by a minimum four foot high fence constructed in such manner as to prevent entry through or under the fence

Effective Date

This ordinance shall take effect 30 days after its adoption:

Adopted: July 17, 2006
Published: July 26, 2006
Effective: August 16, 2006

Section 5.0 Administrations

1. *Permits.* No artificial pond, ditch or dike may hereafter be created, enlarged or extended without a permit obtained from the Village Council of the Village of Shepherd.

2. *Permit Submittals.* Application for a permit shall be made in writing and shall include the following information:

- a. Name and address of the property owner.
- b. A statement of the purpose of the artificial pond, ditch or dike.

- c. Site topography with two-foot contour intervals and the direction and flow of surface water on the site.
 - d. Cross sections of the pond, ditch or dike every 100 feet showing the embankment, channel and depth along with the estimated volume and flow of water in cubic feet per second for a 25 year return rainfall for a watercourse.
 - e. Embankment materials and the methods of construction including erosion and sedimentation control.
 - f. A site plan of the property drawn to scale showing the exact location, size and dimensions of the artificial pond, ditch or dike and the location of any buildings and on-site sewage disposal systems on the property with distances between the artificial pond, ditch or dike and right-of-way lines, property lines and building.
 - g. For artificial ponds or dikes over 10,000 cubic feet, a certification by a State of Michigan licensed civil engineer.
 - h. Determination of navigability for any watercourse or water body within 300 feet of the proposed pond, ditch or dike.
3. *Permit Approvals.* The Village Council may approve, conditionally approve or deny a permit. The Village Council shall take action to approve, conditionally approve or deny the application within 60 days of submittal and shall state in writing any condition of approval or reasons for denial. No public notice or hearing is required but Village Council action shall be taken in public session as part of a previously prepared agenda.
 4. *Permit Application Review Fee.* A permit application fee of \$25.00 shall be paid to the Village Clerk at the time of permit submittal.
 5. *Violations.* It shall be a violation of this ordinance to create, enlarge or extend any artificial pond, ditch or dike without a permit. It shall be a violation of this ordinance to maintain an artificial pond, ditch or dike such that water is diverted onto or set upon adjacent properties through seepage or overflow.
 6. *Remedies.* Compliance with the provisions of this ordinance may be enforced by appropriate fines and penalties or by injunctive suit by the Village.
 7. *Penalties.* Any person who violates any provision of this ordinance, or any order issued hereunder, shall upon conviction, forfeit not more than Two Hundred Dollars (\$200.00) together with the costs of prosecution. Each day that a violation exists shall constitute a separate offense.
 8. *Appeals.* Any person aggrieved by a decision of the Village Council, may within 30 days after the decision, commence an action seeking the remedy available by certiorari.
 9. *Severability.* It is declared to be the legislative intent that should any provision or part of this ordinance be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this ordinance in its entirety or any part thereof, other than that so declared to be invalid.

10. *Effective Date.* This ordinance shall be effective 30 days after adoption by the Village Council of the Village of Shepherd and after publication.

Adopted:	December 2, 2002
Published:	December 18, 2002
Effective:	January 1, 2003