

**VILLAGE OF MESICK AMENDMENT TO THE ZONING ORDINANCE
ORDINANCE 2003-02**

PASSED 3-3-03

An ordinance to amend in part an ordinance entitled "Mesick Village Zoning Ordinance" which was adopted December 3, 1969 as amended, to add certain definitions to said ordinance, to add certain special uses (sexually related businesses) to certain districts, and to add additional standards for considering special uses pertaining to sexually related businesses.

The Village of Mesick, Wexford County, Michigan ordains:

Article IV - Commercial Districts C

The purpose of establishing Commercial Districts is to provide areas exclusive of residential use and primary dedicated to a wide variety of commercial business, professional and other services commonly associated with commercial and business districts. Uses are limited to those not characterized by heavy truck movements or the nuisance of smoke, dust, fumes, gas, heat, glare, noise and vibration. As in the Residential Districts, provision is also made for integration of various enterprises and establishments by Special Approval. It is the further purpose of this section to protect the public health, safety, welfare and morals of the community, and to protect individuals and neighborhoods from the adverse effects of having activities and standards involving pandering to gross sexuality imposed on them or concentrated in the same general area.

Section 4.02. Property Uses.

The use of all lands and premises, and the erection and use of all buildings and structures shall hereafter be limited to the following:

4.02 A Primary Uses (not subject to Special Approval)

1. Antique shops when conducted entirely within enclosed buildings and without exterior display or storage.
2. Automobile showrooms and public garages for new and used automobiles.
3. Banks, real estate, insurance and similar business.
4. Carpenter, plumbing, electric, sign painting, interior decorating, radio, TV and similar shops and services when conducted within completely enclosed buildings without outside storage, and operated chiefly as a retail and service business.
5. Personal service shops, such as barber, beauty parlor, shoe repair, and the like.

6. Printing, publishing, photographic and related shops and services.
7. Professional offices such as doctors, lawyers, dentists, chiropractors, osteopaths, and similar and allied professions.
8. Publicly-owned and operated buildings.
9. Public assembly buildings, such as auditoria, churches, clubs and lodges.
10. Restaurants, including lunch counters, diary bars and similar establishments providing food for consumption on the premises, but not including "drive-ins," or facilities providing dancing or entertainment.
11. Retail food establishments supplying groceries, fruits, vegetables, meats, dairy products, baked goods, confections and similar goods for consumption off the premises. Foodstuffs may be processed on the premises as an accessory activity if the sale of the product is limited to the local retail store.
12. Retail stores and shops offering chiefly new merchandise such as drugs, dry goods, clothing, notions, music, books, hardware and similar items, except those retail establishments doing sexually related business as provided in Section 4.02(B).

4.02 B Uses Subject to Special Approval, as provided under Section 6.06

1. Automobile laundries.
2. Bus passenger stations.
3. Drive-in business, except drive-in theaters, provided all lighting is shielded from adjacent residential districts.
4. Gasoline service stations when located on a lot not less than fifteen thousand (15,000) square feet in area with a minimum width of one hundred fifty (150) feet. Service station buildings shall be set back not less than forty (40) feet from all street right-of-way lines and not less than one hundred (100) feet from any adjacent residential property. All exterior lighting shall be so arranged as to deflect away from adjacent properties.
5. Open-air retail sale of plant materials not grown on the site, sales of lawn furniture, playground equipment, and garden supplies.

6. Motels, providing no less than two hundred forty (240) square feet of floor area per rental unit.
7. Outdoor advertising signs other than that which exclusively advertises a retail business on the premises.
8. Commercial parking lots, and outdoor sales of new and used automobiles, trailers and boats, provided the space used is paved and adequately maintained so as to provide a durable, smooth and dustless surface, and is so graded and provided with adequate drainage facilities to effectively carry off all collected water from the site.
9. Pet shops, provided that animals and birds are kept entirely within the building at all times.
10. Retail second-hand stores when conducted entirely within enclosed buildings and without exterior display or storage.
11. Service and repair of motor vehicles, trailers and boats.
12. Veterinary hospitals and clinics, including kennels.
13. Laundromats, laundries, and clothes-cleaning establishments without use of explosive or inflammable fluids.
14. Billiard halls, bowling alleys, indoor archery, indoor skating rinks, and similar recreational uses, provided that all uses shall be conducted within a completely enclosed building and located not less than one hundred (100) feet from an adjacent residential district.
15. Sexually related business as defined in Article XI of this Ordinance and including the following:
 - (i) Book sales and magazine sales, where either the advertising or the displays or signs in or out of the location offer written materials showing specified sexual activities or specified anatomical areas. This does not apply to the availability for sale of any material displayed in such a way that only the name of the book or magazine appears.
 - (ii) Movie theaters offering movies or other displays showing specified sexual activities or specified anatomical areas.

- (iii) Any type of theater or establishment offering any kind of show emphasizing specified sexual activities or specified anatomical areas.
- (iv) Any coin operated devices in any place or offering coin operated devices which shows specified sexual activities or specified anatomical areas.
- (v) Any cabaret, club or tavern offering any entertainment showing specified sexual activities or specified anatomical areas.

16. Funeral homes and mortuaries.

17. Public utility buildings.

18. Taverns.

4.02 C Accessory Uses, Buildings and Structures

Accessory uses, buildings and structures customarily incidental to any Primary or Permitted Use.

Article VI - Supplementary Provisions

Section 6.01. Unlisted Property Uses.

The Village Council shall have the power on written request of any property owner to classify a use not listed with a comparable permitted Primary or Approved Use, and issue a Special Permit for such use, giving due consideration to the purpose of this Ordinance as expressed in Article On. If found incomparable, such use may then only be provided for by due amendment to the Ordinance.

Section 6.02. Supplementary Lot and Yard Provisions.

6.02 A Lots of Record

Every building hereafter erected or altered shall be located on a lot the description of the boundaries of which are on public record, or in the case of a land contract on file with the County Clerk. The burden of proof of the exact location of any lot lines in question shall rest with the lot owner.

6.02 B Lot Frontage

Every lot upon which a dwelling is hereafter erected shall have frontage on a public street.

6.02 C Open Yards

Every part of every required yard shall be open to the sky, excepting for ordinary projections of sills, belt courses, window air conditioning units, chimneys, cornices and ornamental projections which may be project not to exceed thirty-six (36) inches into a required yard.

6.02 D Attached Accessory Buildings and Structures

All attached garages, enclosed porches, breezeways and car ports shall be considered a part of a dwelling in determining yard requirements, provided that open, unenclosed porches, platforms or paved terraces, not covered by a roof or canopy and which do not extend above the first floor level of the building may extend or project into the front yard not more than ten (10) feet and into side yards not more than eight (8) feet.

6.02 E Unattached Accessory Buildings and Structures

No unattached building or structure shall be setback less than the dwelling on a premises.

6.02 F Limitations on Use of Yards or Open Space

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1. The storage or parking of one unoccupied house trailer or mobile home which is the property of the occupant of the dwelling may be permitted only in a rear yard when located not less than eight (8) feet from the side lot lines and six (6) feet from the rear lot line.
2. The erection of cabins or tents (except children's play tents) shall not be permitted or considered a legal accessory on a dwelling lot.
3. No yard or open space encompassing a dwelling shall hereafter be used for the open-air parking, disposition, storage, wrecking, dismantling, accumulation or abandonment, either temporarily or otherwise of discarded, wornout, wrecked, or dismantled vehicles, machinery, implements, apparatus, furniture, appliances, junk or other personal property. Without limiting the meaning of junk, the term shall include used or salvaged metals, and their

combination, or used or salvaged lumber, ropes, bags, paper, rags, glass, rubber, and similar articles and materials.

4. No premises shall be so filled or graded as to discharge surface runoff on abutting premises in such manner as to cause ponding or surface accumulation of such runoff thereon.

Section 6.03. Nonconforming Uses

6.03 A Discontinued Nonconforming Uses

Any nonconforming use of any building or structure which is discontinued through vacancy, lack of operations, or otherwise for a period of one (1) year shall be construed as abandonment of use, and any future use thereof shall conform with the provisions of the Zoning District wherein situated.

6.03 B Change of Nonconforming Use

No nonconforming use shall be changed to other than a conforming use, nor shall any use be reverted to a former nonconforming use after use has been changed to a conforming use.

6.03 C Use of Nonconforming Buildings and Structures

The use of any nonconforming building or structure which is discontinued for a period of one (1) year shall be construed as abandonment of use, following which no further use shall maintain until the building or structure has been brought into conformity with the provisions of this Ordinance.

6.03 D Completion of Nonconforming Buildings and Structures

To avoid undue hardship, nothing in this Ordinance shall be construed to require a change in the plans, construction or designated use of any building or structure on which actual construction has been lawfully begun prior to the effective date of this Ordinance or any amendment thereto, and is completed within one (1) year of said date. Actual construction shall be construed as permanent fixation of construction material in place.

6.03 E Substandard Dwellings

For the express purpose of protecting the health, safety, and general welfare of the inhabitants of the Village, and of reducing hazards to life and property, no basement-dwelling, cellar-dwelling, garage-house, or other substandard structure shall hereafter

be occupied, erected or moved upon any premises and occupied or used for dwelling purposes.

6.03 F Repair of Nonconforming Buildings

Nothing in this Ordinance shall prohibit the repair, improvement or modernizing of a lawful nonconforming building to correct deterioration, obsolescence, depreciation, and wear, provided that such repair does not exceed an aggregate cost of thirty (30) percent of the assessed valuation of the building by the assessing officer unless the subject building is changed by such repair to conforming standards.

6.03 G Reconstruction and Restoration of Nonconforming Buildings

Any lawful nonconforming building damaged by fire, explosion, an Act of God, or by other causes may be restored, rebuilt, or repaired, provided that such restoration does not exceed fifty (50) percent of its assessed value, as determined by the assessing officer, exclusive of foundations, provided further that said use be the same or more nearly conforming with the provision of the district in which located.

Section 6.04. Mobile Homes or House Trailers.

6.04 A Occupancy of House Trailer or Mobile Home During Construction of a Dwelling

1. The owner of any lot in Residential Districts R which qualifies for a dwelling may locate not more than one (1) house trailer or mobile home upon the premises and occupy the same during the actual construction of a dwelling thereon for a period not exceeding one (1) year from the date of issuance of a Special Permit therefor.
2. Application for such Permit shall be made to the Village Zoning Administrator, granting of which shall be contingent among other things upon written agreement of the applicant to the following conditions:
 - (a) The location of the house trailer or mobile home on the premises shall be in conformity with the front yard requirements of the District.
 - (b) The water, sewage and waste disposal facilities shall be approved by the County Health Officer, installation and confirmation of which shall precede occupancy of the house trailer, or mobile home.
 - (c) On delivery of the Permit, the owner of the premises shall certify in a space allotted for the purpose on the copy retained by the Zoning Administrator that he has full knowledge of the limitations of the

Permit, and the penalties that may be imposed for violation. No such Permit shall be transferable to any other person.

6.04 B Use of House Trailer or Mobile Home for Dwelling Purposes in Residential District R

The use of a house trailer or mobile home as a dwelling may be permitted in Residential District R under the following conditions:

1. Lot size, setback and all yard requirements shall be in conformity with all requirements of conventional dwellings in the District.
2. Floor area shall include not less than six hundred (600) square feet exclusive of any carport, breezeway, porch or other attached structure.
3. No annex to the house trailer or mobile home shall be erected which exceeds the length thereof nor transgresses upon the yard requirements of the District. Use of such annex shall be limited to a porch, either open or closed for use as dining space or utility storage. It shall not include area for sleeping or kitchen purposes. All accessory buildings and structures shall be subject to the same limitations as those of conventional dwellings in the District.
4. Not more than forty-five (45) days and not less than thirty (30) days prior to making application for a permit, the owner of the lot shall mail a notice to all adjacent property owners of record on lots within two hundred (200) feet of the perimeter of the lot, at the address shown on the last preceding tax role, stating his intent to apply for a permit, the location and legal description of his lot, and the intended date of application.
5. Application for a permit shall be made to the Village Council through the office of the Zoning Administrator, accompanied by the legal description of the lot, by the name and address of all parties to which notices have been sent as required by a copy of the notice, and by proof of mailing of notices.
6. Following a public hearing, the Village Council shall consider such a petition in terms of the overall effect upon the development of the neighborhood including the purposes of this Ordinance. Requirements intended to maintain the character of the neighborhood and Zoning District may be a requisite for granting a permit.

6.04 C Transient Occupancies

The owner of any dwelling may permit the parking of one (1) occupied house trailer or mobile home of a personal guest or visitor on the premises for a period not exceeding thirty (30) days in the case of any one (1) party, or a total of not to exceed one hundred twenty (120) days within any calendar year in the case of all guests and visitors, provided the owner of the premises registers the name and address of the owner and occupants of the house trailer or mobile home, including the make and number, within three (3) days of arrival with the Zoning Administrator.

Section 6.05. Water Supplies and Waste Disposal.

Every building or structure hereafter erected and used for human occupancy shall be provided with a safe and sanitary water supply, a sewage disposal system, and a waste disposal system approved by the County Health Officer.

Section 6.06. Uses Subject to Special Approval.

6.06 A Intent

It is the intent of this Section to provide standards and procedures for issuance of Special Permits for specific land uses which, because of particular characteristics, require special consideration in relation to the welfare of adjacent properties, and the health, safety, convenience and general welfare of the inhabitants of the area. The procedure provides an opportunity to review each such property use and to impose conditions and safeguard upon each use deemed necessary for the protection of the public welfare.

6.06 B Procedure

1. Application shall be made to the Village Council through the office of the Zoning Administrator, which application shall include the following information:
 - (a) Name of applicant and owner of premises, including legally recorded description of the premises.
 - (b) Description of proposed uses, including parking facilities if required, and any exceptional health, traffic or other hazardous situation the use may occasion.

- (c) Sketch to approximate scale showing development of the total property, including location of all existing and proposed structures, types of buildings, and their uses.
 - (d) Sewage and waste disposal facilities and water supply, existent or proposed for installation.
 - (e) Use of premises on all adjacent properties within two hundred (200) feet of the perimeter of the premises.
 - (f) A written statement of the property owner appraising the effect of the proposed use on the general development of the neighborhood.
2. The Zoning Administrator shall file his recommendation with the Village Council which shall make determination. In reaching its determination, the Council shall consider the following:
- (a) Whether the sewage disposal and water supply will be safe and adequate.
 - (b) Whether the use will cause congestion, or a major traffic hazard or problem, or overburden available public services.
 - (c) Whether the use will disrupt the orderly and proper development of the neighborhood, or be more objectionable than the operation of any Primary Use of the District by reason of traffic, noise, vibration, dust, fumes, smoke, odor, fire hazard, flashing lights, or disposal of waste or sewage.
 - (d) Whether the use will discourage or hinder the appropriate development and use of surrounding premises, or the neighborhood as a whole, or defeat the purpose and intent of this Ordinance.
 - (e) In order to obtain and retain a special use permit for operation of sexually related business regulated use as defined by this ordinance, the following conditions must be met in addition to all other standards set forth herein for special use permits:
 - (i) In order to prevent the undesirable concentration of sexually oriented businesses, the regulated uses as defined by this ordinance shall not be located within one thousand (1,000) feet of any other sexually oriented businesses, nor within three hundred (300) feet of any residentially zoned district or

pre-existing residential use prior to enactment of the zoning districts, school, day care center, church or other religious institution, or public park or other public facility, as measured along a line forming the shortest distance between any portion of the respective properties;

- (ii) The sexually oriented businesses shall only operate between the hours of 2:00 p.m. and 1:00 a.m.;
 - (iii) No one under the age of eighteen (18) shall be allowed on to the premises;
 - (iv) Once a special use permit has been issued for a sexually oriented business, the sexually oriented business shall not be enlarged and/or amended;
 - (v) A special use permit for a sexually oriented business is subject to the terms and conditions of the permit set forth in Section 7.03(b) and 2.703(e), inclusive of this ordinance.
 - (vi) Special use permits issued under this section shall expire one (1) year after issuance, and may be renewed by the same procedure as the original issue of the special use permit was granted.
3. In granting approval, the Council may impose such additional conditions and safeguards deemed necessary for insuring that the intent and objectives of this Ordinance will be observed.
 4. All permits issued under this Section shall be subject to the provisions of subsections 7.03 B to 7.03 E inclusive of this Ordinance.

Section 6.07. Public Utilities and Departments.

The erection, construction, alteration or maintenance by public utilities or municipal departments or commissions, of overhead or underground gas, electrical, steam, water distribution or transmission, collection, communication, supply or disposal systems, including mains, drains, sewer pipes, conduits, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, poles, electrical substations, gas regulator stations and other similar equipment and accessories connected therewith, reasonable necessary for the furnishing of adequate service by such public utility or municipal department or commission or for the public health, safety or general welfare, but not including buildings, shall be permitted as authorized and regulated by law in any

Zoning District, it being the intent hereof to except the erection, construction, alteration, and maintenance from the application of this Ordinance.

Article XI - Definitions

For the purpose of this Ordinance, the following terms are herewith defined:

Section 11.01. Accessory Building or Structure.

A supplemental building or structure on the same lot or premises as the main building occupied by, or devoted exclusively to an accessory use, but not including for dwelling, lodging or sleeping purposes.

Section 11.02. Accessory Use.

A subordinate use incidental to and customary in connection with the use of the principal building or use, and located on the same lot or premises.

Section 11.03. Building.

Any structure having a roof supported by columns or walls for the shelter of persons or property.

Section 11.04. Dwelling.

A building designed or used for residence, or as a home or sleeping place, either permanently or temporarily, but not including so-called basement or cellar homes, boarding or rooming houses, house trailers, mobile homes, tents, hotels, or cabins, or other structures designed or used for transient occupants.

Section 11.05. Erected.

Includes built, constructed, reconstructed, moved upon, or any physical operation on the premises intended or required for a building or structure. Fill, drainage, and general property improvement shall not be considered as erection.

Section 11.06. Family.

One or two more persons occupying a dwelling and living together as a single housekeeping unit.

Section 11.07. Floor Area.

The square feet of floor space within the outside walls exclusive of porches, garage, basement, cellar or attic area.

Section 11.08. Garage, Public.

A building or part hereof other than a private garage designed or used for equipping, servicing, repairing, hiring, storing or parking of motor vehicles. The term does not include the rebuilding, dismantling or storage of wrecked or junked vehicles.

Section 11.09. Gasoline Service Station.

Any land, building or structure used for sale at retail of motor vehicles, fuels, oils or accessories, or installing or repairing minor parts and accessories, but not including repairing or replacing motors, bodies, or fenders or painting motor vehicles.

Section 11.10. Home Occupations.

An occupation clearly incidental to residential use, such as dressmaking, real estate sales, bookkeeping and accounting services, but not including musical instrument or dancing instruction, beauty parlors, or barber shops. Such occupation may be engaged in only by a resident entirely within his dwelling, and not in an accessory building, or with the use of ten percent (10%) percent of the floor area exclusive of attic or basement, and shall show no external evidence of such use, or any change in the appearance of the building or premises from the residential use.

Section 11.11. Home Professional Office.

The office of a professional person such as a doctor, lawyer, osteopath, dentist, chiropractor or engineer and similar professions when engaged in only by a resident within his dwelling and not in an accessory building or structure, and with the assistance of not more than one (1) outside or nonresident employee. Such use shall occupy not more than ten percent (10%) percent of the floor area exclusive of attic or basement, and shall show no external evidence of such use or any change in the appearance of the dwelling or of the premises from residential use, provided that one illuminated but non-flashing or non-glaring sign not exceeding two (2) square feet in area may be erected flat on the front wall of the dwelling for identification.

Section 11.12. Junk Yard

The use of premises for storage or disposition of old and dilapidated automobiles, trucks, tractors, wagons, and other vehicles and parts thereof, scrap building materials, scrap contractor's equipment, tanks, cases, barrels, boxes, drums, piping, bottles, old iron, machinery, rags, paper and any other kind of scrap or waste materials.

Section 11.13. Lot or Premises.

The parcel of land occupied by or to be occupied by a building and its accessory buildings or structures together with such open spaces, minimum area, and width required by this Ordinance for the District wherein located, and having its frontage on a public street.

Section 11.14. Lot of Record.

A lot on record in the office of the Wexford County Register of Deeds, or which is part of a subdivision on record in said office.

Section 11.15. Massage Parlor.

Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, 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 barber shops or beauty salons in which massages are administered only to the hands, feet, scalp, face, neck or shoulder. This definition shall not be construed to include the practices of massage therapists who are duly licensed.

Section 11.16. Mobile Home, House Trailers.

Any structure designed and constructed for sleeping, living, business, or storage purposes having no foundation other than wheels, blocks, skids, jacks, horses, or skirtings, and which may be

Section 11.17. Specified Anatomical Areas

Means the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areolae; and
2. Human male genitals in a discernibly turgid state, whether or not covered.

Section 11.18. Specified Sexual Activities.

Includes the following:

1. Human genitals in a state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse or sodomy;
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

equipped with wheels or other devices for transporting from place to place, whether by motor power or other means.

Section 11.19. Street.

A public thoroughfare which affords the principal means of access to abutting property.

Section 11.20. Structures.

Any construction, assembly or erection the use of which required permanent location on the ground or attached to something having a permanent location on the ground.

Section 11.21. Yard.

Space open to the sky between a building and the lot lines of the premises on which located, unoccupied and unobstructed by any encroachment or structure except as otherwise provided by this Ordinance.

Section 11.21 A. Yard, Front.

A yard across the full width of the lot extending from the front line of the principal building to the front lot line.

Section 11.21 B. Yard, Rear.

A yard extending across the full width of the lot from the rear line of the principal building to the rear lot line.

Section 11.21 C. Yard, Side.

A yard extending from the side lot line to the nearest side line of the building.

CONFLICTING ORDINANCES

All other ordinances and parts of ordinances, or amendments thereto, of the Mesick Village in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE

This ordinance amendment shall take effect on _____.