

**VILLAGE OF YELLOW SPRINGS, OHIO
ORDINANCE 2016-07**

**REPEALING OLD SECTION 1284.08 DEFINITIONS: R-S OF CHAPTER 1284
DEFINITIONS OF TITLE FOUR ZONING OF PART TWELVE PLANNING AND
ZONING OF THE CODIFIED ORDINANCES OF THE VILLAGE OF YELLOW
SPRINGS, OHIO AND ENACTING NEW SECTION 1284.08 DEFINITIONS**

Whereas, Village staff and Planning Commission members have determined that there were matters which required updating in the Zoning Code including the addition of swimming pool regulations which requires the definition of private swimming pools and spas to be added to the Code; and

Whereas, Planning Commission held a public hearing on March 14, 2016 and following the public hearing recommended approval of this code revision in accordance with Section 1280.03 of the Yellow Springs Codified Ordinances; and

Whereas, it is Village Council's intent to amend Section 1284.08 of the Codified Ordinances to add the definition of private swimming pools and spas to the Zoning Code.

**NOW, THEREFORE, THE COUNCIL OF THE VILLAGE OF YELLOW SPRINGS,
OHIO HEREBY ORDAINS THAT:**

Section 1. That Section 1284.08 *Definitions: R-S* of Chapter 1284 *Definitions* of Title Four *Zoning* of Part Twelve *Planning and Zoning* of the Codified Ordinances of the Village of Yellow Springs, Ohio be repealed.

Section 2. That a new Section 1284.08 *Definitions: R-S* of Chapter 1284 *Definitions* of Title Four *Zoning* of Part Twelve *Planning and Zoning* of the Codified Ordinances of the Village of Yellow Springs, Ohio be enacted to read as set forth on Exhibit A with new language underlined and text to be deleted in ~~strikeout~~, which is attached hereto and incorporated herein.

Section 3. This ordinance shall take effect and be in full force at the earliest date permitted by law.

Karen Wintrow, President of Council

Passed: 4-18-2016

Attest: _____
Judy Kintner, Clerk of Council

ROLL CALL

Karen Wintrow __Y__ Brian Housh __Y__ Gerald Simms _Y____
Marianne MacQueen _Y__ Judith Hempfling _Y____

EXHIBIT A – ORDINANCE #2016-07

1284.08 DEFINITIONS: R-S.

Recreational vehicle. Vehicles or equipment used primarily for recreational or leisure purposes including, but not limited to, motor homes, camper trailers, travel trailers, pop-up campers, boats, snowmobiles, motorcycles, dune buggies and similar vehicles and the trailers used to transport them.

Recycling center. A facility or location in which used material is separated and processed prior to shipment to others who will use the materials to manufacture new products.

Residential districts. The R-A, R-B and R-C Districts.

Restaurant. An establishment principally operated for the sale of food and beverages to be served for consumption on the premises, which may also include carry-out service or delivery of food through a drive-in and drive-thru facility for consumption off the premises.

Right-of-way. A strip of land dedicated for public use and occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main or other essential services.

Screen. A visual barrier that surrounds a potentially offensive or incompatible activity.

Screening. The method by which a view of one site from another adjacent site is shielded, concealed or hidden. Techniques include fences, hedges, walls, berms or other such features.

Setback. The required minimum horizontal distance between the line at which the building may be built and the related front, rear and side property lines.

Sexually oriented business. Those businesses defined, as follows:

(1) Adult arcade. 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, or other visual representations, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, digital video discs, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(2) Adult bookstore, adult novelty store or adult video store.

A. A commercial establishment which has as a significant or substantial (i.e., 50% or more) portion of its stock-in-trade or derives a significant or substantial (i.e., 50% or more) portion of revenues or devotes a significant or substantial (i.e., 50% 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, digital video discs, 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 are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

B. 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 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 the definition above is met.

(3) Adult cabaret. A nightclub, bar, restaurant, private club, bottle club, juice bar or similar commercial establishment, whether or not alcoholic beverages are served, which features: (a)

persons who appear nude or semi-nude or in a state of nudity or semi-nudity; (b) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or (c) films, motion pictures, video cassettes, digital video discs, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. "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.

(4) Adult motel. A motel, hotel or similar commercial establishment which offers public accommodation, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, digital video discs, 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.

(5) Adult motion picture theater. A commercial establishment where films, motion pictures, video cassettes, digital video discs, slides or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas are shown for any form of consideration.

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

(7) Escort agency. A person or business association that 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 privately appear in the state of nudity or semi-nudity for another person.

(8) Massage parlor. Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of or in connection with specified sexual activities is offered, 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.

(9) Semi-nude model studio. Any place where a person regularly appears in a state of nudity or semi-nudity or displays specified anatomical areas for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons. This definition does not include an accredited state licensed public or private educational institution or bona-fide art organization offering instruction, which may involve the exposure of the human body for purposes of drawing, filming or photographing as part of a course.

(10) Sexual encounter establishment. A business or commercial establishment that as one of its principal business purposes offers for any form of consideration:

A. 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

B. 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. 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 of Ohio engages in medically approved and recognized sexual therapy.

(11) Simulated. To assume the mere appearance of something, without the reality, to imitate or pretend.

(12) Specified anatomical areas. Includes any of the following:

A. Less than completely and opaquely covered human genitals, pubic region, anus or any portion of the female breast below the top of the areola or nipple; or

B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(13) Specified sexual activities. Includes any of the following:

A. The fondling or other intentional touching of human genitals, pubic region, anus, or female breast;

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;

C. Masturbation, actual or simulated;

D. Human genitals in a state of sexual stimulation, arousal or tumescence; or

E. Excretory functions as part of or in connection with any specified sexual activities defined in this section.

Short-term rental unit. A dwelling unit that is rented or leased to one person, family or entity on a weekly or monthly basis, but typically less than one year.

Sign. A device, structure, fixture or placard which may or may not use graphics, symbols and/or written copy designed specifically for the purpose of advertising or identifying an establishment, product, service or activity.

(1) Sign, balloon. A non-porous bag of material, with or without lettering on its surface, filled with air or gas and intended to draw attention to a business or other use on the premises on which it is located.

(2) Sign, billboard. A sign which advertises an establishment, product, service or activity not available on the lot on which the sign is located.

(3) Sign, business center. A sign advertising a shopping or business center, strip center, mall or any multi-tenant commercial, industrial or office use.

(4) Sign, canopy. Any sign that is affixed to or printed on a canopy or awning.

(5) Sign, changeable message. A sign designed to permit immediate change of copy, either manually or electronically.

(6) Sign, community special event. A temporary sign calling attention to special events of interest to the general public which are sponsored by governmental agencies, schools or other non-profit charitable, philanthropic, religious or benevolent organizations.

(7) Sign, construction. A sign which identifies the owners, lenders, contractors, architects and engineers of a project under construction.

(8) Sign, directional. A sign used to direct motor vehicle, bicycle and/or pedestrian traffic entering or leaving business establishments or shopping centers.

(9) Sign, free-standing. Any sign not attached to a building or wall which is supported by one or more poles or braces or which rests on the ground or on a foundation resting on the ground.

(10) Sign, gateway. A sign placed at the street entrance to a single- family subdivision, multiple-family development, planned unit development, industrial park or similar consolidated development, containing only the name of the subdivision or development.

(11) Sign, ground. A free-standing sign supported by a base which rests directly on the ground. The width of the base shall be at least 50% of the width of the sign to be considered a ground sign.

(12) Sign, marquee. A sign that is part of or attached to a permanent roof-like structure or canopy of rigid materials supported by and extending from the building front.

(13) Sign, pole. A free-standing sign that is elevated above the ground on poles or braces and not attached to any building or other structure.

(14) Sign, political. Any sign dealing with candidates or issues appearing on a ballot in an election sanctioned by the Board of Elections.

(15) Sign, projecting. Any sign attached to a building or other structure and extending in whole or in part more than 12 inches from such structure.

(16) Sign, public service. Any sign whose purpose is solely to serve the public and which does not advertise a business.

(17) Sign, real estate. A sign advertising the real estate upon which the sign is located as being for sale, rent or lease.

(18) Sign, roof. Any sign erected upon a building or structure which extends above the roof line of the building or structure.

(19) Sign, temporary. A sign that is not permanent or affixed to a building or structure and, by its nature, may be or is intended to be moved from one location to another, such as "A" frame signs or signs on a movable trailer, whether rented or owned.

(20) Sign, wall. A sign painted, attached to or erected in a plane parallel to a wall, extending no more than 12 inches from the exterior face of the wall to which it is attached.

(21) Sign, window. A sign affixed to the glass on the outside or inside of a window, or erected within three feet of a window on the inside of a building so as to be seen from the outside of the building.

Site plan. A drawing, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses and principal site development features proposed for a specific land parcel.

Skilled nursing care. Procedures that require technical skills and knowledge beyond those of an untrained individual and commonly employed in providing for the physical, mental and emotional needs of the ill or otherwise incapacitated.

Spot zone. Singling out of a lot or small area for discriminatory or different treatment from that accorded surrounding land which is similar in character.

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, and also any portion of a building used for human occupancy between the topmost floor and the roof.

Street. A public right-of-way 50 feet or more in width which provides a public means of primary access to abutting property, or any such right-of-way more than 30 and less than 50 feet in width, provided that it existed prior to November 18, 1971. The term "street" includes avenue, drive, lane, circle, road, parkway, boulevard, highway, thoroughfare or any other similar term.

Street classification. A hierarchy of street types denoting their relative function and traffic-carrying capability.

(1) Arterial. A connected network of continuous routes serving intra- and interstate travel, as well as interurban travel. Arterials accommodate high traffic volumes generally at higher speeds. Access to abutting land is subordinate to moving through traffic. The following streets are classified as arterials:

A. Dayton-Yellow Springs Road /Dayton Street.

- B. Fairfield Pike.
- C. Xenia Avenue.

(2) **Collector.** Those streets which collect traffic from local streets and channel it to arterial streets. Collector streets carry moderate traffic volumes and primarily provide for local traffic movements with a minor amount of through traffic. While traffic movement is an important function, collectors also provide for a higher degree of land access than arterials. The following streets are classified as collectors:

- A. Allen.
- B. Corry.
- C. Enon.
- D. High.
- E. King.
- F. Limestone.
- G. Livermore.
- H. South College.
- I. Spillan.
- J. Walnut.

(3) **Local.** A street that provides direct access to adjacent land and access to higher street classifications. All streets not otherwise classified are local.

Structure. Anything constructed, erected or placed which requires location on the ground or attachment to something having location on the ground including, but not limited to: buildings, accessory buildings, sheds, patios, gazebos, tennis courts, swimming pools, radio and television towers, decks and platforms; provided, however, that patios shall not be deemed structures if no part is above the ground and if it is located outside the minimum front, side and rear yard setback area. Lawful fences or walls, utility poles, basketball goals, mailboxes, sidewalks, driveways, streets, parking areas or retaining walls shall not be considered as structures for purposes of this code.

Subdivision. Shall mean:

(1) The division of any parcel of land shown as a unit or as contiguous units on the last preceding tax roll, into two or more parcels, sites or lots, any one of which is less than five acres for the purpose, whether immediate or future, of transfer of ownership, provided, however, that the division or partition of land into parcels more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall not be considered a subdivision for purposes of this code; or

(2) The improvement of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division or allocation of land for the opening, widening or extension of any street or streets except private streets serving industrial structures, and the division or allocation of land as open spaces for common use by owners, occupants or lease holders, or as easements for the extension and maintenance of public sanitary sewers, water lines, storm drainage or other public features.

Swimming Pools and Spas, Private ó any structure or container, either permanent or portable, and either above or below ground, designed to hold water to a depth of 24 inches or greater at any point, intended for the immersion of the human body, whether for swimming, wading or sitting, used by the occupants thereof and guests, without payment of any fee, and as an accessory use to a residence. This includes hot tubs, steam baths and other hydrotherapy devices. Pools that are less than 24 inches in depth, are portable or temporary, are exempted from the requirement of a zoning permit.

