

TOWNSHIP OF BIRCH RUN SAGINAW COUNTY, MICHIGAN

ORDINANCE NO. 2014-03

ADOPTION: June 10, 2014
PUBLICATION DATE: June 18, 2014
EFFECTIVE DATE: July 17, 2014

SEXUALLY ORIENTED BUSINESS ORDINANCE

An Ordinance to amend the Birch Run Township Zoning Ordinance, Ordinance No. 2004-02 adopted December 14, 2004, as amended, to add, delete and otherwise revise provisions addressing sexually oriented businesses including changing the title of Section 14.13 from "Adult Entertainment Business" to "Sexually Oriented Business" and revising the definitions and regulations that apply to a Sexually Oriented Business.

FINDINGS and PURPOSE

It is recognized that there are some uses, which because of their very nature, have serious objectionable 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 Ordinance. Prior to adopting these regulations, the Township of Birch Run reviewed studies prepared on these uses, reviewed ordinances and regulations prepared by other municipalities, and reviewed applicable federal and state case law. Based on evidence of the adverse effects of sexually oriented businesses, the Township Board finds that sexually oriented businesses as a category of establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that the Township of Birch Run is seeking to abate and prevent in the future. Sexually oriented businesses, as defined herein, shall be subject to the regulations of this Ordinance. Additional purposes include the protection, preservation and the improvement of the character and quality of the residential neighborhoods and business areas of the Township of Birch Run.

THE TOWNSHIP OF BIRCH RUN ORDAINS:

Section 1 Amendment of Table 9-3.

Table 9-3, Permitted Principal Uses in Commercial and Industrial Districts, of the Birch Run Township Zoning Ordinance of 2004, as amended, is hereby amended by the deletion of the phrase "adult entertainment facilities" and the insertion of "sexually oriented businesses" in its place.

Section 2 Amendment of Table 9-3.

Table 9-3, Permitted Principal Uses in Commercial and Industrial Districts, of the Birch Run Township Zoning Ordinance of 2004, as amended, is hereby amended by the deletion of the phrase "adult entertainment business" and the insertion of "sexually oriented business" in its place.

Section 3 Amendment of Article 21.

Article 21 of the Birch Run Township Zoning Ordinance of 2004, as amended, is hereby amended by the deletion of the phrase "Adult Entertainment Business" and its corresponding meaning including the additional terms and phrases listed and defined under "Adult Entertainment Business".

Section 4 Amendment of Section 14.13.

Section 14.13 of the Birch Run Township Zoning Ordinance of 2004, as amended, is hereby amended to read as follows:

“Section 14.13 Sexually Oriented Business

A. Definitions: For the purposes of this Section 14.13 and Ordinance, the following terms and phrases shall have the following meanings:

1. **Adult Arcade:** Any place to which the public is permitted or invited wherein cash-operated, credit-operated, coin-operated or slug-operated or electronically, internet or mechanically controlled still or motion picture machines, projectors or other image producing devices are maintained to show images and where the images so displayed are distinguished or characterized by the depicting or describing of "sexually explicit activities" or "specified anatomical areas".
2. **Adult Bookstore, Adult Novelty Store or Adult Video Store:** An establishment which offers for sale or rental for any form of consideration, as one of its principal business purposes, any one or more of the following:
 - a. Books, computer diskettes, tapes or hard drives, magazines, periodicals or other printed matter or photographs, films, motion pictures, video matter or photographs, cassettes or video reproductions, slides or other visual representation and/or items which depict or describe "sexually explicit activities" or "specified anatomical areas" or which are characterized by their emphasis upon exhibition or description of 'sexually explicit activities' or "specified anatomical areas"; or
 - b. Instruments, devices or paraphernalia which are characterized by their emphasis upon "sexually explicit activities" or "specified anatomical areas" or designed for use in connection with "sexually explicit activities"; or
 - c. Items, materials or paraphernalia depicting, displaying, advertising or packaged as "sexually explicit activities" or which depict or describe, or are characterized by their emphasis upon, the exhibition or description of "specified anatomical areas".
 - d. For purposes of this Ordinance, "principal business purpose" means:
 - (1) The devotion of a significant or substantial portion of its stock-in-trade or interior floor space, meaning thirty percent (30%) or more of the interior floor area as defined by the applicable Building Code, to the items as described in this Section 14.13(A)(2); or
 - (2) The receipt of fifty (50%) percent or more of its annual revenues from the sale of the items listed in Section 14.13(A)(2) above. Revenue is a gross increase in assets or a gross decrease in liabilities recognized and measured in conformity with generally accepted accounting principles; or
 - (3) The devotion of a significant or substantial portion of its advertising expenditures to the promotion of the sale, rental or viewing of books, magazines, periodicals or other printed matter, or photographs, film, motion pictures, video cassettes, compact discs, slides or other visual representations, items, materials, or paraphernalia which are characterized by the depiction, description, display, advertising or packaging of "sexually explicit activities" or "specified anatomical areas".
 - (4) An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "sexually explicit activities" or "specified anatomical areas", and still be characterized as an adult book store, adult novelty or retail store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store, adult video store, so long as the establishment falls within the definition of an adult bookstore, adult novelty store or adult video store as set forth above.
3. **Adult Cabaret:** A nightclub, bar, restaurant or similar commercial establishment, whether or not alcohol is served, which regularly features:
 - a. Persons who appear in a state of nudity, semi-nudity or any form of dress whereby the entire buttocks and all portions of the breast below the topmost portion of the areola are not opaquely covered; or
 - b. Live performances of an erotic nature which are characterized by the partial exposure of "specified anatomical areas" or "sexually explicit activities" on a stage, on poles, in booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises wherein an entertainer or waitress provides adult entertainment to members of the public, a

- patron or a member, when such adult entertainment is held, conducted, operated or maintained for a direct or indirect profit; or
- c. Films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas".
 4. Adult 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 manipulation of the human body which occurs as 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. An Adult Massage Parlor shall not include the practice of massage in any licensed hospital, nor by a licensed 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, semi-professional or professional athlete or athletic team or school athletic program nor a therapeutic massage practitioner.
 5. Adult Motel: A hotel, motel or similar establishment which:
 - a. Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are regularly characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas"; and which advertises the availability of this adult 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, internet or television; or
 - b. Permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for transmission off the premises; or
 - c. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - d. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
 6. Adult Motion Picture Theater: An establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas".
 7. Adult Theater: A theater, concert hall, auditorium or similar establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by the performance of "sexually explicit activities".
 8. Alcoholic Commercial Establishment: Any hotel, motel, tavern, restaurant, park, nightclub, cocktail lounge, burlesque house, bar, cabaret, taproom, club or other similar establishment licensed by the State of Michigan Liquor Control Commission, or where alcoholic beverages, including beer, are dispensed and/or consumed. This definition shall exclude a theater or auditorium.
 9. Entertainer: A person who performs some type of activity or pose with the intent of allowing others to witness that activity or pose.
 10. Escort: A person who, for consideration in any form, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately perform as an entertainer, including, but not limited to, the modeling of lingerie, the removal of clothing and the performance of a dance or skit. Under this definition, "privately" shall mean a performance for an individual or that individual's guests.
 11. 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.
 12. Establishment: Any of the following:
 - a. The opening or commencement of any sexually oriented business as a new business; or
 - b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
 - c. The location or relocation of any sexually oriented business.
 13. Licensee: The individual listed as an applicant on the application of a sexually oriented business license, or a person whose name appears on a license to operate a sexually oriented business.
 14. Manager: An operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees, or is otherwise responsible for the operation of the sexually oriented business.
 15. Massage: The treating of external parts of the body for remedial or hygienic purposes, consisting of stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating with the hands or with the aid

- of any mechanical or electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided shall pay any consideration whatsoever therefore. For purposes of this Ordinance, the term "bodywork" shall mean massage.
16. Nude Model Studio: Any place where a person appears in a state of nudity or displays "specific anatomical areas", and is provided money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons. This includes modeling studios that provide for nude modeling on an occasional basis, but it does not include a modeling studio whose primary function is to provide art classes as part of a college, university or educational institution and which is certified by the State of Michigan.
 17. Nudity or a State of Nudity: The appearance of a human bare buttock, anus, male genitals, female genitals or female breasts.
 18. Operator: The owner, licensee, manager or person in charge of any premises.
 19. Peep Booth: An adult motion picture theater with a viewing room or cubical of less than one hundred fifty (150) square feet of floor space.
 20. Premises or Licensed Premises: Any premises that requires a sexually oriented business license and that is classified as a sexually oriented business.
 21. Private Room: A room in a hotel/motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.
 22. Regular or Regularly: Recurring, attending or functioning at fixed or uniform intervals.
 23. Semi-Nude: A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
 24. Sexual Encounter Center: A business or enterprise that, as one (1) of its primary business purposes, offers a place where two (2) or more persons may congregate, associate or consort for the purpose of "sexually explicit activities" or the exposure of "specified anatomical areas" for any form of consideration, including, but not limited to:
 - a. Physical contact in the form of wrestling or tumbling between persons of the same or opposite sex; or
 - b. Activities when one or more of the persons is in a state of nudity or semi-nudity; or
 - c. Permits patrons to display or be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for recording or transmission over the World Wide Web or any other media.
 25. Sexually Explicit Activities: Any of the following:
 - a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or
 - b. Sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation or sodomy; or
 - c. Masturbation, actual or simulated; or
 - d. Any activity intended to arouse, appeal to or gratify a person's lust, passions or sexual desires; or
 - e. The display of human genitals in a state of sexual stimulation, arousal or tumescence; or
 - f. The display of excretory function as part of or in connection with any of the activity set forth in (a) through (e) above.
 26. Sexually Oriented Business: An adult arcade, adult bookstore, adult massage parlor, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
 27. Significant or Substantial Portion: Thirty percent (30%) or more of the term modified by such phrase.
 28. Specified Anatomical Areas. Any of the following:
 - a. Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, or female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola, or any combination of the foregoing; or
 - b. Human genitals in a state of sexual arousal, even if opaquely and completely covered.
 29. Specified Criminal Acts: Sexual crimes against children, sexual abuse, criminal sexual conduct, rape, crimes classified as sexual crimes by the State of Michigan or any other state, or crimes connected with another sexually oriented business, including, but not limited to, the distribution of obscenity, prostitution and/or pandering.

B. The following site and developmental requirements shall apply

1. Separation Distances: A sexually oriented business shall not be located closer than one thousand (1,000) feet to the property line of any of the following listed in subsections (1)(a)-(g) below. Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property site boundary of a sexually oriented business to the nearest property line of the premises of any use, district or right-of-way listed in subsections (a) – (g) below. Access easements or portions of the parcel that are exclusively used to provide access to the site of the sexually oriented business shall be excluded from the parcel boundary in determining whether the site complies with the required separation. The intent of this exclusion is to allow sexually oriented businesses to comply with the separation requirement from major thoroughfares by means of an access easement or access strip of land from the site to the thoroughfare.
 - a. Church, religious institution, or building used primarily for religious worship and related religious activities.
 - b. Public or private elementary or secondary school, vocational school, special education school, junior college or university.
 - c. Any single-family, two-family or multiple-family zoning district.
 - d. Lot or parcel in residential use
 - e. Public park
 - f. Existing sexually oriented business
 - g. Child care facility, nursery or preschool
2. Within Same Building:
 - a. No sexually oriented business shall be located within or otherwise be attached to a building in which one (1) or more dwelling units are located, or on the same lot where one (1) or more dwelling units are located.
 - b. No more than one (1) sexually oriented business shall be established in a building, structure or portion thereof. No existing sexually oriented business within the same building, structure or portion thereof as another sexually oriented business shall be enlarged or expanded in floor area by more than ten percent (10%) after the adoption date of the ordinance amending this Section 14.13.
3. Off-Street Parking: All off-street parking areas and entry door areas of a sexually oriented business shall be illuminated from dusk until the closing time of the business with a lighting system which meets the standards of this Ordinance.
4. Signs and Exterior Treatments: Signs and exterior aspects of the building or portion thereof housing a sexually oriented business shall comply with the Birch Run Township Sign Ordinance in addition to the following:
 - a. The merchandise or activities of the sexually oriented business shall not be visible from any point outside the establishment.
 - b. The exterior portions of the sexually oriented business including signs pertaining thereto shall not have any words, lettering, photographs, silhouettes, drawings or pictorial representations of any specified anatomical area or sexually explicit activity as defined in this Ordinance.

C. Special Performance Standards

1. Semi-nude Viewing: No employee in a sexually oriented business shall knowingly or intentionally appear in view of any patron in a semi-nude condition unless the employee, while semi-nude, shall be and remains at least six (6) feet from all patrons and on a fixed stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
2. Employee Mingling: No employee in a sexually oriented business shall knowingly or intentionally mingle with patrons unless they are not dancing or have not danced for at least thirty (30) minutes.
3. Nude Entertainment in Alcoholic Commercial Establishments: No person shall perform in any alcoholic commercial establishment, to knowingly permit or allow to be performed therein, any of the following acts or conduct:
 - a. The public performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellations, or any sexual acts which are prohibited by law;
 - b. The actual or simulated touching, caressing or fondling on the breasts, buttocks, anus or genitals in public; or
 - c. The actual or simulated public displaying of the pubic hair, anus, vulva or genitals.
 - d. The wholly or substantially exposure to public view of one (1) or both female breasts. "Wholly or substantially exposed to public view" as it pertains to breasts shall mean the showing of the

- female breast in an alcoholic commercial establishment with less than a fully opaque covering of all portions of the areola and nipple.
- e. Topless or bottomless or totally uncovered waitresses, bartenders or barmaids, entertainers including dancers, impersonators, lingerie models, or any other topless, bottomless or totally uncovered person for the attraction or entertainment of customers.
 - f. Wet t-shirt and similar contests.
4. **Lighting:** Except in the case of a theater, the premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, at an illumination of not less than one (1) foot candle measured at floor level.
 5. **Manager's Station:** The applicant shall submit a diagram of the premises showing a plan thereof and specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and illumination intensity of each. A manager's station shall not exceed fifty (50) square feet of floor area.
 6. **Changing of Attire:** All changing of attire by employees or performers shall be within a completely enclosed room into which access by patrons is prohibited.
 7. **License Required:** Approval of a sexually oriented business shall be granted on the condition that the operator or owner of the sexually oriented business obtain a license from the Township Clerk or his/her designee to operate the business as required by Birch Run Township Ordinance # 2001-01 as amended. No license shall be issued for an existing or proposed business where the existing or proposed business would be illegal under any law or ordinance of the United States of America, the State of Michigan, the County of Saginaw or the Township of Birch Run."

Section 5 Addition of Section 20.23.

The Birch Run Township Zoning Ordinance of 2004, as amended, is hereby amended by the addition of Section 20.23 to read as follows:

"Section 20.23 Display of Sexually Oriented Material

A. Sexually Oriented Material Defined: For the purpose of this Section 20.23, "sexually oriented material" shall include any of the following that depict or describe "sexually explicit activities" or "specified anatomical areas" or which are characterized by their emphasis upon exhibition or description of "sexually explicit activities" or "specified anatomical areas", but which do not constitute a adult bookstore, adult novelty store or adult video store according to Section 14.13 of this Ordinance: books; computer diskettes, tapes or hard drives; magazines, periodicals or other printed matter or photographs; films, motion pictures, or video matter; cassettes or video reproductions, slides or other visual representations; and instruments, devices or other miscellaneous articles and material depicting, displaying, advertising or packaged as "sexually explicit activities" or which depict or describe, or are characterized by their emphasis upon, the exhibition or description of "sexually explicit activities" or "specified anatomical areas". For the purpose of this definition, "sexually explicit activities" and "specified anatomical areas" shall be construed to have the meanings as provided in Section 14.13 of this Ordinance.

B. Display Limitations: Any use which is characterized by the display of sexually oriented material, but which does not constitute a sexually oriented business as defined by Section 14.13, shall comply with the following limitations:

1. **Floor Space/Display Restrictions:** The sale, display or exhibition of sexually oriented materials shall be limited to no more than twenty-nine (29%) percent of the total stock in trade or interior floor space. The sexually oriented material shall be located in the rear portion of a building away from its main entrance area. The sexually oriented materials shall be separated by racks, walls or other means that restrict visibility into the area displaying the sexually oriented materials. No sexually oriented material shall be located outside of such designated sexually oriented material area.
2. **Exterior Visibility:** No sexually oriented material shall be displayed in any of the business's windows at any time or visible from the exterior of the business or building. Additionally, no portion of the ceiling in a business or building shall be used to display sexually oriented material.
3. **Magazines:** Magazines that contain "sexually oriented material" or "specified anatomical areas" may be located outside an area specifically devoted to sexually oriented material provided the merchandise rack on which the materials are placed are located immediately adjacent to the separate area that displays or sells the sexually oriented material, and contain opaque blinders that only allow viewing of the magazine title.
4. **Height Restrictions:** The height of the racks and display walls upon which sexually explicit material can be displayed shall be limited to six (6') feet."

Section 6 Validity

Should any section, clause or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Section 7 Savings Clause

All proceedings pending and all rights and liability existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law in force when they were commenced.

Section 8 Effective date

This ordinance shall become effective 30 days after adoption and publication of a summary of this ordinance.

Township of Birch Run

By: _____
Ray Letterman, Supervisor

By: _____
Corey Trinklein, Clerk

STATE OF MICHIGAN)
COUNTY OF SAGINAW)

I, the undersigned, the fully qualified and acting Clerk of the Township of Birch Run, Saginaw County, Michigan, do hereby certify that the foregoing is a true and complete Copy of an ordinance adopted at a regular meeting of the Township Board of the Township of Birch Run, Michigan, held on the 13th day of May, 2014, the original of said meeting was given to and in compliance with Act 267, Public Acts of Michigan, 1976.

IN WITNESS WHEREOF, I have hereunto fixed my official signature on this 14th day of May, 2014.

Corey Trinklein, Clerk
Birch Run Township