

BEAR CREEK TOWNSHIP

EMMET COUNTY, MICHIGAN

SEXUALLY ORIENTED BUSINESS ORDINANCE

ORDINANCE NO. 26-07

AN ORDINANCE to provide for the licensing and regulation of Sexually Oriented Businesses; to address the negative secondary effects associated with Sexually Oriented Businesses by providing for additional miscellaneous regulations of Sexually Oriented Businesses; to allow inspections; to provide penalties for violation; to repeal conflicting ordinances; and to provide for the effective date of this ordinance.

THE TOWNSHIP OF BEAR CREEK, COUNTY OF EMMET AND STATE OF MICHIGAN, ORDAINS:

Section 1. Purpose and Intent.

It is the purpose of this Ordinance to minimize the negative secondary effects associated with Sexually Oriented Businesses, and thereby promote the health, safety, and general welfare of the patrons of and performers at Sexually Oriented Businesses and the citizens and residents of the Township, through licensing and regulating Sexually Oriented Businesses and related activities. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any expressive activity or communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution or Article I, Section 5 of the Michigan Constitution of 1963, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Ordinance to legitimize activities prohibited by Township ordinance, or by County, State or Federal law.

This Ordinance shall not apply to a Sexually Oriented Business that is lawfully operating at a location within the township on the effective date of this Ordinance unless the ownership of such Sexually Oriented Business changes or unless such a Sexually Oriented Business seeks to relocate or expand to a new or additional location within the Township.

Section 2. Definitions.

A. The following definitions shall apply in the interpretation and enforcement of this Ordinance, unless a different meaning is clearly indicated by the context:

1. Person: Any individual, agent, partnership, corporation, limited liability company, joint venture, or any other form of business association or business entity.

2. Sexually Oriented Business: Any of the following: (a) Adult Bookstore or Adult Video Store; (b) an Adult Cabaret; (c) an Adult Motion Picture Theater; (d) a Sexual Device Shop, or (e) a Sexual Encounter Center, as any of these businesses are defined by the Emmet County Zoning Ordinance.
3. Specified Anatomical Areas means and includes:
 - a. Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
 - b. Human male genitals in a discernible turgid state, even if completely and opaquely covered.
4. Specified Criminal Activity: An offense involving any of the following activities, for the specified time periods.
 - a. Dissemination of obscenity; sale, distribution or display of sexually explicit or otherwise harmful material to a minor; possession or distribution of child pornography; sexual performance by a child; child molestation; indecency with a child; indecent exposure; public lewdness; prostitution or assignation (accosting, promoting, or soliciting for purposes of prostitution); sexual assault or criminal sexual conduct; engaging in organized criminal activity; gambling; distribution of a controlled substance; or any offense under the criminal or penal code of any other state or country similar to those described above.
 - b. Specified time periods.
 - (1) Less than two years have passed since the date of the conviction or the date of release from confinement, whichever is later, if the conviction is for a single misdemeanor offense;
 - (2) Less than five years have passed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is later, if the convictions are for two or more misdemeanor offenses or any combination of misdemeanor offenses occurring within a 24 month period; or
 - (3) Less than five years have passed since the date of conviction or the date of release from confinement, whichever is later, if the conviction is for a felony offense.
 - a. A pending appeal of a conviction shall have no effect on the definition of Specified Criminal Activity.

5. Specified Sexual Activity means any of the following:
 - a. Intercourse, oral copulation, masturbation or sodomy; or
 - b. Excretory functions as a part of or in connection with any of the activities described in a. above.

B. Terms used in this Ordinance that are not defined above but that are defined in the Emmet County Zoning Ordinance, as that ordinance has been or may be amended, shall have the meaning as specified therein for the purposes of interpreting and enforcing this Ordinance.

Section 3. Prohibition.

It shall be a violation of this Ordinance for any person:

A. To own or operate a Sexually Oriented Business within the Township unless that Sexually Oriented Business is licensed and is in full compliance with the provisions of this Ordinance and the Emmet County Zoning Ordinance.

Section 4. Operating Requirements.

- A. All Sexually Oriented Businesses shall comply with all of the following.
 1. No person younger than 18 years of age shall enter or be on the premises of a Sexually Oriented Business at any time during which the Sexually Oriented Business is open for business.
 2. No person under the age of 18 shall be employed by a Sexually Oriented Business or contracted with a Sexually Oriented Business for the provision of services to patrons.
 3. No employee of a Sexually Oriented Business shall sell or provide goods, merchandise or services to persons under the age of 18 on the premises.
 4. No alcoholic beverages shall be permitted within the premises of a Sexually Oriented Business at any time, unless specifically allowed pursuant to a license duly issued by the Michigan Liquor Control Commission.
 5. No loitering shall be allowed on the premises of any Sexually Oriented Business at any time.
 6. No Sexually Oriented Business shall allow its building, place, or premises to be used for the purpose of lewdness, assignation or prostitution.
 7. No Sexually Oriented Business shall be open to do business before 8:00 a.m. or

after 10:00 p.m. on any day.

B. Any Sexually Oriented Business offering live entertainment shall further comply with all of the following.

1. A dressing area for performers must be provided with direct access to the performance area or stage, with direct access back from the performance area or stage to the dressing area, such that the performer may enter and leave the performance area or stage without entering the area from which patrons view the performance.
2. Access to the performance area, stage, and dressing room must be handicap accessible to the extent required by law.
3. The performance area or stage must be elevated at least 18 inches above the area from which patrons will view the performance.
4. The dressing area for performers must be separate and not freely accessible from areas of the business accessible to patrons.
5. The performers' dressing area must have hot and cold running water and adequate toilet facilities.
6. An employee, owner, independent contractor, or performer of any type whose activities are characterized by the display of Specified Anatomical Areas or Specified Sexual Activities shall not engage in any physical contact with, or be within six feet of, patrons during performances; neither shall any such person receive tips or gratuities from patrons for performances.
7. At least one bouncer or security guard employed by the Sexually Oriented Business shall be present at all times when the Sexually Oriented Business is open to do business. The bouncer or security guard shall patrol the premises, including the parking lot, to ensure compliance with the requirements of this Section.

A violation of subsections A.1, A.2, and/or A.3 of this Section shall be grounds for criminal prosecution of both the underage person, and of any licensee, owner, operator, and employees who permitted the violation of the section by the underage person.

Section 5. Sexually Explicit Performance Prohibited.

A. No person shall dance, entertain, display or otherwise engage in any exhibition or performance in such a manner as to expose to the view of any person within a Sexually Oriented Business, or in any other commercial establishment, any Specified Anatomical Areas, or any device, costume or covering which gives the appearance of or simulates any Specified Anatomical Areas.

B. No person shall engage in any Specified Sexual Activities on the premises of a Sexually Oriented Business.

C. It shall be unlawful for any person to knowingly promote the commission of any of the unlawful acts listed in subsections A or B of this Section.

Section 6. Inspection.

An applicant or licensee shall allow the Township Supervisor, Township Ordinance Enforcement Officer, or other designee of the Township Board, the County Sheriff, any Deputy Sheriff, or any other law enforcement official, individually or jointly, to inspect the premises of a Sexually Oriented Business at any time it is occupied or open for business for the purpose of ensuring compliance with this Ordinance, the Emmet County Zoning Ordinance, all other local ordinances, and all other statutes, laws, rules or regulations of the County, State and Federal government.

Section 7. Operating Licenses.

A. An application for a license to operate a Sexually Oriented Business within the Township shall be made on a form provided by the Township. The application may require the applicant to provide any and all information and documentation (including fingerprints and photographs) necessary to enable the Township to determine whether the applicant meets the qualifications and requirements established in this Ordinance. An application shall not be deemed complete until all such information and documentation has been provided to the Township by the applicant or the applicant's agents and/or representatives.

B. If the Sexually Oriented Business is intended to be operated as a sole proprietorship by an individual, then the individual is deemed the applicant and shall sign the application for a license.

C. Where the Sexually Oriented Business is intended to be operated in any capacity other than as a sole proprietorship, then each individual who has a significant or controlling interest in the business is deemed to be an applicant and each such person shall sign the application for a license. The application shall further provide the following information.

Where the business entity is a partnership, the partnership shall state its complete name, the names of all partners, the status of the partnership as a general or limited partnership, and include a copy of the partnership agreement, if any agreement exists.

Where the business entity is a corporation (C-corporation, S-corporation, Professional corporation, or any other corporation), the corporation shall state its complete name, the date of its incorporation, the state of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacities of each office holder, director, and principal stockholders in the corporation, and the name of the registered corporate agent and the address of the registered office for service of process.

Where the business entity is a Limited Liability Company (Member-managed, Manager-managed, Professional, or any other Limited Liability Company), the Limited Liability Company shall state its complete name, the date of its organization as a Limited Liability Company, the state in which it was organized as a Limited Liability Company, evidence that the Limited Liability Company is in good standing under the laws of the state in which it is organized, the names of and capacities of each member

in the Limited Liability Company, and the name of the manager and the address of the registered office for service of process.

D. If the Sexually Oriented Business is intended to be operated under a name other than that of the applicant, the applicant must state the fictitious name of the Sexually Oriented Business and submit the required registration documents.

E. An application for a Sexually Oriented Business License shall contain the following information and shall be accompanied by any necessary documentation for each applicant.

1. The application shall state the applicant's legal name and all prior names and aliases (including stage names) by which the applicant has ever been known, and submit proof that the applicant is at least 18 years of age.
2. The application shall state the applicant's current mailing address and residential address.
3. The application shall state the applicant's driver's license number, and state or federally issued tax identification number.
4. The application shall include the applicant's fingerprints on a form provided by the Township or its designee and two color passport photographs of the applicant clearly showing the applicant's face. Any fees required to produce and process the fingerprints and photographs shall be paid by the applicant.
5. The application shall state whether the applicant, or a person residing with the applicant, has ever been convicted of, pleaded guilty to, or pleaded no contest to, a Specified Criminal Activity as defined in this Ordinance. In the event of an affirmative response, the applicant shall state each specified criminal activity involved, along with the date, place, and jurisdiction of each offense.
6. The application shall state whether the applicant, or a person residing with the applicant, has ever had a previous license under this Ordinance or any other similar Sexually Oriented Business ordinance of another municipality or county denied, suspended, or revoked. In the event of an affirmative response, the applicant shall state the name and location of each Sexually Oriented Business that had its license denied, suspended, or revoked, as well as the date of and reason for the denial, suspension, or revocation.
7. The application shall state whether the applicant, or a person residing with the applicant, has ever been a partner in a partnership, or an officer, director or principal stockholder of a corporation, or a member or manager of a Limited Liability Company, or otherwise had a significant or controlling interest in any business entity that is or was licensed under this Ordinance, or any other similar Sexually Oriented Business ordinance of another municipality or county, whose license has previously been denied, suspended or revoked. In the event of an affirmative response, the applicant shall state the name and location of the

Sexually Oriented Business that had its license denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

8. The application shall state whether the applicant, or a person residing with the applicant, currently holds any other licenses under this Ordinance or any other similar Sexually Oriented Business Ordinance of another municipality or county. In the event of an affirmative response, the applicant shall state the names and locations of each licensed Sexually Oriented Business.
9. The application shall state the location of the proposed Sexually Oriented Business, including a legal description of the property, the street address, and the telephone number, if any.
10. The application shall include a sketch or a diagram, drawn to a designated scale with marked dimensions, which shows the proposed interior configuration of the Sexually Oriented Business premises.

F. The Township shall grant or deny the requested operating license within 30 days after receiving the completed application for an operating license. The Township shall grant the operating license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following is true.

1. The applicant is under 18 years of age.
2. The applicant, or a person with whom the applicant is residing, is currently overdue in payment to the Township of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or a person with whom the applicant is residing.
3. The applicant has falsely answered a question or request for information on the application.
4. The applicant, or a person with whom the applicant is residing, has previously been denied a license by the Township to operate a Sexually Oriented Business during the preceding 12 months.
5. The applicant, or a person with whom the applicant is residing, has had a license to operate a Sexually Oriented Business within the Township revoked during the preceding 12 months.
6. The applicant, or a person with whom the applicant is residing, has been convicted of, pleaded guilty to, or pleaded no contest to, a Specified Criminal Activity as defined in this Ordinance.
7. The premises of the Sexually Oriented Business have not been approved by the Fire Department and the Building Department serving the township, as being in compliance with all applicable laws and ordinances.

8. The applicant has failed to pay the application and investigation fee required by this Ordinance.
9. The existing or proposed Sexually Oriented Business is in violation of, or is otherwise not in compliance with, any provision of this Ordinance or any other ordinance of the Township, or any other ordinance, statute, law, rule or regulation of the County, State or Federal government.

G. The Fire Department and the Building Inspector shall complete their certification that the premises of the proposed Sexually Oriented Business is in compliance, or not in compliance, within 20 days of the Township's receipt of the application.

H. A license shall state on its face the name of the person or persons to whom it is granted, the expiration date of the license, and the address of the Sexually Oriented Business. All licenses shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that they may be easily read at any time.

Section 8. Fees.

A. Operating Licenses. Every application for a Sexually Oriented Business license (whether for a new license or for a renewal) shall be accompanied by a non-refundable application and investigation fee to be established by resolution of the Township Board to cover the expense of considering, investigating, and making a decision on the application.

In addition to the application and investigation fee required above, every Sexually Oriented Business that is granted a license (new or renewal) shall, within 30 days of the grant of a new or renewed license, pay to the Township an annual non-refundable license fee to be established by resolution of the Township Board.

Section 9. Expiration and Renewal of Licenses.

A. Each license granted under this Ordinance shall expire one year from the date the license is granted and may be renewed only by making a new application for a license as provided in this Ordinance. A complete application for renewal of a license shall be made at least 30 days before the expiration date of the license. In the event the completed application is made less than 30 days before the expiration date, the prior license will still expire one year from the date the license was granted, and the Sexually Oriented Business must remain closed from the date of the expiration of the prior license until the date the new license is granted under this Ordinance.

B. In the event the Township denies the renewal of a license, the applicant shall be prohibited from reapplying for a new license for a period of one year from the date of the renewal denial.

Section 10. Suspension.

The Township shall suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has refused to allow an inspection of the Sexually Oriented

Business premises as authorized by this Ordinance, or has otherwise violated any section of this Ordinance.

Section 11. Revocation.

A. The Township shall revoke a license if the license has been suspended more than two times within a 12 month period.

B. The Township shall revoke a license if the Township determines by a preponderance of the evidence that any one or more of the following have occurred.

1. A licensee gave false or misleading information in the application.
2. A licensee has knowingly allowed the possession, use, or sale of controlled substances on the premises of the Sexually Oriented Business.
3. A licensee has knowingly allowed assignation or prostitution on the premises of the Sexually Oriented Business.
4. A licensee knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended.
5. The licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act, including any Specified Sexual Activity, to occur in or on the licensed premises of the Sexually Oriented Business.
6. The licensee is delinquent in payment to the Township, County, or State for any taxes or fees.

C. Any revocation of a license shall continue for one year, and the licensee shall not be issued a Sexually Oriented Business license for a period of one year from the date the revocation became effective.

Section 12. Appeals.

Any denial of an initial application or renewal for a license under this Ordinance, or any suspension or revocation of any license under this Ordinance, may be appealed in writing within 10 days of the decision to the Township Board. The Township Board shall hold a hearing within 30 days of receiving the written appeal. The Township Board shall make its decision upholding or overturning the denial, suspension, or revocation within 30 days of the hearing. The decision of the Township Board shall be deemed a final decision by the Township. The applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

Section 13. Transfer of License.

Any license granted under this Ordinance shall be non-transferable. A licensee shall not transfer any license to another individual or business, nor shall a licensee operate a Sexually Oriented Business under the authority of a license at any place other than the address designated in the application for the license.

Section 14. Penalties.

Any person or entity that violates this Ordinance shall be deemed to be responsible for a municipal civil infraction as defined by Michigan statute which shall be punished by a civil fine determined in accordance with the following schedule:

	<u>Minimum</u>	<u>Maximum</u>
1st Offense within 3-year period*	\$ 75.00	\$ 500.00
2nd Offense within 3-year period*	150.00	500.00
3rd Offense within 3-year period*	325.00	500.00
4th or More Offense within 3-year period*	500.00	500.00

* Determined on the basis of the date of commission of the offense(s).

Additionally, the violator shall pay costs which may include all expenses, direct and indirect, to which Bear Creek Township has been put in connection with the municipal civil infraction. Each day that a violation exists shall constitute a separate offense.

The Township Supervisor and the Township Ordinance Enforcement Officer are each authorized to issue municipal civil infraction citations for violations of this ordinance.

Section 15. Abatement of Sexually Oriented Businesses as a Public Nuisance.

A violation of this Ordinance is also declared to be a public nuisance, and the Township shall have the right to proceed in any court of competent jurisdiction for the purpose of obtaining an injunction, restraining order, or other appropriate remedy to compel compliance with this Ordinance, including the right to correct the violation and to recover for any damages caused by Ordinance violations.

Nothing within this Ordinance shall preclude the Attorney General of the State of Michigan, the Emmet County Prosecuting Attorney, or any citizen of Emmet County from maintaining an action to enjoin and abate a Sexually Oriented Business as a nuisance.

Section 16. Severability and Captions.

This Ordinance and its various parts, sections, subsections, sentences, phrases and clauses are declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

Section 17. Repeal.

All resolutions, ordinances or orders in conflict in whole or in part with any of the provisions of this Ordinance are, to the extent of such conflict, repealed.

Section 18. Administrative Liability.

No officer, agent, employee or member of the Township shall be personally liable for any damage which may occur to any person or entity as a result of any act or decision performed in the discharge of duties and responsibilities pursuant to this Ordinance.

Section 19. Effective Date.

This Ordinance was approved and adopted by the Township Board of Bear Creek Township, Emmet County, Michigan, on July 11, 2007. This Ordinance shall become effective 30 days following publication of the ordinance, or a summary thereof, in a newspaper of general circulation within the Township.

Dennis Keiser, Township Supervisor

Judy Mays, Township Clerk

CLERK'S CERTIFICATION

I hereby certify this Ordinance was adopted by the Bear Creek Township Board at a regular meeting held on July 11, 2007, and that the vote was as follows:

FOR:

AGAINST:

I further certify this Ordinance or, a summary thereof, was published in the *Petoskey News-Review* on July 16, 2007.

Judy Mays, Clerk
Bear Creek Township

BEAR CREEK TOWNSHIP
EMMET COUNTY, MICHIGAN

Summary of a Sexually Oriented Business Ordinance, No. 26-07, adopted by the Bear Creek Board of Trustees at its regular meeting on July 11, 2007.

Section 1. Purpose and Intent. Indicates the purpose and intent of the ordinance to minimize the negative secondary effects associated with Sexually Oriented Businesses; indicates the ordinance is not intended to improperly limit or restrict Constitutionally and legally protected rights; provides an exemption for pre-existing Sexually Oriented Businesses.

Section 2. Definitions. Provides certain definitions that apply to the ordinance; adopts definitions from the Emmet County Zoning Ordinance.

Section 3. Prohibition. Prohibits a Sexually Oriented Business from operating within the township unless licensed and in compliance with this ordinance and the Emmet County Zoning Ordinance.

Section 4. Operating Requirements. Specifies the requirements for the operation of a Sexually Oriented Business within the township, including but not limited to hours of operation.

Section 5. Sexually Explicit Performance Prohibited. Prohibits live displays of Specified Anatomical Areas within Sexually Oriented Businesses and prohibits Specified Sexual Activities on such premises.

Section 6. Inspection. Provides for the right of inspection of Sexually Oriented Businesses by law enforcement personnel and other designees of the township board to ensure compliance with this ordinance and other applicable laws.

Section 7. Operating Licenses. Indicates the manner and method of application for a license to operate a Sexually Oriented Business within the Township.

Section 8. Fees. Provides for application and licensing fees to be established by resolution of the township board.

Section 9. Expiration and Renewal of Licenses. Provides that a license expires one year from the date of issuance and provides the manner for renewal of a license.

Section 10. Suspension. Provides for a 30 day suspension of a license for violations of the ordinance.

Section 11. Appeals. Provides for an appeal of the denial of an initial or renewal application for a license under the ordinance, or a suspension or revocation of a license.

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Section 12. Transfer of License. Provides that any license granted under this Ordinance is non-transferable.

Section 13. Penalties. Provides that a violation of the ordinance shall be a municipal civil infraction, and indicates the possible penalties for such infractions.

Section 14. Abatement of Sexually Oriented Businesses as a Public Nuisance. Indicates that ordinance violations constitute a public nuisance and are subject to abatement by a court.

Section 15. Severability. Provides that if any portion of the ordinance is found to be invalid by a court, the validity of the remaining portions shall not be affected.

Section 16. Repeal. Provides that any other ordinances or parts thereof that conflict with any provisions of this ordinance are repealed to the extent of such conflict.

Section 17. Administrative Liability. Provides that no officer, agent, employee or member of the Township shall be personally liable for any damage which may occur to any person or entity as a result of any act or decision performed in the discharge of duties and responsibilities pursuant to this ordinance.

Section 18. Effective Date. Provides that the ordinance will take effect 30 days following publication of the ordinance or a summary thereof.

A true copy of the entire Bear Creek Township Sexually Oriented Business Ordinance may be inspected or obtained at the Bear Creek Township Hall, 373 N. Division Road, Petoskey, Michigan, 49770.

Judy Mays
Bear Creek Township Clerk