

TOWNSHIP OF SCHUYLKILL
ORDINANCE NO. 2001-1

AN ORDINANCE OF THE TOWNSHIP OF SCHUYLKILL TO PROVIDE FOR THE REGULATION OF THE DISPLAY, EXHIBITION, SALE, AND DISTRIBUTION OF AND ACTIVITIES CONCERNING OBSCENE AND OTHER SEXUAL MATERIAL, AND TO PRESCRIBE FINES AND PENALTIES FOR VIOLATIONS.

It is hereby ENACTED and ORDAINED by the Board of Supervisors of the Township of Schuylkill, Schuylkill County, Pennsylvania, as follows:

SECTION 1. PURPOSE. Pursuant to the authority granted in the Second Class Township Code to prohibit nuisances; to promote the health, cleanliness, comfort and safety of the citizens of Schuylkill Township and the Authority of political subdivisions of the Commonwealth of Pennsylvania to enact local ordinances to regulate, inter alia, the sale, distribution, display and exhibition of and activities concerning obscene and other sexual material as provided for in 18 P.S. §5903(k) and as upheld by the United States District Court for the Eastern District of Pennsylvania, in Brown v. Pornography Commission of Lower Southampton Township, 620 F.Supp 1199 (1985), the Township of Schuylkill enacts the following Ordinance.

SECTION 2. OFFENSES DEFINED.

- a) Offenses defined. No person, knowing the obscene character of the material or performance involved, shall, within the Township of Schuylkill:
- 1) display or cause or permit the display of any explicit sexual materials as defined in subsection c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;
 - 2) sell, lend, distribute, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, exhibit or give away

or show any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene material in any manner;

- 3) design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;
- 4) write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had;
- 5) produce, present or direct any obscene performance or participate in a portion thereof that is obscene or what contributes to its obscenity; or
- 6) hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection.

- b) Definitions. As used in this Ordinance, the following words and phrases shall have the meanings given to them in this subsection:

“Community”- For the purpose of applying the “contemporary community standards” in this Ordinance, community means the State.

“Knowing”- As used in subsection (a), knowing means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the person charge with violation of this Ordinance.

“Material”- Any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, video tape or motion picture.

“Nude”- The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

“Obscene”- Any material or performance, if:

- 1) the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;

- 2) the subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in the Ordinance; and
- 3) the subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

“Performance”- Any play, dance or other live exhibition performed before an audience.

“Sadomasochistic Abuse”- In a sexual context, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or in a bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed.

“Sexual Conduct”- Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality; and patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibitions of the genitals.

“Transportation Facility”- Any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including air craft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations.

- c) Dissemination to minors. No person shall knowingly disseminate by sale, loan, or otherwise explicit sexual materials to a minor. “Explicit sexual materials,” as used in this subsection, means materials which are obscene, or:
 - 1) any picture, photograph, drawing, sculpture, motion picture film, video tape or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minor; or
 - 2) any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (2), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.
- d) Admitting minor to show. It shall be unlawful for any person knowingly to exhibit for monetary consideration to a minor or knowingly to sell to a

minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture show or other presentation or performance which in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.

- e) Definitions. As used in subsections c) and d) of this Ordinance:
- 1) "Minor" means any person under age of 18 years.
 - 2) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernible turgid state.
 - 3) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, sexual bestiality or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.
 - 4) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
 - 5) "Sadomasochistic Abuse" means flagellation or torture by or upon a person who is clad in undergarments, a mask or in bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
 - 6) "Harmful to minors" means that quality of any description or representation in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:
 - i) predominantly appeals to the prurient, shameful, or morbid interest of minors; and
 - ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable materials of minors; and
 - iii) taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.

- 7) “knowingly” means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:
- i) the character and content of any material or performance described herein which is reasonably susceptible of examination by the person charged with violation of this Ordinance; and
 - ii) the age of the minor: provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the person charged with violation of this Ordinance made a reasonable bona fide attempt to ascertain the true age of such minor.
- e) Requiring sale as a condition of business dealings. No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, video tape, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any of any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, video tape figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

SECTION 3. EXEMPTION. Nothing in this Ordinance shall apply to any recognized historical society or museum accorded charitable status by the Federal government, any county, city, borough, township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision.

SECTION 4. PENALTY. Any person who shall violate the provisions of this Ordinance shall upon summary conviction before any District Justice, pay a fine not to exceed One Thousand dollars (\$1,000.00) and costs of prosecution. Upon judgment against any person by summary conviction, or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the person who shall have violated this Ordinance may be sentenced and committed to the county jail for a period not exceeding thirty (30) days.

SECTION 5 SEVERABILITY AND REPEALER.

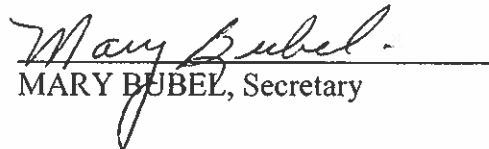
- 1) Severability- The provisions of this Ordinance are severable and if any section, subsection, clause, sentence or part thereof shall be held or declared illegal, invalid or unconstitutional by any court of competent jurisdiction, the decision shall not affect or impair any of the remaining sections, subsections, clauses, sentences or parts thereof, of this Ordinance; it is hereby declared to be the intent of the Board of Supervisors that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, subsection, clause, sentence or part thereof had not been included herein.
- 2) Repealer- All other ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of any such inconsistency.

SECTION 6. Effective Date. This Ordinance shall take effect immediately following its enactment by the Schuylkill Township Board of Supervisors.

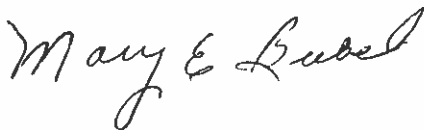
ENACTED and ORDAINED this 5th day of December.


JOSEPH BORAN, Chairman

MAUREEN VANEK, Vice-Chairman


MARY BUBEL, Secretary

ATTEST:





FRANK THOMPSON, SUPERVISOR

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ENACTED and ORDAINED this 5th day of December

Joseph Boran
JOSEPH BORAN, Chairman

Maureen E. Vanek
MAUREEN VANEK, Vice-Chairman

Mary Bubel
MARY BUBEL, Secretary

ATTEST:

Mary E. Bubel

Frank Thompson
FRANK THOMPSON, SUPERVISOR

