

Ordinance 81-21

Obscenity

5/20/1981

ORDINANCE NO. 81-4

AN ORDINANCE OF THE TOWNSHIP OF HOPEWELL DECLARING
OBSCENITY AND PORNOGRAPHY IN ANY AND ALL FORMS, LIVE
FILMS AND THEATRES, OBSCENE PUBLICATIONS, MASSAGE
PARLORS AND MODEL STUDIOS TO BE PUBLIC NUISANCES
AND PROVIDING PROCEDURES TO ABATE THE SAME AND
PENALTIES AND VIOLATIONS

WHEREAS, the Hopewell Township Board of Commissioners finds that commercial exploitation of explicit sexual conduct through the public exhibition of obscene films and live theatre productions and the display and/or sale of obscene publications and the use of so-called massage parlors and model studios for purposes of obscenity, assignation or prostitution constitutes a debasement and distortion of fundamental human sexuality central to family life, community welfare and the development of human personality; and

WHEREAS, the Township finds that such exploitation adversely affects the quality of life, property values, commerce and total community environment of the Municipality; and

WHEREAS, the Township finds that such activities are detrimental to the best health, safety, convenience, morals and general welfare of the Municipality and the citizens and businesses thereof; and

WHEREAS, the Township hereby declares such activities to be a public nuisance and herein establishes procedures for the abatement thereof;

NOW, THEREFORE, the Board of Commissioners of the Township of Hopewell, Pennsylvania, hereby ordains as follows:

SECTION 1. DEFINITIONS

(A) "Knowledge" or "knowledge of such nuisance" means

having knowledge of the contents and character of the patently offensive sexual conduct or other content which appears in the Motion Picture Film, Publication, or Live Theatre Production, or knowledge of the acts of obscenity, assignation, or prostitution which occur in any Place.

(B) "Obscene" Matter means any Matter:

- (1) which the average adult person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
- (2) which depicts or describes patently offensive representations or descriptions of;
 - (a) ultimate sexual acts, normal or perverted, actual or simulated; or
 - (b) masturbation, excretory functions, or exhibition of the genitals or genital area; and
- (3) the matter, taken as a whole, lacks serious literary, artistic, political, educational, or scientific value.

(C) "Live Theatre Production" shall mean any dramatic, musical or comedic production performed in the presence of a live audience.

(D) "Massage" shall mean any method of treating the superficial soft parts of the human body, for remedial, hygienic or other purposes, consisting of rubbing, stroking, kneading, or any similar treatment, accomplished by hand or by the use of any instrument.

(E) "Massage Parlor" shall mean any building or structure or portion thereof, located within the Municipality, which is open to members of the general public, with or without the payment of a fee, at which massage services are offered.

(F) "Matter" shall mean a Motion Picture Film, Live Theatre Production, Publication, or all three.

(G) "Model Studio" means:

(1) Any Place where there is conducted the business of furnishing figure models who pose in the nude for the purpose of being observed or viewed by any person or of being sketched, painted, drawn, sculptured, photographed or otherwise similarly depicted for persons who pay a fee, or other consideration or compensation, or a gratuity, for the right or opportunity so to depict the figure model, or for admission to, or for permission to remain upon, or as a condition for remaining upon the Place;
or

(2) Any Place where there is conducted the business of furnishing or providing or procuring, for a fee or other consideration or compensation or gratuity, figure models who pose in the nude to be observed or viewed by any person or to be sketched, painted, drawn,

sculptured, photographed or otherwise similarly depicted.

(3) Exception. The words "Model Studio" do not include:

- (a) Any studio which is operated by any state college or junior college, public or private school, or any governmental agency wherein the person, firm, association, partnership or corporation so operating has met the requirements established by the Commonwealth of Pennsylvania for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma or honorary diploma; or
- (b) Any Place where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in subsection (a) of this subsection.

(H) "Motion Picture Film" shall include any:

- (1) film or plate negative;
- (2) film or plate positive;
- (3) film designed to be projected on a screen for exhibition;
- (4) film, glass slides or transparencies, either in

negative or positive form, designed for exhibition by projection on a screen; or
(5) video tape or any other medium used to electronically reproduce images on a screen.

(I) "Nude" shall include:

- (1) completely without clothing; or
- (2) with the human male or female genitals, public area or buttocks with less than a full 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 covered male genitals in a discernible turgid state.

(J) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(K) "Place" includes, but not limited to, any building, structure or space, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(L) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or Motion Picture Film which is displayed in an area open to the public, offered for sale or exhibited in a coin-operated machine.

(M) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, obscene matter.

SECTION 2. OBSCENE FILMS, LIVE THEATRE PRODUCTIONS, PUBLICATIONS, AND PLACES EXHIBITING THE SAME DECLARED A PUBLIC NUISANCE; ABATEMENT THEREOF

(A) Any and every Place in the Municipality where obscene Motion Picture Films or Live Theatre Productions are publicly exhibited or possessed for the purpose of such exhibition; and any and every Place in the Municipality where obscene publications are publicly disseminated or sold, or possessed for the purpose of such dissemination, is a public nuisance.

(B) Any and every obscene Motion Picture Film or Live Theatre Production which is publicly exhibited, and any and every obscene Publication which is publicly displayed, disseminated or sold, or possessed for such purpose, is a public nuisance per se.

(C) From and after service on the Place, or its manager, or acting manager, or person then in charge of such Place, of a true and correct copy of this Ordinance and a true and correct copy of the Summons and Complaint to abate a nuisance, all monies paid thereafter as admission price to such exhibitions or productions, or purchase price of such publications, are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

SECTION 3. MESSAGE PARLORS OR MODEL STUDIOS USED FOR PURPOSES OF OBSCENITY, ASSIGNATION, OR PROSTITUTION, OR UPON WHICH SUCH ACTS OCCUR, DECLARED A PUBLIC NUISANCE: ABATEMENT THEREOF

(A) Every Massage Parlor or Model Studio, which, as a regular course of business, is used for the purposes of obscenity, assignation, or prostitution, and every such Massage Parlor or Model Studio in or upon which acts of obscenity, assignation, or prostitution, are held or occur, is a public nuisance which shall be enjoined, abated and prevented.

(B) From and after service on the Place, or its manager, or acting manager, or person then in charge of such Place, of a true and correct copy of this Ordinance and a true and correct copy of the Summons and Complaint to abate a nuisance, all monies or other valuable consideration paid for services rendered to customers are also declared to be a public nuisance, as personal customers are also declared to a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

SECTION 4. KNOWLEDGE OF NUISANCE PRESUMED FROM NOTICE OR SUMMONS AND COMPLAINT; RESPONSIBILITY OF PARTIES THEREFOR; ABATEMENT OF SUCH NUISANCES

(A) Upon and after receiving notice through services of a true and correct copy of this Ordinance and a true and correct copy of the Summons and Complaint to abate a nuisance or Notice by the Municipal Solicitor of the character of the obscene Film, Production, Publication, or Place, any and every Person who shall own, legally, or equitably, lease, maintain, manage, conduct or operate a Place in the Municipality which is declared to be a public nuisance as set forth and stated in Section 2 or Section 3, of this Ordinance is deemed to be a Person who has knowledge of such nuisance for the purpose of this Ordinance, and may, thereafter, be responsible for its maintenance, and liable therefor.

(B) The Place and Matters declared to be public nuisances under Section 2 or Section 3 shall be abated as provided for herein.

SECTION 5. WHO MAY TAKE ACTION; POSTING OF BOND

The Municipal Solicitor or any Citizen of the Commonwealth of Pennsylvania resident within the Municipality may maintain an action of an equitable nature in the name of the Municipality upon the relation of such Municipal Solicitor, or Citizen to abate a nuisance.

No Bond shall be required of the Municipal Solicitor. If such action is instituted by a Private Citizen, a bond shall be required in the amount of not less than Five Hundred Dollars, to secure to the defendants the proximate damages which may be sustained, including attorney's fees, if any Court finds that there were no reasonable grounds for said action.

The Municipal Solicitor shall have the right to present arguments and authorities on behalf of either party.

SECTION 6. REMEDIES

(A) Money damages may be recovered

- (1) for compensation for loss or harm suffered in person or property by the Municipality or Private Citizen flowing from such nuisance; and
- (2) as exemplary or punitive damages for the sake of example or to punish the offender, where it is shown that the offender has been guilty of malice. Malice means an intent to do a wrongful act, that is, an intent to maintain, permit, or allow a nuisance to exist.

(B) Preliminary and permanent injunctions may be issued to prevent the further maintenance of a nuisance and to prevent the further sale or exhibition of obscene Motion Picture Films, Live Theatre Productions and Publications. The procedures for obtaining such injunctions shall be governed by the rules of civil procedure, preserving the right to trial by jury upon the application for permanent injunction.

Upon the application for preliminary injunction the Court shall set the matter for a hearing no earlier than two days and no later than five days from the date of service of the Summons and Complaint.

Upon the trial on the merits of the permanent injunction, if the Court finds a Place to be a nuisance, the Court may issue an Order closing the Place to all uses and purposes for the period of one year. If the offenders or persons owning, in control or in charge of such Place certify that the nuisance has been abated and that the Films, Productions, or Publications found to be obscene shall not be exhibited, sold or otherwise disseminated and, at the discretion of the Court, post a bond in an amount not to exceed the value of the personal property possessed or contained at such Place for the maintenance of the nuisance, the Court may release such person or persons from the closure Order. The release shall remain in effect for one year or until the nuisance is found to exist at the Place before the expiration of one year. The bond shall be deposited with the Court prior to the release of any closure order and shall be returned to the person posting said bond, without interest at the expiration of one year, provide that the nuisance is not maintained or re-established within that year.

SECTION 7. FORFEITURE TO THE GENERAL FUND OF THE MUNICIPALITY;
COST OF ABATEMENT; MANNER OF COLLECTION

(A) If the existence of the nuisance is established on the trial, a judgement shall be entered which shall permanently enjoin the defendant, and any other person with notice or knowledge of the action and judgement, from maintaining the nuisance at said Place and the defendants from maintaining such nuisance elsewhere, and the entire expenses of such abatement action shall be recovered by the plaintiff as part of his costs.

(B) The cost of abatement shall include the following:

- (1) investigative costs.
- (2) Court costs.
- (3) reasonable attorney's fees arising out of the preparation for, and trial of the case, and appeals therefrom, and other costs allowed on appeal.
- (4) printing costs of trial and appellate briefs, and all other papers filed in such proceeding.

Such cost of abatement may be made a special assessment against the Place or the parcel of land upon which such Place is located. Upon its determination in a civil action, such shall, by separate legal proceeding, be made a lien against such property and a personal obligation against any Person, and shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment.

(C) Upon judgement for the plaintiff in legal proceedings brought pursuant to this ordinance, an accounting shall be made by such

defendant or defendants of all monies or valuable consideration received by them which have been declared to be a public nuisance under Section 2 or 3 of this Ordinance. Such monies or their equivalent and and valuable consideration received shall be forfeited to the General Fund of the Municipality or to the Municipality as property of the Municipality if any valuable consideration received be not money.

SECTION 8. SEVERABILITY CLAUSE

If any Court shall determine that any work, clause, phrase, sentence, paragraph, or subsection of this Ordinance, is unconstitutional, the Court shall first attempt to construe or interpret such unconstitutional provision so as to enable the same to be constitutional as so narrowed or construed. If the Court cannot so limit or construe such word or provision narrowly so as to render the same constitutional, it shall strike or modify only the minimum number of words, phrases, clauses, sentences or paragraphs as will be absolutely necessary to render the remainder constitutional. In no case shall a clause or phrase or word or other portion hereof render any other word, clause, phrase, sentence, paragraph or section unconstitutional, but instead shall be severed therefrom entirely, with the balance of this Ordinance in its entirety remaining in full force and effect.

SECTION 9. That all Ordinances or parts thereof conflicting herewith be and the same are hereby repealed.

ORDAINED AND ENACTED into an Ordinance and passed by the Board of Commissioners of the Township of Hopewell, Pennsylvania,

on this 26th day of May, 1981.

ATTEST:

BOARD OF COMMISSIONERS OF
HOPEWELL TOWNSHIP


Secretary


President

The **Beaver County Times**, a daily published by BEAVER NEWSPAPERS, 400 Fair Avenue, West Bridgewater, established in 1946, and has been issued since said date.

The attached advertisement, which is appeared in the regular issue on

STATE OF PENNSYLVANIA, }
 COUNTY OF BEAVER, } SS:

Before me, a Notary Public in and for such county and state, personally appeared **JAMES R. MILLER**, who being duly sworn according to law says that he is

TREASURER of **BEAVER NEWSPAPERS, INC.**; that neither affiant nor said corporation is interested in the subject matter of the attached advertisement; and that all of the allegations of the foregoing statement including those as to the time, place and character of publication are true.

Sworn to and subscribed before me
 this 29TH day of **APRIL 1981**

Meritt L. Shupp

The costs of advertising and proof, has been paid.

459.42

ALVIN HOFFMEIER - Carpet & vinyl sales. Carpet cleaning, res-tretches & repairs. 22 years experience. 728-5754; 728-4861.

ANDY PETRO - Home cleaning, dry team carpet & upholstery cleaning. 846-9281, 378-3545.

ANTHONY'S - Carpet & upholstery cleaning. Expert workman-ship. 775-1144, 775-0697.

BOOZE'S CLEANERS - Carpets & furniture cleaned in your home or our shop. 843-8046.

CARPET & VINYL INSTALLED - All work guaranteed. New & used. Installed, restretched, repaired. 846-6370.

CARPET SPECIAL - Carpet - loam

THOMAS MASONRY - We handle all your masonry needs, no job too big or too small. Call evenings, 375-2011.

VARRATO & FERRANTE - Cut stone, specializing in stone fireplaces. All types masonry. 752-1443, 758-3051.

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A-1. ALWAYS QUALITY - New wiring & remodeling. Free estimates. 375-5318.

A-1 WIRING - Panels, plaster, kitchen, journeymore, Michael Home Improvements. 375-2385.

H.K. LILLERS - Heating, air conditioning, refrigeration, wiring. Free estimates. 728-4174.

KITCHEN & BATHROOM REMODELING - Customized cabinets. Call after 5, 847-1787.

KITCHEN CITY - Sink counter, formica kitchens and inset stock kitchen cabinets. Brick, call Rocky.

LA. FLOORING - Beautiful carpet, tile, wood decks, drive-in, walks, porches, remodeling. 774-1306, 774-6140.

TOM WOODWORKING - Residential, commercial, and trim carpentry. 774-9271.

By James R. Miller