

ORDINANCE NO. 69

AN ORDINANCE REGULATING THE EXPLOITATION OF EXPLICIT SEXUAL CONDUCT THROUGH PUBLIC EXHIBITION OF LEWD FILMS AND THE DISPLAY AND/OR SALE OF LEWD PUBLICATIONS AND THE USE OF SO-CALLED MASSAGE PARLORS AND MODEL STUDIOS FOR THE PURPOSES OF LEWDNESS, ASSIGNATION OR PROSTITUTION BY DECLARING SUCH ACTIVITIES TO BE PUBLIC NUISANCES; AND PRESCRIBING PROCEDURES FOR THE ABATEMENT THEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT HEREWITH:

BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of Rush, and it is hereby ordained and enacted by the authority of the same as follows:

SECTION 1. DEFINITIONS: As used in this ordinance, the following terms shall have the meanings indicated:

KNOWLEDGE OR KNOWLEDGE OF SUCH NUISANCE - 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 theater production or knowledge of the acts of lewdness, assignation or prostitution which occur in any place.

LEWD MATTER:

A. Any Matter:

- (1) Which the average 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) Human genitals in a state of sexual stimulation or arousal.

(b) Acts of human masturbation, sexual intercourse or sodomy.

(c) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

B. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole and in the context in which it is used, possesses serious literary, artistic, political or scientific value.

LIVE THEATER PRODUCTION - Any dramatic musical or comic production performed in the presence of a live audience.

MASSAGE - Any method of treating the superficial soft parts of the human body, for remedial, hygenic or other purposes, consisting of rubbing, stroking, kneading or any similar treatment, accomplished by hand or by the use of any instrument.

MASSAGE PARLOR - Any buiding or structure or portion thereof, located within the Township, which is open to members of the general public, with or without the payment of a fee, at which massage services are offered.

MATTER - A motion picture film, live theater production, publication or all three (3).

MODEL STUDIO:

A. 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

B. 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.

C. Exception. The words "model studio" do not include:

(1) 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

(2) Any place where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in Sub-Section C(1) of this definition.

MOTION-PICTURE FILM includes any:

- A. Film or plate negative.
- B. Film or plate positive.
- C. Film designed to be projected on a screen for exhibition.
- D. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.
- E. Video tape or any other medium used to electronically reproduce images on a screen.

NUDE - includes:

A. Completely without clothing; or

B. 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 discernably turgid state.

PERSON - any individual, partnership, firm, association, corporation or other legal entity.

PLACE - includes, but is not limited to, any building, structure, or space or any separate part or portion thereof, whether permanent or not, or the ground itself.

PUBLICATION - includes any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording or a motion-picture film which is displayed in an area open to the public, offered for sale or exhibited in a coin operated machine.

SALE - 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 lewd matter.

SECTION 2. Film or live theater declared public nuisance and abatement ordered.

A. Any and every place in the Township where lewd motion-picture films or live theater productions are publicly exhibited or possessed for the purpose of such exhibition, and any and every place in the Township where a lewd motion-picture film or live theater production is publicly or repeatedly exhibited or possessed for the purpose of such exhibitions, is a public nuisance.

B. Any and every lewd motion-picture film which is publicly exhibited or possessed for such purpose at a place which is a public nuisance under Subsection A above, is a public nuisance per se.

C. From and after service on the theater or its manager or acting manager or person then in charge of such a place of a true and correct copy of this ordinance and a true and correct copy of the resolution and order of summary abatement provided for in Section 6 hereof, all moneys paid thereafter as admission price to such exhibitions or productions are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

SECTION 3. Publications declared public nuisance and abatement ordered.

A. Any and every place in the Township where lewd

publications constitute a part of the stock in trade is a public nuisance.

B. Any and every lewd publication possessed at a place which is a public nuisance under the Sub-section A above 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 a place of a true and correct copy of this ordinance and a true and correct copy of the resolution and order of summary abatement provided for in Section 6 hereof, all valuable consideration received for the sale of such lewd publications is also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

SECTION 4. Massage parlors or model studios declared public nuisance and abatement ordered.

A. Every massage parlor or model studio, which, as a regular course of business is used for the purposes of lewdness, assignation or prostitution, and every such massage parlor or model studio in or upon which acts of lewdness, assignations 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 the resolution and order of summary

abatement provided for in Section 6 hereof, all moneys or other valuable consideration paid for services rendered to customers are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

SECTION 5. Persons operating or maintaining public nuisance liable; abatement required.

A. Upon and after receiving notice through service of a true and correct copy of this ordinance and a true and correct copy of the resolution and order of summary abatement provided for in Section 6 hereof, 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, 3 and 4 of this ordinance, is deemed to be a person who has knowledge of such nuisance for the purpose of this ordinance and is, thereafter, responsible for its maintenance and shall be liable therefor.

B. The places and matters declared to be public nuisances under Sections 2, 3 and 4 shall be abated as provided for herein.

SECTION 6. Action to be taken by the Board of Supervisors; procedure.

The Board of Supervisors shall investigate or cause to be investigated all complaints that activity constituting a

public nuisance, as defined in Sections 2, 3 and 4 of this ordinance, exists in the Township. Upon the Board of Supervisor's specific finding that a public nuisance exists in the Township, the Board of Supervisors, in applying the provisions of this ordinance to such nuisance, shall provide for the following, by resolution:

- A. Declare the fact that such a nuisance exists.
- B. Set forth the description or legal description and street address of the place which constitutes the nuisance.
- C. Set forth the evidentiary facts considered by the Board of Supervisors in arriving at its factual determination.

(1) In the case of a motion-picture film or live theater production, such shall include a recitation of the particular sexual conduct and acts which the Board of Supervisors finds are patently offensive and the basis for the findings by the Board of Supervisors that such motion-picture film or live theater production is publicly exhibited or produced in the course of business or that such motion-picture film or live theater production is publicly or repeatedly exhibited or produced or held for such exhibition or production at the place declared to be a nuisance.

(2) In the case of a publication, such shall include a recitation of the particular publications or types of publications considered by the Board of Supervisors and those which the Board of Supervisors find to be patently offensive and the basis for the finding by the Board of Supervisors that such publications are displayed, sold or held for sale at any place found by the Board of Supervisors to be a public nuisance and the basis of the findings by the Board of Supervisors that such publications constitute a part of the stock in trade of such place of business or other place.

(3) In the case of a massage parlor or model studio, such shall include a recitation of the particular acts of lewdness, assignation or prostitution which have occurred and the basis for the findings by the Board of Supervisors that such acts occur in the course of business.

D. Order all persons described in Section 5A hereof to summarily abate such public nuisance within twenty-four (24)

hours of service of such order on any such persons, by terminating the exhibition, sale or possession for sale of such lewd matter or by ceasing to use the place where the nuisance is declared to exist or by terminating the use of said place for the purposes of lewdness, assignation or prostitution or causing the same to be terminated and notifying the Board of Supervisors of compliance therewith by sworn affidavit as ordered by the action of the Board of Supervisors in such resolution.

E. Order the Township Solicitor to proceed to do all things necessary to abate such public nuisance through judicial proceedings and to conclude such proceedings as expeditiously as is permissible under the law, including requesting the court to advance such proceedings on the calendar of the court.

F. Inform and give notice to persons designated in Section 5A:

(1) That the Board of Supervisors has determined that a public nuisance presently exists at such place and address and that, under Section 5A of said ordinance, they are deemed to have knowledge thereof and are responsible therefor.

(2) That, in the event the order of the Township is not complied with within twenty-four (24) hours, the Board of Supervisors has

ordered the Township Solicitor, as provided for under Section 8 hereof, to commence necessary legal proceedings naming such persons as defendants in a civil action to abate the public nuisance, judicially, under this section, and that, under Section 7A and B of this ordinance, the costs of abatement of such civil abatement action filed, including investigative costs, court costs, attorney's fees and other expenses, are made a special assessment against the parcel of land upon which such nuisance is being maintained and, upon their determination in such court action, will, by separate legal procedure, be made a lien against such property and a personal obligation against any person deemed to be in violation of this ordinance.

(3) All lewd motion picture films or lewd publications being used in conducting and maintaining such public nuisance are contraband and the subject of forfeiture.

(4) From and after service on the place or its manager or acting manager or persons then in charge of such a place of a true and correct copy of this ordinance and a true and correct copy of such resolution, any and all moneys paid as admission price to or for the exhibition or exhibitions of such lewd motion picture films or production of such lewd live theater productions and valuable consideration received for the sale of such lewd publications and all moneys or other valuable consideration received for services rendered in such massage parlors or model studios are a public nuisance, as personal property used in conducting and maintaining such nuisance and, as such, are the subject of forfeiture.

G. Order that a true and correct copy of said resolution and a true and correct copy of this ordinance be delivered forthwith in any manner normally used to effectuate personal service of process to all persons of record having any legal or equitable interest in the real property and to the regular or acting manager or persons in charge of the place therein declared a public nuisance.

SECTION 7. Forfeiture of funds to general fund; cost of abatement; collection.

A. Upon judgment for the Township in legal proceedings brought pursuant to this ordinance, an accounting shall be made by such defendant or defendants of all moneys or valuable consideration received by them which have been declared to be a public nuisance under Section 2(C), 3(C), or 4(B) of this ordinance. Such moneys or their equivalent and any valuable consideration received shall be forfeited to the general fund of the Township or to the Township as property of the Township if any valuable consideration received is not money.

B. Cost of abatement.

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

- (a) Investigative costs,
- (b) Court costs,
- (c) Reasonable attorney's fees arising out of the preparation for and trial of the case and appeals therefrom and other costs allowed on appeal,
- (d) Printing costs of trial and appellate briefs and all other papers filed in such proceeding.

(2) Such cost of abatement is hereby made a special assessment against the parcel of land upon which such nuisance is maintained. 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.

SECTION 8. Action to be taken by Township Solicitor.

Upon a specific finding by resolution of the Board of Supervisors that a public nuisance exists at a particular location, the Township Solicitor, with the approval of the Board of Supervisors, is authorized to take whatever action is appropriate to carry out this ordinance.

SECTION 9. Severability.

If any court shall determine that any word, clause,

phrase, sentence, paragraph or sub-section 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 10. Repealer.

Any ordinance or part of an ordinance conflicting with the provisions of this ordinance shall be and the same is hereby repealed to the extent of such conflict.

SECTION 11. Effective date.

This ordinance shall be effective five (5) days after passage, and approved in the manner prescribed by law.

ENACTED AND ORDAINED this 3rd day of January, 1984.

Board of Supervisors of Rush Township,
Schuylkill County, Pa.

Chester Gurnoff
Joseph J. Webb
Hermit A. Koffen