

AN ORDINANCE OF THE BOROUGH OF NEW MILFORD, SUSQUEHANNA COUNTY, PENNSYLVANIA, PROHIBITING THE OPERATION THROUGHOUT THE MUNICIPALITY OF UNDESIRABLE BUSINESSES INCLUDING BUSINESSES DEALING IN OBSCENE MATERIAL, ADULT BOOK STORES, ADULT MOVIE HOUSES, ADULT MINI-THEATRES, CERTAIN MASSAGE PARLORS, AND BUSINESSES DEALING IN THE SALE OF OR RELEASE PARAPHENALIA FOR THE ILLICIT USE OF CONTROLLED SUBSTANCES AND ASSESSING PENALTIES FOR THE VIOLATION HEREOF.

WHEREAS the Borough Council of the Borough of New Milford deems it expedient and necessary, for the proper management, care and control of the Borough and in the interest of peace, good government and welfare of the Borough and its citizens, to prohibit such businesses and:

WHEREAS it is the intention of the Borough Council of New Milford to herein provide fair notice as required by law to those persons conducting such businesses that such business will bring prosecution hereunder:

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of New Milford in meeting assembled and it is hereby ordained and enacted by and with the authority of same as follows:

SECTION 1. Definitions.

A. Obscene Materials - Any literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing photograph, figure, image, motion picture, sound recording, article, instrument, or any other written or printed matter which

(1) Depicts or describes in a patently offensive manner sexual conduct, sexual excitement or sadomasochistic abuse or (in case of articles or instruments) is designed or intended for use in achieving artificial sexual stimulation; and

(2) taken as a whole, does not have serious literary, artistic, political or scientific value; and

(3) taken as a whole, appeals to the prurient interest.

B. Prurient Interest - is to be judged with reference to average adults unless it appears from the nature of the material or the circumstances of its dissemination, distribution or exhibition that it is designed for clearly defined deviant sexual groups in which case the predominant appeal of the matter shall be judged with reference to its intended recipient group.

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

D. Sexual Conduct - actual or simulated acts of human masturbation, sexual intercourse or any touching of the clothed or unclothed genitals, public area, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex, or between humans and animals.

E. Sexual Excitement - the condition of human male or female genitalia when in a state of sexual stimulation or arousal.

F. Massage - any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the body with the hands or with the aid of any mechanical 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

whom the treatment is provided or some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

C. Massage Parlor - Any establishment having a course of income or compensation derived from the practice of massage and which has a fixed place of business where any person, firm, association or corporation engages in or carried on the practice of massage.

H. Adult Book Stores - An establishment which has a substantial or significant portion of its stock in trade, books, magazines, or other periodicals and which excludes minors by virtue of age.

I. Adult Movie Houses - An enclosed building with a capacity of 50 or more persons used for presenting motion pictures, films, movies, slides or similar photographic reproductions for observation by persons therein, and which excludes minors by virtue of age.

J. Adult mimi-theaters - An enclosed building with a capacity for less than 50 persons used for presenting motion pictures, films, movies, slides, or similar photographic reproductions for observation by persons therein, and which excludes minors by virtue of age.

K. Drug Paraphenalia - Any objects, devices, instruments, apparatus or contrivances, whose primary and traditionally exclusive use is involved with the illegal use of any and all controlled substances under the laws of Pennsylvania.

L. Controlled Substances - A drug, substance or immediate precursor as defined in schedules 1 through 5 of the Pennsylvania Controlled Substance, Drug Device and Cosmetic Act, 35 P.S. 780.104, or any amendments thereto.

M. Immediate Precursor - a substance which under the regulations of the Pennsylvania Department of Health is a principle compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used, in the manufacture of a controlled substance.

N. Traditionally Exclusive Use - a use which is primary and inherent as opposed to secondary and incidental, and is associated with certain knowledge or beliefs derived from statements of contemporary persons and handed down through a considerable period of time.

Section 3. The following uses shall also be prohibited in all districts throughout the Borough.

a. The operation of any business which has obscene materials as a substantial or significant portion of its stock-in-trade.

b. The operation of any massage parlor in which any of the following activities are carried on:

(1) The treatment of any person or the opposite sex, except upon the signed order of a licensed physician, osteopath, chiropractor, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments. The day and hour of each treatment given and the name of the operator shall be entered on such order by the establishment where such treatments are given and shall be given to inspection by police. The requirements of this provision shall not apply to treatments given in the residence of a patient, the office of a licensed physician, osteopath, or registered physical therapist, chiropractor or in a regularly established and licensed hospital or sanitarium.

(2) The massage of, or physical contact with, the sexual or genital parts of one person by any other person. Sexual or genital parts shall include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

(3) The failure to conceal with a fully opaque covering, the sexual or genital parts of the body of any person.

c. The operation of any business which involves, in whole or in part, the sale, lease trade, gift, or display for sale, of any and all types of drug paraphenalia, as defined herein.

SECTION III

Any person, partnership or corporation who or which shall violate any provision of this ordinance shall, for each and every violation, upon conviction thereof, be sentenced to pay a fine of not more than five hundred (500.00) dollars and costs of prosecution and, in default of payment of such fine and costs, to imprisonment of not more than sixty (60) days. Provided, however, each day that a violation is continued shall constitute a separate offense.

SECTION 4.

The provisions of this ordinance are severable and if any provisions or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this ordinance.

ORDINANCED AND ENACTED into law this 1st day of March 1984.

ERNEST C. WELLS
MAYOR
MICHIGAN COUNTY, PENNSYLVANIA

James P. Gussak
PRESIDENT

ATTEST:

Miss P. Jones
Secretary

By: 1994/12