

ORDINANCE NO.

AN ORDINANCE OF THE TOWNSHIP OF MIDDLETOWN, SUSQUEHANNA COUNTY, PENNSYLVANIA, PROHIBITING THE OPERATION THROUGHOUT THE MUNICIPALITY OF BUSINESSES DEALING IN OBSCENE MATERIALS, ADULT BOOK STORES, ADULT MOVIE HOUSES, ADULT MINI-THEATERS, 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 Board of Supervisors of the Township of Middletown deems it expedient and necessary, for the proper management, care and control of the Township and in the interest of peace, good government and welfare of the Township and its citizens, to prohibit such businesses and

WHEREAS it is the intention of the Board of Supervisors of the Township of Middletown 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 Board of Supervisors of the Township of Middletown 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, appeals to the prurient interest; and

3) taken as a whole, does not have serious literary, artistic, political or scientific value.

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 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, pubic 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 human 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 similary preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to 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.

G. Massage Parlor - any establishment having a source 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 carries 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 a 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 Mini-Theatre - 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 Penna.

L. Controlled Substance - 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 accodiated with certain knowledge or beliefs derived from statements of contemporary persons and handed down through a considerable period of time.

SECTION 2. The following uses shall also be prohibited in all districts throughout the Township:

a. The operation of any business which has obscene materials as a substantial or a 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 of 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 date 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 register 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 perinem 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 3.

Any person, partnership or corporation who or which shall violate any provision of this ordinance shall, for each and every such 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 for 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 provision 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.

ORDAINED AND ENACTED into law this 4th day of January, 1982.

Board of Supervisors
Township of Middletown
Susquehanna County, Pennsylvania

BY: _____

John A. Linton
Chairman