

nuisances

ORDINANCE NO. 5790

AN ORDINANCE DECLARING CERTAIN ACTIVITIES TO BE PUBLIC NUISANCES AND DEFINING CERTAIN SUMMARY OFFENSES FOR THE SUPPRESSION OF CRIMINAL ACTS, CONDUCT AND PRACTICES, UNLAWFUL SEXUAL ACTIVITIES, AND ACTIVITIES WHICH PRESENT A REASONABLE RISK OF THE TRANSFER OF SEXUALLY TRANSMITTED DISEASE; TO REGULATE CERTAIN CONDUCT OF AND BY PERSONS IN THE TOWNSHIP; TO PROMOTE PUBLIC PEACE, SAFETY, HEALTH, MORALS, AESTHETICS AND GENERAL WELFARE; TO PROTECT PRIVATE AND PUBLIC PROPERTY; AND TO PROTECT THE SOCIAL INTEREST IN ORDER AND MORALITY; DECLARING THE COMMERCIAL EXPLOITATION OF OBSCENE MOTION PICTURE FILMS, SHOWS, PRESENTATIONS, PUBLICATIONS, DEVICES, ARTICLES, AND INSTRUMENTS TO BE CONTRARY TO PUBLIC HEALTH, SAFETY AND GENERAL WELFARE; PROHIBITING PERSONS FROM SELLING, LENDING, DISTRIBUTING, EXHIBITING OR ASSISTING IN THE SALE, LENDING, DISTRIBUTING OR EXHIBITING OF SUCH A MOTION PICTURE FILM, SHOW, PRESENTATION, PUBLICATION, OR DEVICE, ARTICLE OR INSTRUMENT; PROHIBITING CERTAIN CONDUCT INVOLVING AND/OR AFFECTING MINORS; PROHIBITING ADVERTISEMENT OF OBSCENE OR PORNOGRAPHIC MATERIAL OR OF OBSCENE MOTION PICTURE FILMS, SHOWS OR OTHER PRESENTATIONS; PROHIBITING ESCORT AGENCIES, MASSAGE PARLORS, MODEL STUDIOS AND SEXUAL ENCOUNTER CENTERS USED FOR THE PURPOSE OF LEWDNESS, ASSIGNATION OR PROSTITUTION; AND DESCRIBING PENALTIES FOR VIOLATIONS THEREOF.

AND ENACTING AN ORDINANCE ESTABLISHING REASONABLE AND UNIFORM REGULATIONS FOR THE OPERATION OF SEXUALLY ORIENTED BUSINESSES AND REASONABLE AND UNIFORM REGULATIONS REGARDING THE LOCATION AND CONCENTRATION OF THE SAME.

BE IT ORDAINED AND ENACTED by the Board of Supervisors of Taylor Township, Blair County, Pennsylvania, and it is hereby ordained and enacted that:

SECTION 1: LEGISLATIVE FINDING AND PURPOSE

The Board of Supervisors of the Township of Taylor finds that the public exhibition of obscene films, shows and performances, the sale of obscene publications and devices, and the use of escort agencies, massage parlors, model studios, and sexual encounter centers for the purpose of lewdness, assignation or prostitution, interferes with the comfortable enjoyment of life and property, in that such interferes with the tone of commerce in the Township, property values, and the public safety; and that the continued operation of such activities is detrimental to the best of health, safety, convenience, aesthetics, morals, public peace and general welfare of the Township of Taylor and the residents, citizens, inhabitants and businesses thereof. Accordingly, the Board of Township Supervisors hereby declares such activities to be illegal as hereinafter set forth, and further, that such activities are, and are hereby declared to be and constitute a public nuisance, and herein establishes penalties for engaging in such activities.

To the extent that sexually oriented businesses are not prohibited by this Ordinance, it is the further purpose of this Ordinance to establish reasonable and uniform regulations for the operation of sexually oriented businesses and reasonable and uniform regulations regarding the location and concentration of the same. It is the purpose of these regulations to control the deleterious effects of sexually oriented businesses including, but not limited to: the attraction of a clientele predisposed toward the illegal sale and use of drugs, vandalism, violence and crime; the carrying on of unlawful sexual activities, including prostitution; and the transfer of sexually transmitted diseases.

SECTION 2. Any person who, with knowledge of the character and content, either sells, gives away, lends, distributes, exhibits, shows, transmutes, or offers either to sell, give away, lend, distribute, exhibit, show or transmute, or has in his possession or under his control with intent either to sell, give away, lend, distribute, exhibit, show or transmute to another, any obscene motion picture film or any obscene literature, book, magazine, pamphlet, newspaper, story book, paper, comic book, writing, drawing, photograph, figure, image, or any written or printed matter of any obscene nature or any sexual device, article or instrument of any obscene nature, shall be guilty of a

summary offense and upon conviction thereof, shall be penalized in accordance with Section 13 of this Ordinance.

SECTION 3. Any person who designs, copies, draws, photographs, prints, utters, publishes or in any manner manufactures or prepares any obscene motion picture film, or any obscene book, picture, film, drawing, magazine, pamphlet, newspaper, story book, paper, comic book, writing, figure, image, matter, sexual device, articles or instrument of an obscene nature, shall be guilty of a summary offense and upon conviction thereof shall be penalized in accordance with Section 13 of this Ordinance.

SECTION 4. Any person who, with knowledge of the character, and content, produces, presents or directs any obscene performance or participates in the portion thereof which is obscene shall be guilty of a summary offense, and upon conviction thereof, shall be penalized in accordance with Section 13 of this Ordinance.

SECTION 5. Any person who knowingly participates in, supports or in any way aids or assists any person in selling, lending, distributing, giving away, or showing any obscene motion picture film, or any obscene literature, book, magazine, pamphlet, newspaper, story book, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any device, article or instrument of an obscene nature, shall be guilty of a summary offense and upon conviction thereof, shall be penalized in accordance with Section 13 of this Ordinance.

SECTION 6. Any person, being the owner of any premises or having control thereof, who knowingly permits within or upon said premises the exhibition, projection or showing of any motion picture film, show, presentation or performance of an obscene nature, or permits anyone to sell, lend, distribute, exhibit, give away or show any obscene literature, book, magazines, pamphlet, newspaper, story book, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any sexual device, article, or instrument of an obscene nature, shall be guilty of a summary offense and upon conviction thereof, shall be penalized in accordance with Section 13 of this Ordinance.

SECTION 7. Whoever knowingly writes, prints, publishes or utters, or causes to be printed, published or uttered, any advertisement or notice of any kind giving information directly or indirectly, stating or purporting to state where, how or who or by what means, any obscene motion picture film, picture, book, writing, paper, comic book, figure, image, matter, sexual device, article or instrument of any obscene nature can be seen, purchased, obtained or had, shall be guilty of a summary offense, and upon conviction thereof, shall be penalized in accordance with Section 13 of this Ordinance.

SECTION 8. No person within the Township of Taylor shall willfully or knowingly engage in the business of selling, lending, giving away, showing, advertising for sale or distributing to any person under the age of seventeen (17) years, or have in his possession with intent to engage in the said business or to otherwise offer for sale or commercial distribution to any individual under the age of seventeen (17) years, any obscene motion picture film or any still picture or photograph, or any book, pocket book, pamphlet or magazine, the cover or content of which exploits, is devoted to, or is principally made up of descriptions or depictions of illicit sex or sexual immorality, or which is obscene, or which consists of pictures of nude or partially denuded figures posed or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or perversion for commercial gain, or any device, article or instrument of an obscene nature.

SECTION 9. No person within the Township of Taylor shall display at newsstands or any other business establishment frequented by minors under the age of seventeen (17) years or where said minors are or may be invited as a part of the general public, any obscene motion picture film or any still picture or photograph or any book, pocket book, pamphlet or magazine, the cover or content of which exploits, is devoted to, or is principally made up of descriptions or depictions of illicit sex or sexual immorality, or which is obscene, or which consists of pictures of nude or partially denuded figures posed or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or perversion for commercial gain, or any device, article or instrument of an obscene nature.

SECTION 10. No person shall own, operate or maintain any massage parlor, model studio, escort agency or sexual encounter center, which, as a regular course of business, is used for the purpose of lewdness, assignation or prostitution, and every such massage parlor, model studio, escort agency or sexual encounter center in or upon which acts of lewdness, assignation or prostitution are held or occur, is declared to be a public nuisance.

SECTION 11. Every owner of a sexually oriented business as defined under this Ordinance shall constantly maintain the business premises in the manner prescribed by this Section:

(a) No owner of a sexually oriented business shall:

(i) remain open and/or transact business between 2:00 a.m. and 8:00 a.m.;

(ii) Use or permit to be used inside or outside the business premises a loudspeaker or similar device whereby music or other entertainment or the advertisement

thereof, can be heard on the outside of the premises between 11:00 p.m. and 8:00 a.m.;

(iii) Advertise or permit to be advertised, by descriptive poster, picture, plaque or sign, flag, or otherwise on the outside of the premises anything pertaining to the type of entertainment conducted therein. The sign cannot contain descriptive matter, paintings or photographs; however, this shall not prevent the name of the establishment from being displayed.

(iv) Permit a person engaged directly or indirectly as an entertainer in the facility to contact or associate with the patrons;

(v) Permit an employee of the facility to contact or associate with the patrons in the establishment, room or place, except as is necessary in the actual service of food or beverages;

(vi) Permit a minor person, under age 18, to be employed as an entertainer;

(vii) Permit any dancing by the entertainers except if the same occur on a raised platform at least 2 feet from floor level and 10 feet from any patron;

(viii) Permit any entertainer or employee to fondle or caress any patron, or permit any patron to fondle or caress the entertainer or employees;

(ix) Permit any entertainer to directly accept gratuities from any person.

b. Every owner of a sexually oriented business as defined under this Ordinance, shall maintain the following business records which are to be made available upon demand to any law enforcement official:

(i) Facility data; name, address, phone number and principal occupation of each owner of the premises, each Lessee and each individual responsible for managing the club;

(ii) The names of each entertainer or employee and his or her address, phone number, birth date, aliases (past and present) and, if an entertainer, the business

name and address of any place where the entertainer has entertained and when the entertainer entertained there;

(iii) All of the information required under subsection (ii) above shall be retained by the sexually oriented business for a period of two years after the association of any such entertainer or employee with the sexually oriented business has ended.

SECTION 12. The premises of any sexually oriented business shall be set back a minimum distance of twenty-five (25) feet from the right-of-way lines of all abutting streets, roads or highways, a minimum distance of one-hundred (100) feet from any existing dwelling house erected upon premises adjacent to a licensed premises but in any event not less than a minimum distance of twenty-five (25) feet from property lines of all adjacent properties. No sexually oriented business shall be established or maintained in or within five-hundred (500) feet of any existing sexually oriented business; church; school; playground; restaurant; motel or other place of public use or accommodation. Any owner or operator of a sexually oriented business shall provide designated off street parking from an entrance or entrances off any adjacent street, road or highway, and which shall be a size sufficient to accommodate one parking space for the owner or operator of the sexually oriented business and an additional space for each employee and entertainer employed by the business plus a sufficient number of additional spaces based upon the estimated number of patrons or customers to be served.

SECTION 13. PENALTIES.

For each violation of Sections 1-12 of this Ordinance, each person, partnership, corporation, or similar entity in violation thereof shall be guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine not exceeding Six Hundred Dollars (\$600.00), or undergo imprisonment for a period not exceeding thirty (30) days, or both.

SECTION 14. DEFINITIONS.

A. "Adult Arcade" means any place to which the public is permitted or invited, or in which coin operated or slug operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to an audience; and where the image is so displayed, distinguished, or characterized by the depicting or describing of "nude or partially denuded figures" or "illicit sex".

B. "Adult Book Store" means a commercial establishment having a substantial or significant portion of its stock in trade; including but not limited to books, magazines, periodicals, visual representations or writings; distinguished or characterized by emphasis on matter depicting, describing or

related to "nude or partially denuded figures" or to "illicit sex" or an establishment with a segment or section devoted to the sale or display of such materials.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing "nude or partially denuded figures" or "illicit sex" and still be characterized as "adult book store". Such other business purposes will not serve to exempt such commercial establishment from being characterized as an "adult book store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "nude or partially denuded figures" or "illicit sex".

C. "Adult Cabaret" means a night club, bar, restaurant, or similar commercial establishment which regularly features"

- (a) persons who appear as "nude or partially denuded figures", or
- (b) live performances which are characterized by the featuring of "nude or partially denuded figures" or "illicit sex", or
- (c) Files, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "nude or partially denuded figures" or "illicit sex".

D. "Adult Motel" means a hotel, motel or similar commercial establishment which:

- (a) Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "nude or partially denuded figures" or "illicit sex"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic productions; or
- (b) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (c) Allows a tenant or occupant of the sleeping room to sub-let the room for a period of time that is less than ten hours.

E. "Adult Motion Picture Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes,

slides, or similar graphic reproductions are displayed which are characterized by the depiction or description of "nude or partially denuded figures" or "illicit sex".

F. "Adult Theatre" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear as "nude or partially denuded figures" or live performances which are characterized by the exposure of "nude or partially denuded figures" or "illicit sex".

G. "Community Standards," means the standards of the community from which the jury is drawn or would be drawn if it were the trier of fact. Where any material or performance is disseminated to minors, the "community standards" shall be the standards of the the community from which the jury is drawn or would be drawn if it were the trier of fact with respect to what is suitable for minors.

H. "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide or date for any person, or who agrees to offer to privately model lingerie or to privately perform a strip tease for another person.

I. "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration.

J. "Establish" means and includes any of the following:

(a) The opening or commencement of any socially oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(c) The additions of any sexually oriented business to any other existing sexually oriented business; or

(d) The relocation of any sexually oriented business.

K. "Illicit sex," or "Sexual immorality," means:

(a) Human genitals in a state of sexual stimulation or arousal;

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

(c) Fondling or other erotic touching of human genitals, pubic region,



buttocks, or female breast.

L. "Knowingly" means having knowledge of the character and content of the material involved or reason to know; or upon a belief or ground for belief which warrants further inspection, failure to exercise reasonable inspection which would disclose the content and character of the same.

M. "Massage," means 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.

N. "Massage Parlor," means any building 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.

O. "Model Studio" means:

(1) Any premises on which there is conducted the business of furnishing figure models who pose as "nude or partially denuded figures" 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 this figure model, or the admission to, or for permission to remain upon, or as a condition for remaining upon the premises; or

(2) Any premises 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 as "nude or partially denuded figures" to be observed or viewed by any person or to be sketched, painted, drawn, sculptured, photographed or otherwise similarly depicted.

P. "Nude or partially denuded figures," means:

(a) Less than completely and opaquely covered:

(i) human genitals; (ii) pubic regions; (iii) buttock, or (iv) female breast below a point immediately above the top of the areola; or

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

Q. "Obscene," as used in the Ordinance means that which is determined as obscene, applying the following guidelines:

1. Whether the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;
2. Whether the subject matter depicts or describes in a patently offensive way sexual conduct, sadomasochistic sexual abuse or lewd exhibition of the genitals.
3. Whether the subject matter taken as a whole lacks serious literary, artistic, political or scientific value.

R. "Person" means a natural person, partnership, corporation. Whenever used in a clause describing or imposing a fine or term of imprisonment, or both, the term "person" as applied to partnership shall mean the partners or members thereof, and as applied to corporation, shall mean the officers thereof.

S. "Prurient" means a lascivious, unhealthy, degrading, shameful, or morbid interest in sexual conduct, sexually explicit nudity, sadomasochistic sexual abuse or lewd exhibition of the genitals. Materials or performances may be deemed to appeal to the prurient interest when they have a tendency to excite lascivious thoughts or desires or when they are designed, marketed, promoted or disseminated to cater or appeal to such an interest. Where the material or performance is designed for and primarily disseminated or promoted to a clearly defined deviant sexual group, rather than the public at large, the prurient-appeal requirement is satisfied if the dominant theme of the material or performance, taken as a whole, appeals to the prurient interest in sex of the members of that intended and probable recipient group. Where the material or performance is disseminated to minors, the prurient-appeal requirement is satisfied if the dominant theme of the material or performance taken as a whole, appeals to the prurient interest in sex of minors.

T. "Sadomasochistic sexual abuse" means actual or simulated flagellation, rape, torture or other physical or sexual abuse, by or upon a person who is nude or partially denuded, or the condition of being fettered, bound or otherwise physically restrained, for the actual or simulated purpose of sexual gratification or abuse or represented in the context of a sexual relationship.

U. "Sexual conduct" means ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons, or a person or persons and an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, analingus or physical contact with a person's nude or partially denuded genitals, pubic area, perineum, anal region, or, if such person be female, a breast.

V. "Sexual device" means any artificial human penis, vagina or anus, or other device primarily designed, promoted, or marketed to physically stimulate or manipulate the human genitals, pubic area, perineum or anal areas, including dildoes, penisators, vibrators, vibrillators, penis rings and erection enlargement or prolonging creams, jellies or other such chemicals or preparations.

W. "Sexual Encounter Center" means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) Activities between male and female persons and/or persons of the same sex when one or more of the persons appears as a "nude or partially denuded figure".

X. "Sexually Oriented Business" means an adult arcade, adult book store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, message parlor, model studio, or sexual encounter center.

#### SECTION 15. DEFENSES

It shall be an affirmative defense to a prosecution under this Ordinance if the pornographic material is disseminated by a person who is acting in his capacity as:

- (a) A teacher of an accredited course of study related to pornography at a state approved educational institution; or
- (b) A licensed medical practitioner or psychologist disseminating such material in the treatment of a patient; or
- (c) A participant in the criminal justice system, such as a legislator, judge, prosecutor, law enforcement official or other similar or related position; or
- (d) A supplier to any person described in (a) through (c) above.

SECTION 16. The provisions of this Ordinance shall be severable. If any Court shall determine that any word, clause, phrase, sentence, paragraph or subsection of this Ordinance is unconstitutional as worded, the Court shall first attempt to construe or interpret such unconstitutional provision, so as to

enable the same to be constitutional as so narrowly 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 subordinate clause or phrase or word render its attached major section or provision unconstitutional, but instead shall be severed therefrom entirely, unless such severance renders the remainder wholly meaningless or unconstitutional.

ORDAINED AND ENACTED as an Ordinance of Taylor Township, Blair County, Pennsylvania this 7<sup>th</sup> day of May, 1990.

TAYLOR TOWNSHIP SUPERVISORS

J.M. Thompson

Elmer S. Keith

A.G. Brown

Attest:

Thomas G. Lutz  
Secretary