

ORDINANCE NO. 158

AN ORDINANCE PROHIBITING THE SALE OR DISPLAY OF OBSCENE MATERIALS; PROHIBITING PREPARATION OF OBSCENE MATERIALS; PROHIBITING ADMISSION TO CERTAIN SHOWS; PROHIBITING DISSEMINATION OF EXPLICIT SEXUAL MATERIALS TO MINORS; PROHIBITING THE ACTIVITY OF MINORS IN OBSCENE MATTERS; PROHIBITING CERTAIN BUSINESSES; PROVIDING PENALTIES FOR VIOLATIONS HEREOF; PROVIDING FOR INJUNCTIVE RELIEF BY THE BOROUGH OF NEW FLORENCE.

BE IT ORDAINED AND ENACTED BY THE BOROUGH COUNCIL OF THE BOROUGH OF NEW FLORENCE in the County of Westmoreland an Commonwealth of Pennsylvania, and it is hereby ORDAINED AND ENACTED by the authority of the same, in accordance with the provisions of the act of Assembly of the Commonwealth of Pennsylvania, as follows:

SECTION 1: OFFENSES DEFINED

No person knowing the obscene character of the materials involved, shall, within the BOROUGH OF NEW FLORENCE.

(a) Display or cause to permit the display of any obscene materials or explicit sexual materials as defined in Section 4 of this ORDINANCE, in or on any window, showcase, newstand, display desk, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such matter that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare;

(b) Sell, lend, distribute, exhibit, give away or show any obscene materials to any person eighteen (18) years of age or older or offer to sell, lend, distribute, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, exhibit or give away or show any obscene materials to any person eighteen (18) years of age or older, or knowingly advertise any obscene materials in any manner;

(c) Design, copy draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;

(d) Write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had; or

(e) Hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection.

SECTION 2. ADMISSION TO SHOW

No person shall exhibit for monetary consideration to any other person, or sell an admission ticket or pass to any other person or admit any other person to premises whereon there is exhibited, a motion picture show, live performance or any other presentation which, in whole or in part, depicts nudity, sexual excitement, sexual conduct, or sadomasochistic abuse.

### SECTION 3. DEFINITIONS

(a) "Community." For the purpose of applying the "contemporary community standards" in this section, community means the Commonwealth of Pennsylvania.

(b) "Knowing." As used in Section 1, knowing means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material described therein which is reasonably susceptible of examination by the defendant.

(c) "Obscene materials." Any literature, including any book, magazine, pamphlet, newspaper, storypaper, comic book or writing, and any figure, visual representation, or image including any drawing, photograph, picture or motion picture, video tape, cassette, if:

(1) The average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;

(2) The subject matter depicts or describes in a patently offensive way, sexual conduct or a type described in this section; and

(3) The subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

(d) "Sexual conduct." As used in Section 1, sexual conduct means patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, and patently offensive representations or descriptions of masturbation, excretory functions and lewd exhibition of the genitals. As used in Section 2, sexual conduct means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

(e) "Sexual excitement." The condition of human male or female genitals when in a state of sexual stimulation or arousal.

(f) "Sadomasochistic abuse." Flagellation or torture by or upon a person 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.

(g) "Transportation facility." Any conveyance, premises or place used for or in connection with public passenger transportation whether by motor vehicle or any other method, including buses, and railroad and bus terminals and stations.

### SECTION 4. DISSEMINATION TO MINORS

No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to a minor. "Explicit sexual materials," as used in this section, means materials which are obscene or:



(a) Any picture, photograph, drawing, sculpture, motion picture film, video tape, cassette, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

#### SECTION 5. DEFINITIONS

As used in this ordinance:

(a) "Minor" means any person under the age of eighteen (18) years.

(b) "Nudity" means the showing of the human male or female genitals, public area, or buttocks with less than a fully 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 depiction of covered male genitals in a discernibly turgid state.

#### SECTION 6. PROHIBITED BUSINESSES

The following businesses shall be prohibited throughout the Borough of New Florence.

(a) The operation of a business which has obscene materials or explicit sexual materials as defined above as a substantial or significant portion of its stock in trade or which exhibits motion picture shows, live performances or any other presentations which, in whole or in part, depict nudity, sexual excitement, sexual conduct, or sadomasochistic abuse.

(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, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments, not to exceed ten (10). 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 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 the 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 genitals parts of the body or 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.

(d) Any adult business, activity or use similar to or of the same general nature as certain of the uses listed above. This paragraph shall include, but shall not be limited to, rap centers, nude wrestling studios, sensativity centers, and escort bureaus, all of which exclude minors by virtue of age as patrons thereof.

#### SECTION 7. ADDITIONAL DEFINITIONS

As used in this ordinance:

(a) "Massage." Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulation 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 similar 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.

(b) "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.

(c) "Head Shop." Any business, the operation of which involves the sale, lease, trade, gift or display for sale, of any and all types of drug paraphenalia.

(d) "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.

(e) "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.

(f) "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.

(g) "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 8 INJUNCTION

The Solicitor for New Florence Borough may institute proceedings in equity in the Court of Common Pleas of Westmoreland County when any person violates or clearly is about to violate this Ordinance for the purpose of enjoining such violation. The Court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The Court shall, when practicable, hold a hearing within three (3) days after demand by the Solicitor for New Florence Borough. A written memorandum supporting the decree shall be filed.

## SECTION 9. SUMMARY OFFENSE

Any person or entity who violates any provisions of this ordinance shall be guilty of a summary offense, punishable by a fine of not more than Three Hundred Dollars (\$300.00) per offense or thirty (30) days imprisonment or both.

## SECTION 10. SEVERABILITY

The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and/or void, the remaining provisions of this act shall, nevertheless, remain valid, unless the court finds the valid provisions of this act are so essentially and inseparably connected with, and so depend upon, the void provisions, that it cannot be presumed New Florence Borough would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

## SECTION 11.

All ordinances or parts of ordinances inconsistent herewith, shall be and the same are hereby repealed but only insofar as they are inconsistent with the provisions of this Ordinance. This Ordinance shall be effective immediately.

ORDINANCED AND ENACTED AS AN ORDINANCE OF THE BOROUGH COUNCIL OF THE BOROUGH OF NEW FLORENCE, in lawful session duly assembled, this 15th day of MAY, 1984.

BOROUGH COUNCIL OF THE BOROUGH OF  
NEW FLORENCE

By: Eugene A. Gornasii  
President of Council

APPROVED:

Mollie A. Spary  
Mayor

ATTEST:

Margaret S. Bayle  
Secretary-Treasurer