

ORDINANCE NO. 1997 - 01

AN ORDINANCE OF THE CITY OF PARKER, COUNTY OF ARMSTRONG AND STATE OF PENNSYLVANIA ESTABLISHING AN ORDINANCE FOR THE PROTECTION OF THE HEALTH, MORALS AND GENERAL WELFARE OF THE COMMUNITY BY EXERCISING THE AUTHORITY GIVEN BY CHAPTER 59 OF THE PENNSYLVANIA CONSOLIDATED STATUTES TO REGULATE OBSCENITY IN A MANNER NOT INCONSISTENT THEREWITH AND TO REGULATE ACTIVITIES, DISPLAYS, EXHIBITIONS OR MATERIALS NOT SPECIFICALLY REGULATED BY THAT CHAPTER.

BE IT ORDERED AND ENACTED by the Mayor and City Council of the City of Parker, County of Armstrong, and State of Pennsylvania, and it is hereby ordained and enacted by Authority of the same:

SECTION 1: OFFENSES DEFINED

No person, knowing the obscene character of the materials or performance involved, shall:

(a) display or cause or permit the display of any obscene materials in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen marquee or similar place in such manner 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 17 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 17 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;

(e) produce, present, or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity; or

(f) hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this section.

SECTION 2: DEFINITIONS

As used in this ordinance the following words or phrases shall have the meanings given to them in this section:

Community: For the purpose of applying the "contemporary community standards" in this section, community means the State.

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 the performance or any material described in Section 1 which is reasonably susceptible of examination by the Defendant.

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.

Performance: Means any play, dance, or other live exhibition performed before an audience.

Obscene: Any material, materials or performance is "obscene" if:

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

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

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

Sexual Conduct: As used in Section 2 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 exhibitions of the genitals.

Transportation Facility: Any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including aircraft, watercraft, railroad, cars, busses, and air, boat, railroad and bus terminals and stations.

SECTION 3: DISSEMINATION TO MINORS

No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to minors.

Explicit Sexual Materials: As used in this section, means materials which are obscene or:

(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochist 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 Section 3(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 4: ADMITTING MINOR TO SHOW

It shall be unlawful for any person knowingly to exhibit for monetary consideration to a minor or knowingly to sell a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture show or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.

SECTION 5: DEFINITIONS

As used in Sections 3 and 4:

(a) Minor: Means any person under the age of 17 years.

(b) Nudity: Means the showing of the human male or female genitals, pubic 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.

(c) 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 female, breast.

(d) Sexual Excitement: Means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) Sadomasochistic Abuse: Means 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.

(f) Harmful to Minors: Means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(i) Predominantly appeals to the prurient, shameful or morbid interest of minors; and

(ii) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(iii) Is considered as a whole, to lack serious literary, artistic, political and scientific value for minors.

(g) Knowingly: Means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both:

(i) The character and content of any material described herein which is reasonably susceptible of examination by the Defendant; and

(ii) The age of the minor: Provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the Defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

#### SECTION 6: REQUIRING SALE AS CONDITION OF BUSINESS DEALINGS

No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

SECTION 7: EXEMPTION

Nothing in this Ordinance shall apply to any recognized historical society or museum accorded charitable status by the Federal Government, any county, city, borough, township, or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision.

SECTION 8: SEVERABILITY

If a final decision of a Court of competent jurisdiction holds any provision of this Ordinance, or the application of any provision to any circumstances, to be illegal or unconstitutional, the other provisions of this Ordinance, or the application of such provision to other circumstances shall remain in full force and effect. The intent is that the provisions of this Ordinance shall be severable and that this Ordinance would have been adopted even if any such illegal or unconstitutional provisions had not been included.

SECTION 9: FINES AND PENALTIES

Any person violating any Section of this Ordinance shall, upon conviction be fined not more than Three Hundred Dollars (\$300.00) or imprisoned for not more than ninety (90) days or both.

Each day that a violation hereof shall continue to be considered a separate offense and punishable as such.

SECTION 10: EFFECTIVE DATE

This Ordinance shall take effect on January 27th 1997.

DONE, ENACTED and ORDAINED at a regular meeting by the Council of the City of Parker, this 20th day of January 1997.

CITY OF PARKER

s/ Richard W. Lauer  
RICHARD LAUER, MAYOR

ATTEST:

s/ Carol Bowser  
CAROL BOWSER, SECRETARY