

ORDINANCE NO. 77-2 (1027)

AN ORDINANCE OF THE BOROUGH OF WEST KITTANNING, ARMSTRONG COUNTY, PENNSYLVANIA, DECLARING THE COMMERCIAL EXPLOITATION OF LEWD MOTION PICTURE FILMS, AND PUBLICATIONS, AND THE USE OF MASSAGE PARLORS AND MODEL STUDIOS FOR THE PURPOSES OF LEWDNESS, ASSIGNATION, OR PROSTITUTION, TO BE CONTRARY TO PUBLIC HEALTH, SAFETY AND GENERAL WELFARE, MAKING ANY PLACE POSSESSING OR EXHIBITING SUCH LEWD MOTION PICTURE FILMS, AND ANY PLACE OF BUSINESS IN WHICH LEWD PUBLICATIONS CONSTITUTE THE PART OF THE STOCK IN TRADE, AND ANY MASSAGE PARLOR OR MODEL STUDIO USED FOR THE PURPOSE OF LEWDNESS, ASSIGNATION, OR PROSTITUTION, A PUBLIC NUISANCE, PER SE; ORDERING ABATEMENT AFTER DECLARATION AND PROVIDING FOR NOTICE AND CIVIL PROCEEDINGS TO ABATE THE SAME AND FOR OTHER RELIEF BY RESOLUTION.

BE IT ORDAINED BY THE COUNCIL, GOVERNING BODY OF THE BOROUGH OF WEST KITTANNING.

Section 1. PURPOSE; POLICY; AUTHORITY; EXCLUSION.

The Borough Council find that the crass commercial exploitation of explicit sexual conduct through the public exhibition of lewd films, and the display and/or sale of lewd publications, and the use of so-called massage parlors and model studios for purposes of lewdness, assignation, or prostitution, constitutes a debasement and distortion of a sensitive key relationship of human existence, central to family life, community welfare and the development of human personality; is indecent and offensive to the senses and to public morals and interferes with the comfortable enjoyment of life and property, in that such interferes with the interest of the public in the quality of life and total community environment the tone of commerce in the Borough, property values, and the public safety; and that the continued operation of such activities is detrimental to the best health, safety, convenience, good morals and general welfare of the Borough of West Kittanning, and of the residents, citizens, inhabitants and business thereof. The Borough Council hereby declares such activities to be a public nuisance, and herein establishes procedures for the abatement thereof. This ordinance shall apply to existing establishments which are presently engaged in the type of activity herein declared to be a public nuisance.

SECTION 2. DEFINITIONS.

(a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct or demonstration which appears in the film, publication, or knowledge of the acts lewdness, assignation, or prostitution which occur on the premises.

(b) "Lewd" matter means any matter:

(1) which the average person, applying contemporary community standards would find, when considered as a whole, appeals to the prurient interest; and

(2) which depicts or describes patently offensive representations or descriptions of:

(a) ultimate sexual acts, normal or perverted, actual or simulated; or

(b) masturbation, excretory functions, or exhibition of the genitals or genital area.

Nothing herein contained is intended to include or prescribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political or scientific value.

(c) "Massage" shall mean 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.

(d) "Massage Parlor" shall mean any building or structure or portion

thereof, located within the Borough, which is open to members of the general public, with or without the payment of a fee, at which massage services are offered.

(e) "Matter" shall mean a motion picture film or a publication, or both.

(f) "Model Studio" means:

(1) Any premises on which there is conducted the business of furnishing figure models who pose in the nude 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 the figure model, or for 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 in the nude to be observed or viewed by any person or to be sketched, painted, drawn, sculptured, photographed, or otherwise similarly depicted.

(3) Exception. The words "model studio" do not include.

(a) Any studio which is operated by any state college or junior college, public school, or any governmental agency wherein the person, firm, association, partnership, or corporation operating it has met the requirements established by the Commonwealth of Pennsylvania for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma or honorary diploma; or

(b) Any premises where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in subsection (a) of this subsection.

(c) Any studio operated by a tax exempt, non-profit corporation devoted to the development of art and its appreciation.

(G) "Motion picture film" shall include any:

- (1) film or plate negative;
- (2) film or plate positive;
- (3) film designed to be projected on a screen for exhibition;
- (4) films, glass slides or transparencies, either in negative or positive forms, designed for exhibition by projection on a screen;
- (5) video tape or any other medium used to electronically reproduce images on a screen.

(H) "Nude" shall include:

- (1) completely without clothing; or
- (2) with the human male or female genitals, pubic area or buttocks with less than a full opaque covering or the showing of the female breasts with less than a full opaque covering of any portion thereof below the top of the nipple, or the covered male genitals in a discernibly turgid state.

(I) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(J) "Place" includes, but is not limited to any building, structure, or space, or any separate part or portion thereof, whether permanent or not, or the ground itself.

(K) "Publication" shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture.

film which is displayed in an area open to the public offered for sale or exhibited in a coin operated machine.

(1) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession of, lewd matter.

SECTION 3. LEWD FILMS AND THEATERS EXHIBITING THE SAME DECLARED A PUBLIC NUISANCE; ABATEMENT THEREOF.

(a) Any and every place in the Borough of West Kittanning, where lewd films are publicly exhibited or possessed for the purpose of such exhibition; and any and every place in the Borough of West Kittanning, where a lewd film is publicly or repeatedly exhibited, or possessed for the purpose of such exhibitions, is a public nuisance.

(b) Any and every lewd film which is publicly exhibited or possessed for such purpose at a place which is a public nuisance under Section 3(a) above, is a public nuisance per se.

(c) From and after service on the theater, or its manager, or acting manager, or person then in charge of such place, of a true and correct copy of this ordinance and a true and correct copy of the Resolution and order of summary abatement provided for in Section 7 hereof, all monies paid thereafter as admission price to such exhibitions are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

SECTION 4. PLACE OF BUSINESS IN WHICH LEWD PUBLICATIONS CONSTITUTE A PRINCIPAL PART OF THE STOCK IN TRADE, LEWD PUBLICATIONS POSSESSED THEREIN, AND VALUABLE CONSIDERATION RECEIVED FOR SALES THEREOF, DECLARED PUBLIC NUISANCE, ABATEMENT THEREOF.

(a) Any and every place in the Borough of West Kittanning, in which lewd publications constitute a part of the stock in trade is a public nuisance.

(b) Any and every lewd publication possessed at a place which is a public nuisance under Section 4 (a) above, is a public nuisance per se.

(c) From and after service on the place, or its manager, or acting manager, or person then in charge of such place, of a true and correct copy of this Ordinance and a true and correct copy of the Resolution and order of summary abatement provided for in Section 7 hereof, all valuable consideration received for the sale of such lewd publications is also declared to be a public nuisance as personal property used in conducting and maintaining a declared public nuisance.

SECTION 5. MESSAGE PARLORS OR MODEL STUDIOS USED FOR PURPOSES OF LEWDNESS, ASSIGNATIONS, OR PROSTITUTION, OR UPON WHICH ACTS OCCUR, DECLARED A PUBLIC NUISANCE; ABATEMENT THEREOF.

(a) Every message parlor or model studio, which, as a regular course of business, is used for the purposes of lewdness, assignation, or prostitution and every such message parlor or model studio in or upon which acts of lewdness, assignations, or prostitution, are held or occur, is a public nuisance which shall be enjoined, abated and prevented.

(b) From and after service on the place, or its manager, or acting manager, or person then in charge of such place of a true and correct copy of this Ordinance and a true and correct copy of the Resolution and order of summary abatement provided for in Section 7 hereof, all monies or other valuable consideration paid for services rendered to customers are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

SECTION 6. KNOWLEDGE OF NUISANCE PRESUMED FROM NOTICE OF ORDER OF ABATEMENT, RESPONSIBILITY OF PARTIES THEREFOR; ABATEMENT OF SUCH NUISANCES.

(a) Upon and after receiving notice through service of a true and correct copy of this Ordinance and of a true and correct copy of the Resolution and order of summary abatement provided for in Section 7 hereof, any and every person who shall own, legally or equitably, lease, maintain, manage, conduct or operate a place in the Borough of West Kittanning which is declared to be a public nuisance as set forth and stated in Section 3, Section 4, or Section 5 of this Ordinance, is deemed to be a person who has knowledge of such nuisance for the purpose of this Ordinance, and is, thereafter, responsible for its maintenance, and shall be liable therefor.

(b) The place and subject matter declared to be a public nuisance under Section 3, Section 4, or Section 5 shall be abated as provided for herein.

SECTION 7. ACTION TO BE TAKEN BY BOROUGH COUNCIL.

Upon a specific finding that a public nuisance, as defined in Section 3, Section 4, or Section 5. of this Ordinance exists in the Borough of West Kittanning, the Borough Council, in applying the provisions of this Ordinance to such nuisance, shall provide for the following by Resolution:

- (a) Declare the fact that such nuisance exists:
- (b) Set forth the description or legal description and street address of the place which constitutes the nuisance.
- (c) Set forth the evidentiary facts considered by the Borough Council in arriving at its factual determination.
 - (1) In the case of a motion picture film or films, such shall include a recitation of the particular sexual conduct and acts which the Borough Council finds are patently offensive, and the basis for the finding by the Borough Council that (a) such films are publicly exhibited in the course of business, or that (b) such film is publicly or repeatedly exhibited, or held for such exhibition at the place declared to be a nuisance.
 - (2) In the case of a publication or publications, such shall include a recitation of (a) the particular publications or types of publications considered by the Borough Council, and those which the Borough Council finds to be patently offensive, and (b) the basis for the finding by the Borough Council that such publications are displayed, sold or held for sale at any place found by the Borough Council to be a public nuisance, and (c) the basis of the finding by the Borough Council that such publications constitute a part of the stock in trade of such place of business or other place.
 - (3) In the case of a massage parlor or model studio, such shall include a recitation of (a) the particular acts of lewdness, assignation or prostitution which have occurred, and (b) the basis for the finding by the Borough Council that such acts occur in the course of business.
- (d) Order all persons described in Section 6 (a) hereof to summarily abate such public nuisance within twenty-four hours of service of such order on any such persons, by terminating the exhibition, sale or possession for sale of such lewd subject matter or by ceasing to use the place where the nuisance is declared to exist or by terminating the use of said premises for the purposes of lewdness, assignation, or prostitution, or causing the same to be terminated, and notifying the Borough Manager and Borough Council of compliance therewith by sworn affidavit as ordered by the Action of the Borough Council in such resolution.
- (e) Order the Borough Solicitor to proceed as directed in Section 9 of this Ordinance and do all things necessary to abate such public nuisance through

judicial proceedings and to conclude such proceedings as expeditiously as is permissible under the law, including requesting the Court to advance such proceedings on the calendar of the Court.

(f) Inform and give notice to persons designated in Section 6 (A) that:

(1) That the Borough Council has determined that a public nuisance presently exists at such place and address, and that, under Section 6 (A) of said Ordinance, they are deemed to have knowledge thereof and are responsible therefor.

(2) That in the event the order of the Borough is not complied with within twenty-four hours, the Borough Council has ordered the Borough Solicitor as provided for under Section 9 hereof, to commence necessary legal proceedings naming such persons as defendants in a civil action to abate the same judicially under Section 7 of this ordinance, and that under sections 8 (A) and 8 (B) of this ordinance, the costs of abatement of such civil abatement action filed including investigative costs, court costs, solicitor's fees, and other expenses are made a special assessment against the parcel of land upon which such nuisance is being maintained and, upon their determination in such court action, will, be separate legal procedure, be made a lien against such property and a personal obligation against any person, persons, firm, association, partnership, corporation or other entity deemed to be in violation of this ordinance.

(3) All lewd motion picture films or lewd publications being used in conducting and maintaining such public nuisance are contraband and the subject of forfeiture, and

(4) from and after service on the place, or its manager, or acting manager, or person then in charge of such place, of a true and correct copy of this Ordinance and a true and correct copy of such Resolution, any and all monies paid as admission price to or for the exhibition or exhibitions of such lewd motion picture films, and valuable consideration received for the sale of such lewd publications, and all monies or other valuable consideration received for services rendered in such massage parlors or model studios are a public nuisance, as personal property used in conducting and maintaining such nuisance, as such, are the subject of forfeiture.

(g) Order that a true and correct copy of said Resolution and a true and correct copy of this Ordinance be delivered forthwith in any manner normally used to effectuate personal service of process to all persons of record having any legal or equitable interest in the real property, and to the regular or acting manager or persons in charge of the place therein declared a public nuisance.

SECTION 8. FORFEITURE TO THE GENERAL FUND OF THE BOROUGH, COST OF ABATEMENT; MANNER OF COLLECTION.

(A) Upon judgment for the Borough of West Kittanning, in legal proceedings brought pursuant to this Ordinance, an accounting shall be made by such defendant or defendants of all monies or valuable consideration received by them which have been declared to be a public nuisance under Sections 3 (c), 4 (c) or 5 (b), of this Ordinance. Such monies or their equivalent and any valuable consideration received shall be forfeited to the General Fund of the Borough of West Kittanning or to the Borough of West Kittanning as property of the Borough of West Kittanning, if any valuable consideration received be not money.

(B) The cost of abatement shall include the following:

(1) investigative costs.

(2) court costs.

(3) reasonable solicitor's fees arising out of the preparation for, and trial of the cause and appeals therefrom, and other costs allowed on appeal.

- (4) printing costs of trial and appellate briefs and all other papers filed in such proceeding.

Such cost of abatement is hereby made a special assessment against the parcel of land upon which such nuisance is maintained. Upon its determination in a civil action, such shall, by separate legal proceeding, be made a lien against such property and a personal obligation against any person, firm, association, partnership, corporation or other entity and shall be collected at the same time and in the same manner as ordinary borough taxes are collected, and shall be subject to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary borough taxes. All laws, applicable to the levy, collection and enforcement of borough taxes, shall be applicable to such special assessment.

SECTION 9. ACTION TO BE TAKEN BY BOROUGH SOLICITOR

Upon a specific finding by Resolution of the Borough Council of the fact that a public nuisance exists at a particular location, the Borough Solicitor shall:

(A) Not later than three days after passage of said resolution, commence legal proceedings by the filing of a civil action seeking the following relief:

- (1) A Declaratory Judgment that the matter named by the Borough Council is lewd, as defined herein.
- (2) A Declaratory Judgment that the matter found to be lewd is or are public nuisances per se under this Ordinance and such Resolution.
- (3) A Declaratory Judgment that each place named by the Borough Council is a public nuisance under this Ordinance and such Resolution.
- (4) An accounting of all monies paid as admission price to or for the exhibition or exhibitions of such lewd motion picture films and valuable consideration received for the sale of such lewd publications, and all monies or other valuable consideration received for services rendered in such massage parlors or model studios from and after the time the persons maintaining said nuisance receive notice of the finding by the Borough Council by Resolution that the public nuisance exists, and a judgment that such monies or valuable consideration are a public nuisance under this Ordinance.
- (5) An Order that all admission price monies or valuable consideration received and enumerated in the Court-ordered accounting be forfeited as contraband to the General Fund of the Borough of West Kittanning or as property belonging to the Borough of West Kittanning.
- (6) An Injunction enjoining and restraining all persons responsible for maintaining said nuisance from possessing or publicly exhibiting said lewd motion picture films, or from selling or possessing for sale said lewd publications, or from committing acts of lewdness, assignation, or prostitution, at any time in the future in the Borough of West Kittanning, and such other injunctive relief as the Court may order.
- (7) An order that all positive prints of the named lewd film and all lewd publications or copies or reproductions thereof be forfeited as contraband under this Ordinance.
- (8) Judgment for the Borough of West Kittanning, for all costs therein expended, including investigative costs, court costs, reasonable solicitor's fees, and such other expenses as are provided for herein.
- (9) All other relief as the Court may deem proper.

SECTION 10. SEVERABILITY CLAUSE.

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 too narrowed or construed. If the Court cannot so limit or construe such word or provision narrowly so as to render the same unconstitutional, 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 clause or phrase or word or other portion hereof render any other word, clause, phrase, sentence, paragraph or section unconstitutional, but instead shall be severed therefrom entirely with the balance of this ordinance in its entirety remaining in full force and effect.

ORDAINED AND ENACTED this 31 day of May, 1977.

SEAL

BOROUGH OF WEST KITTANNING

ATTEST:

Bernie Bower
Borough Secretary

BY: Donald Thomas
President

APPROVED THIS 31 DAY OF May, 1977.

John C. Beech
MAYOR OF WEST KITTANNING BOROUGH