

ORDINANCE NO. 4-94

An Ordinance of Franklin Township, Erie County, Pennsylvania, defining lewd materials and regulating the distribution thereof, and prescribing penalties for violation. Therefore, the Supervisors of Franklin Township hereby ordain as follows:

SECTION 1
Definitions

As used in this ordinance, the following terms shall have the meanings indicated:

AUDIENCE - one or more persons who are permitted to view a performance for valuable consideration or in or from a public place.

DISPLAY PUBLICLY - exposing, placing, posting, exhibiting, or in any other fashion displaying in any location, whether public or private, material or a performance in such a manner that it may be readily seen and its content or character distinguished by viewing it in or from a public place or vehicle.

DISSEMINATE - manufacture, issue, publish, sell, lend, distribute, transmit, broadcast, exhibit or present material or to offer or agree to do the same, or to have in one's possession with intent to do the same.

LEWD MATERIAL - any material or performance in which all of the following elements are present:

1. considered as a whole, by the average person, applying the contemporary community standards of Franklin Township, it appeals to the prurient interest in sex; and

2. it depicts, describes or represents in a patently offensive way, sexual conduct, as hereinafter defined; and

3. taken as a whole, it lacks serious literary, artistic, political, educational or scientific values.

MATERIAL - any printed matter, visual representation, or sound recording, including, but not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, three-dimensional forms, sculptures, and phonograph, tape or wire recordings.

NUDITY - uncovered, or less than opaquely covered, post-pubertal human genitals or pubic area, the post-pubertal human female breast below a point immediately above the top of the areola or the covered human male genitals in a discernibly turgid state. For the purpose of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

PANDER - advertising or propagandizing in connection with the sale of material, the offering of a service, or the presentation or exhibition of a performance by appealing to the prurient interest of potential customers.

PERFORMANCE - any live or reproduced exhibition including but not limited to any play, motion picture film, dance or appearance presented to or performed before an audience.

PERSON - any individual, partnership, firm, association, corporation or other legal entity.

PRURIENT INTEREST - desire or craving for sexual stimulation or gratification. In determining prurient interest, the material or performance shall be judged with reference to average persons, unless it appears from the character of the material or performance that it is designed to appeal to the prurient interest of a particular group of persons, including but not limited to, homosexuals or sado-masochists. In that case, it shall be judged with reference to the particular group for which it was designed.

PUBLIC PLACE or **VEHICLE** - any street, alley, park, boulevard, school or other public property or any dance hall, rental hall, theater, amusement park, liquor establishment, store, depot, place of public accommodation, or other private property in Franklin Township generally frequented by the public for the purposes of education, recreation, amusement, entertainment, sport, shopping or travel; or any vehicle for public transportation, owned or operated by the government, either directly or through a public corporation or authority, or owned or operated by any non-governmental agency for the use, enjoyment or transportation of the general public.

SADO-MASOCHISTIC ABUSE - flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bizarre costume, or the condition of such person being fettered, bound or otherwise physically restrained, in an apparent act of sexual stimulation or gratification.

SEXUAL CONDUCT -

1. masturbation;
2. sexual intercourse, whether genital-genital, oral-genital, oral-anal, or anal-genital;
3. any erotic fondling or touching of the covered or uncovered genitals, buttocks, pubic area, or any part of the breasts of the female, whether the conduct described in subsection 1 through 3 is engaged in alone or between members of the same or opposite sex, or between humans and animals or humans and inanimate objects;
4. actual or stimulated display or exhibition of the human pubic area or genitals or any part thereof;
5. sexual excitement, as hereinafter defined; or
6. sado-masochistic abuse as herein defined.

SEXUAL EXCITEMENT - the facial expressions, movements, utterances or any other physical responses of a human male or female, whether alone or with others, whether clothed or not, who is in an apparent state of sexual stimulation or arousal, or experiencing the physical or sensual reactions of humans engaging in or witnessing sexual conduct.

As used in this ordinance, the masculine shall include the feminine and neuter.

SECTION 2
Disseminating and/or Promoting Lewd Material

It shall be unlawful for any person, to disseminate and/or promote and/or display publicly lewd material in Franklin Township. A person shall be guilty of the offense of disseminating and/or promoting and/or displaying publicly lewd material, if, knowing its content and character he:

1. disseminates or causes to be disseminated any lewd material in or from a public place or vehicle, or for valuable consideration; or has in his possession any lewd material with intent to so disseminate; or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him, for such dissemination of lewd material; or

2. sells an admission ticket, or pass to premises where there is being exhibited or is about to be exhibited lewd material or a performance which contains lewd material; or

3. admits, by accepting a ticket or pass, a person to premises where there is being exhibited or is about to be exhibited material or a performance which contains lewd material; or

4. produces, presents, directs, or knowingly allows the use of any business, building, vehicle or place, owned, leased, conducted or managed by him to be used for a performance which contains lewd material before an audience; or

5. participates in that portion of a live performance before an audience which makes the performance contain lewd material; or

6. panders, displays publicly, or disseminates door to door, any lewd material, or causes such pandering, public display or door to door dissemination.

SECTION 3
Penalties

Any person who shall violate this ordinance shall, upon conviction thereof, be sentence to pay a fine of not more than three hundred (\$300.00) dollars, and/or to imprisonment for a term not to exceed ninety (90) days. Each day a violation of this ordinance continues shall constitute a separate offense.

SECTION 4
Injunction

The Solicitor of Franklin Township may institute proceedings in equity in the Court of Common Pleas of Erie County for the purpose of enjoining any violation or potential violation of this ordinance.

SECTION 5
Repealer

All ordinances or parts of ordinances which are inconsistent herewith are hereby repealed.

SECTION 6
Severability


If any sentence, clause, section, or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this ordinance. It is hereby declared as the intent of the Supervisors of Franklin Township that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 7
Effective Date


This Ordinance shall become effective on November 8th, 1994.

BE IT ENACTED this 8th day of November, 1994.

ATTEST:


Secretary

THE TOWNSHIP OF FRANKLIN

By 
Benjamin J. Sitek


Herbert J. Netzler


David G. Henderson

SEAL