

WASHINGTON TOWNSHIP

ORDINANCE NO. 164

AN ORDINANCE BY THE BOARD OF SUPERVISORS OF TOWNSHIP OF WASHINGTON, NORTHAMPTON COUNTY, PENNSYLVANIA, PROHIBITING AND PENALIZING THE SALE OR SHOWING OF PORNOGRAPHIC MATERIAL TO PERSONS UNDER 18 YEARS OF AGE AND THE CREATION OF A PORNOGRAPHY COMMISSION TO REGULATE THE SALE OR SHOWING OF PORNOGRAPHY.

WHEREAS, pursuant to its powers under the Second Class Township Code, as amended, to regulate and prohibit nuisances as delegated to it by said Code as amended, and by Acts of May 20, 1957, P.L. 174, Section 5; March 21, 1968, P.L. 66, No. 22, Section 1; 53 P.S. 65712;

WHEREAS, said Board has the power to ordain for the proper maintenance of peace, good government, and welfare of the Township, as delegated to it by said Code, as amended, and by the Act of August 27, 1963, P.L. 1280, Section 1; 53 P.S. 65762; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of Supervisors of the Township of Washington, Northampton County, Pennsylvania, and it is hereby enacted and ordained by the Authority of the same:

SECTION 1: It is hereby declared that the sale or showing by any person of pornographic material to a person under 18 years of age, or the display of pornographic material by any person so as to be visible without solicitation to a person under the age of 18 years, within Washington Township is prohibited as a nuisance, offensive to the general public and inimicable to the peace, health and welfare of the Township.

SECTION 2: Definitions. The following definitions are applicable to Section One:

a. Sale: For the purpose of this Ordinance, the word sale shall mean: (1) any sale, distribution, lease, barter, bailment or trade; or (2) solicitation to sell, lease, distribute, barter, bail or trade; or (3) the display of material or showing of movies for profit.

b. Pornographic Material: For the purpose of this Ordinance, Pornographic Material shall mean any photograph, drawing, motion picture, or other visual material depicting obscene sexual conduct.

c. Sexual Conduct: For the purpose of this Ordinance, sexual conduct shall mean:

(1) Physical contact of the unclothed male genital or pubic area, with the unclothed female genital, buttock or pubic area or the unclothed male buttock of another, where such contact is clearly visible; or

(2) The depiction of the male genital either clothed or unclothed in a discernible turgid state; or

(3) Acts of sexual intercourse, either heterosexual or homosexual where physical contact of the unclothed male or female genitals or pubic area with the unclothed female or male genitals, pubic area or buttocks of another is clearly visible; or

(4) Oral sexual activity where oral or facial contact of a male or female with the unclothed genital, pubic area or buttocks of another is clearly visible; or

(5) Acts of masturbation where the unclothed female or

male genitals, pubic area or buttocks is clearly visible; or

(6) Visible fondling of the unclothed genitals or pubic area of a male or female by another; or

(7) Acts of sexual intercourse by a male or female with any animal other than a human being where physical contact of the unclothed male or female genitals, pubic area or buttocks with the genitals or buttocks of an animal is clearly visible; or masturbation or oral sexual activity with an animal which is clearly visible.

(8) The depiction of human or animal excretory functions which is clearly visible.

d. Obscene: For the purpose of this Ordinance, obscene shall mean the depiction of sexual conduct in a manner which, taken as a whole:

(1) Is patently offensive to the average person, applying the contemporary community standards of the Commonwealth of Pennsylvania; and

(2) Would be found by the average person, applying the contemporary community standards of the Commonwealth of Pennsylvania, to appeal to the prurient interests; and

(3) Lacks serious and bona fide educational, artistic, political or scientific value.

e. Person: For the purpose of this Ordinance, Person shall mean any person, partnership, corporation or association who commits the nuisance aforesaid, or any person, partnership, corporation or association who knowingly acts so as to cause or commit or any owner, tenant or occupant of any premises or property

who knowingly permits or allows the nuisance aforesaid.

SECTION 3: PORNOGRAPHY COMMISSION. The Board of Supervisors of the Township of Washington, hereby creates a Pornography Commission for the purpose of examining, inspecting and reviewing material so as to determine whether such material is pornographic and to enforce the provisions of this Ordinance.

SECTION 4: MEMBERSHIP OF COMMISSION. The Membership of the Commission shall consist of five (5) residents of the Township appointed by the Board of Supervisors. Their terms of office shall be three (3) years, and shall be so fixed that the term of office of at least one member shall expire each year. The Commission shall promptly notify the Board of Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.

SECTION 5: REMOVAL OF MEMBER. Any Commission Member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the members shall request it in writing.

SECTION 6: ORGANIZATION OF COMMISSION. The Commission shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Commission.

SECTION 7: COMMISSION FUNCTION.

a. Registration of Pornographic Material: Prior to the sale or showing of any pornographic material in Washington Township, such material shall be registered with the Washington Township Pornography Commission.

b. Review of Material: For the purpose of determining whether or not material is pornographic, the Commission shall examine and inspect material submitted for review, and after consideration by a majority of its members, render its decision in accordance with the provisions of this Ordinance. Material may be submitted for review:

(1) Upon complaint by a resident, township officer, or upon the Commission's own motion that pornographic material is being sold or shown in violation of the Ordinances of Washington Township; or

(2) By a person selling or displaying material depicting sexual conduct set forth in Section 2(c) of this Ordinance.

Any person selling or showing material submitted for review may request a hearing within five (5) days, and the Commission shall grant such a hearing within a reasonable time thereafter. The Commission shall render its decision within thirty (30) days of the hearing, or if no hearing is held, within thirty (30) days of the materials submission for review. The Commission shall communicate its decision to the seller of such material, or his agent, either orally or in writing within ten (10) days of rendering its decision.

SECTION 8: RIGHT OF APPEAL. Any person aggrieved by a final adjudication of the Commission shall have the right of appeal therefrom. Such appeal, shall be taken within thirty (30) days to the Court of Common Pleas of Northampton County.

SECTION 9: ENFORCEMENT. The sale or showing of any material in violation of this Ordinance is hereby declared to be a public nuisance, and the Board of Supervisors shall immediately therewith order that such sale or showing cease.

SECTION 10: PENALTY. Any person who shall violate any provision of this Ordinance or who shall fail to comply therewith, and who shall fail to comply with an Order by the Board of Supervisors enforcing this Ordinance, shall be guilty of a misdemeanor, and upon conviction before a Justice of the Peace in and for Northampton County, be sentenced to pay a fine of not less than One hundred (\$100.00) Dollars, nor more than Three hundred (\$300.00) Dollars for each violation and costs of prosecution, and in default of the payment of such fine and costs, be sentenced to undergo imprisonment in the Northampton County Jail for a period of not less than five (5) days, nor more than thirty (30) days. The sale or showing of each individual piece of pornographic material shall constitute a separate offense punishable by a like fine or penalty.

SECTION 11: SEVERABILITY. If any section, paragraph, subsection, clause or provision of this Ordinance shall be declared by a Court of competent jurisdiction to be invalid, such decisions shall not affect the validity of this Ordinance as a whole or any part thereof. It is the intention of the Board of Supervisors of

Washington Township that the remainder of such Ordinance would have been adopted as if such invalid section, paragraph, subsection had not been enacted.

SECTION 12: REPEALER. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed insofar as such inconsistencies may exist.

SECTION 13: EFFECTIVE DATE. This Ordinance shall be effective from and after five (5) days after the enactment thereof.

ORDAINED AND ENACTED by the Supervisors of the Township of Washington, County of Northampton and State of Pennsylvania, on this 11th day of May 1983.

WASHINGTON TOWNSHIP BOARD OF SUPERVISORS

Saul B. Wagner Chairman
Richard A. Lane
Paul T. Miller

ATTEST:

Barbara J. Hallett
Secretary