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Part 1

Pornography

§101. Declared to be a Public Nuisance.

The Borough of Mohnton finds that the crass commercial exploitation of explicitly sexual conduct through the public exhibition of lewd films, and a 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 interests of the public and the quality of life in total community environment, the tone of commerce in the Borough of Mohnton, 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 and of the residents, citizens, inhabitants and businesses thereof. The Borough hereby declares such activities to be a public nuisance, and herein establishes procedures for the abatement thereof and penalties for such activities. This Part 1 shall apply to existing establishments which are presently engaged in the type of activity herein declared to be a public nuisance. (Ord. 450, 4/10/1985, §1)

§102. Definitions.

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 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 therefore.

MASSAGE PARLOR — any establishment having a source of income or compensation derived from the practice of massage in which has a fixed place of business where any person, firm, association or corporation engages in or carries on the practice of massage.

NUDITY — the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering of any portions thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

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OBSCENE MATERIALS — any literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing, photograph, figure, image, article instrument, or any other written or printed matter which

- A. depicts or describes in a patently offensive manner sexual conduct, sexual excitement or sadomasochistic abuse of (in the case of article or instruments) is designed or intended for use in achieving artificial sexual stimulation;
- B. would be found by the average person, taken as a whole, and applying the contemporary community standards of the Commonwealth of Pennsylvania, to appeal to the prurient interests; and
- C. taken as a whole, lacks serious and bona fide educational, literary, artistic, political or scientific value.

PATENTLY OFFENSIVE — so offensive on its face as to affront current standards of decency, and shall be deemed to include any forms of sexual conduct described in this §102, if they are depicted so as to affront current standards of decency.

PERSON — any person, partnership, corporation or association who commits or who knowingly acts so as to cause or commit a violation of this Part 1, or any owner, tenant or occupant of any premises or property who knowingly permits or allows a violation of this Part 1.

SADOMASOCHISTIC ABUSE — flagellation or torture by or upon a person who is nude or 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.

SALE –

- A. Any sale, distribution, lease, barter, bailment or trade;
- B. Solicitation to sell, lease, distribute, barter, bail or trade;
- C. The display of material or showing of movies for profit.

SEXUAL CONDUCT –

- A. Any act of sexual intercourse, normal or perverted, actual or simulated, real or animated, including genital-genital, anal-genital or oral-genital intercourse, whether between human beings or between a human being and an animal;
- B. Sadomasochistic abuse;

- C. Masturbation, excretory functions, and lewd exhibitions of the genitals, including any explicit close-up representation of a human genital organ or spread eagle exposure of female genital organs;
- D. Physical contact or simulated physical contact with the clothed or naked pubic area of buttocks of a human male or female or the breasts of the female, whether along or between members of the same or opposite sex, or between humans or animals in an act of apparent sexual stimulation or gratification;
- E. A device designed and marketable as useful primarily for its stimulation of the human genital organs;
- F. Male or female genitals in a discernibly turgid state; and
- G. Fellatio, cunnilingus, anal sodomy, seminal ejaculation, or any excretory function.

SEXUAL EXCITEMENT — the condition of human male or female genitalia when in a state of sexual stimulation or arousal.

(Ord. 450, 4/10/1985, §2)

§103. Prohibited Businesses.

The following businesses or business activity shall be declared to be prohibited as a public nuisance throughout the Borough of Mohnton.

- 1. The operation of a business which has obscene or explicit sexual materials as herein defined as a substantial or significant portion of its stock in trade or which exhibits motion picture shows, live performances or any other presentation which, in whole or in part, depict nudity, sexual excitement, sexual conduct, or sado-masochistic abuse;
- 2. The operation of any massage parlor in which any of the following activities are carried on:
 - A. The treatment of any person of the opposite sex, except upon the signed order of a licensed physician, osteopath, chiropractor, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments, not to exceed 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 licensed physician, osteopath, or registered physical therapist, chiropractor, or in a regularly established and licensed hospital or sanitarium;

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- B. The massage, of or physical contact with, the sexual or genital parts of a person by any other person. Sexual or genital parts of a person by any other person. Sexual or genital parts shall include genitals, public area, buttocks, anus or perineum of any person, or the vulva or breasts of a female; and
 - C. The failure to conceal with a fully opaque covering the sexual or genital parts of the body of any person.
3. 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, sensitivity centers, and escort bureaus.

(Ord. 450, 4/10/1985, §3)

§104. Injunction.

In the event any person or business should violate or act with intent to violate any provision of this Part 1, the Solicitor for the Borough of Mohnton may institute legal proceedings seeking declaratory judgment that the violations complained of are public nuisances and requesting an injunction from the Court restraining said violation or violations. Said injunction may provide for the restraint of possession or public exhibition of lewd motion picture films and/or lewd publications, lewdness, assignation or prostitution, forfeiture of said films and publications, judgments for costs expended and such other relief as the Court may deem proper and/or necessary. Any defendant named in an action commenced under this §104 shall receive written notice and shall have the right to a hearing prior to the issuance of an injunction. The Court shall, when practicable, hold a hearing within three days after demand by the Solicitor for the Borough of Mohnton. A written memorandum supporting the decree shall be filed. (Ord. 450, 4/10/1985, §4)

§105. Penalty.

Any person or entity who shall violate any provision of this Part 1 or who shall fail to comply therewith, shall be guilty of a summary offense, and upon conviction before the Court of Common Pleas of Berks County, will be sentenced for each violation to pay a fine of not more than \$300 and costs of prosecution, and/or be sentenced to a term of imprisonment not to exceed 90 days. The sale of each individual piece of pornographic material shall constitute a separate offense punishable by a like fine or penalty. (Ord. 450, 4/10/1985, §5; as amended by Ord. 478, 8/10/1988)

Part 2

Curfew

§201. Curfew Hours.

It shall be unlawful for boys and girls under 18 years of age, such persons being defined for purposes of this Part as a "child" or "children," to be or remain in or upon the streets (which includes the area located between the building lines as set forth on the topographical survey of the Borough of Mohnton), alleys, parks or public places in the Borough of Mohnton at night after the hour 10:00 p.m., prevailing time until 6:00 a.m., prevailing time, the following morning, unless such child is accompanied by his or her parent, guardian or other person having the legal care or custody of such child. (Ord. 161, 3/15/1954, §1; as amended by Ord. 307, 7/21/1969, §1; by Ord. 308, 7/21/1969, §1; by Ord. 361, 11/10/1976, §1; by Ord. 362, 11/10/1976, §1; and by Ord. 657, 2/17/2003, §1)

§202. Unlawful Presence after Prohibited Times.

It is hereby made unlawful for any child, children, parent, guardian, or any other person to violate any of the posted rules and regulations adopted by the Borough in connection with the authorized use of any parks or public places in the Borough of Mohnton. (Ord. 161, 3/15/1954, §2; as amended by Ord. 308, 7/21/1969, §2; and by Ord. 361, 11/10/1976, §2)

§203. Penalties.

Any person in violation of any provisions of this Part 2 shall, upon conviction thereof, be forced to pay a fine of not less than \$10 nor more than \$300, plus costs of a prosecution or in failure thereof, to be imprisoned in the County jail for a period not to exceed 90 days; and in the case of a minor, said parent, guardian or person having legal care or custody of said minor who shall allow said minor to violate any of the provisions of this Part 2, shall likewise upon conviction thereof, be similarly sentenced. (Ord. 161, 3/15/1954, §3; as amended by Ord. 308, 7/21/1969, §2; and by Ord. 361, 11/10/1976, §3; and by Ord. 362, 11/10/1976, §2; as amended by Ord. 478, 8/10/1988)

§204. Violations.

Any child who shall violate this Part 2 more than three times shall be reported to the Juvenile Probation Officers of Berks County and such proceedings shall be initiated in the Court of Common Pleas of Berks County exercising jurisdiction as the Juvenile Court as may be deemed necessary by said Juvenile Probation Officers or by any citizen who is a resident of Berks County, and the parent, guardian or person having the legal care or custody of said child shall likewise be reported to said juvenile Probation Officers and a like procedure followed as in the case of said child. (Ord. 161, 3/15/1954, §4)

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§205. Age and Proof Thereof.

The Police Officers of the Borough, in taking children into custody, shall use their discretion in determining age, and in doubtful cases may require positive proof, and until such proof is furnished, the officer's judgment shall prevail. (Ord. 161, 3/15/1954, §5)

§206. Variances.

The Mayor and the Borough Council shall have the power to vary the curfew hours during special events. (Ord. 478, 8/10/1988)

Part 3

Firearms

§301. Discharge of Firearms Prohibited.

Except in necessary defense of person and property and except as provided in §303 of this Part 3, it shall be unlawful for any person to use, fire, or discharge any gun or other firearm within the Borough. (Ord. 478, 8/10/1988)

§302. Use of Air Rifles, Bow and Arrows, or Similar Devices Restricted.

It shall be unlawful for any person to discharge any air rifle, air pistol, spring gun, spring pistol, B-B gun, bow and arrow, or similar device, or any implement that is not a firearm but which impels a pellet of any kind with a force that can reasonably be expected to cause bodily harm, at any place within the Borough, except as provided in §303 of this Part 3, and except on a target range which is properly constructed to trap or stop the projectile as ascertained by the Chief of Police. (Ord. 478, 8/10/1988)

§303. Exceptions.

This Part 3 shall not apply to:

1. Persons licensed to hunt in this Commonwealth while actually engaged in hunting where permitted under the laws of the Commonwealth of Pennsylvania;
2. Members of any organization incorporated under laws of this Commonwealth engaged in target shooting upon the grounds or property belonging to or under the control of such organization; and
3. Any law enforcement officers when used in the discharge of their official duties.

(Ord. 478, 8/10/1988)

§304. Penalties for Violation.

Any person who shall violate any provision of this Part 3 shall, upon conviction thereof, be sentenced to pay a fine of not more than \$300, and/or to imprisonment for a term not to exceed 90 days. (Ord. 478, 8/10/1988)