

ORDINANCE NO. 3584

TITLE: AN ORDINANCE RELATING TO PUBLIC DECENCY AND MORALS,  
AMENDING THE ALBANY MUNICIPAL CODE, SECTIONS 7.12.040  
AND 7.12.060 AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: AMENDMENTS

The Albany Municipal Code, Section 7.12.040, is hereby amended to read as follows:

"Section 12.040. Public Decency and Morals.

"Section 7.12.041. DEFINITIONS. ADVERTISING PURPOSES AND DELIVER DEFINED. As used in this chapter, except where the context otherwise requires:

- (a) ADVERTISING PURPOSES means purposes of propagandizing in connection with the commercial sale of a produce or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.
- (b) DELIVER means to do any act which is intended and has the result of placing the thing delivered in the actual or constructive possession of another, whether the person making delivery be the owner, lessee, bailee, or other custodian of the thing delivered.

"Section 7.12.042. DISPLAY PUBLICITY," "FURNISH" AND "JUVENILE" DEFINED.

As used in this chapter, except where the context otherwise requires:

- (a) DISPLAY PUBLICITY means to expose, place, post, exhibit or in any fashion display visibly or audibly in any location, whether public or private, an item or thing in such a manner that it may be readily seen or heard and its content or character distinguished by normal, unaided vision or hearing from a public place.
- (b) FURNISH means to sell, give, rent, loan or otherwise provide.
- (c) JUVENILE means an unmarried person under 18 years of age.

"Section 7.12.043. "NUDITY," "OBSCENE MATERIAL" and  
"OBSCENE PERFORMANCE" DEFINED.

As used in this chapter, except where the context otherwise requires:

- (a) NUDITY means uncovered, or less than opaquely covered post-pubertal human genitals, pubic areas, 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 purposes of this definition a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.
- (b) OBSCENE MATERIAL means:
  - (1) Any book, magazine, paperback, pamphlet or other written or printed matter however produced; any sound record or recording; or any picture, drawing, photograph, sculpture, any of which, in whole or in part, depicts, explicitly describes, portrays, reproduces or otherwise represents nudity, sado-masochistic abuse, sexual conduct or sexual excitement; or contains obscene words; or
  - (2) Any device, artifact, mechanism or thing which is designed or represented as being a means for aiding or engaging in sexual conduct, or for artificially producing or stimulating sexual excitement.
- (c) OBSCENE PERFORMANCE means any play, motion picture, dance, show, tableau or other presentation, whether pictured, animated or live, before an audience of at least one person, and which, in whole or in part, depicts, explicitly describes, portrays, reproduces, or otherwise represents nudity, sado-masochistic abuse, sexual conduct or sexual excitement or includes obscene words.

"Section 7.12.044. "OBSCENE WORD" AND "PUBLIC PLACE"  
DEFINED.

As used in this chapter, except where the context otherwise requires:

- (a) OBSCENE WORD means any slang word currently generally rejected for regular use in mixed society that is used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that has no

other meaning or that, in context, is clearly used for its bodily, sexual or excretory meaning.

- (b) PUBLIC PLACE means any public street, sidewalk, alley, public conveyance or any other place, whether publicly or privately owned which is open to the general public including juveniles by general invitation or permission; or any place or property in plain view or hearing from such places.

"Section 7.12.045. "SADO-MASOCHISTIC ABUSE," SEXUAL CONDUCT" AND "SEXUAL EXCITEMENT" DEFINED.

As used in this chapter, except where the context otherwise requires:

- (a) SADO-MASOCHISTIC ABUSE" means flagellation or torture by or upon a person who is in a state of nudity or clad in undergarments or bizzare or revealing costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (b) SEXUAL CONDUCT means human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, in an act of apparent sexual stimulation or gratification.
- (c) SEXUAL EXCITEMENT means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual exeriencies of humans engaging in or witnessing sexual conduct or nudity.

Section 7.12.046. FURNISH OBSCENE MATERIAL TO JUVENILES.

It shall be unlawful for any person knowing or having good reason to know the character of the materials to furnish any obscene material to any juvenile.

Section 7.12.047. DELIVERING OBSCENE MATERIAL TO JUVENILES.

- (a) It shall be unlawful for any person knowing or having good reason to know the character of the material, to deliver or cause or permit to be delivered any obscene material to any juvenile.

- (b) Unless the defendant knows or has good reason to know that the person to whom the materials are delivered is a juvenile, it is a defense to a prosecution under this section that there was, at the time of the delivery, prominently printed on the outer package, wrapper or cover of the materials to be delivered, in words or substance, 'This package (wrapper) (publication) contains material that, by law, cannot be furnished to a juvenile.'

"Section 7.12.048. DISPLAYING OBSCENE MATERIALS TO JUVENILES.

It shall be unlawful for any person being the owner, operator or manager of a business, or acting in a managerial capacity, to knowingly or recklessly permit any juvenile who is not then and there accompanied by his parent or lawful guardian to enter or remain upon any premises or any portion thereof, where there is displayed or offered for sale any obscene material.

"Section 7.12.049. EXHIBITING AN OBSCENE PERFORMANCE TO JUVENILES.

- (a) It shall be unlawful for any person to knowingly or recklessly, for monetary consideration or other valuable commodity or service:
- (1) Exhibit an obscene performance to any juvenile who is not then and there accompanied by his parent or lawful guardian; or
  - (2) Sell an admission ticket or other means to gain entrance to an obscene performance to any juvenile who is not then and there accompanied by his parent or lawful guardian; or
  - (3) Permit the admission of any juvenile who is not then and there accompanied by his parent or guardian to any premises whereon there is exhibited an obscene performance.
- (b) No employe is liable to prosecution under this section for exhibiting any obscene motion picture, provided the the employe is acting within the scope of his regular employment at a showing open to the public.
- (c) As used in this section "employe" means any person regularly employed by the owner or operator of the motion picture theater if he has no financial interest other than salary or wages in the ownership or opera-

tion of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed, but does not include a manager of the motion picture theater."

Section 2: AMENDMENTS

Section 7.12.060 is amended to read as follows:

"Section 7.12.060. JUVENILES NOT TO LOITER IN CERTAIN PLACES.

It shall be unlawful for any juvenile who is not then and there accompanied by his parent or lawful guardian to enter or loiter in or upon any premises or portion thereof where there is sold, offered for sale or displayed any obscene material, where there is exhibited any obscene performance, or where there are signs posted as required by the provisions of Section 7.12.061 of this Code.

"Section 7.12.061. CERTAIN LOCATIONS TO BE POSTED; FORM AND CONTENTS; RESPONSIBILITY.

- (a) On every business premises, or every physically and visually distinct and separate portion thereof, where there is sold, offered by sale or in any manner displayed any obscene material, or where there is exhibited any obscene performance, there shall be conspicuously posted at every entrance thereto, and at no less than two conspicuous locations therein, signs conforming to the requirements of this section.
- (b) The sign required by subsection (a) of this section shall be of a design and character so as to be clearly and unmistakably legible and conspicuous to a person of normal, unaided vision from a distance of at least fifteen (15) feet; shall be at least nine (9) inches by ten (10) inches in size; and shall contain in words or substance the following language reproduced in Roman letters and Arabic numerals on a white background: "NO ONE UNDER 18 YEARS PERMITTED ON THESE PREMISES UNLESS ACCOMPANIED BY A PARENT OR GUARDIAN," and beneath that, in smaller letters and numerals, "Section 7.12.060, Albany Revised Code."
- (c) It shall be the responsibility of the owner, manager or other person in charge of any premises mentioned in subsection (a) of this section to post signs of

the required number and form in the prescribed locations; to ascertain that such signs are posted in such a manner as not to be easily removed or dislodged; and to make reasonable inspections of such signs during such times as they are required to be displayed so as to ascertain that they remain on display in the condition required by this section. Failure to carry out such responsibilities shall be unlawful.

- (d) The fact that signs were posted pursuant to the provisions of this section shall not, of itself, constitute a defense to a prosecution brought under any other section of this chapter.
- (e) Signs of the number, size and design required by this section, but imposing stricter requirements than those provided in subsection (b) of this section shall be deemed to comply with the provisions of that subsection.

Section 7.12.062. EMPLOYMENT OF JUVENILES FOR CERTAIN PURPOSES PROHIBITED.

It shall be unlawful for any person to knowingly or recklessly hire, employ or otherwise engage for payment in money or any valuable consideration any juvenile for the purpose of furnishing obscene material to any person, for the purpose of selling admission to or acting as an usher or attendant at any obscene performance, for the purpose of delivering obscene materials, or for any other purpose when the duties of such juvenile will require or permit him to enter upon any premises where obscene materials are sold or displayed or any obscene performance is exhibited; provided, however, this section shall have no application where the parent or lawful guardian of a juvenile consent to such employment and the employment is not otherwise prohibited by state law.

"Section 7.12.063. USE OF JUVENILES IN AN OBSCENE PERFORMANCE.

It shall be unlawful for any person to knowingly or recklessly cause or permit any juvenile to engage or participate in any obscene performance.

"Section 7.12.064. DEFENSES, JUVENILES. In any prosecution under Sections 7.12.060 through 7.12.062 of this Code, it is an affirmative defense for the defendant to prove:

- (a) That the defendant was in a parental or guardianship relationship with a minor; or

- (b) That the defendant was a bona fide school, museum or public library, or was acting in the course of his employment as an employe of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization; or
- (c) That the defendant was charged with the sale, showing, or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise nonoffending whole, and serving some legitimate purpose therein other than titillation.

"Section 7.12.065. PUBLIC DISPLAY OF OBSCENE MATERIAL.

- (a) It shall be unlawful for any person to display publicly, or to cause or permit to be displayed publicly, any obscene material, or any obscene performance, for advertising purposes.
- (b) In any prosecution brought under this section it shall be an affirmative defense for the defendant to prove:
  - (1) That the public display, even though in connection with a commercial venture, was primarily for artistic purposes or as a public service; or
  - (2) That the public display was of nudity, exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting.

"Section 7.12.066. OBSCENE CONDUCT IN PUBLIC.

It shall be unlawful for any person who is in any public place or in a place where food or alcoholic beverage is offered for sale or consumption on the premises to:

- (a) Appear in a state of nudity with the intent of arousing sexual excitement in himself or another person;
- (b) Engage in any sexual conduct;
- (c) Do any act or participate in any activity involving sado-masochistic abuse."

Section 3: EMERGENCY CLAUSE.

This act being necessary for the immediate preservation

of the public peace, health, and safety, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after the day of its passage.

Passed by the Council:	<u>October 27, 1971</u>
Approved by the Mayor:	<u>October 27, 1971</u>
Effective Date:	<u>October 27, 1971</u>

  
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Mayor

ATTEST:

  
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City Recorder