

Upon motion by _____, seconded by _____, the following Ordinance was duly enacted, _____ voting in favor of enactment, _____ voting against enactment.

ORDINANCE 98-19

An Ordinance of the Township of Millcreek, Erie County, Pennsylvania, defining and declaring unlawful acts constituting public indecency; establishing regulations and penalties for violation; and containing repealer and severability clauses.

WHEREAS, the Millcreek Township Board of Supervisors believes that certain lewd, immoral and indecent activities carried on in public places within Millcreek Township are detrimental to the public health, safety and welfare and lead to the debasement of men and women, exposure to minors of indecent activity and promotion of violence, public intoxication, prostitution, sex crimes and other serious criminal activity; and

WHEREAS, the Board of Supervisors is aware of and fully respects the fundamental constitutional guarantees of free speech and free expression, and understands that restrictions of such freedoms must be carefully drafted and enforced so that speech and expression are not curtailed except as is essential to promote and protect the public health, safety and welfare; and

WHEREAS, the Board of Supervisors is mindful of the decision of the Supreme Court of Pennsylvania in *Pap's A.M., t/d/b/a Kandyland v. The City of Erie, et al.* entered on October 21, 1998 at 719 A.2d 273 (1998) and the Court's discussion in that decision of issues relating to imposition of restrictions upon individual speech and expression; and

WHEREAS, the Board of Supervisors finds that there is no constitutionally protected right to be in the nude, to expose minors to adult-oriented entertainment or activities, to foster, promote or condone activities which have been declared to constitute offenses against the public or to unreasonably expose the public to lewd or indecent activity; and

WHEREAS, the Board of Supervisors is aware that the General Assembly of the Commonwealth of Pennsylvania has enacted legislation at 68 Pa. C.S.A. § 5501, et seq. which imposes regulations upon the conduct of adult-oriented and adult entertainment establishments, which regulations exist independently of any action by this Township; and

WHEREAS, the Millcreek Township Zoning Ordinance establishes standards governing the authorization and operation of uses of land constituting adult entertainment and adult-oriented establishments.

IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Millcreek, Erie County, Pennsylvania, and it is ordained and enacted, as follows:

1.01 Definitions

1.01.1 Terms used in this ordinance shall be given their general and customary meaning and, where such terms are defined in statutes of the Commonwealth of Pennsylvania or ordinances of

Millcreek Township, such definitions shall control.

1.01.2 When used in this ordinance, the following terms shall be defined as follows:

A. **Adult Entertainment -**

- (1) An exhibition in an adult-oriented establishment of any adult-oriented books, motion pictures or other media, meaning those distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as these terms are defined at 68 Pa. C.S.A. § 5502, as may in the future be amended.
- (2) A live performance, display or dance of any type in an adult-oriented establishment which has as a significant or substantial portion of the performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomiming, modeling or any other personal services offered customers.

B. **Nude -** Being in a state of nudity.

C. **Nudity -** The showing of the human male or female genital or pubic area or of the buttocks with less than a fully opaque covering; and/or the showing of the female breast with less than a fully opaque covering or any part of the breast below a point immediately above the top of the areola.

D. **Public Indecency -** Shall be deemed to include all actions declared in this ordinance to constitute public indecency. The term shall not include:

- (1) The act of performing or dancing in the nude in an adult-oriented establishment or in a play or performance open to the general public where the fact that nude performance is made known to patrons prior to their entry to the premises and this ordinance is not otherwise violated;
- (2) Any child under the age of ten (10) years;
- (3) Any individual exposing a breast in the process of breast-feeding an infant under the age of two (2) years;
- (4) Any person being in a state of nudity other than in a public place, or in circumstances of emergency or which are not within the reasonable control of that person.

E. **Public Place -** Includes all outdoor places owned by or open to the general public, and all buildings and enclosed premises owned by or open to the general public, whether or not an admission charge is levied.

1.02 Public Indecency Prohibited No person shall commit an act of public indecency in Millcreek Township or maintain acts of public indecency as a property owner, lessee, proprietor or manager of a business, and it shall be unlawful for any such person to commit or maintain any act(s) of public indecency.

An act of public indecency occurs when a person knowingly, intentionally or recklessly, in a public place:

1.02.1 Engages in sexual intercourse.

1.02.2 Engages in any specified sexual activity as defined at 68 Pa. C.S.A. § 5502, as may in the future be amended, this including:

- A. Causing one's own or another person's human genitals to be in a state of sexual stimulation or arousal.
- B. Acts of human masturbation, sexual intercourse or sodomy.
- C. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts of oneself or any other person in a public place not constituting an adult entertainment for which such activity as to oneself may be an element of the performance.
- D. In adult-oriented entertainment, plays or performances, the fondling or erotic touching of human genitals, pubic region, buttocks or female breasts of another person by a performer, patron or other person, and/or of a performer by any patron or person not involved in the play or performance.

1.02.3 Appears in a state of nudity, other than as a performer in a dance, play or performance for which nudity constitutes an aspect of the performance.

1.02.4 Brings, allows or condones entry of a minor to an adult-oriented establishment.

1.02.5 Brings, allows or condones entry of or access by a minor to adult entertainment or adult-oriented materials in any establishment, whether or not an adult-oriented establishment as defined in the Zoning Ordinance.

1.03 Regulations on Operation and Conduct of Adult-Oriented Establishments

1.03.1 No establishment constituting an adult entertainment or adult oriented establishment shall be open for business earlier than 10:00 a.m. on Mondays through Saturdays or 12:00 p.m. on Sundays, and no such establishment shall be open for business later than 12:00 a.m. on any day of the week.

1.03.2 No person in the course of performance in any establishment offering adult entertainment or in any play, dance or performance shall, at any time, be situated nearer than ten feet (10') from any patron of the establishment or any other person not directly involved in the performance.

1.03.3 The Millcreek Township Police Department and the Township's Code Administrator and his or her designees are authorized to inspect adult-oriented establishments at reasonable times for purposes of enforcing the regulations of State law and this ordinance.

1.03.4 The Board of Supervisors and/or the Code Administrator, through the Solicitor, shall be authorized to commence by the Township actions at law or in equity to enjoin violations of this ordinance or of 68 Pa. C.S.A. § 5501, et seq.

1.04 Declaration of Public Nuisance In addition to specific penalties prescribed in this ordinance for violations, it is declared that any building, structure or portion thereof regularly used for acts of public indecency in violation of this ordinance is a public nuisance, subjecting the owner, lessee, proprietor or other operator thereof to any and all actions authorized by the Commonwealth of Pennsylvania or the Millcreek Township Nuisance Ordinance for the abatement of public nuisances. In the event of any action by the Township to abate a public nuisance, the owner of the subject property shall further be liable for payment to the Township of all costs, attorneys' fees and other expenses incurred by the Township in such action.

1.05 Enforcement The Millcreek Township Police Department and the Code Administrator are hereby authorized and directed to enforce the terms of this Ordinance.

1.06 Penalties for Violation Any person or entity committing any act(s) prohibited herein shall violate this ordinance. This ordinance shall be enforced pursuant to the provisions of Ordinances Nos. 96-8 and 96-9 governing civil enforcement of ordinances and attorney's fees and costs payable in enforcement actions. An administrative fine of Five Hundred Dollars (\$500.00) is prescribed for any violation of this ordinance. If the administrative fine is not paid within thirty (30) days after the date of the enforcement notice, then a civil action shall be brought in the office of the District Justice having jurisdiction, the civil fine upon a finding of violation being Six Hundred Dollars (\$600.00). In any civil action, a person or entity found to have violated this ordinance shall also be obligated within the judgment to pay all costs and attorney's fees incurred by the Township in the enforcement action. Each day a violation of this ordinance continues shall constitute a separate offense. Each violation of this ordinance shall constitute a separate offense, subject to the prescribed fine for each violation.

1.07 Severability If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

1.08 Repealor All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed.

BE IT ENACTED this 22nd day of December, 1998.

Suzanne R. Weber, Secretary

INDECENT11/18/MLK