

BILL NO. 2445

ORDINANCE NO. 2267

AN ORDINANCE CREATING A MUNICIPAL OFFENSE FOR THE PUBLIC DISPLAY OF OBSCENE MATERIAL OR AN OBSCENE PERFORMANCE AND THE PUBLIC DISPLAY OR DISTRIBUTION OF MATERIAL HARMFUL TO MINORS

WHEREAS, there is a need to control sexually provocative, photography, performances, written, printed and published materials that depict obscene materials; and

WHEREAS, upon consideration of such evidence as presented in the passage of Resolution 313, the Chesterfield City Council finds it necessary and appropriate to regulate the secondary effects of the display of obscene material or obscene performances; and

WHEREAS, There exists the need to prevent commercial exposure of minors to sexually provocative written, photographic, printed, or published materials as these are hereafter defined and which are hereby declared to be harmful to minors; and

WHEREAS, It is in the best interest of the health, welfare, and safety of the citizens of this city and state, and especially of minors within the city and state, that commercial dissemination of such sexually provocative written, photographic, printed, or published materials deemed harmful to minors be restricted to persons at least 17 years old; or if available to minors under the age of 17 years, that the availability of such materials be restricted to sources within established and recognized schools, religious institutions, museums, medical clinics and physicians, hospitals, public libraries, the minor's home, or government sponsored organizations; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI AS FOLLOWS:

Section 1. Definitions:

MINOR: Any person under the age of 17 years.

NUDITY: The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernible turgid state.

SEXUAL CONDUCT: Includes any of the following depicted sexual conduct:

- (i) Any act of sexual intercourse, actual or simulated, including genital-genital, anal-genital, or oral-genital intercourse, whether between human beings or between human beings and an animal.

- (ii) Sadomasochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a revealing costume or the condition of being fettered, bound or otherwise physically restricted on the part of one so clothed.
- (iii) Masturbation or lewd exhibitions of the genitals including any explicit, close-up representation of a human genital organ.
- (iv) Physical contact or simulated physical contact with the clothed or unclothed pubic areas or buttocks of a human male or female, or the breasts of the female, whether alone or between members of the same sex or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.
- (v) Published or printed material depicting an act of sexual assault where physical violence or drugs are employed to overcome the will of or achieve the consent of a person to an act of sexual conduct and the effects or results of the violence or drugs are shown.

SEXUAL EXCITEMENT: The condition of human male or female genitals when in a state of sexual stimulation or arousal.

HARMFUL TO MINORS: The quality of any description or representation, in whatever form, of nudity, sexual conduct, or sexual excitement, when it:

- (1) predominately appeals to the prurient, shameful, or morbid interest of minors in sex; and
- (2) is patently offensive to contemporary standards in the adult community as a whole with respect to what is suitable sexual material for minors; and
- (3) taken as a whole, excepting a cover, which shall stand alone, lacks serious literary, artistic, political or scientific value.

KNOWINGLY: Having a general knowledge of, or reason to know, or a belief or ground for belief, which warrants further inspection or inquiry or both:

- (1) the character and content of any material which is reasonably susceptible of examination by the defendant; and
- (2) the age of the minor, provided however that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

OBSCENE: Any material or performance is obscene, if:

- (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, the material or performance appeals to the prurient interest in sex; and
- (2) the average person, applying contemporary adult community standards, would find that, taken as a whole, the material or performance depicts, describes or portrays in a patently offensive way, human sexual intercourse, sodomy, bestiality, oral copulation, masturbation, urinary and defecatory functions, sadism, masochism, sado-masochistic abuse, lewd exhibition of the genitals 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; and
- (3) The reasonable person, when taking the material or performance as a whole, would find that it lacks serious social, literary, artistic, political or scientific value.

PERFORMANCE: Any play, motion picture, dance or other exhibition performed before an audience.

Section 2.

Public display of obscene sexual material or an obscene performance is unlawful. A person is guilty of the public display of obscene sexual material or an obscene performance when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, stage, performance area, public space, wall, door, billboard, display board, viewing screen, moving picture screen, marquee or similar place, in such a manner that the display is easily visible from or in any: public street, sidewalk or thoroughfare; transportation facility; or any place accessible to members of the public and including but not limited to schools, bars, restaurants, clubs, places of amusement, parks and playgrounds but excluding rooms or apartments designed for actual residence-no display in these rooms however may be displayed in a manner that would make the material easily visible from a public street, sidewalk or thoroughfare; any performance, pictorial, three-dimensional or other visual representation of a person or a portion of the human body that is obscene, and that:

- (a) depicts nudity, or actual or simulated sexual conduct; or
- (b) depicts or appears to depict nudity, or actual or simulated sexual conduct, with the area of the male or female subject's unclothed or apparently unclothed genitals, pubic area or buttocks, or of the female subject's unclothed or apparently unclothed breast, unless obscured by a

covering or mark placed or printed on or in front of the material displayed, or obscured or altered in any other manner.

Section 3.

It is unlawful for any person commercially and knowingly to exhibit, display, sell, offer to sell, give away, circulate, distribute, or attempt to distribute any material which is harmful to minors in its content in any place where minors are or may be present or allowed to be present and where minors are able to view such materials unless each item of such material is at all times kept in a sealed wrapper.

(a) It is also unlawful for any person commercially and knowingly to exhibit, display, sell, offer to sell, give away, circulate, distribute, or attempt to distribute any material whose cover, covers or packaging, standing alone, is harmful to minors, in any place where minors are or may be present or allowed to be present and where minors are able to view such material unless each item of such materials is blocked from view by an opaque cover. The requirement of opaque cover shall be deemed satisfied concerning such material if those portions of the cover, covers or packaging containing such materials harmful to minors is blocked from view by an opaque cover.

(b) The provisions of this section shall not apply to distribution or attempt to distribute by the exhibition, display, sale, offer of sale, circulation, giving away of material harmful to minors where such material is sold, exhibited, displayed, offered for sale, given away, circulated, distributed, or attempted to be distributed under circumstances where minors are not present, not allowed to be present or are not able to view such materials or the cover, covers, or packaging of such material. Any business may comply with the requirements of this clause by physically segregating such material in a manner so as to physically prohibit the access to and view of the material by minors, by prominently posting at the entrance(s) to such restricted area, "Adults Only – You must be 17 to enter," and by enforcing said restrictions.

(c) All acts of distribution or attempt to distribute by the exhibition, display, sale, offer of sale, circulation, giving away of material harmful to minors where such material is sold, exhibited, displayed, offered for sale, given away, circulated, distributed, or attempted to be distributed under circumstances where minors are not present, not allowed to be present or are not able to view such materials or the cover, covers, or packaging of such material shall take place only in such areas as are permitted pursuant to Chapter 17, Article VII.

Section 4.

The following are exempt from criminal or other action hereunder:

(a) Recognized and established schools, religious institutions, museums, medical clinics and physicians, hospitals, public libraries, governmental agencies or quasi governmental sponsored organizations, and persons acting in their capacity as employees or agents of such organization. For the purpose of this section, "recognized and established" shall mean an organization or agency having a full time faculty and diversified curriculum in the case of a school; a religious institution affiliated with a national or regional denomination; a licensed physician or psychiatrist or clinic of licensed physicians or psychiatrists; and in all other exempt organizations shall refer only to income tax exempted organizations which are supported in whole or in part by tax funds or which receive at least one third of their support from publicly donated funds.

(b) Individuals in a parental relationship with the minor.

Section 5.

Violation of Section 2, public display of obscene sexual material or an obscene performance, shall be punishable by a fine of not less than Five Dollars (\$5.00) and not more than One Thousand Dollars (\$1,000.00) or by imprisonment for a period of not to exceed three (3) months or by both such fine and imprisonment. Each day of such public display of obscene material or an obscene performance may be considered as separate offenses.

Violation of Section 3 shall be punishable by a fine of not less than Five Dollars (\$5.00) and not more than One Thousand Dollars (\$1,000.00) or by imprisonment for a period of not to exceed three (3) months or by both such fine and imprisonment. Each sale or distribution may be considered as separate offenses.

Section 6

This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 15th day of May, 2006.


MAYOR