

ORDINANCE NO. 680

An ordinance providing definitions: Defining materials deemed harmful to minors and making it unlawful to sell, loan, display, furnish, give to or purchase for a minor the same: Punishing certain false representations by a minor: Providing exemptions from the scope of the ordinance: Providing for enforcement and penalties for the violation thereof: And providing an effective date.

WHEREAS, through a series of decisions of the Supreme Court of the United States previously valid state and local laws setting forth definitions and standards pertaining to obscenity have been held invalid; and

WHEREAS, one of the primary objectives in suppressing the publications and distribution of certain material is the protection of persons of tender years from said material, while at the same time holding the material constitutionally protected when tested against a law restricting its distribution to both minors and adults; and

WHEREAS, the Federal courts have now recognized as a valid exercise of the police power the suppression of certain material, otherwise obscene, from distribution to minors or persons of tender age; and

WHEREAS, the present ordinances of the City of Nokomis do not adequately protect minors, as defined herein, from the effect and influence of obscene materials, as defined herein; and

WHEREAS, it is the judgment and opinion of the Council of the City of Nokomis, Illinois, there should be a restrictive obscenity control law for the further protection of those among our people who are of tender years and whose character and values are yet being molded by the values passed on to them from preceding generations:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NOKOMIS, ILLINOIS, as follows:

SECTION 1. Definitions as used in this Ordinance.

(a) "Minor" means any person under the age of seventeen (17) years.

(b) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full 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.

(c) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person be a female, breast.

(d) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) "Sado-masochistic abuse" means flagellation or torture by or upon a person 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.

(f) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when taken as a whole it:

(1) predominately appeals to the prurient shameful or morbid interest of minors in sex; and

(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(3) does not have serious literary, artistic, political or scientific value for minors.

(g) "Knowingly" means having general knowledge of or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both.

(1) The character and content of any material described herein 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.

(h) "City" shall mean the City of Nokomis and its police jurisdiction.

(i) "Person" means an individual, company, partnership or corporation.

(j) "Display" means to exhibit in a manner which induces or persuades an inspection of that which is exhibited for sale or rent.

(k) "Motion picture" means movies projected from eight (8) or sixteen (16) or thirty-five (35) millimeter film.

SECTION II. It shall be unlawful for any person knowingly to sell, loan, display, furnish, give to, or purchase for a minor:

(a) any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors, or

(b) any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) of Section II hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement sexual conduct or sado-masochistic abuse and which taken as a whole, is harmful to minors;

Provided, however, that it shall not constitute an unlawful display where the materials defined in subsections (a) and (b) hereof are separated and placed in an enclosure or behind a sales counter, behind a rail with a gate, under the control of an adult sales clerk, or placed behind an enclosure, partition or wall, access to which is controlled by an adult sales clerk, or in any other manner segregated from the materials generally available to the public in such a manner that a minor, as defined herein, cannot in any event inspect the contents of, real, possess or purchase said materials.

SECTION III. It shall be unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.

SECTION IV. It shall be unlawful for a minor person, directly or indirectly to falsely represent that he is not a minor or is not under seventeen (17) years of age, and by means of such false representation buy, receive, or otherwise obtain, attempt to buy, receive or otherwise obtain any matter enumerated in paragraph (a) or (b) of Section II hereof.

SECTION V. It shall be unlawful for a minor person, directly or indirectly, to falsely represent that he is not a minor or is not under seventeen (17) years of age, and by means of such false representation buy, receive, or otherwise obtain, or attempt to buy, receive or otherwise obtain an admission ticket or pass to, or otherwise gain admittance onto premises whereon there is exhibited a motion picture show, or other representation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which, taken as a whole, is harmful to minors.

SECTION VI. The acts forbidden by this ordinance shall not apply to a parent or legally constituted guardian who does such an act with reference to his own child, or to any judge, jury or officer of a court or any attorney or any member of a legislative body, municipal, state or federal, when such act is connected with the prosecution or investigation of a violation or possible violation of this ordinance or other law, or the consideration of legislation or proposed legislation designed to eliminate or reduce obscenity in any form; nor to medical texts, encyclopedias of art illustrated religious works, and similar materials held by tax supported libraries and by accredited public schools of the City, nor to written materials of instruction assigned by an accredited public school of the City in any course of supervised study.

SECTION VII. Any parent, guardian or other person having first-hand and personal knowledge of a violation of this ordinance by any person may appear before the Chief of Police, Assistant Chief of Police or Police Officer in charge of any shift of the Nokomis Police Department to make an oath, affidavit and request a warrant of arrest for violation of this ordinance.

SECTION VIII. Any person, firm or corporation found guilty of violating any provision of this Ordinance shall be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred and 00-100 Dollars (\$500.00). Each day any violation of any provision of this Ordinance shall continue shall constitute a separate offense.

SECTION IX. It is hereby declared to be the intention of the Council of the City of Nokomis that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared invalid or unconstitutional by the valid judgement or decree of any court or competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the Council without the incorporation of this Ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

SECTION X. This Ordinance shall take effect thirty (30) days after its passage and publication, as provided by law.

Passed, and approved the 25th day of July, 1977.

Published this 28th day of July, 1977.

APPROVED: *Ted Durbin*
Ted Durbin, Mayor

ATTEST: *Mary Jean Scheller*
Mary Jean Scheller, City Clerk

STATE OF ILLINOIS)
) ss
COUNTY OF MONTGOMERY)

I, MARY JEAN SCHELLER, do hereby certify that I am the duly appointed and now acting City Clerk of the City of Nokomis, Illinois, that I have caused Ordinance No. 680 which was duly passed by the City Council of the City of Nokomis, Illinois, at a regular meeting thereof held on July 25th, 1977, and was approved by the Mayor of said City on said date to be published in the Free Press Progress, a newspaper of general circulation in the City of Nokomis, Illinois, on the 28th day of July, A.D. 1977.

Given under my hand and official seal this 25 day of July, A.D. 1977.

Mary Jean Scheller
Mary Jean Scheller, City Clerk