

Ordinance No. 1977-1

The Offensive Sexually Explicit Material Control Ordinance

An Ordinance to control the public display of pictorially offensive sexually explicit material within the boundaries of the Township of Ely, Michigan. This Ordinance shall be known as The Offensive Sexually Explicit Material Control Ordinance.

Section 1. It shall be unlawful for any person acting in a managerial capacity or being the owner, proprietor, operator, or manager of a business to knowingly place offensive sexually explicit material upon public display, for purposes of sale, entertainment, or distribution, or to fail to take prompt action to remove such a display from property in his possession or under his control after learning of its existence. The prohibition of this section shall not apply to broadcasts or telecasts through facilities licensed under the Federal Communications Act.

Section 2. For purposes of this Ordinance:

A. “Sexually explicit material” means any picture, photograph, drawing, sculpture, motion picture, film, or other visual representation or image depicting uncovered, or less than opaquely covered, post pubertal human genitals or pubic areas in a lewd fashion, or bestiality, oral intercourse, anal intercourse, human-animal intercourse, excretory functions, homosexual acts, direct physical stimulation or touching of unclothed genitals or pubic areas of the human male or female, flagellation or torture by or upon a person who is nude or clad in revealing or bizarre costumes in the context of a sexual relationship or sexual stimulation. The material shall be judged without regard to any covering which may be affixed or printed over the material in order to obscure genital areas in a depiction otherwise falling within the definition of these subsections. Works of art or of anthropological significance are not included within the definition of this paragraph.

B. “Public Display”, in the context of films or motion pictures, means the projection of said films or motion pictures on any viewing screen outside a completely enclosed building or theater. In the context of photographs, drawings, sculptures, or other visual representations, “public display” shall mean the placing of materials within the definition of subparagraph “A” on or in a newsstand, display rack, window, showcase, display case or similar place so that said material is easily visible from a public thoroughfare, from the property of others, from a common walk or mall, or from that portion of the interior of places of business generally open to minors at the time of such placing.

Section 3. The basic guidelines for the trier of act in prosecutions for the violation of this ordinance shall be:

(a.) whether the average person applying contemporary community standards, finds that the work, taken as a whole, appeals to the prurient interest; and

- (b.) whether the work constitutes, depicts or describes, in a patently offensive way, sexually explicit material as specifically defined in sub-section A of Section 2: and
- (c.) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

If the trier of fact finds that each of these elements has been established beyond a reasonable doubt, and that the other elements of the offense have also been proven beyond a reasonable doubt, the defendant shall be guilty of a violation of this Ordinance.

The Offensive Sexually Explicit Material Control Ordinance Continues

STATE OF MICHIGAN
COUNTY OF ELY

I, the undersigned, the duly qualified and acting Township Clerk of the Township of Ely, Marquette County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of an Ordinance adopted by the Township Board of the Township of Ely, County of Marquette, Michigan, on the 18th day of August, 1977, at a regular meeting of the Township Board, and I further certify that the Ordinance has been recorded in the Ordinance Book of said Township and said recording authenticated by the signatures of the Supervisor and Township Clerk.

Elise Petro
Ely Township Clerk

Section 4. Every person, who violates or refuses to comply with any section of this Ordinance shall be guilty of a misdemeanor. Upon conviction thereof, such person shall be punishable by a fine of not to exceed \$100.00, or by imprisonment in the county jail for not to exceed 90 days, or both. Each day during which a violation continues shall be deemed a separate offense. In addition to the criminal sanctions herein provided, the Township may institute injunctive proceeding, or other appropriate civil proceeding to prevent, enjoin, abate or remove any violation of the Ordinance.

Section 5. This Ordinance shall become effective 30 days after publication thereof.

Ely Township Board
Kenneth A. Tuominen, Supervisor
Elise Petro, Clerk