ORDINANCE # 2017-18
INTRODUCED BY O'Keefe
DATE INTRODUCED 8/15/17
ITEM NUMBER 2017-08-04
PUBLIC HEARING 9/19/17
ADOPTED/TABLED 9/19/17
EFFECTIVE 10/19/17
BOOK # PAGE #
RECORDATION #
AMENDED BY ORDINANCE #
DATE AMENDED

ADOPTION INTRODUCTION

CITY OF COVINGTON
STATE OF LOUISIANA

ORDINANCE NUMBER 2017-18

AN ORDINANCE OF THE CITY OF COVINGTON AMENDING THE FOLLOWING PROVISIONS OF THE COVINGTON CODE OF ORDINANCES: CHAPTER 66 OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE IV. OFFENSES AFFECTING PUBLIC MORALS, SEC. 66-113. OBSCENITY

WHEREAS, certain amendments have been suggested to the Covington Code of Ordinances, Chapter 66 Offenses and Miscellaneous Provisions, regarding offenses affecting public morals; and

WHEREAS, the Covington City Council deems these amendments appropriate to protect the health, safety and welfare of the citizens of Covington; and

WHEREAS, the City Council has held its public hearing in accordance with law.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Covington, at its regular session convened, that Chapter 66 Offenses and Miscellaneous Provisions, Article IV. Offenses Affecting Public Morals, Sec. 66-113. Obscenity, shall be amended to read as follows:

~~**Sec. 66-113. - Obscenity.**~~
~~(a) Obscenity is the intentional:~~
~~(1) Exposure of the genitals, pubic hair, anus, vulva or female breast nipples in any location or place open to the public view, such as but not limited to a street, highway, neutral ground, sidewalk, park, beach, river bank or other place or location viewable therefrom with the intent of arousing sexual desire, or which appeals to prurient interest, or is patently offensive.~~
~~(2) Participation or engagement in, or management, operation, production, presentation, performance, promotion, exhibition, advertisement, sponsorship, or display of hard core sexual conduct, when the trier of fact determines that the average person applying contemporary community standards would find that the conduct, taken as a whole, appeals to the prurient interest; and the hard core sexual conduct, as specifically defined in this subsection, is presented in a patently offensive way; and the conduct taken as a whole lacks~~

~~serious literary, artistic, political or scientific value. The term "hard core sexual conduct" is the public portrayal, for its own sake, and for ensuring commercial gain of:~~

~~a. Ultimate sexual acts, normal or perverted, actual, simulated, or animated, whether between human beings, animals, or an animal and a human being;~~

~~b. Masturbation, excretory functions or lewd exhibition, actual, simulated, or animated, of the genitals, pubic hair, anus, vulva, or female breast nipples;~~

~~c. Sadomasochistic abuse, meaning actual, simulated or animated, flagellation, or torture by or upon a person who is nude or clad in undergarments or in a costume that reveals the pubic hair, anus, vulva, genitals or female breast nipples, or in the condition of being fettered, bound, or otherwise physically restrained, on the part of one so clothed;~~

~~d. Actual, simulated, or animated touching, caressing, or fondling of, or other similar physical contact with, a pubic area, anus, female breast nipple, covered or exposed, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of apparent sexual stimulation or gratification; or~~

~~e. Actual, simulated, or animated stimulation of a human genital organ by any device whether or not the device is designed, manufactured, or marketed for such purpose.~~

~~(3) Sale, allocation, consignment, lease, rental, distribution, dissemination, advertisement, exhibition, or display of obscene material, or the preparation, manufacture, publication, or printing of obscene material for sale, allocation, consignment, lease, rental, distribution, advertisement, exhibition or display. The term "obscene material" is any tangible work or thing which may or may not require mechanical or other means to be transmitted into auditory, visual or sensual representations, which the trier of fact determines:~~

~~A. That the average person applying contemporary community standards would find, taken as a whole, appeals to the prurient interest;~~

~~b. Depicts or describes in a patently offensive way, hard core sexual conduct specifically defined in subsection (a)(2) of this section; and~~

~~c. The work or thing taken as a whole lacks serious literary, artistic, political or scientific value.~~

~~(4) Requiring as a condition to a sale, allocation, consignment, or delivery for resale of any paper, magazine, book, periodical, or publication to a purchaser or consignee that such purchases or consignee also receive or accept any obscene material, as defined in subsection (a)(3) of this section, for resale, distribution, display, advertisement, or exhibition purposes; or, denying or threatening to deny a franchise to, or imposing a penalty, on or against, a person by reason of his refusal to accept, or his return of, such obscene material.~~

~~(5) Solicitation or enticement of an unmarried person under the age of 17 years to commit any act prohibited by subsection (a)(1), (2), or (3) of this section.~~

~~(6) Advertisement, exhibition, or display of sexually violent material. The term "violent material" is any tangible work or thing which the trier of facts determines depicts actual or simulated patently offensive acts of violence, including but not limited to, acts depicting sadistic conduct, whippings, beatings, torture, and mutilation of the human body, as described in subsection (a)(2)c of this section.~~

~~(b) Lack of knowledge of age or marital status shall not constitute a defense.~~

~~(c) No employee of a theatre, bookstore or video rental cooperative or business, acting in the course and scope of his employment wherein such employee is employed by any person exhibiting or renting motion pictures or selling books, periodicals or other published material pursuant to a license or permit to exhibit, lease or sell the published material by a state or any municipality, parish or consolidated city-parish government therein, shall be guilty of a violation of this section as a result of his possession, exhibition, sale or lease within the course and scope of such employment; provided such employee has no managerial duties or has no financial interest in the possessing, exhibition or sale of any materials other than wages from his employment; unless there is no person having managerial duties or a financial interest in the possession, exhibition, sale or lease of obscene material subject to immediate arrest and prosecution. In the event of the arrest of an employee of a theatre, video rental cooperative or business for an offense designated in this section, the employer and/or owner of such theatre, video rental cooperative or establishment shall reimburse the employee for all attorney's fees and other costs of defense of such employee. Such fee and expenses may be fixed by the court exercising criminal jurisdiction after contradictory hearing or by ordinary civil process.~~

~~(d) Types of proceedings.~~

~~(1) In rem proceedings.~~

a. The chief of police may apply to the city attorney to institute an attachment proceeding against any material which is alleged to be obscene in a sworn affidavit.

b. Upon filing of an application for attachment authorized in subsection (d)(1)a of this section, the chief of police shall immediately cause notice thereof to be served either personally or by mail upon any person residing or doing business in the city who is known or believed by the chief of police to have any of the following interests in material named in the complaint:

1. The publisher;

2. The wholesaler, distributor or rental dealer in material named in the complaint; and

3. Every retailer or dealer who has, or may have, possession of any material identical to material named in the complaint.

c. Trial shall be held no later than the fourth judicial day following the filing for attachment. No trial under this section shall be continued or otherwise postponed more than one judicial day, but may be conducted by a judge pro tempore in the event of unavailability of the trial judge.

(2) Declaratory judgment.

a. Any person receiving notice in writing from the city attorney under this section that a specified activity is obscene may bring action against the city for a declaratory judgment to determine whether such activity is obscene.

b. If it is adjudged and declared by the court that such activity is obscene, then the city attorney may cause the publication of such judgment in a newspaper of general circulation in the city and upon such publication all persons residing or doing business in the city will be presumed to have actual notice of the nature of the activity.

(3) Criminal prosecution.

a. The city attorney may cause criminal charges to be brought against any person presently engaging in or who has engaged in any prohibited activity in violation of this section.

b. If the city attorney has given notice pursuant to this section, then such criminal charges may be brought only after seven judicial days after receipt of such notice.

(4) Injunction.

a. The city attorney may seek a temporary restraining order in the mayor's court in order to enjoin any obscene performance or the service of patrons in violation of this section.

b. If the city attorney has given written notice pursuant to this section, he may after the passage of seven judicial days seek such a temporary restraining order.

c. A judicial hearing on a request for such order must be granted within three judicial days, and if the temporary restraining order is issued, a trial on the issue of the obscenity of the activity must be commenced within ten judicial days of the issuance of the temporary restraining order. Such trial is not to be postponed, stayed, or adjourned, by the mayor's court for more than two judicial days, but it may be conducted by a judge pro tempore (or master, justice of the peace, magistrate, etc.) if no trial judge is available.

Proceedings authorized by this subsection shall be in addition to any others provided by law.

(e) Evidence; defenses.

(1) Expert affirmative evidence that the materials or activities are obscene is not required when the materials or activities themselves are presented as evidence.

(2) It shall be an affirmative defense in any prosecution under this section that allegedly obscene material was disseminated, or presented for a bona fide scientific, medical, educational, governmental, or judicial purpose by a physician, psychologist, teacher, clergyman, prosecutor, or judge.

(f) Penalties.

(1) In an in rem proceeding against sexually explicit material under this section the court shall, upon a determination by the trier of fact that the material is obscene, make an order confiscating the obscene material and authorize and direct the chief of police to, pending the exhaustion of all appeals, destroy such material.

(2) After conviction, in addition to any other penalty imposed for a violation of this section, the city may, in its discretion, revoke the business license of the offender and upon conviction of the offender for a second violation, the city shall revoke the business license of such person.

Sec. 66-113. Urination and Defecation in Public Prohibited.

A. Urination in Public

Urination in public is the willful and intentional urination by a person in a public place, in a place not intended for such purposes, or in a place open to the public view. Whoever commits the crime of urination in public shall be punished in accordance with Section 1-8 of this code.

B. Defecation in Public

Defecation in public is the willful and intentional defecation by a person in a public place, in a place not intended for such purposes, or in a place open to the public view. Whoever commits the crime of defecation in public shall be punished in accordance with Section 1-8 of this code.

BE IT FURTHER ORDAINED that all other sections of Chapter 66 Offenses and Miscellaneous Provisions shall remain the same and in full force.

BE IT FURTHER ORDAINED that if any provision of this ordinance shall be held to be invalid, such invalidity shall not affect other provisions herein which can be given effect without the invalid provision and to this end the provisions of this ordinance are hereby declared to be severable.

WHEREUPON, this ordinance having been submitted in writing, having been read by title and adopted at a public meeting of the City Council of the City of Covington, State of Louisiana, was then submitted to an official vote as a whole, the vote thereon being as follows:

MOVED FOR ADOPTION by Smith, seconded by Wright.

YEAS: 7 **ABSENT:** 0

NAYS: 0 **ABSTAIN:** 0

PASSED AND ADOPTED this 19th day of September, 2017.

R. S. Sam O'Keefe

R.S. "SAM" O'KEEFE
COUNCIL PRESIDENT

Bonnie D. Champagne

BONNIE D. CHAMPAGNE
COUNCIL CLERK

Presented to the Mayor this 20th day of September, 2017, at 1:00 o'clock P.M.

Bonnie D. Champagne
BONNIE D. CHAMPAGNE
COUNCIL CLERK

Approved ✓ or Vetoed ___ by the Mayor on this 20th day of September, 2017.

MICHAEL B. COOPER
MAYOR

Received from the Mayor on the 20th day of September, 2017, at 3:45 o'clock P.M.

Bonnie D. Champagne
BONNIE D. CHAMPAGNE
COUNCIL CLERK