

AN ORDINANCE REGULATING OBSCENE MOTION PICTURE FILMS:  
SEIZURE, PROSECUTION OF PERSONS EXHIBITING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAMILTON, ALABAMA, AS FOLLOWS:

- (A) The following words and terms, when used in this section shall, for the purpose of this section, have the meanings respectively ascribed to them by this subsection:
- (1) "Obscene" means that to the average person, applying contemporary community standards, the work or matter, taken as a whole, appeals to the prurient interest; the work or matter depicts or describes, in a patently offensive way, sexual conduct; and the work or matter, taken as a whole, lacks serious literary, artistic, political or scientific value.
  - (2) "Work" or "Matter" means any book, magazine, newspaper or other printed or written material, or any picture, drawing, photograph, motion picture, computer or other pictorial representation or any statue or figure or any recording transcription or mechanical, chemical or electrical reproduction, or any other articles, equipment, machines or materials.
  - (3) "Sexual conduct" shall be construed to mean any one of the following:
    - (a) Patently offensive representation or descriptions of ultimate sexual acts, normal or perverted, actual or simulated.
    - (b) Patently offensive representation or descriptions of masturbation, excretory functions, and lewd exhibition of the genitals.
  - (4) "Person" means any individual, partnership, firm, association, corporation or other legal entity.
  - (5) "Distribute" means to transfer possession of, whether with or without consideration.
  - (6) "Knowingly" means having actual or constructive knowledge of the character and content of the subject matter. A person has constructive knowledge if a reasonable inspection under the circumstances would disclose the nature of the subject matter and the failure to inspect it for the purpose of avoiding such disclosure.
  - (7) "City" means City of Hamilton, a municipality in the State of Alabama.
- (B) Search warrants for the seizure as evidence of motion picture films alleged to be obscene and to have been exhibited publicly in the City of Hamilton, or its police jurisdiction, in violation of Ordinance NO. 99-001 and 99-002 or any other ordinance of the city, shall be issued by the City Magistrate.
- (C) Any police officer of the City of Hamilton or any other individual who accuses any person of exhibiting in the City of Hamilton, or its jurisdiction, an obscene motion picture film in violation of this ordinance or any other ordinance of the City of Hamilton, may appear before a Magistrate and testify under oath to the facts upon which he bases such accusation. Such person may also offer in evidence before such Magistrate the testimony of any other person on any issue relevant to whether or not such film is obscene or whether or not the accused person is guilty of exhibiting it. All such testimony shall be reduced to writing in the form of affidavits and subscribed and sworn to by the person making the same. The Magistrate, unless he has already viewed the motion picture film alleged to be obscene or unless he determines from the affidavit or affidavits that such film is not obscene, may at his own discretion, view such film, if it is then being publicly exhibited in the city or its police jurisdiction.
- (D) If such Magistrate determines from said affidavits, and his viewing of the film alleged to be obscene that such film is obscene, he shall issue a search warrant for the seizure of said film and a warrant for the arrest of the person or persons accused of publicly exhibiting the same in the City of Hamilton, or its police jurisdiction, in violation of said Ordinance No. 99-001 and 99-002 or any other ordinance of the City.
- (E) The case against the person or persons accused of exhibiting said film and arrested therefor shall be set for trial in the municipal court.
- (F) Should the City Judge find such defendant not guilty, or if more than one defendant all such defendants not guilty, he shall immediately order the film so seized returned to the defendant or defendants, or such other person as is entitled thereto.
- (G) Should the City Judge find such a defendant guilty and the defendant appeals to the Circuit Court of Marion County or other courts as provided by law, the film shall be retained as evidence in the trial on appeal, and should the City Judge find such a defendant guilty, and there is no appeal, said film is hereby declared to be contraband and ordered to be destroyed by the Chief of Police of the City of Hamilton, Alabama.
- (H) This section is cumulative in effect and shall not be held to restrict, repeal, or limit any other procedure or authority legally provided for or possessed by the Municipal Court of the City of Hamilton, but shall be construed as an additional procedure available for use by said court.

Adopted and Approved this 16th day of August, 1999.