

## ORDINANCE NO. 5

### AN ORDINANCE OF THE TOWNSHIP OF BERWICK, ADAMS COUNTY, PENNSYLVANIA SETTING FORTH THE LICENSING AND GENERAL REGULATION OF BUSINESSES WITHIN THE TOWNSHIP IN THE NATURE OF AMUSEMENTS, JUNK DEALERS, SOLICITORS, TRANSIENT RETAIL SALES, THE SALE OF PRONOGRAPHY AND MECHANICAL AMUSEMENT DEVICES.

Section 1. Definitions. For the purpose of this Ordinance, the words and phrases set forth below shall have the meaning respectively ascribed to them:

- (a) In this Ordinance, the word “person” shall mean and include any natural person, partnership, association, firm or corporation.
- (b) In this Ordinance, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and the neuter.
- (c) In this Ordinance, the words “theatrical exhibitions, amusements, and other exhibitions” shall be interpreted as including, but not limited to, theatrical performances, operatic performances, motion picture exhibitions with or without accompanying sound effects, museums, carnivals, circuses, shows, side shows, vaudeville, swimming or bathing pools, race tracks, including but not limited to auto, horse and snowmobile racing, and amusement parks and all forms of entertainment therein.
- (d) In this Ordinance, the word “junk” shall mean any discarded material or article such as is not ordinarily disposed of as rubbish or refuse, and shall include, but not be limited to, scrap metal and scrapped motor vehicles, and shall not include any garbage or other organic waste, or any paper, rubbish, rags or other flammable article or material.
- (e) In this Ordinance, the phrase “junk dealer” shall mean any person, as hereinafter defined, who shall engage in the business of selling, buying and dealing in junk.
- (f) Nothing in this Ordinance shall apply to used articles commonly referred to as “antiques,” or second-hand articles, offered for sale and not intended to be discarded at the time or shortly thereafter.
- (g) In this Ordinance, the phrase “transient retail business” shall mean and include the

following:

(1) Engaging in peddling, canvassing, soliciting and taking order, either by sample or otherwise, for any goods, wares or merchandise upon any of the streets or alleys, sidewalks or public grounds or from house to house, in the Township of Berwick; and

(2) Selling, soliciting or taking orders for any goods, wares or merchandise, from a fixed location in the Township, on a temporary basis, which shall include, but shall not be limited to, such activities conducted at the time of special occasions or celebrations, for seasonal purposes, or for or in advance of specific yearly holidays.

(h) In this Ordinance, the work “sale” shall mean:

(1) Any sale, distribution, lease, barter, bailment or trade; or

(2) Solicitation to sell, lease, distribute, barter, bail or trade; or

(3) The display of material or showing of movies for profit.

(i) In this Ordinance, the phrase “pornographic material” shall mean any photograph, drawing, motion picture, or other visual material depicting obscene sexual conduct.

(j) In this Ordinance, the phrase “sexual conduct” shall mean:

(1) Physical contact of the unclothed male genital or pubic area, with the unclothed female genital, buttock or pubic area or the unclothed male buttock of another, where such contact is clearly visible; or

(2) The depiction of the male genital either clothed or unclothed in a discernible turgid state; or

(3) Acts of sexual intercourse, either heterosexual or homosexual where physical contact of the unclothed male or female genitals or pubic area with the unclothed female or male genitals, pubic area or buttocks of another is clearly visible; or

(4) Oral sexual activity where oral or facial contact of a male or female with the unclothed genital, pubic area or buttocks of another is clearly visible; or

(5) Acts of masturbation where the unclothed female or male genitals, pubic area

or buttocks is clearly visible; or

(6) Visible fondling of the unclothed genitals or pubic area of a male or female by another; or

(7) Acts of sexual intercourse by a male or female with any animal other than a human being where physical contact of the unclothed male or female genitals, pubic area or buttocks with the genitals or buttocks of an animal is clearly visible; or masturbation or oral sexual activity with an animal which is clearly visible; or

(8) The depiction of human or animal excretory functions which is clearly visible.

(k) In this Ordinance, the work “obscene” shall mean the depiction of sexual conduct in a manner which, taken as a whole:

(1) Is patently offensive to the average person, applying the contemporary community standards of the Commonwealth of Pennsylvania; and

(2) Would be found by the average person, applying the contemporary community standards of the Commonwealth of Pennsylvania, to appeal to the prurient interests; and

(3) Lacks serious and bona fide educational, artistic, political or scientific value.

(l) In this Ordinance, the word “device” shall mean any juke box or mechanical amusement device for the use of which for profit, a tax is levied under this Ordinance.

(m) In this Ordinance, the phrase “juke box” shall mean any music vending machine, contrivance or device which, upon the insertion of a coin, slug, token, plate, disc or key into any slot, crevice or other opening, operates or may be operated for the emission of song, music or similar amusement.

(n) In this Ordinance, the phrase “mechanical amusement device” shall mean any video or electronic device, machine or apparatus other than a “juke box” which, upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally as a game, entertainment or amusement, whether or not registering a score and whether or not a prize is offered, PROVIDED: such phrase shall not include any gambling device or any

mechanism which has been judicially determined to be a gambling device.

Section 2. Licenses Required.

(a) On and after the effective date of this Ordinance, it shall be unlawful for any person to engage in or thereafter engage in the operation of or conducting of within the Township of Berwick the businesses, operations and activities which are set forth in subsection (b) of this section without having first obtained a license from the Township Chief of Police as hereinafter prescribed.

(b) Engaging in the following businesses, operations and activities must be licensed as set forth in subsection (a) above and as prescribed hereinafter in this Ordinance:

(1) The operation of or conducting of a theatrical exhibition, other exhibitions, dances or other amusements at which an admission or other fee is charged.

(2) Junk Dealers.

(3) Transient Retail Business.

(4) Soliciting contributions or gifts either of money, merchandise or other things of value.

(5) Sale of Pornographic Materials.

(6) Offering to the general public for an established price any mechanical amusement device or juke box.

Section 3. Fee Schedules.

(a) License fees shall be paid upon application according to the following schedule:

(1) Amusements                      \$50.00 annually

(2) Junk Dealers                      \$50.00 annually

(3) Transient Retail Business              \$5.00 for one week or fraction thereof

\$10.00 for one month or fraction thereof

\$15.00 for one year or fraction thereof

(4) Solicitors                      \$10.00 for each 30-day period

- (5) Sale of Pornographic \$500.00 annually
- (6) Mechanical Amusement \$50.00 annually per each device
- (7) Juke Boxes \$25.00 annually per each device

(b) In any case in which a business operation or activity is initially established in the Township on or after the first day of November in any year, the license fee payable by the applicant for the remainder of the effective yearly license period shall be one-half the yearly rate.

Section 4. Term of the License.

(a) Any license issued hereunder shall be issued for a twelve (12) month period beginning May 1 an ending April 30 of the following year, with the exception of licenses issued to solicitors and for transient retail sales which shall be valid for the period stated on the license.

(b) Each license issued under this Ordinance must be renewed annually on or before the first day of May of each year, with the exception of licenses issued to solicitors and for transient retail sales which must be renewed upon the date of expiration.

Section 5. Application.

(a) An application for a license under this Ordinance shall be submitted to the Township Chief of Police on the form supplied by the Secretary setting forth the following:

- (1) The name and address of the applicant; and
- (2) Premises from which licensed business, operation or activity is to be conducted; and
- (3) Nature of proposed business, operation or activity; and
- (4) Any previous criminal record of applicant, applicant's employees and applicant's employer, principal or agent; and

(5) If Applicable, names and addresses of person(s) by whom applicant is employed, organization on whose behalf applicant is engaging in business, operation or activity or principals or agents of applicant; and

(6) Names and addresses of employees.

Section 6. Investigation by Township.

(a) Upon receipt of a license application form and payment of the required license fee, the Township may cause an investigation to be made of the nature of the proposed business, operation or activity, the condition of the premises, the character and reputation of the applicant, and any other factors which shall be deemed necessary for ascertaining whether the same can be conducted lawfully and without endangering the lives or health of prospective patrons.

(b) When upon said investigation, the Township determines that the proposed business, operation or activity may be conducted lawfully and without endangering the health or safety of proposed patrons and if it is found that the information set forth on the application is true and correct, the applicant to be of good character and reputation and that no license previously issued to the applicant hereunder was ever revoked and that the applicant is not indebted to the Township for taxes or for license fees of any kind or nature whatsoever, then a license shall issue no later than thirty (30) days after application had been made.

Section 7. Display of License.

(a) Every license issued hereunder shall be posted conspicuously upon the premises so licensed except as set forth in subsection 7(b) below.

(b) In the event of a transient retail business which is not carried on at a fixed location, but rather from house to house or upon the streets, alleys, sidewalks or public grounds of the Township and solicitors, the license holder shall carry the license upon his person and

shall display said license, upon request, to all police officers, Township officials and residents of the Township.

Section 8. Transfer of License.

(a) No license issued under this Ordinance shall be transferable from one person to another except when the ownership of a licensed premises shall change. In any such case, the new owner shall apply for a transfer of such license to him and shall pay a transfer fee of one-half of the original license fee.

(b) All License transfer applications shall be subject to the same investigation as set forth in Section 6 of this Ordinance and shall be issued only upon the satisfactory results of said investigation.

(c) All recipients of a transferred license shall be subject to all the applicable provisions of this Ordinance and any amendments hereto.

Section 9. Revocation and Suspension.

(a) The Township shall suspend any license issued under this Ordinance when it shall be deemed that such suspension is beneficial to the public health, safety or morals of the Township residents; for violation of any of the provisions of this Ordinance, any other Township ordinance or any law of the Commonwealth of Pennsylvania; for giving false information upon any application for a license hereunder; or for failure of the licensee to pay onto the Township any taxes, assessment or other charges when due.

(b) Written notification to the licenses of such a suspension shall be immediately given either by registered mail or by personal service by a Township official. Suspension shall be effective immediately upon receipt of such notification.

(c) Appeals from any suspension may be made to the Township Supervisors at any time within ten (10) days after receipt of written notification. Such appeals shall be in writing.

(d) Upon appeal, a hearing before the Supervisors will be scheduled within ten (10)

(e) days of receipt of written notice of such appeal.

(f) After hearing on appeal or if no appeal is requested within ten (10) days following notice of suspension, the Township may revoke the license previously suspended upon finding the existence of any of the conditions set forth in subsection 9(a) above. The licensee shall receive written notification of revocation by registered mail or by personal service.

(g) No part of a license fee shall be refunded to any person whose license shall have been suspended or revoked.

#### Section 10. Inspection and Records.

(a) The Township is hereby charged with the enforcement of this Ordinance and any Township officer, official or employee so designated shall have access to the premises of the licensee for inspection purposes at any and all reasonable times.

(b) The Township may supervise the activities of all persons holding licenses under this Ordinance in regard to the licensed business, operation or activity and the Township Secretary and Chief of Police shall keep a record of all licenses issued hereunder.

#### Section 11. Junk Dealers.

(a) No person licensed under this Ordinance shall engage in business as a junk dealer in any place other than one place designated upon his license.

(b) Every junk dealer shall provide and shall constantly keep a book in which shall be fairly written down in the English language at the time of the purchase of any junk, a description of every article or material purchased or received by him, the date and hour of such purchase or receipt, and the person from whom such article or material was purchased or received. Such book and all junk purchased, received or handled by any junk dealer shall at all times be subject to the inspection of the Township Supervisors and any other official of the Township of Berwick.

(c) Every junk dealer, licensed under this Ordinance, shall keep and retain upon the



licensed premises, for a period of forty-eight (48) hours after the purchase or receipt thereof, all junk received or purchased by him, and he shall not disturb or reduce the same or alter the original form, shape or condition until such period of forty-eight (48) hours shall have elapsed.

(d) Every junk dealer licensed under this Ordinance shall constantly maintain the licensed premises in the manner prescribed by this section, as follows:

(1) Such premises shall at all times be maintained so as not to constitute a nuisance or a menace to the health of the community or of residents nearby or a place for the breeding of rodents and vermin.

(2) No garbage or other organic waste, and no paper, rubbish, rags or other flammable articles or materials shall be stored in such premises.

(3) Whenever any motor vehicle shall be received in such premises as junk, all gasoline and oil shall be drained and removed therefrom and none shall be permitted to remain upon the premises.

(4) The manner of storage and arrangement of junk, and the drainage facilities of the premises shall be such as to prevent the accumulation of stagnant water upon the premises, and to facilitate access for fire-fighting purposes.

(5) No person licensed under this Ordinance shall burn more than one motor vehicle at any one time and no grease, tires, oil, gasoline or other similar material that might be dangerous or produce obnoxious smoke or odors shall be burned on the licensed premises at any time. Burning of vehicles must be attended and controlled at all times.

(6) No junk shall be stored on the licensed premises within twenty-five (25) feet of the property lines.

(7) The licensed premises shall, whenever the Township Supervisors shall deem it necessary and desirable, be enclosed by a fence of a type and style to be determined by the

Township Supervisors or by evergreen screen plantings, or both.

Section 12. Transient Retail Business.

(a) No license fee shall be charged, under this Ordinance, of the following:

(1) To Township farmers selling their own produce;

(2) For the sale of goods, wares, merchandise, donated by the owners thereof,

(3) the proceeds whereof are to be applied to any charitable or philanthropic purposes; or

(4) To any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk and milk products; but all persons exempted hereby from payment of the license fee shall be required to register with the Township and to obtain a license without fee.

(b) Any person dealing in one or more of the hereinabove mentioned exempted categories, and selling other goods, wares or merchandise not so exempted, shall be subject to the payment of the license fee fixed by this section for his activities in connection with the sale of goods, wares and merchandise not in such exempted categories.

(c) The Township may similarly exempt from payment of the license fee, but not from registering with it, persons working without compensation and selling goods, wares or merchandise for the sole benefit of any nonprofit organization.

(d) Every license issued under the provisions of this Ordinance shall be issued on an individual basis to persons engaging in such business; every individual shall obtain a separate license, issued to him in his name, and the license fee hereby imposed shall be applicable to every such individual license.

(e) No person engaged in any transient retail business shall:

(1) Sell any product or type of product not mentioned in his license.;

(2) Engage in such transient retail business any day of the week before seven o'clock A.M. or after nine o'clock P.M.;

(3) Use any loud speaker or horn or any other device for announcing his

(4)  
presence by which the public is annoyed;

(5) Park any vehicle upon any of the streets, alleys or public places in the Township in order to sort, rearrange or clean any of his goods, wares or merchandise;

(6) Place or deposit any refuse upon any of the streets, alleys or public grounds in the Township;

(7) When selling from a vehicle, stop or park such vehicle upon any of the streets, alleys or public places in the Township for longer than necessary in order to sell therefrom to persons residing in the immediate vicinity;

(8) Occupy any fixed location upon any of the streets, alleys, sidewalks or public places in the Township for the purpose of the conduct of his business, with or without a stand or counter.

### Section 13. Sale of Pornographic Materials.

(a) It is hereby declared that the sale by any person of pornographic material to a person under eighteen (18) years of age, or the display of pornographic material by any person so as to be visible without solicitation to a person under the age of eighteen (18) years of age, within Berwick Township is prohibited as a nuisance, offensive to the general public and unamicable to the peace, health and welfare of the Township.

(b) The sale of any material in violation of subsection 13(a) or any other section of this Ordinance or the removal or defacing of information required by this Ordinance to be affixed to or printed on pornographic material is hereby declared to be a public nuisance, and the Board of Supervisors shall immediately therewith order that such sale or removal or defacing of information required herein cease.

(c) In order to regulate the sale of pornographic material so as to enforce the

prohibition of the sale of pornographic material to persons under eighteen (18) years of age, it shall be unlawful to sell pornographic material except under the following conditions:

(1) The sale of pornographic material shall be carried on only by a person who has acquired a license as prescribed by this Ordinance.

(2) The sale of pornographic material shall be made only to buyers holding a permit obtained in accordance with subsection 13(e) below.

(3) Only pornographic material which has been registered in accordance with subsection 13(f) of this Ordinance shall be sold within the Township.

(d) Pornography Commission.

(1) The Board of Supervisors of the Township of Berwick hereby creates a Pornography Commission for the purpose of examining, inspecting and reviewing material so as to determine whether such material is pornographic and to then inform Township officials in order that the provisions of this Ordinance may be enforced.

(2) The membership of the Commission shall consist of five (5) to nine (9), but no less than five (5) residents of the Township appointed by the Board of Supervisors, with at least five (5) members needed to vote. Their terms of office shall be three years and shall be so fixed that the term of office of at least two members shall expire each year. The Commission shall promptly notify the Board of Supervisors of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term.

(3) Any Commission Member may be removed for malfeasance, misfeasance or nonfeasance in office or for other just cause by a majority vote of the Board of Supervisors taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the members shall request it in writing.

(4) The Commission shall elect from its own membership its officer, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Commission.

(5) Commission Function:

(a) Registration of pornographic material – Prior to the sale of any pornographic material in Berwick Township, such material shall be registered with the Berwick Township Pornography Commission.

(b) Review of materials – For the purpose of determining whether or not material is pornographic, the Commission shall examine and inspect material submitted for review, and after consideration by a majority of its members render its decision in accordance with the provisions of this Ordinance. Material may be submitted for review:

(1) Upon complaint by a resident, Township officer, or upon the Commission's own motion that pornographic material is being sold in violation of the Ordinance of Berwick Township; or

(2) By a person selling materials depicting sexual conduct set forth in subsection 1(j) of this Ordinance.

Any person selling material submitted for review may request a hearing within ten (10) days, and the Commission shall grant such a hearing within a reasonable time thereafter. The Commission shall render its decision within ten (10) days of the hearing, or if no hearing is held within ten (10) days after the submission of the materials for review. The Commission shall communicate its decision to the seller of such material, or his agent, in writing within ten (10) days of rendering its decision.

(6) Right of appeal – Any person aggrieved by a final adjudication of the Commission shall have the right to appeal therefrom. Such appeal shall be taken within twenty (20) days to the Court of Common Pleas of Adams County.

(e) Buyer's permit

(1) Sale of pornographic material – it shall be unlawful for any person to sell pornographic material within the Township of Berwick to a buyer who does not have in his possession a Berwick Township Buyer’s Permit.

(2) Permit applications – an application for Buyer’s Permit may be submitted to the Township Chief of Police on the form supplied by the Police Chief setting forth the following:

(a) Name and address of the applicant; and

(b) Prior criminal convictions, if any, of the applicant for the following offenses:

(1) Rape; assault with intent to rape or ravish; statutory rape; or

(2) Corrupting the morals of a minor; contributing to the delinquency of a minor; or

(3) Unlawful sale or distribution of pornographic material.

(c) Proof that the applicant is over the age of eighteen (18).

(3) A Buyer’s Permit shall issue upon receipt of the above information in proper form plus a permit fee of \$2.00 for a thirty (30) day permit and \$20.00 for a one (1) year permit.

(f) Registration of material

(1) Each and every piece of pornographic material sold or to be sold within the Township of Berwick shall be registered with the Berwick Township Pornographic Commission and shall be assigned a serial number by the Commission.

(2) Every person who sells or intends to sell pornographic material within Berwick Township shall keep a current journal of pornographic material sold and shall list the permit number and the name and address of the buyer. A report of all sales listed or which should be listed in said journal shall be submitted each week to the Berwick Township Pornographic Commission.

(3) There shall be printed or firmly attached to each and every piece of

pornographic material the following:

- (a) Name and address of the seller;
- (b) The serial number assigned by Berwick Township;

(c) A place for the fixing of the name and permit number of the buyer; (except for motion pictures, such identification shall be printed or firmly attached to the reel or spool containing said motion picture).

4. There shall be excluded from the requirement of subsection 13(3)(c) above, pornographic material which is displayed solely and exclusively on the seller's premises.

(g) No proprietor of an establishment offering for sale pornographic materials shall permit or allow the premises from which such sales are made to be open to the public between the hours of twelve o'clock a.m. and nine o'clock a.m.

(h) It shall be unlawful to sell any pornographic material, without first printing the name and address and permit number of the buyer on each and every piece of pornographic material, in the presence of the buyer.

(i) Any theatre, place of amusement or entertainment, recreational facility, or store specializing in the sale of adult products, or store commonly referred to as "Adult Book Store" or "Adult Theatre", where there is sold on the premises pornographic material, there shall be placed conspicuously in plain view on the outside wall next to the main entrance way, copies of this Ordinance.

#### Section 14. Mechanical Amusement Devices and Juke Boxes.

(a) In case a proprietor licensed under the provisions of this Ordinance desires, after the expiration of any portion of any license year, to increase the number of devices to be used or played, or exhibited for use or play in his establishment, he shall surrender his license to the Township Secretary who shall issue a new license showing the number of devices licensed thereunder, upon payment of the proper license fee therefor.

(b) Any proprietor who owns such device or devices at the time this article becomes effective shall file with the Chief of Police of the Township evidence of such ownership prior to the issuance of a license; and any proprietor purchasing a device or devices after the effective date of this article shall file with the Chief of Police of the Township evidence of ownership thereof before exhibiting or placing said device or devices for use or play.

(c) No proprietor shall permit or allow any person under the age of eighteen (18) years to operate or play any coin-operated amusement device as defined herein.

(d) All devices shall, at all times, be kept in place in plain view of any person or persons who may frequent or be in any place where such devices are kept of used. Nothing in this Ordinance shall be construed to authorize, or permit, or license any gambling device of any nature whatsoever.

(e) No proprietor shall permit or allow the operation or play of the devices licensed hereunder with the exception of juke boxes between the hours of twelve o'clock a.m. and nine o'clock a.m.

Section 15. Penalty for Violation.

(a) Any person, firm, corporation, or association violating any of the provisions of this Ordinance shall, upon summary conviction, before a District Justice, be sentenced to pay a fine of not more than \$300.00 and costs of prosecution, and in default of payment thereof shall undergo imprisonment for not more than ten (10) days. PROVIDED: Each day's violation of any other provisions of this Ordinance shall constitute a separate offense.

(b) In addition to any penalty imposed, the Township Supervisors may revoke any license issued under the provisions of this Ordinance for any violation of this Ordinance or any other applicable Township Ordinance.

Section 16. Severability.

(a) The provisions of this Ordinance shall be severable, and if any section, part of section or provision thereof shall be held to be unconstitutional, illegal or otherwise invalid, such decision shall not affect the validity of any of the remaining sections, part of sections or provisions of this Ordinance. It is hereby declared as a legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or otherwise invalid provision not been a part thereof.

Section 17. Effective Date.

(a) This Ordinance shall become effective on May 1, 1983.

ORDAINED AND ENACTED THIS 14 day of February, 1983.