

## Chapter 171

### PEACE AND GOOD ORDER

#### ARTICLE I Public Indecency and Obscenity

§ 171-1. Title.

§ 171-2. Definitions.

§ 171-3. Obscenity, nudity and related sexual conduct prohibited.

§ 171-4. Violations and penalties.

§ 171-5. Construction and severability.

[HISTORY: Adopted by the Board of Supervisors of the Township of Fairview as indicated in article histories. Amendments noted where applicable.]

#### GENERAL REFERENCES

Adult uses — See Ch. 82.

Alcoholic beverages — See Ch. 92.

#### ARTICLE I Public Indecency and Obscenity [Adopted 1-6-1997 by Ord. No. 1-1997]

§ 171-1. Title.

This article shall also be known as the "Fairview Township Public Indecency and Obscenity Ordinance."

§ 171-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ALCOHOL — Ethyl alcohol of any degree of proof originally produced by the distillation of any fermented liquid, whether rectified or diluted with or without water, whatever may be the origin thereof, and shall include synthetic ethyl alcohol, but shall not mean or include ethyl alcohol, whether or not diluted, that has been denatured or otherwise rendered unfit for beverage purposes.

ALCOHOLIC BEVERAGE —

- A. Any liquor, alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than 1/2 of 1% of alcohol by volume.
- B. Any malt or brewed beverage, beer, lager beer, ale, porter or similar fermented malt beverage containing 1/2 of 1% or more of alcohol by volume, by whatever name such beverage may be called.

- C. Any whiskey or alcoholic distillate from a fermented mash of grain, capable of being used for beverage purposes.

**ESTABLISHMENTS DEALING IN ALCOHOLIC BEVERAGES** — Any business or commercial establishment (whether open to the public at large or where entrance is limited by cover charge or membership requirement), including those licensed by the commonwealth for sale and/or service of alcoholic beverages; and any bottle club; hotel; motel; restaurant; nightclub; country club; cabaret; meeting facility utilized by any religious, social, fraternal or similar organization; business or commercial establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that the same will be, or is intended to be, mixed, combined with or drunk in connection or combination with an alcoholic beverage on the premises of said business or commercial establishment; or business or commercial establishment where the consumption of alcoholic beverages is permitted. A private residence, whether permanent or temporary in nature, is not an establishment dealing in alcoholic beverages.

**KNOWINGLY** — A person who has actual knowledge or should have known about the existence of their own or another's voluntary acts or activities which are prohibited pursuant to this article.

**NUDITY** — The showing of any portion of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.

**OBSCENE** — Any material, performance or presentation is obscene if:

- A. The average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;
- B. The subject matter depicts or describes in a patently offensive way sexual conduct of a type described in this section; and
- C. The subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

**PERSON** — A natural person, association or corporation. Whenever used in a clause prescribing or imposing a fine or civil penalty, the term "person," as applied to "association," shall mean the partners or members thereof, and, as applied to "corporation," shall mean the officers thereof, except, as to incorporated clubs, the term "person" shall mean such individual or individuals who, under the bylaws of such club, shall have jurisdiction over possession and sale of alcoholic beverages therein.

**§ 171-3. Obscenity, nudity and related sexual conduct prohibited.**

- A. A person who knowingly, in an establishment dealing in alcoholic beverages, engages in sexual intercourse; engages in deviate sexual intercourse as defined by the Pennsylvania

Crimes Code;<sup>1</sup> appears in a state of nudity; or fondles the genitals of himself, herself or another person commits public indecency, punishable under the provisions of § 171-4.

- B. A person maintaining, owning or operating an establishment dealing in alcoholic beverages who knowingly permits a person to commit public indecency, as defined in Subsection A, or permits the exposition or availability of any obscene presentations, including photographs, pictures or the projection of film, commits public indecency, punishable under the provisions of § 171-4.

**§ 171-4. Violations and penalties. <sup>2</sup>**

- A. Any person who commits any of the acts lists in this article shall, upon conviction in a summary proceeding brought before a Magisterial District Judge under the Pennsylvania Rules of Criminal Procedure, be guilty of a summary offense and shall be punishable by a fine of not less than \$200 nor more than \$1,000, plus costs of prosecution. In default of payment thereof, the defendant may be sentenced to imprisonment for a term not exceeding 90 days.
- B. Whenever such person shall have been officially notified by the Township or in any other official manner that said person is committing a violation of this article, each day that said person shall continue such violation after such notification shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected.

**§ 171-5. Construction and severability.**

It is the intention of the Township that the provisions of this article be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of freedom of speech, free expression, due process, equal protection or other fundamental rights. The provisions of this article are severable and if any section, subsection, sentence, clause, or part thereof shall be held or declared illegal, invalid or unconstitutional by any court of competent jurisdiction, the decision shall not affect or impair any of the remaining sections, subsections, sentences, clauses or parts thereof of this article; it is hereby declared to be the intent of the Township Board of Supervisors that this article would have been adopted if such illegal, invalid, or unconstitutional section, subsection, sentence, clause or part thereof had not been included herein.

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1. Editor's Note: See 18 Pa.C.S.A. § 101 et seq.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

