

ORDINANCE NO. 2

(Dissemination of Obscene Material)

WHEREAS, the Flathead County Board of Commissioners are provided by law with authority to prescribe rules and regulations for the preservation of order and to promote the health and safety of the citizens of Flathead County; and

WHEREAS, Sections 7-5-102 through 7-5-107, Montana Code Annotated, provide the method for the adoption of ordinances; and

WHEREAS, the dissemination of obscene materials constitutes a public nuisance and presents a danger to the health, safety and welfare of the citizens of Flathead County; and

WHEREAS, Section 45-8-201(5), Montana Code Annotated, authorizes the adoption by said County Commissioners of an ordinance more restrictive as to the obscenity than the existing provisions of Sections 45-8-201 and 45-8-202, Montana Code Annotated.

NOW, THEREFORE, be it resolved that effective thirty (30) days after the second reading and final adoption thereof, the following ordinance shall be in full force and effect in all of Flathead County exclusive of the area within the limits of the incorporated cities therein:

Section 1. Definitions. The following definitions apply in this ordinance:

- (a) "Disseminate" means to transfer, distribute, dispense, lend, show, display, exhibit, send, transport, or broadcast in exchange for consideration.
- (b) "Obscene". Any material or performance, whether through pictures, photographs, drawings, writings, cartoons, recordings, films, videotapes, or other such medium, is "obscene" if,
 - (1) the average person, applying contemporary community standards, would find that the material or performance, taken as a whole, appeals to the prurient interest; and
 - (2) the material or performance depicts or describes, in a patently offensive way, sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals; and
 - (3) the material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- (c) "Material" means any book, magazine, newspaper, advertisement, pamphlet, poster, print, picture, figure, image, drawing, description, motion picture film, phonographic record or recording tape, video tape, or other tangible thing capable of producing or reproducing an image, picture, sound or sensation through sight, sound, or touch.
- (d) "Performance" means any motion picture, film, video tape, played record, phonograph, or tape, broadcast, preview, trailer, play, show, skit, dance, or any other exhibition performed or presented to or before an audience of one or more, transmitted by means of electrical, radio, television, telephonic, or other communicative device or facility to a known closed or open circuit audience of one or more persons or to the general public.
- (e) "Person" means any individual, corporation, company, partnership, firm, association, business, establishment, organization, or other legal entity of any kind.
- (f) "Prurient" means a lustful, lascivious, erotic, shameful, or morbid interest in sexual conduct, sexually explicit nudity, sadomasochistic sexual abuse, or lewd exhibition of the genitals.

Materials or performances may be deemed to appeal to the prurient interest when they have a tendency to excite lustful thoughts or lascivious desires, or when they are designed, marketed, promoted, or disseminated to cater or appeal to such an interest. Where the material or performance is designed for and primarily disseminated or promoted to a clearly defined deviant sexual group, rather than the public at large, the prurient-appeal requirement is satisfied if the dominant theme of the material or performance, taken as a whole, appeal to the prurient interest in sex of the members of that intended and probable recipient group.

- (g) "Sexual conduct" means ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons or a person or persons and an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, anilingus, or physical contact with a person's nude or partially denuded genitals, pubic area, perineum, anal region, or, if such person be female, a breast.
- (h) "Sadomasochistic sexual abuse" means actual or simulated flagellation, rape, torture, or other physical or sexual abuse, by or upon a person who is nude or partially denuded or in the condition of being fettered, bound, or otherwise physically restrained for the actual or simulated purpose of sexual gratification or abuse or represented in the context of a sexual relationship.

Section 2. Affirmative defense. It is an affirmative defense to a charge under this ordinance that the material or performance involved was disseminated or promoted for a bona fide medical, psychological, legislative, judicial, or law enforcement related purpose, by or to a physician, psychologist, legislator, judge, prosecutor, law enforcement officer, or other person having such a bona fide interest in such material or performance.

Section 3. Disseminating obscene material. A person commits the offense of disseminating obscene material when, with knowledge of the general nature and character of the content of material involved irrespective of the absence or presence of an evil motive, bad purpose or intent to violate or disregard the law, he:

- (a) willfully disseminates obscene material; or,
- (b) knowing or having reason to know that it will be disseminated, willfully finances the manufacture or production, produces, manufactures, directs, photographs, poses, acts, or in any way assists in the production, copying or reproduction of visually represented obscene material or advertisements for any obscene material.

Section 4. Penalty. A person convicted of the offense of disseminating obscene material shall be guilty of a misdemeanor.

Section 5. Severability clause. If any provision of this ordinance is held to be invalid, such invalidity shall not effect other provisions which can be given effect without the invalid provision. To this end provisions of this ordinance are to be severable.

DATED this 9th day of APRIL, 19 80.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

BY: Iris I. Hindman
Iris I. Hindman, Flathead County
Clerk and Recorder

BY: Frank Guay
Frank Guay
Chairman