

ORDINANCE 76

AN ORDINANCE PROHIBITING INDECENT EXPOSURE

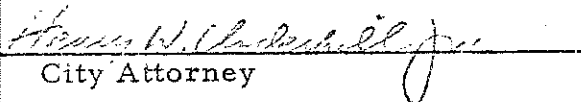
BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina:

Section 1. Chapter 13, Section 21 of the Code of the City of Charlotte is hereby repealed and deleted from the Code and the following new section is substituted in lieu thereof and shall read as follows:

"Sec. 13-21. Indecent Exposure. Any person who shall willfully expose the natural or simulated pubic hair in the hypogastric region or who exposes the genitals or buttocks of his or her person in any business or public place and in the presence of any other person or persons, or who aids or abets in any such act, or who procures another to perform such act; or any person, who knowingly as owner, manager, lessee, director, promoter or agent, or in any other capacity, hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a misdemeanor."

Sec. 2. That this ordinance shall become effective upon adoption.

Approved as to form:

  
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in Special Session convened on the 23rd day of April, 1971, the reference having been made in Minute Book 55, and recorded in full in Ordinance Book 18, at Page 143.

Ruth Armstrong, City Clerk

AMENDING CHAPTER 11

ORDINANCE 77

AN ORDINANCE AMENDING CHAPTER 11, ENTITLED "LICENSES", OF THE CODE OF THE CITY OF CHARLOTTE.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina:

Section 1. Chapter 11, Article II, Section 11-18 of the Code of the City of Charlotte is hereby amended by adding a new classification which shall read as follows:

"(305.1) (a) TOPLESS OR NUDE WAITRESS, ENTERTAINER, DANCER OR EMPLOYEE.

Any female person who partially or completely exposes the whole breast or breasts, or who exposes natural or simulated pubic hair in the hypogastric region or who exposes the genitals or buttocks, while acting as a waitress, entertainer, dancer or employee in any business or public place shall pay an annual license tax of 500.00 "

Sec. 2. Chapter 11, Article II, Section 11-18 of the Code of the City of Charlotte is hereby amended by adding a new classification which shall read as follows:

"(305.1) (b) TOPLESS OR NUDE MODELS.

Any female person who partially or completely exposes the whole breast or breasts, or who exposes natural or simulated pubic hair in the hypogastric region or who exposes the genitals or buttocks, while acting as a model or employee in any business or public place, shall pay an annual license tax of . . . . . 500.00 "

Sec. 3. It is not the intent of this ordinance to make legal any such display of the human anatomy as herein described, but only to provide for the taxation of such activity under the City's taxing authority, and the same is not to be deemed to conflict with any ordinance in exercise of the police power of the City or of the State Statutes.

Sec. 4. That this ordinance shall become effective upon adoption.

APPROVED AS TO FORM:

Henry W. Underhill, Jr.  
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in Special Session convened on the 23rd day April, 1971, the reference having been made in Minute Book 55, and recorded in full in Ordinance Book 18, at Page 144.

Ruth Armstrong  
City Clerk

AMENDING CHAPTER 13

78

ORDINANCE \_\_\_\_\_

AN ORDINANCE PROHIBITING THE DISSEMINATION OF OBSCENITY.

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina:

Section 1. Chapter 13, Section 21.1 of the Code of the City of Charlotte is hereby repealed and deleted from the Code and the following new section is substituted in lieu thereof and shall read as follows:

"Sec. 13-21.1. Obscene literature and exhibitions.

(a) It shall be unlawful for any person, firm or corporation to intentionally disseminate obscenity in any public place. A person, firm or corporation disseminates obscenity within the meaning of this section if he or it:

- (1) sells, delivers or provides or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or
- (2) presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or
- (3) publishes, exhibits or otherwise makes available anything obscene; or

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(4) exhibits, broadcasts, televises, presents, rents, sells, delivers, or provides; or offers or agrees to exhibit, broadcast, televise, present, rent or to provide: any obscene still or motion picture, film, filmstrip, or projection slide, or sound recording, sound tape, or sound track, or any matter or material of whatever form which is a representation, embodiment, performance, or publication of the obscene.

(b) For purposes of this Section any material is obscene if:

- (1) the dominant theme of the material taken as a whole appeals to the prurient interest in sex; and
- (2) the material is patently offensive because it affronts contemporary national community standards relating to the description or representation of sexual matters, and;
- (3) the material is utterly without redeeming social value; and
- (4) the material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

(c) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other especially susceptible audiences if it appears from the character of the material or

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the circumstances of its dissemination to be especially designed for or directed to such children or audiences. In any prosecution for an offense involving dissemination of obscenity under this Section, evidence shall be admissible to show:

- (1) the character of the audience for which the material was designed or to which it was directed;
- (2) whether the material is published in such a manner that an unwilling adult could not escape it;
- (3) whether the material is exploited so as to amount to pandering;
- (4) what the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;
- (5) artistic, literary, scientific, educational or other social value, if any, of the material;
- (6) the degree of public acceptance of the material throughout the United States;
- (7) appeal to prurient interest, or absence thereof, in advertising or in the promotion of the material.

Expert testimony and testimony of the author, creator or publisher relating to factors entering into the determination of the issue of obscenity shall also be admissible.

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(d) It shall be unlawful for any person, firm or corporation to knowingly and intentionally create, buy, procure or possess obscene material with the purpose and intent of disseminating it unlawfully.

(e) It shall be unlawful for a person, firm or corporation to advertise or otherwise promote the sale of material represented or held out by said person, firm or corporation as obscene.

(f) Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor.

Sec. 13-21.2. Adversary hearing prior to seizure.

(a) The purpose of this section is to provide an adversary determination of the question of whether books, magazines, motion pictures or other materials are obscene prior to their seizure.

(b) The public policy of this City requires that all proceedings prescribed in this section shall be examined, heard and disposed of with the maximum promptness and dispatch commensurate with the Constitution of the United States and the Constitution of North Carolina.

(c) Whenever a law enforcement officer has reasonable cause to believe that any person, firm or corporation is engaged in the sale, display, distribution or dissemination in a public place of any books, magazines, motion pictures or other materials which are obscene within the meaning of Sec. 13-21.1, he shall, without seizing such material, notify the solicitor. Upon receiving such notification the solicitor shall submit a written complaint to any resident judge of the Superior Court Division, or any judge of the District Court Division, or any Magistrate, to which shall be attached, if available

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without purchase or seizure, a true copy of the allegedly obscene material. The complaint shall:

- (1) be directed against the person, firm or corporation believed to be engaged in the sale, display, distribution or dissemination in a public place of the material alleged to be obscene and against such material by name, description, volume and issue as appropriate;
- (2) allege that such material is obscene within the meaning of Sec. 13-21.1;
- (3) designate as respondent the person, firm or corporation believed to be engaged in the sale, display, distribution or dissemination in a public place of the material alleged to be obscene;
- (4) seek an adjudication that said material is obscene;
- (5) seek a temporary restraining order prohibiting the respondent from removing, causing, or permitting to be removed the material alleged to be obscene within the meaning of Sec. 13-21.1;
- (6) seek a warrant to search for and seize said material as obscene within the meaning of Sec. 13-21.1.

(d) Upon receipt of such complaint from the solicitor, the judge or magistrate shall:

- (1) issue a summons to be served upon the respondent which shall be in the same form prescribed for warrants in G. S. 15-20,

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except that it shall summon the respondent to appear before the said judge or magistrate at a stated time not less than two days, including the day of service, and not more than four days, including the day of service, after service of the summons, and to show cause why the said material should not be declared obscene and a warrant issued authorizing a search for and seizure of said material;

- (2) issue a subpoena as provided for under G. S. 1A-1, Rule 45 of the Rules of Civil Procedure commanding the respondent to produce copies of all items of said material not attached to the complaint in order that a complete adversary hearing may be held on the question of whether said material should be declared obscene and a warrant issued authorizing a search for and seizure of said material;
- (3) issue a temporary restraining order prohibiting the respondent from removing, causing, or permitting to be removed the material which is alleged to be obscene within the meaning of Sec. 13-21.1; provided, however, that such temporary restraining order shall not be construed as prohibiting the respondent from conducting sales in the normal course of business only, so long as at least one copy of each item alleged in the complaint to be obscene is retained for evidentiary purposes at the said hearing;



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(4) insure that any and all hearings held pursuant to this section are designed to focus searchingly upon the issue of whether the said material is obscene within the meaning of Sec. 13-21.1, and that the rights of the respondent to counsel, to confrontation and cross-examination of witnesses for the City, to present witnesses including expert witnesses in his own behalf, and all other rights granted the respondent by the Constitution of the United States or the Constitution of North Carolina are protected, and;

(5) render a decision on the issue of whether said material is obscene within the meaning of Sec. 13-21.1 within two days, excluding the final day of said hearing, after the conclusion of any hearing held under the authority of this section.

(e) In the event that the judge or magistrate fails to find the material involved is obscene within the meaning of Sec. 13-21.1, he shall enter judgment accordingly and dismiss the complaint. Should the respondent fail to appear or the judge or magistrate find that said material is obscene within the meaning of Sec. 13-21.1, the judge or magistrate involved shall enter judgment accordingly and issue a warrant to search for and seize said material. The warrant shall describe with reasonable certainty the person, premises or other place to be searched and the material

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for which the search is to be made and which is to be seized. The warrant must be signed by the issuing judge or magistrate and bear the date and hour of its issuance above his signature.

(f) Evidence of any hearing held pursuant to this section shall not be competent or admissible in any criminal action for the violation of any other section of this Chapter; provided, however, that where a violation involving the dissemination of obscenity under other sections of this Chapter is charged as having occurred subsequent to such hearing, having involved the same materials declared obscene under the provisions of this section, and the same party who was respondent in such hearing, then evidence of such hearing shall be competent and admissible as bearing on the issue of scienter only.

(g) Any respondent described in this section who shall violate any provision of this section or any order issued under any provision of this section shall be guilty of a misdemeanor.

(h) Nothing in this section shall be construed as preventing any law enforcement officer from arresting any person when that person is charged under a proper warrant or indictment with a criminal violation of Sec. 13-21.1, or when that person has committed a crime in the presence of the officer, or when the officer has reasonable grounds to believe that that person has committed a crime in his presence. Neither shall anything in this section be construed as prohibiting any law enforcement officer from seizing for evidentiary purposes single

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copies of any books, magazines, or other printed material, which he reasonably believes to be obscene within the meaning of Sec. 13-21.1 when such seizure is made pursuant to a lawful arrest.

Sec. 13-21.3. Exhibition of obscene pictures; posting of advertisements.

If any person, firm or corporation shall disseminate in any public place any obscene motion picture; or if any person, firm or corporation shall post any obscene placard, writings, pictures, or drawings on walls, fences, billboards, or other public places, advertising theatrical exhibitions or moving picture exhibitions or shows; or if any person, firm or corporation shall intentionally permit such obscene exhibitions to be conducted in any tent, booth, or other place or building owned or controlled by said person, firm or corporation, the person, firm or corporation performing either one or all of the said acts shall be guilty of a misdemeanor.

Sec. 13-21.4. Coercing acceptance of obscene articles or publications.

No person, firm or corporation shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication require that the purchaser or consignee receive for resale any other article, book, or publication which is obscene within the meaning of Sec. 13-21.1; nor shall any person, firm or corporation deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books, or publications, or by reason of the return thereof. Any violation of

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this section shall be a misdemeanor.

Sec. 13-21.5. Preparation of obscene photographs, slides and motion pictures.

Every person who knowingly:

- (1) photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for the purpose of dissemination in a public place; or
- (2) models, poses, acts, or otherwise assists in the preparation of any obscene film, photograph, negative, slide, or motion picture for the purpose of dissemination in a public place, shall be guilty of a misdemeanor.

Sec. 13-21.6. Employing or permitting minor to assist in offense under these sections.

Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 18 years to do or assist in doing any act or thing constituting an offense under these sections shall be guilty of a misdemeanor.

Sec. 13-21.7. Dissemination to minors under the age of eighteen years.

Every person 18 years of age or older who knowingly disseminates to any minor under the age of 18 years any material which is obscene within the meaning of Sec. 13-21.1 shall be guilty of a misdemeanor."

Section 2. That this ordinance shall become effective upon adoption.

Approved as to form:

Henry W. Underhill, Jr.  
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina in Special Session convened on the 23rd day of April, 1971 the reference having been made in Minute Book 55, and recorded in full in Ordinance Book 18, beginning at Page 145. Ruth Armstrong, City Clerk