

**BOROUGH OF OLD TAPPAN
ORDINANCE NO. 748-01**

**AN ORDINANCE SUPPLEMENTING CHAPTER III
“GENERAL POLICE REGULATIONS” OF THE REVISED
GENERAL ORDINANCES OF THE BOROUGH OF OLD
TAPPAN TO REGULATE DISPLAY OF OBSCENE MATERIALS**

WHEREAS, N.J.S. 2C:34-3.2 provides that a municipality may enact an ordinance regulating the display of obscene materials as provided therein;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Old Tappan, County of Bergen, State of New Jersey, as follows:

Section 1. Chapter 3 “General Police Regulations” of the Revised General Ordinances of the Borough of Old Tappan is hereby supplemented by the addition of the following:

3-16 Display by Retailer of Obscene Material.

3-16.1 *Definitions.* The following words and terms shall have the meanings herein indicated for the purposes of this section:

Obscene Material. Any description, narrative account, display, depiction of a specified anatomical area or specified sexual activity contained in, or consisting of, a picture or other representation, publication, sound recording, live performance, film, or video, which by means of posing, composition, format or animated sensual details, emits sensuality with sufficient impact to concentrate prurient interest on the area or activity.

Retailer. Any person who operates a store, newsstand, booth, concession, or similar business with unimpeded access for persons under 18 years old, who is in the business of making sales or rentals of periodicals, other publications, films or video, at retail.

Specified Anatomical Area.

a. Less than completely or opaquely covered human genitals, pubic region, buttock or female breasts below a point immediately above the top of the areola; or

- b. Human male genitals in a discernibly turgid state, even if covered.

Specified Sexual Activity.

- a. Human genitals in a state of sexual stimulation or arousal; or
- b. Any act of human masturbation, sexual intercourse or deviate sexual intercourse; or
- c. Fondling or other erotic touching of covered or uncovered human genitals, pubic region, buttock or female breast.

3-16.2 *Regulation of Display by Retailer of Obscene Material.* It shall be a petty disorderly persons offense for a retailer to display or permit to be displayed at his business premises any obscene material at a height of less than five feet or without a blinder or other covering placed or printed on the front of the material displayed. Public display of the obscene material shall constitute presumptive evidence that the retailer knowingly made or permitted the display.

Section 2. Repealer.

All ordinances or parts of ordinances inconsistent or in conflict with this Ordinance are hereby repealed as to said inconsistencies and conflicts.

Section 3. Severability.

If any section, part of any section, or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this ordinance. The governing body of the Borough of Old Tappan

declares that it would have passed the ordinance and each section and subsection thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

Section 4. Effective Date.

This ordinance shall take effect immediately upon passage and publication according to law.