

City Clerk File No. Ord. 18-123

Agenda No. 3.A 1st Reading

Agenda No. 4.A 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 18-123

TITLE: AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 251 (PORNOGRAPHY AND OBSCENITY) OF THE JERSEY CITY MUNICIPAL CODE REPEALING THE CURRENT VERSION IN ITS ENTIRETY AND ADOPTING A NEW VERSION

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Chapter 251 of the Municipal Code governs the sale, distribution or exhibition of obscene materials or devices and defines indecent exposure; and

WHEREAS, Chapter 251 of the Municipal Code was first adopted by the Municipal Council on May 27, 1982 as Ordinance MC-187 later amended and supplemented by Ordinance McC-131 on April 25, 1990 and amended again by Ordinance McC-197 on September 26, 1990; and

WHEREAS, the United States Supreme Court, ruling in the matter of Miller v. California, 413 U.S. 15 (1973), held that when establishing laws regulating obscene materials, the governing body must craft the regulation(s) in light of contemporary community standards as an average person within the community would judge them; and

WHEREAS, the Municipal Council finds that the current version of Chapter 251 no longer reflects the contemporary community standards and must be repealed in its entirety and a new version, reflecting contemporary community standards, must be adopted.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that the existing version of Chapter 251 (Pornography and Obscenity) is repealed in its entirety and the following is hereby adopted:

CHAPTER 251 PORNOGRAPHY AND OBSCENITY

§ 251-1. - Definitions.

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

DISPLAY - To promote, issue, sell, give, provide, lend, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.

FILM - Any motion picture, film, preview or trailer to a motion picture or film, not including any motion picture or film which portrays actual events or pictorial news.

LICENSED ESTABLISHMENT - any business licensed to sell alcoholic beverages for purchase or consumption.

MATERIAL - Anything tangible that is capable of being used, displayed or adapted for use.

OBSCENE - In accordance with the standards set forth in *Miller v. California*, 413 U.S. 15 (1973), any material, film or any performance which violates the accepted community standard for decency. The public display of material, film or a performance shall be deemed obscene if an average resident of Jersey City, after having evaluated the display or performance as a whole, and after having applied contemporary community standards to the display or performance, would conclude that the display or performance (1) lacks any serious literary, artistic, political or scientific value and (2) appeals only to the prurient interest in sex.

Examples of obscenity include, but are not limited to, the public display of any material, any film or live performance which depicts:

- (1) reproductions or descriptions of intimate sexual acts, actual or simulated, including sexual intercourse and bestiality;
- (2) representations or descriptions of masturbation, excretory functions, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal or covered male genitals in a discernibly turgid state.

PERFORMANCE - A play, dance or other exhibition performed before an audience.

STATE OF NUDITY - The complete exposure of the anus or genitals or pubic area or of the female breast below the point immediately above the top of the areola down to the bottom of the areola.

§ 251-2. - Display of Obscene Materials for sale, restrictions; fee.

- A. No person who operates a store, newsstand, booth, concession, movie and video sale or rental or similar business with unimpeded access for persons under 18 years of age or who is in business of making sales or rentals of movies, pictures, drawings, photographs or other visual depictions shall display or permit to be displayed at his or her business premises any Obscene Material at a height of less than five feet and without a blinder or other covering placed or printed on the material displayed. The public display of the Obscene Material shall constitute presumptive evidence that the retailer knowingly made or permitted this display.
- B. Every person who displays Obscene Materials as defined herein shall register with the Division of Commerce, identify the location of each site where such materials are displayed and thereafter notify the Division of Commerce of any change of location or change of address of the material displayed. There shall be a one-time registration fee as provided in Chapter 160, Fees and Charges, to offset the cost of registration and enforcement.

§ 251-3. - Unlawful acts.

A person commits an offense under this Chapter if that person:

- (1) displays any Obscene Material, or displays any Obscene Material for sale in a manner inconsistent with the provisions set forth in § 251-2;
- (2) publicly presents an Obscene Film or Performance or participates in a part participates in a part of a performance that is obscene or that contributes to its obscenity;
- (3) appears or travels on any street, avenue, highway, road or waterway located in the City or to appears in any public place, store or business in a State of Nudity.

§ 251-4. - Exceptions.

A female is not considered to be in a State of Nudity if she exposes her breast while in the process of breastfeeding.

§ 251-5. - Licensed Establishments may be subject to more stringent restrictions.

Licensed Establishments are subject to the standards set forth in N.J.S.A. 33 et seq. governing the sale of Intoxicating Liquors and N.J.A.C. 13:2 et seq.. Nothing in this Chapter shall be construed as supplementing or superseding any of the regulations contained therein with respect to obscene or lewd behavior in or about a Licensed Establishment.

§ 251-6. - Violations and penalties.


The penalty for a violation of this article shall be as provided in Chapter 1, General Provisions, § 1-25.

- I. All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed.
- II. This Ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Jersey City Code.
- III. This ordinance shall take effect at the time and in the manner as provided by law.
- IV. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this Ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new. Therefore, underlining has been omitted.

JJH/JS 7/19/18


APPROVED AS TO LEGAL FORM



Corporation Counsel

APPROVED: _____

APPROVED: _____



Business Administrator

Certification Required ☐
Not Required ☐

ORDINANCE FACT SHEET

This summary sheet is to be attached to the front of any Ordinance that is submitted for Council consideration. Incomplete or vague fact sheets will be returned with the Ordinance.

Full Title of Ordinance

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 251 (PORNOGRAPHY AND OBSCENITY) OF THE JERSEY CITY MUNICIPAL CODE REPEALING THE CURRENT VERSION IN ITS ENTIRETY AND ADOPTING A NEW VERSION

Initiator

Department/Division	The Municipal Council	Office of the Ward E Councilperson
Name/Title	James Solomon	Councilman, Ward E
Phone/email	201-547-5315	jsolomon@jcnj.org

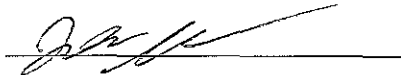
Note: Initiator must be available by phone during agenda meeting (Wednesday prior to council meeting @ 4:00 p.m.)

Ordinance Purpose

This Ordinance repeals the existing version of Chapter 251 and replaces it with an entirely new version more aligned with contemporary community standards.

Specifically, this new version updates and/or clarifies the definitions found in the existing version, removes any reference to sexual devices, and provides an exception for breastfeeding. It also clarifies that events held within establishments which dispense alcoholic beverages are subject to the heightened standards set forth under the State's laws governing the sale of liquor.

I certify that all the facts presented herein are accurate.



James Solomon
Councilman, Ward E

October 16, 2018

Date

Ordinance of the City of Jersey City, N.J.



ORDINANCE NO. Ord. 18-123
TITLE: 3.A OCT 24 2018 4.A

NOV 07 2018

An ordinance amending and supplementing Chapter 251 (Pornography and Obscenity) of the Jersey City Municipal Code repealing the current version in its entirety and adopting a new version

RECORD OF COUNCIL VOTE ON INTRODUCTION											
OCT 24 2018 6-2											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
RIDLEY	✓			YUN		✓		RIVERA	ABSENT		
PRINZ-AREY	✓			SOLOMON	✓			WATTERMEN	✓		
BOGGIANO		✓		ROBINSON	✓			LAVARRO, PRES.	✓		

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
NOV 07 2018 7-0											
Councilperson <u>SOLOMON</u> moved, seconded by Councilperson <u>LAVARRO</u> to close P.H.											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
RIDLEY	✓			YUN	ABSENT			RIVERA	✓		
PRINZ-AREY	✓			SOLOMON	✓			WATTERMEN	ABSENT		
BOGGIANO	✓			ROBINSON	✓			LAVARRO, PRES.	✓		

✓ Indicates Vote

N.V.--Not Voting (Abstain)

SPEAKERS:

YVONNE BALCER
RICHARD SURAZYNSKI
LILLIAN BUSTLE
JEANNE DALY
TYBER LENTUR MURPHY
MIKE KULOWSKI

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson				moved to amend* Ordinance, seconded by Councilperson				& adopted			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
RIDLEY				YUN				RIVERA			
PRINZ-AREY				SOLOMON				WATTERMEN			
BOGGIANO				ROBINSON				LAVARRO, PRES.			

RECORD OF FINAL COUNCIL VOTE											
NOV 07 2018 7-1											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
RIDLEY	✓			YUN		✓		RIVERA	✓		
PRINZ-AREY	✓			SOLOMON	✓			WATTERMEN	ABSENT		
BOGGIANO	✓			ROBINSON	✓			LAVARRO, PRES.	✓		

✓ Indicates Vote

N.V.--Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on OCT 24 2018
Adopted on second and final reading after hearing on NOV 07 2018

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on NOV 07 2018

Robert Byrne
Robert Byrne, City Clerk

*Amendment(s):

APPROVED:

Rafael R. Lavarro, Jr.
Rafael R. Lavarro, Jr., Council President

Date NOV 07 2018

APPROVED:

Steven M. Fulop
Steven M. Fulop, Mayor

Date NOV 08 2018

Date to Mayor NOV 08 2018