



CITY OF CAMBRIDGE

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LAW DEPARTMENT

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CHARLES WATSON
LEGISLATIVE AGENT

April 3, 1974

The Honorable City Council
City Hall
Cambridge, Massachusetts

Dear Councillors:

You have asked for my assistance in drafting an ordinance relative to pornographic materials.

Please be advised that, at the present time, there is a bill pending in the Massachusetts House of Representatives. The said bill is House No. 1962 and is in the House Judiciary Committee.

I have attached a copy of the bill hereto and feel that the City of Cambridge should wait until the House Bill is reported out of Committee, before enacting a local ordinance.

I will follow the course which this bill takes and report back to you at the appropriate time.

Very truly yours,

Edward D. McCarthy
City Solicitor

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Enc.

~~By Messrs. Flynn of Boston and White of Boston,~~
~~By the same Messrs.~~

By Mr. Flynn of Boston, petition (accompanied by bill, House, No. 1962) of Robert H. Quinn (Attorney General), Raymond L. Flynn and W. Paul White for legislation to regulate the sale and distribution of obscene matters. The Judiciary./

AN ACT amending certain laws relating to obscene matters.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 272 of the General Laws is hereby amended by striking out sections 28A through 28H, inclusive, and inserting in place thereof the following ten sections:

Section 28. Whoever knowingly sells or distributes, imports, prints or publishes for the purpose of selling or distributing, to a person under the age of eighteen years any matter which is obscene or harmful to minors, or knowingly introduces into a family, school or place of education, any such matter, or knowingly buys, procures, receives or has in his possession any such matter, either for the purpose of sale, exhibition, loan or circulation to a person under the age of eighteen years or with intent to introduce the same into a family, school or place of education, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than

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two and one half years, or by a fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment in jail or the house of correction. In order to obtain a conviction under this section, it shall not be necessary to prove that such matter has been adjudged to be obscene under the provisions of sections twenty-eight C to twenty-eight H, inclusive.

Section 28A. Whoever knowingly imports, prints, publishes, sells or distributes any matter which is obscene, or knowingly buys, procures, receives or has in his possession any such matter, for the purpose of sale, exhibition, loan or circulation, shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one half years, or by a fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment in jail or the house of correction.

Section 28B. Whoever imports, prints, publishes, sells, loans or distributes, or buys, procures, receives, or has in his possession for the purpose of sale, loan or distribution, a book, knowing it to be obscene, or whoever, being a wholesale distributor, a jobber, or publisher sends or delivers to a retail storekeeper a book, pamphlet, magazine or other form of printed or written material, knowing it to be obscene, which said storekeeper had not previously ordered in writing, specifying the title and quantity of such publication he desired, shall be punished by imprisonment in the state prison for

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not more than five years or in a jail or house of correction for not more than two and one half years, or by a fine of not less than one hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment in jail or the house of correction.

Section 28C. Whenever there is reasonable cause to believe that a book which is being imported, sold, loaned or distributed, or is in the possession of any person who intends to import, sell, loan or distribute the same, is obscene, the attorney general, or any district attorney within his district, shall bring an information or petition in equity in the superior court directed against said book by name. Upon the filing of such information or petition in equity, a justice of the superior court shall, if, upon a summary examination of the book, he is of opinion that there is reasonable cause to believe that such book is obscene, issue an order of notice, returnable in or within thirty days, directed against such book by name and addressed to all persons interested in the publication, sale, loan or distribution thereof, to show cause why said book should not be judicially determined to be obscene. Notice of such order shall be given by publication once each week for two successive weeks in a daily newspaper published in the city of Boston and, if such information or petition be filed in any county other than Suffolk county, then by publication also in a daily newspaper published in such other county. A copy of such order of notice shall be sent by registered mail to the publisher of said book, to the person holding the copyrights, and to the author,

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in case the names of any such persons appear upon said book, fourteen days at least before the return day of such order of notice. After the issuance of an order of notice under the provisions of this section, the court shall, on motion of the attorney general or district attorney, make an interlocutory finding and adjudication that said book is obscene, which finding and adjudication shall be of the same force and effect as the final finding and adjudication provided in section twenty-eight E or section twenty-eight F, but only until such final finding and adjudication is made or until further order of the court.

Section 28D. Any person interested in the sale, loan or distribution of said book may appear and file an answer on or before the return day named in said notice or within such further time as the court may allow, and may claim a right to trial by jury on the issue whether said book is obscene.

Section 28E. If no person appears and answers within the time allowed, the court may at once upon motion of the petitioner, or of its own motion, no reason to the contrary appearing, order a general default and if the court finds that the book is obscene, may make an adjudication against the book that the same is obscene.

Section 28F. If an appearance is entered and answer filed, the case shall be set down for speedy hearing, but a default and order shall first be entered against all persons who have not appeared and answered, in the manner provided in section twenty-eight E. Such

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hearing shall be conducted in accordance with the usual course of proceedings in equity including all rights of exception and appeal. At such hearing the court may receive the testimony of experts and may receive evidence as to the literary, artistic, political or scientific value of said book and as to the manner and form of its publication, advertisement, and distribution. Upon such hearing, the court may make an adjudication in the manner provided in section twenty-eight E.

Section 28G. An information or petition in equity under the provisions of section twenty-eight C shall not be open to objection on the ground that a mere judgment, order or decree is sought thereby and that no relief is or could be claimed thereunder on the issue of the defendant's knowledge as to the obscenity of the book.

Section 28H. In any trial under section twenty-eight B on an indictment found or a complaint made for any offense committed after the filing of a proceeding under section twenty-eight C, the fact of such filing and the action of the court or jury thereon, if any, shall be admissible in evidence. If prior to the said offense a final decree had been entered against the book, the defendant, if the book be obscene, shall be conclusively presumed to have known said book to be obscene, or if said decree had been in favor of the book he shall be conclusively presumed not to have known said book to be obscene, or if no final decree had been entered but a proceeding had been filed prior to said offense, the defendant shall be conclusively presumed to

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have had knowledge of the contents of said book.

Section 28I. As used in this chapter, the following words shall have the following meanings unless the context requires otherwise:

"Harmful to minors", to the average adult person applying contemporary standards of the commonwealth, the matter taken as a whole (a) does not have serious literary, artistic, political or scientific value, (b) appeals to the prurient interest in sex of individuals under eighteen years of age, and (c) goes substantially beyond customary limits of candor in description or representation of such matters for individuals under eighteen years of age.

"Knowingly", having a general awareness of the character of the matter.

"Matter", any printed material, visual representation, or sound recording, including but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures or statues.

"Obscene", to the average person, applying contemporary standards of the commonwealth, the matter taken as a whole, (a) appeals to the prurient interest in sex, (b) portrays in a patently offensive way a representation or description of human sexual intercourse, actual or simulated, normal or perverted; or portrays in a patently offensive way a representation or description of masturbation, homosexuality, lesbianism, excretory functions, lewd exhibition of the genitals, bestiality, oral intercourse, anal intercourse, direct physical stimulation of (1) clothed or unclothed genitals (2) pubic area, (3) buttocks, or (4) breast or breasts of a female, flagellation, or torture in the context of a sexual relationship and (c) does not have serious literary, artistic, political, or scientific value.

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