

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

ORDINANCE #18-2024

BOROUGH OF MENDHAM
MORRIS COUNTY, NEW JERSEY

**AN ORDINANCE OF THE BOROUGH OF MENDHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY, AMENDING CHAPTER 147, PEACE AND GOOD ORDER,
TO REMOVE SECTION 147-2, INDECENT PRESENTATIONS, BOOKS AND
OBJECTS, WHICH HAS BEEN SUPERSEDED BY N.J.S.A. 2C:34-2, FROM OF THE
BOROUGH OF MENDHAM'S CODE OF ORDINANCES**

WHEREAS, the Borough of Mendham Code currently reflects a chapter entitled Chapter 147, Peace and Good Order, which reflects a number of prohibited activities for the betterment and protection of the public's health, safety and welfare; and

WHEREAS, within Chapter 147, at Section 147-2 and entitled Indecent presentations, books and objects, and pursuant to a re-codification effort to update the Borough Code, that section is now legally superseded by New Jersey state statute; and

WHEREAS, while N.J.S.A. 40:48-2 authorizes municipalities to enact ordinances for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and N.J.S.A. 40:41A-28 recognizes that "[m]unicipalities are and shall remain the broad repository of local police power in terms of the right and power to legislate for the general health, safety and welfare of their residents" the Borough's interests as set forth within Chapter 147-2 are now in fact superseded by state statute only as to this specific section; and

WHEREAS, N.J.S.A. 2C:34-2 and New Jersey case law (See State v. Meyer, 212 N.J. Super. 1, 4 (App. Div. 1986)), has directed that "The subject of obscenity has largely been preempted by the Code"; and

WHEREAS, the Council Safety Committee has reviewed with the Borough Attorney and recommends the update; and

WHEREAS, the Mayor and Borough Council of the Borough of Mendham now deem it in the best interests of the Borough to amend the Borough Code to reflect this update.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Borough Council of the Borough of Mendham, in the County of Morris and State of New Jersey, as follows:

SECTION 1.

Within the Borough Code of the Borough of Mendham, Part II: General Legislation, Chapter 147, Peace and Good Order, only Section 147-2, entitled Indecent presentations, books and objects, shall herein be revoked and repealed in its entirety.

SECTION 2.

All ordinances or parts of ordinances of the Borough of Mendham inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 3.

If any section, subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this Ordinance.

SECTION 4.

This Ordinance may be renumbered for purposes of codification, and/or Chapters reserved for future use.

SECTION 5.

This Ordinance shall take effect upon final passage, approval, and publication as required by law.

INTRODUCED: November 7, 2024

ADOPTED:

EFFECTIVE DATE:

ATTEST:

BOROUGH OF MENDHAM
COUNTY OF MORRIS
STATE OF NEW JERSEY

Lauren McBride, Acting Borough Clerk

Christine Serrano-Glassner, Mayor