

Chapter 88
OBSCENE MATERIALS

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[HISTORY: Adopted by the Board of Supervisors of the Bear Creek Township 4-5-1977. Amendments noted where applicable.]

GENERAL REFERENCES

Nuisances — See Ch. 86.

§ 88-1. Findings and purpose.

The Board of Supervisors finds that the inundation of the commercial market with pictures, descriptions and accounts of explicit sexual conduct by the public sale, distribution and exhibition of obscene motion picture films, publications, devices and objects for the purpose of the commercial exploitation of explicit sexual conduct and behavior, and the increase in direct and personal confrontations of the public with lewdness, assignation and prostitution in the form of business establishments which in the regular course of business are used for such purposes, constitutes a debasement and an unrealistic and perverted distortion of a sensitive, key relationship in the human existence, central to the family institution, which remains the foundation of our society, community welfare and the development of our human personalities; is indecent and offensive to the senses and to the public morals and interferes with the comfortable enjoyment of life and property, in that such interferes with the interest of the public in the quality of life and the total community environment, the tone of commerce in the township, property values and the public safety and morality; and that the continued existence and operation of such activities is detrimental to the best health, safety, convenience, good morals and general welfare of the Bear Creek Township, Pennsylvania, and of the residents, citizens, inhabitants and businesses thereof. Accordingly, the Board of Supervisors of the Bear Creek Township herein declares such activities and conduct to be unlawful and, further, that such activities and conduct are declared to be a public nuisance, and herein establishes penalties for such activities and conduct.

§ 88-2. Definitions.

Terms used in this chapter, unless the context requires otherwise, mean as follows:

CONTEMPORARY COMMUNITY STANDARDS — The standards of the average person in the community from which a jury may be drawn if it were to be the trial of fact in an action arising hereunder.

DISTRIBUTED and DISTRIBUTION — The transfer of possession or control, whether with or without consideration.

EXHIBITED or EXHIBITION — To show publicly or display, or to provide for the showing or displaying to any member of the public, whether with or without consideration.

KNOWINGLY — Having actual or constructive knowledge of the character or content of the subject matter, material or conduct. A person shall be deemed to have constructive knowledge of the character and content of the subject matter, material or conduct if he has knowledge of facts which would put a reasonable and prudent man on notice as to nature of the matter, material or conduct.

MATTER or MATERIAL — Any book, magazine, newspaper or other written or printed material; or any picture, drawing, photograph, motion picture film or other pictorial representations; or any statue, object or other figure; or any recording, transcription or mechanical, chemical or electrical reproduction; or any other articles, equipment or machines.

MOTION PICTURE FILM — Includes any:

- A. Film or plate negative.
- B. Film or plate positive.
- C. Film, slides or transparencies, either in negative or positive form, designed for presentation by projection upon a screen or wall surface.

NUDE or NUDITY — Includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering or the showing of the female breast or any portion thereof below a point immediately above the top of the areola, with less than a full opaque covering, or the depiction of opaquely covered male genitals in a discernibly turgid state.

NUISANCE — A public nuisance and shall apply to:

- A. Any place where obscene motion picture films or live performances are publicly exhibited, presented or shown as a regular course of business or possessed for the purpose of such exhibition, presentation or showing;
- B. Any place where an obscene motion picture film or live performance is publicly and repeatedly exhibited, presented or shown or is possessed for the purpose of such exhibition, presentation or showing; or
- C. Any place of business where obscene publications, materials or matter are sold, distributed or exhibited to the public.

OBSCENE:

- A. As applied to motion picture films, live performances and publications, any motion picture film, live performance or publication which:
 - (1) The average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest.

- (2) Depicts or describes patently offensive representations or descriptions of:
 - (a) Ultimate sex acts, normal or perverted, actual or simulated, heterosexual or homosexual; or
 - (b) Masturbation, excretory functions, exhibition of the genitals or genital area or the female breast or any portion thereof below a point immediately above the top of the areola, with less than a full opaque covering.
- B. However, nothing contained in this subsection is intended to include, nor does it include, any film or publication which, when considered as a whole and in the framework in which it is used, possesses serious literary, artistic, political or scientific value.
- C. Matter or material, as follows:
 - (1) The dominant theme of which, taken as a whole, appeals to the prurient interest.
 - (2) Which is patently offensive because it affronts contemporary community standards of decency and morality relating to the description of sexual conduct.
 - (3) Lacks serious literary, artistic, political or scientific value.

PATENTLY OFFENSIVE CONDUCT — Conduct which is so offensive as to ignore contemporary community standards of decency and morality, and shall be deemed to include all forms of sexual conduct and sadomasochistic abuse, if depicted, described or represented in a patently offensive manner.

PERSON — Includes any natural person or individual, whether male or female, firm, corporation, partnership, association, lessee, agent or other legal entity. This term as applied to partnerships shall mean and include the partners thereof, and as applied to corporations, shall mean and include the officers thereof.

PLACE — Includes but is not limited to any building, structure or place or any separate part or portion thereof, whether permanent or not, or the ground itself, whether enclosed or open.

PRURIENT INTEREST — A shameful or morbid interest in nudity, sexual conduct or excretion, which goes substantially beyond customary limits of candor in depiction, description or representation of such matters. If it appears from the content and the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience or a clearly defined deviant sexual group, the appeal of the subject matter shall be judged with reference to such audience or group.

PUBLICATION — Includes any book, magazine, article, pamphlet, writing, printing, illustration, drawing, picture, sound recording or a motion picture film which is offered for sale, distribution or exhibition.

SADOMASOCHISTIC ABUSE — The flagellation or torture by or upon a person who is wholly or partially nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, tied or otherwise physically restrained on the part of one who is wholly or partially nude or so clothed.

SEXUAL CONDUCT— Includes but is not limited to any act of masturbation, homosexuality, sexual intercourse or physical conduct with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, the breast.

§ 88-3. Prohibited acts.¹

- A. Any person, as defined in § 88-2 of this chapter, who knowingly sells, distributes, exhibits, donates, lends or transmits to another, or offers to or intends to sell, distribute, exhibit, donate, lend or transmit to another, any obscene matter or material as defined in § 88-2 herein shall be guilty of an offense hereunder.
- B. Any person who manufactures, publishes or prepares any obscene matter or material shall be guilty of an offense.
- C. Any person who knowingly sponsors, directs, produces, presents or participates in any performance knowing the same to be obscene in content and character shall be guilty of an offense.
- D. Any person who knowingly sponsors, supports or participates in or aids and abets any person in procuring, selling, lending, distributing, donating, showing or transmitting any obscene matter or material to the public or any member thereof shall be guilty of an offense.
- E. Any person, being the owner, lessee or sublessee of any property or premises or having control thereof, who knowingly permits within or upon said premises the exhibition, presentation or showing of any performance, obscene in nature, whether it be live or film, or permits the sale, distribution, exhibition, lending, donation or showing of any obscene matter or material to anyone while within or upon said premises shall be guilty of an offense.
- F. Any person who knowingly writes, prints, publishes, transcribes or utters or causes to be written, printed, published, transcribed or uttered any advertisement, invitation or notice of any kind giving direct or indirect information, stating or purporting to state where, how or by whom or by what means any obscene matter or material can or might be viewed, seen, purchased, received, obtained or had shall be guilty of an offense.
- G. Any person who willfully or knowingly engages in the business of selling, distributing, exhibiting, lending, donating, showing or advertising for sale to any person under the age of eighteen (18) years, or who has in his possession with the intent to engage in said business or to otherwise offer for sale or commercial distribution to any individual under the age of eighteen (18) years, any obscene matter or materials, the cover or content of which exploits, is devoted to or is principally made up of descriptions, depictions or representations of obscene sexual conduct or sadomasochistic abuse or which consists of photographs or drawings of nude or partially nude figures posing or presented in a manner to provoke or arouse lust or passion or to exploit such sex, lust or sadomasochism for commercial gain, or any object, device, article or instrument of an obscene nature shall be guilty of an offense.

¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

- H. Any person who knowingly displays at newsstands or magazine stands or any other business establishment frequented by minors or where said minors are or may be invited as part of the general public, any obscene matter or material, the cover or content of which exploits, is devoted to or is principally made up of depictions, descriptions or representations of obscene sexual conduct or sadomasochistic abuse or which consists of photographs or drawings of nude or partially nude figures posing or presented in a manner to provoke or arouse lust or passion or to exploit such nudity, sex, lust or perversion for commercial gain, shall be guilty of a summary offense.
- I. Any person who shall own, lease, operate or maintain any place, building, apartment or establishment, or any part thereof, which, as a regular course of business, is used for the purpose of lewdness, assignation or prostitution, and every such place, building, apartment or establishment in or upon which acts of lewdness, assignation or prostitution are held or occur, as a regular course of business, is declared to be a public nuisance. Any such person violating this section shall be guilty of an offense.
- J. Subsections A through I of this section shall not apply to any persons who may possess or distribute obscene matter or participate in conduct, otherwise prescribed and prohibited by said subsections, when such possession, distribution or conduct occurs in the course of law enforcement and judicial activities, in the course of bona fide school, junior college, college, university, museum or public library activities or in the course of employment of such an organization.

§ 88-4. Violations and penalties.²

Any person convicted of violating any subsection of § 88-3 of this chapter shall be sentenced to pay a fine of not less than twenty-five dollars (\$25.) and not exceeding six hundred dollars (\$600.), and costs of prosecution, for each and every violation, or to a term of imprisonment for a period not exceeding thirty (30) days, or both. Each separate instance of sale, distribution, lending, donating, showing, advertising for sale or transmitting, or the offering to do the aforescribed, in violation of the provisions of this chapter shall constitute separate and distinct offenses.

§ 88-5. Applicability.

This chapter shall become effective immediately and shall apply to existing establishments which are presently engaged in the type of activity herein declared to be illegal and a public nuisance.

² Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.