

ORDINANCE

ORDINANCE NO. 1-78

AN ORDINANCE DEFINING AND PROHIBITING THE PROMOTION OF PORNOGRAPHY WITHIN THE TOWNSHIP OF KISKIMINETAS, COUNTY OF ARMSTRONG AND COMMONWEALTH OF PENNSYLVANIA, AND PRESCRIBING FINES AND PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township of Kiskiminetas, and it is hereby Ordained and Enacted as follows:

SECTION I: DEFINITIONS - For the purpose of this Ordinance, the words and phrases set forth below shall have the meaning respectively ascribed to them:

1. AUDIENCE means one or more persons who are permitted to view a performance (a) for valuable consideration or (b) in or from a public place.
2. DISPLAY PUBLICLY means the exposing, placing, posting, exhibiting, or in any other fashion displaying in any location, whether public or private, material or a performance in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public place or vehicle.
3. DISSEMINATE means to manufacture, issue, publish, sell, lend, distribute, transmit, broadcast, exhibit or present material or to offer or agree to do the same, or to have in one's possession with intent to do the same.
4. MATERIAL means any printed matter, visual representation, or sound recording, and includes but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, three-dimensioned forms, sculptures, and phonograph, tape or wire recordings.

5. MINOR means any person under eighteen (18) years of age.

6. NUDITY means uncovered, or less than opaquely covered, post-pubertal human genitals or pubic area, the postpubertal human female breast below a point immediately above the top of the areola or the covered human male genitals in a discernibly turgid state. For the purpose of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

7. PANDER means advertising or propagandizing in connection with the sale of material, the offering of a service, or the presentation or exhibition of a performance by appealing to the prurient interest of potential customers.

8. PERFORMANCE means any live or reproduced exhibition, including, but not limited to, any play, motion picture film, dance or appearance presented to or performed before an audience.

9. PORNOGRAPHIC: Relating to pornography.

10. PORNOGRAPHY: Any material or performance is "pornography" if all of the following elements are present: (a) considered as a whole, by the average person, applying the contemporary community standards of the Township of Kiskiminetas, it appeals to the prurient interest; and, (b) it depicts, describes or represents in a patently offensive way, sexual conduct, as hereinafter defined; and, (c) it lacks serious literary, artistic, political or scientific value.

11. PORNOGRAPHY FOR MINORS: Any material or performance is "pornography for minors" if all of the following elements are present: (a) considered as a whole, by the average person applying the contemporary community standards of the Township of Kiskiminetas, with respect to what is suitable for minors, it is presented in such a manner as to appeal to a minor's prurient interest; and, (b) it depicts, describes or represents in a patently offensive way, nudity or sexual conduct as hereinafter defined; and,

(c) it lacks serious literary, artistic, political or scientific value for minors.

12. PRURIENT INTEREST means desire or craving for sexual stimulation or gratification. In determining "prurient interest", the material or performance shall be judged with reference to average persons, unless it appears from the character of the material or performance that it is designed to appeal to the prurient interest of a particular group of persons, including, but not limited to, homosexuals, or sado-masochists. In that case, it shall be judged with reference to the particular group for which it was designed.

13. PUBLIC PLACE OR VEHICLE means any of the streets, alleys, parks, boulevards, schools or other public property in the Township, or any dance hall, rental hall, theater, amusement park, liquor establishment, store, depot, place of public accommodation, or other private property generally frequented by the public for the purposes of education, recreation, amusement, entertainment, sport, shopping or travel; or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any non-governmental agency for the use, enjoyment or transportation of the general public.

14. SEXUAL CONDUCT means: (a) masturbation; (b) sexual intercourse, whether genital-genital, oral-genital, oral-anal, or anal-genital; (c) any erotic fondling or touching of the covered or uncovered genitals, buttocks, pubic area, or any part thereof the breasts of the female; whether the conduct described in (a) through (c) is engaged in alone or between members of the same or opposite sex, or between humans and animals or humans and inanimate objects; or, (d) actual or simulated display or exhibition of the human pubic area or genitals or any part thereof, or (e) sexual excitement, as hereinafter defined; or, (f) sado-masochistic abuse as hereinafter defined.

15. SEXUAL EXCITEMENT means the facial expressions, movements, utterances or other responses of a human male or female, whether along or with others, whether clothed or not, who is in an apparent state of sexual stimulation or arousal, or experiencing the physical or sensual reactions of humans engaging in or witnessing sexual conduct.

16. SADO-MASOCHISTIC ABUSE means flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bizarre costume, or the condition of such person being fettered, bound or otherwise physically restrained, in an apparent act or sexual stimulation or gratification.

SECTION II: PROMOTING PORNOGRAPHY

1. It shall be unlawful for any person to promote pornography. A person commits the offense of promoting pornography if, knowing its content and character, the person:

a. Disseminates or causes to be disseminated any pornographic material in or from a public place or vehicle, or for valuable consideration; or has in his possession any pornographic material with intent to so disseminate; or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him, for such dissemination of pornographic material; or,

b. Sells an admission ticket, or pass to premises where there is being exhibited or is about to be exhibited material or a performance which is pornographic; or,

c. Admits, by accepting a ticket or pass, a person to premises where there is being exhibited or is about to be exhibited material or a performance which is pornographic; or,

d. Produces, presents, directs or knowingly allows the use of any business, building, vehicle or place, owned,

leased, conducted or managed by him to be used for, a pornographic performance before an audience; or,

e. Participates in that portion of a live performance before an audience which makes it pornographic; or,

f. Panders, displays publicly, or disseminates door-to-door, any pornographic material or performance, or causes such pandering, public display or door-to-door dissemination.

2. For the purposes of this section, possession of two (2) or more identical copies of any pornographic material by any person engaged in the business of disseminating material, as defined above, shall be prima facie evidence of possession with intent to disseminate for valuable consideration.

SECTION III: PROMOTING PORNOGRAPHY FOR MINORS

1. It shall be unlawful for any person to promote Pornography for minors. A person commits the offense of promoting pornography for minors if, knowing its content and character, the person:

a. Disseminates or causes to be disseminated to a minor material which is pornography for minors, or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him for the dissemination to a minor of material which is pornography for minors; or,

b. Exhibits to a minor a motion picture film or other performance which is pornography for minors; or,

c. Sells to a minor an admission ticket or pass to any building, vehicle, or place where there is being exhibited or is about to be exhibited a motion picture film or other performance which is pornography for minors; or,

d. Admits a minor to any building, vehicle or place where there is being exhibited or is about to be exhibited a motion picture film or other performance which is pornography for minors; or,

e. Knowingly produces, presents, directs or allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him for the presentation of performance which is pornography for minors, before any audience which includes a minor; or,

f. Displays publicly or disseminates door-to-door any material or performance which is pornography for minors, or causes such public display or door-to-door dissemination.

2. Subsections 1 (a) through (e) do not apply to a parent, guardian, or other person in loco parentis to the minor.

SECTION IV: DEFENSES

It shall be an affirmative defense to a prosecution under Section II or Section III of this Ordinance if the pornographic material was disseminated by a person who was acting in his capacity as:

1. A teacher of an accredited course of study related to pornography at a State approved educational institution; or,

2. A licensed medical practitioner or psychologist in the treatment of a patient; or,

3. A participant in the criminal justice system, such as a legislator, judge, prosecutor, law enforcement official or other similar or related position; or,

4. A supplier to any person described in (1) through (3) above.

SECTION V: PENALTIES

1. FINES: Any person convicted of violating this Ordinance shall be guilty of a summary offense, and, upon conviction before any District Magistrate, be subject to a fine not exceeding \$300.00 and costs, for each offense, and, in default of payment thereof, shall be subject to imprisonment in the appropriate jail for a period not exceeding thirty (30) days. Each day a violation of this Ordinance continues shall constitute a separate offense.

2. In addition to the fines and penalties hereinabove provided, the Township of Kiskiminetas may also enforce the provisions of this Ordinance in any Court of competent jurisdiction in an action in equity and may seek any equitable remedies so provided.

SECTION VI: DECLARATION OF PUBLIC NUISANCE

Any sale, resale, lending, distribution, exhibit, gift or show, deemed to be pornographic under the terms of this Ordinance and any offer or intended offer of sale, resale, lending, distribution, exhibition, gift or showing, are hereby declared to be contrary to the welfare and peace of the community and are hereby declared to be a public nuisance.

SECTION VII: REPEALER AND SEVERANCE

Any Ordinance or a part of Ordinance in conflict with any of the provisions of this Ordinance is hereby repealed to the extent of such conflict. If any one or more sections, subsections, sentences, clauses or phrases of this Ordinance is for any reason held to be unconstitutional, unlawful or invalid, such decision shall not affect the constitutionality, legality or validity of the remaining portions of this Ordinance. The Township of Kiskiminetas declares that if would have passed this Ordinance and any one or more remaining sections, subsections, sentences, clauses and phrases thereof, irrespective of the fact that any one or more

sections, subsections, sentences, clauses or phrases be declared unconstitutional.

ORDAINED AND ENACTED by the Board of Supervisors of the Township of Kiskiminetas at a regular meeting thereof held the ____ day of _____, 1978.

BOARD OF SUPERVISORS
KISKIMINETAS TOWNSHIP

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