

TOWNSHIP OF MONTGOMERY
INDIANA COUNTY
PENNSYLVANIA

ORDINANCE NO. 23

AN ORDINANCE RELATING TO PROHIBITION
OF THE PROMOTION OF PORNOGRAPHY

BE IT ORDAINED AND ENACTED by the Township Supervisors of the Township of Montgomery, Indiana County, Pennsylvania, and it is hereby ordained and enacted by the authority of same 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 and (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 contents 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 18 years of age.

6. "Nudity" means uncovered, or less than opaquely covered, post-pubertal human genitals or pubic area, the post-pubertal 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 reproduction 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 Montgomery, 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 Montgomery 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 materials 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 adjudged 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 Montgomery 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 or 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, or 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 or 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, utterance or other responses of a human male or female, whether alone 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 of 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, he/she:

(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 do disseminate; or knowingly allows the use of any business, building, vehicle, or place owned, leased, conducted, or managed by him/her, 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/her 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 purpose of this Section, possession of two 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 offenses of promoting pornography for minors if, knowing its content and character, he/she:

(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/her 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 an 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 of 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 Justice, be subject to a fine not less than \$300.00 nor more than \$600.00 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 days.

2. Injunction: Township Supervisors may institute proceedings in equity in the Court of Common Pleas of Indiana County for the purpose of enjoining the sale, resale, lending, distributing, exhibiting, gifting, showing, or performing of such pornographic medium, literature, book, magazine, pamphlet, newspaper, story-paper, paper, comic book, writing, drawing, photograph, figure or image, or any written or printed matter of an obscene nature, or any article or instrument of a pornographic nature, contrary to the provisions of this section, and for such

purposes jurisdiction is hereby conferred upon said Court. A preliminary injunction may issue and a hearing thereafter be held thereon in conformity with the Rules of Civil Procedure upon the averment of the Township Supervisors that the sale, resale, lending, distributing, exhibiting, gifting, showing or performing of such pornographic medium publication constitutes a danger to the welfare or peace of the community.

SECTION VI - REPEALER: Any ordinance or a part of ordinance not in accord with this ordinance is hereby repealed insofar as it affects this ordinance. 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 Supervisors of Montgomery Township declare that they 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 shall be declared unconstitutional.

ORDAINED AND ENACTED this 2nd day of January, 1996.

TOWNSHIP OF MONTGOMERY

ATTEST:

Virginia Dudek
Secretary

By William M. Burke
Supervisor

By Bruce A. Gardner
Supervisor

By Joseph A. Burkaw
Supervisor



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