

Chapter 117

OBSCENITIES

- § 117-1. Definitions.
- § 117-2. Prohibited conduct.
- § 117-3. Enforcement.
- § 117-4. Violations and penalties.

[HISTORY: Adopted by the Borough Council of the Borough of South Greensburg 3-10-1980 as Ord. No. 80-7. Sections 1172B(2)(a) and 117-4 amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I. Other amendments noted where applicable.]

§ 117-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

COMMUNITY STANDARDS — The standards of the community from which the jury is drawn or would be drawn if it were the trier of the fact.

KNOWINGLY — Having knowledge of the character and content of the material involved or failure on notice to exercise reasonable inspection which would disclose the content and character of the same.

OBSCENE — That which is determined as obscene, applying the following guidelines:

- A. Whether the average person applying contemporary community standards would find that the subject matter taken as a whole appeal to the prurient interest;
- B. Whether the subject matter depicts or describes in a patently offensive way sexual conduct, of a type hereinafter described; and
- C. Whether the subject matter taken as a whole lacks serious literary, artistic, political or scientific value.

PATENTLY OFFENSIVE — so offensive on its face as to affront current standards of decency, and shall be deemed to include any of the following described forms of sexual conduct, if they are depicted so as to affront current standards of decency:

- A. An act of sexual intercourse, normal or perverted, actual or simulated, real or animated, including genital-genital, anal-genital or oral-genital intercourse, whether between human beings or between a human being and an animal.
- B. Sadoomasochistic abuse, meaning flagellation or torture or sexual gratification, by or upon a person who is nude or clad in undergarments or in a revealing costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.
- C. Masturbation, excretory functions and lewd exhibition of the genitals, including any explicit close-up representation of a human genital organ or spread-eagle exposure of female genital organs.

- D. Physical contact or simulated physical contact with the clothed or naked pubic area of buttocks of a human male or female or the breasts of the female, whether alone or between members of the same or opposite sex, or between humans and animals in an act of apparent sexual stimulation or gratification.
- E. A device designed and marketed as useful primarily for stimulation of the human genital organs.
- F. Male or female genitals in a discernibly turgid state.
- G. Fellatio, cunnilingus, anal sodomy, seminal ejaculation or any excretory function.

PERSON — A natural person, partnership or corporation. Whenever used in a clause describing or imposing a fine or term of imprisonment, or both, the term "person" as applied to partnership shall mean the partners or members thereof and, as applied to corporation, shall mean the officers thereof.

§ 117-2. Prohibited conduct.

A. General.

- (1) No person shall knowingly either sell, rent, distribute, exhibit, show, transmit or offer either to sell, rent, distribute, exhibit, show or transmit or have in his possession or under his control with intent either to sell, rent, distribute, exhibit, show or transmit to another any obscene motion picture film or any obscene literature, book, magazine, pamphlet, newspaper, storybook, paper, comic book, writing, drawing, photograph, figure, image or any written or printed matter of an obscene nature or any device, article or instrument of an obscene nature.
- (2) No person shall knowingly participate in, support or in any way aid or assist any person in selling, renting, distributing or showing any obscene motion picture film or any obscene literature, book, magazine, pamphlet, newspaper, storybook, paper, comic book, writing, drawing, photograph, figure or image or any written or printed matter of an obscene nature or any device, article or instrument of an obscene nature.
- (3) No person shall knowingly design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene motion picture film or any obscene book, picture, film, drawing, magazine, pamphlet, newspaper, storybook, paper, comic book, writing, figure, image, matter, device, article or instrument of an obscene nature.
- (4) No person shall knowingly produce, present or direct any obscene performance or participate in the portion thereof which is obscene.
- (5) No person, being the owner of any premises or having control thereof, shall knowingly permit within or upon said premises the exhibition, projection or showing of any motion picture film, show, presentation or performance of an obscene nature or permit anyone to sell, rent, distribute, exhibit, give away or show any obscene literature, book, magazine, pamphlet, newspaper, storybook, paper, comic book, writing, drawing, photograph, figure or image or any written or printed matter of an obscene nature.
- (6) No person shall knowingly write, print, publish or utter or cause to be printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how or whom or by what means any obscene motion picture film, picture, book, writing, paper, comic book, figure, image, matter, article or thing of an obscene nature can be seen, purchased, obtained or had.

B. Minors.

- (1) No person within the Borough of South Greensburg shall display at newsstands or any other business establishment frequented by minors under the age of eighteen (18) years or where said minors are or may be invited as a part of the general public or where they may view the same any material depicting the acts specified in the definition of "patently offensive" in § 117-1, male or female buttocks or genitals or the female breast below a point immediately above the top of the areola.
- (2) Young and prepubescent children.
 - (a) In addition to any other violations or penalties prescribed herein, any person in the Borough of South Greensburg who has in his possession or under his control with intent to sell, rent, distribute, exhibit, show or transmit to another any obscene motion picture film or any obscene literature, book, magazine, pamphlet, newspaper, storybook, paper, comic book, writing or any other written or printed matter containing photographs or photographic images depicting children under the age of seventeen (17) years participating, performing or observing any of the acts prohibited in this section shall be guilty of a summary offense and, upon conviction thereof, shall be punishable as provided in § 117-4.
 - (b) Any obscene literature or film displaying or presenting pictures, photographs or photographic images depicting prepubescent children exhibiting underdeveloped genitalia or breasts shall be a per se violation of the provisions of this section without further proof of age.

C. Model studios.

- (1) No person shall own, operate or maintain any model studio which, as a regular course of business, is used for the purpose of lewdness, assignation or prostitution, and every such model studio in or upon which acts of lewdness, assignation or prostitution are held or occur is declared to be a public nuisance.
- (2) Definitions. As used in this subsection, the following terms shall have the meanings indicated:
MODEL STUDIO:

- (a) Any premises on which there is conducted the business of furnishing figure models who pose in the nude for the purpose of being observed or viewed by any person or of being sketched, painted, drawn, sculptured, photographed or otherwise similarly depicted for persons who pay a fee or other consideration or compensation or a gratuity for the right or opportunity so to depict the figure model or for admission to or for permission to remain upon or as a condition for remaining upon the premises; or
- (b) Any premises where there is conducted the business of furnishing or providing or procuring, for a fee or other consideration or compensation or gratuity, figure models who pose in the nude to be observed or viewed by any person or to be sketched, painted, drawn, sculptured, photographed or otherwise similarly depicted.

- (c) Exception. the words "model studio" do not include:

[1] Any studio which is operated by any college or junior college, public school or any governmental agency wherein the person, firm, association, partnership or corporation operating it has met the requirements of the Commonwealth of Pennsylvania for the issuance or conferring of, and is in fact authorized thereunder to issue and confer, a diploma or honorary diploma;

- [2] Any premises where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in the preceding paragraph; or
- [3] Any studio operated by a tax exempt, nonprofit corporation devoted to the development of art and its appreciation.

§ 117-3. Enforcement.

Upon observing or receiving notice of a potential violation of this chapter, the Police Department shall conduct an investigation to determine whether legal action shall be taken. If the Department determines that there is reason to believe that a violation of this chapter has or is continuing to occur, the Department shall continue its investigation in order to provide a court of competent jurisdiction with sufficient facts to establish probable cause that this chapter has been violated and to enable the District Justice to issue the appropriate process. The facts establishing probable cause shall be assembled according to the following procedure.

- A. Obscene articles available for purchase. A police officer shall purchase the allegedly obscene articles, prepare a citation for each article purchased and present the article and the citation to a court of competent jurisdiction, requesting the District Justice to issue the appropriate process.
- B. Obscene films.
 - (1) If an allegedly obscene film is not available for purchase, a police officer shall prepare a search warrant for the seizure of the film. After the search warrant has been issued, the officer shall confiscate the film described in the search warrant, prepared a citation and present the film and the citation to a court of competent jurisdiction, requesting the District Justice to issue the appropriate process.
 - (2) If the film seized is the only copy available, the officer shall request the District Justice who issued the search warrant to allow the copying of the film. The original film shall be returned to the owner as soon as possible after review by the court of competent jurisdiction and after it has been copied pursuant to the Judge's authorization.
- C. Obscene live performances. An officer shall observe the allegedly obscene performance, prepare a citation and present the citation to a court of competent jurisdiction, requesting the District Justice to issue the appropriate process.

§ 117-4. Violations and penalties.

Any person violating any provision of this chapter shall be guilty of a summary offense and, upon conviction thereof, shall be punishable for each offense by a fine of not more than six hundred dollars (\$600.) and costs of prosecution or, upon default in payment of the fine and costs, by imprisonment for not more than thirty (30) days.