

## Chapter 91 PORNOGRAPHY

§ 91-1. Definitions.

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**[HISTORY: Adopted by the Borough Council of the Borough of Delmont by Ord. No. 42, as amended through 2000. Subsequent amendments noted where applicable.]**

### GENERAL REFERENCES

Sexual conduct in public places — See Ch. 91.

Zoning — See Ch. 130.

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#### § 91-1. Definitions.

For the purpose of this chapter, the words and phrases set forth below shall have the meanings respectively ascribed to them:

**AUDIENCE** — One or more persons who are permitted to view a performance:

- A. For valuable consideration; or
- B. In or from a public place.

**DISPLAY PUBLICLY** — 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.

**DISSEMINATE** — 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.

**MATERIAL** — 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-dimensional forms, sculptures and phonograph, tape or wire recordings.

**MINOR** — Any person under 18 years of age.

**NUDITY** — 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.

**PANDER** — Advertising or propogandizing 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.

**PERFORMANCE** — 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.

**PORNOGRAPHIC** — Relating to pornography.

**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 borough of Delmont, it appeals to the prurient interest; and
- B. It depicts, describes or represents, in a patently offensive way, sexual conduct, as herein defined; and
- C. It lacks serious literary, artistic, political or scientific value.

**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 Borough of Delmont 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 herein defined; and
- C. It lacks serious literary, artistic, political or scientific value for minors.

**PRURIENT INTEREST** — 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 sadomasochists. In that case, it shall be judged with reference to the particular group for which it was designed.

**PUBLIC PLACE OR VEHICLE** — Any of the streets, alleys, parks, boulevards, schools or other public property in the borough 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 nongovernmental agency for the use, enjoyment or transportation of the general public.

**SEXUAL CONDUCT:**

- A. Masturbation; sexual intercourse, whether genital-genital, oral-genital, oral-anal or anal-genital; or 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 is engaged in alone or between members of the same or opposite sex or between humans and animals or humans and inanimate objects; or

- B. Actual or simulated display or exhibition of the human pubic area or genitals or any part thereof; or
- C. Sexual excitement, as herein defined; or
- D. Sadomasochistic abuse, as herein defined.

**SEXUAL EXCITEMENT** — The facial expressions, movements, utterances 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.

**SADOMASOCHISTIC ABUSE** — 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.

**§ 91-2. Promoting pornography.**

- A. 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:
  - (1) 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
  - (2) 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
  - (3) 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
  - (4) 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
  - (5) Participates in that portion of a live performance before an audience which makes it pornographic; or
  - (6) Panders, displays publicly or disseminates door-to-door any pornographic material or performance or causes such pandering, public display or door-to-door dissemination.
- B. 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.

**§ 91-3. Promoting pornography for minors.**

- A. 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, he:
- (1) Disseminates or cause 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 mandated by him for the dissemination to a minor of material which is pornography for minors; or
  - (2) Exhibits to a minor a motion-picture film or other performance which is pornography for minors; or
  - (3) 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
  - (4) 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
  - (5) 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
  - (6) 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.
- B. Subsection A(1) through (5) does not apply to a parent, guardian or other persons in loco parentis to the minor.

**§ 91-4. Defenses.**

It shall be an affirmative defense to a prosecution under § 91-2 or 91-3 of this chapter if the pornographic material was disseminated by a person who was acting in his capacity as:

- A. A teacher of an accredited course of study related to pornography at a state-approved educational institution; or
- B. A licensed medical practitioner or psychologist in the treatment of a patient; or
- C. A participant in the criminal justice system, such as a legislator, Judge, prosecutor, law enforcement official or other similar or related position; or
- D. A supplier to any person described in Subsections A through C above.

**§ 91-5. Violations and penalties. [Amended 6-12-2001 by Ord. No. 2001-3]**

Any person convicted of violating this chapter shall be guilty of a summary offense and, upon conviction before any District Justice, shall be subject to a fine not exceeding \$600, plus all

costs of prosecution for each such offense and, in default of payment thereof, shall further be subject to imprisonment in the appropriate jail for a period not exceeding 30 days.

**§ 91-6. Injunction.**

Council may institute proceedings in equity in the Court of Common Pleas of Westmoreland County for the purpose of enjoining the sale, resale, lending, distribution, exhibit, gift or show of such pornographic literature, book, magazine, pamphlet, newspaper, storypaper, 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 Council that the sale, resale, lending, distribution, exhibit, gift or show of such publication constitutes a danger to the welfare or peace of the community.