

Chapter 102

OBSCENITY

§ 102-1. Findings; declaration of nuisance.

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[HISTORY: Adopted by the Borough Council of the Borough of Westfield 9-13-1995 by Ord. No. 260. Amendments noted where applicable.]

§ 102-1. Findings; declaration of nuisance.

- A. The Borough Council of the Borough of Westfield finds that the crass commercial exploitation of explicit sexual conduct through public exhibitions for the purpose of lewdness, assignation or prostitution constitutes a debasement and distortion of a sensitive relationship of human existence; is indecent and offensive to the senses and to 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 total community environment, the tone of commerce in the Borough, property values and the public safety; and that the continued operation of such activities is detrimental to the best health, safety, convenience, good morals and general welfare of the Borough of Westfield and of the residents, citizens, inhabitants and business thereof.
- B. Accordingly, the Borough Council hereby declares such activities to be illegal as hereinafter set forth and, further, that such activities are and are hereby declared to be and constitute a public nuisance and herein establish penalties for such activities.

§ 102-2. Definitions.

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

AUDIENCE — One or more persons who are permitted for valuable consideration or in or from a public place.

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

DISPLAY PUBLICLY — Exposing, placing, posting, exhibiting or in any other fashion showing 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 viewing it from a public place or vehicle.

DISSEMINATE — Manufacture, sell, issue, publish, 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 the intent to do the same.

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

LEWD MATERIAL — Any material or performance in which all of the following elements are present:

- (1) Considered as a whole, by the average person, applying the contemporary community standards of Westfield Borough, it appeals to the prurient interest in sex.
- (2) It depicts, describes or represents in a patently offensive way sexual conduct as hereinafter defined.
- (3) The subject matter, taken as a whole, lacks serious literary, artistic, scientific, educational or political values.

MATERIAL — Any printed matter, visual representation or sound recording, including but not limited to books, magazines, motion-picture films, pamphlets, newspapers, pictures, photographs, drawings, three-dimensional forms, sculptures, phonographs, compact discs, tape or wire recordings.

NUDITY — Uncovered or less than opaquely covered human genitals or pubic area, buttocks, the female breast below a point immediately above the top of the areola or the covered male genitals in a discernable turgid state. For the purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple only and areola are covered.

PANDER — Advertising or propagandizing in connection with the sale of material, the offering of a service or the presentation or exhibition of a performance containing lewd material and/or nudity and intended to appeal to the prurient interest of potential customers.

PERFORMANCE — Any live or reproduced exhibition, including but not limited to any motion-picture film, videotape, dance, male/female revue, play or appearance presented to or performed before an audience.

PERSON — Any individual, partnership, association, corporation or other legal entity.

PRURIENT INTEREST — A 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 or 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 street, alley, park, boulevard, school or other public property, or any dance hall, rental hall, theater, amusement park, store, depot, liquor establishment, place of public accommodation or other place of private property in Westfield Borough frequented generally 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 the government, either directly or through a

nongovernmental agency, public corporation, or authority, for the use, enjoyment or transportation of the general public.

SEXUAL CONDUCT —

- (1) Sexual conduct shall include:
 - (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 of the breasts of the female.
 - (d) Actual or simulated display or exhibition of nudity.
 - (e) Sexual excitement as hereinafter defined.
 - (f) 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, tied, bound or otherwise physically restrained in an apparent act of sexual stimulation or gratification.
- (2) For the purposes of Subsection (1)(a) through (c) above, sexual conduct is defined whether the conduct described is engaged in alone, between members of the opposite sex, between members of the same sex, between humans and animals or between humans and inanimate objects.

SEXUAL EXCITEMENT — The facial expressions, movements, utterances or any other physical 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.

- B. As used in this chapter, the masculine shall include the feminine and neuter, and the singular shall include the plural.

§ 102-3. Prohibited acts.

It shall be unlawful for any person to disseminate, promote and/or display publicly any lewd material in the Borough of Westfield. A person shall be guilty of violating this chapter if, knowing its content and character, he or she:

- A. Disseminates or causes to be disseminated any lewd material in or from a public place or vehicle; or has in his or her possession any lewd 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 or her, for such dissemination of lewd material;
- B. Sells an admission ticket or pass or imposes an entrance fee to a premises where there is being exhibited or is about to be exhibited lewd material or a performance containing lewd material;

- C. Admits, by accepting a ticket or pass, a person to a premises where there is being exhibited or is about to be exhibited a performance which contains lewd material;
- D. Produces, presents, directs or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him or her to be used for a performance before an audience which contains lewd material;
- E. Participates in that portion of a live performance which contains lewd material; or
- F. Panders, displays publicly or disseminates door to door any lewd material or causes such pandering, public display or door-to-door dissemination.

§ 102-4. Violations and penalties.

Any person who shall violate this chapter shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600, the costs of prosecution and, in default of payment, to imprisonment for a term not to exceed 30 days. Each day a violation of this chapter continues shall constitute a separate offense.

§ 102-5. Injunction.

The Solicitor of Westfield Borough may institute proceedings in equity in the Court of Common Pleas of Tioga County for the purpose of enjoining any violation or potential violation of this chapter. Such a proceeding shall not impair upon the right of Westfield Borough to impose criminal liability for a violation of this chapter.