

ADULT ENTERTAINMENT

Findings; purpose.

The Borough Council finds that the crass commercial exploitation of explicit sexual conduct through the public exhibition of obscene films and the sale of obscene publications and devices and the use of so-called massage parlors, topless or bottomless commercial establishments and model studios for the purpose of lewdness, assignation or prostitution constitutes a debasement and distortion of a sensitive key relationship of human existence, central to family life, community welfare and the development of human personality; 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 and of the residents, citizens, inhabitants and businesses thereof..

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 establishes penalties for such activities.

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.

Illicit Sex or Sexual Immorality

- A. Human genitals in a state of sexual stimulation or arousal.
- B. Acts of human masturbation, sexual intercourse or sodomy.

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.

Nude or Partially Denuded Figures – Less than completely and opaquely covered:

- A. Human genitals
- B. Pubic regions
- C. Buttock
- D. Female breast below a point immediately above the top of the areola.

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 appeals 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 values.

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 depicted or described in a patently offensive way:

- A. An act of sexual intercourse, normal or perverted, actual or simulated, real or animated, including genital-genital, anal-genital and oral-genital intercourse, whether between human beings or between a human being and an animal.
- B. Masturbation, excretory functions or physical contact or simulated physical contact between humans and animals in an act of apparent sexual stimulation or gratification.
- C. A device designed and marketed as useful primarily for stimulation of the human genital organs.
- D. Male or female genitals in a state of sexual stimulation or arousal.
- E. Fellatio, cunnilingus, anal sodomy, seminal ejaculation or any other 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 a partnership, shall mean the partners or members thereof and, as applied to corporation, shall mean the officers thereof.

Prohibited acts.

- A. Any person who, with knowledge of the character and content, either sells, exhibits or shows for remuneration or offers to sell or has in his or her possession or under his or her control with intent to sell, exhibit or show for remuneration any obscene motion-picture film or any obscene literature, book, magazine, pamphlet, newspaper, story book, paper, comic book, writing, drawing, photograph, figure, image or any written or printed matter of any obscene nature or any device, article or instrument of an obscene nature shall be guilty of a violation.
- B. Any person who, with knowledge of the character and content, produces, presents or directs any obscene performance or participates in the portion thereof, which is obscene, shall be guilty of a violation.

- C. Any person who knowingly participates in selling or distributing any obscene motion-picture film or any obscene literature or any device, article or instrument of an obscene nature shall be guilty of a violation.
- D. No person within the Borough shall display at any business establishment, except in plain cover showing name of publisher only, any book, pocket book, pamphlet or magazine the cover or contents of which exploits, is devoted to or is principally made up of descriptions or depictions of illicit sex or sexual immorality or which consists of pictures of nude or partially denuded figures posed or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or perversion for commercial gain, and violation hereof shall be a violation
- E. No person shall own, operate or maintain any massage parlor, model studio or topless or bottomless commercial establishment which, as a regular course of business, is used for the purpose of lewdness, assignation or prostitution, and every such massage parlor or model studio in or upon which acts of lewdness, assignation or prostitution are held or occur is declared to be a public nuisance. Any such person violating this section shall be guilty of a violation.
 - 1. "Massage", as used in this section, shall mean any method of treating the superficial soft parts of the human body for remedial, hygienic or other purposes, consisting of rubbing, stroking, kneading or any similar treatment accomplished by hand or by the use of any instrument.
 - 2. "Massage parlor" shall mean any building or structure or portion thereof located within the borough, with or without payment of a fee, at which massage services are offered.
 - 3. Model studio
 - a) For the purpose of this section, model studio means:
 - 1) 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
 - 2) 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.

- b) 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 State 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 Subsection E-3.
 - 3) Any studio operated by a tax-exempt, nonprofit corporation devoted to the development of art and its appreciation.
4. “Topless or bottomless commercial establishment”, as used in this chapter, means a commercial business which uses, as an inducement to acquire patronage thereof, or lure potential customers with persons who are present therein in a nude or partially denuded condition whose purpose thereby is to provoke and arouse lust or passion or to exploit sex, lust or passion for commercial gain.

Violations and penalties.

Any person, firm or corporation who or which shall violate any provision of this chapter shall upon conviction thereof, be sentenced to pay a fine of not more than six hundred dollars (\$600) and costs of prosecution or, in default of payment of such fine and costs, to undergo imprisonment for not more than thirty (30) days, provided that each violation of any provision of this chapter and each day the same is continued shall be deemed a separate offense.

This is a sample ordinance. We suggest that it be modified, as appropriate, to fit the needs of your borough. We also suggest that all proposed ordinances be reviewed by your solicitor. Although these are samples of ordinances which have been adopted by other municipalities, the Association cannot assume responsibility for ensuring their legality. We are pleased to provide this service free of charge to our members. If we can be of further assistance, please do not hesitate to contact us: **PENNSYLVANIA STATE ASSOCIATION OF BOROUGHS**, 2941 North Front Street, Harrisburg, PA 17110. 717-236-9526.