

Chapter 140

PORNOGRAPHY AND SEX BUSINESSES

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[HISTORY: Adopted by the BOROUGH COUNCIL 10-7-81 as Ord. No. 630. Amendments noted where applicable.]

§ 140.1. Definitions.

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

KNOWLEDGE or KNOWLEDGE OF SUCH NUISANCE - Having knowledge of the contents and character of the explicit and patently offensive sexual conduct or other content which appears in the live, motion-picture or videotape recorded production or knowledge of the acts or lewdness, assignation or prostitution which occur in any place.

LEWD MATTER:

- A. Any matter which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest and which depicts or describes patently offensive representations or descriptions of:
 - (1) Human genitals in a state of sexual stimulation or arousal.
 - (2) Acts of human masturbation, sexual intercourse or sodomy.
 - (3) Human male genitals in a discernibly turgid state even if completely and opaquely covered.
- B. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole and in the context in which it is used, possesses

serious literary, artistic, political or scientific value.

LIVE THEATER PRODUCTION - Any dramatic, musical or comedic production performed in the presence of a live audience.

MASSAGE - 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.

MASSAGE PARLOR - Any building or structure or portion thereof located within the MUNICIPALITY which is open to members of the general public, with or without the payment of a fee, at which MASSAGE services are offered.

MATTER - A motion-picture film, video, LIVE THEATER PRODUCTION or publication.

MODEL STUDIO:

- A. Any place where 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 place.
- B. Any place 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 state college or junior college, public or private school or any governmental agency wherein the person, firm, association, partnership or corporation so operating has met the requirements established by the Commonwealth of Pennsylvania for the issuance or conferring of, and is in fact authorized there- under to issue and confer, a diploma or honorary diploma.
 - (2) Any place where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in Subsection **C(1)** of this definition.

MOTION-PICTURE FILM - Includes any:

- A. Film or plate negative.
- B. Film or plate positive.
- C. Film designed to be projected on a screen for exhibition.

- D. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.

NUDE - Includes:

- A. Completely without clothing.
- B. With the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the covered male genitals in a discernibly turgid state.

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

PLACE - Includes but is not limited to any building, structure or space or any separate part or portion thereof, whether permanent or not, or the ground itself.

PUBLICATION - Includes any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording or a MOTION-PICTURE FILM which is displayed in an area open to the public, offered for sale or exhibited in a coin-operated machine.

SALE - A passing of title or right of possession from a seller to a buyer for valuable consideration, and includes but is not limited to any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of or transfer or possession of LEWD MATTER.

VIDEOTAPE RECORDING - Includes any cassette or reel-to-reel tape system or any disk system used to electronically reproduce previously recorded images on a television screen directly or by projection.

§ 140.2. Exhibition of lewd films, VIDEOTAPE RECORDINGS, performances.

104.2.1. Any and every PLACE in the BOROUGH where lewd MOTION-PICTURE FILMS, VIDEOTAPE RECORDINGS or LIVE THEATER PRODUCTIONS are publicly exhibited or possessed for the purpose of such exhibition or repeated exhibition is a public nuisance.

104.2.2. Any and every lewd MOTION-PICTURE FILM or VIDEOTAPE RECORDING which is publicly exhibited or possessed for the purpose of such exhibition at a PLACE which is a public nuisance under **Subsection 140.2.1** above is a public nuisance per se.

104.2.3. From and after service on the theater or other public PLACE or its manager or acting manager or PERSON then in charge of such PLACE of a true and correct copy of this chapter and a true and correct copy of the resolution and order of summary abatement provided in **§ 140.6** hereof, all moneys paid thereafter as admission price to such exhibit, exhibitions and productions are declared to be a public nuisance, being personal property used in conducting and maintaining a declared public nuisance.

§ 140.3. Businesses selling lewd PUBLICATIONS.

140.3.1. Any and every PLACE in the BOROUGH where lewd PUBLICATIONS constitute a part of the stock-in-trade is a public nuisance.

140.3.2. Any and every lewd PUBLICATION possessed at a PLACE which is a public nuisance under **Subsection 140.3.1** above is a public nuisance per se.

140.3.3. From and after service on the PLACE or its manager or acting manager or PERSON then in charge of such PLACE of a true and correct copy of this chapter and a true and correct copy of the resolution and order of summary abatement provided for in **§ 140.6** hereof, all valuable consideration received for the SALE of such lewd PUBLICATIONS is also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

§ 140.4. MESSAGE PARLORS and MODEL STUDIOS.

140.4.1. Every MESSAGE PARLOR or MODEL STUDIO which, as a regular course of business, is used for the purposes of lewdness, assignation or prostitution, and every such MESSAGE PARLOR or MODEL STUDIO in or upon which acts of lewdness, assignation or prostitution are held or occur, is a public nuisance which shall be enjoined, abated and prevented.

140.4.2. From and after service on the PLACE or its manager or acting manager or PERSON then in charge of such PLACE of a true and correct copy of this chapter and a true and correct copy of the resolution and order of summary abatement provided for in **§ 140.6** hereof, all moneys or other valuable consideration paid for service rendered to customers are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance. **[Amended 6-6-84 by Ord. No. 682]**

§ 140.5. Presumption of KNOWLEDGE of nuisance.

140.5.1. Upon and after receiving notice through service of a true and correct copy of the resolution and order of summary abatement provided for in **§ 140.6** hereof, any and every PERSON who shall own, legally or equitably, lease, maintain, manage, conduct or operate a PLACE in the BOROUGH which is declared to be a public nuisance as set forth and stated in **§§ 140.2, 140.3 or 140.4** of this chapter is deemed to be a PERSON who has KNOWLEDGE OF SUCH NUISANCE for the purpose of this chapter and is thereafter responsible for its maintenance and shall be liable therefor.

140.5.2. The PLACES and MATTERS declared to be public nuisances under **§§ 140.2, 140.3 and 140.4** shall be abated as provided for herein.

§ 140.6. Resolution and order to abate.

The Council of the BOROUGH shall investigate or cause to be investigated all complaints that activity constituting a public nuisance, as defined in **§§ 140.2, 140.3 or 140.4** of this chapter, exists in the BOROUGH. Upon Council's specific finding that a public nuisance exists in the BOROUGH, the Council, in applying the provisions of this chapter to such nuisance, shall, by resolution:

104.6.1. Declare the fact that such nuisance exists.

140.6.2. Set forth the description or legal description and street address of the PLACE which constitutes the nuisance.

140.6.3. Set forth the evidentiary facts considered by the Council in arriving at its factual determination.

140.6.3.1. In the case of a MOTION-PICTURE FILM, VIDEOTAPE RECORDING or LIVE THEATER PRODUCTION, such shall include a recitation of the particular sexual conduct and acts which the Council finds are patently offensive and the basis for the finding by Council that such MOTION-PICTURE FILM, VIDEOTAPE RECORDING or LIVE THEATER PRODUCTION is publicly exhibited or produced in the course of business or that such MOTION-PICTURE FILM, VIDEOTAPE RECORDING or LIVE THEATER PRODUCTION is publicly or repeatedly exhibited or produced, or held for such exhibition or production, at the PLACE declared to be a nuisance.

140.6.3.2. In the case of a PUBLICATION, such shall include a recitation of the particular PUBLICATIONS or types of PUBLICATIONS considered by the Council and those which the Council finds to be patently offensive and the basis for the finding by the Council that such PUBLICATIONS are displayed, sold or held for SALE at any PLACE found by the Council to be a public nuisance and the basis of the finding by the Council that such PUBLICATIONS constitute a part of the stock-in-trade of such PLACE of business or other PLACE.

140.6.3.3. In the case of a MASSAGE PARLOR or MODEL STUDIO, such shall include a recitation of the particular acts of lewdness, assignation or prostitution which have occurred and the basis for the finding by the Council that such acts occur in the course of business.

140.6.4. Order all PERSONS described in § 140.5.1 hereof to summarily abate such public nuisance within twenty-four (24) hours of service of such order on any such PERSONS, by terminating the exhibition, SALE or possession for SALE of such LEWD MATTER or by ceasing to use the PLACE where the nuisance is declared to exist or by terminating the use of said PLACE for the purposes of lewdness, assignation or prostitution or causing the same to be terminated, and notifying the Council of compliance therewith by sworn affidavit as ordered by the action of the Council in such resolution.

140.6.5. Order the BOROUGH Solicitor to proceed to do all things necessary to abate such public nuisance through judicial proceedings and to conclude such proceedings as expeditiously as is permissible under the law, including requesting the court to advance such proceedings on the calendar of the court.

140.6.6. Inform and give notice to PERSONS designated in § 140.5.1 that:

140.6.6.1. The Council has determined that a public nuisance

presently exists at such PLACE and address, and, under § 140.5.1 of this chapter, they are deemed to have KNOWLEDGE thereof and are responsible therefor.

140.6.6.2. In the event the order of the BOROUGH is not complied with within twenty-four (24) hours, the Council will order the BOROUGH Solicitor, as provided for under § 140.8 hereof, to commence necessary legal proceedings naming such PERSONS as defendants in a civil action to abate the public nuisance judicially under this section of this chapter, and, under § 140.7 of this chapter, the costs of abatement of such civil abatement action filed, including investigative costs, court costs, attorney's fees and other expenses, will be made a special assessment against the parcel of land upon which such nuisance is being maintained, and upon their determination in such court action, will be, by separate legal procedure, made a lien against such property and a personal obligation against any PERSON deemed to be in violation of this chapter.

140.6.6.3. All lewd MOTION-PICTURE FILMS, VIDEOTAPE RECORDINGS or PUBLICATIONS being used in conducting and maintaining such public nuisance are contraband and the subject of forfeiture.

140.6.6.4. From and after service on the PLACE or its manager or acting manager or PERSON then in charge of such PLACE of a true and correct copy of this chapter and a true and correct copy of such resolution, any and all moneys paid as admission price to or for the exhibition or exhibitions of such lewd MOTION-PICTURE FILMS, VIDEOTAPE RECORDINGS or production of such lewd LIVE THEATER PRODUCTIONS, and any valuable consideration received for the SALE of such lewd PUBLICATIONS and all moneys or other valuable consideration received for services rendered in such MASSAGE PARLORS or MODEL STUDIOS are a public nuisance, as personal property used in conducting and maintaining such nuisance, and, as such, are the subject of forfeiture.

140.6.7. Order that a true and correct copy of said resolution and a true and correct copy of this chapter be delivered forthwith in any manner normally used to effectuate personal service of process to all PERSONS of record having any legal or equitable interest in the real property and to the regular or acting manager or PERSONS in charge of the PLACE therein declared a public nuisance.

§ 140.7. Forfeiture to general fund; costs of abatement; collection.

140.7.1. Upon judgment for the BOROUGH in legal proceedings brought pursuant to this chapter, an accounting shall be made by such defendant or defendants of all moneys or valuable consideration received by them which have been declared to be a public nuisance under §§ 140.2.3, 140.3.3 or 140.4.2 of this chapter. Such moneys or their equivalent and any valuable consideration received shall be forfeited to the general fund of the BOROUGH or to the BOROUGH as property of the BOROUGH if any valuable consideration received be not money.

140.7.2. The cost of abatement shall include the following:

140.7.2.1. Investigative costs.

140.7.2.2. Court costs.

140.7.2.3. Reasonable attorney's fees arising out of the preparation for and trial of the cause and appeals therefrom and other costs allowed on appeal.

140.7.2.4. Printing costs of trial and appellate briefs and all other papers filed in such proceeding.

Such costs of abatement are hereby made a special assessment against the parcel of land upon which such nuisance is maintained. Upon their determination in a civil action, such shall, by separate legal proceeding, be made a lien against such property and a personal obligation against any PERSON, and shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and SALE in the case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment.

§ 140.8. Action by Solicitor.

Upon a specific finding by resolution of the Council that a public nuisance exists at a particular location, the BOROUGH Solicitor, with the approval of the Council, is authorized to take whatever action is appropriate to carry out this chapter.