

Part 1  
Pornography

§101. Definitions.

KNOWLEDGE or KNOWLEDGE OF SUCH NUISANCE - having knowledge of the contents and character of the patently offensive sexual conduct or other content which appears in the motion picture film, publication, or live theater production, or knowledge of the acts of obscenity, assignation, or prostitution which occur in any place.

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 Borough, 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, live theatre production, publication, or all three.

MODEL STUDIO -

(1) 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.

(2) 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.

(3) Exception. The words "model studio" do not include:

(a) 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 thereunder to issue and confer, a diploma or honorary diploma.

(b) Any place where there is conducted the business of furnishing, providing or procuring figure models solely for any studio described in Subsection (a).

OBSCENE MATTER - any matter which:

(1) The average adult person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest.

(2) Depicts or describes patently offensive representations or descriptions of:

(a) Ultimate sexual acts, normal or perverted, actual or simulated.

(b) Masturbation, excretory functions, or exhibition of the genitals or genital area.

(3) The matter, taken as a whole, lacks serious literary, artistic, political, educational, or scientific value.

MOTION PICTURE FILM - any:

(1) Film or plate negative.

(2) Film or plate positive.

(3) Film designed to be projected on a screen for exhibition.

(4) Films, glass slides or transparencies, either negative or positive form, designed for exhibition by projection on a screen.

(5) Video tape or any other medium used to electronically reproduce images on a screen.

NUDE -

(1) Completely without clothing.

(2) With the human male or female genitals, pubic area or buttocks with less than a full 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 - any building, structure or space, or any separate part or portion thereof, whether permanent or not, or the ground itself.

PUBLICATION - 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 shall include, 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 of possession of, obscene matter.

(Ord. 224, 7/6/1982, §1)

§102. Obscene Films, Live Theatre Productions, Publications, and Places Exhibiting the Same Declared a Public Nuisance; Abatement Thereof.

1. Any and every place in the Borough where obscene motion picture films or live theatre productions are publicly exhibited or possessed for the purpose of such exhibition; and any and every place in the Borough where obscene publications are publicly disseminated or sold, or possessed for the purpose of such dissemination, is a public nuisance.

2. Any and every obscene motion picture film or live theatre production which is publicly exhibited, and any and every obscene publication which is publicly displayed, disseminated or sold, or possessed for such purpose, is a public nuisance per se.

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 Part and a true and correct copy of the summons and complaint to abate a nuisance, all monies paid thereafter as admission price to such exhibitions or productions, or purchase price of such publications, are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

(Ord. 224, 7/6/1982, §2)

§103. Massage Parlors or Model Studios Used for Purposes of Obscenity, Assignment, or Prostitution, or Upon Which Acts Occur, Declared a Public Nuisance; Abatement Thereof.

1. Every massage parlor or model studio, which, as a regular course of business, is used for the purposes of obscenity, assignment, or prostitution, and every such massage parlor or model studio in or upon which acts of obscenity, assignment, or prostitution, are held or occur, is a public nuisance which shall be enjoined, abated and prevented.

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 Part and a true and correct copy of the summons and complaint to abate a nuisance, all monies or other valuable consideration paid for services rendered to customers are also declared to be a public nuisance, as personal property used in conducting and maintaining a declared public nuisance.

(Ord. 224, 7/6/1982, §3)

§104. Knowledge of Nuisance Presumed from Notice or Summons and Complaint; Responsibility of Parties Therefore; Abatement of Such Nuisances.

1. Upon and after receiving notice through service of a true and correct copy of this Part and a true and correct copy of the summons and complaint to abate a nuisance or notice by the Borough Solicitor of the character of the obscene film, production, publication, or place, 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 §§102 and 103 of this Part is deemed to be a person who has knowledge of such nuisance for the purpose of this Part, and may, thereafter, be responsible for its maintenance, and liable therefore.

2. The places and matters declared to be public nuisances under §§102 or 103 shall be abated as provided for herein.

(Ord. 224, 7/6/1982, §4)

§105. Who May Take Action; Posting of Bond.

1. The Borough Solicitor or any citizen of the Commonwealth of Pennsylvania resident within the Borough may maintain an action of an equitable nature in the name of the Borough upon the relation of such Borough Solicitor or citizen to abate a nuisance.

2. No bond shall be required of the Borough Solicitor. If such action is instituted by a private citizen, a bond shall be required in the amount of not less than five hundred (\$500.00) dollars to secure to the defendants the proximate damages which may be sustained, including attorney's fees, if any Court finds that there were no reasonable grounds for said action.

3. The Borough Solicitor shall have the right to present arguments and authorities on behalf of either party.

(Ord. 224, 7/6/1982, §5)

§106. Remedies.

1. Money damages may be recovered:

A. For compensation for loss or harm suffered to person or property by the Borough or private citizen flowing from such nuisance.

B. As exemplary or punitive damages for the sake of example or to punish the offender, where it is shown that the offender has been guilty of malice. Malice means an intent to do a wrongful act, that is, an intent to maintain, permit, or allow a nuisance to exist.

2. Preliminary and permanent injunctions may be issued to prevent the further maintenance of a nuisance and to prevent the further sale or exhibition of obscene motion picture films, live theatre productions and publications. The procedures for obtaining such injunctions shall be governed by the rules of civil procedure, preserving the right of trial by jury upon the application for permanent injunction.

A. Upon the application for preliminary injunction, the court shall set the matter for a hearing no earlier than two (2) days and no later than five (5) days from the date of service of the summons and complaint.

B. Upon the trial on the merits of the permanent injunction, if the court finds a place to be a nuisance, the court may issue an order closing the place to all uses and purposes for the period of one (1) year. If the offenders or persons owning, in control or in charge of such place certify that the nuisance has been abated and that the films, productions, or publications found to be obscene shall not be exhibited, sold or otherwise disseminated and, at the discretion of the court, post a bond in an amount not to exceed the value of the personal property possessed or contained at such place for the maintenance of the nuisance, the court may release such person or persons from the closure order. The release shall remain in effect for one

(1) year or until the nuisance is found to exist at the place before the expiration of one (1) year. The bond shall be deposited with the court prior to the release of any closure order and shall be returned to the person posting said bond, without interest at the expiration of one (1) year, provided that the nuisance is not maintained or re-established within that year.

(Ord. 224, 7/6/1982, §6)

§107. Forfeiture to the General Fund of the Borough; Cost of Abatement; Manner of Collection.

1. If the existence of the nuisance is established on the trial, a judgment shall be entered which shall permanently enjoin the defendants, and any other person with notice or knowledge of the action and judgment, from maintaining the nuisance at said place and the defendants from maintaining such nuisance elsewhere, and the entire expenses of such abatement action shall be recovered by the plaintiff as part of his costs.

2. The cost of abatement shall include the following:

A. Investigative costs.

B. Court costs.

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

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

2. Such cost of abatement may be made a special assessment against the place or the parcel of land upon which such place is located. Upon its 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.

3. Upon judgment for the plaintiff in legal proceedings brought pursuant to this Part, an accounting shall be made by such defendant or defendants of all monies or valuable consideration received by them which have been declared to be a public nuisance under §102 or §103 of this Part. Such monies 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.

(Ord. 224, 7/6/1982, §7)