

Chapter 18

ADULT USES

Article 1: Businesses

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[HISTORY: Adopted by the Borough Council of the Borough of Callery at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 93.

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§ ~~18-1~~. Purpose and intent.

It is the purpose of this chapter to promote the health, safety, morals and general welfare of the citizens of the Borough of Callery and to establish reasonable and uniform regulations regarding the location and concentration of sexually oriented businesses and the promotion of pornography within the Borough. The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor the effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; neither is it the intent nor the effect of this chapter to condone or legitimize the distribution of obscene materials.

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§ ~~18-2~~. Definitions.

The words and phrases set forth below shall have the meanings respectively ascribed to them:

ADULT ARCADE — Any place to which the public is permitted or invited or in which coin-operated or slug-operated or electronically, electrically or mechanically controlled still- or motion-picture machines, projectors or other image-producing devices are maintained to show images to an audience, and where the image is so displayed, distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE — A commercial establishment having a substantial or significant portion of its stock in trade, including but not limited to books, magazines, periodicals,

visual representations or writings, distinguished or characterized by emphasis on matter depicting, describing or related to specified anatomical areas or to specified sexual activities or an establishment with a segment or section devoted to the sale or display of such materials. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing specified sexual activities or specified anatomical areas and still be characterized as an "adult bookstore." Such other business purposes will not serve to exempt such commercial establishment from being characterized as an "adult bookstore" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.

ADULT CABARET — A nightclub, bar, restaurant or similar commercial establishment which regularly features:

- A. Persons who appear in a state of nudity;
- B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- C. Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT MOTEL — A hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible for the public right-of-way which advertises the availability of this adult type of photographic productions;
- B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. Allows a tenant or occupant of the sleeping room to sublet the room for a period of time that is less than 10 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar graphic reproductions are displayed which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER — A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

AUDIENCE — One or more persons who are permitted to view a performance for valuable consideration of, 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 contents 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 materials or to offer or agree to do the same or to have in one's possession with intent to do the same.

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide or date for any person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY — A person or business association who or which furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

ESTABLISHMENT — Includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The addition of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

NUDE MODEL STUDIO — Any place where a person who appears in a state of nudity or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

NUDITY — Uncovered or less than opaquely covered post-pubertal human genitals or pubic area, the post-pubertal human female breast below the 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 propagandizing 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 Callery, it appeals to the prurient interest.

- B. It depicts, describes or represents, in a patently offensive way, sexual conduct, as hereinafter defined.
- C. It lacks serious literary, artistic, political or scientific value.

PORNOGRAPHY FOR MINORS — Any material 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 Callery with respect to what is suitable for minors, it is presented in such a way as to appeal to a minor’s prurient interest.
- B. It depicts, describes or represents, in a patently offensive way, nudity or sexual conduct as hereinafter defined.
- C. It lacks serious literary, artistic, political or scientific value for minors.

PRURIENT INTERESTS — 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 prurient interests 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 of Callery or any dance hail, rental hail, theater, amusement park, liquor establishment or depot, place of public accommodation or other private property generally frequented by the public for the purpose 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.

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.

SEXUAL CONDUCT:

- A. Masturbation.
- B. Sexual intercourse, whether genital-genital, oral-genital, oral-anal or anal-genital.
- C. Any erotic fondling or touching of any parts of the covered or uncovered genitals, buttocks, pubic area or breasts of the female.
- D. Actual or simulated display or exhibition of the human pubic area or genitals or any part thereof.
- E. Sexual excitement, as hereinafter defined.
- F. Sadomasochistic abuse, as hereinbefore defined.

- G. The conduct described in Subsections A through C, inclusive, is "sexual conduct," whether or not it is engaged in alone or between members of the same sex or between members of the opposite sex or between humans and animals or between humans and inanimate objects.

SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

SEXUAL EXCITEMENT — The facial expression, 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 who experiences the physical or sensual reactions of humans engaging in or witnessing sexual conduct.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

SPECIFIED ANATOMICAL AREAS — Human genitals; pubic region; buttocks; female breasts below a point immediately above the top of the areola.

SPECIFIED SEXUAL ACTIVITIES — Human male genitals in a discernibly turgid state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, public regions, buttocks or female breasts.

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§ ~~183~~. Classification of businesses.

Sexually oriented businesses are classified as follows:

- A. Adult arcades.
- B. Adult bookstores.
- C. Adult cabarets.
- D. Adult motels.
- E. Adult motion-picture theaters.
- F. Adult theaters.
- G. Escort agencies.
- H. Nude model studios.
- I. Sexual encounter centers.

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§ ~~18-4~~. **Businesses prohibited in certain areas.**

It shall be unlawful to establish or maintain any sexually oriented business in or within 500 feet of another sexually oriented business, a church, a public or private elementary or secondary school, a boundary of any residential district, a public park adjacent to any residential district or the property line of a lot devoted to residential use.

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§ ~~18-5~~. **Promotion of pornography unlawful.**

- 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.
 - (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;
 - (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;
 - (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;
 - (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 purposes 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.

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§ ~~18-6~~. **Promotion of pornography involving 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 causes 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 managed by him for the dissemination to a minor of material which is pornography for minors;
 - (2) Exhibits to a minor a motion-picture film or other performance which is pornography for minors;

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- (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;
 - (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;
 - (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 a 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. The provisions of Subsection A(1) through (5) do not apply to a parent, guardian or other persons in loco parentis to the minor.

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§ 18-7. Affirmative defenses.

It shall be an affirmative defense to a prosecution under § 18-5 or 18-6 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;
- B. A licensed medical practitioner or psychologist in the treatment of a patient;
- 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.

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§ 18-8. Violations and penalties.

- A. Fines. Any person convicted of violating this chapter shall be guilty of a violation and, upon conviction before any District Justice, shall be subject to a fine not exceeding \$1,000 and costs for each offense and, in default of payment thereof, shall be subject to imprisonment in the appropriate jail for a period not exceeding 30 days.
- B. Injunction. The Council may institute proceedings in equity in the Court of Common Pleas of Butler County for the purpose of enjoining the sale, resale, lending, distribution, exhibit, gift or show of such pornographic literature, books, magazines, pamphlets, newspapers, story papers, papers, comic books, writings, drawings, photographs, figures or images 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

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the averment of the Council that the sale, resale, lending, distribution, exhibit, gift or show of such publications constitutes a danger to the welfare or peace of the community.

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