

**Chapter 31**  
**ADULT USES**

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**[HISTORY: Adopted by the Borough Council of the Borough of Heidelberg 7-15-1980 as Ch. 67 of the 1980 Code. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Commercial establishments — See Ch. 41.**

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**§ 31-1. Legislative declaration. [Amended 12-15-2009 by Ord. No. 586, §5]**

- A. The Borough Council finds that the crass commercial exploitation of explicit sexual conduct through the public exhibition of lewd films and the display and/or sale of lewd publications and the use of so-called massage parlors and model studios for purposes 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 of Heidelberg and of the residents, citizens, inhabitants and businesses thereof. This chapter shall apply to existing establishments which are presently engaged in the type of activity herein declared to be a public nuisance.
- B. Should any of the activities, products or uses that are classified as adult uses be determined to be legal and/or allowable under Chapter 31 and/or existing law, then any application filed with the Borough of Heidelberg to operate a legally authorized adult use facility shall be allowed only in and is restricted to a location or district of the Borough of Heidelberg zoned as M - Manufacturing District of the Borough of Heidelberg. **[Added 12-15-2009 by Ord. No. 586, §5]**
- C. Any adult use or business to be determined as legal under this section or under the existing law shall not be permitted to operate within the R-1, R-2 or C Districts of the Borough of Heidelberg. **[Added 12-15-2009 by Ord. No. 586, §5]**

**§ 31-2. 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 patently offensive sexual conduct or demonstration which appears in the film or publication, or knowledge of the acts, lewdness, assignation or prostitution which occurs on the premises.

**LEWD MATTER** — Any matter:

- A. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
- B. Which depicts or describes patently offensive representations or descriptions of:
  - (1) Ultimate sexual acts, normal or perverted, actual or simulated; or
  - (2) Masturbation, excretory functions or exhibition of the genitals or genital area.
- C. Nothing herein contained is intended to include or prescribe 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.

**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 or a publication, or both.

**MODEL STUDIO:**

- A. 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 gratuity for the right or opportunity so to depict the figure model, or for admission to the premises, or for permission to remain upon or as a condition for remaining upon the premises; or
- B. 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.
- C. The words “model studio” do not include any of the following:
  - (1) Any studio which is operated by any state college or junior college, public school or any governmental agency wherein the person, firm, association, partnership or corporation operating it 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.

- (2) Any premises where there is conducted the business or furnishing, providing or procuring figure models solely for any studio described in Subsection C(1) of this definition.
- (3) Any studio operated by a tax exempt, nonprofit corporation devoted to the development of art and its appreciation.



**MOTION-PICTURE FILM:**

- A. Any film or plate negative.
- B. Any film or plate positive.
- C. Any film designed to be projected on a screen for exhibition.
- D. Any films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.
- E. Any video tape or any other medium used to electronically reproduce images on a screen.

**NUDE:**

- A. Completely without clothing; or
- B. The human male or female genitals, pubic area or buttocks exposed 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** — 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.

**PUBLICATIONS** — Any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording or 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 lewd matter.

**§ 31-3. Lewd films and theatrical exhibitions as nuisances.**

- A. Any and every place in the Borough of Heidelberg where lewd films are publicly exhibited or possessed for the purpose of such exhibition and any and every place in the Borough of Heidelberg where a lewd film is publicly or repeatedly exhibited or possessed for the purpose of such exhibitions is a public nuisance.
- B. Any and every lewd film which is publicly exhibited or possessed for such purpose at a place which is a public nuisance under Subsection A above is a public nuisance per se.
- C. From and after service on the theater, its manager, 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 § 31-7 hereof, all moneys paid thereafter as admission price to such exhibitions are also declared to be a public nuisance as personal property used in conducting and maintaining a declared public nuisance.

**§ 31-4. Lewd publications as nuisances.**

- A. Any and every place in the Borough of Heidelberg in which lewd publications constitute a part of the stock in trade is a public nuisance.
- B. Any and every lewd publication possessed at a place which is a public nuisance under Subsection A above, is a public nuisance per se.
- C. From and after service on the place, its manager, 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 § 31-7 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.

**§ 31-5. Massage parlors or model studios as nuisances.**

- A. Every massage parlor or model studio which, as a regular course of business, is used for the purposes of lewdness, assignation or prostitution and every such massage parlor or model studio in or upon which acts of lewdness, assignations or prostitution are held or occur is a public nuisance which shall be enjoined, abated and prevented.
- B. From and after service on the place, its manager, 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 § 31-7 hereof, all moneys 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.

**§ 31-6. Presumption of knowledge.**

- A. Upon and after receiving notice through service of a true and correct copy of this chapter and of a true and correct copy of the resolution and order of summary abatement provided for in § 31-7 hereof, any and every person who shall own, legally or equitably, lease, maintain, manage, conduct or operate a place in the Borough of Heidelberg which is declared to be a public nuisance as set forth and stated in § 31-3, 31-4 or 31-5 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.
- B. The places and subject matter declared to be public nuisances under § 31-3, 31-4 or 31-5 shall be abated as provided for herein.

**§ 31-7. Action by Borough Council.**

Upon a specific finding that a public nuisance, as defined in § 31-3, 31-4 or 31-5 of this chapter, exists in the Borough of Heidelberg, the Borough Council, in applying the provisions of this chapter to such nuisance, shall provide for the following by resolution:

- A. Declare the fact that such nuisance exists.

- B. Set forth the description or legal description and street address of the place which constitutes the nuisance.
- C. Set forth the evidentiary facts considered by the Borough Council in arriving at its factual determination.
- (1) In the case of a motion-picture film or films, such shall include a recitation of the particular sexual conduct and acts which the Borough Council finds are patently offensive and the basis for the finding by the Borough Council that:
    - (a) Such films are publicly exhibited in the course of business.
    - (b) Such films are publicly or repeatedly exhibited or held for such exhibition at the place declared to be a nuisance.
  - (2) In the case of a publication or publications, such shall include a recitation of:
    - (a) The particular publications considered by the Borough Council and those which the Borough Council finds to be patently offensive.
    - (b) The basis for the finding by the Borough Council that such publications are displayed, sold or held for sale at any place found by the Borough Council to be a public nuisance.
    - (c) The basis of the finding by the Borough Council that such publications constitute a part of the stock in trade of such place of business or other place.
  - (3) In the case of a massage parlor or model studio, such shall include a recitation of:
    - (a) The particular acts of lewdness, assignation or prostitution which have occurred.
    - (b) The basis for the finding by the Borough Council that such acts occur in the course of business.
- D. Order all persons described in § 31-6A hereof to summarily abate such public nuisance within 24 hours of service of such order on any such persons by terminating the exhibition, sale or possession for sale of such lewd subject matter or by ceasing to use the place where the nuisance is declared to exist or by terminating the use of said premises for the purposes of lewdness, assignation or prostitution or causing the same to be terminated and notifying the Chief of Police of the borough of compliance therewith by sworn affidavit as ordered by the action of the Borough Council in such resolution.
- E. Order the Solicitor for the borough to proceed as directed in § 31-9 of this chapter and 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.
- F. Inform and give notice to persons designated in § 31-6A that:
- (1) The Borough Council has determined that a public nuisance presently exists at such place and address, and that, under § 31-6A of this chapter, they are deemed to have knowledge thereof and are responsible therefor.

- (2) In the event the order of the borough is not complied with within 24 hours, the Borough Council has ordered the Solicitor, as provided for under § 31-9 hereof, to commence necessary legal proceedings, naming such persons as defendants in a civil action to abate the same judicially under § 31-7 of this chapter, and that, under § 31-8 of this chapter, the costs of abatement of such civil abatement action filed, including investigative costs, court costs, attorney's fees and other expenses, are 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, by separate legal procedure, be made a lien against such property and a personal obligation against any person or persons, firm, association, partnership, corporation or other entity deemed to be in violation of this chapter.
  - (3) All lewd motion-picture films or lewd publications being used in conducting and maintaining such public nuisance are contraband and the subject of forfeiture.
  - (4) From and after service on the place, its manager, 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 and 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.
- G. 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.

**§ 31-8. Forfeitures; cost of abatement.**

- A. Upon judgment for the Borough of Heidelberg 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 § 31-3C, 31-4C or 31-5B of this chapter. Such moneys or their equivalent and any valuable consideration received shall be forfeited to the general fund of the Borough of Heidelberg or to the Borough of Heidelberg as property of the Borough of Heidelberg if any valuable consideration received is not money.
- B. Cost of abatement.
  - (1) 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 cause 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 is hereby made a special assessment against the parcel of land upon which such nuisance is maintained. Upon its determination in a civil action, such shall, by separate legal proceeding, be made a lien against such property and personal obligation against any person or persons, firm, association, partnership, corporation or other entity and shall be collected at the same time in the same manner as ordinary borough 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 borough taxes. All laws applicable to the levy, collection and enforcement of borough taxes shall be applicable to such special assessment.

**§ 31-9. Action by Borough Solicitor.**

Upon a specific finding by resolution of the Borough of Heidelberg of the fact that a public nuisance exists at a particular location, the Solicitor shall not later than three days after passage of said resolution, commence legal proceedings by the filing of a civil action seeking the following relief:

- A. A declaratory judgment that the matter named by the Borough Council is lewd as defined herein.
- B. A declaratory judgment that the matter found to be lewd is or are public nuisances per se under this chapter and such resolution.
- C. A declaratory judgment that each place named by the Borough Council is a public nuisance under this chapter and such resolution.
- D. An accounting of all moneys paid as admission price to or for the exhibition or exhibitions of such lewd motion-picture films and 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 from and after the time the persons maintaining said nuisance receive notice of the finding by the Borough Council by resolution that the public nuisance exists and a judgment that such moneys or valuable consideration are a public nuisance under this chapter.
- E. An order that all admission-price moneys or valuable consideration received and enumerated in the court-ordered accounting be forfeited as contraband to the general fund of the Borough of Heidelberg or as property belonging to the Borough of Heidelberg.
- F. An injunction enjoining and restraining all persons responsible for maintaining said nuisance from possessing or publicly exhibiting said lewd motion-picture films or from selling or possessing for sale said lewd publications or from committing acts of lewdness, assignation or prostitution at any time in the future in the Borough of Heidelberg and such other injunctive relief as the court may order.
- G. An order that all positive prints of the named lewd film and all lewd publications or copies or reproductions thereof be forfeited as contraband under this chapter.

- H. Judgment for the Borough of Heidelberg for all costs therein expended, including investigative costs, court costs, reasonable attorney's fees and such other expenses as are provided for herein.
- I. All other relief as the court may deem proper.

**§ 31-10. Violations and penalties.<sup>1</sup>**

Any person who shall violate any provision of this chapter shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600 plus costs of prosecution, and, in default of payment of such fine and costs, by imprisonment for not more than 30 days.

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<sup>1</sup> Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).