

PART II

**GENERAL
LEGISLATION**



Chapter 59
ADULT BOOKSTORES, ADULT LEWD DANCING
ESTABLISHMENTS AND PORNOGRAPHY

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[HISTORY: Adopted by the Council of the Borough of Berwick 9-20-1982 by Ord. No. 1158. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 165.

ARTICLE I
Definitions

§ 59-1. Definitions.

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

ADULT BOOKSTORE — A commercial establishment having as part of its stock-in-trade books, magazines, photographs or other material which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas which are defined as lewd, obscene or which are pornographic as defined herein. [Amended 6-7-1993 by Ord. No. 93-8]

ADULT LEWD DANCING ESTABLISHMENTS — A place where nude dancing occurs and/or lewd, obscene or pornographic performances as described herein are shown or occur. [Added 6-7-1993 by Ord. No. 93-8]

ADULT MOTION-PICTURE THEATERS — Any commercial place where lewd, obscene or pornographic film or matter or performances as described herein are shown or displayed. [Amended 6-7-1993 by Ord. No. 93-8]

AUDIENCE — One or more persons who are permitted to view a performance for valuable consideration or in or from a public place. [Added 6-7-1993 by Ord. No. 93-8]

INTENT — The possession and display of pornography shall be prima facie the intent to sell or transfer possession thereof.

LEWD-OBSCENE PORNOGRAPHY — 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 ultimate sexual acts, normal or perverted, actual or simulated, or masturbation, excretory functions or the exhibition of nude anatomical areas as defined herein. [Amended 6-7-1993 by Ord. No. 93-8]

MATTER — A film, tape, recording or publication, or any of them, singularly or together.

MOTION-PICTURE FILM — Includes any film or plate negative; film or plate positive; film designed to be projected on a screen or other surface for exhibition; films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen or other surface; and videotape or any other medium used to electronically reproduce images on a screen or other surface.

NUDE [Amended 6-7-1993 by Ord. No. 93-8] — Completely without clothing, or showing:

- A. Less than completely and opaquely covered human genitals, pubic region, buttocks or the female breast below the top of the nipple.
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

PERFORMANCE — Any live or reproduced exhibition, including but not limited to any play, dance or appearance presented to or performed before an audience. [Added 6-7-1993 by Ord. No. 93-8]

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 motion-picture film which is displayed in an area open to the public or is offered for sale or exhibited in a coin or otherwise electronically 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 the use of or transfer of possession of lewd-obscene pornography matters, as defined herein, is completed.

§ 59-2. Intent.

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, educational or scientific value.

ARTICLE II
Restrictions; Nuisances

§ 59-3. Unlawful activities. [Amended 6-7-1993 by Ord. No. 93-8]

Possession and display of lewd, obscene or pornographic materials for sale or the intent to transfer possession of thereof, the conducting of adult bookstores, the conducting of adult lewd dancing establishments, the exhibition of lewd, obscene or pornographic materials or films, as described herein, are prohibited activities.

§ 59-4. Publicly exhibited materials deemed nuisances. [Amended 6-7-1993 by Ord. No. 93-8]

- A. Any and every place within the Borough of Berwick where lewd, obscene or pornographic materials, adult lewd dancing establishments and/or performances and/or pornographic publications or films are carried on, possessed for sale or publicly exhibited and/or offered for sale or transfer or viewing or places within the Borough of Berwick where said films, adult lewd dancing establishments, performances, publications, materials or matter are exhibited and/or offered for sale or transfer or viewing for consideration, or where said materials or publications or adult lewd dancing establishments or performances or matters or films as designated herein are publicly disseminated or sold or possessed for such dissemination, is prohibited and is a public nuisance.
- B. Any and every lewd, obscene or pornographic material, adult lewd dancing establishment, performance and/or publication or film which is publicly exhibited or possessed for such purpose, or is possessed with intent to sell or transfer possession, at a place which is a public nuisance under Subsection A above is a public nuisance per se.

§ 59-5. Moneys paid as admission or purchase prices deemed public nuisances.

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 order of summary abatement provided for in § 59-8 hereof, all moneys paid thereafter as admission price to such exhibition or as purchase price or consideration for transfer of possession are declared to be a public nuisance as personal property used in conducting and maintaining a declared public nuisance.

§ 59-6. Minors. [Amended 6-7-1993 by Ord. No. 93-8]

- A. From and after the passage of this chapter, it shall be unlawful for any person or business to sell, offer for sale, attempt to sell, possess and display with intent to sell, transfer, display for viewing by or to a child or children under the age of 17 years, any lewd, obscene or pornographic materials, publications, matter or film, as defined herein, and such activities conducted within the Borough of Berwick shall and are declared to be a public nuisance subject to the penalty and abatement proceedings as provided hereinafter.
- B. In addition, from and after the passage of this chapter, it shall be unlawful for any person or business to grant admission or allow any child or children under the age of 17 into an adult motion-picture theater or an adult lewd dancing establishment or performance, as defined herein, and the allowance of such a minor or minors into an adult motion-picture theater or adult lewd dancing establishment shall and is declared to be a public nuisance subject to the penalty and abatement proceedings as provided hereinafter.

**ARTICLE III
Liability; Abatement**

§ 59-7. Liability of persons served with notice; abatement.

- A. Upon and after receiving notice as provided herein and a notice or order of summary abatement as provided in § 59-8D, any and every person who shall own, lease, maintain, legally or equitably, or manage, conduct or operate a place within the Borough of Berwick which is declared to be a public nuisance, as set forth and stated in this chapter in § 59-4, is deemed to be a person who has knowledge of such nuisance for the purpose of this Article and is therefore responsible for its maintenance in continuance and shall be liable therefor.
- B. The places and subject matter declared to be public nuisances under § 59-4 shall be abated as provided for in this chapter.

**ARTICLE IV
Abatement Procedure**

§ 59-8. Responsibility of Police Department; abatement orders.

Upon a specific finding that a public nuisance, as defined herein, exists within the Borough of Berwick, the Police Department, in applying the provisions of this article to such nuisance, shall:

- 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, the home address of the record owner thereof and the name of the manager or person in charge, when known.
- C. Set forth the evidentiary facts considered by the Police Department in arriving at its factual determination. In the case of books, publications or magazines, such facts shall include a recitation of the particular books, publications or magazines or types considered by the Police Department; in the case of a motion-picture film or films, or performances at an

adult lewd dancing establishment which the Police Department finds are patently offensive, or other paraphernalia, a recitation of the particular sexual conduct and acts which the Police Department finds are patently offensive; the basis for the finding by the Police Department that such publications, performances, establishments, film or films or other paraphernalia are displayed, sold or held for sale at any place found by the Police Department to be a public nuisance; and the basis of the finding by the Police Department that such books, publications or magazines or such films or other paraphernalia constitutes a part of the stock-in-trade of such place of business or other place. [Amended 6-7-1993 by Ord. No. 93-8]

- D. Under the authority of the Borough of Berwick Council, order all persons described in Article II herein to summarily abate such public nuisance within 24 hours of service of such order on any such subject matter or to cease to use the place where the nuisance is declared to exist or to terminate the use of said premises for the purpose of possessing for sale or transfer, displaying and/or selling or transferring possession of or exhibiting lewd, obscene, pornographic publications or operating or conducting adult lewd dancing establishments or performances and/or films and other paraphernalia or to cause the same to be terminated. [Amended 6-7-1993 by Ord. No. 93-8]
- E. Request the Solicitor to proceed to do all things necessary to abate such public nuisance through judicial proceedings and to conclude such proceedings as expeditiously as possible, including requesting the court to advance proceedings on the court calendar as provided by law or judicial administration procedure. Borough Council shall be required to give formal approval to action taken by the Solicitor upon request of the Police Department.
- F. Inform and give notice in writing to persons designated that:
- (1) The Police Department has determined that a public nuisance presently exists at such place and address; the activities which constitute the public nuisance, and under Article III of this chapter they are deemed to have knowledge thereof and are responsible therefor.
 - (2) In the event the order of the Borough of Berwick has not been complied with within the 24 hours, the Police Department may request the Solicitor, as provided under Subsection E, to commence necessary civil legal proceedings to abate the same judicially, and the costs of abatement of such public nuisance in such proceedings shall include investigative costs, court costs, attorneys' fees, where authorized by law, and other expenses, and the same shall 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 and allowances as such, shall be made a municipal lien against such property and a personal obligation against an person, persons, firm, association, partnership, corporation or other entity deemed to be in violation of this chapter.
 - (3) All lewd, obscene and/or pornographic publications, film or paraphernalia being used in conducting, or displayed on the premises in which such public nuisance is being conducted and maintained, and being an integral part of the conduct of the activities described as a public nuisance herein, are contraband and subject to forfeiture.

- (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 the notice required by this chapter, any and all money paid or other consideration received for the sale or transfer of possession of lewd, obscene or pornographic publications or other paraphernalia prohibited herein or for admission price to or for the exhibition, viewing or display thereon of adult lewd dancing performances, publications or pornographic films, or other materials and paraphernalia referred to above as a public nuisance is personal property used in conducting and maintaining such nuisance and, as such, is the subject of forfeiture. [Amended 6-7-1993 by Ord. No. 93-8]
- G. Order a true and correct copy of this article to 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.

ARTICLE V

Forfeiture of Revenues; Abatement Costs; Recoverability

§ 59-9. Forfeiture of revenues from public nuisances.

- A. Upon judgment in favor of the Borough of Berwick in any legal proceedings instituted hereunder, revenues or other consideration forfeited as provided in this chapter shall be forfeited to the general fund of the Borough of Berwick; proceedings shall also include claim for recovery of investigative and court costs, trial expense and reasonable attorneys' fees as provided herein. The cost of said abatement proceedings upon judgment is recoverable as a special assessment against the parcel of real estate or personal obligation against the person conducting the activities constituting the public nuisance and abated by legal proceedings.
- B. In abatement proceedings upon judgment in favor of the Borough of Berwick, an accounting shall be made by the defendant of all moneys or consideration received which have been declared to be a public nuisance under Article II. Such money or consideration, or equivalent, shall be forfeited to the general fund of the Borough of Berwick or as property of the Borough of Berwick if the consideration is not money.

§ 59-10. Cost of abatement proceedings.

The cost of abatement proceedings shall include the following:

- A. Investigative cost.
- B. Court costs.
- C. Reasonable attorneys' fees arising out of the preparation for and trial of the cause and appeals, and other costs allowed on appeal, including but not limited to transcript.
- D. Printing costs of trial, briefs and all other litigation proceedings relating to order.

§ 59-11. Recovery of costs.

Cost of abatement is hereby made a special assessment against the parcel of land upon which such nuisance is maintained. Upon determination of cost in a civil action, such shall, by separate legal proceedings, be made a lien against such property and a personal obligation against any person, persons, firm, association, partnership, corporation or other entity and shall be collected in the same manner as ordinary municipal tax and claim liens are collected, subject to the same interest, penalty and procedure set forth in the statute. All laws applicable to the levy, collection and enforcement of municipal taxes and claims shall be applicable to such special assessment.

