

Chapter 48

ADULT USES

[HISTORY: Adopted by the Borough Council of the Borough of Chester Heights 1-3-1995 by Ord. No. 135. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 185.

§ 48-1. Findings and determinations; intent.

- A. It is hereby determined that adult entertainment uses, as defined by this chapter, tend to bring with them secondary concerns that impact on the health, safety and general welfare concerns of the Borough of Chester Heights. These associated concerns include difficulties for law enforcement, municipal maintenance, trash, deleterious effects on business and residential property values, increased crime, particularly corruption of the morals of minors and prostitution, and encourage residents and businesses to move elsewhere.
- B. With these goals in mind, the Borough of Chester Heights is amending Chapter 185, Zoning, of the Code of the Borough of Chester Heights to restrict or limit the location where said activities can locate within the bounds of the Borough of Chester Heights. The Borough of Chester Heights has concluded that a permitting and/or licensing process is a legitimate and reasonable means of accountability to ensure that the operators of adult entertainment uses comply with reasonable regulation and do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation. The Borough of Chester Heights also does not intend by this chapter to affect or suppress any activities protected by the First Amendment but instead address these secondary effects.

§ 48-2. Definitions.

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

ADULT ARCADE

- A. Any place to which the public is permitted or invited wherein coin-operated or slug operated or electronically, electrically or mechanically controlled still or motion producing devices are maintained to show images to five or fewer persons per machine at any one time or where the image is so displayed or distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.
- B. Adult cabaret, adult dance hall, adult club, adult bar, adult tavern, night club, restaurant or similar commercial establishment offering adult entertainment; any cabaret, dance hall, club, tavern, bar, night club, restaurant or similar commercial establishment offering entertainment used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas,

for observation by patrons therein whether or not liquor is sold on the premises. Such presentation or material may be live or through films, motion pictures, video cassettes, slides or other photographic reproduction depicting or describing specified sexual activities or specified anatomical areas.

ADULT ENTERTAINMENT — Live or nonlive entertainment containing specified sexual activities or displaying or presenting specified anatomical areas. This definition is a broad overall definition which includes the activities adult cabaret, adult dance hall, adult club, adult bar, adult tavern, adult materials sales, adult mini motion-picture theater, adult motion-picture theater and peep shows as part of its definition for adult entertainment.

ADULT MATERIAL SALES

- A. Book, video, magazine sales, other printed matter, photographs, films, motion-picture video or production slides or other visual representation and/or rentals where either the materials, advertising or the displays or the signs in or out of the locations offer written material showing, displaying, and/or used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas for observation by patrons therein. This does not apply to the availability for sale of any material displayed in such a way that only the name of the book or magazine appears.
- B. Instruments, devices or paraphernalia which are used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.
- C. Such a commercial establishment as listed in Subsections A and B may have other principal business purposes that do not involve the offering for sale or rental of material depicted or describing specified sexual activities or specified anatomical areas and still be characterized as adult material sales. Such other business purposes will not serve to exempt such commercial establishments from being categorized as adult material sales so long as one of its principal business purposes is the offering for sale or rental for consideration of specified materials used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

ADULT MINI MOTION-PICTURE THEATER — Any enclosed or semienclosed or unenclosed building which houses a commercial establishment with the capacity for less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas, for observation by patrons therein.

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

- A. Offers accommodation to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproduction which are used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

ADULT MOTION-PICTURE THEATER — Any enclosed or partially enclosed or unenclosed building which houses a commercial establishment with the capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activities or specified anatomical areas for observation by patrons therein.

APPLICANT — A person who applies by filling out an application for a permit for an adult entertainment business.

CERTIFICATION — A department and/or agency of the Borough after inspection of the premises for adult entertainment writes a report to the Code Enforcement or Zoning Officer regarding compliance or noncompliance.

ESTABLISHMENT

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

NUDITY or STATE OF NUDITY — The appearance of the specified anatomical areas without any coverings on the body area.

PEEP SHOWS — Any enclosed or semienclosed or unenclosed building/enclosure which houses a commercial establishment with the capacity for one person used for presenting material distinguished or characterized by an emphasis on matter depicting or describing specified sexual activity or specified anatomical areas for observation by parties therein.

PERMITTEE and/or LICENSEE — A person or persons to whom a permit and/or license to operate an adult entertainment has been issued, as well as the individual or individuals listed as an applicant on the application for permit and/or license.

PERSON — An individual, proprietorship, partnership, corporation, association or other legal entity.

SEMINUDE or SEMINUDITY — State of dress in which clothing partially or opaquely covers specified anatomical areas.

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 or seminude.

SPECIFIED ANATOMICAL AREAS

- A. Human genitals, pubic region, anus;
- B. Buttocks; or
- C. Female breast(s) below a point immediately above the top of the areola and/or female breast(s) partially or completely covering the areola; or
- D. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES

- A. Human genitals in a state of sexual stimulation or arousal;
- B. Acts or simulated acts of human masturbation, sexual intercourse, sodomy or oral copulation;
- C. Fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast(s); or
- D. Excretory functions as part of or in connection with any of the activities set forth in Subsections A through C above.

TRANSFER OF OWNERSHIP OR CONTROL

- A. The sale, lease or sublease of a business;
- B. The transfer of securities which constitutes a controlling interest in the business whether by sale, exchange or similar means; or
- C. The establishment of a trust, gift or other similar device which transfers the ownership or control of the business except for transfer by a bequest or other operation of law upon the death of a person possessing the ownership or control.

§ 48-3. Uses; issuance of permits.

- A. Uses. Only in Limited Industrial District, in addition to those uses by special exception stated in Chapter 185, Zoning, of the Code of the Borough of Chester Heights, the land, buildings or premises shall be by special exception only for the following additional uses:
 - (1) Adult arcade.
 - (2) Adult cabaret, adult dance hall, adult club, adult bar, adult tavern, night club, restaurant or similar commercial establishment.
 - (3) Adult entertainment.
 - (4) Adult material sales.
 - (5) Adult mini motion-picture theater.
 - (6) Adult motel.
 - (7) Adult motion-picture theater.

- (8) Peep shows.
 - (9) Sexual encounter center.
- B. The above additional uses are allowed by permit only in the Industrial District if the property line of this use is greater than 500 feet from the property lines of a:
- (1) School;
 - (2) House of worship;
 - (3) Borough owned park;
 - (4) Residential district; or
 - (5) Any other adult use establishment as listed above.
- C. For purposes of this chapter, measures shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult entertainment business is conducted, to the nearest property line of a school, house of worship, Borough-owned park and/or residential district.
- D. Permit process. The Zoning Officer, upon submission to the Borough of Chester Heights of an application, shall present the applicant with a use permit for adult entertainment business(s) as follows:
- (1) In the Industrial District, a permit shall be issued only if the applicant is successful in obtaining a special exception for the proposed type of adult entertainment and the application successfully meets all health, use and occupancy and/or building permit requirements as defined in the pertinent ordinances and their amendments/revisions and the location of said use is demonstrated to comply with § 48-3A above.
 - (2) The application for a permit to operate an adult entertainment business must be made on the form provided by the Zoning Officer of the Borough. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but need at least be drawn to a designated scale or drawn with marked dimensions on the interior and exterior of the premises to an accuracy of plus or minus six inches.
 - (3) The applicant must be qualified according to the provisions of this chapter, and the premises must be inspected and found to be in compliance with the law by the Zoning Officer, the Fire Marshal and the Building Inspector.
 - (4) If a person wishes to operate an adult entertainment business as an individual, he must sign the application for permit as an applicant. If a person who wishes to operate an adult entertainment business is other than an individual, each individual that has 10% or greater interest in the business must sign the application for permit as an applicant.
 - (5) The fact that a person possesses other types of Borough permit(s) does not exempt the person from the requirement of obtaining an adult entertainment business permit.

- (6) The Zoning Officer shall approve the issuance of a permit to an applicant within 30 days after the applicant is awarded a special exception by the Zoning Hearing Board of the Borough of Chester Heights and will not approve a permit if the Zoning Officer finds one or more of the following to be true:
 - (a) Applicant is under 18 years of age.
 - (b) Applicant or applicant's spouse is overdue on his or her payment to the Borough of taxes, fees, fines or penalties assessed against him or her or imposed upon him or her in relation to an adult entertainment business.
 - (c) Applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.
 - (d) Permits to be used for the adult entertainment business have been reviewed and have been disapproved by either the Zoning Officer or the Fire Marshal as not being in compliance with the applicable laws and ordinances.
 - (e) The permit fee required by this chapter has not been paid or any other applicable permits have not been complied with or the fees were not paid before.
 - (f) Applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.
- (7) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the adult entertainment business. The permit shall be posted in a conspicuous place at or near the entrance of the adult entertainment business so it can be read at any time.
- (8) The permit, if granted, shall have a life of one year from the date of issuance. At that time, the applicant must file another application before the expiration of the permit in order to continue doing business without interruption. Application for renewal should be made at least 30 days before the expiration date. When an application is made less than 30 days before the expiration date, the pendency of the application will not prevent the expiration of the permit. Again, all of the above rules listed in this section and the entire article must be complied with as if a new permit were being issued.
- (9) The Zoning Officer, Fire Marshal and the Building Inspector and other applicable inspectors shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the Zoning Officer. This certification shall be promptly presented to the Zoning Officer.
- (10) If the Borough Zoning Officer denies a renewal of a license, the applicant shall not be issued a permit for one year from the date of denial, except that after 90 days of lapse since the date of denial, the applicant may be granted a permit if the Zoning Officer finds that the basis for denial of the renewal permit has been corrected or abated.

§ 48-4. Inspection.

- A. An applicant or permittee shall permit representatives of the Building Inspector, Fire Marshal, Zoning Officer or other Borough departments or agencies to inspect the premises of an adult entertainment business for the purpose of ensuring compliance with the law at any time the adult entertainment business is occupied or open for business. These inspection departments/agencies shall certify in writing to the Code Enforcement or Zoning Officer whether compliance is achieved.
- B. A person who operates an adult entertainment business or his agent or employee violates Chapter 185, Zoning, of the Code of the Borough of Chester Heights if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

§ 48-5. Permit fees.

The annual fee for an adult entertainment business permit is \$500.

§ 48-6. Suspension of permit.

The Zoning officer shall suspend a permit for a period not to exceed 30 days if he determines that a permittee or an employee of the permittee has:

- A. Violated or is not in compliance with any section of this chapter or Chapter 185, Zoning, of the Code of the Borough of Chester Heights.
- B. Engaged in excessive use of alcoholic beverages while on the adult entertainment premises.
- C. Refused to allow an inspection of the adult entertainment premises as authorized by this chapter.

§ 48-7. Revocation of permit.

- A. The Zoning Officer shall revoke a permit if a cause of suspension set forth in § 48-6 occurred and the permit has been suspended within the preceding 12 months.
- B. The Zoning Officer shall also have the power to revoke a permit if he determines that:
 - (1) A permittee or any of the persons specified has given false or misleading information or materials submitted to the Borough during the application process.
 - (2) A permittee or employee of the permittee has knowingly allowed prostitution on the premises as defined by the Pennsylvania Crime Codes.
 - (3) A permittee or employee of the permittee knowingly operated the adult entertainment business during a period of time when the permittee's permit was suspended or revoked.
 - (4) A permittee or employee of the permittee knowingly allowed any action of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the permitted premises.
 - (5) A permittee is delinquent in payment to the Borough, county, or state for any taxes or fees past due.

- C. When the Zoning Officer revokes the permit, the revocation shall continue for one year and the permittee shall not be issued an adult entertainment business permit for one year from when the date of revocation became effective. If, subsequent to revocation, the Zoning Officer finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit if at least 90 days have elapsed since the date the revocation became effective.
- D. After denial of an application or denial of a renewal of an application or suspension or revocation of a permit, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

§ 48-8. Transfer of permit.

A permittee shall not transfer his/its permit to another person nor shall a permittee operate an adult entertainment business under the authority of a permit at any place other than the address designated within the application.

§ 48-9. Exemption.

It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated as follows:

- A. By a proprietary school licensed by the Commonwealth of Pennsylvania or college, junior college or university supported entirely or partly by taxation.
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to any college, junior college or university supported entirely or partly by taxation.

§ 48-10. Operating without a permit; injunction.

A person who operates or causes to be operated an adult entertainment business without a valid permit or in violation of this chapter is subject to an action in equity or a suit for injunction as well as citations for violations of Chapter 185, Zoning, of the Code of the Borough of Chester Heights.

§ 48-11. Violations and penalties.

Any person who violates any provision of this chapter shall be subject to the penalties set forth in Article XXII, § 185-129, of Chapter 185, Zoning, of the Code of the Borough of Chester Heights.