

Chapter 47

ADULT ENTERTAINMENT

[HISTORY: Adopted by the Mayor and Council of the City of Seat Pleasant: Art. I, at time of adoption of Code (See Ch.1, General Provisions, Art. I). Amendments noted where applicable.]

GENERAL REFERENCES

Public entertainment — See Ch. 80.

ARTICLE I

Obscenity

[Adopted at time of adoption of Code]

§ 47-1. Definitions.

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

AVAILABLE TO THE PUBLIC — The matter or performance may be purchased or attended on a subscription basis or a membership fee arrangement or for a separate fee for each item or performance.

DISSEMINATE — To transfer possession of, with or without consideration.

KNOWINGLY — Being aware of the character and the content of the material.

MATERIAL — Any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture or other pictorial representation or any statue or other figure or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment or machines.

NUDITY — The showing of the human male or female genitals or pubic area with less than a fully opaque covering, or the depiction of covered male genitals in a discernibly turgid state.

OBSCENE — To the average person applying contemporary community standards, that:

- A. The predominant appeal of the matter taken as a whole is to prurient interest, i.e., a shameful or morbid interest in sexual conduct, nudity or excretion;
- B. The matter depicts or describes in a patently offensive manner sexual conduct regulated by the applicable state statute; and
- C. The work, taken as a whole, lacks serious literary, artistic, political or scientific value.

PERFORMANCE — Any preview, play, show, skit, film, dance or other exhibition performed before an audience.

PERSON — Any individual, partnership, firm, association, corporation or other legal entity.

PROMOTE — To cause, permit, procure, counsel or assist.

SERVICE TO PATRONS — The provision of services to paying guests in establishments providing food and beverages, including but not limited to hostessing, hatching, cooking, bartending, serving, table setting and clearing, waitering and waitressing and entertaining.

§ 47-2. Prohibited conduct.

It shall be unlawful for any person to:

- A. Knowingly disseminate, distribute or make available to the public any obscene material.
- B. Knowingly engage or participate in any obscene performance made available to the public.
- C. Knowingly engage in commerce for commercial gain with materials depicting and describing explicit sexual conduct, nudity or excretion utilizing displays, circulars, advertisements and other public sales efforts that promote such commerce primarily on the basis of their prurient appeal.
- D. Provide service to patrons in such a manner as to expose to public view:
 - (1) His or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region.
 - (2) Any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anal region or pubic hair region.
 - (3) Any portion of the female breast at or below the areola thereof.
- E. Knowingly promote the commission of any of the above listed unlawful acts.

§ 47-3. Notice of obscene material or action.

- A. Actual notice of the obscene nature of such material, performance or activity may be given to a person involved in or responsible for such from the City Attorney on the basis of information lawfully gathered and supplied to him/her by the Police Department or citizens.
 - (1) Such notice shall be in writing and delivered by mail or in person to the alleged offender.
 - (2) Such notice shall state that:
 - (a) In the opinion of the City Attorney the activity engaged in falls within the prohibitions of § 47-2.
 - (b) If such activity has not ceased within seven judicial days, the city will take appropriate legal action.

- (c) A declaratory judgment proceeding as described in § 47-4B is available if a person engaged in the challenged activity wishes to initiate the legal determination of whether the activity is in fact obscene.
- B. A person who promotes any obscene activity as prohibited in § 47-2 in the course of his/her business is presumed to do so with knowledge of its content and character.

§ 47-4. Types of proceedings.

- A. Declaratory judgment.
 - (1) Any person receiving notice, in writing, from the City Attorney under § 47-3A that a specified activity is obscene may bring action against the city for a declaratory judgment to determine whether such activity is obscene.
 - (2) If it is adjudged and declared by the court that such activity is obscene, then the City Attorney may cause the publication of such judgment in a newspaper of general circulation in the city, and upon such publication, all persons residing or doing business in the city will be presumed to have actual notice of the nature of the activity.
- B. Criminal prosecution.
 - (1) The City Attorney may cause criminal charges to be brought against any person presently engaging in or who has engaged in any prohibited activity in violation of § 47-2A.
 - (2) If the City Attorney has given notice pursuant to § 47-3A, then such criminal charges may be brought only after receipt of said notice.
- C. Injunction.
 - (1) The City Attorney may seek a temporary restraining order in Circuit Court for Prince George's County in order to enjoin any obscene performance or the service of patrons in violation of § 47-2D.
 - (2) If the City Attorney has given written notice pursuant to § 47-3A, he/she may, after the passage of seven judicial days, seek such a temporary restraining order.
- D. Proceedings authorized by this section shall be in addition to any others provided by law.

§ 47-5. Evidence; defenses.

- A. Expert affirmative evidence that the materials or activities are obscene is not required when the materials or activities themselves are presented as evidence.
- B. It shall be an affirmative defense in any prosecution under this Article that allegedly obscene material was disseminated or presented for a bona fide scientific, medical, educational, governmental or judicial purpose by a physician, psychologist, teacher, clergyman, prosecutor or Judge.

§ 47-6. Violations and penalties.

- A. Whoever violates this Article shall, upon conviction thereof, be fined not less than \$500 nor more than \$1,000 and be imprisoned for a period not to exceed six months, or both.
- B. After conviction, in addition to any other penalty imposed for a violation of this Article, the city may, in its discretion, revoke the business license of the offender, and upon conviction of the offender for a second violation, the city shall revoke the business license of such person.