

Chapter 13

Licenses, Permits and General Business Regulations

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Part 1**Coin-Operated Amusement Devices****§13-101. Definitions.**

Coin-operated amusement device - any amusement machine or device operated by means of the insertion of a coin, token, or similar object, for the purpose of amusement or skill and for the playing of which a fee is charged. The term does not include vending machines in which are not incorporated gaming or amusement features, nor does the term include any coin-operated mechanical musical devices.

Operator - any person, firm, corporation, partnership or association who sets up for operation by another or leases or distributes for the purpose of operation by another, any device as herein defined, whether such setting up for operation, leasing or distributing be for a fixed charge or rental, or on the basis of a division of the income derived from such device, or otherwise.

Proprietor - any person, firm, corporation, partnership, association or club who, as the owner, lessee, or proprietor has under his or its control any establishment, place or premises in or at which such device is placed or kept for use or play, or on exhibition for the purpose of use or play.

(*Ord. 726, 11/10/1983, §1*)

§13-102. License Required.

No person, firm, or corporation, shall engage in the business of an operator or proprietor of an establishment containing coin-operated amusement devices as the terms are herein defined, without first having obtained the proper license therefor.

(*Ord. 726, 11/10/1983, §2*)

§13-103. Fee Established.

The license fee for each said device of the kind and character hereinabove defined shall be as established from time to time by resolution of Borough Council.

(*Ord. 726, 11/10/1983, §3; as amended by Ord. 1025, 10/14/2004*)

§13-104. Annual License.

It shall be unlawful for any person, firm, or corporation, to install, operate, or maintain such device without first having obtained the license from the Secretary of the Borough. The license period shall be the same as the calendar year or any part thereof. All license fees shall be paid annually in January of each year and for the first year, i.e., 1983, in which this Part is effective, the license fee for each said device shall be paid within 30 days of the effective date of this Part. In no case shall any portion of the said license fee be repaid to the licensee in the event that the device is removed.

(*Ord. 726, 11/10/1983, §4*)

§13-105. Application.

1. Application for license hereunder shall be filed with the Secretary of the

Borough of Shillington in writing and shall specify:

A. The name and address of the applicant, and if a firm, corporation, partnership or association, the principal officers thereof and their addresses.

B. The address of the premises where the licensed device or devices are to be operated, together with the character of the business as carried on at such place.

C. The trade name and general description of the device or devices to be licensed, the name of the manufacturer and the serial number and, if the applicant is a proprietor, the number of devices to be licensed.

D. The name and address of the operator of the device or devices, if other than the proprietor. The proper license fee shall accompany such application.

2. Application for license hereunder shall be first referred by the Secretary of the Borough to Borough Council who shall make or cause to be made such investigation as they deem necessary. If the application is approved by the Borough Council the license shall be issued by the Secretary. If the license is denied, the fee shall be returned to the applicant. All licenses under this Part shall expire on December 31 following their issuance. The license shall be posted in a conspicuous place in the establishment of the licensee. Such license shall be nonassignable and nontransferable, and shall apply only to the premises for which the license is issued. All license renewals and applications thereof shall be referred to the Secretary of the Borough of Shillington who shall make or cause to be made such investigation as he or she deems necessary for the reissuance of said license. Upon being satisfied as to the propriety thereof, the Secretary of the Borough shall issue said renewal license.

(*Ord. 726, 11/10/1983, §5*)

§13-106. New License Required for Added Devices.

In case a proprietor licensed under the provisions of this Part desires, after the expiration of any portion of any license year, to increase the number of devices to be used or played, or exhibited for use or play in his establishment, he shall surrender his license to the Borough Secretary who shall issue a new license showing the number of devices licensed thereunder, upon payment of the proper license fee therefor.

(*Ord. 726, 11/10/1983, §6*)

§13-107. Owner to Give Evidence of Ownership.

Any proprietor who owns such device or devices at the time this Part becomes effective shall file with the Secretary of the Borough evidence of such ownership prior to the issuance of a license; and any proprietor purchasing a device or devices after the effective date of this Part shall file with the Secretary of the Borough evidence of ownership thereof before exhibiting or placing said device or devices for use or play.

(*Ord. 726, 11/10/1983, §7*)

§13-108. All Devices to be in View.

All devices shall, at all times, be kept in place in plain view of any person or persons who may frequent or be in any place where such devices are kept or used. Nothing in this Part shall be construed to authorize, or permit, or license any gambling device of any nature whatsoever.

(*Ord. 726, 11/10 1983, § 8*)

§13-109. Record Keeping by Borough.

The proper officials and employees of the Borough of Shillington are hereby authorized and directed to make and keep such records, prepare such forms, and to take such other measures as may be deemed necessary or convenient to carry this Part into effect.

(*Ord. 726, 11/10/1983, §9*)

§13-110. Penalties.

Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not exceeding \$1,000 and costs and, in default of payment thereof, shall be subject to imprisonment for a term not to exceed 30 days. Each day that a violation of this Part continues shall constitute a separate offense. In addition to any penalty imposed, the Borough Council may revoke such license for any violation of this Part pertaining to the conduct of such business.

(*Ord. 726, 11/10 1983, §10; as amended by Ord. 1025, 10/14/2004*)

Part 2**Self-Service Laundry and Dry Cleaning Establishments****§13-201. License Required to Operate Commercial Self-Service Laundry or Dry Cleaning Establishment.**

No person shall operate a commercial self-service laundry or dry cleaning establishment unless he has obtained a license for each establishment from the Borough Manager. Each application for a license shall set forth:

- A. The name and address of the applicant.
- B. The physical description of the premises where the self-service laundry or dry cleaning establishment will be located.
- C. The number of washing machines, dryers, cleaning machines or other equipment to be used on the premises.
- D. A description of the equipment used to prevent lint or fumes from being discharged out of the premises.
- E. Full compliance with all existing State laws and regulations.
- F. Such other information as the Borough Manager may require.

(*Ord. 420, 12/27/1962, §1*)

§13-202. Annual License Fee.

Each applicant shall pay a yearly license fee, as established by resolution of Borough Council, for each premises beginning with the calendar year of 1963.

(*Ord. 420, 12/27/1962, §2; as amended by Ord. 1025, 10/14/2004*)

§13-203. Information on License; Display Thereof.

Each license shall show the name and address of the licensee, the number of machines on the premises, and the date of issuance and expiration. The license shall be prominently posted on the premises.

(*Ord. 420, 12/27/1962, §3*)

§13-204. Certain Information to be Posted; Public Telephone Required on Premises.

There shall be prominently posted in the premises, the name, address and telephone number of the owner or operator of the laundry, or dry cleaning establishment, and there shall be a public telephone on the premises in a conspicuous location.

(*Ord. 420, 12/27/1962, §4*)

§13-205. Requirements for Dryers.

Any dryer located on the premises for use in connection with such washing machines shall be so constructed that it may be opened from the inside as well as from the outside.

(*Ord. 420, 12/27/1962, §5*)

§13-206. Attendant Required from Midnight to 7 a.m.

No licensee shall permit the premises to be used, or the laundry or dry cleaning establishment to be operated during the hours of 12:00 midnight and 7:00 a.m., unless, however, such establishment shall have an attendant employed by the licensee present and on the premises continuously between the aforesaid hours of 12:00 midnight and 7:00 a.m.

(*Ord. 420, 12/27/1962, §6*)

§13-207. Attendant Required When Self-Service Dry Cleaning Equipment Available for Use.

In every premises where self-service dry cleaning equipment is located, an attendant employed by the licensee must be present and on the premises at all times that such equipment is available for use by the public.

(*Ord. 420, 12/27/1962, §7*)

§13-208. Penalties.

Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not less than \$10 and not exceeding \$1,000 plus costs and, in default of payment thereof, shall be subject to imprisonment for a term not to exceed 30 days. Each day that a violation of this Part continues shall constitute a separate offense.

(*Ord. 420, 12/27/1962, §8; as amended by Ord. 529, 7/17/1970, §1; and by Ord. 1025, 10/14/2004*)

Part 3**Circuses and Carnivals****§13-301. Definitions and Interpretation.**

The word “person,” as used in this Part shall mean and include any natural person, partnership, association, firm or corporation. In this Part the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and the neuter.

(*Ord. 543, 7/17/1970, §1*)

§13-302. Permit Required to Hold Circus or Carnival.

It shall be unlawful for any person to hold or conduct any circus or carnival, at any location within the Borough of Shillington, without first obtaining a permit therefor from the Borough Manager, and paying a permit fee of an amount as established from time to time by resolution of the Borough Council which shall be for the use of the Borough.

(*Ord. 543, 7/17/1970, §2; as revised by Ord. 1025, 10/14/2004*)

§13-303. Penalty for Violation.

Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000 plus costs, and in default of payment, to imprisonment for a term not to exceed 30 days. Everyday that a violation of this Part continues shall constitute a separate offense.

(*Ord. 543, 7/17/1970; as revised by Ord. 1025, 10/14/2004*)

Part 4**Transient Retail Business****§13-401. Definitions and Interpretation.**

1. The term "transient retail business," as used in this Part shall mean and include the following: (A) engaging in peddling, canvassing, soliciting and taking orders, either by sample or otherwise, for any goods, wares or merchandise, upon any of the streets or alleys, sidewalks or public grounds, or from house to house, within the Borough of Shillington; and (B) selling, soliciting or taking orders for any goods, wares or merchandise, from a fixed location within the Borough, on a temporary basis, which shall include, but shall not be limited to, such activities conducted at the time of special occasions or celebrations, for seasonal purposes, or for or in advance of specific yearly holidays.

2. The word "person," as used in this Part, shall mean any natural person, association, partnership, firm or corporation.

3. In this Part, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and the neuter.

(*Ord. 544, 7/17/1970, §1*)

§13-402. License Required to Engage in Transient Retail Business.

1. No person shall engage in any transient retail business within the Borough of Shillington without first having obtained from the Borough Secretary a license, for which a fee, which shall be for the use of the Borough, shall be charged; said fee to be established from time to time by resolution of Borough Council. [*Ord. 1025*]

2. Provided: no license fee shall be charged under this Section (A) to farmers selling their own produce; (B) for the sale of goods, wares and merchandise, donated by the owner thereof, the proceeds whereof are to be applied to any charitable or philanthropic purpose; (C) to any manufacturer or producer in the sale of bread and bakery products, meat and meat products, or milk or milk products; (D) to any individual employed by or representing a public utility, church, Borough civic association or school (or component part thereof) within the Governor Mifflin Jointure. Provided further: any person in one or more of the hereinabove mentioned exempted categories, and selling other goods, wares or merchandise not so exempted, shall be subject to the payment of the license fee required by this Section for his activities in connection with the sale of goods, wares and merchandise not in such exempted categories. Provided further: every license issued under the provisions of this Part shall be issued on an individual basis to persons engaging in such business; every individual shall obtain a separate license, issued to him in his name; and the license fee hereby imposed shall be applicable to every such individual license.

(*Ord. 544, 7/17/1970, §2; as amended by Ord. 682, 5/8/1980, §1; and by Ord. 1025, 10/14/2004*)

§13-403. Application for License.

Every individual desiring a license under this Part shall file with the Borough

Secretary a sworn application in writing on a form to be furnished by the Borough Secretary, which shall give the following information:

A. Name and description of the applicant.

B. Address (legal and local).

C. A brief description of the nature of the business and the goods, wares and merchandise to be sold, and, in the case of products of farm or orchard, whether produced or grown by the applicant.

D. If employed, the name and address of the employer, together with credentials establishing the exact relationship

E. The length of time for which such license is desired.

F. If a vehicle is to be used, a description of the same, together with license number or other means of identification.

G. A photograph of the applicant, taken within 60 days immediately prior to the date of filing of the application, which photograph shall be 2 inches by 2 inches, showing the head and shoulders of the applicant in a clear and distinguishing manner as the applicant currently appears. [*Ord. 682*]

H. A statement as to whether the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty imposed therefor.

At the time of filing the application, a fee, in an amount as established by resolution of Borough Council, shall be paid to the Borough Secretary, for the use of the Borough, to cover the cost of investigation. [*Ord. 1025*]

(*Ord. 544, 7/17/1970, §3; as amended by Ord. 682, 5/6/1980, §2; and by Ord. 1025, 10/14/2004*)

§13-404. Investigation and Issuance.

Upon receipt of the application it shall be referred to a police officer of the Borough who shall cause such an investigation to be made of the applicant's business and moral character as he shall deem necessary for the protection of the public good. If, as a result of such investigation, the applicant's character or business responsibility shall be found to be unsatisfactory, the police officer shall endorse on such application his disapproval, and his reasons for the same and shall return such application to the Borough Secretary, who shall notify the applicant that his application has been disapproved and that no license will be issued to him. If, as the result of such application, the character and business responsibility of the applicant shall be found to be satisfactory, the police officer shall endorse on the application his approval and a license shall be issued to the applicant upon his paying the prescribed license fee.

(*Ord. 544, 7/17/1970, §4*)

§13-405. Custody and Exhibit of License; Nontransferable.

Every license holder shall carry such license upon his person, if engaged in a transient retail business from house to house or upon any of the streets, alleys, sidewalks or public grounds, or shall display such license at the location where he shall engage in such business if doing so at a fixed location. He shall exhibit such license,

upon request, to all police officers, Borough officials and citizens or residents of the Borough. No license issued under this Part shall be used or displayed by any person other than the one to whom it was issued.

(*Ord. 544, 7/17/1970, §5*)

§13-406. Prohibited Acts.

No person engaged in any transient retail business shall:

A. Sell any product or type of product not mentioned on his license.

B. Hawk or cry his wares upon any street, alley, sidewalk or public place in the Borough; or use any sound device, including any loud speaker or sound-amplifying device upon any street, alley, sidewalk or public place, or upon any private premises where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon any street, alley, sidewalk or public place, for the purpose of attracting attention to any goods, wares or merchandise that he proposes to sell.

C. When selling from a vehicle, stop or park such vehicle upon any street or alley for longer than necessary in order to sell therefrom to persons residing or working in the immediate vicinity.

(*Ord. 544, 7/17/1970, §6*)

§13-407. Use of Streets.

No person engaged in a transient retail business shall have any exclusive right to any location on any of the streets, alleys or sidewalks in the Borough; nor shall any person be permitted a stationary location; nor shall any person be permitted to operate in a congested area where his operations might impede traffic or inconvenience the public. For the purpose of this Section, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the traffic impeded or the public inconvenienced.

(*Ord. 544, 7/17/1970, §7*)

§13-408. Enforcement.

It shall be the duty of any police officer of the Borough of Shillington to require any person referred to in this Part, and who is not known to such police officer to be duly licensed, to produce the appropriate license and to enforce the provisions of this Part against any person found to be violating the same.

(*Ord. 544, 7/17/1970, §8*)

§13-409. Records.

The Chief of Police shall report to the Borough Secretary all convictions for violation of this Part and the Borough Secretary shall maintain a record for each license issued, and record the reports of violation thereof.

(*Ord. 544, 7/17/1970, §9*)

§13-410. Revocation of License.

Licenses issued under the provisions of this Part may be revoked by the Borough Secretary after notice and hearing for any of the following causes:

- A. Fraud, misrepresentation or false statement contained in the application for license.
- B. Fraud, misrepresentation or false statement made in the course of carrying on such licensed business.
- C. Any violation of this Part.
- D. Conviction any crime or misdemeanor involving moral turpitude.
- E. Conduct of the business in an unlawful manner or in such a manner as to constitute a menace to the health, safety or general welfare of the Borough.

Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the license holder at the address set forth in the application at least 5 days prior to the date set for the hearing.

(*Ord. 544, 7/17/1970, §10*)

§13-411. Appeal.

Any person aggrieved by the action of the Borough Secretary in the denial of an application for license as provided in §13-404 of this Part, or in a decision with reference to the revocation of a license as provided in §13-410 of this Part, shall have the right of appeal to the Borough Council. Such appeal shall be taken by filing with the Council, within 10 days after notice of the action complained of shall have been mailed to such person's last known address, a written statement setting forth grounds for the appeal. The Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in §13-410 of this Part for notice of hearing on revocation. The decision and order of the Council on such appeal shall be final and conclusive.

(*Ord. 544, 7/17/1970, §11*)

§13-412. Expiration of License.

All annual licenses issued under this Part shall expire on the 31st day of December of the year when issued. Other than annual licenses shall expire on the date specified on the license.

(*Ord. 544, 7/17/1970, §10*)

§13-413. Penalties.

Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not exceeding \$1,000 plus costs and, in default of payment thereof, shall be subject to imprisonment for a term not to exceed 30 days. Each day that a violation of this Part continues shall constitute a separate offense.

(*Ord. 544, 7/17/1970, §11; as amended by Ord. 1025, 10/14/2004*)

Part 5**Junkyards****§13-501. "Junkyard" Defined.**

A "junkyard," as that term is used in this Part, shall mean any place not entirely within a building or other closed structure, used for the purchase, handling or storage, for sale or resale, of scrap iron, scrap metal, canvas, rope, metal pipe, rags, sacks, bottles, paper, cans, used or salvaged metal, metal products, including but not limited to used or salvaged appliances and/or equipment, building material, or other articles or objects including, but not limited to, used automobile tires and/or other used automotive equipment, or materials of any kind commonly known as or called junk; and shall include such a place used for the scrapping or dismantling of motor vehicles or aircraft.

(*Ord. 252, 11/13/1947, §1; as amended by Ord. 424, 2/28/1963, §1*)

§13-502. Operation, Maintenance and Existence of Junkyards a Public Nuisance.

It is hereby declared that the operation, maintenance or existence of a junkyard within the Borough of Shillington constitutes a menace to the health, peace, safety, morals and general welfare of the inhabitants thereof; and the operation, existence or maintenance of a junkyard within said Borough is hereby declared to be a public nuisance and abatable as such.

(*Ord. 252, 11/13/1947, §2*)

§13-503. Unlawful to Establish, Operate, Maintain or Allow Junkyard.

It shall be unlawful for any person or persons, natural or artificial, to establish, operate, maintain or allow a junkyard within the Borough of Shillington.

(*Ord. 252, 11/13/1947, §3*)

§13-504. Penalties.

Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not less than \$50 and not exceeding \$1,000 plus costs and, in default of payment thereof, shall be subject to imprisonment for a term not to exceed 30 days. Each day that a violation of this Part continues shall constitute a separate offense.

(*Ord. 252, 11/13/1947, §4; as amended by Ord. 511, 7/17/1970, §1; and by Ord. 1025, 10/14/2004*)

Part 6**Pole License****§13-601. Annual Pole License and Inspection Fee Imposed.**

From and after the passage of this Part, all persons, companies and corporations owning, erecting, maintaining or using any telegraph, telephone, electric light or other poles on any of the highways in the Borough of Shillington shall pay to the Borough an annual license and inspection fee of 15¢ for each pole so owned, erected, maintained or used.

(*Ord. 113*, 10/23/1924, §1; as amended by *Ord. 507*, 7/17/1970, §2)

Part 7**Garage Sales****§13-701. Title.**

This Part shall be known and cited as "Garage and Yard Sale Permit Ordinance."
(*Ord. 856, 6/11/1992, §1*)

§13-702. Purpose.

These rules and regulations are designed to control and restrict garage and yard sales in order to protect the public health, safety and convenience and to restrict such sales to casual and/or occasional occurrences, only, in keeping with the character of the neighborhood where this activity is carried on in compliance with the Zoning Ordinance [Chapter 27] of the Borough of Shillington. The intent of this Part is to eliminate perpetual, prolonged and extended garage and yard sales in residential areas. Such sales if continued indefinitely tend to become retail businesses in residential areas and zones, create a nuisance and often violate the zoning regulations of the Borough of Shillington. The provisions of this Part arise from the need to limit, regulate, restrict and control garage and yard sales. It is not the intent of this Part to change or amend the Zoning Ordinance [Chapter 27], Transient Business Ordinance [Part 4] and/or any other ordinance of the Borough of Shillington.

(*Ord. 856, 6/11/1992, §2*)

§13-703. Definitions.

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

Garage sale -

(1) The sale or offering for sale of 10 or more new, used or secondhand items of personal property at any one residential premises at any one time.

(2) Includes all sales in residential areas entitled "garage sale," "yard sale," "tag sale," "porch sale," "lawn sale," "attic sale," "basement sale," "rummage sale," "flea market sale," or any similar casual sale of tangible personal property.

Goods - any goods, warehouse merchandise or other personal property capable of being the object of a sale regulated hereunder.

Persons - individuals, partnerships, family groups, voluntary associations and corporations.

Municipality - all residential dwellings located within any type of zone, zoned area, zoning district, whether or not said areas or zones are residential, business, commercial or otherwise, within the geographic boundaries of the Borough of Shillington.

(*Ord. 856, 6/11/1992, §3*)

§13-704. Permit Required; Fee; Conditions for Sales.

1. It shall be unlawful for any person to conduct a garage sale within the geographic boundaries of the Borough of Shillington without first obtaining a garage sale license from the Zoning Officer after filing an application containing the information hereinafter specified.

2. The first garage sale license issued to any one person or for any one premises within one 12-month period shall be issued without charge. For the second such license issued in any 12-month period, there shall be a nonrefundable fee as set by the Borough Council pursuant to a resolution.

(*Ord. 856, 6/11/1992, §4*)

§13-705. Exemptions.

This Part shall not be applicable to:

A. Persons selling goods pursuant to an order of process of a court of competent jurisdiction.

B. Persons acting in accordance with their powers and duties as public officials.

C. Any person selling or advertising for sale an item or items of personal property which is specifically named or described in the advertisement and which separate items do not exceed nine in number. Notwithstanding any provisions of this Part, any person may sell up to nine secondhand articles without being subject to the provisions of this Part.

D. Any publisher of a newspaper, magazine or other publication or other communications media who publishes or broadcasts anything in good faith without knowledge of its false, deceptive or misleading character or without knowledge that the provisions of this Part have not been met.

E. Any sale conducted by any legitimate business or commercial or industrial establishment on property zoned under the zoning regulations of the Borough of Shillington with or without the protection of the non-conforming use section of the zoning laws, or any sale conducted by any other vendor or dealer when the sale is conducted in a properly zoned area and not otherwise prohibited by laws of the Commonwealth of Pennsylvania and ordinances of the Borough of Shillington including this Part.

F. Sales by a bona fide charitable, eleemosynary, educational, cultural or governmental institution, civic group, service club, religious or fraternal society or other tax-exempt organization; provided, however, that the burden of proof to establish the exemption under this subsection shall be on the organization or institution claiming such exemption.

G. Any public auction having a duration of no more than 2 days and conducted by an auctioneer, licensed by the Commonwealth of Pennsylvania.

(*Ord. 856, 6/11/1992, §5*)

§13-706. Enforcement.

1. This Part shall be enforced by the Zoning Officer and it shall be his duty to investigate and prosecute any violation of this Part.

2. If, after an investigation, a violation is found to exist, the Zoning Officer shall prosecute a complaint before a District Justice pursuant to the provisions of this Part.

3. The person to whom the garage sale license was issued and the person conducting the sale and the owner, tenant or occupant of the premises where the sale or activity is conducted shall be jointly or severally responsible for the maintenance of good order and decorum on the premises during the hours of such sale or activity.

A. No such person shall permit any loud or boisterous conduct on such premises or permit vehicles to impede the passage of the traffic on any roads or streets in the area of the premises where the sale is being conducted.

B. In the event of an emergency, all such persons shall obey reasonable orders from any member of the Police Department or the Fire Department in order to maintain the public health, safety and convenience.

(Ord. 856, 6/11/1992, §6)

§13-707. Penalties.

Any person, firm or corporation who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000, and in default of payment, to imprisonment for a term not to exceed 30 days.

(Ord. 856, 6/11/1992, §7)

Part 8**Sexually Oriented Businesses****§13-801. Purpose and Intent.**

It is the purpose of this Part to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the Borough and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the Borough. The provisions of this Part have neither the purpose nor 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 effect of this Part 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 effect of this Part to condone or legitimize the distribution of obscene material.

(Ord. 885, 6/9/1994, §1)

§13-802. Definitions.

Adult arcade - 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 picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

Adult bookstore or *adult video store* - a commercial establishment which has a substantial or significant portion of its stock-in-trade, and offers for sale or rent for any form of consideration, any one or more of the following:

A. Books, magazines, periodicals or other printed, matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

B. Instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

A commercial establishment may have substantial or significant portions of its stock-in-trade in other goods and/or services that do not involve the offering for sale or rental of material distinguished or characterized by its emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” and still be categorized as “adult bookstore” or “adult video store.” Such other business purposes will not serve to exempt such commercial establishment from being categorized as an “adult bookstore” or “adult video store” so long as one of its principal business purposes meets the definition of an “adult bookstore” or “adult video store” set forth above.

Adult cabaret - a nightclub, bar, restaurant, or similar commercial establishment

which regularly features:

A. Persons who appear in the state of nudity.

B. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

C. Films, motion pictures, video cassettes, 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 from the public right of way which advertises the availability of this type of photographic reproductions.

D. Offers sleeping rooms for rent, four or more times in 1 calendar day during 5 or more calendar days in any continuous 30-day period.

Adult motion picture theater - a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown 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 “specified sexual activities.”

Borough - the Borough of Shillington.

Escort - a person who, for consideration, agrees or offers to act as a companion, guide, or date for another 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 furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Permittee and/or licensee - a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

Nude model studio - any place where a person who appears in a state of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.

Nudity or a state of nudity - the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

Person - an individual, proprietorship, partnership, corporation, association, or other legal entity.

Semi-nude - a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center - a business or commercial enterprise that as on of its primary business purposes, offers for any of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of

the opposite sex.

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 semi-nude.

Sexually oriented business - an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

Specified anatomical areas - genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

Specified sexual activities - includes any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.

C. Masturbation, actual or simulated.

D. Excretory functions as part of or in connection with any of the activities set forth herein.

Substantial enlargement of a sexually oriented business - the increase in floor areas occupied by the business by more than 25%, as the floor areas exist on date of enactment of this Part.

Transfer of ownership or control of a sexually oriented business - includes any of the following:

A. The sale, lease, or sublease of the business.

B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means.

C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 885, 6/9/1994, §2)

§13-803. Classification.

Sexually oriented businesses are classified as follows:

A. Adult arcades.

B. Adult bookstores or adult video stores.

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.

(Ord. 885, 6/9/1994, §3)

§13-804. Permit Required.

1. Any person who operates a sexually oriented business without a valid permit issued by the Borough is guilty of a violation of this Part.

2. An application for a permit to operate a sexually oriented business must be made on a form provided by the Code Enforcement Officer of the Borough. The application must be accompanied by a sketch or diagram showing the floor plan and plot plan configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.

3. The applicant must be qualified according to the provisions of this Part and the premises must be in compliance with this and all other applicable Borough ordinances.

4. If a person who wished to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has 10% or greater interest in the business must sign the application for permit as applicant. If a corporation is listed as the owner of a sexually oriented business, each individual having a direct or indirect interest of 10% or greater in the corporation must sign the application for a permit as applicant.

5. The fact that a person possesses other types of Borough permits does not exempt the person from the requirement of obtaining a sexually oriented business permit.

(Ord. 885, 6/9/1994, §5)

§13-805. Issuance of Permit.

1. The Borough Code Enforcement Officer shall issue a permit to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true, in which event he shall deny the permit within said 30-day period.

A. An applicant is under 18 years of age.

B. An 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.

C. The premises to be used for the sexually oriented business do not meet the requirements of the Borough Code and ordinances.

D. The permit fee required by this Part has not been paid.

E. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Part.

2. 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 sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(*Ord. 885, 6/9/1994, §5*)

§13-806. Fees.

The annual fee for a sexually oriented business permit is in an amount as established from time to time by resolution of Borough Council.

(*Ord. 885, 6/9/1994, §6; as amended by Ord. 1025, 10/14/2004*)

§13-807. Inspection.

1. An applicant, or permittee, shall permit representatives of the Police Department, Fire Marshall, Health Officer, Code Enforcement Officer, or other Borough departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time that the sexually oriented business is occupied or open for business.

2. A person who operates a sexually oriented business or his agent or employee violates this Part if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

(*Ord. 885, 6/9/1994, §7*)

§13-808. Expiration of Permit.

1. Each permit shall expire 1 year from the date of issuance and may be renewed only by making application as provided in §13-805. Application for renewal should be made at least 30 days before the expiration date, the pendency of the application will not prevent the expiration of the permit. A decision to renew or deny shall be made within 30 days of receipt of the application by the Borough.

2. Where the applicant certifies, under penalty of perjury, that no change has occurred in the use, possession and/or physical structure of the premises since the date of the issuance of the last permit, the applicant shall be permitted to continue the operation of its business under the exact provisions of said permit pending a decision by the Borough Code Enforcement Officer on the renewal application. In the event the renewal application is denied, applicant may continue to operate its business under the exact conditions of the expired permit until said denial is reviewed and determined by the Court of Common Pleas of Berks County, Pennsylvania, provided applicant appeals said denial within 30 days of the decision of the Borough.

(*Ord. 885, 6/9/1994, §8*)

§13-809. Suspension of Permit.

The Code Enforcement Officer shall suspend a permit for a period not to exceed 30 days if he determines that a permittee or an employee of a permittee has:

- A. Violated or is not in compliance with any section of this Part.
- B. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises.
- C. Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.
- D. Knowingly permitted gambling by any person on the sexually oriented

business premises.

E. Failed to man managers' stations and/or maintain viewing rooms as set forth in §13-813.

(*Ord. 885, 6/9/1994, §9*)

§13-810. Revocation of Permit.

1. The Code Enforcement Officer shall revoke a permit if a cause of suspension set forth in §13-809 occurs and the permit has been suspended within the preceding 12 months.

2. The Code Enforcement Officer shall revoke a permit if:

A. A permittee gave false or misleading information in the material submitted to the Borough during the application process.

B. A permittee or an employee of a permittee has knowingly allowed possession, use, or sale of controlled substances on the premises.

C. A permittee or an employee of a permittee has knowingly allowed prostitution on the premises.

D. A permittee or an employee of a permittee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended.

E. A permittee or an employee of a permittee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other explicit sexual conduct to occur in or on the permitted premises.

3. When the Code Enforcement Officer revokes a permit, the revocation shall continue for 1 year and the permittee shall not be issued a sexually oriented business permit for 1 year from the date revocation became effective.

4. 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 shall have the right to appeal said action to the Borough Council of the Borough of Shillington and, subsequently, to the Court of Common Pleas of Berks County if not satisfied with the decision of Borough Council.

(*Ord. 885, 6/9/1994, §10*)

§13-811. Transfer of Permit.

A permittee shall not transfer his permit to another person. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designate in the application.

(*Ord. 885, 6/9/1994, §11*)

§13-812. Location of Sexually Oriented Businesses.

1. A person is guilty of a violation of this Part if he operates or causes to be operated a sexually oriented business outside of the district in which a sexually oriented business is a permitted use. No sexually oriented business shall be located outside a district in which a sexually oriented business is a permitted use.

2. A person is guilty of a violation of this Part if he operates or causes to be

operated a sexually oriented business within 100 feet of the boundary of a residential district or within 1,000 feet of:

- A. A church.
- B. A public or private pre-elementary, elementary or secondary school.
- C. A public library.
- D. A child care facility or nursery school.
- E. A public park adjacent to any residential district.

3. A person is guilty of a violation of this Part if he causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

4. A person is guilty of a violation of this Part if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof; or the increase of floor areas of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

5. For the purpose of this Part, measurement 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 a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private pre-elementary, elementary, or secondary school, public library, child care facility, or nursery school, or to the nearest boundary of an affected public part.

6. For purposes of subsection .3 of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

7. Any sexually oriented business lawfully operating on date of enactment of this Part that is in violation of subsections .1 through .6 of this Section shall be deemed a nonconforming use. Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. In the event that two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

(*Ord. 885, 6/9/1994, §12*)

§13-813. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

1. A person who operates or causes to be operated a sexually oriented business other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film or video cassette, or other video or other image production or reproduction which is distinguished or characterized by its emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” shall comply with the following requirements:

- A. All viewing rooms shall be open to an adjacent public area of the premises.

B. The application for a permit to operate a sexually oriented business shall be accompanied by a floor plan and plot plan diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all viewing rooms and adjacent open public areas, partitions and doors and the location of all viewing rooms and adjacent open public areas, partitions and doors and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus 6 inches. The Code Enforcement Officer may waive the foregoing diagram adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

C. The application shall be sworn to be true and correct by the applicant.

D. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Code Enforcement Officer or his designee.

E. It is the duty of the owners and operators of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

F. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the public area adjacent to the viewing room and from the manager's station in every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction or viewing equipment. If the premises has two or more manager's stations designated, the interior of the premises shall be configured in such a manner that there is unobstructed view of each area of the premises to which any patrons permitted access for any purpose, other than restrooms, from each of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station and the public areas adjacent to viewing rooms.

G. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in subsection .E remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has not been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection .A of this Section.

H. No viewing room may be occupied by more than one person at any time. No connections or openings to an adjoining viewing room shall be permitted.

I. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access

at an illumination of not less than 1 footcandle as measured at the floor level.

J. It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

2. A person having a duty under subsections .A through .D of subsection .1 is guilty of a violation of this Part if he knowingly fails to fulfill that duty.

(*Ord. 885, 6/9/1994, §13*)

§13-814. Exemptions.

It is a defense to prosecution under §§13-805 and 13-812 that a person appearing in a state of nudity did so in a modeling class operated:

A. By a proprietary school, licensed by the Commonwealth of Pennsylvania, or a 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 a college, junior college, or university supported entirely or partly by taxation.

C. In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.

(2) Where, in order to participate in a class, a student must enroll at least 3 days in advance of the class.

(3) Where no more than one nude model is on the premises at any one time.

(*Ord. 885, 6/9/1994, §14*)

§13-815. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid permit or in violation of this Part is subject to an action in equity or a suit for injunction as well as citations for violations of this Part.

(*Ord. 885, 6/9/1994, §15*)

