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Part 1

Curfew

A. Night-time Curfew

§101. Definitions and Interpretations. As used in this Section, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

MINOR – Person under the age of eighteen (18) years.

PARENT – Any natural parent of a minor, as herein defined, or a guardian, or any adult person responsible for the care and custody of a minor. When used in this Section, "parent" shall mean one (1) or both parents.

PUBLIC PLACE – Any street, alley, highway, sidewalk, park, playground or vacant lot to which the general public has access or a right to resort for business, entertainment or other lawful purpose; or in any enclosure or vehicle which is on or in close proximity to any such street, road, alley, highway, park or public place in the Borough of Pottstown. A public place shall include, but not be limited to, any store, shop, restaurant, tavern, bowling alley, cafe, theater, drug store, pool room, shopping center and any other place devoted to amusement or entertainment of the general public. It shall also include the front or immediate area of the above.

REMAIN – To stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totaling two (2) or more persons in which any minor involved would not be using the streets for emergencies or other purposes of excuse as hereinafter set forth.

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. 1752, 11/8/1993, §2)

§102. Purpose. This is a Curfew Ordinance prescribing, in accordance with prevailing community standards, regulations for the conduct of minors on streets at night, for the protection of younger children in the Borough of Pottstown from each other and from other persons on the streets during nighttime hours, for the enforcement of parental control and responsibility of their children, for the protection of the public from nocturnal mischief by minors and for the reduction of the incident of juvenile criminal activity, all for the good of minors, for the furtherance of family responsibility, and for the public good, safety and welfare. (Ord. 1752, 11/8/1993, §2)

§103. Curfew; Exceptions Thereto.

1. It shall be unlawful for any minor to be or remain in or upon any public highway, street, road, alley, park or other public place or in any enclosure or vehicle which

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is on or in close proximity to any such street, road, alley, highway, park or other public place within the Borough of Pottstown, between the hours of 9:30 P.M. to 5:00 A.M., Sunday through Thursday, and the hours of 11:00 P.M. to 5:00 A.M. on Fridays and Saturdays.

2. Any minor who is arrested for a violation of this Section and who, after thirty (30) minutes of time from the said arrest, fails to remove herself or himself, as the case may be, from the public highway, street, road, alley, park, playground or vacant lot, or other public place or in any enclosure or vehicle which is on or in close proximity to any said street, road, alley, highway, park, vacant lot or other public place within the Borough of Pottstown, between the hours of 9:30 P.M. to 5:00 A.M., Sunday through Thursday, and the hours of 11:00 P.M. to 5:00 A.M. on Fridays and Saturdays, shall again be subject to violating the provisions of this Part, and each violation of the provisions of this Part shall constitute a separate offense.
3. The provisions of this Part shall not apply:
 - A. To any minor accompanied by parent, guardian or other person having legal care or custody of such minor.
 - B. To any minor possessing a written statement dated that day and signed by parent, guardian or other person having the legal care or custody of such minor, which statement specifies the time, place, purpose and necessity of the minor being in a public place contrary to this Section.
 - C. To any minor lawfully employed making it necessary to be on or in highways, streets, parks, etc., as stated above, and possessing a current letter certifying the same and signed by the employer, parent or guardian.
 - D. To any minor traveling to and from church, school, recreational or municipal activity with parental permission statement as in subsection B above.
 - E. To any minor on an emergency errand.

(Ord. 1752, 11/8/1993, §2)

§104. Parents Not to Permit Violation. It is hereby made unlawful for any parent, guardian or the person having the legal care or custody of a minor to allow or permit such minor to violate any of the provisions of this Part without legal justification therefor. (Ord. 1752, 11/8/1993, §2)

§105. Responsibility of Owners of Public Places. It shall be unlawful for any person, firm or corporation operating or having charge of any public place to knowingly permit any minor under the age of eighteen (18) years to loiter, loaf or idle in such place during the hours prohibited by this Section more fully set forth in §103 herein. (Ord. 1752, 11/8/1993, §2)

§106. Authority of Police Officer. Any police officer is authorized to arrest, with or without warrant, any person or persons violating any provision of this Part.

- A. Any minor in violation of this Part may be taken into custody by the Borough police, who shall notify the parents, guardian or other person having legal custody or care of such child.
- B. Any juvenile violating this Section who does not immediately, upon demand, provide proof of his identity, date of birth and place of residence, may be taken into police protection until such proof of identity, date of birth and place of residence is established.

§107. Procedure In Case of Repeated Violations or Other Factors Interfering With Enforcement. Any minor who shall violate this Part more than three (3) times may, at the discretion of the proper municipal officials, be reported to a society or organization, the purpose of which is to take charge of incorrigibles and delinquents, and proceedings shall then be taken in the proper court for the permanent welfare of such minor and a like procedure may be taken in cases where the arrest of the parent is not effective, or where, for any other reason, the provisions of §102 of this Section cannot be made effective by the imposition of fines and penalties. (Ord. 1752, 11/8/1993, §2)

§108. Penalties.

1. Any minor who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00).
2. Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine not less than one hundred dollars (\$100.00) nor more than six hundred dollars (\$600.00), or imprisonment in the County jail not to exceed thirty (30) days.
3. Any minor who shall violate any provisions of this Section shall not be incarcerated, but shall be dealt with as provided by law.

(Ord. 1752, 11/8/1993, §2)

B. School Curfew.

§111. Definitions. As used in this Part, the following terms shall have the following meanings indicated:

BOROUGH – the Borough of Pottstown, Montgomery County, Pennsylvania.

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COMPULSORY SCHOOL AGE – the period of a child's life from the time the child's parents elect to have the child enter school, which shall be not later than at the age of eight (8) years, until the age of seventeen (17) years. The term shall not include any child who holds a certificate of graduation from a regulatory accredited senior high school.

ESTABLISHMENT – any privately owned place of business carried on for profit or any place of amusement or entertainment to which the public is invited.

GUARDIAN – any person other than a parent who has legal guardianship of a student or is a person in a parental relation, having control or charge of any student.

HOME EDUCATION PROGRAM – a program conducted, in compliance with the School Code, by the parent or guardian of such person having legal custody of the child or children.

PARENT – the natural or adoptive parents of a student.

PUBLIC PLACE – any public street, highway, road, park, playground, public building, vacant lot or parking area open to the general public, including the interior of any motor vehicle being operated upon or parked upon or standing in or upon any such areas.

SCHOOL – any institution, public or private, authorized and/or certified by the School Code.

SCHOOL CODE – the Public School Code of 1949, as amended.

SCHOOL DAY – the time period of any day that students are required to attend school.

SCHOOL TERM – the period of time elapsing between the opening of schools in the fall of one year and the closing of school in the Spring of the following year.

STUDENT – any person of compulsory school age.

UNAUTHORIZED ABSENCE – any absence from school by a student which is not excused or permitted by school authorities.

(Ord. 1906, 11/13/2000, §1)

§112. Curfew for Students.

1. It shall be unlawful for any student, required by the School Code to attend school, to remain in or play in or upon public place or at any establishment or to wander

or stroll upon public streets or right-of-ways when such student is required by the School Code to attend school during the school day.

2. The provisions of this Part shall not apply to any student who:
 - A. Has attained the age of sixteen (16) years, and who is regularly engaged in any useful and lawful employment or service during the time the schools are in session, and who holds an employment certificate issued according to law.
 - B. Has been examined by an approved mental health treatment facility or by a person certified as a school psychologist or psychological examiner and has been found to be unable to profit from further public school attendance, and who has been reported to the Board of School Directors and excused, in accordance with the regulations prescribed by the State Board of Education.
 - C. Has attained the age of fifteen (15) years and is engaged in farm work or domestic service in a private home on a permit issued by the School Board or the designated school official of the School District of the student's residence, in accordance with regulations which the Superintendent of Public Instruction is hereby authorized to prescribe.
 - D. Has attained the age of fourteen (14) years and is engaged in farm work or domestic service in a private home on a permit issued as provided in subsection (C) of this Section, and who has satisfactorily completed, either in public or private schools, the equivalent of the highest grade of the elementary school organization prevailing in public schools of the district in which he resides, if the issuance of such a permit has first been recommended by the District Superintendent of Schools having supervision of the schools of the district where such child resides or by the principal of the private school where such child is enrolled and the reason therefor has been approved by the Superintendent of Public Instruction.
 - E. Is engaged in a home education program.

(Ord. 1906, 11/13/2000, §2)

§113. Liability and Penalties.

1. Any person who shall fail to comply with this Part, shall on summary conviction thereof, be sentenced to pay a fine not exceeding three hundred dollars (\$300.00) and to pay court costs.
2. The student and every parent, guardian or person in parental relation must appear at a hearing established by the District Justice.

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3. In lieu of or in addition to any other sentence imposed under this Section, the District Justice may order the student to perform community service for a period not to exceed six (6) months.

(Ord. 1906, 11/13/2000, §3)

§114. Parental/Guardian Liability.

1. Every parent, guardian or person in parental relation, having control or charge of any child or children of compulsory school age, who shall fail to comply with the provisions of this Part regarding compulsory school attendance, subject to the exceptions set forth in §802(2)(A), (B), (C) and (D) shall be subject to the provisions of §803.
2. Any parent, guardian or person in parental relation, having control or charge of any child or children of compulsory school age, who is convicted of a violation of this Part, may be ordered by the District Justice to complete an approved parenting education program or counseling offered by a local school district or other community resource, in lieu of any fine imposed.
3. If the parent, guardian or person in parental relation charged with a summary offense under this Section shows that he or she took every reasonable step to insure attendance of the student at school, he or she shall not be convicted of the summary offense.

(Ord. 1906, 11/13/2000, §4)

§115. Enforcement.

1. Any police officer who finds a student violating this Part may obtain the information from each student that is required in order to issue a citation to the student. A copy of the citation and/or written notice shall be provided to the parent or guardian of the student by the School Resources Officer or his designee advising of the violation. The student should then be transported to school.
2. Any police officer who is notified by a parent, guardian or person in parental relation of a student who willfully refuses to attend school, shall obtain permission from the parent, guardian or person in parental relation to enter the residence of the parent, guardian or person in parental relation and issue a citation for the violation of this Part to the student and return the student to the public school in which the student is, or should be, enrolled.
3. If a person suspected of violating this Part refused to satisfactorily identify himself to a police officer, the person may be temporarily detained to permit the police officer reasonable opportunity to determine his/her identity. If it is determined that the suspect is a student, subject to compulsory school attendance, then the

parent or guardian of such student shall be notified and unless requested by such parent, guardian or person in parental relation to place said student in a school other than the public school, the student may be place in public school in which the student is, or should be, enrolled.

(Ord. 1906, 11/13/2000, §5)

Part 2

Alcoholic Beverages

§201. Definitions.

ON OR ABOUT THE PERSON – the location of any container, bottle or can containing any alcoholic beverage which is nearby, close at hand, convenient of access, and within such distance of the party so having it as that such party could without materially changing his position, get his hand on it.

OPEN – the condition of a container whose cap, cork, top or other closing device has been removed or the condition of a can which has been punctured or pulled open so as to break its seal.

POSSESSION – the exercising of conscious dominion or control over any container, bottle or can containing an alcoholic beverage.

(Ord. 1480, 9/13/1982, §1)

§202. Possession of Open Containers or Consumption in Public Prohibited.

1. No person shall have on or about his person, possess, carry or transport liquor, wine, beer or other alcoholic beverages in open containers in or about any public sidewalk, street, alley, walkway, public park or playground, or any other public place in the Borough. No person shall drink or consume liquor, wine, beer or other alcoholic beverages in or upon any street, sidewalk, alley, walkway, public park or playground, or any other public place in the Borough except as hereinafter provided.
2. Possession and consumption of alcoholic beverages may be permitted on Borough property under such regulations as shall be promulgated from time to time by the Borough Council. [Ord. 1735]
3. Any person or persons desiring to possess and consume alcoholic beverages on any Borough property may do so only after obtaining written permission from the Borough Council or its authorized representative. [Ord. 1735]
4. Failure to obtain permission from the Borough Council as aforesaid in §202(3) shall constitute a violation of this Part and shall be subject to the penalties provided in §203 of this Part.

(Ord. 1480, 9/13/1982, §2; as amended by Ord. 1735, 4/12/1993)

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§203. Violations and Penalties. Any person who shall violate any provision of this Part shall, upon conviction, be subject to a fine of not less than twenty-five (\$25.00) dollars nor more than six hundred (\$600.00) dollars, together with costs of prosecution for the violation, or, in default of payment thereof, to suffer imprisonment for not more than thirty (30) days. (Ord. 1480, 9/13/1982, §3; as amended by Ord. 1735, 4/12/1993)

§204. Gender and Number. In this Part, the singular shall include the plural and the masculine shall include the feminine. (Ord. 1480, 9/13/1982, §5)

Part 3

Disorderly Conduct

§301. Disorderly Conduct Defined and Prohibited. Disorderly conduct within the meaning of this Part shall be and is hereby defined as any act, work or conduct causing or tending to cause a disturbance of the peace and good order of the Borough, or causing or tending to cause any danger, discomfort or annoyance to the inhabitants of the Borough and/or users of the Borough thoroughfares, and shall include loafing, begging, profanity, and the carrying on of any business, trade, transportation, recreation or amusement at a time, in a place or in a manner which causes danger and annoyance to the inhabitants of the Borough, and all such disturbances and acts are hereby prohibited. Except in the cases of emergency, no person shall carry on any activity at a time or in a manner which causes unnecessary annoyance or disturbs the peace and quiet of the immediate neighborhood. (Ord. 1410, 12/11/1978, §1)

§302. Particular Conduct Prohibited. Without in any manner intending to limit or restrict the generality of the above definition of, and prohibition against, disorderly conduct, the following are hereby declared to constitute disorderly conduct:

- A. The keeping or handling of dogs or other animals, chickens or other fowl or birds under such conditions, or lack of control, or in such a manner that by barking, crowing or otherwise, they disturb the peace, safety and quiet of the immediate neighborhood.
- B. The operation of sound amplification equipment or audible electronic instruments or devices, singing, shouting or playing of musical instruments in a manner and at a time which is generally considered to be inappropriate and which unnecessarily disturbs the peace and quiet of the immediate neighborhood.
- C. The loading, unloading and delivery of materials, merchandise or commercial products at a time of the day or night which unnecessarily disturbs the peace and quiet of the immediate neighborhood. [Ord. 1735]
- D. The discharging in the Borough of Pottstown of air guns, spring guns, rifles or firearms of any kind or character whatsoever, or any other device that discharges a projectile of any kind.
- E. Malicious loitering or prowling during daytime around a dwelling house or any other place used wholly or in part for living or dwelling purposes, belonging to or occupied by another.

(Ord. 1410, 12/11/1978, §1; as amended by Ord. 1735, 4/12/1993)

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§303. Sound Amplification System in Motor Vehicles. Council of the Borough of Pottstown has determined that the use of loud sound amplification systems in motor vehicles is a safety hazard because operators of motor vehicles may be distracted thereby or may not hear emergency vehicles or warning signals or other traffic sounds. In addition, the use of loud amplification systems in motor vehicles is a nuisance annoying residents and others in the vicinity thereof. Therefore, no person operating, occupying or otherwise in physical possession or control of a motor vehicle on a street, highway, alley, parking lot or driveway shall operate or permit the operation of any sound amplification system in the vehicle so that the sound is audible at a distance of twenty-five (25) feet or more from the location of the vehicle:

A. Definitions.

- (1) SOUND AMPLIFICATION SYSTEM – any radio, tape player, compact disc player, loud speaker or other electronic device used for the amplification of sound.
- (2) AUDIBLE – any sound including bass reverberations whether or not words are discernible.

B. This Section shall not apply to the following sound amplification systems:

- (1) A system operated to request medical or vehicular assistance or to warn of a hazardous road condition.
- (2) A system in an emergency or public safety vehicle.
- (3) A system in a vehicle owned and operated by the Borough of Pottstown or a gas, electric, communications or refuse company, where the sound amplification system is being used in connection with official business.
- (4) A system used for the purpose of giving instructions, directions, talks, addresses, lectures or transmitting music to any person or assembly of persons in compliance with ordinances of the Borough of Pottstown.
- (5) A system used in authorized public activities, such as parades, fireworks, sports events, musical productions and other activities which have prior approval of the Borough of Pottstown.
- (6) A vehicle theft alarm system.

(Ord. 1410, 12/11/1978; as added by Ord. 1780, 11/14/1994; and amended by Ord. 1791, 1/9/1995)

§304. Penalty. 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 six hun-

dred (\$600.00) dollars plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Each day that a violation of this Part continues shall constitute a separate offense. (Ord. 1410, 12/11/1978, §1; as amended by Ord. 1735, 4/12/1993)

Part 4

Protection and Regulation of Public Property

§401. Definitions and Interpretation. As used in this Part, the term "person" shall include any individual, corporation, partnership, association, firm or other legal entity. The singular shall include the plural; the plural shall include the singular; and the masculine shall include the feminine and the neuter. (Ord. 1649, 10/22/1990, §1)

§402. Misuse and Tampering with Certain Public Property in the Downtown Pottstown Business District. No person shall destroy, injure, tamper with or deface any public property of the Borough of Pottstown, or any grass, walk, lamp, ornamental work, bench, planter, ballard, building or street light on or in any of the streets, sidewalks or public grounds in the downtown Pottstown business district. In addition, no persons shall sit, recline or rest on the backs or arms of the benches, or any portions of the planters or ballards which are located in the downtown improvement area. (Ord. 1649, 10/22/1990, §1)

§403. Tampering with Stakes, Posts, Ballards and Chains Prohibited. No person shall, in any manner, interfere or meddle with or pull, drive, change, alter or destroy any stake, post, ballard, chain or monument or other marking made, placed or set, or hereafter made, placed or set, or caused to be done by the authorities of the Borough of Pottstown. (Ord. 1649, 10/22/1990, §1)

§404. 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 six hundred (\$600.00) dollars plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed thirty (30) days. Each day that a violation of this Part continues shall constitute a separate offense. (Ord. 1649, 10/22/1990, §1; as amended by Ord. 1735, 4/12/1993)

Part 5

Loitering

A. General Provisions.

§501. Definitions. As used in this Part, the following terms shall have the meanings indicated:

IDLE – includes the following activities: walking about aimlessly without apparent purpose, lingering, hanging around, lagging behind, the idle spending of time, delaying, sauntering and moving slowly about, where such conduct is not due to physical defects or conditions.

PLACE, PUBLIC or PRIVATE – includes, but is not limited to, the following: all places commonly known as being distinctively public, such as public streets, public rest rooms, sidewalks, parks, alleys and buildings, all places privately owned but open to the public generally, such as shopping centers, transportation terminals, retail stores, movie theaters, office buildings and restaurants and all places distinctively private, such as homes or private residences and apartment houses.

(Ord. 1888, 5/10/1999, §1, Art. I)

§502. Disorderly Conduct. A person shall be guilty of disorderly conduct if he shall remain idle in essentially one (1) location in a public place with the intent to cause public inconvenience or alarm or to recklessly create a risk thereof in such a manner so as to:

- A. Engage in fighting or threatening or in violent or tumultuous behavior.
- B. Create or cause to be created any disturbance calculated to interfere with the comfort and repose of any person.
- C. Obstruct the free passage of pedestrians or vehicles.
- D. Obstruct, molest or interfere with any person lawfully in any public place.
- E. Make unsolicited remarks of any offensive, disgusting or insulting nature or which are calculated to disturb the person to or in whose hearing they are made.
- F. Appear in any public place manifestly under the influence of alcohol, narcotics or other drug, not therapeutically administered, to the degree that he may endanger himself or other persons or property or disturb persons in his vicinity.
- G. Carry in a threatening or menacing manner, without authority of law, any pistol, revolver, dagger, razor, dangerous knife, stiletto, knuckles or sling-

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shot, an object containing noxious or deleterious liquid, gas or substance or another dangerous weapon, or to conceal said weapon on or about the person or vehicle.

(Ord. 1888, 5/10/1999, §1, Art. I)

§503. Directive to Vacate Premises. Whenever any police officer shall, in the exercise of reasonable judgment, decide that the presence of any person in any public place is causing any conditions enumerated in §502 herein, he may, if he deems it necessary for the preservation of the public peace and safety, order that person to leave that place, and any person who shall refuse to leave after being ordered to do by a police officer shall be guilty of a violation of this Section. (Ord. 1888, 5/10/1999, §1, Art. I)

§504. Constitutional Expression and Assembly. This Part shall not apply to peaceful picketing, public speaking or other lawful expressions of opinion not in contravention of other laws. (Ord. 1888, 5/10/1999, §1, Art. I)

§505. Intent. It is the intent that this Part shall be supplemental to any laws of the Commonwealth of Pennsylvania hereinbefore or hereinafter adopted concerning disorderly conduct. (Ord. 1888, 5/10/1999, §1, Art. I)

B. Loitering for Unlawful Purposes.

§506. Unlawful Activities. It shall be unlawful for any person to loiter in or upon any public place for the purpose of committing any of the following:

- A. Offering to commit, committing or engaging in prostitution or lewdness as prohibited by §§5901 and 5902 (a)(1) and (2) and (b)(8) of the Pennsylvania statutes.
- B. Soliciting, inducing, enticing or procuring another to commit prostitution or lewdness with himself or herself as prohibited by §§5901 and 5902 (a)(1) and (2) and (b)(2), (3), (4), (5), (6) and (8) of the Pennsylvania statutes.
- C. Selling, purchasing, manufacturing or delivering or possessing with intent to sell, purchase, manufacture or deliver a controlled substance as prohibited by Act 64 and Title 18 of the Pennsylvania statutes.

(Ord. 1888, 5/10/1999, §1, Art. II)

§507. Definitions. For the purpose of this Part, the following terms shall have the meanings indicated:

PUBLIC PLACE – an area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, automobiles (whether moving or not) and buildings open to the general public, including those which serve food or drink or provide entertainment, and the doorways and entrances to buildings or dwellings and the grounds enclosing them.

(Ord. 1888, 5/10/1999, §1, Art. II)

§508. Violations and Penalties. Any person or persons violating the provisions of this Part shall, upon being convicted in a summary proceeding before a district justice, be sentenced to pay a fine for the use of the Borough of not less than twenty-five dollars (\$25.00) nor more than six hundred dollars (\$600.00) and costs of prosecution and, in default of payment of such fine and costs, to imprisonment in the Borough lockup or County jail for a period of not more than thirty (30) days. (Ord. 1888, 5/10/1999, §1, Art. II)

Part 6

Prohibiting Nude or Nearly Nude Activities and Certain Sexual Conduct In Establishments Dealing in Alcoholic Beverages

§601. Definitions.

ALCOHOL – ethyl alcohol of any degree of proof originally produced by the distillation of any fermented liquid, whether rectified or diluted with or without water, whatever may be the origin thereof, and shall include synthetic ethyl alcohol, but shall not mean or include ethyl alcohol, whether or not diluted, that has been denatured or otherwise rendered unfit for beverage purposes.

ALCOHOLIC BEVERAGE -

- A. Any liquor, alcoholic, spirituous, vinous, fermented or other alcoholic beverage or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures, and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than one-half (1/2) percent of alcohol by volume.
- B. Any malt or brewed beverage, beer, lager beer, ale, porter or similar fermented malt beverage containing one-half (1/2) percent or more of alcohol by volume, by whatever name such beverage may be called.
- C. Any whiskey or alcoholic distillate from a fermented mash of grain, capable of being used for beverage purposes.

ESTABLISHMENTS DEALING IN ALCOHOLIC BEVERAGES – any business or commercial establishment (whether open to the public at large or where entrance is limited by cover charge or membership requirement), including those licensed by the Commonwealth for sale and/or service of alcoholic beverages; and any bottle club, hotel, motel, restaurant, night club, country club, cabaret, meeting facility utilized by any religious, social, fraternal or similar organization, business or commercial, establishment where a product or article is sold, dispensed, served or provided with the knowledge, actual or implied, that the same will be, or is intended to be mixed, combined with or drunk in connection or combination with an alcoholic beverage on the premises of said business or commercial establishment, or business or commercial establishment where the consumption of alcoholic beverages is permitted. A private residence, whether permanent or temporary in nature, is not an establishment dealing in alcoholic beverages.

PERSON – a natural person, association or corporation. Whenever used in a clause prescribing or imposing a fine, imprisonment or both, the term "person," as applied to "association," shall mean the partners or members thereof and, as ap-

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plied to "corporation," shall mean the officers thereof, such individual or individuals who, under possession and sale of alcoholic beverages therein.

(Ord. 1895, 9/13/1999, §1)

§602. Nudity, Sexual Conduct Prohibited.

1. No person shall expose to public view his or her genitals including, without limitation, the human male genitals, including, without limitation, the human male genitals in a discernibly turgid state, even if covered, pubic area, vulva, anus, anal cleft or cleavage, or buttocks or any simulation thereof, in an establishment dealing in alcoholic beverages. For purposes of this subsection, "buttocks" shall include the area at the rear of the body which lies between two (2) imaginary lines running parallel to the ground when a person is standing, the first or top such line drawn at the top of the cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom line drawn at the lowest visible point of this cleavage or the lowest point of the curvature of the fleshy protuberance, whichever is lower, and between two (2) imaginary lines on each side of the body, which lines are perpendicular to the ground and to the horizontal lines described above, and which perpendicular lines are drawn through the point at which each nate meets the outer side of each leg. This Part would be violated, therefore, if any portion of this area is visible from any vantage point.
2. No female shall expose to public view any portion of the breast below a horizontal line across the top of the areola at its highest point, or simulation thereof, in an establishment dealing in alcoholic beverages. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human breast exhibited by a dress, blouse, shirt, opaque leotard, bathing suit or other wearing apparel; provided, the areola is not exposed or visible in whole or in part.
3. No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose to public view his or her genitals including, without limitation, the human male genitals in a discernibly turgid state, even if covered, pubic area, vulva, anus, anal cleft or cleavage or buttocks as defined in subsection (1) here above, or any simulation thereof, within the establishment dealing in alcoholic beverages.
4. No person maintaining, owning or operating an establishment dealing in alcoholic beverages shall suffer or permit any female person to expose to public view any portion of her breasts as defined in subsection (2) here above, or any simulation thereof, within the establishment dealing in alcoholic beverages.
5. No person shall engage in and no person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sex-

ual act which is prohibited by law, the touching, caressing, or fondling of the female breast as that term is defined in subsection (2) here above, buttocks as that term is defined in subsection (1) here above, anus or genitals including, without limitation, the human male genitals in a discernibly turgid state, even if covered, or the simulation thereof, within an establishment dealing in alcoholic beverages.

6. No person shall cause and no person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit the exposition or availability of any graphic presentation, including photographs, pictures or the projection of film, which depicts human genitals including, without limitation, the human male genitals in a discernibly turgid state, even if covered, pubic area, vulva, anus, anal cleft or cleavage, buttocks, as that term is defined in subsection (1) here above, female breast as that term is defined in subsection (2) here above, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act prohibited by law, the touching, caressing or fondling of the female breast as that term is defined in subsection (2) here above, buttocks as that term is defined in subsection (1) here above, anus or genitals including, without limitation, the human male genitals in a discernibly turgid state, even if covered, scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described in subsections (1) through (6), inclusive, here above, or any simulation thereof, within any establishment dealing in alcoholic beverages.

(Ord. 1895, 9/13/1999, §2)

§603. Criminal Penalties.

1. Any person who shall violate the provisions of this Part shall, upon summary conviction before any districts Justice, pay a fine not exceeding one thousand dollars (\$1,000.00) and the costs of prosecution and, in default of payment of the fine or costs, the violator may be sentenced to the county jail for a period not exceeding thirty (30) days.
2. Whenever such person shall have been officially notified by the Borough of Pottstown or by other service of a summons in a prosecution or in any other official manner that said person is committing a violation of this Part, each day that said person shall continue such violation after such notification shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are not by law collected.

(Ord. 1895, 9/13/1999, §3)

Part 7

Regulation of the Display, Exhibition, Sale and Distribution of and Activities Concerning Obscene and other Sexual Material

§701. Purpose. Pursuant to the authority granted in the Borough Code of the Commonwealth of Pennsylvania to prohibit nuisances, to promote the health, cleanliness, comfort and safety of the citizens of the Borough of Pottstown and the authority of political subdivisions of the Commonwealth of Pennsylvania to enact local ordinances to regulate, inter alia, the sale, distribution, display and exhibition of and activities concerning obscene and other sexual material as provided for in 18 P.S. §5903(k) and as upheld by the United States District Court for the Eastern District of Pennsylvania, in *Brown v. Pornography Commission of Lower Southampton Township*, 620 F. Supp. 1199 (1985) the Borough of Pottstown enacts the following Part. (Ord. 1893, 8/9/1999, §1)

§702. Offenses Defined.

1. Offenses Defined. No person, knowing the obscene character of the materials or performances involved shall, within the Borough of Pottstown:
 - A. Display or cause or permit the display of any explicit sexual materials as defined in subsection (2) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials.
 - B. Sell, lend, distribute, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, exhibit or give away or show any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene materials in any manner.
 - C. Design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials.
 - D. Write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom or by what means any obscene materials can be purchased, obtained or had.
 - E. Produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity.

CONDUCT

F. Hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection.

2. Definitions. As used in this Part, the following words and phrases shall have the meanings given to them in this subsection:

COMMUNITY – for the purpose of applying the contemporary community standards in this Part, community means the State.

KNOWING – as used in subsection (1), "knowing" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of the character and content of any material or performance described therein which is reasonably susceptible of examination by the person in charge with violation of this Part.

MATERIAL – any literature, including any book, magazine, pamphlet, newspaper, story paper, bumper sticker, comic book or writing; any figure, visual representation or image, including any drawing, photograph, picture, video tape or motion picture.

NUDE – the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

OBSCENE – any material or performance, if:

- (1) The average person, applying contemporary community standards, would find that the subject matter taken as a whole appeals to the prurient interest.
- (2) The subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this Part.
- (3) The subject matter, taken as a whole, lack serious literary, artistic, political or educational or scientific value.

PERFORMANCE – any play, dance or other live exhibition performed before an audience.

SADOMASOCHISTIC ABUSE – in a sexual context, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or in a bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

SEXUAL CONDUCT – patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual in-

tercourse, anal or oral sodomy and sexual bestiality; and patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibitions of the genitals.

TRANSPORTATION FACILITY – any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including aircraft, water craft, railroad cars, buses and air, boat, railroad and bus terminals and stations.

3. Dissemination to Minors. No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to a minor. Explicit sexual materials, as used in this subsection, means materials which are obscene, or:
 - A. Any picture, photograph, drawing, sculpture, motion picture film, video tape or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors.
 - B. Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in this Section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.
4. Admitting Minor to Show. It shall be unlawful for any person knowingly to exhibit, for monetary consideration, to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor, for a monetary consideration, to premises whereon there is exhibited a motion picture show or other presentation or performance which, in whole or in part, depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.
5. Definitions. As used in subsections (3) and (4) of this Part:

HARMFUL TO MINORS – that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

- (1) Predominantly appeals to the prurient, shameful or morbid interest of minors.
- (2) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable materials for minors.
- (3) Taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.

CONDUCT

KNOWINGLY – having general knowledge of or reason to know or a belief or ground for belief which warrants further inspection or inquiry of both:

- (1) The character and content of any material or performance described herein which is reasonably susceptible or examination by the person charged with violation of this Part.
- (2) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the person charged with violation of this Part made a reasonable bonafide attempt to ascertain the true age of such minor.

MINOR – any person under age of 18 years.

NUDITY – the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering or the showing of the female breast with less than fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

SADOMASOCHISTIC ABUSE – flagellation or torture by or upon a person who is clad in undergarments, a mask or in bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

SEXUAL CONDUCT – acts of masturbation, homosexuality, sexual intercourse, sexual bestiality or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

SEXUAL EXCITEMENT – the condition of human male or female genitals when in a state of sexual-stimulation[??] or arousal.

6. Requiring Sale as a Condition of Business Dealings. No person shall knowingly require any distributor or retail seller, as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing, photograph, video tape, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any obscene literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing, photograph, video tape, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

(Ord. 1893, 8/9/1999, §2)

§703. Exemption. Nothing in this Part shall apply to any recognized historical society or museum accorded charitable status by the Federal government, any county, city, borough, township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision. (Ord. 1893, 8/9/1999, §3)

§704. Penalty. Any person who shall violate the provisions of this Part shall, upon summary conviction before any district justice, pay a fine not to exceed six hundred dollars (\$600.00) and costs of prosecution. Upon judgment against any person by summary conviction or by proceedings by summons on default of the payment of the fine or penalty imposed and the costs, the person who shall have violated this Part may be sentenced and committed to the County jail for a period not exceeding thirty (30) days. (Ord. 1893, 8/9/1999, §4)