

CHAPTER 6

CONDUCT

PART 1

CURFEW

- §101. Definitions and Interpretations**
- §102. Purpose**
- §103. Curfew; Exceptions**
- §104. Parents Not to Permit Violation**
- §105. Procedure Upon Violation**
- §106. Police Discretion in Age Determination**
- §107. Penalties**

PART 2

PROHIBITING THE DISCHARGE OF FIREARMS

- §201. Discharge of Firearms Prohibited**
- §202. Use of Air Rifles, Bows and Arrows or Similar Devices Restricted**
- §203. Exceptions**
- §204. Penalties for Violation**

PART 3

PUBLIC PROPERTY

- §301. Tampering With Public Property or Property on Streets, Alleys or Public Ground Prohibited**
- §302. Tampering With Stakes, Posts and Monuments Prohibited**
- §303. Tampering With Warning Lamps, Signs or Barricades Prohibited**
- §304. Removal or Placement of Material in Streets, Alleys or Public Grounds Prohibited**
- §305. Exceptions**
- §306. Penalty for Violation**

PART 4

LEWD CONDUCT

- A. Lewd Materials**

CONDUCT

- §401. Definitions**
- §402. Offenses Defined**
- §403. Admitting Minor to Show**
- §404. Exemption**
- §405. Penalty**

B. Lewd Acts

- §411. Definitions**
- §412. Committing Public Indecency; Exception**
- §413. Abatement of Nuisances Authorized**
- §414. Severability**
- §415. Penalty**

PART 1
CURFEW

§101. Definitions and Interpretation.

As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

MINOR — person under the age of 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 ordinance, “parent” shall mean one or both parents.

PUBLIC PLACE — any public street, alley, sidewalk, park, playground, public building or vacant lot in the City.

REMAIN — to stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totaling four or more persons in which any minor involved would not be using the streets, for emergencies or ordinary purposes such as mere passage of going home.

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. 14-56, 9/10/1956; as revised by Ord. 11-98, 9/23/1998)

§102. Purposes.

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 City from each other and from other persons on the streets during nighttime hours, for the enforcement of parental control and responsibility for 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. 14-56, 9/10/1956; as revised by Ord. 11-98, 9/23/1998)

§103. Curfew; Exceptions.

It shall be unlawful for any minor to be or remain in or upon any public highway, park or other public place within the City, or in any enclosure or vehicle which is on or in close proximity to any such public place within the City, between the hours of 11:00 p.m.

CONDUCT

and 6:00 a.m. on the following day and 12:00 midnight to 6:00 a.m. on Fridays and Saturdays. Exceptions to the above are the following:

- A. Minor accompanied by parent, guardian, or other person having legal care or custody of such minor.
- B. 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 Part.
- C. 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 employer, parent or guardian.
- D. Minor on an emergency errand.
- E. Minor traveling to and from church, school or municipal activity with parental permission statement as in subsection (B) above.

(Ord. 14-56, 9/10/1956; as revised by Ord. 11-98, 9/23/1998)

§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. 14-56, 9/10/1956; as revised by Ord. 11-98, 9/23/1998)

§105. Procedure Upon Violation.

Any minor found upon the streets, alleys, parks or public places within the City in violation of §102 shall be taken into custody by the City police or legally deputized individual, be released to his parent(s), guardian, or person having the legal custody of said minor. If said parent, guardian or person having the legal custody of said minor shall again allow him to be on the streets, alleys, parks or public places in violation of §102, said parent, guardian, or person having the legal custody of said minor so offending shall, upon the second offense, be called along with offender and be so advised once again as to the penalty provisions contained in this Part. Upon the third violation, said parent, guardian or person will be cited for the violation.

(Ord. 14-56, 9/10/1956; as revised by Ord. 11-98, 9/23/1998)

§106. Police Discretion in Age Determination.

The police officers of the City in taking minors into custody shall use their discretion in determining age and in doubtful cases may require positive proof of age. Until such proof is furnished, the officer's judgment shall prevail.

(Ord. 14-56, 9/10/1956; as revised by Ord. 11-98, 9/23/1998)

§107. Penalties.

Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600, and costs and, in default of payment, to imprisonment for a term not to exceed 30 days.

(Ord. 14-56, 9/10/1956; as revised by Ord. 11-98, 9/23/1998)

PART 2

PROHIBITING THE DISCHARGE OF FIREARMS

§201. Discharge of Firearms Prohibited.

Except in necessary defense of person and property and except as provided in §203 of this Part, it shall be unlawful for any person to use, fire, or discharge any gun or other firearm within the City.

(Ord. 9-61, 10/4/1961; as revised by Ord. 11-98, 9/23/1998)

§202. Use of Air Rifles, Bow and Arrows, or Similar Devices Restricted.

It shall be unlawful for any person to discharge any air rifle, air pistol, spring gun, spring pistol, B-B gun, bow and arrow, or similar device, or any implement that is not a firearm but which impels a pellet of any kind with a force that can reasonably be expected to cause bodily harm, at any place within the City, except as provided in §203 of this Part, and except on a target range which is properly constructed to trap or stop the projectile as ascertained by the Chief of Police.

(Ord. 9-61, 10/4/1961; as revised by Ord. 11-98, 9/23/1998)

§203. Exceptions.

This Part shall not apply to:

- A. Persons licensed to hunt in this Commonwealth while actually engaged in hunting where permitted under the laws of the Commonwealth of Pennsylvania;
- B. Members of any organization incorporated under laws of this Commonwealth engaged in target shooting upon the grounds or property belonging to or under the control of such organization; and,
- C. Any law enforcement officers when used in the discharge of their official duties.

(Ord. 9-61, 10/4/1961; as revised by Ord. 11-98, 9/23/1998)

CONDUCT

§204. Penalties for Violation.

Any person who shall violate any provision of this Part shall, upon conviction thereof, be sentenced to pay a fine of not more than \$600 and costs and, in default of payment of fine and costs, to imprisonment for a term not to exceed 30 days.

(Ord. 9-61, 10/4/1961; as revised by Ord. 11-98, 9/23/1998)

PART 3

PUBLIC PROPERTY

§301. Tampering with Public Property or Property on Streets, Alleys or Public Ground Prohibited.

No person or persons shall intentionally destroy or injure in any way whatsoever, or tamper with or deface any public property of the City of Hermitage, within or without the City including, but not limited to, any grass, walk, lamp, ornamental work, building, street light or water stop box on or in any of the streets, alleys, sidewalks or public grounds in the City of Hermitage.

(Ord. 52-75, 12/30/1975, §1; as amended by Ord. 18-83, 12/22/1983)

§302. Tampering with Stakes, Posts and Monuments Prohibited.

No person or persons shall in any manner intentionally interfere with or meddle with or pull, drive, change, alter or destroy any stake, post, monument or other evidence of any elevation, grade, line, location, corner or angle in the City of Hermitage, made, placed or set, or hereafter made, placed or set or caused to be done by the authorities of the City in any survey of or in any street, alley or public ground in the City, to evidence the location, elevation, line, grade, corner or angle of any public street, alley, sidewalk, curb, gutter, drain or other public work, matter or thing.

(Ord. 52-75, 12/30/1975, §1; as amended by Ord. 18-83, 12/22/1983)

§303. Tampering with Warning Lamps, Signs or Barricades Prohibited.

No person or persons shall intentionally destroy or remove or deface or obliterate or cover up any lamp, warning sign or barricade erected by the authorities of the City or by any person, firm or corporation doing work by permission of the authorities of the City on any of the streets, alleys, sidewalks or bridges in the City or on any public grounds of the City within or without the City, as a warning of danger.

(Ord. 52-75, 12/30/1975, §1; as amended by Ord. 18-83, 12/22/1983)

§304. Removal or Placement of Material in Streets, Alleys or Public Grounds Prohibited.

No person or persons shall intentionally take or place any earth, stone or other material from or in any of the streets, alleys or public grounds in the City.

(Ord. 52-75, 12/30/1975, §1; as amended by Ord. 18-83, 12/22/1983)

CONDUCT

§305. Exceptions.

This Part shall not apply to normal activities in connection with the construction, maintenance and repair of streets, alleys, sidewalks and public grounds and the structures and fixtures located thereon, or to incidental results of work done thereon or therein upon permit from or by authority of the City.

(Ord. 52-75, 12/30/1975, §1; as amended by Ord. 18-83, 12/22/1983)

§306. 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 less than \$5 nor more than \$600 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Provided, the fact that a violator has been penalized, after hearing, as herein provided, shall not preclude the City or other injured party from taking proper legal action to recover damages resulting from such violation.

(Ord. 52-75, 12/30/1975, §1; as amended by Ord. 18-83, 12/22/1983; and by Ord. 11-98, 9/23/1998)

PART 4
LEWD CONDUCT

A. Lewd Materials.

§401. Definitions.

As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

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

HARMFUL TO MINORS — as used in §402, means 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; and,
- (2) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable materials for minors; and,
- (3) Taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.

KNOWING — as used in §402, “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 charged with violation of this Part.

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

MINOR — any person under the age of 18 years of age.

NUDE/NUDITY — the showing of the human or female genitals, pubic area or buttocks with less than 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:

CONDUCT

- (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; and,
- (3) The subject matter, taken as a whole, lacks serious literary, artistic, political, 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 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 intercourse, anal or oral sodomy and sexual bestiality and patently offensive representations or description of masturbation, excretory functions, sadomasochistic abuse and lewd exhibitions of the genitals.

SEXUAL EXCITEMENT — the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

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, watercraft, railroad cars, buses and air, boat, railroad and bus terminals and stations.

(Ord. 18-96, 9/19/1996, §1)

§402. Offenses Defined.

No person, knowing the obscene character of the materials or performances involved, shall, within the City of Hermitage:

- A. Display or cause or permit the display of any explicit sexual materials as defined in subsection (B) of this Section 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. 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:
 - (1) 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; or,
 - (2) Any book, pamphlet, magazine, printed matter however reproduced or sound recording which contains any matter enumerated in subsection (B)(1) 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.
- 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; or,
- F. Hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this Section.

(Ord. 18-96, 9/19/1996, §2)

§403. 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 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.

(Ord. 18-96, 9/19/1996, §3)

CONDUCT

§404. Exemption.

Nothing in this Part shall apply to any organized historical society or museum accorded charitable status by the Federal government, 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. 18-96, 9/19/1996, §4)

§405. Penalty.

Any person violating any provision of this Part shall, upon conviction thereof, be sentenced to a fine of not more than \$600 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day on which a violation of this Part shall continue shall constitute a separate offense.

(Ord. 18-96, 9/19/1996, §5)

B. Lewd Acts

§411. Definitions.

As used in this Part, the following terms shall have the meanings indicated, unless a different meaning clearly appears from the context:

NUDITY — the showing of the human male or female genital, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, the exposure of any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum and anal region or pubic hair region or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples or areola.

PUBLIC PLACE — all outdoor places owned by or open to the general public and all buildings and enclosed places owned by or open to the general public, including such places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission charge is levied.

(Ord. 19-96, 9/19/1996, §1)

§412. Committing Public Indecency; Exception.

1. A person who knowingly or intentionally does any of the following in a public place commits public indecency, a summary offense:
 - A. Engages in sexual intercourse.
 - B. Engages in deviate sexual intercourse as defined by the Pennsylvania Crimes Code.
 - C. Appears in a state of nudity.
 - D. Fondles the genitals of himself, herself or another person.
2. A person who knowingly or intentionally promotes or maintains any acts of public indecency as a property owner, proprietor or manager of a business, commits public indecency, a summary offense.
3. The prohibition set forth in subsection (1)(C) hereof shall not apply to:
 - A. Any child under 10 years of age; or,
 - B. Any mother breastfeeding her child in any location where the mother is otherwise authorized to be.

(Ord. 19-96, 9/19/1996, §2)

§413. Abatement of Nuisances Authorized.

In addition to the specific penalties provided in this Part, it is hereby declared that any building, portion of a building or enclosed place regularly used for prohibited display of public nudity is a public nuisance, subjecting the owner, proprietor or other operator thereof to any and all actions authorized by the Commonwealth of Pennsylvania for the abatement of public nuisances.

(Ord. 19-96, 9/19/1996, §3)

§414. Severability.

It is the intention of the City that the provisions of this Part be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights consistent with the purpose of this Part. Should a court of competent jurisdiction determine that any part of this Part or any application or enforcement of it is excessively restrictive of such rights or liberties, then such portion of this Part or

CONDUCT

specific application of this Part shall be severed from the remainder which shall continue in full force and effect.

(Ord. 19-96, 9/19/1996, §4)

§415. Penalty.

Any person, firm, corporation or association, who shall violate any provision of this Part, either by commission of a public indecency or by the promotion or maintenance of public indecency as property owner, proprietor or manager of a business shall be, upon conviction thereof, sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 30 days. Each day that a violation of this Part continues shall be construed as a separate offense.

(Ord. 19-96, 9/19/1996, §5; as amended by Ord. 11-98, 9/23/1998)