

CHAPTER 6

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PART 1

MASSAGE PARLORS

§6-101. Definitions.

For the purpose of this Part, the words and phrases set forth below shall have the meanings respectively ascribed to them:

EXPOSURE – the failure to conceal with a fully opaque covering the sexual or genital parts of the body of any person.

MASSAGE – any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other such similar preparations commonly used, in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or, some third person on his or her behalf will pay money or give any other consideration or any gratuity therefor.

MASSAGE PARLOR – any establishment having a source of income or compensation derived from the practice of massage and which has a fixed place of business where any person, firm, association or corporation engages in or carries on the practice of massage.

PERSON – any person, partnership, corporation or association.

SEXUAL OR GENITAL PARTS – the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

(Ord. 39, 4/21/1983, §1)

§6-102. Prohibited Activities and Conduct.

The operation of a massage parlor in which any of the following activities are carried on is hereby prohibited:

- A. The treatment of any person of the opposite sex, except upon the signed order of a licensed physician, osteopath, chiropractor, or registered physical therapist, which, order shall be dated and shall specifically state the number of treatments. The date and hour of each treatment given and the name of the person or persons giving the treatment shall be entered on such order by the establishment where such treatments are given and shall be available for inspection by the police. The requirements of this provision shall not

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apply to treatments given in the residence of a patient, the office of a licensed physician, osteopath, or registered physical therapist, chiropractor, or in a regularly established and licensed hospital or sanitarium.

- B. The massage or physical contact with the sexual or genital parts of one person by any other person.
- C. The exposure of the sexual or genital parts of the body of any person.

(Ord. 39, 4/21/1983, §1)

§6-103. Penalties.

Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a District Justice in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be 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 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

(Ord. 39, 4/21/1983, §3; as amended by Ord. 71, 3/6/1990; by Ord. 8/6/1996; and by Ord. 2003-31, 10/21/2003, §1)

PART 2

PORNOGRAPHY

§6-201. Definitions.

For the purpose of this Part, the words and phrases set forth below shall have the meanings respectively ascribed to them:

AUDIENCE – one or more persons who are permitted to view a performance for valuable consideration or in or from a public place.

DISPLAY PUBLICLY – the exposing, placing, posting, exhibiting, or in any other fashion displaying in any location, whether public or private, material or a performance in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public place or vehicle.

DISSEMINATE – to manufacture, issue, publish, sell, lend, distribute, transmit, broadcast, exhibit or present material or to offer or agree to do the same, or to have in one's possession with intent to do the same.

MATERIAL – any printed matter, visual representation, or sound recording, and includes, but is not limited to books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, drawings, three-dimensional forms, sculptures, figures, images, instruments, devices and phonograph, tape or wire recordings.

MINOR – any person under 18 years of age.

NUDITY – uncovered, or less than opaquely covered, post-pubertal human genitals or pubic area, the post-pubertal human female breast below a point immediately above the top of the areola or the covered human male genitals in a discernibly turgid state. For the purpose of this definition, a female breast is considered uncovered if the nipple and the areola only are covered.

PANDER – advertising or propagandizing in connection with the sale of material, the offering of a service, or the presentation or exhibition of a performance by appealing to the prurient interest of potential customers.

PERFORMANCE – any live or reproduced exhibition including, but not limited to, any play, motion picture film, dance or appearance presented to or performed before an audience.

PERSON – any person, partnership, corporation, or association.

PORNOGRAPHIC – relating to pornography.

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PORNOGRAPHY – any material or performance is pornography if all of the following elements are present:

- A. Considered as a whole, by the average person, applying the contemporary community standards of the Township of Oxford, it appeals to the prurient interest; and
- B. It depicts, describes or represents in a patently offensive way, sexual conduct or nudity, as hereinafter defined; and
- C. It lacks serious literary, artistic, political or scientific value.

PORNOGRAPHY FOR MINORS – any material or performance is "pornography for minors" if all of the following elements are present:

- A. Considered as a whole by the average person applying the contemporary community standards of the Township of Oxford with respect to what is suitable for minors, it is presented in such a manner as to appeal to a minor's prurient interest; and
- B. It depicts, describes or represents in a patently offensive way, nudity or sexual conduct as hereinafter defined; and
- C. It lacks serious literary, artistic, political or scientific value for minors.

PRURIENT INTEREST – desire or craving for sexual stimulation or gratification. In determining "prurient interest," the material or performance shall be judged with reference to average persons, unless it appears from the character of the material or performance that it is designed to appeal to the prurient interest of a particular group of persons, including, but not limited to, homosexuals or sadomasochists. In that case, it shall be judged with reference to the particular group for which it was designated.

PUBLIC PLACE OR VEHICLE – any of the streets, alleys, parks, boulevards, schools or other public property in the Township, or any dance hall, rental hall, theater, amusement park, liquor establishment, store, depot, place of public accommodation, or other private property generally frequented by the public for the purposes of education, recreation, amusement entertainment, sport, shopping or travel; or any vehicle for public transportation, owned or operated by government, either directly or through a public corporation or authority, or owned or operated by any non-governmental agency for the use, enjoyment or transportation of the general public.

SADOMASOCHISTIC ABUSE – flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bizarre costume, or the condition of such person being fettered, bound or otherwise physically restrained, in an apparent act of sexual stimulation or gratification.

SEXUAL CONDUCT –

- A. Masturbation, whether the conduct is engaged in alone or between members of the same or opposite sex, or between humans and animals or humans and inanimate objects;
- B. Sexual intercourse, either heterosexual or homosexual, whether genital-genital, oral-genital, oral-anal or anal-genital, whether the conduct is engaged in alone or between members of the same or opposite sex, or between humans and animals or humans and inanimate objects;
- C. Any erotic fondling or touching of the covered or uncovered genitals, buttocks, pubic area, or any part thereof the breasts of the female, whether the conduct is engaged in alone or between members of the same or opposite sex, or between humans and animals or humans and inanimate objects;
- D. Actual or simulated display or exhibition of the human pubic area or genitals or any part thereof;
- E. Sexual excitement, as hereinafter defined; or
- F. Sadoomasochistic abuse, as hereinafter defined.

SEXUAL EXCITEMENT – the facial expressions, movements, utterances or other responses of a human male or female, whether alone or with others, whether clothed or not, who is in an apparent state of sexual stimulation or arousal, or experiencing the physical or sensual reactions of humans engaging in or witnessing sexual conduct.

(Ord. 41, 4/21/1983, §1)

§6-202. Promoting Pornography.

- 1. It shall be unlawful for any, person to promote pornography. A person commits the offense of promoting pornography if, knowing its content and character, he:
 - A. Disseminates or causes to be disseminated any pornographic material in or from a public place or vehicle, or for valuable consideration; or has in his possession any pornographic material with intent to so disseminate; or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him for such dissemination of pornographic material.
 - B. Sells an admission ticket or pass to premises where there is being exhibited or is about to be exhibited material or a performance which is pornographic.

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- C. Admits, by accepting a ticket or pass, a person to premises where there is being exhibited or is about to be exhibited material or a performance which is pornographic.
 - D. Produces, presents, directs, or knowingly allows the use of any business, building, vehicle or place, owned, leased, conducted or managed by him to be used for, a pornographic performance before an audience.
 - E. Participates in that portion of a live performance before an audience which makes it pornographic.
 - F. Panders, displays publicly or disseminates door to door, any pornographic material or performance, or causes such pandering, public display or door-to-door dissemination.
2. For the purpose of this Section, possession of two or more identical copies of any pornographic materials by any person engaged in the business of disseminating material, as defined above, shall be prima facie evidence of possession with intent to disseminate for valuable consideration.

(Ord. 41, 4/21/1983, §2)

§6-203. Promoting Pornography for Minors.

1. It shall be unlawful for any person to promote pornography for minors. A person commits the offense of promoting pornography for minors if, knowing its content and character, he:
- A. Disseminates or causes to be disseminated to a minor material which is pornography for minors, or knowingly allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him for the dissemination to a minor of material which is pornography for minors.
 - B. Exhibits to a minor a motion picture film or other performance which is pornography for minors.
 - C. Sells to a minor an admission ticket or pass to any building, vehicle, or place where there is being exhibited or is about to be exhibited a motion picture film or other performance which is pornography for minors.
 - D. Admits a minor to any building, vehicle or place where there is being exhibited or is about to be exhibited a motion picture film or other performance which is pornography for minors.
 - E. Knowingly produces, presents, directs or allows the use of any business, building, vehicle or place owned, leased, conducted or managed by him for

the presentation of performance which is pornography for minors, before an audience which includes a minor.

- F. Displays publicly or disseminates door to door any material or performance which is pornography for minors, or causes such public display or door-to-door dissemination.
2. Subsections 1A through 1E do not apply to a parent, guardian or other persons in loco parentis to the minor.

(Ord. 41, 4/21/1983, §3)

§6-204. Defenses.

It shall be an affirmative defense to a prosecution under §§6-202 and 6-203 of this Part if the pornographic material was disseminated by a person who was acting in his capacity as:

- A. A teacher of an accredited course of study related to pornography at a State-approved educational institution.
- B. A licensed medical practitioner or psychologist in the treatment of a patient.
- C. A participant in the criminal justice system, such as a legislator, judge, prosecutor, law enforcement official or other similar or related position.
- D. A supplier to any person described in Subsections A through C above.

(Ord. 41, 4/21/1983, §4)

§6-205. Penalties.

- 1. Fines. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a District Justice in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be 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 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.
- 2. Injunction. The Oxford Township Board of Supervisors may institute proceedings in equity in the Court of Common Pleas of Adams County, Pennsylvania, for the purpose of enjoining the sale, resale, lending, distribution, exhibit, gift, or show of such pornographic literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing, photograph, figure or image, or any written

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or printed matter of an obscene nature, or any article or instrument of a pornographic nature, contrary to the provisions of this Section, and for such purposes jurisdiction is hereby conferred upon said Court. A preliminary injunction may issue and a hearing thereafter be held thereon in conformity with the Rules of Civil Procedure upon the averment of the Board that the sale, resale, lending, distribution, exhibit, gift or show of such publication constitutes a danger to the welfare or peace of the community.

(Ord. 41, 4/21/1983, §4; as amended by Ord. 71, 3/6/1990; by Ord. 8/6/1996; and by Ord. 2003-31, 10/21/2003, §1)

PART 3

CURFEW

§6-301. Purposes and Findings.

This is an updating of the Township's Curfew Ordinance of September 5, 1989, known as "Ordinance No. 70," 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 Township of Oxford 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 criminal 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.

- A. The Board of Supervisors finds that the curfew meets a very real local need, has been over the years a significant factor in minimizing juvenile delinquency and should be updated and amplified in the light of Oxford Township's local situation and facts.
- B. The community sense of the proper time for cessation of outdoor activities by minors on the streets is reflected in the curfew hours declared by this Part, which takes into consideration also the danger hours for nocturnal crime and for accumulations of minors with potential risks incident to immaturity.
- C. Adequate indoor living space in Oxford Township permits minors to healthfully occupy their time.
- D. Commercial recreational facilities are almost nonexistent, and there is little or nothing for minors to do outdoors but roam the streets after the curfew hours which this Part declares.
- E. Oxford Township is a stable family community. Parental responsibility for the whereabouts of children is the norm; legal sanctions to enforce such responsibility have had a demonstrated effectiveness over the years; as parental control increases likelihood of juvenile delinquency decreases; and there is a continuing need for the nocturnal curfew for minors which has achieved and will continue to achieve under local conditions the purposes hereinbefore stated.

(Ord. 2007-66, 12/18/2007)

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§6-302. Definitions.

For the purposes of this Part, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

MINOR – any person under the age of 18.

PARENT – any person having legal custody of a minor as a natural or adoptive parent, as a legal guardian, as a person who stands in loco parentis, or as a person to whom legal custody has been given by order of court.

PUBLIC PROPERTY – any street, public or private park, public or private playground, public or private parking lot (including access routes thereto), public building, or vacant lot in the Township of Oxford.

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 ordinary or serious purposes, such as mere passage or going home.

STREET – a way or place, of whatsoever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term “street” includes the legal right-of-way, including but not limited to the cartway or traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term “street” does not include private streets within the Township. The term “street” is applied irrespective of what it may be called or formally named, whether alley, avenue, court, road, or otherwise.

TIME – as referred to herein, is based on the prevailing standard of time in Oxford Township, whether Eastern Standard Time or Eastern Daylight Saving Time, prima facie the time then observed in the Township administrative offices and police station.

TOWNSHIP – Oxford Township, Adams County, Pennsylvania, with administrative offices at 780 Hanover Street, New Oxford, Pennsylvania 17350.

YEAR OF AGE – continues from one birthday, such as the seventeenth, to (but not including the day of) the next, such as the eighteenth birthday, making it clear that 17 or less years of age is herein treated as equivalent to the phrase "under 18 years of age."

(Ord. 2007-66, 12/18/2007)

§6-303. Curfew for Minors.

It shall be unlawful for any person 17 or less years of age (under 18) to be or remain in or upon the streets or public property of the Township or in any vehicle which is on or in close proximity to any such public property or street at night during the period:

- A. Sunday through Thursday, beginning at 11:00 p.m. and ending at 6:00 a.m. the following morning.
- B. Friday and Saturday, beginning at 12:00 midnight and ending at 6:00 a.m. the following morning.

(Ord. 2007-66, 12/18/2007)

§6-304. Exceptions.

1. In the following exceptional circumstances, a minor on a Township street or on public property in the Township during the hours of curfew as established in §6-303, Curfew for Minors, above shall not be considered in violation of this Part:
 - A. When accompanied by a parent of such minor.
 - B. When accompanied by an adult authorized by a parent of such minor to take said parent's place in accompanying said minor for a designated period of time and purpose within a specified area.
 - C. When possessing a written statement dated that day and signed by the minor's parent, which statement specifies the time, place, purpose, and necessity of the minor being on a street or on public property in violation of this Part.
 - D. When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly. Such minor shall evidence the bona fides of such exercise by first delivering to the Township Board of Supervisors a written communication, signed by the minor and countersigned by the minor's parent, with their home address and telephone number, specifying when, where and in what manner said minor will be on the streets or public property at night in the exercise of a First Amendment right specified in such communication.
 - E. In case of reasonable necessity, but only after such minor's parent has communicated to the Township police station personnel the facts establishing such reasonable necessity relating to specified streets or public property at a designated time for a described purpose, including points of origin and destination.

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- F. When the minor is on the sidewalk of the place where such minor resides or on the sidewalk of either next-door neighbor not communicating an objection to the police officer.
 - G. When returning home by a direct route from (and within 30 minutes of the termination of) a school activity, or an activity of a religious or other voluntary association, of which prior notice, indicating the place and probable time of termination, has been given in writing to and duly filed for immediate reference by the Police Department.
 - H. When on an emergency errand.
 - I. When lawfully employed, making it necessary to be on the Township streets or public property in violation of this Part, and possessing a current letter certifying the employment and signed by the minor's employer or parent.
 - J. When the minor is, with parental consent, in a motor vehicle. This contemplates normal travel. This clearly exempts bona fide interstate movement through Oxford Township, particularly on normal routes such as Route 30 East and West. This also exempts interstate travel beginning or ending in Oxford Township.
2. Each of the foregoing exceptions is severable, as hereinafter provided, but here reemphasized.

(Ord. 2007-66, 12/18/2007)

§6-305. Parental Responsibility.

It shall be unlawful for a parent knowingly to permit or by inefficient control to allow such minor to be or remain upon any Township street or public property in violation of this Part. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

(Ord. 2007-66, 12/18/2007)

§6-306. Police Procedures.

1. Any minor found upon the street or public property within the Township in violation of this Part, shall be taken into custody by the Township police and delivered to his or her parent. A report shall be filed, where the minor's and the minor's parents' identity, age and address are recorded, and this information shall be kept in

a log for that specific purpose. If the parent cannot be located, then the minor shall be released to the juvenile authorities. The head of the Township Police Department shall, by certified mail, send to the minor's parent written notice of said violation, with a warning that any subsequent violations will result in full enforcement of this Part, including enforcement of parental responsibility and of applicable penalties. It is not the intent of this provision to require the officers to transport the child at all if other duties or calls prevent the officer from doing so, at the officer's discretion.

2. Any minor found upon the street or public property within the Township in violation of this Part, subsequent to his or her first offense, shall be taken into police custody and to the Township police station, where a parent shall immediately be notified to come for such minor. When a parent immediately called has come to take charge of the minor and the appropriate information has been recorded, the minor shall be released to the custody of such parent. If the parent cannot be located, or fails to take charge of the minor, then the minor shall be released to the juvenile authorities.
3. The police officers of Oxford Township, in taking a minor into custody, shall use their best judgment in determining age and in doubtful cases may require positive proof of age. Until such proof is furnished, the officer's best judgment shall prevail.

(Ord. 2007-66, 12/18/2007)

§6-307. Violations and Penalties.

1. If, after warning notice pursuant to §6-306, Subsection 1, above of a first violation by a minor, a parent or minor violates this Part, said minor or parent, upon conviction thereof in an action brought before a District Justice in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be 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 90 days.
2. Any minor who shall violate the provisions of this Part more than two times shall be reported by the Township to a society or organization whose purpose it is to take charge of incorrigibles and delinquents, and proceedings shall then be taken, under the Juvenile Act, before the Juvenile Court for the treatment, supervision and rehabilitation of such minor.
3. A like procedure, before the juvenile authorities, shall be followed in any case where the imposing of a fine or fines upon a parent shall not be effective.

(Ord. 2007-66, 12/18/2007)

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§6-308. Repealer.

Any ordinance in existence at the time of the adoption of this Part that conflicts herewith is hereby repealed, including Ordinance No. 70.¹

(Ord. 2007-66, 12/18/2007)

¹ Editor's Note: Ordinance No. 70, as amended was formerly included as Part 3, Curfew, of this chapter.