

TITLE XIII: GENERAL OFFENSES

Chapter

- 130. OBSCENITIES; OBSCENE MATERIAL**
- 131. OFFENSES TO PUBLIC PEACE AND SAFETY**
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CHAPTER 130: OBSCENITIES; OBSCENE MATERIAL

Section

130.01 Furnishing obscene material

130.02 Obscenity prohibited

' 130.01 FURNISHING OBSCENE MATERIAL.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FURNISH. To sell, give, rent, loan or otherwise provide.

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, sculptures and tape or wire recordings.

NUDITY. Uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, 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 purposes of this definition, the female breast is considered ***UNCOVERED*** if the nipple only or the nipple and the areola only are covered.

OBSCENE MATERIALS. Material which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit descriptions or narrative accounts of sexual conduct, and if all of the following elements are also present:

(a) Considered as a whole, by the average person, applying the contemporary community standards of the city, it appeals to the prurient interest;

(b) It depicts, describes or represents any of the above mentioned sexual activities in a patently offensive way; and

(c) It lacks serious literary, artistic, political or scientific value.

OBSCENITIES. Those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

SADO-MASOCHISTIC 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 being fettered, bound or otherwise physically restrained, in an apparent act of sexual stimulation or gratification.

SEXUAL CONDUCT. Human masturbation, sexual intercourse or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

SEXUAL EXCITEMENT. The condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

(B) *Unlawful act.* It is unlawful for any person to furnish another person obscene material.

(C) *Defense.* In any prosecution under this section, it is an affirmative defense and the burden of so proving shall rest upon the defendant to prove:

(1) That the defendant was a bona fide school, museum or public library, or was acting in the course of his or her employment as an employee of the organization or of a retail outlet affiliated with and serving the educational purpose of the organization;

(2) That the defendant was a licensed medical practitioner or psychologist in the treatment of a patient;

(3) That the defendant was a participant in the criminal justice system, such as a legislator, judge, prosecutor, law enforcement official or other similar or related position; or

(4) That the defendant was a supplier to any person described in divisions (A), (B) or (C) above.

(1994 Code, ' 10.62) Penalty, see ' 10.99

' 130.02 OBSCENITY PROHIBITED.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

NUDITY. Uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, 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 purposes of this definition, a female breast is considered ***UNCOVERED*** if the nipple only or the nipple and the areola only are covered.

OBSCENE PERFORMANCE. A performance which in whole or in part depicts or reveals nudity, sexual conduct, sexual excitement or sado-masochistic abuse, or which includes obscenities or explicit verbal descriptions or narrative accounts of sexual conduct, and if all of the following elements

are also present:

- (a) Considered as a whole, by the average person, applying the contemporary community standards of the city it appeals to the prurient interest;
- (b) The obscene performance depicts, describes or represents any of the above mentioned sexual activities in a patently offensive way; and
- (c) It lacks serious literary, artistic, political or scientific value.

OBSCENITIES. Those slang words currently generally rejected for regular use in mixed society, that are used to refer to genitals, female breasts, sexual conduct or excretory functions or products, either that have no other meaning or that in context are clearly used for their bodily, sexual or excretory meaning.

PERFORMANCE. Any play, motion picture film, dance or other exhibition pictured, animated or live, performed before an audience.

SADO-MASOCHISTIC 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 the person being fettered, bound or otherwise physically restrained, in an apparent act of sexual stimulation or gratification.

SEXUAL CONDUCT. Human masturbation, sexual intercourse or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

SEXUAL EXCITEMENT. The condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

(B) It is unlawful for any licensee, for a monetary consideration or other valuable commodity or service, to:

- (1) Exhibit an obscene performance;
- (2) Directly or indirectly sell an admission ticket or other means to gain entrance to an obscene performance; or
- (3) Directly or indirectly permit admission of a person to premises whereon there is exhibited an obscene performance.

(C) In any prosecution under this section it is an affirmative defense and the burden of so proving shall rest with the defendant to prove:

- (1) That the defendant was a bona fide school, museum or public library, or was acting in the

course of his or her employment as an employee of the organization or of a retail outlet affiliated with and serving the educational purpose of the organization;

(2) That the defendant was a licensed medical practitioner or psychologist in the treatment of a patient;

(3) That the defendant was a participant in the criminal justice system, such as a legislator, judge, prosecutor, law enforcement official or other similar or related position; or

(4) That the defendant was a supplier to any person described in divisions (A), (B) or (C) above.

(1994 Code, ' 10.63)

CHAPTER 131: OFFENSES TO PUBLIC PEACE AND SAFETY

Section

- 131.01 Unlawful use and furnishing of tobacco
- 131.02 Dangerous trespasses and other acts
- 131.03 Noisy parties; disorderly conduct
- 131.04 Disorderly conduct
- 131.05 Air pollution control

' 131.01 UNLAWFUL USE AND FURNISHING OF TOBACCO.

(A) It is unlawful for any person, under the age of 18 years, to use tobacco in any form.

(B) It is unlawful for any person to furnish tobacco, by any manner or means and in any form, to any person under the age of 18 years.

(1994 Code, ' 10.03) Penalty, see ' 10.99

Cross-reference:

Tobacco and tobacco users, see Chapter 113

' 131.02 DANGEROUS TRESPASSES AND OTHER ACTS.

It is unlawful for any person to:

(A) Smoke in the presence of explosives, or inflammable materials, or in a building, or area, in which ANo Smoking@ notices have been prominently posted;

(B) Interfere with or obstruct the prevention or extinguishing of any fire, or destroy the lawful orders of a law enforcement officer or firefighter present at the fire;

(C) Show a false light or signal or interfere with any light, signal or sign controlling or guiding traffic upon a highway, railway track, navigable water or in the air;

(D) Place an obstruction upon a railroad track;

(E) Expose another or his or her property to an obnoxious or harmful gas, fluid or substance, with intent to injure, molest or coerce;

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(F) Trespass or permit animals under his or her control to trespass upon a railroad track;

(G) Permit domestic animals or fowls under his or her control to go upon the lands of another within the city;

(H) Interfere unlawfully with any monument, sign or pointer erected or marked to designate a point of a boundary line or a political subdivision, or a tract of land;

(I) Trespass upon the premises of another without claim of right;

(J) Enter the premises of another with intent to take or injure any fruit, fruit trees or vegetables growing thereon without the permission of the owner or occupant; or

(K) Without the permission of the owner tamper with or get into or upon a motor vehicle, or ride in or upon the motor vehicle knowing it was taken and is being driven by another without the permission of the owner.

(1994 Code, ' 10.23) Penalty, see ' 10.99

' 131.03 NOISY PARTIES; DISORDERLY CONDUCT.

(A) It is unlawful for any person or persons to congregate on any private lands because of, or participate in, any party or gathering of people from which noise emanates of a sufficient volume or of a nature so as to disturb the peace, quiet or repose of other persons. Any owner or person in lawful possession or control of the private lands who has knowledge of the disturbance and fails to immediately abate the disturbance shall be guilty of a violation of this section.

(B) It is unlawful for any person or persons to congregate on any private lands of another because of, or participate in, any party or gathering of people in the absence of the owner of the private lands being present, without first having obtained written permission from the landowner or other person in lawful possession of the private lands. The written permission shall at all times be in the possession of one or more persons at the site of the congregation. The document containing the written permission must bear the signature of the landowner and date of the permitted use. Failure to display written permission upon request shall be considered prima facie evidence of an absence of permission from the owner.

(C) A violation of division (A) or (B) above shall give a peace officer the authority to order all persons present, other than persons identifying themselves as the owner or person in lawful possession or control of the land, to immediately disperse. Any person who shall refuse to leave after being ordered to do so by a peace officer shall be guilty of a violation of this section.

(1994 Code, ' 10.26) Penalty, see ' 10.99

' 131.04 DISORDERLY CONDUCT.

It is unlawful for any person, in a public or private place, knowing or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace to: engage in brawling or fighting; or disturb an assembly or meeting, not unlawful in its character; or engage in offensive, obscene or abusive language or in boisterous and noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

(1994 Code, ' 10.27) Penalty, see ' 10.99

' 131.05 AIR POLLUTION CONTROL.

(A) It is unlawful for any person to burn or permit burning of any grass, weeds, leaves, rubbish or other substance upon premises owned or occupied by him or her, except as otherwise provided by this code.

(B) The Air Pollution Control Rules, 1976, APC 1 through 32, 6 MCAR 4.0033, 6 MCAR 4.0039 and 6 MCAR 4.0041, updated through 1983, promulgated by the Minnesota Pollution Control Agency, are hereby adopted by reference as though set forth verbatim herein. One copy of the rules shall be marked ACITY OF CHISHOLM - OFFICIAL COPY@ and kept on file in the office of the City Clerk and open to inspection and use by the public. It is unlawful to violate a provision of this section or of the Air Pollution Control Rules hereby adopted by reference.

(1994 Code, ' 10.30) Penalty, see ' 10.99

CHAPTER 132: CURFEW; MINORS

Section

132.01 Curfew for minors

132.01 CURFEW FOR MINORS.

(A) *Purpose.* The curfew for minors established by this section is maintained for four primary reasons:

- (1) To protect the public from illegal acts of minors committed during the curfew hours;
- (2) To protect minors from improper influences that prevail during the curfew hours, including involvement with gangs;
- (3) To protect minors from criminal activity that occurs during the curfew hours; and
- (4) To help parents control their minor children.

(B) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

EMERGENCY ERRAND. A task that if not completed promptly threatens the health, safety or comfort of the minor or a member of the minor's household. The term shall include, but shall not be limited to, seeking urgent medical treatment, seeking urgent assistance from law enforcement or Fire Department personnel, and seeking shelter from the elements or urgent assistance from a utility company due to a natural or human-made calamity.

OFFICIAL CITY TIME. The time of day as determined by reference to the master clock used by the Police Department.

PLACES OF AMUSEMENT, ENTERTAINMENT OR REFRESHMENT. Those places that include, but are not limited to, movie theaters, pinball arcades, shopping malls, nightclubs catering to minors, restaurants and pool halls.

PRIMARY CARE or ***PRIMARY CUSTODY.*** The person who is responsible for providing food, clothing, shelter and other basic necessities to the minor. The person providing ***PRIMARY CARE OR CUSTODY*** to the minor shall not be another minor.

SCHOOL ACTIVITY. An event which has been placed on a school calendar by public or parochial school authorities as a school sanctioned event.

(C) *Hours.*

(1) *Minors under the age of 16 years.* No minor under the age of 16 years shall be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; nor in or upon places of amusement, entertainment or refreshment; nor in or upon any vacant lot, between the hours of 10:30 p.m. and 5:00 a.m. the following day, official city time.

(2) *Minors ages 16 years to 18 years.* No minor of the ages of 16 or 17 years shall be in or upon the public streets, alleys, parks, playgrounds or other public grounds, public places, public buildings; nor in or upon places of amusement, entertainment or refreshment; nor in or upon any vacant lot, between the hours of 12:00 midnight and 5:00 a.m. the following day, official city time.

(D) *Effect on control by adult responsible for minor.* Nothing in this section shall be construed to give a minor the right to stay out until the curfew hours designated in this section if otherwise directed by a parent, guardian or other adult person having the primary care and custody of the minor; nor shall this section be construed to diminish or impair the control of the adult person having the primary care or custody of the minor.

(E) *Exceptions.* The provisions of this section shall not apply in the following situations:

(1) To a minor accompanied by his or her parent or guardian, or other adult person having the primary care and custody of the minor;

(2) To a minor who is upon an emergency errand at the direction of his or her parent, guardian or other adult person having the primary care and custody of the minor;

(3) To a minor who is in any of the places described in this section if in connection with or as required by an employer engaged in a lawful business, trade, profession or occupation; or to a minor traveling directly to or from the location of the business, trade, profession or occupation and the minor=s residence. Minors who fall within the scope of this exception shall carry written proof of employment and proof of the hours the employer requires the minor=s presence at work;

(4) To a minor who is participating in or traveling directly to or from an event which has been officially designated as a school activity by public or parochial school authorities; or who is participating in or traveling directly to or from an official activity supervised by adults and sponsored by the city, a civic organization, school, religious institution or similar entity that takes responsibility for the minor and with the permission of the minor=s parent, guardian or other adult person having the primary care and custody of the minor;

(5) To a minor who is passing through the city in the course of interstate travel during the hours of curfew;

(6) To a minor who is attending or traveling directly to or from an activity involving the exercise of First Amendment rights of free speech, freedom of assembly or freedom of religion;

(7) To minors on the sidewalk abutting his or her residence or abutting the residence of a next-door neighbor if the neighbor does not complain to the city=s designated law enforcement provider about the minor=s presence; or

(8) To a minor who is married or has been married, or is otherwise legally emancipated.

(F) *Duties of person legally responsible for minor.* No parent, guardian or other adult having the primary care or custody of any minor shall permit any violation of the requirements of this section by the minor.

(G) *Duties of other persons.* No person operating or in charge of any place of amusement, entertainment or refreshment shall permit any minor to enter or remain in his or her place of business during the hours prohibited by this section unless the minor is accompanied by his or her parent, guardian or other adult person having primary care or custody of the minor, or unless one of the exceptions to this section applies.

(H) *Defense.* It shall be a defense to prosecution under this section that the owner, operator or employee of an establishment promptly notified the city=s designated law enforcement provider that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(I) *Affirmative defense.* A law enforcement officer must look into whether a minor has an affirmative defense before making an arrest.

Penalty, see ' 10.99

CHAPTER 133: WEAPONS AND FIREARMS

Section

- 133.01 Acts prohibited
- 133.02 Exception
- 133.03 Discharge of firearms and explosives
- 133.04 Exception
- 133.05 Possession and sale of fireworks
- 133.06 Use of bow and arrow
- 133.07 Concealed hand gun and modified firearms

133.01 ACTS PROHIBITED.

It is unlawful for any person to:

- (A) Recklessly handle or use a gun or other dangerous weapon or explosive so as to endanger the safety of another;
- (B) Intentionally point a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another;
- (C) Use any weapon known as a slung-shot or sand club;
- (D) Manufacture, transfer or possess metal knuckles or a switch blade knife opening automatically;
- (E) Possess any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another;
- (F) Sell or have in his or her possession any device designed to silence or muffle the discharge of a firearm;
- (G) Permit, as a parent or guardian, any child under 14 years of age to handle or use, outside of the parent=s or guardian=s presence, a firearm or air gun of any kind, or any ammunition or explosive; or
- (H) Furnish a minor under 18 years of age with a firearm, air gun, CO₂ gas operated dart gun, ammunition or explosive without the written consent of his or her parent or guardian or of the Police Department; or

(I) Have in his or her possession, if under the age of 18 years, any firearm or air gun of any kind for any purpose except while accompanied by, or under the immediate supervision of, his or her parent or guardian, and then only if the firearm is encased.

(Ord. 97, passed 9-8-1998) Penalty, see ' 10.99

' 133.02 EXCEPTION.

Nothing in ' 133.01 shall prohibit the possession of the articles therein mentioned if the purpose of the possession is for public exhibition by museums or collectors of art.

(Ord. 97, passed 9-8-1998)

' 133.03 DISCHARGE OF FIREARMS AND EXPLOSIVES.

It is unlawful for any person to fire or discharge any bow and arrow, cannon, gun, pistol or other firearm, firecracker, sky rocket or other fireworks, air gun, air rifle, CO₂ gas operated dart gun or other similar device commonly referred to as a B-B gun.

(Ord. 97, passed 9-8-1998) Penalty, see ' 10.99

' 133.04 EXCEPTION.

Nothing in ' 133.03 shall apply to a display of fireworks by an organization or group of organizations authorized in writing by the City Council, or to a peace officer in the discharge of his or her duty, or to a person in the lawful defense of his or her person or family.

(Ord. 97, passed 9-8-1998)

' 133.05 POSSESSION AND SALE OF FIREWORKS.

It is unlawful for any person to sell or have in possession for the purpose of sale, except as allowed in ' 133.04, any firecrackers, sky rockets or other fireworks.

(Ord. 97, passed 9-8-1998) Penalty, see ' 10.99

' 133.06 USE OF BOW AND ARROW.

It is unlawful for any person to shoot a bow and arrow, except a community-wide supervised class or event specifically authorized by the Chief of Police.

(Ord. 97, passed 9-8-1998) Penalty, see ' 10.99

' 133.07 CONCEALED HAND GUN AND MODIFIED FIREARMS.

It is unlawful for any person to carry upon his or her person or in a motor vehicle a concealed hand gun, or firearm which has been changed or modified from the original manufacture thereof so as to materially reduce its length; provided, however, that the Chief of Police may issue a permit to a person to carry upon his or her person or in a motor vehicle, a concealed hand gun after an investigation by him or her to an extent that he or she shall deem necessary and proper, and keep a permanent record of all permits issued which shall be non-transferable.

(Ord. 97, passed 9-8-1998) Penalty, see ' 10.99

