

CHAPTER 46

MINORS

46.01 Curfew

46.02 Cigarettes and Tobacco

46.03 Contributing to Delinquency

46.01 CURFEW.

1. Purpose. The Council has determined that a curfew for minors is necessary to promote the public health, safety, morals and general welfare of the City and specifically to achieve the following purposes:

- A. Reinforce the primary authority and responsibility of adults responsible for minors;
- B. Protect the public from the illegal acts of minors committed individually and in groups after the curfew hour; and
- C. Protect minors from improper influences and criminal activity by individuals and groups that prevail in public places after the curfew hour.

2. Definitions. For use in this section, the following terms are defined:

- A. “Curfew hours” means:
 - (1) Sunday – Thursday
11:00 p.m. – 5:00 a.m. each day
 - (2) Friday – Saturday
12:00 a.m. (midnight) – 5:00 a.m. each day
- B. “Emergency” means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.
- C. “Establishment” means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.
- D. “Guardian” means:
 - (1) A person who, under court order, is the guardian of the person of a minor; or

(2) A public or private agency with whom a minor has been placed by a court.

E. “Knowingly” means knowledge which a responsible adult should reasonably be expected to have concerning the whereabouts of a minor in that responsible adult’s custody. It is intended to continue to hold the neglectful or careless adult responsible for a minor to a reasonable community standard of adult responsibility through an objective test. It is therefore no defense that an adult responsible for a minor was completely indifferent to the activities or conduct or whereabouts of the minor.

F. “Minor” means any person under eighteen (18) years of age.

G. “Operator” means any person operating, managing or conducting any establishment including the members or partners of an association or partnership and the officers of a corporation.

H. “Parent” means a person who is:

(1) A natural parent, adoptive parent or step-parent of another person; or

(2) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

I. “Public place” means any place to which the public or a substantial group of the public has access and includes but is not limited to streets, highways and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

J. “Remain” means:

(1) To linger or stay; or

(2) To fail to leave the premises when requested to do so by a police officer or the owner, operator or other person in control of the premises.

K. “Serious bodily injury” means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

3. Offenses.

A. A minor commits an offense if he or she remains in any public place or on the premises of any establishment within the City during curfew hours.

B. A parent or guardian commits an offense if he or she knowingly permits or by insufficient control allows the minor to remain in any public place or on the premises of any establishment within the City during curfew hours.

C. The owner, operator or any employee of an establishment commits an offense if he or she knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

4. Defenses.

A. It is a defense to prosecution under subsection 3 of this section that the minor was:

- (1) Accompanied by the minor's parent or guardian;
- (2) On an errand at the direction of the minor's parent or guardian, without any detour or stop;
- (3) In a motor vehicle involved in interstate travel;
- (4) Engaged in an employment activity or going to or returning home from an employment activity, without any detour or stop;
- (5) Involved in an emergency;
- (6) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the Police Department about the minor's presence;
- (7) Attending an official school, religious or other recreational activity supervised by adults and sponsored by the City, a civic organization or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the City, a civic organization or other similar entity that takes responsibility for the minor;
- (8) 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; or

(9) Married or previously married or if said minor had disabilities of minority removed in accordance with Section 599 of the Code of Iowa.

B. It is a defense to prosecution under subsection 3(C) of this section that the owner, operator or employee of an establishment promptly notified the Police Department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

5. Enforcement.

A. Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. In the absence of convincing evidence such as a birth certificate or driver's license, a police officer on the street shall, in the first instance, use his or her best judgment in determining age. The officer shall not issue a citation or take a minor into custody under this section unless the officer reasonably believes that an offense has occurred and that, based on the minor's response and other circumstances, no defense in subsection 4 of this section is present.

B. A peace officer may take a minor into custody for violation of this section pursuant to Section 232.19 of the Code of Iowa for the limited purpose of detaining the minor until he or she can be reunited with the minor's family or guardian or other responsible adult or if the peace officer has probable cause to believe that the minor has committed a delinquent act which if committed by an adult would constitute a public offense. A peace officer who takes a minor into custody shall not place bodily restraints such as handcuffs on the minor unless the minor physically resists or threatens physical violence when being taken into custody. A minor shall not be placed in detention following a curfew violation.

C. After a minor is taken into custody, the peace officer shall notify the adult responsible for the minor as soon as possible. The minor shall be released to the adult responsible for the minor upon the promise of such person to produce the child in court at such time as the court may direct.

D. If a peace officer determines that a minor does not have adult supervision because the peace officer cannot locate the minor's parent, guardian or other person legally responsible for the care of the minor within a reasonable time, the peace officer

shall attempt to place the minor with an adult relative of the minor, an adult person who cares for the minor or another adult person who is known to the minor.

6. Penalties.

A. Responsible Adult's First Violation - Warning. In the case of a first violation by a minor, the Police Chief or designee of the Police Chief shall, by certified mail or personal service, deliver to the adult responsible for the minor written notice of the violation with a warning that any subsequent violation will result in full enforcement of the curfew ordinance against both the responsible adult and minor, with applicable penalties.

B. Responsible Adult's Second Violation - Municipal Infraction. Any responsible adult as defined in this section who, following receipt of a warning, knowingly allows the minor to violate any of the provisions of this section shall be guilty of a municipal infraction as set forth in Chapter 4 of this Code of Ordinances and upon conviction shall be punished by a fine as established in Chapter 4.

C. Minor's First Violation - Warning. In the case of a first violation by a minor, the peace officer shall give the minor a written warning, which states that any subsequent violation will result in full enforcement of the curfew ordinance against the responsible adult and the minor, with applicable penalties.

D. Minor's Second Violation - Municipal Infraction. For the minor's second and subsequent violations of any of the provisions of this section, the minor shall be guilty of a municipal infraction as set forth in Chapter 4 of this Code of Ordinances and upon conviction shall be punished by a fine as established in Chapter 4.

46.02 CIGARETTES AND TOBACCO. It is unlawful for any person under eighteen (18) years of age to smoke, use, possess, purchase or attempt to purchase any tobacco, tobacco products or cigarettes. Possession of cigarettes or tobacco products by a person under eighteen years of age shall not constitute a violation of this section if said person possesses the cigarettes or tobacco products as part of the person's employment and said person is employed by a person who holds a valid permit under Chapter 453A of the Code of Iowa and lawfully offers for sale or sells cigarettes or tobacco products.

(Code of Iowa, Sec. 453A.2)

46.03 CONTRIBUTING TO DELINQUENCY. It is unlawful for any person to encourage any child under eighteen (18) years of age to commit any act of delinquency.

(Code of Iowa, Sec. 709A.1)