

**CHAPTER 12**

**MISCELLANEOUS OFFENSES AND PROVISIONS**

**ARTICLE I  
CURFEW**

**SECTION 12-1: CURFEW IMPOSED**

(A) It shall be unlawful for any person of less than 18 years of age to be present at or upon any public assembly, building, place, street or highway in the Village at the following times unless accompanied by a parent, legal guardian or other responsible companion at least 21 years of age unless engaged in a business or occupation which the laws of this state authorize a person less than 18 years of age to perform: Between 10:00 p.m. on Sunday through Saturday, and 6:00 a.m. of the following day.

(B) This section does not apply to a minor who is:

- (1) Accompanied by a parent, guardian, or custodian;
- (2) Accompanied by an adult specified by a parent, guardian, or custodian;
- (3) Carrying out an errand or other lawful activity as directed by a parent, guardian, or custodian;
- (4) Occupying the sidewalk of the place where the minor resides, or the sidewalk of a place where the minor has permission from his or her parent or guardian to be, or the sidewalk of a next-door neighbor not communicating an objection to a police officer; or
- (5) Participating in, going to, or returning from:
  - (a) Lawful employment;
  - (b) A lawful athletic, educational, entertainment, religious, social event; or
  - (c) Interstate travel.

**SECTION 12-2: PERMITTING PERSON TO VIOLATE CURFEW**

It shall be unlawful for a parent, legal guardian or other person to knowingly permit a person in his custody or control to violate the provisions of section 12-1 of this chapter.

**ARTICLE II  
PUBLIC MORALS**

**SECTION 12-3: PUBLIC DECENCY**

**(A) DEFINITIONS**

**“ADULT BOOK STORE”** Means an establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals that are distinguished or characterized by their emphasis on matter depicting, describing or relating to nudity, sexual intercourse, deviate sexual conduct or erotic touching, or an establishment with a segment or section of its floor space or display area devoted to the sale or display of such material.

**“ADULT MINI-MOTION PICTURE THEATER”** An enclosed building with an attendance capacity for less than fifty (50) persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, sexual intercourse, deviate sexual conduct, or erotic touching for observation by patrons therein.

**“CABARET”** An adult club, restaurant, theater, hall or similar place that features topless dancers, go-go dancers, exotic dancers, strippers (male or female), male or female impersonators or similar entertainers appearing in a state of nudity, engaging in sexual intercourse, deviate sexual conduct or erotic touching.

**“NUDITY”** The showing of the human male or female genitals, 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, or the showing of covered male genitals in a discernibly turgid state.

**“PUBLIC INDECENCY”** Person who knowingly or intentionally, in a public place:

- (a) engages in sexual penetration;
- (b) engages in deviate sexual intercourse;
- (c) appears in a state of nudity; or
- (d) fondles the genitals of himself or herself or another person; commits public indecency.

**“INDECENT EXPOSURE”** Person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

- (a) engages in sexual intercourse;
- (b) engages in deviate sexual conduct; or
- (c) fondles the genitals of himself or herself or of another person; where he or she can be seen by persons other than invitees and occupants of that place, commits indecent exposure.

**“SEXUAL PENETRATION”** Any conduct, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person including, but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

**“SEXUAL CONDUCT”** Any intentional or knowing touching or fondling by a person over the age of seventeen, either directly or through clothing, of the sex organs, anus or breast of another person, or any part of the body of a child under thirteen years of age, for the purpose of sexual gratification or arousal of either person.

#### **(B) PUBLIC INDECENCY PROHIBITED**

It shall be unlawful for any person to engage in public indecency within the Village limits of the Village of Lena or within 3 miles of the Village limits of the Village of Lena. A person does not commit public indecency if that person appears in a state of nudity as part of a live performance with serious literary or artistic value.

#### **SECTION 12-4: OBSCENITY**

**(A) ELEMENTS OF THE OFFENSE** A person commits obscenity when, with knowledge of the nature or content thereof, or recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof, he:

(1) Sells, delivers, or provides, or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene;

(2) Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene;

(3) Publishes, exhibits, or otherwise makes available anything obscene;

(4) Performs an obscene act or otherwise presents an obscene exhibition of his body for gain;

(5) Creates, buys, procures, or possesses obscene matter or material with intent to disseminate it in violation of this section, or of the penal laws or regulations of any other jurisdiction; or

(6) Advertises or otherwise promotes the sale of material represented or held out by him to be obscene, whether or not it is obscene.

**(B) “OBSCENE” defined.** Any material or performance is **OBSCENE** if:

(1) The average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest;

(2) The average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic

sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions, or lewd exhibition of the genitals; and

(3) Taken as a whole, it lacks serious literary, artistic, political, or scientific value.

**(C) INTERPRETATION OF EVIDENCE**

(1) Obscenity shall be judged with reference to ordinary adults except that it shall be judged with reference to children or other specially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.

(2) Where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate that material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is lacking in serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) The character of the audience for which the material was designed or to which it was directed;

(b) What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;

(c) The artistic, literary, scientific, educational, or other merits of the material, or absence thereof;

(d) The degree, if any, of public acceptance of the material in this state;

(e) Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material;

(f) Purpose of the author, creator, publisher, or disseminator.

**(D) PRIMA FACIE EVIDENCE** The creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies, or the possession of more than three copies of obscene material shall be *prima facie* evidence of an intent to disseminate.

**(E) AFFIRMATIVE DEFENSES** It shall be an affirmative defense to obscenity that the dissemination:

(1) Was not for gain and was made to personal associates other than children under 18 years of age;

(2) Was to institutions or individuals having scientific or other special justification for possession of such material.

## **SECTION 12-5: HARMFUL MATERIAL**

(A) **ELEMENTS OF THE OFFENSE** No person, with knowledge that a person is a child (that is, a person under 18 years of age), or who fails to exercise reasonable care in ascertaining the true age of a child, shall knowingly distribute to, send, or cause to be sent to, or exhibit to, or offer to distribute or exhibit any harmful material to a child.

(B) **DEFINITIONS** For purposes of this section:

**“HARMFUL”** Material is harmful if, to the average person, applying contemporary standards, its predominant appeal, taken as a whole, is to prurient interest, that is a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters, and is material the redeeming social importance of which is substantially less than its prurient appeal.

**“MATERIAL”** Any writing, picture, record, or other representation or embodiment.

**“DISTRIBUTE”** To transfer possession of, whether with or without consideration.

**“KNOWINGLY”** Having knowledge of the contents of the subject matter, or recklessly failing to exercise reasonable inspection which would have disclosed the contents thereof.

### **(C) INTERPRETATION OF EVIDENCE**

(1) The predominant appeal to prurient interest of the material shall be judged with reference to average children of the same general age of the child to whom the material was offered, distributed, sent, or exhibited, unless it appears from the nature of the matter or the circumstances of its dissemination, distribution or exhibition that it is designed for specially susceptible groups, in which case the predominant appeal of the material shall be judged with reference to its intended or probable recipient group.

(2) In prosecutions under this section, where circumstances of production, presentation, sale, dissemination, distribution, or publicity indicate the material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the material and can justify the conclusion that the redeeming social importance of the material is in fact substantially less than its prurient appeal.

### **(D) AFFIRMATIVE DEFENSES**

(1) Nothing in this section shall prohibit any public library or any library operated by an accredited institution of higher education from circulating harmful material to any person under 18 years of age, provided such circulation is in aid of a legitimate scientific or educational purpose, and it shall be an affirmative defense in any prosecution for a violation of this section that the act charged was committed in aid of legitimate scientific or educational purposes.

(2) Nothing in this section shall prohibit any parent from distributing to his child any harmful material.

(3) Proof that the defendant demanded, was shown, and acted in reliance upon any of the following documents as proof of the age of a child, shall be a defense to any criminal prosecution under this section: a document issued by the federal government or any state, county, or village government or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the Federal Selective Service Act or an identification card issued to a member of the armed forces.

(4) In the event an advertisement of harmful material as defined in this section culminates in the sale or distribution of harmful material to a child, under circumstances where there was no personal confrontation of the child by the defendant, his employees, or agents, as where the order or request for harmful material was transmitted by mail, telephone, or similar means of communication, and delivery of the harmful material to the child was by mail, freight, or similar means of transport, it shall be a defense in any prosecution for a violation of this section that the advertisement contained the following statement, or a statement substantially similar thereto, and that the defendant required the purchaser to certify that he was not under 18 years of age and that the purchaser falsely stated that he was not under 18 years of age: "NOTICE: It is unlawful for any person under 18 years of age to purchase the matter herein advertised. Any person under 18 years of age who falsely states that he is not under 18 years of age for the purpose of obtaining the material advertised herein, is guilty of a Class B misdemeanor under the laws of the state of Illinois and a violation of Section 12-5 of the Village Code of Ordinances".

(E) **CHILD FALSIFYING AGE** No person under 18 years of age shall falsely state, either orally or in writing, that he is not under the age of 18 years, or present or offer to any person any evidence of age and identity which is false or not actually his own for the purpose of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material.

#### **SECTION 12-6: SEVERABILITY**

If any section, subsection, paragraph, sentence, clause or phrase of this Chapter, or any part thereof, or application thereof to any person, firm, corporation, public agency or circumstances is for any reason held to be unconstitutional or invalid or ineffective by any Court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof. It is hereby declared to be the legislative intent of the Village Council that this Chapter would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section or part thereof not then been included.

#### **SECTION 12-7: PENALTY**

Any person found to be in violation of any provision of this Chapter, Article II, shall be fined \$100.00 - \$500.00.

Each day a continuing violation exists may be deemed a separate offense.

**ARTICLE III  
NOISE/PUBLIC NUISANCE**

**SECTION 12-8**

(A) **FINDINGS** It is recognized that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

(B) **ADOPTION OF STATE PROVISIONS** Chapter 8 of the Illinois Pollution Control Board Rules and Regulations pertaining to noise from stationary sources is hereby adopted by the Village of Lena.

(C) **VEHICULAR NOISE GENERALLY**

(1) No person shall sound any horn or audible signal device of any motor vehicle of any kind while not in motion, nor shall such horn or signal be sounded under any circumstances except as required by law, nor shall it be sounded for any unnecessary or unreasonable period of time.

(2) It shall be unlawful and it is hereby declared a public nuisance for any person, owner and/or operator, to make unnecessary and annoying noises with a motor vehicle by loud use of audio equipment, sound amplification equipment, squealing tires, excessive acceleration of an engine, or by emitting unnecessary and loud muffler noises so that it annoys, injures, or endangers the comfort, health or safety of others, or that can be heard outside the vehicle from seventy-five (75) feet or more when the vehicle is being operated or parked.

(D) **UNREGISTERED RECREATIONAL OR OFF-HIGHWAY VEHICLES** It shall be unlawful for any person to operate a motor-driven vehicle of a type not subject to registration for road use between the hours of 9:00 p.m. and 9:00 a.m.

(E) **CONSTRUCTION NOISE** It shall be unlawful for any person to use any hammer or power-operated tool for repair or construction purposes between the hours of 10:30 p.m. and 7:00 a.m. within six hundred (600) feet of any building used for residential or hospital purposes. Repairs to public service utilities shall be exempted from this Section.

(F) **GROUNDS MAINTENANCE EQUIPMENT** It shall be unlawful to operate any power-driven lawn or garden maintenance equipment between the hours of 10:30 p.m. and 7:00 a.m. within six hundred (600) feet of any building used for residential or hospital purposes.

(G) **MISCELLANEOUS NOISE SOURCES** It shall be unlawful to operate the following equipment outdoors between the hours of 10:30 p.m. and 7:00 a.m. within six hundred (600) feet of any building used for residential or hospital purposes:

- (1) Power-operated models including automobiles, boats and aircraft.

- (2) Sound trucks and public address systems.
- (3) Musical instruments.
- (4) Radios, television sets, cd players, tape decks and phonographs.
- (5) Factory time whistles.
- (6) Church bells and carillons.
- (7) Garbage collection truck between the hours of 10:30 p.m. and 6:00 a.m.

(H) **ANIMAL NOISE** It shall be unlawful for any person to own, keep, have in his possession, or harbor any animal which by frequent or habitual emission or generation of noise shall cause annoyance or disturbance to persons in the neighborhood, provided that the provisions of this section shall not apply to hospitals conducted for the treatment of animals or to premises used by the Village of Lena for the confinement of stray animals.

(I) **NUISANCE NOISES**

(1) It shall be unlawful to cause or create any unnecessary unusual or loud noise at any time which annoys, injures, or endangers the comfort, repose, health, or safety of others unless such noise is necessary for the protection or preservation of property or of the health, safety, or life of some person.

(2) No person owning or in possession or control of any building or premises shall use the same, permit the use of the same, or rent the same to be used for any business or employment or residential use, or for any purpose of pleasure or recreation, if such use shall, by its boisterous nature, disturb or destroy the peace of the neighborhood in which such building or premises is situated, or be dangerous or detrimental to health.

(J) **EXCEPTIONS TO REGULATIONS** The following are exempt from the above regulations:

- (1) Sirens and bells on emergency vehicles.
- (2) Fire and burglar alarms.
- (3) Civil defense warning systems.
- (4) Train whistles and horns.
- (5) Authorized fireworks displays.
- (6) Authorized concerts and parades.

(K) **PENALTIES** Any person found to be in violation of any provisions of this Chapter, Articles III, shall be fined \$100.00 - \$500.00.

Each day a continuing violation exists may be deemed a separate offense.



**ARTICLE IV  
ADVERTISING; SOLICITING**

**SECTION 12-9: ADVERTISING**

It shall be unlawful to advertise any unlawful business or article in the Village, and it shall be unlawful to injure or deface any lawful advertisement or notice.

**SECTION 12-10: POSTING BILLS**

It shall be unlawful to post any bills or advertisements on any public property without the authority of the President and Board of Trustees, and it shall be unlawful to post any bill or advertisement on any property without the written consent of the owner thereof.

**SECTION 12-11: SOLICITING OR PEDDLING**

It shall be unlawful for any person to go upon the premises of another for the purpose of soliciting orders, selling, or peddling without the consent or invitation of the owner or occupant.

**SECTION 12-12 HANDBILLS PROHIBITED**

It shall be unlawful for any person, firm or corporation by himself, or his or its agents or servants to distribute, cast, throw or place or cause to be distributed, cast, thrown or placed in, or upon or along the streets, alleys or other public places of the Village, or upon the porches or yards of private residences therein or within any dwelling or building in the Village, any handbill, paper, or similar article, with the intent of advertising or making known in a general or promiscuous manner any business, occupation, proposition, medical treatment, medicine or other article whatsoever.

**ARTICLE V  
PUBLIC URINATION AND DEFECATION**

**SECTION 12-13: PUBLIC URINATION & DEFECATION (Passed 1/9/06)**

(A) It shall be unlawful for any person to urinate or defecate in public, other than when using a toilet, urinal or commode located in a restroom, bathroom or other structure enclosed from public view.

(B) This section shall not apply to individuals who may not be able to adequately control the bodily functions that control urination or defecation, including the following: Children five years of age or younger; or persons of any age who, by reason of a verified medical condition, cannot control bodily functions, which affect that ability to urinate and defecate.

(C) Subject to Section (B) above, any person to be in violation of any provision of this Chapter, Article V, shall be fined \$100.00 - \$500.00

Each day a continuing violation exists may be deemed a separate offense.