

CHAPTER 46

MINORS

46.01 Curfew

46.02 Cigarettes and Tobacco

46.03 Contributing to Delinquency

46.04 Parental Responsibility

46.01 CURFEW. The City of Asbury recognizes that all citizens including minors have certain inalienable rights and that among them are the rights of liberty and the pursuit of happiness. Further, all citizens including minors have the right to freedom of religion, freedom of speech, freedom of assembly and of association. This section should be interpreted to avoid any construction that would result in the appearance of interference with the free exercise of religious worship and political association, and this section shall not be construed to mean that the City intends to interfere with a minor's freedom of association for political, economic, religious or cultural matters or association for purposes such as marches, demonstrations, picketing or prayer vigils which are otherwise lawful and peaceful assemblies.

(Code of Iowa, Sec. 364.1)

1. Findings and Purpose.
 - A. The City Council has determined that there has been an increase in juvenile violence and crime by persons under the age of 16 in the City of Asbury; and
 - B. Persons under the age of 16 are particularly susceptible by their lack of maturity and experience to participate in unlawful and gang-related activities and to be victims of older perpetrators of crime; and
 - C. The City of Asbury has an obligation to provide for the protection of minors from each other and from other persons, for the enforcement of parental control over and responsibility for children, for the protection of the general public, and for the reduction of the incidence of juvenile criminal activities.
2. Definitions. The following terms are defined for use in this section:
 - A. "Curfew hours" means eleven o'clock (11:00) p.m. until six o'clock (6:00) a.m.
 - 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. “Minor” means any person under age 16 years of age.

F. “Operator” means any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

G. “Parent” means a person who is either:

(1) (1) A biological parent, adoptive parent, step-parent, legal guardian or any other person having or who has assumed the care, control or custody by birth, by court order, on a voluntary basis or otherwise; or

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

H. “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, sidewalks, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and commercial establishments.

(Paragraphs G and H – Ord. 7-2015 – Dec. 15 Supp.)

I. “Remain” means to:

(1) Linger or stay; or

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

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

3. Offenses.

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

B. A parent or guardian of a minor 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 said person 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 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 of Asbury, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home without any detour or stop, an official school, religious, or other recreational activity supervised

by adults and sponsored by the City of Asbury, a civic organization, or another 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 had been married.

B. It is a defense to prosecution under subsection 3 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. 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. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection 4 of this section is present. A minor who is in violation of this section shall be reunited with the minor's parent or guardian or custodian or other adult taking the place of the parent or shall be taken home by the police officers of the City.

6. Violation. A violation of this section is a municipal infraction, punishable under Chapter 3 of this Code of Ordinances.

46.02 CIGARETTES AND TOBACCO. It is unlawful for any person under 21 years of age to smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes. Possession of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by an individual under 21 years of age shall not constitute a violation of this section if the individual under 21 years of age possesses the tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes 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* or who lawfully offers for sale or sells cigarettes or tobacco products.

(Ord. 8-2020 – Sep. 20 Supp.)

(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)

46.04 PARENTAL RESPONSIBILITY. A parent must exercise reasonable control over the parent's minor to prevent the minor from committing any act of delinquency as defined by Iowa Code Chapter 232, or any unlawful act in violation of federal or state law or city ordinance.

1. Definitions. The following terms are defined for use in this Section 46.04:

A. "Minor" means any person who has not attained eighteen (18) years of age.

B. "Parent" as defined by Section 46.01(2)(G).

2. Violation. A failure by a parent to exercise reasonable control over the parent's minor which causes or allows the minor to commit an act of delinquency or unlawful act is a violation of this Section 46.04.

3. Enforcement. 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. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection 4 of this section is present. A minor who is in violation of this section shall be reunited with the minor's parent or guardian or custodian or other adult taking the place of the parent or shall be taken home by the police officers of the City of Asbury. A parent must exercise reasonable control over the parent's minor to prevent the minor from committing any unlawful act in violation of federal or state law or city ordinances.

4. Violation. A failure by a parent to exercise reasonable control over the parent's minor which causes or allows the minor to commit an unlawful act is a violation of this article.

A. For a first violation of Section 4 of this article, the City will issue the parent a warning letter that the parent is in violation of Chapter 46, Section 46.04, Subsection 4 of the Code of Ordinances with a description of the nature of the parent's violation and a statement setting forth the fines and/or consequences of future violations.

B. A second violation of Section 4 of this article is a municipal infraction for which the fine is two hundred fifty dollars (\$250.00). In lieu of a fine, and subject to the approval of the Chief of Police, the parent may elect:

(3) (1) To attend, successfully complete, and provide proof of completion within one hundred and eighty

(180) days of the date of the notice of violation, a recognized course of instruction on parenting skills and/or techniques. The failure of the parent to successfully complete such course within such time constitutes a municipal infraction;

(4) or

(5) (2) To submit in writing within thirty (30) days of the notice of violation for review and approval of the Chief of Police a plan for action steps that will be taken to prevent further unlawful acts by the minor. The failure of the parent to submit such plan within such time constitutes a municipal infraction.

C. A third violation of Section 4 of this article is a municipal infraction for which the fine is five hundred dollars (\$500.00). In lieu of a fine, and subject to the approval of the Chief of Police, the parent may elect to attend, successfully complete, and provide proof of completion within one hundred eighty (180) days of the date of the notice of the violation, a recognized course of instruction on parenting skills and/or techniques but only if the parent has not previously attended such course under Subsection B of this section. The failure of the parent to successfully complete such course within such time constitutes a municipal infraction.

D. A fourth and any subsequent violation of Section 4 of this article is a municipal infraction for which the fine is one thousand dollars (\$1,000.00) for each such violation. In addition, the Chief of Police will refer the violation to the county attorney for review of whether the issuance of a criminal charge under Iowa Code section 709A.1 and/or whether a proceeding under Iowa Code, Chapter 232, child or family in need of assistance, is appropriate.

(Ord. 7-2015 – Dec. 15 Supp.)

[The next page is 235]