

## CHAPTER 11

### VILLAGE MISCELLANEOUS OFFENSES AND PROVISIONS CODES

#### ARTICLE I: GENERAL

##### Sec. 11-0. GENERAL - APPLICABILITY.

The provisions of this Chapter shall apply to all persons residing in or visiting the Village of Orangeville who have any stated, implied or incurred jurisdiction, liability or responsibility regarding the implementation, enforcement, and compliance with any and all of the articles of this Chapter.

##### Sec. 11-1. GENERAL - PURPOSE.

A. The purpose of this Chapter is to establish reasonable, comprehensive, and functional miscellaneous offense and provision Codes and policies regarding curfew, public morals, noise pollution, and unlawful advertising and soliciting.

B. It is intended that these Codes shall help protect and preserve the existing character of the Village with a consideration toward conserving the community's public health, safety, and welfare, while providing the best possible wholesome community environment for its residents to live in.

##### Sec. 11-2. GENERAL - TERMS and DEFINITIONS.

**ADULT BOOK STORE.** The term "Adult Book Store," when used herein, shall mean 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.** The term "Adult Mini-Motion Picture Theater," when used herein, shall mean 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.** The term "Cabaret," when used herein, shall mean 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.

**CURFEW.** The term “Curfew,” when used herein, shall mean an order or regulation enjoining specific classes of the population to retire from the streets at a prescribed hour.

**DISTRIBUTE.** The term “Distribute,” when used herein, shall mean to transfer possession of, whether with or without consideration.

**HARMFUL.** The term “Harmful,” when used herein, shall mean 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.

**KNOWINGLY.** The term “Knowingly,” when used herein, shall mean having knowledge of the contents of the subject matter, or recklessly failing to exercise reasonable inspection which would have disclosed the contents thereof.

**MATERIAL.** The term “Material,” when used herein, shall mean any writing, picture, record, or other representation or embodiment.

**NUDITY.** The term “Nudity,” when used herein, shall mean 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.

**OBSCENE.** The term “Obscene,” when used herein, shall mean that the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; or 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 taken as a whole, it lacks serious literary, artistic, political, or scientific value.

**PUBLIC INDECENCY.** The term “Public Indecency,” when used herein, shall mean a person who knowingly or intentionally, in a public place: engages in sexual penetration; engages in deviate sexual intercourse; appears in a state of nudity; or fondles the genitals of himself or herself or another person; commits public indecency; where he or she can be seen by persons other than invitees and occupants of that place, commits indecent exposure.

**SEXUAL PENETRATION.** The term “Sexual Penetration,” when used herein, shall mean

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.** The term "Sexual Conduct," when used herein, shall mean any intentional or knowing touching or fondling by a person over the age of seventeen (17) years, 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 (13) years of age, for the purpose of sexual gratification or arousal of either person.

Sec. 11-3. GENERAL - SEVERABILITY.

The sections, paragraphs, sentences, clauses and phrases of this Chapter are severable, and if any phrase, clause, sentence, paragraph or section of this Chapter shall be declared unconstitutional, invalid, or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Chapter.

Sec. 11-4 through 11-8. RESERVED.

## **ARTICLE II: CURFEW**

Sec. 11-9. CURFEW - IMPOSED.

A. It shall be unlawful for any person of less than eighteen (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 twenty-one (21) years of age unless engaged in a business or occupation which the laws of this state authorize a person less than eighteen (18) years of age to perform between 10:00 p.m. on one day and 6:00 a.m. of the following day.

B. This section does not apply to a minor who is: accompanied by a parent, guardian, or custodian; accompanied by an adult specified by a parent, guardian, or custodian; carrying out an errand or other lawful activity as directed by a parent, guardian, or custodian; 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 participating in, going to, or returning from: lawful employment; a lawful athletic, educational, entertainment, religious, or social event; or interstate travel.

Sec. 11-10. CURFEW - PERMITTING PERSON TO VIOLATE.

It shall be unlawful for a parent, legal guardian or other person to knowingly permit a person of less than eighteen (18) years of age in his custody or control in the Village of Orangeville to violate any imposed curfew for that person.

Sec. 11-11 through 11-15. RESERVED.

**ARTICLE II: PUBLIC MORALS**

Section 11-16. MORALS - PUBLIC DECENCY.

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

Sec. 11-17. MORALS - 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/she: 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; or presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or publishes, exhibits, or otherwise makes available anything obscene; or performs an obscene act or otherwise presents an obscene exhibition of his/her body for gain; or 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 advertises or otherwise promotes the sale of material represented or held out by him/her to be obscene, whether or not it is obscene.

B. 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 especially susceptible audiences if it appears from the character of the material or the circumstances of its dissemination to be especially 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; and **(3)** In any prosecution for an offense under this section, evidence shall be admissible to show: the character of the audience for which the material was designed or to which it was directed; or 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; or the artistic, literary, scientific, educational, or other merits of the material, or absence thereof; or the degree, if any, of public acceptance of the material in this state; or appeal to prurient interest, or absence thereof, in advertising or other promotion of the material; or purpose of the author, creator, publisher, or disseminator.

C. Prima facie evidence. The creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity especially 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.

D. Affirmative defenses. It shall be an affirmative defense to obscenity that the dissemination: was not for gain and was made to personal associates other than children under eighteen (18) years of age; or was to institutions or individuals having scientific or other special justification for possession of such material.

#### Sec. 11-18. MORALS - HARMFUL MATERIAL.

A. Elements of the offense. No person, with knowledge that a person is a child (that is, a person under eighteen (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. 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; and **(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.

C. 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; and **(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 eighteen (18) years of age and that the purchaser falsely stated that he was not under eighteen (18) years of age: "NOTICE: It is unlawful for any person under eighteen (18) years of age to purchase the matter herein advertised. Any person under eighteen (18) years of age who falsely states that he is not under eighteen (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 11-5 of the Village Book of Codes."

D. Child falsifying age. No person under eighteen (18) years of age shall falsely state, either orally or in writing, that he is not under the age of eighteen (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.

Sec. 11-19 through 11-29. RESERVED.

#### **ARTICLE IV: NOISE/PUBLIC NUISANCE**

Sec. 11-30. NOISE - GENERAL.

A. Because 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 the environment, 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.

B. Chapter 8 of the Illinois Pollution Control Board Rules and Regulations pertaining to noise from stationary sources is hereby adopted by the Village of Orangeville.

Sec. 11-31. NOISE - VEHICULAR.

A. 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.

B. 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-feet (75') or more when the vehicle is being operated or parked.

C. 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. on the Village streets.

#### Sec. 11-32. NOISE - OTHER.

A. 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-feet (600) of any building used for residential or hospital purposes. Repairs to public service utilities shall be exempted from this Section.

B. 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-feet (600') of any building used for residential or hospital purposes.

C. 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-feet (600') of any building used for residential or hospital purposes: power-operated models including automobiles, boats and aircraft; sound trucks and public address systems; musical instruments; radios, television sets, CD players, tape decks and phonographs; factory time whistles; church bells and carillons; and garbage collection trucks between the hours of 10:30 p.m. and 5:00 a.m.

D. Animal Noises. 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 that neighborhood.

E. Nuisance Noises. 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.

Sec. 11-33. NOISE - EXCEPTION TO REGULATION.

The following are exempt from the above noise regulations: sirens and bells on emergency vehicles; fire and burglar alarms; civil defense warning systems; and fireworks displays, concerts, and parades authorized by the Village.

Sec. 11-34 through 11-40. RESERVED.

**ARTICLE V: ADVERTISING**

Sec. 11-41. ADVERTISING - UNLAWFUL ACT.

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.

Sec. 11-42. ADVERTISING - UNLAWFUL DISTRIBUTION.

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, or on the windshields of vehicles, or staple to utility poles, 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.

Sec. 11-43. ADVERTISING - 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 private property without the written consent of the owner thereof.

Sec. 11-44. ADVERTISING - 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.

Sec. 11-45 NO RIDER POLICY.

A. No person, except an elected or appointed officer, an employee, a hired contractor or a person acting on official business for the Village, shall ride in or on, or operate any vehicle or other equipment owned, leased or used by the Village of Orangeville.

B. This statute shall exclude any passenger in a police vehicle being used to convey that person in the official capacity of that law officer. Also excepted is the necessity of transporting a person in an emergency situation, from one place in the Village to another.

C. Any person so described in Sec. 11-45-A and B who does ride in or on, or operates any vehicle or other equipment owned, leased or used by the Village, shall at all times while riding in, or operating said vehicle or equipment, wear the appropriate safety equipment/clothing as recommended and/or required by OSHA, State, County or Village safety statutes, guidelines, and/or policies.

Sec. 11-46 through 11-98. RESERVED.

**ARTICLE VI: PENALTIES**

Sec. 11-99. Penalty.

A. All penalties addressed by this article are applicable only upon conviction of the referenced violation in the appropriate legal forum. Upon conviction, the Village shall also be entitled to reasonable fees and costs for its part in the adjudication.

B. Whenever in this Chapter or in any Section of this Chapter an act is prohibited or is made or declared to be unlawful or a misdemeanor or a violation of this Chapter, or whenever in such statute the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor or a violation therefor, the violation of any such provision of this Chapter or any statute herein shall be punishable by a fine of not less than ten-dollars (\$10.00), nor more than seven-hundred, fifty-dollars (\$750.00). Each day any violation of any provision of the Chapter or any statute of the Chapter continues, consecutive or not, shall constitute a separate offense. Regardless of the number of total days of violation, any fine shall not exceed three-thousand-dollars (\$3,000.00).