

**TITLE XIII: GENERAL OFFENSES**

Chapter

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Freeport - General Offenses

CHAPTER 130: GENERAL OFFENSES

Section

prescribed in § 10.99 of this code or the penalty prescribed by state law, whichever is less. ('68 Code, § 22-1)

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**§ 130.02 MINORS ATTENDANCE AT CERTAIN MOTION PICTURES.**

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(1) It shall be unlawful for any motion picture theater owner, operator thereof, or employee thereof within the city to permit any person under the age of 18 years to attend or enter into such theater unaccompanied by their parent or lawful guardian while or during the showing of a motion that has been rated by the movie industry as "R," "NC-17," "X," or "XX."

(2) The motion picture theater owner, operator, or employee shall prominently display at the entrance of such theater the rating of each movie shown if rated by the movie industry, so that such display shall be clearly visible to the public, and failure to so display such rating shall constitute a violation of this section.

(3) It is hereby declared to be unlawful for any person under the age of 18 years to attend or enter any motion picture within the city while or during the showing of a motion picture which has been rated "R," "NC-17," "X," or "XX" by the movie industry unless accompanied by a parent or lawful guardian.

**GENERAL PROVISIONS**

**§ 130.01 ADOPTION OF STATE PENAL LAWS.**

Any act, the commission of which constitutes a misdemeanor under the law of the state, is prohibited within the city, and if committed within the city, is hereby declared to be an offense, provided, however, that the penalty therefor shall not exceed the penalty

(B) *Proof of violation.* The fact that a person under 18 years-of-age is found within a motion picture theater at which a motion picture is rated "R," "NC-17," "X," or "XX" is being shown shall constitute prima facie proof of violation of this section.

(C) *Defense.* Consent of a parent or lawful guardian for a person under the age of 18 years to enter into, or see a motion picture rated "R," "NC-17," "X," or "XX," shall not constitute a defense for violation of this section, but actual physical presence of the parent or lawful guardian with the person under 18 years-of-age in such theater shall constitute a defense.

('68 Code, § 22-31) (Ord. 1199, passed 10-19-70) Penalty, see § 130.98

### § 130.03 PURCHASE OR POSSESSION OF TOBACCO BY MINORS.

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

(1) **MINOR.** Any person under the age of 18 years.

(2) **TOBACCO PRODUCT.** Any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.

(B) It shall be unlawful for any minor to possess any tobacco product within the corporate limits of the city.

(C) It is an exception to the application of division (B) of this section if the possession in question occurs at a location or under circumstance which also render such possession a violation of TEX. PENAL CODE, § 48.01.

(D) It is an affirmative defense to a prosecution under division (B) of this section if the minor in possession of a tobacco product:

(1) Is an employee of a person holding a permit issued by the state authorizing such person to engage in the business of being a distributor, wholesaler, bonded agent, or retailer of tobacco products, and such tobacco product is possessed by the minor

on the premises of his or her employer for the purpose of carrying out the business of such employer; or

(2) Is in the presence of his or her adult parent, guardian, or spouse or other adult having custody of such minor by virtue of the order of a court of competent jurisdiction.

(E) It shall be unlawful for any minor to purchase a tobacco product within the corporate limits of the city.

(F) It is unlawful for any minor to falsely state to any person engaged in the business of selling tobacco products within the corporate limits of the city that such minor is not a minor or for any minor to present to any person engaged in the business of selling tobacco products within the corporate limits of the city any document that purports to establish that such minor is not a minor.

(Ord. 1774, passed 10-3-94) Penalty, see § 130.98

### § 130.04 BOTTLES IN CITY PARKS AND BEACHES PROHIBITED.

It shall be unlawful for any person to bring into, have in one's possession, or leave any glass beverage bottles, within any city park. As used in the section, the term "park" includes the city's public beaches. ('68 Code, § 22-32(a)) (Ord. 1397, passed 7-24-78; Am. Ord. 2004-2052, passed 7-6-04) Penalty, see § 130.98

### CURFEW FOR MINORS

#### § 130.20 SHORT TITLE.

This subchapter shall be known and may be cited as "the curfew ordinance of the city." (Ord. 1767, passed 6-20-94; Am. Ord. 1785, passed 6-19-95; Am. Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04)

**§ 130.21 PURPOSE; FINDINGS;  
CONCLUSIONS.**

(A) This subchapter is enacted in accordance with the prevailing community standards and regulations for the conduct of minors on streets, in public places and in private businesses during normal school hours, at night, and during early morning hours for the good of minors in the city, to promote family responsibility here, and for the public good, safety and welfare of the citizens of the city.

(B) The City Council finds that the curfew established by this subchapter meets a very real local need and should, based on the published experiences of other local governments, be a significant factor in minimizing juvenile delinquency in the city in the years ahead. The community sense of the proper time for the cessation of all outdoor activities by minors on the streets, in public places and in private businesses, is reflected in the curfew hours declared by this subchapter which takes into consideration those hours when minors are normally in school as well as those dangerous nocturnal and early morning hours when the accumulation of minors poses a special risk due to their special susceptibility to peer pressure, their immaturity and their lack of experience, all tendencies normally associated with those of youthful years.

(C) The City Council finds that the city is not overcrowded. Local school facilities and adequate indoor living space permits minors in the city to healthfully occupy their time during daytime and nighttime hours. Commercial recreational facilities are almost nonexistent and there is little or nothing for minors to do outdoors, but roam the streets and frequent the commercial establishments of the city which are open after the curfew hours which this subchapter declares.

(D) The City Council finds that minors roaming the streets, public places and frequenting commercial establishments during the curfew hours which this subchapter declares constitutes a public nuisance which should be abated as hereinafter provided.

(E) The City Council finds that school hours should generally be used for educational activities by minors.

(F) Parental responsibility for the whereabouts of children is the norm. Legal sanctions to enforce such results have had a demonstrated effectiveness over the years. As parental control increases, the likelihood of juvenile delinquency decreases. There is a need for daytime and nighttime curfew hours for minors in order to achieve, under local conditions, the purposes hereinbefore stated.

(Ord. 1767, passed 6-20-94; Am. Ord. 1785, passed 6-19-95; Am Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04) Penalty, see § 130.98

**§ 130.22 DEFINITIONS.**

For the purpose of this subchapter, the following terms and phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present terms include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

**CHIEF OF POLICE.** The Chief of Police of the city or his designated representative.

**COMMERCIAL ESTABLISHMENT.** 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, and includes the entire premises thereof and all adjacent parking areas under the control of the owner of the commercial establishment.

**CUSTODY.** Includes possession of a minor by a parent of such minor, possession by the guardian of the person of such minor, or possession by any other person to whom legal conservatorship or other legal custody of the minor has been given by order of a court of competent jurisdiction.

**CURFEW HOURS.**

(1) For any minor 14 years of age or younger, on each day of the week from 10:00 p.m. until 5:00 a.m. of the following day;

(2) For any minor 15 years of age or older, on any Sunday, Monday, Tuesday, Wednesday or Thursday from 11:00 p.m. until 5:00 a.m. of the following day, and on any Friday or Saturday from 12:00 midnight until 5:00 a.m. of the following day;

(3) For any minor, on any day when school is in session within the Brazosport Independent School District during the fall and spring semesters, from 8:15 a.m. through 3:30 p.m.

**DIRECT ROUTE.** The shortest path of travel through a public place to reach a final destination without detour or stops along the way.

**MINOR.** Any person under the age of 18, or, in equivalent phrasing often herein employed, any person 17 or less years of age, provided, however, such definition shall not include any married person or any person who has had the disabilities of minority removed in accordance with the Texas Family Code.

**PARENT.**

(1) The mother, a man presumed to be the biological father, a man who has been adjudicated to be the biological father by a court of competent jurisdiction, or an adoptive mother or father of a minor but does not include any person whose parent-child relationship with a minor has been terminated by a court of competent jurisdiction.

(2) A person who stands in loco parentis to a minor.

(3) A person to whom guardianship, conservatorship or other legal custody has been given by order of a court of competent jurisdiction.

**PUBLIC PLACE.** A physical location which is owned by the public or by a political subdivision of the state or the federal government.

**REMAIN.** To stay behind, to tarry and to stay unnecessarily upon the streets, public places or the premises of commercial establishments including congregating in groups of minors (or the interacting of

individual minors together) in which any minor included would not be using the streets for an purpose declared to be a defense in § 130.24.

**STREET.** A way or place of whatsoever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term street includes legal right-of-way, including, but not limited to, the cartway or traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term **STREET** is implied irrespective of what it is called or formally named, whether alley, avenue, court, road or otherwise.

**TIME OF NIGHT.** As referred to herein is based upon the prevailing standard of time, whether Central Standard Time or Central Daylight Saving Time, generally observed at that hour by the public in the city. Proof that a particular time was observed by the city's police department on any calendar day shall be prima facie evidence in the municipal court of the conformity of such time to the then prevailing standard of time.

**YEAR OF AGE.** Continues from one birthday, such as the 17th to (but not including the day of) the next, such as the 18th birthday, making it clear that "17 or less years of age" is herein treated as equivalent to the phrase, "under 18 years of age." (Ord. 1767, passed 6-20-94; Am. Ord. 1785, passed 6-19-95; Am. Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04)

**§ 130.23 CURFEW FOR MINORS.**

It shall be unlawful for a minor to be or remain in or upon the streets, public places or commercial establishments within the city during the, curfew hours defined in § 130.22 above.

(Ord. 1767, passed 6-20-94; Am. Ord. 1785, passed 6-19-95; Am. Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04) Penalty, see § 130.98

**§ 130.24 DEFENSES.**

(A) It is a defense to prosecution of a minor under this subchapter for such minor being in or upon the streets, public places or commercial establishments within the city during the daytime or nighttime hours designated by § 130.22 as times at which it is unlawful for such minor to remain in or upon such streets, public places or commercial establishments when such minor is:

(1) Accompanied by a parent having custody of such minor.

(2) Accompanied by an adult authorized by a parent of such minor having custody to take said parent's place in accompanying said minor for a designated period of time. For the purposes of this subchapter, it shall be presumed that the step-parent of a minor who is accompanying such minor has been so authorized by a parent of a minor to take such parent's place in accompanying said minor.

(3) Exercising his or her rights under the First Amendment to the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly. Such minor shall evidence the bona fides of such exercise by first delivering to the Chief of Police, at the city's police department, a written communication, signed by such minor and countersigned if practicable by a parent of such minor having custody of such minor, stating the home address and telephone number of the minor and the parent, addressed to the Chief of Police and specifying when, where and in what manner said minor will be on the streets at night (during hours when this subchapter is otherwise applicable to said minor) in the exercise of a First Amendment right which right shall be specified in such communication. This written communication shall be delivered to the office of the Chief of Police at least one week prior to the time specified in such communication as being the time when the minor will be exercising his or her First Amendment right therein specified.

(4) Involved in a case of reasonable necessity, but then only after a parent of a minor or an employee of a public or private school has communicated to the city's police dispatcher, orally or

in writing, the facts establishing such reasonable necessity, relating the same to specified streets at a designated time and a described purpose, including points of origin and destination. A copy of such written communication, or of the police record of an oral communication, in either case, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and addresses of such parent and minor, shall be admissible in evidence in the municipal court of the city as prima facie proof of the truth of all facts set forth therein.

(5) On the sidewalk of the place where such minor resides, or on the sidewalk of either next-door neighbor of the place where the minor resides.

(6) A student enrolled in a private school who was in fact released from attending class on the hour charged due to an official school holiday or in service day. Because of court rulings requiring that students being home schooled receive equal protection of law with those in private schools, children who are being home schooled are also hereby placed under this exemption.

(7) Engaged in an organized athletic activity sponsored by an official group or voluntary association comprised of adults and directly supervised by an adult or adults.

(8) Engaged in an out-of-school educational activity or an activity of a religious or other voluntary association attended by such minor. "Out-of-school educational activity" shall include organized trips for minors to parks, libraries, museums, recreation centers and other such private and public places so long as such trips are planned or permitted by a public school, a private school or by a group or association of home schoolers, and provided that such trips are directly supervised by an adult or adults.

(9) Returning home by a direct route from and within 30 minutes of release from school or from the excepted activities described in divisions (A)(7) or (A)(8) above.

(10) A student on his or her regular school lunch break.

(11) Authorized, by special permit from the Chief of Police, carried on the person of such minor thus authorized, as follows: 'When normal or necessary daytime or nighttime activities' of a minor, particularly a minor well along the road to maturity, may be inadequately provided for by other provisions of this subchapter, then a request may be made to the Chief of Police, either for a regulation as provided below in division (A)(12) of this section or for a special permit under this division (A)(11), as the circumstances warrant. Upon the Chief of Police's finding of necessity for the use of the streets to the extent warranted by a written application by a minor and by a parent of such minor, if feasible, stating (i) the home, age and address of such minor; (ii) the name, address and telephone number of a parent thereof; (iii) the height, weight, sex, color of eyes and hair and other physical characteristics of such minor; (iv) the reason or necessity which requires each minor to remain upon the streets during the curfew hours otherwise prohibited; (v) the street or route and the beginning and ending of the period of time involved by date and hour; (vi) a photo of the minor; and (vii) school attended, if any, and current grade enrolled in by this minor. The Chief of Police may grant a permit in writing for the use by such minor of such streets at such hours as in the Chief of Police's opinion may reasonably be necessary. In an emergency this may be handled by telephone, or other effective communication, with a corresponding record being made contemporaneously, either to the Chief of Police or, if unavailable, by a police officer authorized by the Chief of Police to act on his behalf in an emergency, at the police station. A special permit may also be issued to minors, ages 16 and 17 with a Texas driver's license, whereby the parent makes written application as set out above, except (iv) and (v) and where the parent assumes all responsibility and liability for the actions of the minor; releasing the city from any liability from non-enforcement of this subchapter as to that minor.

(12) Authorized, by regulation issued by the Chief of Police, in other similar cases for reasonable necessity, similarly handled, but adapted to normal or necessary daytime or nighttime activities of more minors than can readily be dealt with on an individual

special permit basis. Normally such regulation by the Chief of Police permitting use of the streets should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the streets permitted, the period of time involved not to extend more than 10 minutes beyond the time for termination of such activity as therein specified, the reason for such minors attending such activity and a showing that such regulation is reasonably necessary and is consistent with the public interest and the purposes of this subchapter. An application for such a regulation shall be in writing, signed by the applicant and be delivered to the office of the Chief of Police at least one week prior to the activity.

(13) In possession of a certified card of employment, signed by the Chief of Police and identifying the minor as outlined in division (A)(11). Such card shall be renewable every two months when the current facts so warrant.

(14) With parental consent, in a motor vehicle. This contemplates normal travel. From excess of caution, this clearly exempts bona fide interstate movement through the city. This also exempts interstate travel beginning or ending in the city.

(B) Each of the foregoing defenses, and their several limitations, such as provisions for notification, shall be severable.

(Ord. 1767, passed 6-20-94; Am. Ord. 1785, passed 6-19-95; Am. Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04)

### **§ 130.25 PARENTAL AND COMMERCIAL ESTABLISHMENT RESPONSIBILITY.**

(A) It shall be unlawful for a parent or other person having legal custody of a minor as defined in this subchapter to knowingly permit or by inefficient control to allow such minor to be or remain upon any city street in violation of § 130.23, under circumstances not constituting a defense under § 130.24, or otherwise beyond the scope of, this

subchapter. The term *KNOWINGLY* includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor. It shall be prima facie evidence of a violation of this section by a parent charged hereunder, if such parent having legal custody of a minor had no knowledge of such minor's whereabouts at the time when such minor was cited for the underlying violation of this § 130.23 that forms the basis of the charge against the parent.

(B) It shall be unlawful for the owner or operator of a commercial establishment to knowingly allow a minor to remain at such commercial establishment during the hours of curfew established in this subchapter beyond the time necessary to conduct and complete an expected activity associated with the normal business of that commercial establishment. It shall be no defense to this section that a minor made a purchase, if the minor did not immediately make such purchase upon arrival and depart immediately thereafter. It shall be a defense to prosecution under this section that the owner or operator of such commercial establishment has promptly notified the police department dispatcher that a minor or minors who are present on the premises after hours have refused to depart. A copy of the police record of such notification, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received, shall be admissible in evidence in the municipal court as prima facie proof of the truth of all facts set forth therein.

(Ord. 1767, passed 6-20-94; Am. Ord. 1785, passed 6-19-95; Am. Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04) Penalty, see § 130.98

### § 130.26 POLICE PROCEDURES.

(A) A police officer of the city, upon finding or having his or her attention called to any minor in

public places, on the streets of the city or at any commercial establishment within the city who appears to be in prima facie violation of this subchapter and not clearly subject to any § 130.24 defenses, shall, subject to divisions (B), (C), and (D) of this section, take such minor to the city's police station where a parent of such minor having custody shall immediately be notified to come for such minor. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the police supervisor then on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available experienced supervisory personnel, the best of facilities and access to information and records. In the absence of convincing evidence such as a birth certificate or a driver's license or other similar identification, a police officer on the street shall in the first instance use his or her best judgment in determining age. The officer may issue a notice to appear as provided in § 33.11.

(B) Where a minor has been picked up pursuant to an apparent prima facie violation of the daytime curfew provisions hereof the police officer having such minor in his custody shall, prior to transporting such minor to the police station, attempt to ascertain whether or not the minor is enrolled as a student at a public school. If it appears the minor is truant from attendance at a school at which he or she is enrolled, then the officer shall as a first alternative attempt to immediately transport such child to the appropriate school where the minor is enrolled in attendance, and release the minor to a truant officer or other school official with the authority to take responsibility for such minor, if possible. If it is not possible the officer shall transport the minor to the police station and follow the procedure outlined in the other provisions of this section in handling such minor. In any event, the officer shall make or cause to be made a report to the appropriate school truant officer for the public school where the minor is enrolled in attendance. If it is determined that the minor is not enrolled in a public school, the police officer shall follow the procedure outlined in division (A) of this section, in handling such minor.

(C) Police procedures shall constantly be refined in the light of experience and may provide, inter alia,

that the police officer may deliver to a parent thereof the minor under appropriate circumstances, as for example, a minor of tender age near his or her home and whose identity and address is already known to the officer or may readily be ascertained.

(D) In any event, when a minor is taken into custody by a police officer under this section, the officer shall, without unnecessary delay:

- (1) Release the minor to the minor's parent, guardian, custodian, or appropriate school official;
- (2) Take the minor before the municipal court to answer the charge; or
- (3) Take the minor to a place designated by the chief of Police as a juvenile curfew processing office.

(E) In any event, any police officer who has taken a minor into custody for a curfew violation under this subchapter, shall, within 24 hours, file a written report with the Chief of Police or shall participate (to the extent of the information for which he or she is responsible) in the preparation and filing of such a report by such supervisor within 24 hours.

(F) When a parent having custody has come to take charge of such minor and the appropriate information has been recorded, such minor shall immediately be released to the custody of such parent. If a parent having custody cannot be located, or fails to take charge of the minor within a reasonable time, then the minor shall be released to the juvenile authorities having jurisdiction over such minor (with referral by the Municipal Court Judge of the city if required by the statutes applicable to such juvenile authorities) or the minor may temporarily be entrusted to another relative, neighbor or other person who will on behalf of a parent having custody assume the responsibility of caring for the minor pending the availability or arrival of such parent.

(G) To ensure parental notice in the case of a first violation by a minor, the Chief of Police shall, by

certified mail and return receipt requested, send to a parent having custody written notice of said violation with a warning that any subsequent violation will result in full enforcement of this subchapter against a parent of a minor in violation and of the applicable penalties.

(H) In the event a police officer of the city, upon finding or having his or her attention called to any minor in a commercial establishment in apparent violation of § 130.25(B), shall undertake any action with respect to such minor as stated in this subchapter, such officer shall ascertain from the police department dispatcher whether or not the owner or operator of such establishment has a defense as outlined above under § 130.25(B) by virtue of having made a report to the police department dispatcher as therein provided. If no such report was made then the officer shall issue a municipal court misdemeanor citation to such owner or operator charging a violation of § 130.25(B).

(Ord. 1767, passed 6-20-94; Am. Ord. 1785, passed 6-19-95; Am. Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04)

#### **§ 130.97 REPORTS OF VIOLATIONS AND TRANSFER OF CASES TO THE BRAZORIA COUNTY JUVENILE PROBATION DEPARTMENT.**

(A) Any minor who has been twice convicted of a violation of any of the provisions of the subchapter and who stands charged with a third violation hereof shall be reported by the Chief of Police to the Brazoria County Juvenile Probation Department pursuant to the Texas Family Code.

(B) At the discretion of the Chief of Police, a similar report may be made to the Brazoria County Juvenile Probation Department concerning any other minor who has been taken into custody for a curfew violation, whenever the Chief deems it appropriate.

(C) The Municipal Court Judge may transfer to the Brazoria County Juvenile Probation Department any minor offender, whether for a first offense or

subsequent offense, where such judge determines that there is a real need for supervision of said minor.

(Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04)

#### **§ 130.98 PENALTY.**

(A) Should any person, firm, or corporation, their agent, servant, or employee, charged with a violation of any provision of this subchapter, be convicted by a court of competent jurisdiction, such person, firm, or corporation, their agents, servants or employees, may be fined any sum not less than \$1 nor more than \$500 for each violation, provided however, that convictions of violations of § 130.25(A) shall be subject to minimum fines for enhanced offenses as specified by division (B) of this section.

(B) If, after a notice of a first violation of § 130.23 by a minor has been given to a parent or other person with custody of such minor as defined by this subchapter, such parent violates § 130.25 (A) (in connection with a second violation of § 130.23 by such minor), such violation by such parent or other person having custody shall constitute a first offense of § 130.25 (A) by such parent or other person having custody and, upon conviction such parent or other person having custody shall be fined not less than \$25 for such first offense. If in the trial of a second offense under § 130.25(A), enhanced, it is shown that the said parent or other person having custody has already been convicted of one previous violation of said Section, upon conviction the said parent or other person having custody shall be fined not less than \$50. If in the trial of a third or additional offense under § 130.25(A), enhanced, it is shown that such parent or other person having custody has been convicted, respectively, of two or more violations of said section as specified in the enhancement paragraph, such parent or other person having custody shall be fined not less than \$75 upon conviction of a third offense, enhanced, not less than \$100 for conviction of a fourth offense, enhanced, and so forth in increasing increments of \$25 for each subsequent conviction shown as alleged in the enhancement paragraph, up to a maximum of \$500. The judge

presiding in a municipal court case filed under this subchapter, upon finding a parent or other person having custody guilty of a second or subsequent violation of § 130.25(A), shall not only sentence such parent or other person having custody to pay such fine and the costs of prosecution but shall also assess any other punishment available to such judge under the laws of the state.

(C) Any person violating any of the provisions of this subchapter for which no penalty is otherwise provided shall be subject to the penalty set forth in § 10.99.

(Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04)

#### **§ 130.99 CONTINUING EVALUATION BY CITY COUNCIL.**

(A) Before the third anniversary of each readoption of this subchapter in its entirety, the City Council will hold public hearings to review and evaluate the provisions of this subchapter, and consider modifications of this subchapter to comply with the TEX. LOC. GOV'T CODE, § 370.002. Provided, however, such evaluation and consideration of updating may occur more often at the request of the Chief of Police.

(B) There shall be compiled and informally reported to the City Council through effective channels (such as the normal by-weekly distribution by the City Manager, to each member of the City Council, the Chief of Police and the City Attorney of noteworthy material) all exceptional cases hereunder of reasonable necessity, the notices of school and other activities, the special permits issued by the Chief of Police and the regulations adopted by the Chief of Police, as hereinabove authorized, for use by the City Council in connection with its evaluation and consideration of updating this subchapter.

(C) For the same reasons, as well as for the implementation beyond these legal aspects of the basic purposes hereof, the Chief of Police, City Manager and City Council, in coordinated efforts, shall work with existing, and may organize, voluntary groups and

shall seek volunteer leadership in programs of research and of action dealing constructively on neighborhood and local basis, with juvenile delinquency and the prevention, control or containment thereof, in all its implications and with practicable steps toward attaining a better life for minors 17 or less years of age, and with the working of this subchapter, community-wide and in individual cases, as one much needed legal goal toward that end, as well as for continuing present protection of minors and of other persons, and of property and other interests important to the welfare of the people of the city.

(Ord. 2001-1957, passed 11-19-01; Am. Ord. 2004-2069, passed 11-15-04)

## CHAPTER 131: OFFENSES AGAINST PROPERTY

### Section

- 131.01 Malicious mischief and vandalism
- 131.02 Damaging public property; reward
- 131.03 Trespass prohibited
- 131.04 Climbing water towers, poles, and the like

### § 131.01 MALICIOUS MISCHIEF AND VANDALISM.

It shall be unlawful for any person to willfully and maliciously damage, deface, injure, remove, carry, or take away, or otherwise unlawfully assume control of any property whether public or private, real or personal, which is not his own.

('68 Code, § 22-21) Penalty, see § 10.99

#### *Statutory reference:*

*Malicious mischief generally, TEX. PENAL CODE, § 28.03*

### § 131.02 DAMAGING PUBLIC PROPERTY, REWARD.

A standing reward of \$250 is hereby offered and shall be paid to any person supplying information to the city which shall lead to the arrest and conviction of any person or persons guilty of having defaced, damaged, or destroyed any public property of the city.

('68 Code, § 22-22) (Ord. 1146, passed 10-16-67; Am. Ord. 1376, passed 2-6-78)

### § 131.03 TRESPASS PROHIBITED.

(A) It shall be unlawful for any person to enter into or to go upon the premises of any other person without having first secured the consent, express, or implied, of the owner of such premises, his agent, or

attorney, or other actual bona fide occupant of such premises. A person going into or upon any business premises, during the regular hours of such business shall be presumed to be there by invitation. Any person other than the owner or bona fide occupant of a business premises going into or upon any business premises at any hour other than the regular business hours of such business shall be presumed not to be at such premises by invitation, express, or implied. ('68 Code, § 22-25)

(B) (1) Any person found in such circumstances as to create a reasonable belief that such person is in violation of division (A) of this section shall be subject to an immediate arrest without warrant being issued therefor, provided always that the person arrested shall be taken immediately before a magistrate and his rights shall be fully explained to him as provided by law.

(2) For the purpose of this division, **IMMEDIATE** means the taking of such person before a magistrate at the earliest possible time during the magistrate's regular working hours.

('68 Code, § 22-27)

(Ord. 1134, passed 10-3-66) Penalty, see § 10.99

### § 131.04 CLIMBING WATER TOWERS, POLES, AND THE LIKE.

It shall be unlawful for any person, not employed to do so, to climb or ascend any water tower, windmill, tower, telephone, telegraph, electric light, or any other publicly- or privately-owned pole in the city.

('68 Code, § 22-30) Penalty, see § 10.99



CHAPTER 132: OFFENSES AGAINST MORALS

Section

132.01 Obscenity

§ 132.01 OBSCENITY.

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

**CONTEMPORARY COMMUNITY STANDARDS.** In no case involves a territory or geographic area less than the state.

**OBSCENE.** Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests.

(B) *Generally.* Whoever shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, televise, publish, or offer to publish, or have in his possession or under his control, or otherwise distribute, display, or exhibit any obscene book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, image, cast, slide, figure, instrument, statue, drawing, phonograph record, mechanical recording or presentation, or other article which is obscene, shall be guilty of a misdemeanor.

(C) *Affirmative defenses.* It shall be a defense to any charges brought hereunder if such prohibited matter or act shall be regularly in use in any bona fide, religious, educational, or scientific institution, or the subject of a bona fide scientific investigation.

(D) *Exceptions.*

(1) The provisions of this section shall not apply to any motion pictures produced or manufactured as commercial pictures which:

(a) Have the seal under the Production Code of the Motion Picture Association of America, Inc.; or

(b) Legally move in interstate commerce under federal law; or

(c) Are legally imported from foreign countries into the United States and have been passed by a custom office of the United States Government at any port of entry.

(2) The provisions of this section shall not apply to any daily or weekly newspaper. ('68 Code, § 22-23) Penalty, see § 10.99

**Statutory reference:**

*Acts involving obscene articles, and the like, see TEX. PENAL CODE, §§ 42.21 through 42.23*



CHAPTER 133: OFFENSES AGAINST PUBLIC PEACE, SAFETY, AND JUSTICE

Section

- 133.01 Abandoned refrigerators
- 133.02 Dangerous weapons
- 133.03 Giving false name to officials
- 133.04 Impersonating an officer
- 133.05 Loitering prohibited
- 133.06 Refusal to leave playground

(B) It shall be unlawful for any person, within the corporate limits of the city, to carry a loaded shotgun, target or other gun of any character, or any other dangerous weapon.

(C) It shall be an affirmative defense to a prosecution under divisions (A) and (B) if:

(1) The actor is a law enforcement officer or otherwise authorized by law to so act; or

(2) The act occurs in:

(a) The area bounded by State Highway 36, the Brazos River Diversion Channel, the San Bernard River and the Gulf of Mexico; or

(b) The area bounded by the Gulf Intracoastal Canal, the Brazos River Diversion Channel, State Highways 36/288 and FM Highway 1495; or,

(c) Any of the area bounded by the Gulf Intracoastal Canal, the Brazos River Diversion Channel, the Gulf of Mexico and FM Highway 1495, and its extension into the Gulf of Mexico, which is designated by the Texas Parks and Wildlife Department as the Bryan Beach Unit of the Peach Point Wildlife Management Unit.

('68 Code, §§ 22-10(a), 22-11) (Ord. 518, passed 10-10-58; Am. Ord. 1176, passed 5-19-69; Am. Ord. 1280, passed 1-7-74; Am. Ord. 1281, passed 1-21-74; Am. Ord. 2003-2027, passed 10-6-03) Penalty, see § 10.99

*Statutory reference:*

*Unlawful carrying of arms, see TEX. PENAL CODE, § 46.02*

**§ 133.01 ABANDONED REFRIGERATORS.**

It shall be unlawful for any person to place, or permit to remain outside of any dwelling, building, or other structure, or within any warehouse or storage room or any unoccupied or abandoned dwelling, building, or other structure, under such circumstances as to be accessible to children, any icebox, refrigerator, or other airtight or semi-airtight container which has a capacity of 1-½ cubic feet or more and an opening of 50 square inches or more and which had a door or lid equipped with a latch or other fastening device capable of securing such door or lid shut.

('68 Code, § 22-2) Penalty, see § 10.99

**§ 133.02 DANGEROUS WEAPONS.**

(A) It shall be unlawful for any person, within the corporate limits of the city, to fire or cause the firing of any pistol, rifle, shotgun, air rifle or gun, pellet gun, slingshot or other instrumentality designed to fire or cast a projectile.

**§ 133.03 GIVING FALSE NAME TO OFFICIALS.**

(A) It shall be unlawful for any person when given a written promise to appear, or given a written notice by any police officer to appear before the corporation court of the city to answer for an offense against any law of this state, sections of this code, or any ordinances of the city, to give an assumed or fictitious name or a false place of residence or address, or any other than his true name and the true place of his residence or address, upon the request of such officer. ('68 Code, § 22-13)

(B) It shall be unlawful for any person when receiving inpatient or outpatient aid or services at the hospital or whenever otherwise being treated or being under the care or custody of any person while in the hospital to give an assumed or fictitious name or a false place of residence or address, or any other than his true name and the true place of his residence or address to any one requesting such information. ('68 Code, § 22-14) Penalty, see § 10.99

**§ 133.04 IMPERSONATING AN OFFICER.**

Any person who shall falsely assume or pretend to be any officer or employee of the city or any judicial, executive, or law enforcement officer of the state or county and shall act as such shall be deemed to be guilty of a misdemeanor.

('68 Code, § 22-19) Penalty, see § 10.99

**Statutory reference:**

*False impersonation of officer, see TEX. PENAL CODE, § 37.11*

**§ 133.05 LOITERING PROHIBITED.**

(A) It shall be unlawful for any person to prowl, loiter, enter into, or go upon or about any premises of another without the express or implied consent of the lawful owner thereof, his agent, or attorney, or the consent, express or implied, of a lawful occupant thereof, his agent, or attorney. The presumptions described under § 131.03(A) shall prevail under this section. ('68 Code, § 22-26)

(B) (1) Any person found in such circumstances as to create a reasonable belief that such person is in violation of division (A) of this section shall be subject to an immediate arrest without warrant being issued therefor, provided always that the person arrested shall be taken immediately before a magistrate and his rights shall be fully explained to him as provided by law.

(2) For the purpose of this division (B), **IMMEDIATE** means the taking of such person before a magistrate at the earliest possible time during the magistrate's regular working hours.

('68 Code, § 22-27)

(Ord. 1134, passed 10-3-66) Penalty, see § 10.99

**§ 133.06 REFUSAL TO LEAVE PLAYGROUND.**

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

**CHIEF OFFICIAN.** The umpire, referee or other similar official having final authority to administer the rules of an organized recreational event.

**ORGANIZED RECREATIONAL EVENT.** A recreational event conducted on any city-owned premises, or in any building or other improvement located thereon, which is either sponsored by the Parks and Recreation Department of the city or a person or organization having a written agreement with such Department for the exclusive use thereof for such purpose.

(B) *Unlawful activity.* It shall be unlawful for any person to remain on any premises owned by the city, or within any building or other improvement located thereon, where an organized recreational activity is taking place, when such person has been told to leave such premises, building or other improvement by the Chief Officiant.

(Ord. 1892, passed 2-28-00) Penalty, see § 10.99