

Chapter 191

OBSCENE MATERIAL

§ 191-1. Exposing minors to harmful materials.

§ 191-3. Violations and penalties; attempt; parties to acts.

§ 191-2. Obscenity prohibited.

[HISTORY: Adopted by the Village Board of the Village of Iola 2-12-1996 as Title 9, Ch. 7, and Sec. 9-1-2, of the 1996 Code. Amendments noted where applicable.]

GENERAL REFERENCES

Adult entertainment — See Ch. 70.
Minors — See Ch. 171.

Nuisances — See Ch. 186.

§ 191-1. Exposing minors to harmful materials. [Amended 2-12-1996 by Res. No. 96-7]

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

HARMFUL TO MINORS — That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, which taken as a whole appeals to the prurient interest in sex, which taken as a whole portrays sexual conduct in a patently offensive way, and which taken as a whole does not have serious literary, artistic, political or scientific value. Whether a work appeals to the prurient interest and whether it depicts or describes sexual conduct in a patently offensive way, and whether it has serious literary, artistic, political or scientific value are to be determined by applying contemporary community standards in the adult community as a whole with respect to what is suitable material for minors.

KNOWINGLY — Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

- (1) The character and content of any material described herein which is reasonably suspect under this section; and
- (2) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

KNOWLEDGE OF THE MINOR'S AGE:

- (1) Knowledge or information that the person is a minor; or
- (2) Reason to know, or a belief or grounds for belief, which warrants further inspection or inquiry of the age of the minor.

MINOR — Any person under the age of 18 years.

NUDITY — The showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

SADOMASOCHISTIC ABUSE — Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

SEXUAL CONDUCT — Acts of sexual intercourse between humans, normal or perverted, actual or simulated, acts of masturbation, fellatio, cunnilingus and acts of excretory function, lewd exhibition of the genitals, especially in a stimulated condition, and sexual relations between humans and animals.

SEXUAL EXCITEMENT — The condition of human male or female genitals when in a state of sexual stimulation or arousal.

- B. It shall be unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, show or other presentation which in whole or in part depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors, unless such minor is accompanied by his or her parent or legal guardian.
- C. It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a minor:
 - (1) Any picture, photograph, drawing, sculpture, motion-picture film or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to minors.
 - (2) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any material enumerated in Subsection C(1) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to minors.
- D. It shall be unlawful for any person knowingly to admit a minor to any premises whereon there is exhibited nudity, sexual conduct or sadomasochistic abuse which is harmful to minors unless such minor is accompanied by his/her parent or legal guardian.

§ 191-2. Obscenity prohibited. [Amended 2-12-1996 by Res. No. 96-7]

- A. Definitions. For the purposes of this section, the following definitions shall apply:

ADULT ESTABLISHMENTS — Includes bookstores, motion-picture theaters, mini motion-picture theaters, bath houses, massage parlors, modeling studios, body painting studios and cabarets and are more specifically defined as:

- (1) ADULT BOOKSTORE — An establishment having as a substantial or significant portion of its stock and trade in books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or

relating to specified sexual activities or specified anatomical areas as defined herein or an establishment with a segment or section devoted to the sale or display of such material.

- (2) **ADULT MOTION-PICTURE THEATER** — An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein for observation by patrons therein.
- (3) **ADULT MOTION-PICTURE THEATER (Outdoor)** — A parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguishably characterized by an emphasis on matter depicting, describing or relating to specified sexual activity or specified anatomical areas.
- (4) **ADULT MINI MOTION-PICTURE THEATER** — An enclosed building with a capacity for less than 50 persons used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as described herein for observation by patrons therein.
- (5) **ADULT BATH HOUSES** — An establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in specified sexual activities as defined in this chapter.
- (6) **ADULT MASSAGE PARLORS** — An establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in specified sexual activity as defined in this chapter.
- (7) **MODELING** — An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise.
- (8) **ADULT BODY PAINTING STUDIOS** — An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this chapter, the adult body painting studio shall not be deemed to include a tattoo parlor.
- (9) **ADULT CABARET** — An establishment or business which features male and/or female topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, burlesque shows, male or female impersonators or similar entertainers.
- (10) **ADULT NOVELTY SHOP** — An establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, specified sexual activity as defined herein or stimulating such activity.

AVAILABLE TO THE PUBLIC — The material, work or performance may be purchased on a subscription basis, on a membership-fee arrangement, or for a separate fee for each item or performance.

DISSEMINATE — To transfer possession of, with or without consideration.

KNOWINGLY — Being aware of the character and the content of the material.

MATERIAL — Any book, magazine, newspaper or other printed or written material, or any picture, drawing, photograph, motion picture, or other pictorial representation of any statue or figure, or any other figure, or any recording, transcription, or mechanical, chemical, or electrical reproduction, or any other articles, equipment or machines.

NUDITY — The showing of the human male or female genitals or pubic area with less than a fully opaque covering or the depiction of covered male genitals in a discernibly turgid state.

OBSCENE:

- (1) The average person applying contemporary community standards would find that the material or work taken as a whole appeals to the prurient interest in sex, i.e., a shameful or morbid interest in sexual conduct, nudity or excretion; and
- (2) Applying community standards, the material or work conduct in a patently offensive way; and
- (3) The material or work taken as a whole lacks serious literary, artistic, political or scientific value.

PERFORMANCE — Any preview, play, show, skit, film, dance or other exhibition performed before an audience.

PERSON — Any individual, partnership, firm, association, corporation or other legal entity.

PROMOTE — To cause, permit, procure, counsel or assist.

SERVICE TO PATRONS — The provision of services to paying guests in establishment providing food and beverages, including, but not limited to, hostessing, hat checking, cooking, bar tending, serving, table setting and clearing, waiter and waitressing and entertaining.

SPECIFIED ANATOMICAL AREAS:

- (1) Less than completely and opaquely covered:
 - (a) Human genitals, pubic region;
 - (b) Buttock;
 - (c) Female breast below a point immediately above the top of the areola.
- (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES:

- (1) Human genitals in a state of sexual stimulation or arousal.
 - (2) Acts of human masturbation, sexual intercourse or sodomy.
 - (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
- B. Prohibited conduct. Whoever does any of the following shall be subject to a forfeiture and such other penalties as provided in Chapter 1, General Provisions, § 1-17:
- (1) Imports, prints, advertises, sells, gives away, has in his or her possession for sale or publishes, exhibits or transfers commercially any obscene matter; or
 - (2) Engages or participates in any obscene performance made available to the public; or
 - (3) Engages in commerce for commercial gain with materials depicting and describing explicit sexual conduct, nudity or excretion utilizing displays, circulars, advertisements and other public sales efforts that promote such commerce primarily on the basis of prurient appeal; or
 - (4) Provide service to patrons in such a manner as to expose to public view:
 - (a) His or her genitals, pubic hair, buttocks, perineum, anal regions or pubic hair region; or
 - (b) Any device, costume or covering which gives the appearance of or stimulates the genitals, pubic hair, buttocks, perineum, anal region or pubic hair region; or
 - (c) Any portion of the female breast at or below the areola thereof; or
 - (5) Promote the commission of any of the above-listed unlawful acts.
- C. Prohibited adult establishments. No person shall set up, operate or permit to be operated the following types of adult establishments or activities as defined above:
- (1) Adult bookstores;
 - (2) Adult motion-picture theaters;
 - (3) Adult mini motion-picture theaters;
 - (4) Adult bath houses;
 - (5) Adult massage parlors;
 - (6) Adult modeling studios;
 - (7) Adult body painting studios;
 - (8) Adult cabaret;
 - (9) Adult novelty shop.

§ 191-3. Violations and penalties; attempt; parties to acts.

- A. **Penalty.** In addition to the general penalty provisions of this Code in Chapter 1, General Provisions, § 1-17, or any other penalty imposed for violation of any section of this chapter, any person who shall cause physical damage to or destroy any public property shall be liable for the cost of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates § 201-11 may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance with the Wisconsin Statutes. Nothing in this Code of Ordinances shall prevent the Police Department from referring violations of the provisions of this chapter to the District Attorney's office in the interest of justice.
- B. **Attempt.**
- (1) Whoever attempts to commit an act prohibited by this chapter of the Code of Ordinances of the Village of Iola may be required to forfeit amounts not to exceed $\frac{1}{2}$ the maximum penalty for the completed act.
 - (2) An attempt to commit an act prohibited by the ordinances in this Code requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of these ordinances and that he or she does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he or she formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.
- C. **Parties to acts prohibited in this chapter.**
- (1) Whoever is concerned in the commission of an act prohibited by this chapter of this Code of Ordinances is a principal and may be charged with and convicted of the commission of said act although he or she did not directly commit it and although the person who directly committed it has not been convicted of some other act prohibited by these ordinances.
 - (2) A person is concerned in the commission of an act prohibited by these ordinances if he:
 - (a) Directly commits the act; or
 - (b) Intentionally aids and abets the commission of it; or
 - (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels, or otherwise procures another to commit it. Such party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This paragraph does not apply to a person who voluntarily changes his/her mind and no longer desires that the act be committed and notifies the other parties concerned of his/her withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.