

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

**Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS** [\[1\]](#)

ARTICLE I. - IN GENERAL

ARTICLE II. - MINORS

ARTICLE III. - SEX OFFENDERS

ARTICLE IV. - GRAFFITI ABATEMENT

ARTICLE V. - ILLEGAL SMOKING PRODUCTS

---

FOOTNOTE(S):

---

--- (1) ---

**Cross reference**— Courts, ch. 38; law enforcement, ch. 62; traffic and vehicles, ch. 94. [\(Back\)](#)

**State Law reference**— Suit to abate prostitution, gambling, etc., V.T.C.A., Civil Practice and Remedies Code § 125.001 et seq.; preemption of criminal offenses by Penal Code, V.T.C.A., Penal Code § 1.08; municipal public health powers, V.T.C.A., Health and Safety Code § 122.006; abatement of health nuisances, V.T.C.A., Health and Safety Code § 341.011 et seq. [\(Back\)](#)

**ARTICLE I. IN GENERAL**

[Sec. 70-1. Smoking in city buildings.](#)

[Sec. 70-2. Interfering with officers.](#)

[Sec. 70-3. Possession or discharge of pellet guns.](#)

[Sec. 70-4. Discharge of firearms.](#)

[Sec. 70-5. Regulation of railroad locomotives.](#)

[70-6—70-35. Reserved.](#)

**Sec. 70-1. Smoking in city buildings.**

- (a) It shall be unlawful for any person to be in possession of a burning tobacco product or to smoke tobacco in the city hall complex of the city and in the city airport terminal building.
- (b) Any person found to be in violation of this section, shall be fined, upon conviction, an amount not to exceed \$500.00.

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

(Code 1978, § 18-33)

**Sec. 70-2. Interfering with officers.**

No person shall interfere with, hinder or molest any city officer in the performance of his duty.

(Code 1978, § 18-1)

**Sec. 70-3. Possession or discharge of pellet guns.**

- (a) It shall be unlawful for any person to carry on or about his person, in a loaded condition, or in an unloaded condition, if loads for such device are in such close proximity to such device and its possessor that a reasonable conclusion can be drawn that such device is being carried or possessed for the purpose of immediate use within the city limits, and when such device is capable, when discharged, of causing physical damage to persons, animals or birds, or damage to real or personal property, or to discharge or permit any other person in his company to carry or discharge any device primarily designed, made or manufactured for the purpose of discharging a missile by air, gas, spring, hydraulic, tension or other pressure, within the city limits.
- (b) Devices referred to in subsection (a) of this section, may be possessed and carried upon a person's own property, except that the discharge of such device is prohibited if the missile propelled by such device shall be capable of causing damage or injury to persons, animals, birds or real or personal property outside of the confines of property owned by, or under the control of, the person, or family of the person, discharging such device.
- (c) Nothing in this section is to be construed as repealing, condoning or permitting any violation of any other ordinance or law regulating the use, possession or discharge of any firearm within the city limits. Nothing contained in this section shall be construed as prohibiting the carrying of firearms within the city limits by those authorized by law to carry such firearms.
- (d) The possession of a device with available loads, as described in subsection (a) of this section, within the city limits, except in such possessor's home or within the confines of real property owned or controlled by such possessor, shall be presumed to be in intended violation of this section.
- (e) The possession of a device described in subsection (a) of this section, by anyone in any place within the city limits other than in his home or upon his premises, is prohibited, unless loads for such device are not in such close proximity to such device that the possessor, or anyone in or upon the vehicle in or upon which such device is carried or transported, can, within a reasonable time and without materially changing his position, obtain and insert such loads into such device.
- (f) The possession of a device referred to in subsection (a) of this section, and loads for such device, is declared to be a public nuisance, a breach of the peace and in violation of the health and welfare of the citizens of the city.
- (g) The carrying of any device referred to in subsection (a) of this section, on or about one's person, or in or upon an occupied vehicle, or other transportation media, within the city, shall be presumed to be in violation of this section, and any arresting officer shall have the authority to search any such person, or the vehicle or other transportation media occupied by such person, having in his possession such a device.

(Code 1978, § 18-3.1(a)—(g))

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

**Sec. 70-4. Discharge of firearms.**

- (a) It shall be unlawful for any person to discharge any gun, pistol or firearm of any description within the corporate limits of the city.
- (b) This section shall not apply to police officers in the discharge of their duties or to persons in the military service of the United States. This section also shall not apply to persons acting in self defense or in defense of their property to the extent permitted by the Penal Code.

(Code 1978, § 18-3)

**State Law reference**— Disorderly conduct, V.T.C.A., Penal Code § 42.01.

**Sec. 70-5. Regulation of railroad locomotives.**

(a) *Definitions.*

*Crew changing operations* means any stopping of a railroad locomotive within the city limits for the purpose of changing crew members, or for the purpose of any maintenance required whether such stopping involves the changing of crew members or not.

*Highway railgrade or crossing* means any street or highway crossing over a line of railroad at grade.

*Locomotive horn* means any train-borne audio warning device other than a bell but including a horn, whistle or siren meeting standards specified by the United States Secretary of Transportation or the operating railway company.

*Supplementary safety measure* means a safety system or procedure approved by the city for safety at a highway railgrade or other established crossing that is determined by the Federal Railroad Administration and/or the United States Secretary of Transportation to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties which fully compensates for the absence of the warning provided by the locomotive horn. A traffic control arrangement that prevents careless movement over the crossing (e.g. as where adequate median barriers prevent movement around crossing gates extending over the full width of the lanes in the particular direction of travel) and that conforms to the standards prescribed by the United States Secretary of Transportation under the Swift Rail Development Act of 1994 Public Law 103-440, as amended, shall be deemed to constitute a supplementary safety measure. The following do not individually or in combination constitute supplementary safety measures within the meaning of this definition: standard traffic control devices or arrangements such as reflectorized crossbucks, stop signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad or through traffic signals.

(b) *Whistle ban designation.*

- (1) Unless preempted by federal or state law the city council may designate selected highway railgrades or crossings within the city limits at which the engineer or person in charge of a railroad locomotive while involved in a crew-change operation shall not blow or sound the horn, whistle or siren of the railroad locomotive while within 3,000 feet of the crossing at which approved supplementary safety measures are installed.
- (2) Before such designation shall take place, the city's code enforcement officer, or other such person or authority appointed by the city council shall review all plans and contracts submitted in connection with the installation of any supplemental safety measure to determine whether it meets or exceeds the safety system or procedure determined by the Federal Railroad Administration and/or the United States Secretary of Transportation to be effective as a substitute for the railroad locomotive horn in the prevention of highway-rail casualties and which fully compensates for the absence of the warning provided by the locomotive horn.

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

After such review, a recommendation will be provided to the city council. If the city council finds the proposed supplemental safety measure to be an effective substitute for the railroad locomotive horn and that all approvals, licenses, construction and maintenance agreements have been executed and the city attorney finds that such supplemental safety measure will not present additional liability exposure or risk to the city the city council may approve the installation of the supplemental safety measure.

- (3) After installation of the supplemental safety measure, testing and acceptance of the construction and equipment by the city and the affected railroad and/or operating company, the city council shall then by resolution designate such highway railgrade or crossing at which a ban of the sounding of a railroad locomotive whistle horn or siren during a crew changing operation shall be in effect in accordance with this section.
- (c) *Whistle ban at selected locations.* It shall be unlawful for the engineer or person operating or in charge of a railroad locomotive while engaged in a crew-changing operation within the city limits to sound the locomotive horn, whistle or siren or cause the same to be done within 3,000 feet of designated highway railgrades or crossings in the city except when there is imminent danger of an accident.
- (d) *Penalty.* Any person, firm, or corporation violating any of the provisions or terms of this section or the Code of Ordinances, as amended, hereby shall be guilty of a misdemeanor and upon conviction in the municipal court of the city, shall be subject to a fine not to exceed the sum of \$100.00 dollars for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

(Ord. No. 2000-11-9, §§ 1, 5, 11-28-00)

**70-6—70-35. Reserved.**

**ARTICLE II. MINORS**

DIVISION 1. - GENERALLY

DIVISION 2. - CURFEW

***DIVISION 1. GENERALLY***

[Sec. 70-36. Display of sexually explicit material.](#)

[Secs. 70-37—70-60. Reserved.](#)

**Sec. 70-36. Display of sexually explicit material.**

- (a) In this section, the term "display" means to locate an item in such manner that it is available to the general public for handling and inspection, or that the cover or outside packaging on an item is visible to members of the general public, without obtaining assistance from an employee of a business establishment.
- (b) A person commits an offense if, in a business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film or videotape with the knowledge that it depicts:

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

- (1) Human sexual intercourse, masturbation or sodomy;
- (2) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
- (3) Less than completely and opaquely covered human genitals, buttocks or that portion of the female breast below the top of the areola; or
- (4) Human male genitals in a discernibly turgid state, whether covered or uncovered;

in a manner calculated to arouse a sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain.

(Code 1978, § 18-10)

**Secs. 70-37—70-60. Reserved.**

***DIVISION 2. CURFEW***

[Sec. 70-61. Definitions.](#)

[Sec. 70-62. Offenses.](#)

[Sec. 70-63. Defenses to prosecution.](#)

[Sec. 70-64. Enforcement.](#)

[Sec. 70-65. Penalties.](#)

[Secs. 70-66—70-69. Reserved.](#)

**Sec. 70-61. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Curfew hours* means:

- (1) Any hour between 11:00 p.m. and 6:00 a.m. of the following day beginning any Sunday, Monday, Tuesday, Wednesday or Thursday; or
- (2) Any hour between 12:01 a.m. and 6:00 a.m. of any Saturday or Sunday.

*Emergency* means any unforeseen combination of circumstances or the resulting state that calls for immediate action. The word "emergency" includes, but is not limited to, a fire, natural disaster, an automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

*Minor* means any person under 17 years of age.

*Operator* means an individual, firm, association, partnership or corporation operating, managing or conducting any establishment. The word "operator" includes the members or partners of an association or partnership and the officers of a corporation.

*Parent or guardian or parent or legal guardian* means any person who is the natural parent, adoptive parent or step-parent of a minor child; or a person, public agency or private agency who, under court order, has legal guardianship of a minor child.

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

*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 and the common areas of schools, hospitals, apartment houses or buildings, office buildings, transport facilities and shops.

*Remain* means:

- (1) To linger or stay; or
- (2) To 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.

(Code 1978, § 18-31(a); Ord. No. 2001-6-7, 7-10-01; Ord. No. 2004-7-2, 7-19-04)

**Cross reference**— Definitions generally, § 1-2.

**Sec. 70-62. Offenses.**

- (a) A minor commits an offense if he 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 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 he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(Code 1978, § 18-31(b); Ord. No. 2001-6-7, 7-10-01; Ord. No. 2004-7-2, 7-19-04)

**Sec. 70-63. Defenses to prosecution.**

It is a defense to prosecution if a minor child is:

- (1) Accompanied by that minor's parent or legal guardian;
- (2) On an errand under the direction of a parent or legal guardian, without any detour or stop;
- (3) In a vehicle involved in interstate travel;
- (4) Engaged in employment activity, or going to or returning home from 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, a civic organization or another similar entity that takes responsibility for the minor, or going to or returning home from such activity, without any detour or stop;
- (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;
- (9) Married, or had been married, or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31.

(Code 1978, § 18-31(c); Ord. No. 2001-6-7, 7-10-01; Ord. No. 2004-7-2, 7-19-04)

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

**Sec. 70-64. 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 is present.

(Code 1978, § 18-31(d); Ord. No. 2001-6-7, 7-10-01; Ord. No. 2004-7-2, 7-19-04)

**Sec. 70-65. Penalties.**

- (a) Any police officer, upon finding a minor in first violation of this article, shall determine the name and address of the minor, and the name and address of his parent or guardian. The police officer will issue a verbal warning notice to the minor and will order the minor to go home by the most direct means and route. A copy of the warning will be filed with the municipal court. A copy of the warning and a letter shall be forwarded to the parent or guardian, advising of the fact that the minor was found in violation of this article, and soliciting cooperation in the future.
- (b) A second violation by such minor, shall be treated as a first offense by the parent or guardian. A complaint for a violation shall be filed in municipal court against the minor who has once previously been found in violation and warned, and for such first parental offense and/or second juvenile offense. A parent or guardian of a minor and/or the minor violating this article, shall be guilty of a class C misdemeanor, which shall be punishable by a fine not to exceed \$500.00. When required by V.T.C.A., Family Code § 51.08, the municipal court shall waive original jurisdiction over a minor who violates this article, and shall refer the minor to juvenile court. The municipal court shall also have the authority pursuant to V.T.C.A., Family Code § 54.022, to order counseling and/or community service for the parent or minor or both in lieu of paying the fine when circumstances dictate such action.

(Code 1978, § 18-31(e); Ord. No. 2001-6-7, 7-10-01; Ord. No. 2004-7-2, 7-19-04)

**Secs. 70-66—70-69. Reserved.**

**ARTICLE III. SEX OFFENDERS**

[Sec. 70-70. Regulation of sex offender residency and attendance or participation at events.](#)

[Sec. 70-71. Offenses.](#)

[Sec. 70-72. Evidentiary matters; measurements.](#)

[Sec. 70-73. Culpable mental state not required.](#)

[Sec. 70-74. Affirmative defenses.](#)

[Sec. 70-75. Exceptions.](#)

[Sec. 70-76. Penalty.](#)

[Secs. 70-77—70-79. Reserved.](#)

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

**Sec. 70-70. Regulation of sex offender residency and attendance or participation at events.**

*Definitions.* For the purposes of this article, the following terms, words, and the derivations thereof shall have the meanings given herein:

*Attendance at events* means attending by physical presence at any event, meeting, celebration, or gathering in a public place where minors are at or are otherwise in attendance.

*Minor or child* means a minor or child is a person younger than 17 years of age.

*Participation at events* means actively taking part in any event, meeting, celebration, or gathering in a public place where minors are at or are in attendance.

*Permanent residence* means a place where a person abides, lodges, or resides for 14 or more consecutive days.

*Prescribed distance* means the distance measured in feet from one property boundary to another and is determined by the established risk level of each registered sex offender.

*Temporary residence* means a place where a person abides, lodges, or resides for any period of time during any calendar year and which is not the person's permanent residence.

(Ord. No. 2008-04-01, § 1, 6-3-08)

**Sec. 70-71. Offenses.**

For each person required to register as a sex offender under Vernon's Ann. C.C.P. ch. 62, because of a violation involving a victim who was a minor, it is unlawful for that person to establish a permanent residence or temporary residence in the city within the prescribed distance of any premises where children commonly gather, including, but not limited to, a public or private school, day-care facility, public park, playground, public or private youth center, public swimming pool, bus stop, or video arcade facility. For the purposes of this article, planted street medians shall not be considered public parks.

For each person required to register as a sex offender under Vernon's Ann. C.C.P. ch. 62, it is unlawful for that person to attend or be within the prescribed distance of any event, meeting, celebration, or gathering or participate in any event, meeting, celebration, or gathering where minors are at or are in attendance, or be within the prescribed distance of any premises where children commonly gather, including, but not limited to, a public or private school, day-care facility, public park, playground, public or private youth center, public swimming pool, sporting events, bus stop, or video arcade facility. Furthermore, it is unlawful for that person to approach, in any way or means, or to communicate in any way or means, with a minor on any public street, sidewalk, or other business or area open to the public.

Approaching and/or communicating, in any way or means, with a minor at any time in a public place, except in an emergency or life saving event, constitutes an offense under this chapter.

(Ord. No. 2008-04-01, § 1, 6-3-08)

**Sec. 70-72. Evidentiary matters; measurements.**

- (a) It shall be prima facie evidence that this article applies to a person if that person's record, or records pertaining to that person, appears on the database and the database indicates that the victim was a minor.



Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

- (b) For the purposes of determining the minimum distance separation, the prescribed distance requirement shall be measured by following a straight line from the outer property line of the permanent or temporary residence to the nearest property line of the premises where children commonly gather, or, in the case of multiple residences on one property, measuring from the nearest property line of the property where the multiple residences are situated to the nearest property line of the premises where children commonly gather. The prescribed distance requirement related to participation or attendance at events shall also be measured by following a straight line from the outer property line of the event location, or of the premises where children commonly gather as previously described, to the prescribed distance in all directions.
- (c) The following shall be prescribed distances in determining the minimum distance separation.
  - (1) Risk Level 1 (Low)—The prescribed distance shall be 500 feet.
  - (2) Risk Level 2 (Moderate)—The prescribed distance shall be 1,000 feet.
  - (3) Risk Level 3 (High)—The prescribed distance shall be 2,000 feet.
  - (4) Risk Level unknown or undetermined—The prescribed distance shall be 1,000 feet.
- (d) A map depicting the prohibited areas regarding residency shall be maintained by the city. The city shall review the map at least annually for changes. The map will be available to the public at the city police department.

(Ord. No. 2008-04-01, § 1, 6-3-08)

**Sec. 70-73. Culpable mental state not required.**

Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this article, and any offense shall be considered a strict liability offense.

(Ord. No. 2008-04-01, § 1, 6-3-08)

**Sec. 70-74. Affirmative defenses.**

It is an affirmative defense to the prosecution of an offense under this article that any of the following conditions apply:

- (1) The person required to register on the database established his/her permanent or temporary residence in the city prior to the effective date of this ordinance, and has complied with all sex offender registration laws of the State of Texas.
- (2) The person required to register on the database is a minor, or was a minor when he/she committed the offense requiring such registration and was not convicted as an adult.
- (3) The premises where children commonly gather was opened or began to be used as such after the person established the permanent or temporary residence, and the person has complied with all sex offender registration laws of the State of Texas.
- (3) The information in the database pertaining to that person is incorrect and, if corrected, this article would not apply to that person.
- (4) The situation involved a genuine emergency or other life saving event.
- (5) The situation involved a genuine and lawful necessity in providing child care to a child of the registered sex offender, and no other alternative to child care exists.

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

(Ord. No. 2008-04-01, § 1, 6-3-08)

**Sec. 70-75. Exceptions.**

It is an exception to an offense under this article that any of the following apply:

- (1) Participation in an event, meeting, celebration, or gathering is required by law.
- (2) Attendance at or participation in an event, meeting, celebration, or gathering is for the lawful purpose of being a spectator due to an immediate family member being involved in the event, meeting, celebration, or gathering, and the registered sex offender does not have any contact with any other minors in attendance.
- (3) This article does not apply to the lawful attendance or participation at any restaurant at which the registered sex offender legitimately attends for food, foodstuff, or dining, provided that the registered sex offender does not have any contact with any other minors in attendance.
- (4) This article does not apply to the lawful attendance or participation at any retail store of any kind at which the registered sex offender legitimately attends provided that the registered sex offender does not have any contact with any other minors in attendance.
- (5) This article does not apply to the lawful attendance or participation at any health or medical facility of any kind, or governmental office of any kind at which the registered sex offender legitimately attends provided that the registered sex offender does not have any contact with any other minors in attendance.
- (6) This article does not apply to the lawful attendance or participation at any private residence or party at which the registered sex offender legitimately attends under the invitation and responsibility of the host or owner of said property.
- (7) This article does not apply to the lawful attendance or participation at any business or residence as part of the legitimate employment of the registered sex offender, provided that the registered sex offender does not have any contact with any other minors in attendance.

(Ord. No. 2008-04-01, § 1, 6-3-08)

**Sec. 70-76. Penalty.**

Any person violating the provisions of this article shall, upon conviction, be punished by a fine not to exceed the sum of \$500.00 for each offense; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

(Ord. No. 2008-04-01, § 1, 6-3-08)

**Secs. 70-77—70-79. Reserved.**

**ARTICLE IV. GRAFFITI ABATEMENT**

[Sec. 70-80. Finding and intent.](#)

[Sec. 70-81. Definitions.](#)

[Sec. 70-82. Graffiti declared a public nuisance.](#)

[Secs. 70-83, 70-84. Reserved.](#)

[Sec. 70-85. Penalty.](#)

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

[Sec. 70-86. Reserved.](#)

[Sec. 70-87. Responsibility of parent or guardian for graffiti created by a minor.](#)

[Sec. 70-88. Possession of graffiti implements prohibited: presumptions; defenses.](#)

[Sec. 70-89. Graffiti abatement program.](#)

[Secs. 70-90—70-100. Reserved.](#)

**Sec. 70-80. Finding and intent.**

The city council hereby finds the following recitals to be true and correct and adopts them for all purposes as findings of fact:

The creation of graffiti is a criminal act prohibited by state laws in the Penal Code. Although the person who has had graffiti applied on his/her property may be the victim of a criminal act, unless the city acts to cause the removal of graffiti, it tends to remain and causes other properties and entire neighborhoods to be affected and become less desirable places in which to be, all to the detriment of the city and the public welfare.

Graffiti is an impure and unwholesome matter and its existence is detrimental to the safety and welfare of the public; tends to reduce the value of private property; invites vandalism, additional graffiti, and other criminal activities; and, produces urban blight which is adverse to the maintenance and continuing development of the city. Graffiti is a public nuisance and destructive of the rights and values of property owners as well as the entire community. It is the intent of this article to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the citizens of the city by providing an additional enforcement tool to protect public and private property from additional acts of graffiti, vandalism and other criminal activities.

(Ord. No. 2008-08-02, 9-16-08)

**Sec. 70-81. Definitions.**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning;

*Graffiti* means any unauthorized painting, scratching, writing or inscription, including initials, slogans, symbols or drawings, that is made in any manner and that has been applied to any wall, building, fence, windows, sign or other property, structure, or surface, which is visible from:

- (1) Any public property;
- (2) Any public right-of-way; or
- (3) Another person's property.

"Graffiti" does not include any of the foregoing that is placed on the property in compliance with any applicable city ordinance, state or federal law.

*Owner* means any owner of record, person who has contractual responsibility for the property, or person who has the legal right of possession of the property.

*Minor* means any person under 17 years of age.

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

*Parent* means a person who is a natural parent, adoptive parent, or step-parent of another person.

*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.

*Unauthorized* means without the consent of the owner or without authority of law. Unless the owner proves otherwise, lack of consent will be presumed under circumstances tending to show:

- (1) The absence of evidence of specific authorization by the owner;
- (2) That the visual blight is inconsistent with the design and the use of the subject property; or
- (3) That the person causing the visual blight was unknown to the owner.

(Ord. No. 2008-08-02, 9-16-08)

**Sec. 70-82. Graffiti declared a public nuisance.**

The city finds and determines that graffiti is an impure and unwholesome matter and its existence:

- (1) Is detrimental to the safety and welfare of the public;
- (2) Tends to reduce the value of private property;
- (3) Invites vandalism, additional graffiti, and other criminal activities; and
- (4) Produces urban blight which is adverse to the maintenance and continuing development of the city. The existence of graffiti on public or private property in violation of this chapter is expressly declared to be a public nuisance and is subject to the removal and abatement provisions provided by law.

(Ord. No. 2008-08-02, 9-16-08)

**Secs. 70-83, 70-84. Reserved.**

**Sec. 70-85. Penalty.**

- (a) Any person violating a provision of this chapter shall be guilty of a Class C misdemeanor.
- (b) An offense under this chapter shall be punishable by a fine not to exceed \$500.00.

(Ord. No. 2008-08-02, 9-16-08)

**Sec. 70-86. Reserved.**

**Sec. 70-87. Responsibility of parent or guardian for graffiti created by a minor.**

- (a) In this section:

*Graffiti* means any marking, including, but not limited to, any inscription, slogan, drawing, painting, symbol, logo, name, character, or figure, that is made in any manner on tangible property.

*Guardian* means:

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

- (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.

*Minor* means any person under 17 years of age.

*Owner* means any person with the legal right of possession to tangible property.

*Parent* means a person who is a natural parent, adoptive parent, or stepparent of another person.

- (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 create graffiti on tangible property in the city without the property owner's consent.
- (c) An offense under this section is punishable by a fine of not less than \$200.00 nor more than \$500.00.

(Ord. No. 2008-08-02, 9-16-08)

**Sec. 70-88. Possession of graffiti implements prohibited: presumptions; defenses.**

- (a) In this section:

*Aerosol paint container* means any container that is adapted or made for the purpose of applying aerosolized paint, or any other aerosolized substance capable of defacing property.

*Consent* means assent in fact, whether express or apparent, by a person legally authorized to act for an owner of property.

*Etching or engraving device* means a device that is capable of making a delineation or impression on tangible property, regardless of the manufacturer's intended use for that device, or in any way can be used in scratching the surface of any object or property.

*Felt tip marker or marker* means any marker or similar implement that:

- (1) Contains ink, paint, or similar substance; and
- (2) Can be used to write or make markings on objects and property.

*Graffiti* means any temporary or permanent marking, including, but not limited to, any inscription, slogan, drawing, painting, symbol, logo, name, character, or figure, that is made in any manner on tangible property without the consent of the property owner.

*Graffiti implement* means any aerosol paint container or other paint device, paint gun, paint ball gun, paint ball gun pellets or capsules, felt tip marker or other type marker, paint stick, graffiti stick, brush, or etching or engraving device that is capable of scarring, marking, or otherwise defacing stone, glass, metal, concrete, wood, or any surface of tangible property.

*Paint stick or graffiti stick* means any device containing a solid or liquid form of paint, chalk, wax, epoxy, other chemical or other similar substance that leaves a visible mark upon application to a surface.

- (b) A person commits an offense if, with the intent to make graffiti, he or she possesses any graffiti implement:
  - (1) In or on any part of a publicly-owned or privately-owned building, facility, park, school ground, library, playground, swimming pool, recreational facility, street, alleyway, right-of-way, or other property; or

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

- (2) Within ten feet of any underpass, overpass, bridge abutment, storm drain, or similar type of infrastructure, or traffic, street, or any other type sign, or trash receptacle or container of any kind.
- (c) A person is presumed to possess the graffiti implement with the intent to make graffiti on such property under subsection (b)(1) or on such infrastructure or property under subsection (b)(2) if while on the property or within ten feet of the infrastructure or property, whichever applies, he or she possesses on or about his or her person any aerosol paint container or any graffiti implement.
- (d) A person commits an offense if he or she is the parent or guardian of a minor and knowingly permits, or by insufficient control allows, the minor to violate subsection (b)(1) or (b)(2).
- (e) It is a defense to prosecution under subsections (b)(1) and (b)(d) that the graffiti implement was possessed on the property with consent of property owner.
- (f) It is a defense to prosecution under subsections (b)(2) and (b)(d) that the graffiti implement was:
  - (1) Possessed on the property with consent; and
  - (2) Possessed in a place where the implement was going to be used for a non-graffiti activity, including but not limited to an employment, school, home, church, art, or similar activity, or possessed while enroute to or from such a place and activity.
- (g) For purposes of applying the defenses set forth in subsections (e) and (f) of this section, consent may be presumed to exist if the person possessing the graffiti implement is an employee or relative of the property owner.
- (h) An offense under this section is punishable by a fine of not less than \$200.00 or more than \$500.00.

(Ord. No. 2008-08-02, 9-16-08)

**Sec. 70-89. Graffiti abatement program.**

The city may maintain a graffiti abatement program that will include, but not be limited to the followings objectives:

- (1) Utilization and coordination of governmental and volunteer programs and services, as available, to assist in the abatement of graffiti in a timely manner.
- (2) Providing abatement assistance to cooperative property owners as resources will allow in an effort to remove graffiti as soon as possible.

Any property owner or any authorized agent of a property owner may request and receive, as may be available through the graffiti abatement program, assistance with the removal of graffiti from their property which is next to or visible from the rights-of-way in the city. Such property owner or authorized agent of a property owner shall first sign a consent to entry and release of liability agreement as may be prepared and used by the city before resources of the program may be used to remove or clean any such graffiti from their property.

Any property owner or any authorized agent who signs a consent to entry and release of liability agreement and who sells the property or becomes no longer authorized by the property owner to consent to the removal of graffiti from property during the time period in which a consent to entry and waiver and release of liability agreement is in effect regarding the property, shall immediately notify the city of such sale or removal of authorization. Procedures for the making of such notice shall be contained in the consent to entry and release of liability agreement.

(Ord. No. 2008-08-02, 9-16-08)

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

**Secs. 70-90—70-100. Reserved.**

**ARTICLE V. ILLEGAL SMOKING PRODUCTS** <sup>[2]</sup>

[Sec. 70-101. Purpose.](#)

[Sec. 70-102. Definitions.](#)

[Sec. 70-103. Sell, offer, gift, display or possession.](#)

[Sec. 70-104. Use or possession of ingestion devices.](#)

[Sec. 70-105. Defense.](#)

**Sec. 70-101. Purpose.**

The purpose of this article is to prohibit the use, possession, sale, ingestion or smoking of illegal smoking products and ingestion devices hereinafter defined within the city limits of the City of Alpine.

(Ord. No. 2012-04-01, § 1, 4-17-12)

**Sec. 70-102. Definitions.**

*Illegal smoking product* shall mean any substance, whether described as tobacco, herbs, or incense, regardless of whether the substance is marketed for the purpose of being smoked, which includes any one or more of the following chemicals:

- (1) Salviadivinatorum or salvinorum A; all parts of the plant presently classified botanically as salvia divinatorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture or preparation of such plant, its seeds or extracts;
- (2) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol (also known as CP47, 497) and homologues;
- (3) (6aS, 10aS)-9-(hydroxymethyl)-6, 6-di-methyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo [c] chormen-Lol (also known as HU-211 or Dexanabinol);
- (4) 1-Pentyl-3-(1-naphthoyl) indole (also known as JWH-018); or
- (5) Butyl-3-(1-naphthoyl) indole (also known as JWH-073).

*Ingestion device* shall mean equipment, a product or material that is used or intended for use in ingesting, inhaling, or otherwise introducing an illegal smoking product into the human body, including:

- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) A water pipe;
- (3) A carburetion tube or device;
- (4) A smoking or carburetion mask;
- (5) A chamber pipe;
- (6) A carburetor pipe;

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS

- (7) An electric pipe;
- (8) An air-driven pipe;
- (9) A chillum;
- (10) A bong; or
- (11) An ice pipe or chiller.

*Person* shall mean an individual, corporation, partnership, wholesaler, retailer or any licensed or unlicensed business.

(Ord. No. 2012-04-01, § 1, 4-17-12; Ord. No. 2013-06-03, § 1, 6-18-2013)

**Sec. 70-103. Sell, offer, gift, display or possession.**

It shall be unlawful for any person to use, possess, purchase, barter, give, publicly display, sell or offer for sale any illegal smoking product.

(Ord. No. 2012-04-01, § 1, 4-17-12)

**Sec. 70-104. Use or possession of ingestion devices.**

It shall be unlawful for any person to use or possess with intent to use an ingestion device to inject, ingest, inhale or otherwise introduce into the human body an illegal smoking product.

(Ord. No. 2012-04-01, § 1, 4-17-12)

**Sec. 70-105. Defense.**

It shall be a defense to a violation of this article that any act described in this article is under and pursuant to the direction or prescription of a licensed physician or dentist authorized to direct or prescribe such act.

(Ord. No. 2012-04-01, § 1, 4-17-12)

---

FOOTNOTE(S):

---

--- (2) ---

**Editor's note**— Ord. No. 2012-04-01, adopted April 17, 2012, amended the Code by adding provisions designated as Art. V. Section numbering has been changed by the editor to avoid conflicts in the numbering of provisions. ([Back](#))