

**CHAPTER 104****PUBLIC OFFENSES****Sections:**

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**Section 104.1 Public Offenses**

**SEC. 104.1.01 ACT.** The term "act" includes a failure to do any act which the law requires one to perform.

**SEC. 104.1.02 PUBLIC OFFENSE DEFINED.** A "public offense" is that which is prohibited by ordinance classified as a public offense in this chapter and punishable by fine or imprisonment. An offense classified as a public offense under this chapter shall be a simple misdemeanor.

**SEC. 104.1.03 MISDEMEANOR PENALTY.**

1. *General Penalty.* When a person is convicted of a violation of this code it shall constitute a simple misdemeanor unless another penalty is specified under subsection (2) of this section or elsewhere in this Code, and the court shall determine the sentence and fix the period of confinement or the amount of fine with the following limitations; imprisonment shall not exceed 30 days or a fine of not less than \$50.00, but not in excess of \$500.00, or both such a fine and such imprisonment.
2. *Scheduled Violation.* Where a violation of this Code is a scheduled violation under state law, the penalty for such violation shall be the scheduled fine for such violation under state law.

**SEC. 104.1.04 PARTIES TO CRIME.**

1. *Aiding and Abetting.* All persons concerned in the commission of a public offense, whether they directly commit the act constituting the offense or aid and abet its commission, shall be charged, tried and punished as principals. The guilt of a person who aids and abets the commission of a crime must be determined upon the facts which show the part the person had in it, and does not depend upon the degree of another person's guilt.

2. **Joint Criminal Conduct.** When two or more persons, acting in concert, knowingly participate in a public offense, each is responsible for the acts of the other done in furtherance of the commission of the offense or escape therefrom, and each persons guilt will be the same as that of the person so acting, unless the act was one which the person could not reasonably expect to be done in the furtherance of the commission of the offense.
3. **Accessory After The Fact.** Any person having knowledge that a public offense has been committed and that a certain person committed it, and who does not stand in the relation of husband or wife to the person who committed the offense, who harbors, aids or conceals the person who committed the offense, with the intent to prevent the apprehension of the person who committed the offense, commits an aggravated misdemeanor if the public offense committed was a felony, or commits a simple misdemeanor if the public offense was a misdemeanor.

**SEC. 104.1.05 RESPONSIBILITY OF EMPLOYERS.** An employer or an employer's agent, officer, director, or employee who supervises or directs the work of other employees, is guilty of the same public offense committed by an employee acting under the employer's control, supervision, or direction in any of the following cases:

1. The person has directed the employee to commit a public offense.
2. The person knowingly permits an employee to commit a public offense, under circumstances in which the employer expects to benefit from the illegal activity of the employee.
3. The person assigns the employee some duty or duties which the person knows cannot be accomplished, or are not likely to be accomplished, unless the employee commits a public offense, provided that the offense committed by the employee is one which the employer can reasonably anticipate will follow from this assignment.

**SEC. 104.1.06 PROPERTY DEFINED.** "Property" is anything of value whether publicly or privately owned. The term includes both tangible and intangible property, labor and services. The term includes all that is included in the terms "real property" and "personal property."

**SEC. 104.1.07 PUBLIC PROPERTY.** The term "public property" means any area, land, plants, building and fixtures, river or other property regularly used for the welfare or benefit of the public, which is not for commercial or residential purposes. Public property includes any property owned, leased, or otherwise held by any utility, railroad, hospital, college, library or government entity.

## **Section 104.2 Public Peace**

### **SEC. 104.2.01 ASSAULT.**

1. No person shall without justification commit any of the following acts:
  - a. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.
  - b. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.
  - c. Dangerous Weapon. Intentionally point any firearm toward another, or display in a threatening manner any dangerous weapon toward another.
2. Provided, that where the person doing any of the above enumerated act, and such other persons, are voluntary participants in a sport, social or other activity, not in itself criminal, and such act is a reasonably foreseeable incident of such sport or activity, and does not create an unreasonable risk or serious injury or breach of the peace, the act shall not be an assault.

### **SEC. 104.2.02 DISORDERLY CONDUCT.** No person shall willfully commit any of the following acts:

1. Engage in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided, that participants in athletic contests may engage in such conduct which is reasonably related to that sport.
2. Make loud and raucous noise in the vicinity any residence, commercial establishment or hospital which causes unreasonable distress to the occupants thereof.
3. Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.
4. Without lawful authority or color of authority, disturb any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.
5. By words or action, initiate or circulate a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.
6. Knowingly and publicly use the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United States, with the intent or reasonable expectation that such use will provoke or encourage another to commit a public offense.
7. Without authority or justification, obstruct any thoroughway or other public way, with the intent to prevent or hinder its lawful use by others.

**SEC. 104.2.03 WILLFUL DISTURBANCE.** No person shall willfully disturb any deliberative body or agency of the state, or subdivision thereof, with the purpose of disrupting the functioning of such body or agency by tumultuous behavior, or coercing by force or the threat of force any official conduct or proceeding.

**SEC. 104.2.04 RIOT.** It shall be unlawful for three (3) or more persons to assemble together in a violent manner, to the disturbance of others, and with any use of unlawful force or violence by them or any of them against another person, or causing property damage. No person shall willingly join in or remain part of a riot, knowing or having reasonable grounds to believe that it is such.

**SEC. 104.2.05 UNLAWFUL ASSEMBLY.** It shall be unlawful for three (3) or more persons to assemble together, with them or any of them acting in a violent manner, and with intent that they or any of them will commit a public offense. No person shall willingly join in or remain part of an unlawful assembly, knowing or having reasonable grounds to believe that it is such.

**SEC. 104.2.06 FAILURE TO DISPERSE.** A peace officer may order the participants in a riot or unlawful assembly or persons in the immediate vicinity of a riot or unlawful assembly to disperse. No person within hearing distance of such command shall refuse to obey.

**SEC. 104.2.07 HARASSMENT.** No person shall, with intent to intimidate, annoy or alarm another do any of the following:

1. Communicate with another by telephone, telegraph, radio, other electronic communication device, or any writing without legitimate purpose and in a manner likely to cause the other person annoyance or harm.
2. Order merchandise or services in the name of another, or to be delivered to another, without such other person's knowledge or consent.
3. Place any simulated explosive or simulated incendiary device in or near any building, vehicle, airplane, railroad engine or railroad car, or boat occupied by such person.
4. Report or cause to be reported false information to a law enforcement authority implicating another in some criminal activity, knowing that the information is false, or report the alleged occurrence of a criminal act, knowing the same did not occur.

### **Section 104.3 Public Morals**

**SEC. 104.3.01 PROSTITUTION.** No person shall sell or offer for sale his or her services as a partner in a sex act, or purchase or offer to purchase such services.

**SEC. 104.3.02 PIMPING.** No person shall solicit a patron for a prostitute, or knowingly take or share in the earnings of a prostitute, or knowingly furnish a room or other place to be used for the purpose of prostitution, whether for compensation or not.

**SEC. 104.3.03 LEASING PREMISES FOR PROSTITUTION.** No person shall rent or let any building, structure or part thereof, boat, trailer or other place offering shelter or seclusion, when such person knows, or has reason to know, that the lessee or tenant is using such for the purposes of prostitution, and who does not, immediately upon acquiring such knowledge, terminate the tenancy or effectively put an end to such practice of prostitution in such place.

**104.3.04 INDECENT EXPOSURE.** No person shall expose the person's genitals or pubes to another not the person's spouse, or commit a sex act in the presence or view of a third person, provided:

1. The person does so to arouse or satisfy the sexual desires of either party; and
2. The person knows or reasonably should know that the act is offensive to the viewer.

### 104.3.05 PUBLIC EXPOSURE.

1. Except as herinafter provided no person shall intentionally expose those parts of his or her body herinafter listed to another in any public place, or in any place where such exposure is seen by another person or persons located in any public place:
  - a. A woman's nipple, the areola thereof, or any portion of the female breast at or below the nipple thereof, except as necessary in the breastfeeding of a baby.
  - b. The pubic hair, pubes, perineum, or anus of a male or female, the penis or scrotum of a male, or the vagina of a female, except such body parts of prepubescent infants of either sex.
2. This section shall not apply to limited or minimal exposures incident to the use of public restrooms or locker rooms or such other places where such exposures occur incident to the prescribed use of those facilities.
3. This section shall not apply to exposures occurring in live stage plays, live theatrical performances, or live dance performances conducted in a theatre, concert hall or similar establishment which is primarily devoted to theatrical performances .

## **Section 104.4 Public Health and Safety**

### SEC. 104.4.01 Fireworks.

1. Definitions. For purposes of this Section:
  - a. "*Consumer Fireworks*" includes first-class consumer fireworks and second-class consumer fireworks as those terms are defined in Section 100.19, subsection 1, Code of Iowa. "*Consumer fireworks*" does not include novelties enumerated in Chapter 3 of the American Pyrotechnics Association's Standard 87-1 or display fireworks enumerated in Chapter 4 of the American Pyrotechnics Association's Standard 87-1.
  - b. "*Display fireworks*" includes any explosive composition, or combination of explosive substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes fireworks containing any explosive or flammable compound, or other device containing any explosive substance. "*Display fireworks*" does not include novelties or consumer fireworks enumerated in Chapter 3 of the American Pyrotechnics Association's Standard 87-1.
  - c. "*Novelties*" includes all novelties enumerated in chapter 3 of the American Pyrotechnics Association's Standard 87-1, and that comply with the labeling regulations promulgated by the United States consumer product safety commission.
2. Display Fireworks.
  - a. A person, firm, partnership, or corporation who offers for sale, exposes for sale, sells at retail, or uses or explodes any display fireworks, commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars unless the city council, having received an application in writing, grants a permit for the display of display fireworks by fair associations, amusement parks, and other organizations or groups of individuals approved by the city when the display fireworks will be handled by a competent operator. No such permit shall be required for the display of display fireworks at incorporated county fairs or at district fairs receiving state aid. Sales of display fireworks for such display may be made for that purpose only.

- b. A person who uses or explodes display fireworks without a permit commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
  - c. A person who uses or explodes display fireworks while the use of such devices is suspended by an order of the state fire marshal commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars.
3. Consumer Fireworks.
- a. A person or a firm, partnership, or corporation may possess, use, or explode consumer fireworks in accordance with this subsection and subsection 4.
  - b. A person, firm, partnership, or corporation who sells consumer fireworks to a person who is less than eighteen years of age commits a simple misdemeanor, punishable by a fine of not less than two hundred fifty dollars. A person who is less than eighteen years of age who purchases consumer fireworks commits a simple misdemeanor.
  - c. A person who uses or explodes consumer fireworks or novelties while the use of such devices is prohibited or limited by subsection 4 in Waverly commits a simple misdemeanor.
  - d. A person who uses or explodes consumer fireworks or novelties while the use of such devices is suspended by an order of the state fire marshal commits a simple misdemeanor.
4. Limitations.
- a. No person shall discharge a consumer fireworks device outside the following dates and times:
    - 1. June 25<sup>th</sup> to July 8<sup>th</sup>.
      - a. The Hours of Noon to 10:00 p.m. on Sunday-Thursday.
      - b. The Hours of Noon to 11:00 p.m. on Friday and Saturday.
      - c. The Hours of Noon to 11:00 p.m. on the 4<sup>th</sup> of July.
    - 2. December 31<sup>st</sup> (New Year's Eve from Noon to 12:30 a.m. on January 1.)
  - b. No person under the age of 18 shall discharge consumer fireworks intended for use by the general public (1.4G Explosives, as defined by the American Pyrotechnics Association, and formerly known as Class C common fireworks) without adult supervision.
  - c. A person shall only discharge a consumer fireworks device on real property they own or on property where consent has been given by the owner of that property.
  - d. Consumer fireworks shall not be discharged by persons showing visible signs of, or determined to be, intoxicated or under the influence of alcohol, drugs or narcotics.
  - e. Any person discharging consumer fireworks, or supervising a child discharging consumer fireworks, assumes all responsibility for the adverse consequences of such discharge. No person shall discharge consumer fireworks in a negligent or reckless manner likely to cause death, injury, fire, property damage or littering.
  - f. A person who violates this subsection commits a simple misdemeanor. A court shall not order imprisonment for violation of this section.
5. Applicability.
- a. This section does not prohibit the sale by a resident, dealer, manufacturer, or jobber of such fireworks as are not prohibited by this ordinance, or the sale of any kind of fireworks if they are to be shipped out of the state, or the sale or use of blank cartridges for a show or the theater, or for signal purposes in athletic sports or by railroads or trucks, for signal purposes, or by a recognized military organization.

b. This section does not apply to any substance or composition prepared and sold for medicinal or fumigation purposes.

c. Unless specifically provided otherwise, this section does not apply to novelties.

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**SEC. 104.4.02 DISTRIBUTING DANGEROUS SUBSTANCES.** No person shall distribute samples of any drugs or medicine, or any corrosive, caustic, poisonous or other injurious substance unless the person delivers such into the hands of a competent person, or otherwise takes reasonable precautions that the substance will not be taken by children or animals from the place where the substance is deposited.

**SEC. 104.4.03 TRANSPORTING OFFENSIVE OR HARMFUL MATERIALS.** No unauthorized person shall willfully transfer, transport or haul, or cause the transferring, transporting or hauling, on, through or along any thoroughway, any offensive substance, including any refuse, garbage, offal, waste, decayed meat or vegetables, or any other substance which causes an offensive odor or stench, unless such substance is contained in a box, barrel or other receptacle or enclosed space which reasonably prevents the escape of the odor or stench.

**SEC. 104.4.04 LITTERING OR DEPOSITING MATERIALS.**

1. No person shall throw, deposit or leave, or cause the throwing, depositing or leaving of any rubbish, filth, offensive substance, ashes, manure, shavings, cinders, stone, sand, coal, wood, brush, hay, straw, trash, garbage, litter, paper, cards, broken glass, glass bottle, tacks, nails or any other sharp or jagged object, on any thoroughway or on any public property, or on any private property.
2. This paragraph shall, however, not apply to property designated by the city council as a proper site to deposit any or all such materials; nor to the depositing person's own property or the property of an owner who permits the depositing of any or all such materials on his or her property, provided that the depositing is otherwise lawful.

**SEC. 104.4.05 RECKLESS USE OF FIRE OR EXPLOSIVES.** No person shall so use fire or any incendiary or explosive device or material as to recklessly endanger the property or safety of another.

**SEC. 104.4.06 SALE OF TAINTED FOOD.** It shall be unlawful for any person to sell or offer for sale any tainted, unsound, or rotten meat, fish, fowl, fruit, vegetables, eggs, butter, canned goods, packaged goods, or other articles of food, or to sell or offer for sale the flesh of any animal that was diseased.

**SEC. 104.4.07 ABANDONED OR UNATTENDED REFRIGERATORS.** No person shall abandon or otherwise leave unattended any refrigerator, icebox, or similar container, with doors that may become locked, outside of buildings and accessible to children. No person shall allow any such refrigerator, icebox, or similar container, to remain outside of a building on premises in the person's possession or control, abandoned or unattended and so accessible to children.

**SEC. 104.4.08 CARRYING WEAPONS.**

1. No person shall go armed with a dangerous weapon concealed on or about the person, or go armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not or who knowingly carries or transports in a vehicle a pistol or revolver.
2. This section shall not apply to the following:
  - a. A person who goes armed with a dangerous weapon in the person's own dwelling or place of business, or on land owned or possessed by the person.
  - b. Any peace officer, when the officer's duties require the person to carry such weapon.

- c. Any member of the armed forces of the United States or of the national guard or person in the service of the United States, when the weapons are carried in connection with the person's duties as such.
- d. Any correctional officer, when the officer's duties require, serving under the authority of the Iowa department of corrections.
- e. Any person who for any lawful purpose carries or transports an unloaded pistol or revolver in any vehicle inside a closed and fastened container or securely wrapped package which is too large to be concealed on the person or inside a cargo or luggage compartment where the pistol or revolver will not be readily accessible to any person riding in the vehicle or common carrier.
- f. Any person while the person is lawfully engaged in target practice on a range designed for that purpose or while actually engaged in lawful hunting.
- g. Any person who has in the person's possession and who displays to any peace officer on demand a valid permit to carry weapons which have been issued to the person, and whose conduct is within the limits of that permit. No person shall be convicted of violation of this section if the person produces at the person's trial a permit to carry weapons which was valid at the time of the alleged offense and which would have brought the person's conduct within this exception if the permit had been produced at the time of the alleged offense.
- h. A law enforcement officer from another state when the officer's duties require the officer to carry the weapon and the officer is in this city for any of the following reasons:
  - (1) The extradition or other lawful removal of a prisoner from this state.
  - (2) Pursuit of a suspect in compliance with the Code of Iowa, as amended.
  - (3) Activities in the capacity of a law enforcement officer with the knowledge and consent of the chief of police of the city of Waverly or the sheriff of Bremer County or the commissioner of public safety.

**SEC. 104.4.09 DUTY TO CARRY PERMIT TO CARRY WEAPONS.** It shall be the duty of any person armed with a revolver or pistol, concealed upon the person to have in the person's immediate possession the permit provided in the Code of Iowa, as amended and to produce the same for inspection at the request of any peace officer.

**SEC. 104.4.10 DISCHARGING FIREARMS.** No person shall discharge a firearm of any kind, including any rifle, shotgun, revolver, pistol or gun, without prior approval by the chief of police authorizing when and where such discharging of weapons may be permitted to take place.

**SEC. 104.4.11 THROWING AND SHOOTING.** No person shall throw stones or missiles of any kind or shoot arrows, rubber guns, slingshots, air rifles or other dangerous instruments or toys on or into any street, highway, alley, sidewalk or public place, except when under proper supervision of persons authorized by the city council. This section shall not apply to any person conducting these activities on private property provided the person has the permission of the property owner; the person exercises due care and caution to avoid hitting, injuring, or endangering any person or property; shall not shoot objects in such a fashion that it travels beyond the boundaries of the private property on which the person is shooting. (Ord. 1006 12/29/15)

**SEC. 104.4.12 SPRING GUNS OR TRAPS.** No person in any place shall set a spring gun or a trap which is intended to be sprung by a person and which can cause such person serious injury.

**SEC. 104.4.13 SETTING OUT POISON.** Any person who places or throws any poison, poisoned food or substances on any street, avenue, alley, public or private grounds within the city, in such a way that it may endanger the life of any person or animal, is guilty of a misdemeanor; provided, however, that nothing in this

section shall prohibit the setting out of poison in a prudent manner upon one's own premises for the purpose of exterminating vermin or rodent.

**SEC. 104.4.14 KEEPING DISORDERLY HOUSE.**

1. Simple Misdemeanor: No person shall permit or suffer to continue, without taking legal steps to prevent the same, any quarreling, fighting, disorderly conduct, or any other conduct or condition that threatens injury to persons or damage to property, or loud, raucous, disagreeable noises to the disturbance of the neighborhood, or to the disturbance of the general public, upon any premises owned by the person or in the person's possession. For the purposes of this section, "to the disturbance of the general public" includes the disturbance of persons beyond the subject premises and/or to the disturbance of persons upon public places, including peace officers. Any violation of this subsection shall be a simple misdemeanor.
2. Authority to Restore Order and Disperse; Failure to Disperse: Upon issuance of a citation for a violation of this section, any peace officer of the city shall have authority to restore order upon the subject premises, up to and including ordering the dispersal of person(s) from the subject premises. Any person who fails or refuses to obey and abide by such an order shall be guilty of a violation of this section. Any violation of this subsection shall be a simple misdemeanor.
3. Civil Sanction: Quarreling, fighting, disorderly conduct, or any other conduct or condition that threatens injury to persons or damage to property, or loud, raucous, disagreeable noises to the disturbance of the neighborhood, or to the disturbance of the general public, upon any premises owned by the person or in the person's possession is prohibited. For the purposes of this section, "to the disturbance of the general public" includes the disturbance of persons beyond the subject premises and/or to the disturbance of persons upon public places, including peace officers. Any violation of this subsection by a property owner or tenant is a municipal infraction punishable by a civil penalty of five hundred dollars (\$500.00) for first offense and seven hundred fifty dollars (\$750.00) for second and subsequent offenses.

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**Section 104.5 Obstructing Justice**

**SEC. 104.5.01 OBSTRUCTING JUSTICE.** No person shall commit any of the following acts:

1. Knowingly resist or obstruct anyone known by the person to be a peace officer or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer or fire fighter, whether paid or volunteer, or knowingly resist or obstruct the service or execution by an authorized person of any civil or criminal process or order of any court.
2. No person shall refuse a reasonable request or order by any magistrate or peace officer to render the magistrate or peace officer assistance in making or attempting to make an arrest, or prevent the commission of any criminal act.

**SEC. 104.5.02 REFUSAL TO ASSIST POLICE.** If any person, being lawfully required by any police officer of the city, willfully neglects to or refuses to assist him in the execution of his office in any criminal case, or in any case of escape or rescue, he is guilty of a misdemeanor.

**SEC. 104.5.03 FAILURE TO OBEY ORDERS.** Any person who refuses or fails to obey the commands or directions of a police or traffic officer of the city, stationed and doing duty at any street, avenue or crossing thereof, or at any public place, is guilty of a misdemeanor.

**SEC. 104.5.04 INTERFERENCE WITH OFFICIAL ACTS.** No person shall knowingly resist or obstruct anyone known by the person to be a peace officer in the performance of any act which is within the scope of the officer's lawful duty or authority, or shall knowingly resist or obstruct the service or execution by any authorized person of any civil or criminal process or order of any court.

**SEC. 104.5.05 INTERFERENCE WITH PUBLIC OFFICIALS.** No person shall willfully prevent or attempt to prevent any public officer or employee from performing the officer's or employee's duty.

**SEC. 104.5.06 IMPERSONATING A PUBLIC OFFICIAL.** No person shall falsely hold himself or herself out or assume to act as an elected or appointed officer, magistrate, peace officer, or person authorized to act on behalf of the state or any subdivision thereof, having no authority to do so.

**SEC. 104.5.07 EMERGENCY COMMUNICATION.** No person shall willfully commit the following acts:

1. Fail to relinquish any telephone or telephone line which the person is using when informed that such phone or line is needed to contact a fire department for aid, or a call for medical aid or ambulance service, when human life or property is in jeopardy and the prompt summoning of aid is essential.
2. Secure the use of a telephone or telephone line by falsely stating that such telephone line is needed for an emergency call.

**SEC. 104.5.08 FALSE REPORTS.** No person shall report or cause to be reported false information to a fire department or a law enforcement authority or an ambulance service, knowing the information is false, nor give or cause to be given any false alarm of a fire without cause, nor report the alleged occurrence of a criminal act knowing the same did not occur.

**SEC. 104.5.09 DISTURBING PUBLIC MEETINGS.** No person shall willfully disturb any deliberative body or department of the city with the purpose of disrupting the functioning of such body or department by tumultuous behavior, or coercing by force or the threat of force any official conduct of proceeding.

**SEC. 104.5.10 UNLAWFUL USE OF POLICE TELEPHONE OR RADIO SYSTEM.** Any person who willfully uses the police telephone or radio system of the city to make a false report as to any crime, offense, circumstance or condition, or in any manner whatsoever uses such telephone or radio system, or any part thereof, for any improper or wrongful purpose, or in any manner contrary to the rules of the police department, within the city, is guilty of a misdemeanor. No person shall use the police radio system of this city except a qualified member of the Waverly police department or other police officer as defined by law.

**SEC. 104.5.11 INTERFERING WITH HYDRANTS PROHIBITED.** Any person, unless properly authorized, other than an employee of the city, or a member of the fire department in the performance of his duty, who takes off or unscrews the cap from any water hydrant in the streets or avenues of the city, or interferes or meddles with such hydrant in any manner, is guilty of a misdemeanor.

**SEC. 104.5.12 DEFACING NOTICES.** Any person who defaces or tears down any notice, ordinance or advertisement within the city, posted by order of the city council or by any public officer in the performance of his official duties, is guilty of a misdemeanor.

**SEC. 104.5.13 FALSE REPORTS TO LAW ENFORCEMENT AUTHORITIES.** No person shall report or cause to be reported false information to a fire department or a law enforcement authority, knowing that the information is false, or shall report the alleged occurrence of a criminal act knowing the same did not occur.

**SEC. 104.5.14 FALSE FIRE ALARMS.** Any person who, by telephone or in any other way or manner, willfully gives a false alarm whereby the fire department is called out is guilty of a misdemeanor.

## **Section 104.6 Public Property**

**SEC. 104.6.01 DEFACING PUBLIC GROUNDS.** It shall be unlawful for a person to cut, break or deface any tree or shrub on public property or on any public way by willfully defacing, cutting, breaking or injuring.

**SEC. 104.6.02 PUBLIC BUILDINGS.** It shall be unlawful to willfully write, make marks, or draw characters on the walls or any other part of any church, college, academy, schoolhouse, court house, or other public building, or on any furniture, apparatus, or fixture therein; or to willfully injure or deface the same, or any wall or fence enclosing the same.

**SEC. 104.6.03 DAMAGE TO PUBLIC UTILITY PROPERTY.** It shall be unlawful for a person to maliciously injure, remove, or destroy any electric railway or apparatus belonging thereto; or any bridge, rail or plank road; or place, or cause to be placed, any obstruction on any electric railway, or on any such bridge, rail or plank road; or willfully obstruct or injure any public road or highway; or maliciously cut, burn or in any way break down, injure, or destroy any post or pole used in connection with any system of electric lighting, electric railway, or telephone or telegraph system; or break down and destroy or injure and deface any electric light, telegraph or telephone instrument; or in any way cut, break, or injure the wires of any apparatus belonging thereto; or to willfully tap, cut, injure, break, disconnect, connect, make connection with, or destroy any of the wires, mains, pipes, conduits, meters, or other apparatus belonging to, or attached to, the power plant or distributing system of any electric light plant, electric motor, gas plant, or water plant; or to aid or abet any other person in so doing.

**SEC. 104.6.04 INJURY TO CEMETERY PROPERTY.** It shall be unlawful for a person to willfully and maliciously destroy, mutilate, deface, injure or remove any tomb, vault, monument, gravestone or other structure placed in any public or private cemetery or other fences, railing or other work for the protection or ornamentation of said cemetery, or of any tomb, vault, monument or gravestone, or other structure aforesaid, on any cemetery lot within such cemetery, or to willfully and maliciously throw or leave any rubbish, refuse, garbage, waste, litter or foreign substance within the limits of said cemetery, or to drive at an unusual and forbidden speed over avenues or roads in said cemetery, or to drive outside of said avenues or roads in said cemetery, or to drive outside of said avenues and roads, and over the grass or graves of said cemetery.

**SEC. 104.6.05 INJURING NEW PAVEMENT.** It shall be unlawful for a person to injure new pavement in any street, alley or sidewalk by willfully driving, walking or making marks on such pavement before it is ready for use.

**SEC. 104.6.06 UNAUTHORIZED ENTRY.** No person shall enter any public building or public enclosure unless authorized to do so. An entry into public buildings and enclosures shall be considered to be unauthorized when said buildings or enclosures are closed and secured against entry and not open to the public. When open to the public, a failure to pay a required admission fee, if any, shall also constitute an unauthorized entry.

**SEC. 104.6.07 JUMPING FROM BRIDGES.** Any person who jumps or dives from the Bremer Avenue bridge, Third Street Southeast bridge, Stockwell bridge, railroad bridge or any other bridge over the Cedar River within the city limits is hereby guilty of a misdemeanor.

**SEC. 104.6.08 DEPOSIT OF ICE OR SNOW UPON PUBLIC WAYS.** It shall be unlawful for any person to deposit ice or snow accumulated from private premises upon any public street, alley, sidewalk, driveway or parking lot in the City of Waverly, Iowa, in such a manner or amount as to cause a traffic or pedestrian hazard or require additional snow removal or clean-up by City of Waverly personnel or require additional snow removal or clean-up by a neighboring property owner.

## **Section 104.7 Park Rules**

**SEC. 104.7.01 DESTROYING PARK PROPERTY.** It shall be unlawful for any person to deface, damage or destroy park property, natural or manmade.

**SEC. 104.7.02 INJURING WILDLIFE.** It shall be unlawful for any person to disturb, injure or kill any wildlife on park property.

**SEC. 104.7.03 VIOLATING PARK RULES.** Any person who commits any of the following prohibited actions in a Waverly city owned park, playground, golf course or cemetery shall be guilty of a misdemeanor:

1. Pick or destroy any flower, or walk, or run up on any flower beds.
2. Break or tear any limbs or branches from any shrub or tree.
3. Remove, damage, or destroy any sign erected under the authority of the City Council.
4. Build or light a fire in any area other than those areas or fixtures designated for fires unless approved by the leisure services director.
5. Remove any wood, living or dead, unless authorized to do so by the Leisure Services Director.

**SEC. 104.7.04 PARK CLOSING HOURS.** No person shall enter upon or remain upon the city parks of the City of Waverly between the hours of midnight (12:00) a.m. and 4:00 o'clock a.m. during which hours the parks shall be closed to the general public with exceptions approved by Golf Commission.

**SEC. 104.7.05 LITTERING.** It shall be unlawful for any person to litter park property.

**SEC. 104.7.06 DAMAGE BY PETS.** It shall be unlawful to allow pets to damage or destroy park property, or to disturb the use of the park by others or disturb, injure, or kill any wildlife.

**SEC. 104.7.07 COMMERCIAL ACTIVITY.** It shall be unlawful for any persons to conduct any promotional or commercial activity on any park property within the limits of the City of Waverly, Iowa, without first obtaining a written permit from the Park Commission.

**SEC. 104.7.08 MOTOR VEHICLES ON PARK ROADWAYS.** It shall be unlawful for any person to operate any motor vehicle on park property, other than on park roadways.

**SEC. 104.7.09 PARKING.** It shall be unlawful for any person to park any vehicle any where but designated parking areas on park property.

**SEC. 104.7.10 SNOWMOBILES.** The operation of snowmobiles is hereby prohibited on city park property, except as is set forth in the snowmobile chapter.

## Section 104.7A Rail Trail Rules

### **SEC. 104.7A RAIL TRAIL RULES**

1. Definition. The Waverly Rail Trail is the trail constructed on the former Trains Unlimited railroad right-of-way consisting of an asphalt trail together with bridges, underpasses, road crossings and the entire right-of-way extending up to 50 feet on either side of the asphalt surface and shall include extensions to the system.
2. Part of Park System. The portion of the Waverly Rail Trail located within the Waverly City Limits is declared to be a part of the Waverly Park System and the Park rules contained at Waverly Code Section 104.7 shall apply except as modified in this Ordinance.
3. Use. This Waverly Rail Trail shall be used as a trail for: bicycling, cross-country skiing, rollerblading and foot traffic and other special event usage authorized by permit from the Waverly Director of Leisure Services or designee.
- 3a. Weapons and Hunting Prohibited. The use of firearms, explosives or weapons of any kind is prohibited on the Waverly Rail Trail. Hunting or trapping is prohibited. No bow or arrow or firearm shall be discharged on or across Rail Trail property.
4. Motorized Vehicles Prohibited. The use of motorized vehicles and snowmobiles is prohibited on the Waverly Rail Trail within the City of Waverly, Iowa, except for authorized emergency and maintenance vehicles and except for motorized wheelchairs and other similar vehicles used by handicapped persons.
5. Horses and Other Animals. No person shall permit a horse under their control to be on the Waverly Rail Trail. No person shall permit or allow an animal or pet on said Waverly Rail Trail unless said animal or pet is under the control of said person and is on a leash of six feet or less in length. Said person shall pick up and dispose of any feces from the animal or pet under that person's control. For the purposes of this article, horse is defined as any equine animal including horses, mules, burrow, donkeys, and all lamas or alpaca like animals. Animal is defined as all animals of the animal kingdom, male or female, whether altered or not.
6. Special Permits. Special permits may be issued by the Director Leisure Services or designee for special events on specific dates utilizing golf carts or similar motorized transportation upon the Waverly Rail Trail.
7. Official Signs. All Waverly Rail Trail users shall observe and obey all official rail trail signs posted along the trail. These signs shall be considered "Official Traffic Control Devices" as defined by the Code of Iowa.
8. Violation of Rules. Any person who fails to obey a rail trail sign, rule, or other provisions of this Ordinance shall be guilty of simple misdemeanor.

**SEC. 104.7.11** It shall be unlawful for any person to feed waterfowl in Kohlmann Park.

## **Section 104.8 Private Property**

### **SEC. 104.8.01 TRESPASSING.**

1. The term "property" shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.
2. The term "trespass" shall mean one or more of the following acts:
  - a. Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate, or to hunt, fish or trap on or in the property. This paragraph does not prohibit the unarmed pursuit of game or furbearing animals lawfully injured or killed which come to rest on or escape to the property of another.
  - b. Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.
  - c. Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.
  - d. Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.
3. The term "trespass" shall not mean entering upon the property of another for the sole purpose of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property.

**SEC. 104.8.02 DAMAGE TO PROPERTY.** No person shall intentionally cut, hack, break, paint, deface, or otherwise injure any ornamental or shade tree, fence, private building, railing or other property, unless the person is the property owner, or the person is acting pursuant to the consent of the property owner, or the person is a government employee acting within the scope of his or her authority, and the action is otherwise lawful.

**SEC. 104.8.03 CRIMINAL MISCHIEF.** Any damage, defacing, alteration, or destruction of tangible property, public or private, is criminal mischief when done intentionally by one who has no right to so act, and shall be unlawful.

**SEC. 104.8.04 ELECTRONIC AND MECHANICAL EAVESDROPPING.** No person, without right or authority to do so, shall tap into or connect a listening or recording device to any telephone or other communication wire, or shall by any electronic or mechanical means listen to, record, or otherwise intercept a conversation or communication of any kind; provided that the sender or recipient of a message or one who is openly present and participating in or listening to a communication shall not be prohibited hereby from recording such message or communication; and provided, that nothing herein shall restrict the use of any radio or television receiver to receive any communication transmitted by radio or wireless signal.

**SEC. 104.8.05 THEFT.** It shall be a public offense for any person to commit theft within the city. A person commits theft when the person:

1. Takes possession or control of the property of another, without the owner's consent or without lawful authority, with the intent to deprive the other thereof.
2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person. Failure by a bailee or lessee of personal property within seventy-two hours after a time specified in a written agreement of lease or bailment shall be evidence of misappropriation.
3. Deception.
  - a. Obtains the labor or services of another, or a transfer of possession, control, or ownership of the property of another, or the beneficial use of property of another by deception. Where compensation for goods and services is ordinarily paid immediately upon the obtaining of such goods or the rendering of such services, the refusal to pay or leaving the premises without payment or offer to pay or without having obtained from the owner or operator the right to pay subsequent to leaving the premises gives rise to an inference that the goods or services were obtained by deception.
  - b. Concealment. The fact that a person has concealed unpurchased property of a store or other mercantile establishment, either on the premises or outside the premises, is material evidence of intent to deprive the owner, and the finding of unpurchased property concealed upon the person or among the belongings of the person, is material evidence of intent to deprive and if the person conceals or causes to be concealed upon the person or among the belongings of another, the finding of the same is also material evidence of intent to deprive on the part of the person concealing the goods.

4. Exercising Control.
  - a. Exercises control over property, knowing such property to have been stolen, or having reasonable cause to believe that such property has been stolen, unless the person's purpose is to promptly restore it to the owner or to deliver it to an appropriate public officer.
  - b. Evidence. The fact that the person is found in possession of property which has been stolen from one or more persons on separate occasions, or that the person is a dealer or other person familiar with the value of such property and has acquired it for a consideration which is far below its reasonable value, shall be evidence from which the court may infer that the person knew or believed that the property had been stolen.
5. Secured Property. No person shall take, destroy, conceal or dispose of property in which someone else has a security interest, with intent to defraud the secured property.
6. Instruments. No person shall make, utter, draw, deliver, or give any check, share draft, draft, or written order on any bank, credit union, person or corporation, and obtain property or service in exchange therefor, if the person knows that such check, share draft, draft or written order will not be paid when presented.
7. Claim of Right. No person who takes, obtains, disposes of, or otherwise uses or acquires property, is guilty of theft by reason of such act if the person reasonably believes that the person has a right, privilege or license to do so, or if the person does in fact have such right, privilege or license.

**SEC. 104.8.06 FRAUDULENT PRACTICE.** It shall be a public offense for any person to commit fraudulent practice within the city. Fraudulent practice is defined as:

1. Makes, tenders or keeps for sale any warehouse receipt, bill of lading, or any other instrument purporting to represent any right to goods, with knowledge that the goods represented by such instrument do not exist.
2. Knowingly attaches or alters any label to any goods offered or kept for sale so as to materially misrepresent the quality or quantity of such goods, or the maker or source of such goods.
3. Knowingly executes or tenders a certification under penalty of perjury, false affidavit, or certificate, which is required by law, or which is given in support of a claim for compensation, indemnification, restitution, or other payment.
4. Makes any entry in or alteration of any public records, or any records of any corporation, partnership, or other business enterprise or nonprofit enterprise, knowing the same to be false.
5. Removes, alters or defaces any serial or other identification number, or any owners' identification mark, from any property not the person's own.

6. For the purpose of soliciting assistance, contributions, or other thing of value, falsely represents oneself to be a veteran of the armed forces of the United States, or a member of any fraternal, religious, charitable, or veterans organization, or any pretended organization of a similar nature, or to be acting on behalf of such person or organization.
7. Manufactures, sells, or keeps for sale any token or device suitable for the operation of a coin operated device or vending machine, with the intent that such token or device may be so used, provided, that the owner or operator of any coin operated device or vending machine may sell slugs or tokens for use in the person's own devices.
8. Alters or renders inoperative or inaccurate any meter or measuring device used in determining the value of or compensation for the purchase, use or enjoyment of property, with the intent to defraud any person.
9. Does any act expressly declared to be a fraudulent practice by any other section of the State Code.

**SEC. 104.8.07 FALSE USE OF A FINANCIAL INSTRUMENT.**

1. Prohibition. No person shall use a false financial instrument with the intent to obtain fraudulently anything of value, knowing that the instrument is not what it purports to be, or knowing that he or she is not the proper person, nor the authorized agent of the proper person, who as shown on the instrument has the right to so use the instrument, by committing any of the following acts:
  - a. Material Change. Make or execute such instrument or an endorsement thereon, or alter such instrument so as to change its nature or the right or obligation which it purports to represent.
  - b. False Representation. Tender or offer such instrument to another in the course of a financial or commercial transaction, with the representation, either express or by implication, that the instrument is what it purports to be and that one is a proper person who is shown on its face to be one who may rightfully so use such instrument.
  - c. Possession. Possess such instrument, knowing it to be false or knowing that one has no right to use or possess it.

**SEC. 104.8.08 FALSE WEIGHTS AND MEASURES.** Any person, firm or corporation, within the city, who gives any false weight or measures or uses any weight, scale or other instrument for weighing or measuring any article for sale, unless he same strictly conforms to the standards adopted by the state, is guilty of a misdemeanor.

**SEC. 104.8.09 DEFRAUDING HOTEL OR RESTAURANT KEEPER-PROHIBITED.** Any person who obtains food, lodging or other accommodation at any hotel, inn or boarding or eating house, within the city, with the intent to defraud the owner or keeper thereof, is guilty of a misdemeanor.**SEC. 104.8.10 EVADING ADMISSION FEE.** Any person who willfully enters any building or enclosure where any public entertainment or exhibition is being held, within the city, and at which an admission fee is charged, without paying such fee, or without leave to so enter from the proper party, is guilty of a misdemeanor.

## **Section 104.9 Alcohol and Beer**

**SEC. 104.9.01 CONSUMPTION OF ALCOHOL IN PUBLIC PLACE.** No person shall use or consume alcoholic liquors or beer upon any thoroughway, or in any public place, or possess or consume alcoholic liquors on any public school property or while attending any public or private school related function **except as authorized under Section 88.3 of this code**. As used in this section "school" means a school or that portion thereof, which provides teaching for any grade from kindergarten through grade twelve.

**SEC. 104.9.02 OPEN CONTAINER.** No person shall knowingly possess in a motor vehicle upon a public street or highway any open or unsealed container, including a bottle, can, jar, or other receptacle, containing an alcoholic beverage or beer while such motor vehicle is upon a public street or highway. An open or unsealed receptacle containing an alcoholic beverage or beer may be transported at any time in the trunk of the motor vehicle or in some other area of the interior of the motor vehicle not designated or intended to be occupied by the driver and not readily accessible to the driver while the motor vehicle is in motion.

### **SEC. 104.9.03 PERSONS UNDER LEGAL AGE; PENALTY.**

1. A person or persons under legal age shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control; except in the case of liquor, wine, or beer given or dispensed to a person under legal age within a private home and with the knowledge, presence, and consent of the parent or guardian, for beverage or medicinal purposes or as administered to the person by either a physician or dentist for medicinal purposes and except to the extent that a person under legal age may handle alcoholic beverages, wine, and beer during the regular course of the person's employment by a liquor control licensee, or wine or beer permittee under Iowa Code Chapter 123.
2. A person who is under legal age, other than a licensee or permittee, who violates this section regarding the purchase of or attempt to purchase alcoholic liquor, wine, or beer, or possessing or having control of alcoholic liquor, wine, or beer, commits the following:
  - a. A simple misdemeanor punishable as a scheduled violation under Iowa Code Section 805.8C, subsection 7.
  - b. A second offense shall be a simple misdemeanor punishable by a fine of \$500.00. In addition to any other applicable penalty, the person in violation of this section shall choose between either completing a substance abuse evaluation or the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.
  - c. A third or subsequent offense shall be a simple misdemeanor punishable by a fine of \$500.00 and the suspension of the person's motor vehicle operating privileges for a period not to exceed one year.

3. The court may, in its discretion, order the person who is under legal age to perform community service work under Iowa Code Section 909.3A, of an equivalent value to the fine imposed under this section.
4. If the person who commits a violation of this section is under the age of 18, the matter shall be disposed of in the manner provided in Chapter 232 of the Iowa Code.  
**State law references: Similar provisions, I.C.A. § 123.47A.**

**SEC. 104.9.04 MISREPRESENTING AGE.** No person who is not at least twenty-one (21) years old shall misrepresent the age of such person for the purpose of purchasing or attempting to purchase any alcoholic beverage or beer.

**SEC. 104.9.05 PUBLIC INTOXICATION.** Any person who uses or consumes any alcoholic liquors upon the public streets or highways, or in any public place, except premises covered by a liquor control license, or who is intoxicated or simulates intoxication in a public place, is guilty of a misdemeanor.

**SEC. 104.9.06 KEGS.** No person shall possess or cause a keg of beer to be placed on public property in the city without first obtaining a permit from the city council as provided in Chapter 60 of this code.

**104.9.07 MISCELLANEOUS PROHIBITIONS.**

1. A person shall not sell, dispense, or give to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer.
2. A person or club holding a liquor control license or retail wine or beer permit under Iowa Code Chapter 123, and the person's or club's agents or employees, shall not do any of the following:
  - a. Knowingly permit any gambling, except in accordance with Iowa Code Chapter 99B, 99D, 99F, or 99G, or knowingly permit solicitation for immoral purposes, or immoral or disorderly conduct on the premises covered by the license or permit.
  - b. Sell or dispense any alcoholic beverage or beer on the premises covered by the license or permit, or permit its consumption thereon between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday, however, a holder of a liquor control license or retail beer permit granted the privilege of selling alcoholic liquor or beer on Sunday may sell or dispense alcoholic liquor or beer between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday.
  - c. Sell alcoholic beverages, wine, or beer to any person on credit, except with a bona fide credit card. This provision does not apply to sales by a club to its members, to sales by a hotel or motel to bona fide registered guests, nor to retail sales by the managing entity of a convention center, civic center, or events center.

- d. Keep on premises covered by a liquor control license any alcoholic liquor in any container except the original package purchased from the division, and except mixed drinks or cocktails mixed on the premises for immediate consumption. This prohibition does not apply to common carriers holding a class "D" liquor control license.
  - e. Reuse for packaging alcoholic liquor or wine any container or receptacle used originally for packaging alcoholic liquor or wine; or adulterate, by the addition of any substance, the contents or remaining contents of an original package of an alcoholic liquor or wine; or knowingly possess any original package which has been so reused or adulterated.
  - f. Employ a person under 18 years of age in the sale or serving of alcoholic liquor, wine, or beer for consumption on the premises where sold.
  - g. Allow any person other than the licensee, permittee, or employees of the licensee or permittee, to use or keep on the licensed premises any alcoholic liquor in any bottle or other container which is designed for the transporting of such beverages, except as permitted in Iowa Code Section 123.95. This paragraph does not apply to the lodging quarters of a class "B" liquor control licensee or wine or beer permittee, or to common carriers holding a class "D" liquor control license.
  - h. Sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, or permit any person, knowing or failing to exercise reasonable care to ascertain whether the person is under legal age, to consume any alcoholic beverage, wine, or beer.
  - i. In the case of a retail beer or wine permittee, knowingly allow the mixing or adding of alcohol or any alcoholic beverage to beer, wine, or any other beverage in or about the permittee's place of business.
  - j. Knowingly permit or engage in any criminal activity on the premises covered by the license or permit.
  - k. Sell or dispense any wine on the premises covered by the permit or permit the consumption on the premises between the hours of 2:00 a.m. and 6:00 a.m. on a weekday, and between the hours of 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday, however, a holder of a wine permit authorized to sell wine on Sunday may sell or dispense wine between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday.
  - l. Sell, give, possess, or otherwise supply a machine which is used to vaporize an alcoholic beverage for the purpose of being consumed in a vaporized form.
3. A person under legal age shall not misrepresent the person's age for the purpose of purchasing or attempting to purchase any alcoholic beverage, wine, or beer from any licensee or permittee. If any person under legal age misrepresents the person's age, and the licensee or permittee establishes that the licensee or permittee made reasonable inquiry to determine whether the prospective purchaser was over legal age, the licensee or permittee is not guilty of selling alcoholic liquor, wine, or beer to a person under legal age.

#### 104.9.08 CRIMINAL AND CIVIL PENALTIES.

1. Any person who violates any of the provisions of section 104.9.07, except subsection 104.9.07(2)(b), shall be guilty of a simple misdemeanor. A person who violates subsection 104.9.07(2)(b), commits a simple misdemeanor punishable as a scheduled violation under Iowa Code Section 805.8C, subsection 2.
2. The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of section 104.9.07, subject to subsection (3) of this section, is grounds for the suspension or revocation of the license or permit by the city council of the city.
3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted or found in violation of subsection 104.9.07(2)(b), the city council of the city shall, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:
  - a. A first violation shall subject the licensee or permittee to a civil penalty in the amount of \$500.00. Failure to pay the civil penalty as ordered under Iowa Code Section 123.39 shall result in automatic suspension of the license or permit for a period of 14 days.
  - b. A second violation within two years shall subject the licensee or permittee to a 30-day suspension and a civil penalty in the amount of \$1,500.00.
  - c. A third violation within three years shall subject the licensee or permittee to a 30-day suspension and a civil penalty in the amount of \$1,500.00.
  - d. A fourth violation within three years shall result in revocation of the license or permit.
  - e. For purposes of this subsection:
    - (1) The date of any violation shall be used in determining the period between violations.
    - (2) Suspension shall be limited to the specific license or permit for the premises found in violation.
    - (3) Notwithstanding Iowa Code Section 123.40, revocation shall be limited to the specific license or permit found in violation and shall not disqualify a licensee or permittee from holding a license or permit at a separate location.
4. Before suspension, revocation, or imposition of a civil penalty, the license or permit holder shall be given written notice and an opportunity for a hearing. The administrator may appoint a member of the division or may request an administrative law judge from the department of inspections and appeals to conduct the hearing and issue a proposed decision. Upon the motion of a party to the hearing or upon the administrator's own motion, the administrator may review the proposed decision in accordance with chapter 17A. Upon review of the proposed decision, the administrator may affirm, reverse, or modify the proposed decision. A licensee or permittee aggrieved by a decision of the administrator may seek judicial review of the administrator's decision in accordance with chapter 17A.  
**State law references: Similar provisions, I.C.A. § 123.39**

## **Section 104.10 Drug Paraphernalia & Controlled Substances**

**SEC. 104.10.01 POSSESSION OF DRUG PARAPHERNALIA.** It is unlawful for any person knowingly or intentionally to possess drug paraphernalia as defined in this Chapter within the City of Waverly, Iowa.

**SEC. 104.10.02 DEFINITIONS.** As used in this chapter, the following words and terms will be ascribed the following meanings:

1. Person means a natural person or any firm, partnership, association, corporation or cooperative association.
2. Drug paraphernalia means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, as defined in Chapter 124, Code of Iowa. The term includes, but is not limited to:
  - a. Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing or harvesting, of any species of plant which is a controlled substance or from which a controlled substance can be derived.
  - b. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
  - c. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant, which is a controlled substance.
  - d. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
  - e. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances.
  - f. Diluents and adulterants, such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances.
  - g. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
  - h. Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances.
  - i. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

- j. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.
- k. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- l. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
  - (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (2) Water pipes;
  - (3) Carburetion tubes and devices;
  - (4) Smoking and carburetion masks;
  - (5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
  - (6) Miniature cocaine spoons, and cocaine vials;
  - (7) Chamber pipes;
  - (8) Carburetor pipes;
  - (9) Electric pipes;
  - (10) Air-driven pipes;
  - (11) Chillums;
  - (12) Bongs;
  - (13) Ice pipes or chillers.
- m. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:
  - (1) Statements by an owner or anyone in control of the object concerning its use.
  - (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.
  - (3) The proximity of the object, in time and space, to a direct violation of this chapter.

- (4) The proximity of the object to controlled substances.
  - (5) The existence of any residue of controlled substances on the object.
  - (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter, the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia.
  - (7) Instructions, oral or written, provided with the object concerning its use.
  - (8) Descriptive materials accompanying the object which explain or depict its use.
  - (9) National and local advertising concerning its use.
  - (10) The manner in which the object is displayed for sale.
  - (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community such as a licensed distributor or dealer of tobacco products.
  - (12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise.
  - (13) The existence and scope of legitimate uses for the object in the community.
  - (14) Expert testimony concerning its use.
- n. The use of inhalants, liquids, or other substances used to induce a reaction or intoxication such as glue, paint thinner, paint, or similar substances and related paraphernalia such as plastic bags, wadded cloth, other items used to contain the fumes or ingredients.
3. Controlled Substance means a "Controlled Substance" as defined in Chapter 124, Code of Iowa.

**SEC. 104.10.03 POSSESSION OF CONTROLLED SUBSTANCES.** It is unlawful for any person to use, or to possess with intent to use, controlled substances to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

**SEC. 104.10.04 MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCES.** It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, controlled substances, knowing, or under circumstances where one reasonably should

know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

**SEC. 104.10.05 DELIVERY OF CONTROLLED SUBSTANCES TO A MINOR.** Any person eighteen (18) years of age or over who violates Section 104.10.03 by delivering controlled substances to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a special offense.

**SEC. 104.10.06 TRANSPORTING CONTROLLED SUBSTANCES.** It shall be unlawful for any person to transport or convey any controlled substances as defined in the current Code of Iowa by motor vehicle on any highway or street in the City of Waverly, Iowa.

**SEC. 104.10.07 ADVERTISEMENT OF CONTROLLED SUBSTANCES.** It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as controlled substances.

**SEC. 104.10.08 Huffing.** “Any person who shall intentionally ingest, inhale, breathe or otherwise take into the body any substance for the purpose of becoming intoxicated is guilty of a misdemeanor. Common examples of huffing include: breathing in fumes from a cloth soaked in a chemical, breathing in fumes from an open container or filling a closet or car with vapors, placing a substance in a plastic bag and holding it over the mouth and nose, spraying a substance directly into the mouth. This section shall not apply to prescribed drugs when taken as prescribed; or any anesthesia for medical or dental purposes.”