## Chapter 18   MISCELLANEOUS PROVISIONS AND OFFENSES

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Sec. 18-1.   Municipal bond fees.

A fee as established by resolution is hereby imposed by the Village of Arthur for bail processing against any person arrested for violating a bailable municipal ordinance or a state or federal law.

(Code 2003, § 6-8-6)

**State Law reference—** Authority for above fee, 65 ILCS 5/1-2-12.1.

Sec. 18-2.   Prohibition on sale to and possession of tobacco by minors; prohibition on the distribution of tobacco samples to any person; use of identification cards; vending machines; lunch wagons; out-of-package sales.

(a)  No minor under 18 years of age shall buy any tobacco product. No person shall sell, buy for, distribute samples of or furnish any tobacco product to any minor under 18 years of age.

(b)  No minor under 16 years of age may sell any tobacco product at a retail establishment selling tobacco products. This subsection does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner

(c)  No minor under 18 years of age in the furtherance or facilitation of obtaining any tobacco product shall display or use a false or forged identification card or transfer, alter, or deface an identification card.

(d)  No minor under 18 years of age shall possess any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms.

(e)  A person shall not distribute without charge samples of any tobacco product to any other person, regardless of age:

(1)  Within a retail establishment selling tobacco products, unless the retailer has verified the purchaser's age with a government-issued identification;

(2)  From a lunch wagon; or

(3)  On a public way as a promotion or advertisement of a tobacco manufacturer or tobacco product.

This subsection (e) does not apply to the distribution of a tobacco product sample in any adult-only facility.

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

*Adult-only facility* means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under state law, or by checking the identification of any person appearing to be under the age of 27) that no person under legal age is present. A facility or restricted area need not be permanently restricted to persons under legal age to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no person under legal age is present during the event or time period in question.

*Lunch wagon* means a mobile vehicle designed and constructed to transport food and from which food is sold to the general public.

*Smokeless tobacco* means any tobacco products that are suitable for dipping or chewing.

*Tobacco product* means any cigar, cigarette, smokeless tobacco, or tobacco in any of its forms.

(g)  Tobacco products listed in this section may be sold through a vending machine only if such tobacco products are not placed together with any non-tobacco product, other than matches, in the vending machine and the vending machine is in any of the following locations:

(1)  Places to which minors under 18 years of age are not permitted access.

(2)  Places where alcoholic beverages are sold and consumed on the premises and vending machine operation is under the direct supervision of the owner or manager.

(3)  Places where the vending machine can only be operated by the owner or an employee over age 18 either directly or through a remote control device if the device is inaccessible to all customers.

(h)  The sale or distribution by any person of a tobacco product in this section, including, but not limited to, a single or loose cigarette, that is not contained within a sealed container, pack, or package as provided by the manufacturer, which container, pack, or package bears the health warning required by federal law, is prohibited.

(i)  It is not a violation of this section for a person under 18 years of age to purchase or possess a cigar, cigarette, smokeless tobacco or tobacco in any of its forms if the person under the age of 18 purchases or is given the cigar, cigarette, smokeless tobacco or tobacco in any of its forms from a retail seller of tobacco products or an employee of the retail seller pursuant to a plan or action to investigate, patrol, or otherwise conduct a sting operation or enforcement action against a retail seller of tobacco products or a person employed by the retail seller of tobacco products or on any premises authorized to sell tobacco products to determine if tobacco products are being sold or given to persons under 18 years of age if the sting operation or enforcement action is approved by the department of state police, the county sheriff, a municipal police department, the department of public health, or a local health department.

(Code 2003, § 6-8-1)

**State Law reference—** Similar provisions, 720 ILCS 675/1.

Sec. 18-3.   Distribution of alternative nicotine products to persons under 18 years of age prohibited.

(a)  For the purposes of this section, the term "alternative nicotine product" means a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. The term "alternative nicotine product" excludes cigarettes, smokeless tobacco, or other tobacco products as these terms are defined in section 18-2 and any product approved by the United States Food and Drug Administration as a non-tobacco product for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

(b)  A person, either directly or indirectly by an agent or employee, or by a vending machine owned by the person or located in the person's establishment, may not sell, offer for sale, give, or furnish any alternative nicotine product, or any cartridge or component of an alternative nicotine product, to a person under 18 years of age.

(c)  Before selling, offering for sale, giving, or furnishing an alternative nicotine product, or any cartridge or component of an alternative nicotine product, to another person, the person selling, offering for sale, giving, or furnishing the alternative nicotine product shall verify that the person is at least 18 years of age by:

(1)  Examining from any person that appears to be under 27 years of age a government-issued photographic identification that establishes the person is at least 18 years of age; or

(2)  For sales made though the Internet or other remote sales methods, performing an age verification through an independent, third-party age verification service that compares information available from public records to the personal information entered by the person during the ordering process that establishes the person is 18 years of age or older.

(Code 2003, § 6-8-1)

**State Law reference—** Similar provisions, 720 ILCS 675/1.5.

Sec. 18-4.   Disorderly conduct.

No person shall engage in disorderly conduct in the village. Any of the following acts constitute disorderly conduct:

(1)  Making, aiding or assisting in making any improper noise, riot, disturbance, breach of the peace or diversion tending to an immediate breach of the peace.

(2)  Engaging in or aiding or abetting any fight, quarrel or other disturbance.

(3)  Disturbing any religious service, public or private meeting or assembly of persons.

(4)  Collecting in crowds for unlawful purposes or for any purpose to the annoyance or disturbance of other persons.

(5)  Being intoxicated, as defined by Illinois Compiled Statutes, in public places, or on any place to the annoyance and disturbance of other persons.

(6)  Resisting or obstructing the performance of one known to be a police officer or any authorized act within the police officer's official capacity; or assisting any person to escape from jail or custody of police.

(7)  Failing to obey a lawful order of dispersal by a person known to be a peace officer, where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance or alarm.

(8)  Lodging in or loitering in outhouses, sheds, barns, stables, or unoccupied buildings.

(9)  Using any obscene, profane, threatening or inciting language in any public place that is reasonably calculated to provoke an immediate breach of the peace.

(10)  Throwing stones or missiles in public places or at any person or property, or brandishing or threatening to use any missile or dangerous weapon or object.

(11)  Damaging or defacing trees, bushes, gardens, fences, windows, signs, buildings, or vehicles, or engaging in any acts of vandalism.

(Code 2003, § 6-8-2)

**State Law reference—** Disorderly conduct, 720 ILCS 5/26-1 et seq.

Sec. 18-5.   Noise.

No person shall disturb the peace and quiet of any other person by creating excessive noise on his or any property that would disturb a person of reasonable sensibilities. Excessive noise shall include, but not by way of limitation, any of the following:

(1)  Loud playing of phonographs, radios, television sets, or music machines, or musical instruments.

(2)  Barking or howling dogs or cats.

(3)  Vehicles without mufflers, or the unnecessary use of horns on vehicles.

(Code 2003, § 6-8-3)

Sec. 18-6.   Curfew.

(a)  *Curfew offenses.*

(1)  A minor commits a curfew offense when he remains in any public place or on the premises of any establishment during curfew hours.

(2)  A parent or guardian of a minor or other person in custody or control of a minor commits a curfew offense when he knowingly permits the minor to remain in any public place or on the premises of any establishment during curfew hours.

(b)  *Curfew defenses.* It is a defense to prosecution under subsection (a) of this section that the minor was:

(1)  Accompanied by the minor's parent or guardian or other person in custody or control of the minor;

(2)  On an errand at the direction of the minor's parent or guardian, without any detour or stop;

(3)  In a motor vehicle involved in interstate travel;

(4)  Engaged in an employment activity or going to or returning home from an 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 a government or governmental agency, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by a government or governmental agency, a civic organization, or another similar entity that takes responsibility for the minor;

(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; or

(9)  Married or had been married or is an emancipated minor under the Emancipation of Minors Act.

(c)  *Enforcement.* Before taking any enforcement action under this section, a law enforcement 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 in subsection (b) of this section is present.

(d)  *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Curfew hours* means:

(1)  Between 12:01 a.m. and 6:00 a.m. on Saturday;

(2)  Between 12:01 a.m. and 6:00 a.m. on Sunday; and

(3)  Between 11:00 p.m. on Sunday to Thursday, inclusive, and 6:00 a.m. on the following day.

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

*Establishment* means any privately-owned place of business operated for a profit to which the public is invited, including, but not limited to, any place of amusement or entertainment.

*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.

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

*Parent* means a person who is:

(1)  A natural parent, adoptive parent, or step-parent of another person; or

(2)  At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

*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, office buildings, transport facilities, and shops.

*Remain* means to:

(1)  Linger or stay; or

(2)  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.

*Serious bodily injury* means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(e)  *Penalty.* A violation of this section is a petty offense with a fine of not less than $10.00 nor more than $500.00, except that neither a person who has been made a ward of the court under the Juvenile Court Act of 1987, nor that person's legal guardian, shall be subject to any fine. In addition to or instead of the fine imposed by this section, the court may order a parent, legal guardian, or other person convicted of a violation of subsection (a) of this section to perform community service as determined by the court, except that the legal guardian of a person who has been made a ward of the court under the Juvenile Court Act of 1987 may not be ordered to perform community service. The dates and times established for the performance of community service by the parent, legal guardian, or other person convicted of a violation of subsection (a) of this section shall not conflict with the dates and times that the person is employed in his regular occupation.

(Code 2003, § 6-8-4)

**State Law reference—** Similar provisions, 720 ILCS 5/12C-60.

Sec. 18-7.   Motor vehicles used in commission of certain offenses.

(a)  *Violations; exceptions.*

(1)  The owner of record of any motor vehicle shall be liable to the village for an administrative fee established by resolution, plus any applicable towing and storage fees payable to a towing agent, whenever any such motor vehicle is used in the commission of any of the following offenses. The administrative fee shall be waived by the village upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded:

a.  Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to 720 ILCS 5/36-1;

b.  Driving under the influence of alcohol, another drug, an intoxicating compound, or any combination thereof, in violation of 625 ILCS 5/11-501; or

c.  Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony or in violation of the Cannabis Control Act (720 ILCS 550/1 et seq.); or

(2)  Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act (720 ILCS 570/100 et seq.);

(3)  Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of 720 ILCS 5/24-1, 720 ILCS 5/24-1.5, or 720 ILCS 5/24-3.1;

(4)  Driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to 625 ILCS 5/6-303, except that vehicles shall not be subjected to seizure or impoundment if the suspension is for an unpaid citation (parking or moving) or due to failure to comply with emission testing;

(5)  Operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance, as defined by the Cannabis Control Act (720 ILCS 550/1 et seq.) or the Illinois Controlled Substances Act (720 ILCS 570/100 et seq.);

(6)  Operation or use of a motor vehicle with an expired driver's license, in violation of 625 ILCS 5/6-101, if the period of expiration is greater than one year;

(7)  Operation or use of a motor vehicle without ever having been issued a driver's license or permit, in violation of 625 ILCS 5/6-101, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age;

(8)  Operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit clerk in Illinois for failing to answer charges that the driver violated 625 ILCS 5/6-101, 625 ILCS 5/6-303, or 625 ILCS 5/11-501;

(9)  Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Article 16 of the Criminal Code of 2012 (720 ILCS 5/16-1 et seq.);

(10)  Operation or use of a motor vehicle in the commission of, or in the attempt to commit, any other misdemeanor or felony offense in violation of the Criminal Code of 2012 (720 ILCS 5/1-1 et seq.; or

(11)  Operation or use of a motor vehicle in violation of 625 ILCS 5/11-503:

a.  While the vehicle is part of a funeral procession; or

b.  In a manner that interferes with a funeral procession.

Any motor vehicle used in the commission of any such violation shall be subject to seizure and impoundment as provided in this article.

(b)  For purposes of this section, a motor vehicle is not considered to have been used in a violation that would render such vehicle eligible for seizure and impoundment if:

(1)  The motor vehicle used in the violation was stolen at the time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered;

(2)  The motor vehicle was operating as a common carrier and the violation occurred without the knowledge of the person in control of the motor vehicle; or

(3)  The alleged owner of record provides adequate proof that the motor vehicle had been sold to another person prior to the violation.

(c)  *Seizure and impoundment.* Whenever a police officer has cause to believe that a motor vehicle is subject to seizure and impoundment pursuant to subsection (a) of this section, such police officer shall provide for the towing of such motor vehicle to a facility designated by the village. Before or at the time the motor vehicle is towed, the police officer shall notify the owner of record or the person in control of the motor vehicle at the time of the alleged violation, whichever is present if there is such a person, of the fact of the seizure and impoundment and of the right of the owner of record to request a vehicle impoundment hearing under this section. If the basis for the vehicle impoundment is sustained by the administrative hearing officer, any administrative fee posted to secure the release of the vehicle shall be forfeited to the village.

(d)  *Notice.* Within ten days after a motor vehicle is seized and impounded pursuant to subsection (c) of this section, the police department shall notify by certified mail the owner of record and any lien holder of record of the fact of the seizure and impoundment and the right to request a motor vehicle impoundment hearing under this section. However, no such notice need be sent to the owner of record if the owner of record is personally served with the notice at the time the motor vehicle is seized and impounded and the owner of record acknowledges receipt of such notice in writing. A copy of such notice shall be forwarded to the chief of police. The notice shall state the penalties that may be imposed if no hearing is requested, including that a motor vehicle not released by payment of the administrative penalty and applicable towing and storage fees may be sold or disposed of by the village in accordance with applicable law.

(e)  *Hearing.*

(1)  The owner of record seeking a vehicle impoundment hearing shall file a written request for such a hearing with the police department of the village no later than 45 days after notice was mailed or otherwise given to the owner of record under subsection (c) or (d) of this section. The hearing date shall be no more than 45 days after a request for a vehicle impoundment hearing has been filed. If, after the vehicle impoundment hearing, the hearing officer determines by a preponderance of the evidence that the motor vehicle was used in the violation, the hearing officer shall enter an order finding the owner of record liable to the village for the amount of the administrative penalty prescribed, plus applicable towing and storage fees payable to the towing agent. At the conclusion of the administrative hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment.

(2)  If, after a hearing, the hearing officer does not determine by preponderance of the evidence that the motor vehicle was used in such a violation, the hearing officer shall enter an order finding for the owner of record and for the return of the motor vehicle and any previously paid administrative penalty and applicable towing and storage fees; provided that if the motor vehicle was seized and impounded pursuant to state or federal drug asset forfeiture laws, the motor vehicle shall not be returned unless and until the village receives notice from the appropriate state, or where applicable, federal officials, that forfeiture proceedings will not be instituted; or forfeiture proceedings have concluded and there is a settlement or a court order providing that the motor vehicle shall be returned to the owner of record.

(3)  If the owner of record requests a vehicle impoundment hearing but fails to appear at such a hearing or fails to request a vehicle impoundment hearing in a timely manner, the owner of record shall be deemed to have waived his right to such a hearing and the hearing officer shall enter a default order in favor of the village for the amount of the administrative penalty prescribed plus applicable tow and storage fees payable to the towing agent. However, if the owner of record pays such administrative penalty and the applicable towing and storage fees and the motor vehicle is returned to the owner of record, no default order need be entered if the owner of record is informed of his right to a hearing and signs a written waiver, in which case an order of liability shall be deemed to have been made when the village receives the written waiver.

(f)  *Hearing officer; proceedings.*

(1)  Administrative hearings shall be conducted by a hearing officer who is an attorney licensed to practice law in this state for a minimum of three years.

(2)  All interested persons shall be given a reasonable opportunity to be heard at any vehicle impoundment hearing. The formal rules of evidence will not apply at any such hearing.

(3)  Any sworn or affirmed report, including a report prepared in compliance with Section 11-501.1 of the Illinois Vehicle Code (625 ILCS 5/11-501.1) that is prepared in the performance of a law enforcement officer's duties and sufficiently describes the circumstances leading to the impoundment, shall be admissible evidence of the owner of record's liability under subsection (a) of this section, and shall support a finding of the owner of record's liability under subsection (a) of this section, unless rebutted by clear and convincing evidence.

(4)  At the conclusion of the administrative hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment.

(5)  If the basis for the vehicle impoundment is sustained by the administrative hearing officer, any administrative fee posted to secure the release of the vehicle shall be forfeited to the village.

(6)  All final decisions of the administrative hearing officer shall be subject to review under the provisions of the Administrative Review Law (735 ILCS 5/3-101 et seq.).

(g)  *Disposition of impounded vehicle.*

(1)  An administrative penalty imposed pursuant to this section shall constitute a debt due and owing the village which may be enforced in any manner provided by law. Except as otherwise provided in this section, a motor vehicle impounded pursuant to this section shall remain impounded until:

a.  The administrative penalty is paid in full to the village and all applicable towing and storage fees are paid to the towing agent, in which case the owner of record shall be given possession of the motor vehicle;

b.  A cash bond in the amount of $250.00 is posted with the village deputy clerk and all applicable towing and storage fees are paid to the towing agent, at which time the motor vehicle shall be released to the owner of record; or

c.  The motor vehicle is sold or otherwise disposed of to satisfy a judgment or enforce a lien as provided by law.

(2)  Notwithstanding any other provisions of this section, whenever a person with a lien of record against a motor vehicle impoundment under this section has commenced foreclosure proceedings, possession of the motor vehicle shall be given to that person if he pays the applicable towing and storage fees and agrees in writing to refund to the village, the net proceeds of any foreclosure sale, less any amounts necessary to pay all lien holders of record, up to the total amount of administrative penalties imposed under this section. Notwithstanding any other provisions of this section, no vehicle that was seized and impounded pursuant to state or federal drug asset forfeiture laws shall be returned to the owner of record unless and until the village has received notice from the appropriate state, or where applicable, federal officials that forfeiture proceedings will not be instituted; or forfeiture proceedings have concluded and there is a settlement or a court order providing that the vehicle shall be returned to the owner of record.

(h)  *Posting of bond.* If a cash bond as required by this section is posted with the village deputy clerk, the impounded motor vehicle shall be released to the owner of record upon payment of any applicable towing and storage fees to the towing agent. If an administrative penalty is imposed for any violation under subsection (a) of this section, the cash bond will be forfeited to the village; however, in the event a violation under subsection (a) of this section is not proven by a preponderance of the evidence, the cash bond will be returned to the person posting the bond. All bond money to be forfeited to the village pursuant to this section shall be held by the village deputy clerk until 30 days after an administrative penalty is imposed by the hearing officer under this section, or, if there is a judicial review, until a final judgment is rendered by a court of competent jurisdiction.

(i)  *Failure to pay penalty.* If the administrative penalty and applicable towing and storage fees are not paid within 30 days after an administrative penalty is imposed under this section against an owner of record who defaults by failing to appear at the vehicle impoundment hearing, the motor vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles. In all other cases, if the administrative penalty and applicable towing and storage fees are not paid with 30 days after the expiration of time at which administrative review of the hearing officer's determination may be sought, or within 30 days after an action seeking administrative review has been resolved in favor of the village, whichever is applicable, the motor vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles; provided that, if the motor vehicle was seized and impounded pursuant to state or federal drug asset forfeiture laws and proceedings have been instituted under state or federal drug asset forfeiture laws, the motor vehicle may not be disposed of by the village except as consistent with those proceedings.

(Code 2003, § 6-8-7)

**State Law reference—** Similar provisions, 625 ILCS 5/11-208.7.