

Enacted November 18, 2020

800 MISCELLANEOUS CRIMINAL CODE

801 GUNS, WEAPONS AND FIREARMS

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803 OPEN BOTTLES

804 DAMAGE TO PROPERTY, GRAFFITI

801 GUNS, WEAPONS AND FIREARMS

801.010 DEFINITIONS.

A. Weapon means any gun, pistol, revolver, sling-shot, sand club, metal, knuckles, daggers, dirk, bowie knife, razor, air rifle, air gun, B-B gun, spring gun, bow and arrow, switch blade, firearm or any similar device for the propulsion of shot or other metal pellet by whatever means, and any other dangerous or deadly weapon or instrument. Person means any person, firm, partnership, or corporation.

B. A weapon is "concealed" within the meaning of this ordinance whenever the fact that a person is carrying a weapon is not readily ascertainable upon observing the person.

801.020 UNLAWFUL ACTS. Except as otherwise provided herein, it shall be unlawful for any person:

- A. To have under his control for sale any weapon within the City of Willernie, except as provided in Section 801.050 of this Ordinance.
- B. To fire, discharge, release, throw, or in any other manner propel a weapon within the City of Willernie.
- C. To wear under ones clothes or conceal about one's person any weapon, or to carry a loaded weapon in any bag, sack, box, knapsack, purse, or other such carrying device which hides the presence of the weapon.

801.030 **SEIZURE, CONFISCATION, PENALTY.**

- A. If any law enforcement officer personally observes conduct in violation of 801.030, the weapon may be immediately seized and held in the custody of the City Law Enforcement Agency pending appropriate court action.
- B. If the court determines a violation of Section 801.030 has occurred, the weapon involved in such violation shall be forfeited to and confiscated by the City of Willernie.
- C. In addition to any confiscation and forfeiture under Section 801.040A, violation of this ordinance shall be a misdemeanor and result in a fine or imprisonment as authorized by the Code.

801.040 **EXCEPTIONS.** The prohibitions of this ordinance shall not apply to:

- A. **Police Officers.** Duly authorized law enforcement officers of the City when in the course and scope of their duties, nor to any officer of any court whose duty shall be to serve warrants or to make arrests, nor to persons who shall have obtained from the City Council or some other appropriate governmental agency, a license or permit to handle or have in his or her possession or control any weapon.
- B. **Encased Weapons.** Persons in possession of any weapon that is unloaded and properly encased and/or is being stored, transported, or displayed within a residence.
- C. **Sale Not in Regular Course of Business.** Persons in possession or control of any weapon for the purpose of the sale of the weapon as long as the sale is not in the regular course of said persons' business.
- D. **Licensed Person.** Persons licensed pursuant to Sections 801.060 to 801.140.

801.050 **LICENSE REQUIRED.** No persons shall deal in or sell at retail or wholesale without a license, any gun, pistol, revolver, bow and arrow, or knife.

801.060 **APPLICATION.** Application for such license shall be made in writing and filed with the Clerk and shall state the full name, age, and address of applicant, the location where the business is to be carried on, the owner of the premises, and such other information as the City Council.

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801.070 **FEE.** The fee for every such license shall be set by resolution of the City Council.

801.080 **INSPECTION.** Applicant shall permit the officers of the City to inspect the place of business described in the application and refusal by an applicant to permit such inspection shall be grounds for the Council to refuse the license.

801.090 **GRANTING OF LICENSE.** The Council may, after such investigation as it consider necessary, grant or deny the license applied for.

801.100 **TERM.** The license shall run for the period of one calendar year commencing January 1st. If application is made after January 1st, the license fee shall not be prorated and the license shall expire December 31st following.

801.110 **CONDITIONS OF LICENSE.** Every license shall be granted subject to the following conditions and all other provisions of this and any other Chapter of the City of Willernie Municipal Code or other ordinance or State Law.

A. No license shall be effective beyond the compact and contiguous space named in the license.

B. No weapon of any sort shall be sold or furnished to any person under Eighteen (18) years of age.

801.120 **REGULATIONS.** All persons licensed, and all persons required by this chapter to be licensed, shall comply with the following regulation:

A permanent written record of every sale of weapons must be kept. The name, age and address of the purchaser, the date of sale, a description and identification of the item, or items sold and the purchase price must be included in this record. City officers shall have the right to inspect this record.

801.130 **REVOCATION.** Violation of any provision of this chapter shall be grounds for revocation of such license.

802 **MINORS**

802.010 It shall be unlawful for the parent, guardian or other adult person having the care and custody of a minor to permit such minor to carry or use within the City of Willernie any weapon as defined by the Code.

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802.020 Any parent, guardian or other adult person having the care and custody of a minor who shall violate the provisions of 802.010 hereof, shall, be guilty of a misdemeanor.

803 OPEN BOTTLES

803.010 Definitions.

- A. "Intoxicating liquor" shall mean any beverage having an alcoholic content.
- B. "Public place" shall mean any land owned by any governmental unit or over which are governmental unit has an easement, including but not limited to streets, sidewalks and parks.
- C. "Open bottle" shall mean any container containing intoxicating liquor, except such original container which seal has never been opened. Any glass or other receptacle into which intoxicating liquor has been poured and is contained is an open bottle.

803.020 Violation.

- A. It shall be unlawful to be in possession of an open bottle of intoxicating liquor or a public place.
- B. It shall be unlawful to consume intoxicating liquor in any motorized vehicle or any passenger carrying appurtenance thereto, including but not limited to trailers or campers attached to pickup trucks or any other motorized vehicles except a motorized vehicle in which consumption of intoxicating liquor is allowed under state law while such vehicle is parked in a public place.

803.030 Special Permit

- A. The City Council of the City of Willernie may issue a special permit not to exceed ninety (90) days waiving any provisions of this ordinance when it deems such waivers to be consistent with public welfare and safety.
- B. Such permit must describe with specificity the conditions under

which the permit is issued including:

1. Public place which is covered by the permit.
2. The person to whom the permit is issued.
3. Any other conditions or restrictions that the City Council deems necessary to adequately provide for the public welfare and safety, including restrictions as to the type of intoxicating liquor which may be consumed and the hours in which such liquor may be served.

804 GRAFFITI AND DAMAGE TO PROPERTY

804.010 DAMAGE TO PROPERTY; GRAFFITI.

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

GRAFFITI. In addition to its usual and customary meaning of defacing walls or structures with messages or slogans, *GRAFFITI* shall also mean any letter, numeral, figure, emblem, insignia, picture, outline, character, spectacle, delineation, announcement, word, phrase, diagram, symbol, sketch, inscription or representation, wherein the contents thereof are visible to any member of the general public and which contains references to sexual activity, diagrams relating to sexual activity or sexual organs, references to criminal activities or groups which promote or are involved in criminal activity, swearing or fighting words, defamatory materials about any person, references to relationships, or any marking of any kind whatsoever which results in damage to, defacing of, marring of, or discoloring of any sidewalk, street, or other public surface, any vehicle, any equipment, lamp, lamp post or other city property, or of the exterior surface of a wall, fence, door, building or other structure, whether publicly or privately owned.

OWNER. Means and includes the owner of record of the subject property, whether public or private, at the time of the placement or discovery of the graffiti or at a subsequent time, the beneficial owner under a land trust, the contract purchaser, or that person or persons or trust in whose name the general taxes for the last preceding year were paid, except that *OWNER* shall not include the city.

(B) *Conduct prohibited.*

(1) It is unlawful for any person to inscribe, draw, or otherwise place or cause to be placed any graffiti upon the surface of any building, structure, wall or surface of other property that is publicly or privately owned.

(2) It shall be unlawful for any parent or legal guardian to knowingly permit any minor child in his or her custody or control to violate division (B)(1) of this section.

(3) The parent or legal guardian of a minor defendant who resides with the parent or legal guardian at the time of the offense may be held liable for any fine or

condition of restitution or reparation imposed by a court upon a minor for violation of this section; provided, that minor has not paid the fine or made restitution or reparation within the time ordered by the court; and further provided that the parent or legal guardian has been served with summons or notice to appear whether in the original cause or in any subsequent proceedings arising therefrom, including sentencing or collection actions, as provided by law.

(C) *Removal by owner.*

(1) *Owner's responsibility.* It shall be the duty of the owner of the structure or wall or other private property upon which any graffiti is placed or made to remove, eradicate, or eliminate the inscription or representation within 30 days of the occurrence unless granted additional time by the City Council.

(2) *Notice to remove graffiti.* In the event the owner has failed to eliminate the graffiti, the owner shall be notified by certified mail or personal notice that he or she has 30 days from the date of the notice in which to remove the graffiti. In the event that charges have been filed against the person believed responsible for placement of the graffiti and the owner can show to the city that there is a reasonable likelihood that the person will be required to make restitution or restore the premises to its previous condition, the owner may be given additional time to meet the removal requirements. In no event shall the owner be granted more than a total of six months' time to remove graffiti, but any extensions shall be based solely upon a reasonable likelihood of apprehension and conviction of the person responsible. In the absence of the reasonable likelihood, the owner is responsible for removal within the time allowed in divisions (C)(1) and (2) of this section.

(3) *List of contractors and cleaning materials.* The city may make available a list of contractors in the business of removing graffiti and list of cleaning materials generally recognized in the industry as effective in the removal of graffiti. By providing lists of contractors and cleaning materials, the city does not guarantee the quality or adequacy of work performed by anyone selected by owner or the effectiveness or safety of the materials listed, and the city expressly disclaims responsibility or liability for the quality or adequacy of the work or materials or any claims for damage or injury arising therefrom.

(D) *Removal by the city.*

(1) The city shall have the right but not the duty to remove graffiti from the exterior of private property if the owner informs the city of the presence of the graffiti and of the owner's inability to remove it. Prior to the city entering any private property to remove graffiti, the owner must sign a statement authorizing removal by the city and agreeing to pay the reasonable costs of the removal and to allow the recording of a lien against the real estate upon which the work was performed if the cost is not paid to the city within 30 days of the date of the invoice sent to the owner. The owner must also sign a release holding the city harmless from any claims or suits brought for damages pursuant to any adverse or injurious effects of such chemicals or from the actions taken by the city or its employees to remove the graffiti prior to the city commencing work on the property. If the property owner does not remove the graffiti within the time specified or extended

time requested and granted by the city or if the city is unable to perform the work at the request of the owner, the owner shall be subject to the penalties listed in division (E) of this section.

(2) If the city performs the graffiti removal pursuant to division (D)(1) of this section, it shall be entitled to a lien and to file a notice of lien against the property upon which the work was performed for the cost of the removal.

(E) *Penalty.*

(1) Upon a finding of guilty for violation of division (B) of this section, an offender shall be punished as provided in this Code. Additionally, the court may, as a condition of probation, supervision, or conditional discharge, require that the party guilty of violating the provisions of division (B) of this section make full and complete restitution to the owner of the property for expenses incurred in the removal of the graffiti or, with the consent of the owner, restore the structure, wall, building or surface to its previous condition. In addition, the court may order as a further penalty community service in the form of time to be spent in cleaning property that has been defaced by graffiti in any location in the city.

(2) Upon a finding of guilty for violation of division (C)(1) of this section, an offender shall be punished as provided in § 130.99. Each and every day that graffiti is permitted to remain beyond the time specified in division (C)(2) of this section shall constitute a separate violation.

(F) *Compliance by the city.*

(1) It is the intention of the city that graffiti discovered upon city property or public property under the jurisdiction and control of the city will be removed within the time periods for graffiti removal imposed upon other governmental bodies and owners of private property under this section. The City Council shall have the authority to order and direct the removal of graffiti.

(2) A designated city officer, or his or her designee, shall provide, no less than semi-annually, a written report to the City Council of graffiti incidents involving city property and removal efforts by the city. The report shall include at a minimum the location of the graffiti, charges filed against or convictions of offenders where relevant, the date and methods of graffiti removal undertaken by the city and the cost of the removal.