

City of Port Huron, MI
Friday, May 4, 2018

Chapter 34. Offenses

ARTICLE VI. Offenses Against Public Morals

DIVISION 1. Generally

§ 34-246. Indecent exposure.

[Code 1975, § 24-25; Code 1992, § 20-176]

It shall be unlawful to knowingly make any open or indecent exposure of his or her person or of the person of another.

§ 34-247. Language or gestures causing public disorder.

[Code 1975, § 24-30; Code 1992, § 20-177]

A person shall be deemed guilty of a misdemeanor if, with the purpose of causing public danger, alarm, disorder or nuisance or if his or her conduct is likely to cause public danger, alarm, disorder or nuisance, such person willfully uses abusive or obscene language or makes an obscene gesture to any other person when such words, by their very utterance, inflict injury or tend to incite an immediate breach of the peace and invade the right of other persons to pursue their lawful activities.

§ 34-248. Urinating or defecating in public.

[Code 1975, § 24-37; Code 1992, § 20-178]

No person shall either urinate or defecate in any public place other than designated facilities for the purpose of urinating or defecating.

§ 34-249. Certain illegal activities deemed public nuisance.

[Code 1992, § 20-179; 5-26-1992 by Ord. No. 1025; 6-12-1995 by Ord. No. 1090]

(a) Findings. The City determines that whenever illegal activity, as defined in Subsection **(b)** of this section, occurs on any property, as defined in Subsection **(b)** of this section, increased criminal activity occurs in the neighborhood surrounding the property, increased pedestrian and/or vehicular traffic occurs in the neighborhood surrounding the property, and the peace and quiet of residents living in the neighborhood surrounding the property are disturbed, thereby constituting a public nuisance.

(b)

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:

ILLEGAL ACTIVITY

Lewdness, assignation or prostitution or gambling, or using or keeping a property for the use of prostitutes or other disorderly persons or using a property for the unlawful manufacture, storing, possessing, transporting, sale, keeping for sale, bartering, furnishing or otherwise disposing of any narcotic and/or hypnotic drug and/or drug paraphernalia as defined by law or of any alcoholic liquor.

OWNER

Any person who possesses or has any legal and/or equitable interest in the property in question.

PROPERTY

Any structure, house, premises, building, vehicle, boat, aircraft or place.

- (c) Declaration of nuisance.
- (1) A property where illegal activity occurs is hereby declared a nuisance, and the furniture, fixtures and contents of any such building, vehicle, boat, aircraft, or place and all such alcoholic liquors therein are also declared a nuisance. All such narcotic and/or hypnotic drugs and nuisances shall be enjoined and abated as provided in this section.
 - (2) Any person or his or her servant, agent or employee who shall knowingly own, lease, conduct or maintain any building, vehicle or place used for illegal activity or where any illegal activity is conducted, permitted or carried on is guilty of maintaining a nuisance.
- (d) Procedure for declaration of nuisance. Whenever the City Council shall find that there has been repeated illegal activity occurring on any property, it may declare, by resolution, after notice to the owner and public hearing and recommendation by the Director of Public Safety or his or her designee, that the property is a public nuisance.
- (1) Public hearing. A public hearing before the City Council shall be held after publication of notice thereof wherein all interested parties may present opinions, evidence or other information bearing on whether the property should or should not be declared a public nuisance.
 - (2) Notice of public hearing. A notice of public hearing setting forth the date, time and location thereof shall be given in the following manner to the owner of the property at least seven but not more than 15 days prior to the public hearing:
 - a. For real property, the notice shall be personally served or sent by certified mail-restricted delivery or by alternate service as defined under the Michigan Court Rules if service by mail or personal service is unsuccessful after three diligent attempts to the grantee or vendee of the last recorded conveyancing instrument or memorandum thereof at the county register of deeds office and, if different, to the taxpayer of record as indicated in the Building Safety Division, for a rental unit, or the City Assessor's office, for an owner-occupied dwelling, and, if different, to the occupants of the premises and to any mortgagee or lienholder of record.
 - b. For personal property, the notice shall be given to the person shown to be the owner by certified record of the state or federal agency where titles to such property are required to be filed and, if different, to such other person as may be known to be in possession or control of the property and to any lienholder of record. Such notice

shall be personally served or sent by certified mail-restricted delivery or by alternate service as defined in the Michigan Court Rules if service by mail or personal service is unsuccessful after three diligent attempts.

- (e) Abatement of nuisance; costs. If the City Council determines that a property is a public nuisance, it may, by resolution, in addition to any other remedies available to the City at law or in equity:
- (1) Authorize the building safety division to prohibit the occupancy of the property by the persons occupying the premises at the time of the public nuisance by either padlocking that portion of the building that would prevent the illegal activity or boarding the property up, whichever is appropriate, for a period until such person creating the nuisance vacates the premises.
 - (2) Determine that the persons creating the nuisance shall be liable for the full cost of any personnel, including police and code compliance officers, involved in each raid subsequent to the first raid, and the full cost of any City personnel and materials involved in the boardup or padlocking and assess those costs against the persons creating the nuisance and for real property assess those costs against the real property in the same manner as a special assessment.
- (f) Persuasive presumption of public nuisance. It shall be a persuasive presumption that a property is a public nuisance if:
- (1) The property has been raided by the police and controlled substances and/or drug paraphernalia or any of the other illegal items described in the definition of the term "illegal activity" in Subsection (b) of this section have been found by the police;
 - (2) A letter, informing the addressee that controlled substances (illegal drugs) and/or drug paraphernalia or any of the other illegal activity has been found by the police at the property and the potential consequences if similar activity recurs at the property, has been:
 - a. Personally served on the owner as indicated by the last recorded conveyancing instrument filed with the register of deeds of the county and, if different, as shown on the records of the of the Building Safety Department;
 - b. For a rental dwelling, sent by certified mail-delivery restricted or alternate service to the owner of record and, if different, the owner as shown in records of the City Assessor's office as indicated in the Building Safety Division, and a return receipt card has been received by the City accepted or refused;
 - c. For an owner-occupied dwelling, sent by certified mail-delivery restricted to the owner of record, as indicated in the City Assessor's office, and a return receipt card has been received by the City accepted or refused; or
 - d. For personal property, sent by certified mail-delivery restricted to the owner of record as indicated by the state or federal agency where titles to such property are required to be filed and a return receipt card has been received by the City accepted or refused; and
 - (3) The same property is raided by the police again within six months from the date of the first raid and evidence of illegal activity is found in the subsequent raid by the police.
- (g) Receiving or admitting persons to property where illegal activity is occurring. No person shall receive or admit or offer to receive or admit any person into any place, structure, house, or vehicle or any property as defined in Subsection (b) of this section for the purpose of illegal activity as defined in Subsection (b) of this section or knowingly permit any person to remain in any such place for any such purpose.

- (h) Loitering in places where illegal activity is occurring or about to occur. No person shall knowingly loiter about a lot that is vacant, street, curb, lawn, alley, yard, apartment, store, boathouse, or other place where illegal activity is occurring and, also, in the case of narcotic and/or hypnotic drug and/or drug paraphernalia, where such illegal activity is about to occur. Some of the circumstances which may be considered to determine whether such illegal drug-related activity is about to occur would be as follows:
- (1) The person is a known unlawful drug user, possessor, or seller. For purposes of this subsection, a "known unlawful drug user, possessor, or seller" is a person who has, within the knowledge of the arresting officer, been convicted in any court within this state of any violation involving the use, possession, or sale of any controlled substance or a person who displays physical characteristics of drug intoxication or usage, such as needle tracks, or a person who possesses drug paraphernalia as defined in § 34-271 of this chapter.
 - (2) By order of court and/or probation, the person's presence is prohibited in a high drug activity geographic area.
 - (3) The person behaves in such a manner as to raise a reasonable suspicion that he or she is about to engage in or is then engaged in an unlawful drug-related activity, including by way of example only such person acting as a lookout.
 - (4) The person is physically identified by the officer as a member of a gang or association which has as its purpose illegal drug activity.
 - (5) The person transfers small objects or packages for currency in a furtive fashion.
 - (6) Such person takes flight upon the appearance of a police officer.
 - (7) The person manifestly endeavors to conceal himself or herself or any object which could reasonably be involved in an unlawful drug-related activity.
 - (8) The area involved is by public repute known to be an area of unlawful drug use and trafficking.
 - (9) The premises involved are known to have been reported to law enforcement as a place suspected of drug activity.
 - (10) Any vehicle involved is registered to a known unlawful drug user, possessor, or seller or a person for whom there is an outstanding warrant for a crime involving drug-related activity.
 - (11) The person has been previously warned and such warning has been logged in the Department of Public Safety.
- (i) Frequenting places where illegal activity is occurring. No person shall knowingly attend, frequent, operate or be an occupant of any property as defined in Subsection (b) of this section where illegal activity is occurring.
- (j) Penalty. Upon conviction of a violation of Subsection (e)(2), (g), (h) or (i) of this section, a person shall be penalized as follows:
- (1) For first violation, a fine of not less than \$175 nor more than \$500 and/or imprisonment for not less than seven days nor more than 90 days;
 - (2) For a second violation, a fine of not less than \$300 nor more than \$500 and/or imprisonment for not less than 30 days nor more than 90 days; and
 - (3)

For the third or subsequent violation, a fine of not less than \$400 nor more than \$500 and/or imprisonment for not less than 60 days nor more than 90 days, plus costs of prosecution.

- (k) Construction of section. To the extent that provisions of this section are the same or substantially the same as provisions of MCL 600.3801 et seq., court decisions construing the provisions of such statute shall be instructive in construing this section.
- (l) Challenge to decisions or orders. A party aggrieved by any final decision or order of the City Council under Subsection (d) or (e) of this section may file an original action with the county circuit court to challenge the decision or order.

§ 34-250. Use and/or possession of marijuana.

[Code 1992, § 20-180; 11-22-1999 by Ord. No. 1166; 12-8-2014 by Ord. No. 14-010]

- (a) Except as provided in Subsection (b), no person shall use or have in his or her possession or under his or her control marijuana or cannabis, as defined by MCL 333.7106, except as otherwise provided by Article 7 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.7101 et seq.).
- (b) The use, possession or transfer of less than one ounce of marijuana, on private property, or transportation of one ounce or less of marijuana, by a person who has attained the age of 21 years, shall not be considered a violation of this section.^[1]
 - [1] *Editor's Note: See also Charter § C3-13, Marijuana.*
- (c) Subsection (b) does not alter state and federal laws that criminalize said actions, or prevent arrests or prosecutions under state and federal laws.

§ 34-251. Engaging a prostitute.

[9-12-2011 by Ord. No. 1325]

Any person who engages or offers to engage the services of another person, not his or her spouse, for the purpose of prostitution, lewdness or assignation, by the payment in money or other forms of consideration, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both.

§ 34-252. Prostitution.

[9-12-2011 by Ord. No. 1325]

A person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both.

§ 34-253. Permitting a place of prostitution.

[9-12-2011 by Ord. No. 1325]

A person 16 years of age or older who receives or admits or offers to receive or admit a person into a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation,

or who knowingly permits a person to remain in a place, structure, house, building, or vehicle for the purpose of prostitution, lewdness, or assignation, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both.

§ 34-254. through § 34-270. (Reserved)

DIVISION 2. Drug Paraphernalia

§ 34-271. Definitions.

[Code 1975, § 24-60; Code 1992, § 20-191]

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

DRUG PARAPHERNALIA

All equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of state or local law. It includes but is not limited to the following:

- (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting any species of a plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances.
- (7) 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.
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances.
- (9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances.
- (10) Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances.

- (11) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances in the human body.
- (12) 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:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion mask.
 - e. Roach clips, meaning objects used to hold burning materials, such as a marijuana cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.
 - g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers.
- (b) 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 by anyone in control of the objects 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 substances.
 - (3) The proximity of the object, in time and space, to a direct violation of state law.
 - (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 or she knows intends to use the object to facilitate a violation of state or local law. The innocence of an owner or of anyone in control of the object as to a direct violation of state law shall not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.
 - (7) Instruction, 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 objects 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.

§ 34-272. Possession of drug paraphernalia.

[Code 1975, § 24-61; Code 1992, § 20-192]

It is unlawful for any person to use or to possess with intent to use drug paraphernalia 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 state or local law.

§ 34-273. Manufacture, delivery or sale of drug paraphernalia.

[Code 1975, § 24-62; Code 1992, § 20-193]

It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowing that it will be used to plant, 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 state law.

§ 34-274. Advertisement of drug paraphernalia.

[Code 1975, § 24-63; Code 1992, § 20-194]

It is unlawful for any person to place in any newspaper, magazine, handbill, sign, poster, or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

§ 34-275. Exceptions.

[Code 1975, § 24-64; Code 1992, § 20-195]

This division shall not apply to manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropractors, veterinarians, pharmacists, and embalmers in the normal legal course of their respective business or profession, nor to persons suffering from diabetes, asthma, or any other medical condition requiring self-injection.

§ 34-276. Civil forfeiture.

[Code 1975, § 24-65; Code 1992, § 20-196]

Any drug paraphernalia used, sold, possessed with intent to use or sell, or manufactured with intent to sell in violation of this division shall be seized and forfeited to the City.

§ 34-277. Delivery or sale to minor.

[Code 1975, § 24-67; Code 1992, § 20-197]

An individual 18 years of age or over who violates § 34-273 by delivering or selling to an individual under 18 years of age drug paraphernalia, knowing that it will be used to plant, 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 state law shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$250 nor more than \$500 and by imprisonment of not less than three days nor more than 90 days, in the discretion of the court.

§ 34-278. Counterfeit substances.

[9-12-2011 by Ord. No. 1325]

(a) As used in this section:

DISTRIBUTE

The actual, constructive, or attempted transfer, sale, delivery, or dispensing from one person to another of an imitation controlled substance.

IMITATION CONTROLLED SUBSTANCE

A substance that is not a controlled substance or is not a drug for which a prescription is required under federal or state law, which by dosage unit appearance including color, shape, size, or markings, and/or by representations made, would lead a reasonable person to believe that the substance is a controlled substance. However, this subsection does not apply to a drug that is not a controlled substance if it was marketed before the controlled substance that it physically resembles.

MANUFACTURE

The production, preparation, compounding, conversion, encapsulating, packaging, repackaging, labeling, relabeling, or processing of an imitation controlled substance, directly or indirectly.

(b) In addition to all logically relevant factors, the following factors as related to "representations made" shall be considered in determining whether a substance is an imitation controlled substance:

- (1) Any express or implied representation made that the nature of the substance or its use or effect is similar to that of a controlled substance.
- (2) Any express or implied representation made that the substance may be resold for an amount considerably in excess of the reasonable value of the composite ingredients and the cost of processing.
- (3) Any express or implied representation made that the substance is a controlled substance.
- (4) Any express or implied representation that the substance is of a nature or appearance that the recipient of the substance will be able to distribute the substance as a controlled substance.

- (5) That the substance's package, label, or name is substantially similar to that of a controlled substance.
 - (6) The proximity of the substance to a controlled substance.
 - (7) That the physical appearance of the substance is substantially identical to a specific controlled substance, including any numbers or codes thereon, and the shape, size, markings, or color.
- (c) A person shall not use, or possess with intent to use, an imitation controlled substance, except under the direction of a person authorized pursuant to Subsection (e). A person who violates this subsection is subject to a municipal civil infraction with a fine of not more than \$100 and costs. Upon a second or subsequent violation of this subsection, a person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$100, or both.
- (d) A default in the payment of a civil fine or costs ordered under Subsection (c) or an installment thereof may be collected by any means authorized for the enforcement of a judgment under Chapter 40 of the Revised Judicature Act of 1961, Act No. 236 of the Public Acts of 1961, being Sections 600.4001 to 600.4065 of the Michigan Compiled Laws, or under Chapter 60 of Act No. 236 of the Public Acts of 1961, being Sections 600.6001 to 600.6097 of the Michigan Compiled Laws.
- (e) This section does not apply to any person who is authorized by the administrator or the Federal Food and Drug Administration to manufacture, distribute, prescribe, or possess an imitation controlled substance for use as a placebo for legitimate medical, therapeutic, or research purposes.

§ 34-279. through § 34-310. (Reserved)