



211 Walnut Street
Neenah, WI 54956

AN ORDINANCE: By Public Services & Safety
Committee
Re: Creating Neenah Code §11-181 – Sexting
Prohibited

ORDINANCE NO. 2018-04
Introduced: March 7, 2018
Committee/Commission Action:
RECOMMENDED FOR PASSAGE

AN ORDINANCE

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

Section 1. Section 11-181 of the Code of Ordinances of the City of Neenah is created to read as follows:

Sec. 11-181: Sexting Prohibited

(a) Definitions. As used in this section, the following terms shall have the meanings indicated:

Minor: Any person under the age of 18 years.

Nudity: The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother’s breastfeeding of her baby does not under any circumstance constitute “nudity”, irrespective of whether or not the nipple is covered during or incidental to feeding.

Harmful to Minors: Any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- (1) Predominantly appeals to a prurient, shameful, or morbid interest;
- (2) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- (3) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

(b) A person commits the offense of Sexting by knowingly doing one of the following:

- (1) *Transmission*: Using any device capable of electronic data transmission to transmit to a minor any image or recording of nudity that is harmful to minors.
 - (2) *Possession*: Possessing an image or recording that was transmitted or distributed by a minor that depicts nudity that is harmful to minors.
 - a. A person does not violate this paragraph if all of the following apply:
 - 1. The person did not solicit the photograph or video.
 - 2. The person took reasonable steps to report the photograph or video to a school or law enforcement official.
 - 3. The person did not re-transmit the image or recording to a third party other than a law enforcement official.
 - (3) *Solicitation*: Solicits the transmission or distribution of any image or recording that would itself be prohibited by this ordinance.
- (c) *Application of Ordinance to First Offenses only*. No person shall be cited under the provisions of this section who has previously been convicted under this ordinance, has been charged under a state statute prohibiting the same or similar conduct, or who has completed an educational course in lieu of citation or criminal charges.
- (d) *Penalties*: Any person who shall violate this section shall pay a forfeiture of \$200 plus costs

Section 2. Severability. In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

Section 3. Repeal and Effective Date. All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Bates/Lendrum
 Adopted: 8-1 March 7, 2018
 Approved: March 7, 2018
 Published: March 15, 2018

Approved:



Dean R. Kaufert, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:
 City Attorney James G. Godlewski
 211 Walnut Street
 Neenah, WI 54956
 State Bar No. 1005210