

TITLE 11

MUNICIPAL OFFENSES¹

CHAPTER

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CHAPTER 1

MISDEMEANORS OF THE STATE ADOPTED

SECTION

11-101. Misdemeanors of the state adopted.

11-101. Misdemeanors of the state adopted. All offenses against the State of Tennessee which are committed within the corporate limits and which are defined by the state law or are recognized by the common law to be misdemeanors are hereby designated and declared to be offenses against this city also. Any violation of any such law within the corporate limits is also a violation of this section. (1988 Code, § 10-101)

¹Municipal code references

Animals and fowls: title 10.

Housing and utilities: title 12.

Fireworks and explosives: title 7.

Traffic offenses: title 15.

Streets and sidewalks (non-traffic): title 16.

CHAPTER 2

ALCOHOL¹

SECTION

11-201. Drinking beer, alcoholic beverages in public, etc.

11-202. Minors in beer places.

11-201. Drinking beer, alcoholic beverages in public, etc. It shall be unlawful for any person to drink, consume, or have an open can or bottle of beer or intoxicating liquor in or on any public street, alley, avenue, highway, sidewalk, public park, public school ground or other public place. (1988 Code, § 10-202)

11-202. Minors in beer places. No person under the age of twenty-one (21) shall loiter in or around or otherwise frequent any place where beer is sold at retail for consumption on the premises. (1988 Code, § 10-203)

¹Municipal code reference

Sale of alcoholic beverages, including beer: title 8.

State law reference

See Tennessee Code Annotated § 33-8-203 (Arrest for Public Intoxication, cities may not pass separate legislation).

CHAPTER 3

FORTUNE TELLING, ETC.

SECTION

11-301. Fortune telling, etc.

11-301. Fortune telling, etc. It shall be unlawful for any person to hold himself forth to the public as a fortune teller, clairvoyant, hypnotist, spiritualist, palmist, phrenologist, or other mystic endowed with supernatural powers. (1988 Code, § 10-303)

CHAPTER 4

OFFENSES AGAINST THE PEACE AND QUIET

SECTION

11-401. Disturbing the peace.

11-402. Anti-noise regulations.

11-401. Disturbing the peace. No person shall disturb, tend to disturb, or aid in disturbing the peace of others by violent, tumultuous, offensive, or obstreperous conduct, and no person shall knowingly permit such conduct upon any premises owned or possessed by him or under his control. (1988 Code, § 10-501)

11-402. Anti-noise regulations. Subject to the provisions of this section, the creating of any unreasonably loud, disturbing, and unnecessary noise is prohibited. Noise of such character, intensity, or duration as to be detrimental to the life or health of any individual, or in disturbance of the public peace and welfare, is prohibited.

(1) Miscellaneous prohibited noises enumerated. The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive, namely:

(a) Blowing horns. The sounding of any horn or signal device on any automobile, motorcycle, bus, truck, or vehicle while not in motion except as a danger signal if another vehicle is approaching, apparently out of control, or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for an unnecessary and unreasonable period of time.

(b) Radios, phonographs, etc. The playing of any radio, phonograph, or any musical instrument or sound device, including but not limited to loudspeakers or other devices for reproduction or amplification of sound, either independently of or in connection with motion pictures, radio, or television, in such a manner or with such volume, particularly during the hours between 11:00 P.M. and 7:00 A.M., as to annoy or disturb the quiet, comfort, or repose of persons in any office or hospital, or in any dwelling, hotel, or other type of residence, or of any person in the vicinity.

(c) Yelling, shouting, etc. Yelling, shouting, whistling, or singing on the public streets, particularly between the hours of 11:00

P.M. and 7:00 A.M., or at any time or place so as to annoy or disturb the quiet, comfort, or repose of any person in any hospital, dwelling, hotel, or other type of residence, or of any person in the vicinity.

(d) Pets. The keeping of any animal, bird, or fowl which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.

(e) Use of vehicle. The use of any automobile, motorcycle, truck, or vehicle so out of repair, so loaded, or in such manner as to cause loud and unnecessary grating, grinding, rattling, or other noise.

(f) Blowing whistles. The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger, or upon request of proper city authorities.

(g) Exhaust discharge. To discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motor vehicle, or boat engine, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(h) Building operations. The erection (including excavation), demolition, alteration, or repair of any building in any residential area or section or the construction or repair of streets and highways in any residential area or section, other than between the hours of 7:00 A.M. and 6:00 P.M. on week days, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the building inspector granted for a period while the emergency continues not to exceed thirty (30) days. If the building inspector should determine that the public health and safety will not be impaired by the erection, demolition, alteration, or repair of any building or the excavation of streets and highways between the hours of 6:00 P.M. and 7:00 A.M., and if he shall further determine that loss or inconvenience would result to any party in interest through delay, he may grant permission for such work to be done between the hours of 6:00 P.M. and 7:00 A.M. upon application being made at the time the permit for the work is awarded or during the process of the work.

(i) Noises near schools, hospitals, churches, etc. The creation of any excessive noise on any street adjacent to any hospital or adjacent to any school, institution of learning, church, or court while the same is in session.

(j) Loading and unloading operations. The creation of any loud and excessive noise in connection with the loading or unloading of any vehicle or the opening and destruction of bales, boxes, crates, and other containers.

(k) Noises to attract attention. The use of any drum, loudspeaker, or other instrument or device emitting noise for the purpose of attracting attention to any performance, show, or sale or display of merchandise.

(l) Loudspeakers or amplifiers on vehicles. The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other purposes.

(2) Exceptions. None of the terms or prohibitions hereof shall apply to or be enforced against:

(a) City vehicles. Any vehicle of the city while engaged upon necessary public business.

(b) Repair of streets, etc. Excavations or repairs of bridges, streets, or highways at night, by or on behalf of the city, the county, or the state, when the public welfare and convenience renders it impracticable to perform such work during the day.

(c) Noncommercial and nonprofit use of loudspeakers or amplifiers. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character and in the course of advertising functions sponsored by nonprofit organizations. However, no such use shall be made until a permit therefor is secured from the board of mayor and aldermen. Hours for the use of an amplifier or public address system will be designated in the permit so issued and the use of such systems shall be restricted to the hours so designated in the permit. (1988 Code, § 10-502)

CHAPTER 5

INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL

SECTION

11-501. Impersonating a government officer or employee.

11-502. False emergency alarms.

11-503. Escape from custody or confinement.

11-504. Resisting or interfering with an officer or fire fighter.

11-501. Impersonating a government officer or employee. No person other than an official police officer of the city shall wear the uniform, apparel, or badge, or carry any identification card or other insignia of office like or similar to, or a colorable imitation of that adopted and worn or carried by the official police officers of the city. Furthermore, no person shall deceitfully impersonate or represent that he is any government officer or employee. (1988 Code, § 10-602)

11-502. False emergency alarms. It shall be unlawful for any person intentionally to make, turn in, or give a false alarm of fire, or of need for police or ambulance assistance, or to aid or abet in the commission of such act. (1988 Code, § 10-603)

11-503. Escape from custody or confinement. It shall be unlawful for any person under arrest or otherwise in custody of or confined by the city to escape or attempt to escape, or for any other person to assist or encourage such person to escape or attempt to escape from such custody or confinement. (1988 Code, § 10-601)

11-504. Resisting or interfering with an officer or fire fighter. It shall be unlawful for any person knowingly to resist or in any way interfere with or attempt to interfere with any police officer or fire fighter if such officer is in the discharge or apparent discharge of his duty. (1988 Code, § 10-604)

CHAPTER 6

FIREARMS, WEAPONS AND MISSILES

SECTION

11-601. Air rifles, etc.

11-602. Throwing missiles.

11-603. Weapons and firearms generally.

11-601. Air rifles, etc. It shall be unlawful for any person in the city to discharge any air gun, air pistol, air rifle, "BB" gun, or sling shot capable of discharging a metal bullet or pellet, made of metal, plastic, or any other kind of material, whether propelled by spring, compressed air, expanding gas, explosive, or other force-producing means or method. (1988 Code, § 10-701)

11-602. Throwing missiles. It shall be unlawful for any person maliciously to throw any stone, snowball, bottle, or any other missile upon or at any vehicle, building, tree, or other public or private property or upon or at any person. (1988 Code, § 10-702)

11-603. Weapons and firearms generally. It shall be unlawful for any unauthorized person to discharge a firearm within the municipality. (1988 Code, § 10-703)

CHAPTER 7

TRESPASSING, MALICIOUS MISCHIEF AND INTERFERENCE
WITH TRAFFIC

SECTION

11-701. Trespassing.

11-702. Malicious mischief.

11-703. Interference with traffic.

11-701. Trespassing. (1) On premises open to the public.

(a) It shall be unlawful for any person to defy a lawful order, personally communicated to him by the owner or other authorized person, not to enter or remain upon the premises of another, including premises which are at the time open to the public.

(b) The owner of the premises, or his authorized agent, may lawfully order another not to enter or remain upon the premises if such person is committing, or commits, any act which interferes with, or tends to interfere with, the normal, orderly, peaceful or efficient conduct of the activities of such premises.

(2) On premises closed or partially closed to public. It shall be unlawful for any person to knowingly enter or remain upon the premises of another which is not open to the public, notwithstanding that another part of the premises is at the time open to the public.

(3) Vacant buildings. It shall be unlawful for any person to enter or remain upon the premises of a vacated building after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.

(4) Lots and buildings in general. It shall be unlawful for any person to enter or remain on or in any lot or parcel of land or any building or other structure after notice against trespass is personally communicated to him by the owner or other authorized person or is posted in a conspicuous manner.

(5) Peddlers, etc. It shall also be unlawful and deemed to be a trespass for any peddler, canvasser, solicitor, transient merchant, or other person to fail to promptly leave the private premises of any person who requests or directs him to leave. (1988 Code, § 10-801)

11-702. Malicious mischief. It shall be unlawful and deemed to be malicious mischief for any person willfully, maliciously, or wantonly to damage, deface, destroy, conceal, tamper with, remove, or withhold real or personal property which does not belong to him. (1988 Code, § 10-802)

11-703. Interference with traffic. It shall be unlawful for any person to stand, sit, or engage in any activity whatever on any public street, sidewalk, bridge, or public ground in such a manner as to prevent, obstruct, or interfere with the free passage of pedestrian or vehicular traffic thereon. (1988 Code, § 10-803)

CHAPTER 8

MISCELLANEOUS

SECTION

11-801. Abandoned refrigerators, etc.

11-802. Caves, wells, cisterns, etc.

11-803. Curfew.

11-804. Cruising.

11-801. Abandoned refrigerators, etc. It shall be unlawful for any person to leave in any place accessible to children any abandoned, unattended, unused, or discarded refrigerator, icebox, or other container with any type latching or locking door without first removing therefrom the latch, lock, or door. (1988 Code, § 10-902)

11-802. Caves, wells, cisterns, etc. It shall be unlawful for any person to permit to be maintained on property owned or occupied by him any cave, well, cistern, or other such opening in the ground which is dangerous to life and limb without an adequate cover or safeguard. (1988 Code, § 10-901)

11-803. Curfew. It shall be unlawful for any person to loiter or linger upon the public streets, alleys, sidewalks, and other public property, or upon the private property of other persons without the consent of said persons, within the corporate limits of the City of Dayton, from 12:01 A.M., until dawn.

The city council shall have the authority to extend the hours of curfew for a period of time earlier than 12:01 A.M., until dawn, by resolution, during times of emergency. The hours prescribed in the resolution shall be published in a local paper, or by radio, prior to the effective date. (1988 Code, § 10-804)

11-804. Cruising. (1) Owners and operators of shopping centers and restaurants in the city shall post signs on and about the parking areas and private roadways on their properties giving notice that cruising on the property is prohibited.

(2) The term "cruising" as used in this section is defined as the continual, repeated, and aimless operation of a motor vehicle back and forth, through, around, or within the parking areas and private roadways of a shopping center or restaurant after 6 o'clock P.M. until the following sunrise other than for the purpose of entering or leaving a parking space where the vehicle has been parked while the driver or passenger is or was visiting the shopping center, business, or restaurant.

(3) It shall be a violation of this section and a trespass for any person to cruise on any shopping center or restaurant parking area, or private roadways that have been posted by the owner or operator as authorized in this section. (1988 Code, § 10-805)

CHAPTER 9

GAMBLING

SECTION

11-901. Gambling.

11-902. Promotion of gambling.

11-901. Gambling. It shall be unlawful for any person to play at any game of hazard or chance for money or other valuable thing or to make or accept any bet or wager for money or other valuable thing. (1988 Code, § 10-301)

11-902. Promotion of gambling. It shall be unlawful for any person to encourage, promote, aid, or assist the playing at any game, or the making of any bet or wager, for money or other valuable thing, or to possess, keep, or exhibit for the purpose of gambling, any gaming table, device, ticket, or any other gambling paraphernalia. (1988 Code, § 10-302)

CHAPTER 10

OBSCENITY, MORALS

SECTION

- 11-1001. Definitions.
- 11-1002. Pandering obscenity.
- 11-1003. Wholesale pandering of obscenity.
- 11-1004. Promoting or wholesale promoting a sexual device.
- 11-1005. Making obscene drawings.
- 11-1006. Disseminating matter harmful to minors.
- 11-1007. Unlawful exhibition or display of harmful materials to minors.
- 11-1008. Unlawful exhibition or harmful performances at outdoor theaters.
- 11-1009. Deception to obtain material harmful to minors.
- 11-1010. Compelling acceptance of objectionable materials.
- 11-1011. Commercial nudity.
- 11-1012. Sexual exploitation of children.
- 11-1013. Presumption and evidence of knowledge.
- 11-1014. Injunctive actions.
- 11-1015. Jury instruction - evidence of pandering.
- 11-1016. Legislative purpose.

11-1001. Definitions. As used in this section, unless the context clearly indicates otherwise:

(1) "Community" when used in connection with "contemporary community standards," means the geographical area within the jurisdiction of the court hearing the case.

(2) "Harmful to minors" includes any material or performance, whether through pictures, photographs, drawings, writings, cartoons, recordings, telephonic transmissions, films, video tapes or other such medium, which is harmful to minors if the following apply:

(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, appeals to the prurient interest of minors in sex.

(b) The material or performance depicts or describes sexually explicit nudity, sexual conduct, sadomasochistic sexual abuse or lewd exhibition of the genitals, in a way which is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors.

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(3) "Knowledge of character" means having general knowledge or reason to know, or a belief or a ground for belief which warrants further inspection or inquiry, of the nature and character of the material or performance involved. A person has such knowledge when he or she knows or is aware that the material or performance contains, depicts or describes sexually explicit nudity, sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals, whichever is applicable, whether or not such person has precise knowledge of the specific contents thereof. Such knowledge may be proved by direct or circumstantial evidence, or both.

(4) "Material" means any book, magazine, newspaper, advertisement, pamphlet, poster, print, picture, figure, image, drawing, description, motion picture film, phonographic record or recording tape, video tape or other tangible thing capable of producing or reproducing an image, picture, sound or sensation through sight, sound or touch.

(5) "Minor" means any person under the age of eighteen (18) years.

(6) "Obscene" means any material or performance, whether through pictures, photographs, drawings, writings, cartoons, recordings, films, video tapes, telephonic transmissions, or other medium to which the following apply:

(a) The average person, applying contemporary adult community standards, would find that the material or performance taken, as a whole, appeals to the prurient interest.

(b) The material or performance depicts or describes, in a patently offensive way, sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals.

(c) The material or performance, taken as a whole, lacks serious literary, artistic, political or scientific value.

(7) "Performance" means any motion picture, film, video tape, played record, phonograph or tape, broadcast preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before any audience of one or more, or transmission by way of electrical, radio, television, telephone, or other communicative device or facility to a known closed or open circuit audience of one or more or to the general public.

(8) "Person" means any individual, corporation, cooperative, company, partnership, firm, association, joint venture, business, establishment, organization or other legal entity of any kind.

(9) "Promote" means to manufacture, issue, sell, give, provide, advertise, produce, reproduce, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, display, exhibit, or advertise or to offer or agree, or possess with intent, to do the foregoing.

(10) "Prurient" means a lascivious, unhealthy, degrading, shameful, or morbid interest in sexual conduct, sexually explicit nudity, sadomasochistic sexual abuse, or lewd exhibition of the genitals. Materials or performances may

be deemed to appeal to the prurient interest when they have a tendency to excite lascivious thoughts or desires or when they are designed, marketed, promoted, or disseminated to cater or appeal to such an interest. Where the material or performance is designed for and primarily disseminated or promoted to a clearly defined deviant sexual group, rather than the public at large, the prurient-appeal requirement is satisfied if the dominant theme of the material or performance, taken as a whole, appeals to the prurient interest in sex of the members of that intended and probable recipient group.

(11) "Sadomasochistic sexual abuse" means actual or simulated flagellation, rape, torture, or other physical or sexual abuse, by or upon a person who is nude or partially nude, or the condition being fettered, bound or otherwise physically restrained, for the actual or simulated purpose of sexual gratification or abuse or represented in the context of a sexual relationship.

(12) "Sexual conduct" means ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons, or a person or persons and an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, anilingus, or physical contact with a person's nude or partially nude genitals, pubic area, perineum, anal region, or if the person is female, a breast.

(13) "Sexual device" means any artificial human penis, vagina, or anus, or other device primarily designed, promoted, or marketed to physically stimulate or manipulate the human genitals, pubic area, perineum or anal area, including dildoes, penisators, vibrators, vibrillators, penis rings and erection enlargement or prolonging creams, jellies, or other such chemicals or preparations.

(14) "Sexually explicit nudity" means the sexually oriented and explicit showing, by any means, including but not limited to, close-up views, poses, or depictions in such position or manners as to present or expose such areas to prominent, focal or obvious viewing attention, of any of the following: post-pubertal, fully or partially developed, human female breast with less than a fully opaque covering of any portion thereof below the top of the areola; the depiction of covered human male genitals in a discernible turgid state; or lewd exhibition of the human genitals, pubic area, perineum, buttocks, or anal region with less than a fully opaque covering.

(15) "Visibly displayed" means that the material or performance is visible on a billboard, viewing screen, marquee, newsstand, display rack, window, show case, display case, or other similar display area that is visible from any part of the premises where a minor is or may be allowed, permitted or invited, as part of the general public or otherwise, or that is visible from a public street, sidewalk, park, alley, residence, playground, school, or other place to which a minor, as part of the general public or otherwise, has unrestrained and reasonably anticipated access and presence.

(16) "Wholesale promote" means to promote for purpose of resale. (1988 Code, § 10-1001)

11-1002. Pandering obscenity. (1) No person with knowledge of the character of the material or performance involved, shall do any of the following:

(a) Create, photograph, produce, reproduce, or publish any obscene material when the offender knows that the material is to be commercially or publicly promoted or when reckless in that regard.

(b) Exhibit or advertise for promotion or promote any obscene material.

(c) Create, photograph, tape, direct, produce, or reproduce any obscene performance when the offender knows that it is to be commercially or publicly promoted or when reckless in that regard.

(d) Advertise an obscene performance for presentation, or promote or participate in promoting any obscene performance when such performance is presented publicly or when admission is charged, or when presented or to be presented before an audience of one or more.

(e) Possess or control any obscene material with the purpose to violate this section.

(f) Participate in the acting or posing for any obscene material or performance or portion thereof which is obscene when the offender knows that it is to be commercially or publicly promoted or when reckless in that regard.

(2) It is an affirmative defense to a charge under this section that the material or performance involved was disseminated or promoted for a bona fide medical, psychological, legislative, judicial, or law enforcement purpose, by or to a physician, psychologist, legislator, judge, prosecutor, law enforcement officer or other person having such a bona fide interest in such material or performance.

(3) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for his code. (1988 Code, § 10-1002)

11-1003. Wholesale pandering of obscenity. (1) No person, with knowledge of the character of the material involved, shall wholesale promote any obscene material or offer or agree, or possess with intent, to wholesale promote any obscene material.

(2) It is an affirmative defense to a charge under this section that the material or performance involved was wholesale promoted for a bona fide medical, psychological, legislative, judicial or law enforcement purpose, by or to a physician, psychologist, legislator, judge, prosecutor, or law enforcement officer.

(3) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1003)

11-1004. Promoting or wholesale promoting a sexual device.

(1) No person, with knowledge that the device involved is a sexual device, shall do either of the following:

(a) Promote, or offer or agree, or possess with intent to promote, any sexual device.

(b) Wholesale promote, or offer or agree or possess with intent to wholesale promote, any sexual device.

(2) It is an affirmative defense to a charge under this section that the sexual device was promoted or wholesale promoted for a bona fide medical, psychological, legislative, judicial, or law enforcement purpose by or to a physician, psychologist, legislator, judge, prosecutor, or law enforcement officer.

(3) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1004)

11-1005. Making obscene drawings. (1) No person shall make, draw, color, paint, scratch, cut, or otherwise produce any obscene drawing, writing, graffiti, picture, or other material in public or on a public place, including a public or private building, billboard, utility pole, wall, sidewalk, roadway, or poster.

(2) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1005)

11-1006. Disseminating matter harmful to minors. (1) No person, with knowledge of its character, shall promote or otherwise furnish or present to a minor any material or performance which is obscene or harmful to minors, or possess or control any such materials with the purpose or intent to violate this section.

(2) The following are affirmative defenses to a charge under this section, involving material or performance which is harmful to minors but not obscene:

(a) The minor exhibited to the defendant or his agent or employee a draft card, driver's license, birth certificate, marriage license, or other governmental or educational document purporting to show that the minor was eighteen (18) years of age or over and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the minor was under the age of eighteen (18) and did not rely

solely upon the oral allegations or representations of the minor as to his or her age.

(b) At the time the material or performance was promoted or otherwise furnished or presented to the minor involved, a parent or lawful guardian of the minor, with knowledge of its character, accompanied the minor or consented to the material or performance being promoted or otherwise furnished or presented to the minor.

(3) The following are affirmative defenses to a charge under this section, involving material or a performance which is obscene or harmful to minors:

(a) The defendant is the parent, lawful guardian, or spouse of the minor involved.

(b) The material or performance was promoted or otherwise furnished or presented to a minor for a bona fide medical, psychological, judicial, or law enforcement purpose by a physician, psychologist, judge, prosecutor, or law enforcement officer.

(4) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1006)

11-1007. Unlawful exhibition or display of harmful materials to minors.

(1) No person, having custody, control, or supervision of any business or commercial establishment or premises, with knowledge of the character of the material involved, shall do any of the following:

(a) Visibly display, exhibit, or otherwise expose to view in that part of the premises where a minor is or may be allowed, permitted, or invited as part of the general public or otherwise, all or any part of any book, magazine, newspaper, or other form of material which is harmful to minors.

(b) Visibly display, exhibit, or otherwise expose to view all or any part of such material which is harmful to minors in any business or commercial establishment where minors, as part of the general public or otherwise, are, or will probably be, exposed to view all or any part of such material from any public or private place.

(c) Hire, employ, or otherwise place, supervise, control, or allow in any business or commercial establishment or other place, any minor under circumstances which would cause, lead, or allow such minor to engage in the business or activity of promoting or otherwise handling such material which is harmful to minors, either to or for adults or minors.

(2) The following are affirmative defenses to a charge under this section:

(a) The minor exhibited to the defendant or his agent or employee a draft card, driver's license, birth certificate, marriage license, or other governmental or educational document purporting to show that the minor was eighteen (18) years of age or over, and the person to whom the document was exhibited did not otherwise have reasonable cause to believe that the minor was under the age of eighteen (18) and did not rely solely upon the oral allegations or representations of the minor as to his or her age or as to the knowing consent of the minor's parent or lawful guardian.

(b) At the time the material was visibly displayed or otherwise furnished or presented to the minor involved, a parent or lawful guardian of the minor, with knowledge of this kind of material, accompanied the minor or consented to the material being visibly displayed or otherwise furnished or presented to the minor.

(c) The defendant is the parent, lawful guardian, or spouse of the minor involved.

(3) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1007)

11-1008. Unlawful exhibition of harmful performances at outdoor theaters. (1) No person having custody, control, or supervision of any outdoor or drive-in motion picture theater or arena, with knowledge of the character of the performance involved, shall knowingly present or participate in presenting the exhibition of a performance which is harmful to minors upon any outdoor or drive-in motion picture theater or arena screen, when the screen is visible from a public highway or street, sidewalk, park, alley, residence, playground, school, or other such place to which minors as a part of the general public or otherwise, have unrestrained and reasonably anticipated access and presence.

(2) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general clause for this code. (1988 Code, § 10-1008)

11-1009. Deception to obtain material harmful to minors. (1) No person, for the purpose enabling a minor to obtain any material or gain admission to any performance which is obscene or harmful to minors, shall do either of the following:

(a) Falsely represent that he or she is parent, guardian, or spouse of the minor.

(b) Furnish the minor with any identification or document purporting to show that the minor is eighteen (18) years of age or over.

(2) No minor, for the purpose of obtaining any material or gaining admission to any performance which is harmful to minors, shall do either of the following:

(a) Falsely represent that he or she is eighteen (18) years of age or over.

(b) Exhibit any identification or document purporting to show that he or she is eighteen (18) years of age or over.

(3) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1009)

11-1010. Compelling acceptance of objectionable materials.

(1) No person, as a condition to the sale or delivery of any material or goods of any kind, shall, over the objection of the purchaser or consignee, require the purchaser or consignee to accept any other material reasonably believed to be obscene or which if furnished or presented to a minor would be harmful to minors.

(2) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1010)

11-1011. Commercial nudity. (1) In any establishment or premises where alcoholic beverages are dispensed, no person shall knowingly provide service without a fully opaque cloth covering of the human male or female genitals, pubic hair, buttocks, anal region, or post-pubertal female breast below the top of the areola, where the person is exposed to the view of the public, patrons, guests, invitees, or customers.

(2) No person, being the owner, lessor, lessee, or having control, custody, or supervision of any commercial business, establishment, tavern, store, shop, massage parlor, or other place of public accommodation, commerce, or amusement, shall recklessly use or promote the use of, or permit or tolerate others to use or promote the use of, the premises in violation of subsection (1) of this section, or if given or having actual notice of the violation, negligently fail or refuse to stop the violation, or to cause an agent, employee, or other subordinate to stop the violation, or to notify a law enforcement agency of the violation.

(3) "Provide service" means the provisions or allowance of services, advertisement, or entertainment to the public, patrons, guests, invitees, or customers, including hostessing, bartending, food or beverage servicing or preparing, table setting or clearing, waitering or waitressing, singing, dancing, massaging, or counseling, and includes beauty or figure contests, modeling, or exhibitions.

(4) It is an affirmative defense to a charge under this subsection if any fully or partial nudity has serious literary, artistic, political, or scientific value.

(5) Every person found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1011)

11-1012. Sexual exploitation of children. (1) No person, with knowledge of the character of the material or performance involved, shall employ, consent to, authorize, direct, or otherwise induce or allow a minor to engage or participate in the production, filming, photographing, acting, posing, or other manner of making any material or performance, when the minor will or does engage or participate in sexually explicit nudity, sexual conduct, or sadomasochistic sexual abuse.

(2) No person, with knowledge of the character of the material or performance involved, shall promote or wholesale promote any material of performance which includes, depicts, represents, or contains a minor engaged or participating in the acting or posing or otherwise being the subject of sexually explicit nudity, sexual conduct, or sadomasochistic sexual abuse.

(3) No person, with knowledge of the character of the material or performance involved, shall promote or wholesale promote any obscene material or performance which includes, depicts, represents, or contains a minor engaged or participating in the acting or posing, or otherwise being the subject of sexually explicit nudity, sexual conduct, or sadomasochistic sexual abuse.

(4) It is an affirmative defense to a charge under subsection (1) that the minor exhibited to the defendant, prior to engaging or participating in the material or performance, a draft card, driver's license, birth certificate, or other governmental or educational document purporting to show that the minor was eighteen (18) years of age or over and the defendant did not otherwise have reasonable cause to believe or suspect that the minor was under the age of eighteen (18) and did not rely solely upon the oral allegation or representation of the minor as to his or her age.

(5) It is an affirmative defense to a charge under subsections (2) and (3) of this section that the defendant, in good faith, had reasonably factual basis to conclude that the subject of the sexually explicit nudity, sexual conduct, or sadomasochistic sexual abuse was not a minor but was a fact over the age of eighteen (18) years.

(6) In any prosecution or action under this section, the court, as trier of fact, shall make the determination of whether the subject of the sexually explicit nudity, sexual conduct, or sadomasochistic sexual abuse is, beyond a reasonable doubt, a minor, and the following methods of proof shall be competent for the admission of direct or circumstantial evidence on this issue:

- (a) Personal inspection or testimony of the minor or alleged minor.
 - (b) Testimony of the parent, lawful guardian, teacher, or other personal acquaintance of the minor or alleged minor.
 - (c) Inspection of the material or performance involved.
 - (d) Testimony of a witness to the production, filming, photographing, acting, posing, or other manner of making the material or performance involved or testimony of a physician, scientist, or other expert witness as to the age or appearance of the minor or alleged minor.
 - (e) Any other method authorized by law or by the rules of evidence.
- (7) The subject of the sexual exploitation is presumed to be a minor if he or she is portrayed, advertised, marketed, cast, represented, or otherwise promoted or appears to be a minor.
- (8) Every person who is found guilty of violating this section is guilty of pandering obscenity and shall be punished in accordance with the general penalty clause for this code. (1988 Code, § 10-1012)

11-1013. Presumption and evidence of knowledge. (1) An owner or manager, or his agent or employee, or a bookstore, news-stand, theater, distributing firm, warehouse, or other commercial establishment engaged in promoting materials or performances or distributing or handling materials for promotion or wholesale promotion, may be presumed to have knowledge of the character of the material or performance involved if he or she has actual or constructive knowledge of the nature of the material or performance, whether or not he or she has precise knowledge of its contents.

(2) In any prosecution or action in which knowledge of the character of material or a performance or knowledge that a device is a sexual device is at issue, it is evidence of such knowledge that actual notice of the nature of the material was previously provided. Without limitation on the manner in which this notice may be given, actual notice of the character of material or a performance may be given in writing by the state's attorney, district attorney, or assistant district attorney, or similar prosecuting authority of the jurisdiction in which the person to whom the notice is directed does business. The notice, regardless of the manner in which it is given, shall identify the sender, identify the material or performance, state whether it is obscene or harmful to minors and bear the date it was given. The notice shall also give a brief description of the contents of the material or performance and indicate whether the material or performance contains sexually explicit nudity, sexual conduct, sadomasochistic sexual abuse, or lewd exhibition of the genitals or is a sexual device.

(3) In the prosecution or action in which knowledge of the character of material or a performance or knowledge that a device is a sexual device is at issue, evidence of any of the following is relevant proof of such knowledge:

(a) The sexually explicit nature and character of the material or performance involved is advertised, marketed, or otherwise publicly exploited for the purpose of attracting patrons or purchasers.

(b) The bookstore, newsstand, theater, distributor, firm, warehouse, or establishment is advertised, held out, or otherwise represented as possessing sexually explicit materials for promotion or wholesale promotion or as promoting or wholesale promoting a sexually explicit performance.

(c) The bookstore, newsstand, theater, distributor, firm, warehouse, or establishment is primarily engaged in promoting or wholesale promoting sexually explicit materials or sexually explicit performances.

(4) In any prosecution or action under this section knowledge of the character of the material or performance involved may be proved by direct or circumstantial evidence, or both. (1988 Code, § 10-1013)

11-1014. Injunctive actions. (1) When there is reason to believe that any person is violating, is about to violate, or possesses any material with intent to violate any of the provisions of this chapter, the state's attorney, the district attorney general, or any assistant district attorney general may institute and maintain an action for preliminary and permanent injunctive relief, to enjoin the violation in Circuit or Chancery Court. No bond shall be required of the official bringing the action and the official and the political subdivision shall not be liable for costs, or damages, or other court costs, by reason of the injunctive orders not being granted or where judgment is entered in favor of the defendant by the trial or an appellate court.

(2) The court may hold the hearing on the preliminary injunction within two (2) days, not counting Saturdays, Sundays, or legal holidays, after service of the complaint and motion for preliminary injunction upon the defendant. The court shall then issue an order granting or denying the preliminary inspection within twenty-four (24) hours after the conclusion of the hearing regarding the material or performance adjudged obscene or harmful to minors. No right of jury trial shall attach to the hearing on a preliminary injunction but the duty rests on the plaintiff to prove by clear and convincing evidence that the offense is being or is about to be committed. If the defendants who have been served fail to appear at the hearing, then a preliminary injunction shall be issued on the date of the hearing. The finding of the court regarding the obscenity or that the subject matter is harmful to minors at the preliminary injunction stage shall not be binding upon the final order on the

merits at trial on the permanent injunction. The court shall reserve the right to reconsider its preliminary finding based upon any further evidence or testimony which may be introduced at the trial. If the court enters a final order denying a permanent injunction on the basis that the material or performance is not obscene or harmful to minors as a whole, then no contempt shall be found for violation of the preliminary injunction relating thereto.

(3) The court shall set the matter for a hearing on the permanent injunction according to the provisions of the rules or other orders of the court. The defendant shall have the right to demand a hearing on a permanent injunction within ten (10) days of the issue or denial of the preliminary injunction. Either party shall have the right of trial by jury on the issue of the obscenity or harmful nature to minors of the material or performance involved at the hearing for the permanent injunction, and the jury shall render a special and separate verdict as to the nature of the subject matter. The duty rests on the plaintiff to prove by clear and convincing evidence that the offense is being or is about to be committed by the defendants. It shall be the duty of the trier of fact to determine all issues of fact concerning the obscene or harmful to minors nature of the subject matter, including the elements of appeal to prurient interest, community standards, patent offensiveness, and serious value, without the need for expert testimony or other evidence other than the material or performance itself. Expert testimony or other evidence on these issues may be entered by either party and will be entitled to such weight as the trier of fact deems appropriate under the circumstances. The court shall then issue an order granting or denying the permanent injunction within five (5) days after the conclusion of the trial, regarding the material or performance adjudged obscene or harmful to minors.

(4) In the event that the court issues a permanent injunction it shall also issue an order directing a law enforcement officer to seize and hold all copies of the subject matter which are in the possession of the defendants. Such material shall be held until the exhaustion of all appellate remedies and may then be disposed of by order of the court.

(5) Violation of a preliminary or permanent injunction shall be punishable as contempt of court. (1988 Code, § 10-1014)

11-1015. Jury instruction - evidence of pandering. The following instructions may be read to the jury in an action under this chapter:

"In determining the question of whether the allegedly obscene material or performance involved, when taken as a whole, lacks serious literary, artistic, political, or scientific value, the jury may consider the circumstances of promotion, advertisement, or editorial intent and particularly whether such circumstances indicate that the material or performance was being

commercially exploited for the sake of its prurient appeal and whether any serious value claimed was, under the circumstances, a pretense or reality."

"Such evidence is probative with respect to the nature of the material or performance and if the jury concludes that the sole emphasis was on the sexually provocative aspect, this can justify the conclusion that the material or performance is lacking in serious literary, artistic, political, or scientific value."

"The weight, if any, which such evidence is entitled is a matter for the jury to determine." (1988 Code, § 10-1015)

11-1016. Legislative purpose. Nothing in this chapter shall be presumed to invalidate, supersede, repeal, prevent, or preempt any statute of the State of Tennessee covering the subject matter of this section. (1988 Code, § 10-1016)

CHAPTER 11

POLITICAL CAMPAIGN SIGNS

SECTION

- 11-1101. Definitions.
- 11-1102. Posting in certain public places prohibited.
- 11-1103. Posting - time limits.
- 11-1104. Removal of legal signs.
- 11-1105. Authority of city manager.
- 11-1106. Removal procedure.
- 11-1107. Storage - notice - return.
- 11-1108. Removal of sign charge.
- 11-1109. Persons responsible.
- 11-1110. Illegal signs - public nuisance.

11-1101. Definitions. Unless it appears from the context that a different meaning is intended, the following words shall have the meaning given in this section:

- (1) "City" means the City of Dayton, a municipal corporation in the State of Tennessee.
- (2) "Person" means any person, firm, partnership, association, corporation, company, or organization of any kind.
- (3) "Political campaign sign" means any sign urging the election or defeat of any candidate seeking any political office or urging the passage or defeat of any ballot measure, but does not mean or include any billboard owned or maintained by a commercial firm or advertising company.
- (4) "Sign" includes any bill, poster, placard, handbill, flyer, painting, sign or other similar object in any form whatsoever which contains printed or written matter in words, symbols or pictures or any combination thereof. (1988 Code, § 10-1101)

11-1102. Posting in certain public places prohibited. It is unlawful for any person to post, place or affix a political campaign sign:

- (1) On any building owned, operated, or leased by a public agency.
- (2) On or within the confines of any public park, recreational area or other type of landscaped grounds owned or operated by the city or other governmental agency, or upon any flagpole or tree owned by a public agency.
- (3) Upon any traffic control sign or device, such as stop lights and their standards, stop signs, yield signs, one-way street signs or any other type of sign or device which directs traffic, or on the supporting post of such sign.
- (4) On any utility pole, either owned or leased by a public agency.

(5) Which in any way blocks the view of a traffic control sign or device by motorist or pedestrians in such a manner as to create a hazard.

(6) Which in any way poses a hazard to motorist, pedestrians or cyclist using the public right of ways, such as not being high enough to allow pedestrians, cyclist to pass by unobstructed, or protruding into a street or sidewalk in such a manner as to interfere with the safe passage of the public. (1988 Code, § 10-1102)

11-1103. Posting - time limits. It is unlawful for any person to post a political campaign sign more than ninety (90) days prior to the election for which the sign is posted or to fail to remove a political campaign sign within thirty (30) days after the election for which the sign was posted. (1988 Code, § 10-1103)

11-1104. Removal of legal signs. The city manager or his authorized agents, shall remove any political sign found posted within the corporate limits of the city which is in violation of §§ 11-1102 or 11-1103. (1988 Code, § 10-1104)

11-1105. Authority of city manager. For the purpose of removing political campaign signs, the city manager or his authorized agents are empowered to enter upon the property where the signs are posted, and the city manager is further authorized to enlist the aid or assistance of any other department of the city and to secure legal process to the end that all such signs shall be expeditiously removed from any property where posted. (1988 Code, § 10-1105)

11-1106. Removal procedure. When the city manager or his agents find that a political campaign sign has been posted in violation of §§ 11-1102 or 11-1103, he shall attempt to contact the candidate, committee or person responsible for the posting of such sign. If successful, he shall give twenty-four (24) hours advanced telephonic notice of his intention to remove the sign, indicating the nature of the violation and the location of the sign. If, after such notification the illegal sign remains in violation, the city manager or his agent shall remove said sign and store it in a safe location. If, after reasonable diligence, the city manager is unable to contact the candidate, committee, or person responsible for the sign, he may dispense with the notice requirement and remove the sign storing it in a safe location. (1988 Code, § 10-1106)

11-1107. Storage - notice - return. If the city manager or his agents remove any political campaign sign, he shall keep a record of the location from which the sign was removed. He shall store the political campaign sign in a safe location for at least ninety (90) days, and shall immediately notify by telephone

the candidate, committee or person responsible for the posting of the sign, indicating the fact of removal and the location where it may be retrieved. If the city manager is unable to make telephone contact, he shall provide written notice, if the address of the candidate, committee or person is known or can be reasonably ascertained. The city manager shall return any political sign upon the payment of a fee of five dollars (\$5.00) for each sign, to cover the costs of removal, notice and storage. (1988 Code, § 10-1107)

11-1108. Removal of sign charge. The city shall be entitled to receive the sum of five dollars (\$5.00) for every political campaign sign removed by the city manager or his agents, to cover the expense of removal, notice and storage. In cases where the unusual effort is needed to remove a sign, such as the cutting or removal of supporting structures, use of aerial devices, towing of "trailer sign," or other unusual situation, the city shall collect from the person responsible a sum sufficient to cover the costs of equipment and hourly wages of employees so utilized. (1988 Code, § 10-1108)

11-1109. Persons responsible. In a campaign for political office the candidate for such office shall be deemed the person responsible for the posting of political campaign signs, unless he first notifies the city recorder and the city manager of another person who is responsible. In such case, the candidate shall provide the name, address, telephone number and signed consent of such other responsible person. In a campaign regarding a ballot measure, the president or chief officer of the committee supporting or opposing such ballot measure shall be deemed responsible unless he first notifies the city recorder and the city manager of some other person responsible, in the manner described above. The candidate or in the case of a ballot measure, the committee president or chief officer or other responsible person if so designated, shall be liable to pay any fee or costs for the removal and storage of the illegal signs as set out herein. Further, such candidate, committee president or chief officer, or other designated person shall be subject to criminal prosecution for violation of §§ 11-1102 and 11-1103. (1988 Code, § 10-1109)

11-1110. Illegal signs - public nuisance. Political campaign signs in violation of §§ 11-1102 or 11-1103 are hereby declared to be public nuisances, and may be abated by the city. The collection of removal fees or other expenses shall not preclude the city from criminally prosecuting any person in violation of said sections. (1988 Code, § 10-1110)

CHAPTER 12

SKATEBOARDING

SECTION

- 11-1201. Definitions.
11-1202. Prohibition in certain areas.
11-1203. Prohibition on private property.
11-1204. Restrictions in residential areas.

11-1201. Definitions. As used in this chapter, unless the context requires otherwise, the words and terms defined in this section shall have the meaning ascribed to them herein:

(1) "Business district" means the downtown business district designated on the zoning map for the City of Dayton as C-1 and C-2.

(2) "Residential district" means the districts designated on the zoning map for the City of Dayton, Tennessee as R-1, R-2, R-3 and R-4.

(3) "Skateboarding" or "skateboards" means a device with wheels for riding upon, usually standing. (1988 Code, § 10-1201)

11-1202. Prohibition in certain areas. It shall be unlawful for any person to operate or ride a "skateboard" on any street, alley, sidewalk, public parking lot, public recreation area, or at any other location which is zoned C-1 or C-2. (1988 Code, § 10-1202)

11-1203. Prohibition on private property. It shall be unlawful to operate or ride a "skateboard" on private property in the area zoned as C-1 or C-2 where signs have been posted at the entrance or displayed prominently on the property prohibiting the use of "skateboards". (1988 Code, § 10-1203)

11-1204. Restrictions in residential areas. It shall be unlawful to operate or ride a "skateboard" in any residential area zoned R-1, R-2, R-3 or R-4 between the hours of 9:00 P.M. and 7:00 A.M. (1988 Code, § 10-1204)

CHAPTER 13

OFFENSES ON PUBLIC PROPERTY

SECTION

11-1301. Offenses in recreational areas, parks and playgrounds.

11-1301. Offenses in recreational area, parks and playgrounds.

(1) It shall be unlawful for any person to deface or tear down any regulations or notices posted in any recreational areas under the control of the recreation board, whether such regulations or notices are posted by the City of Dayton or by the chairman of the recreation board.

(2) It shall be unlawful for any person to drive or propel any vehicle in or upon any such recreational area at a careless, indifferent or reckless rate of speed, and no vehicle shall be driven in or upon any such recreational area except upon and along a roadway which is marked for such purposes, except for necessary purposes and as authorized by the recreational board.

(3) It shall be unlawful for any person to walk, stand or sit on any border, flower bed, monument, vase, fountain, railing or fence in any park, playground in the city, or to enter or leave a park or playground by climbing over or forcing a way through any fence or gate herein.

(4) It shall be unlawful to sleep upon, lie upon or overturn any seat or swing or other appliance of any park or playground.

(5) It shall be unlawful for any person to remove, destroy, mutilate, or deface any structure, monument, statue, vase, fountain, wall, fence, vehicle, bench, tree, shrub, fern, plant, flower or other property in any park or playground in the city.

(6) It shall be unlawful for any person to place or erect any structure, sign, bulletin board or advertisement, without the permission of the appropriate board, except as set forth herein, and any permission granted shall be only on a temporary basis or for the time of the event or season and at the conclusion of the event or season, said sign, structure, billboard or bulletin board, advertisement shall be removed within five (5) days.

Upon approval of city council permanent advertisement will be allowed.

(7) Further, the appropriate board or city council shall have authority at any time to remove the sign, structure, bulletin board, billboard, or advertisement if the board or sign, structure, advertisement is inappropriate, if no permit was issued for the installation, or if the sign falls into disrepair.

(8) It shall be unlawful for any person to hold any public meeting or gathering or make any public speech in any park in the city except by arrangement with the special events committee.

(9) It shall be unlawful for any person to void, excrement or urine in any park or playground except in facilities especially provided for such purposes, or to use or enter any such facility established exclusively for persons of the opposite sex.

(10) It shall be unlawful in any park or playground in the city for any person to carry firearms, to have any alcoholic beverages, to sell, offer or expose for sale any goods or wares, except under a written permit from the special events committee to post or display any sign, place card, flag or advertising device without such a permit or to solicit any subscription or contribution without such a permit.

(11) It shall be unlawful for any person to damage or vandalize a recreational facility of the City of Dayton and upon said damage or vandalism being discovered, the recreation board shall close the facility for a period of fifteen (15) consecutive days, however, if the person or persons responsible for the damage comes forward and admits liability and pays the damage to the facility, said facility may be opened before the expiration of the fifteen (15) day period.

Any repair after the fifteen (15) day period will be done at the sole discretion of the City of Dayton and the Dayton Recreation Board if no monies have been paid to the city for damages to the facility. (1988 Code, § 10-401)