

TITLE 11

MUNICIPAL OFFENSES¹

CHAPTER

1. ALCOHOL.
2. FIREARMS.
3. CRUISING AND LOITERING.
4. SYNTHETIC DRUGS PROHIBITED.

CHAPTER 1

ALCOHOL²

SECTION

- 11-101. Drinking beer, etc., on streets, etc.
11-102. Open containers on public highways, etc.
11-103. Open containers in motor vehicles.
11-104. Violation and penalty.

11-101. Drinking beer, etc., on streets, etc. It shall be unlawful for any person to possess or consume any alcoholic beverage on or in the premises of any property belonging to the Town of Kimball, Tennessee. Said prohibition shall apply to both open and closed containers of alcoholic beverages. (Ord. #70, March 1990, as replaced by Ord. #175, June 2006)

11-102. Open containers on public highways, etc. It shall be unlawful to possess an open container of any alcoholic beverage or to consume any alcoholic beverage while on any public highway, sidewalk, shopping center,

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.

²Municipal 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).

public parking lot or any property frequented by the public. (Ord. #70, March 1990, modified, as replaced by Ord. #175, June 2006)

11-103. Open containers in motor vehicles. It shall be unlawful for any person, while a passenger in any motor vehicle, to possess an open container of any alcoholic beverage or beer or consume any alcoholic beverage or beer while on any public highway, sidewalk, shopping center, public parking lot or any area frequented by the public within the boundaries of the Town of Kimball, Tennessee. (as added by Ord. #175, June 2006)

11-104. Violation and penalty. Any person found to be in violation of this chapter shall be guilty of a civil offense and shall, upon conviction, be fined a civil penalty in an amount not more than fifty dollars (\$50.00) for each offense. The municipal judge may also order the suspension of any person convicted of § 11-101 from using the town's recreational and community facilities. (as added by Ord. #175, June 2006)

CHAPTER 2

FIREARMS

SECTION

11-201. Firearms and dangerous weapons.

11-202. Violation and penalty.

11-201. Firearms and dangerous weapons. (1) It shall be unlawful for any person within the corporate limits of the Town of Kimball, Tennessee, to shoot, fire or discharge any shot gun, rifle, pistol, air pistol, air rifle, "BB" gun or sling shot capable of discharging a metal bullet or pellet whether propelled by spring, compressed air, expanding gas, explosive or other force-producing means or method.

(2) This chapter shall not apply to any person lawfully engaged in the act of "hunting" as said term is defined by Tennessee Code Annotated, § 70-1-101(a)(19). (Ord. #12, Oct. 1968, modified, as replaced by Ord. #201, April 2009)

11-202. Violation and penalty. (1) Any person in violation of any section, part or provision of this chapter shall upon conviction be fined in the amount of not less than two dollars (\$2.00) nor more than fifty dollars (\$50.00).

(2) Should any part of this chapter be held invalid by a court of competent jurisdiction, the remaining parts shall be severable and shall continue to be in full force and effect.

(3) All ordinances or parts of ordinances conflicting with the provisions of this chapter are hereby repealed insofar as the same affect this chapter. (Ord. #12, Oct. 1968, modified, as replaced by Ord. #201, April 2009)

CHAPTER 3

CRUISING AND LOITERING

SECTION

11-301. Business owners authorized to post signs prohibiting cruising and/or loitering.

11-302. Cruising defined.

11-303. Hours prohibited.

11-304. Loitering defined.

11-305. Violations.

11-301. Business owners authorized to post signs prohibiting cruising and/or loitering. The owners and operators of shopping centers or any other business having public parking areas are hereby authorized to post signs on and about the parking areas and private roadways on their properties giving notice that cruising and/or loitering on the property is prohibited. (Ord. #57, Feb. 1987)

11-302. Cruising defined. The term "cruising" as used in this chapter is defined as the continual, repeated, and aimless operation of a motor vehicle, through, over, around or within the parking areas and private roadways of any business or shopping center without parking the motor vehicle to enter the business or shopping center served by such parking areas and/or private roadway. (Ord. #57, Feb. 1987)

11-303. Hours prohibited. Cruising, as hereinabove defined, and loitering, as hereinafter defined, are prohibited between the hours of 8:00 P.M. and 8:00 A.M. And, provided further, such conduct is prohibited during normal business hours when the conduct interferes with, impedes or prevents bona fide customers from being able to enter and exit any business or shopping center. (Ord. #57, Feb. 1987)

11-304. Loitering defined. The term "loitering" shall be defined as parking and congregating around a vehicle or vehicles in the aforesaid prohibited areas for the purpose of hanging out, partying, drinking or socializing. (Ord. #57, Feb. 1987)

11-305. Violations. Violation of the provisions of this chapter shall be deemed a trespass and upon conviction, the violator(s) shall be subject to a civil penalty of not more than five hundred dollars (\$500.00) and court costs. The court may, in its discretion, impose, in addition to civil penalty and costs, a sentence of not more than two (2) days of public or community service with said

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service to be performed on two (2) consecutive Saturdays or at such other times as the court may direct. (Ord. #57, Feb. 1987, modified)

CHAPTER 4**SYNTHETIC DRUGS PROHIBITED****SECTION**

- 11-401. Definitions.
- 11-402. Prohibited conduct.
- 11-403. Exception.
- 11-404. Civil penalty.

11-401. Definitions. (1) "Synthetic drug" as used in this section shall mean:

(a) Any substance, however denominated, and no matter the common street brand or trade name of such substance, containing one (1) or more of the following chemicals:

(i) Salvia divinorum or salvinorum A; all parts of the plant presently classified botanically as salvia dininorum, whether growing or not, the seeds thereof; any extract from any part of such plant, and every compound, manufacture, salts derivative, mixture, or preparation of such plant, its seeds, or extracts;

(ii) (6 a R , 10 a R) - 9 - (h y d r o x y m e t h y l) - 6 , 6 d i m e t h y l - 3 (2 m e t h y l o c t a n 2 y l) - 6 a , 7 , 10 , 10a-tetrahydrobenzo[c]chromen- 1 -o1 (some trade or other names being: HU-210);

(iii) 1-Pentyl-3-(1-naphthoyl) indole (some trade or other names being: JWH-018);

(iv) 1-Butyl-3-(Inaphthoyl) indole (some trade or other names being: JWH-073);

(v) 1-(3 {trifluoromethylphenyl}) piperazine (some trade or other names being: TFMPP);

(vi) 3,4 - methylenedioxypropylvalerone (MDPV), (some trade or other names being; MDPK);

(vii) 4 - methylmethcathinone (Mephedrone);

(viii) 3,4 - methylenedioxymethcathinone (Methylone);

(ix) 3, - methoxymethcathinone;

(x) 4 - methoxymethcathinone;

(xi) 3 - fluoromethcathinone;

(xii) 4 - fluoromethcathinone;

(b) Any other substance which mimics the effects of any controlled substance (to include, but not limited to, any opiates, opium derivatives, hallucinogenic substances, methamphetamine, MDMA, cocaine, PCP, marijuana, cannabis, cannabinoids, cannabicyclohexanol, and tetrahydrocannabinoids), to include, but not limited to, "bath salts,"

"plant food," "incense," or "insect repellent," but excluding legitimate bath salts containing as the main ingredient the chemicals sodium chloride (sea salt) and/or magnesium sulfate (Epsom salt), or legitimate plant foods or insect repellent not intended for human consumption, or legitimate incense used as an odor elimination product.

(2) "Deliver" or "delivery" as used in this section shall mean the actual, constructive, or attempted transfer from one (1) person to another of a synthetic drug as defined herein, with or without any consideration, and whether or not there is an agency relationship.

(3) "Manufacture" as used in this section shall mean the production, preparation, propagation, compounding, conversion, or processing of any synthetic drug as defined herein, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that the term "manufacture" shall not include the preparation, compounding, packaging, or labeling of any synthetic drug as defined herein by:

(a) A practitioner as an incident to administering or dispensing any synthetic drug as defined herein in the course of professional practice; and

(b) A practitioner, or an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(4) "Administer" as used in this section shall mean the direct application of a synthetic drug as defined herein, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by the practitioner's authorized agent in the practitioner's presence; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(5) "Agent" as used in this section shall mean an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. "Agent" does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(6) "Dispense" as used in this section shall mean to deliver a synthetic drug as defined herein to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(7) "Distribute" as used in this section shall mean to deliver other than by administering or dispensing a synthetic drug as defined herein.

(8) "Practitioner" as used in this section shall mean:

(a) A physician, dentist, optometrist, veterinarian, pharmacist, scientific investigator or other person who is licensed, registered, or otherwise lawfully permitted to distribute, dispense, conduct research with respect to, or to administer a synthetic drug as defined herein in the course of professional practice or research in the State of Tennessee; or

(b) A pharmacy, hospital or other institution licensed, registered, or otherwise lawfully permitted to distribute, dispense, conduct research with respect to, or to administer a synthetic drug as defined herein in the course of professional practice or research in the State of Tennessee.

(9) "Person" as used in this section shall mean any individual, corporation, partnership, trust, estate, association, organization, business, or any other legal entity.

(10) "Sell" or "sale" as used in this section shall mean a bargained-for or agreed upon offer and acceptance and an actual or constructive transfer or delivery of a synthetic drug as defined herein.

(11) "Production" as used in this section shall mean the planting, cultivating, tending, growing, or harvesting of a synthetic drug as defined in this section.

(12) "Possess" or "possession" as used in this section shall mean either actual possession or constructive possession.

(a) "Actual possession" as used in this section shall mean the exercise of direct physical control or dominion over an object.

(b) "Constructive possession" as used in this section shall mean the power and intent to exercise control over an object although not in actual physical possession of an object.

Possession may be sole or joint and may be inferred from all relevant facts surrounding the circumstances. (as added by Ord. #217, Jan. 2012)

11-402. Prohibited conduct. (1) It shall be unlawful for any person to use, possess, sell, deliver, distribute, transport, transfer, trade, barter, exchange or purchase any synthetic drug as defined herein, or to attempt to use, possess, sale, deliver, distribute, transport, transfer, trade, barter, exchange or purchase any synthetic drug as defined herein, within the town corporate limits.

(2) It shall be unlawful for any person to publicly display for sale any synthetic drug as defined herein, within the town corporate limits. (as added by Ord. #217, Jan. 2012)

11-403. Exception. An act otherwise prohibited and unlawful under this section shall not be unlawful if done by or under the direction of a "practitioner" as defined herein, provided such act is otherwise permitted by general law, or to otherwise prohibit substances regulated as controlled substances by the United States Food and Drug Administration or the Drug Enforcement Administration, and is not intended to and shall not be construed to supersede

any other federal or state law pertaining to synthetic drugs now or hereafter in effect, but to supplement any such laws in so far as lawfully permitted. (as added by Ord. #217, Jan. 2012)

11-404. Civil penalty. Any Town of Kimball sworn law enforcement officer is hereby empowered to issue a citation to any person for any violation of the provisions of this section. Citations so issued may be delivered in person to the violator or they may be delivered by registered mail to the person so charged if he/she cannot be readily found. Any citation so delivered or mailed shall direct the alleged violator to appear in Kimball Municipal Court on a specific day and at a specific hour stated upon the citation; and the time so specified shall be not less than seventy-two (72) hours after its delivery in person to the alleged violator, or less than ten (10) days of mailing of same. Citations issued for a violation of any of the provisions of this section shall be tried in the municipal court. The municipal court judge shall determine whether a defendant has committed a violation of this section. The town shall bear the burden of proof by a preponderance of the evidence. If a defendant pleads guilty or "no contest" to the alleged violation, or is found guilty by the municipal court judge, the municipal court judge shall assess a civil monetary fine as a penalty against any person found to have violated any of the provisions of this section, said fine to be in an amount of fifty dollars (\$50.00) for each violation. Each day of violation shall be deemed a separate violation. Each separate package containing any substance containing any synthetic drug as defined herein shall be deemed a separate violation. In addition to the civil monetary fine, any defendant who pleads guilty or "no contest" to the alleged violation, or who is found guilty by the municipal court judge, shall be assessed court costs as provided by law, and in addition shall be ordered to pay an administrative fee to the town in an amount sufficient to recoup the cost incurred by the town's law enforcement agency for any chemical test conducted by or at the request of the law enforcement agency that is used to determine the chemical content of any substance collected from the defendant which formed the basis for any citation charge. Appeal may be had as provided by law. (as added by Ord. #217, Jan. 2012)