

TITLE 11

MUNICIPAL OFFENSES¹

CHAPTER

1. ALCOHOL.
2. FORTUNE TELLING, ETC.
3. OFFENSES AGAINST THE PERSON.
4. OFFENSES AGAINST THE PEACE AND QUIET.
5. INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL.
6. FIREARMS, WEAPONS AND MISSILES.
7. TRESPASSING, MALICIOUS MISCHIEF AND INTERFERENCE WITH TRAFFIC.
8. MISCELLANEOUS.
9. MATERIALS HARMFUL TO MINORS.

CHAPTER 1

ALCOHOL²

SECTION

11-101. Minors in beer places.

11-101. Minors in beer places. No minor under twenty-one (21) years of age shall loiter in or around, work in, or otherwise frequent any place where beer is sold at retail for on premises consumption. (Ord. # 1970-33, Aug. 1970)

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 §33-8-293 (Arrest for Public Intoxication, cities may not pass separate legislation).

CHAPTER 2**FORTUNE TELLING, ETC.****SECTION**

11-201. Fortune telling, etc.

11-201. Fortune telling, etc. It shall be unlawful for any person to conduct the business of, solicit for, or ply the trade of fortune teller, clairvoyant, hypnotist, spiritualist, palmist, phrenologist, or other mystic endowed with supernatural powers. (Ord. #1970-33, Aug. 1970, modified)

CHAPTER 3

OFFENSES AGAINST THE PERSON

SECTION

11-301. Assault and battery.

11-301. Assault and battery. It shall be unlawful for any person to commit an assault or an assault and battery. (Ord. #1970-33, Aug. 1970)

CHAPTER 4

OFFENSES AGAINST THE PEACE AND QUIET

SECTION

11-401. Disturbing the peace.

11-402. Anti-noise regulations.

11-403. Supplemental excessive 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. (Ord. #1970-33, Aug. 1970)

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, streetcar, or other 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 persons 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 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 municipal 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) Construction Activities. Construction activities, including demolition and street repair, are permitted between the hours of 7:00 a.m. and sunset Monday through Friday and between the hours of 9:00 a.m. and sunset on Saturday and Sunday. Such activities may be allowed at other times upon written authorization of the Codes Director or his designated agent. Such authorization shall be only granted where such construction activities are necessary for the public health, safety and good of the community.

(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 amplifiers or loudspeakers in the course of attracting attention and in the course of advertising shall not be allowed until a permit is secured from the recorder. Hours for the use of an amplifier or loudspeaker 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.

(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) Municipal vehicles. Any vehicle of the municipality 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 municipality, 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 therefore is secured from the recorder. 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. (Ord. #1970-33, Aug. 1970, modified, Ord. 1997-32, October 1997, Ord. 1997-33, September 1997)

11-403. Supplemental excessive noise regulations.

(1) No person or persons owning, employing or having the care, custody or possession of any musical instrument, radio set, television set, phonograph, or other instrument, machine or device for amplifying, producing or reproducing sound, shall operate, use or permit to be operated or used such instrument, machine or device in such a manner as to disturb the peace and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the persons who are in the room or chamber in which or who are on the premises from which such instrument, machine or device is operated and who are voluntary listeners thereto.

(2) The operation of any such instrument, machine or device in such a manner as to be plainly audible on any adjacent or adjoining property shall be prima facie evidence of a violation of this section unless specifically permitted by ordinance or law or by an agency or department of the City of Hendersonville (the "City").

(3) No person operating or occupying a motor vehicle on any street, highway, alley, parking lot or driveway, either public or private property, shall operate or permit the operation of any sound amplification system, including, but not limited to, any radio, tape player, compact disc player, loud speaker or any other electrical device used for the amplification of sound from within the motor vehicle so that the sound is plainly audible at a distance of fifty or more feet from

the vehicle or, in the case of a motor vehicle on private property, beyond the property line. For the purpose of this subsection, “plainly audible” means any sound which clearly can be heard, by unimpaired auditory senses based on a direct line of sight of fifty or more feet, however, words or phrases need not be discernible and said sound shall include bass reverberation.

Prohibitions contained in this section shall not be applicable to emergency or public safety vehicles, vehicles owned and operated by the City, Sumner County, Tennessee, or any utility company, for sound emitted unavoidably during job-related operation, or any motor vehicle used in an authorized public activity for which a permit has been granted by the appropriate governmental agency.

(4) No person or persons owning, operating, or having the care, custody, or control of any facility located within fifty feet of a residence or of a natural conservation area shall permit to be operated any musical instrument or other entertainment device using amplification unless such music or other entertainment is provided within a totally enclosed structure. Such music or other entertainment may be provided outside of a structure only between the hours of seven a.m. and eleven p.m., except when exempted under provisions of the code as a special event, mass gathering or other permitted activity by the City or its boards or commissions. The provisions of this section shall not apply to entertainment facilities constructed to provide outdoor entertainment owned by the City or its agencies and parks under the control of the board of parks and recreation.

(5) No person or persons owning, operating, or having the care, custody, or control of any business or commercial facility shall be permitted to operate any equipment (musical or otherwise), vehicles, or heavy machinery incident to performing business or commercial functions, or engage in any other business or commercial activity which would emit, cause to be emitted, or permit the emission of any noise in excess of sixty-five (65) Db(A) as measured from a point as close as possible to the outside walls of any residential structure located within a residential zoning district affected by the noise at a height of four feet above the immediate surrounding surface. The provisions of this paragraph shall be in effect between the hours of 9:00 p.m. and 6:00 a.m., Sunday night through Thursday night, and between the hours of 11:00 p.m. and 6:00 a.m., Friday night and Saturday night.

At all other times, no person or persons owning, operating, or having the care, custody, or control of any business or commercial facility shall be permitted to operate any equipment (musical or otherwise), vehicles, or heavy machinery incident to performing business or commercial functions, or engage in any other business or commercial activity which would emit, cause to be emitted, or permit the emission of any noise in excess of seventy-five (75) Db(A) as measured from a point as close as possible to the outside walls of any residential structure located within a residential zoning district affected by the noise at a height of four feet above the immediate surrounding surface. (Ord. # 2005-13, August 2005)

CHAPTER 5

INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL

SECTION

- 11-501. Escape from custody or confinement.
- 11-502. Impersonating a government officer or employee.
- 11-503. False emergency alarms.
- 11-504. Resisting or interfering with an officer.
- 11-505. Coercing people not to work.

11-501. Escape from custody or confinement. It shall be unlawful for any person under arrest or otherwise in custody of or confined by the municipality 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. (Ord. #1970-33, March 1970)

11-502. Impersonating a government officer or employee. No person other than an official police officer of the municipality 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 municipality. Furthermore, no person shall deceitfully impersonate or represent that he is any other government officer or employee. (Ord. #1970-33, March 1970)

11-503. False emergency alarms. It shall be unlawful for any person to intentionally 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. (Ord. #1970-33, March 1970)

11-504. Resisting or interfering with an officer. It shall be unlawful for any person to knowingly resist or in any way interfere with or attempt to interfere with any officer or employee of the municipality while such officer or employee is performing or attempting to perform his municipal duties. (Ord. #1970-33, March 1970)

11-505. Coercing people not to work. It shall be unlawful for any person in association or agreement with any other person to assemble, congregate, or meet together in the vicinity of any premises where other persons are employed or reside for the purpose of inducing any such other person by threats, coercion, intimidation, or acts of violence to quit or refrain from entering a place of lawful

employment. It is expressly not the purpose of this section to prohibit peaceful picketing. (Ord #1970-33, March 1970)

CHAPTER 6

FIREARMS, WEAPONS AND MISSILES

SECTION

11-601. Air rifles, etc.

11-602. Throwing missiles.

11-603. Discharge of firearms.

11-601. Air rifles, etc. It shall be unlawful for any person in the municipality to discharge any air gun, 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. (Ord. #1970-33, March 1970)

11-602. Throwing missiles. It shall be unlawful for any person to maliciously 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. (Ord. #1970-33, March 1970)

11-603. Discharge of firearms. It shall be unlawful for any unauthorized person to discharge a firearm within the corporate limits. (Ord. #1979-40, Oct. 1979)

CHAPTER 7

TRESPASSING, MALICIOUS MISCHIEF AND INTERFERENCE WITH TRAFFIC

SECTION

11-701. Trespassing.

11-702. Trespassing on trains.

11-703. Malicious mischief.

11-704. Interference with traffic.

11-705. Trespassing on private property.

11-701. Trespassing. The owner or person in charge of any lot or parcel of land or any building or other structure within the corporate limits may post the same against trespassers. It shall be unlawful for any person to go upon any such posted lot or parcel of land or into any such posted building or other structure without the consent of the owner or person in charge.

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. (Ord. #1970-33, March 1970)

11-702. Trespassing on trains. It shall be unlawful for any person to climb, jump, step, stand upon, or cling to, or in any other way attach himself to any locomotive engine or railroad car unless he works for the railroad corporation and is acting the scope of his employment or unless he is a lawful passenger or is otherwise lawfully entitled to be on such vehicle. (Ord. #1970-33, March 1970)

11-703. Malicious mischief. It shall be unlawful and deemed to be malicious mischief for any person to willfully, maliciously, or wantonly damage, deface, destroy, conceal, tamper with, remove, or withhold real or personal property which does not belong to him. (Ord. #1970-33, March 1970)

11-704. 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. (Ord. #1970-33, March 1970)

11-705. Trespassing on private property. Any property owner, lessee, lessee's agent or manager of property located within the City of Hendersonville shall, after identifying himself, have the right to demand that any person on the

property disclose their name, address and purpose of their visit and it shall be unlawful for the person so queried to fail to supply the information.

Any property owner or manager of property shall have the right to deny the use of the property to any person (other than a public official pursuing official duties) so long as the motive for the denial of the right to use property generally open to the public is not based upon the race or religion of the person excluded. Any person told by the owner or manager of property to leave property or to not enter the property shall be in violation of this section unless he immediately obeys the order of the property owner. Directions not to enter property shall be effective for such period as the property owner or manager may direct.

The owner or manager of property may direct either in writing or orally the owner or operator of vehicles or other personal property to remove the vehicle or personal property from the premises to remove and refrain in the future from reentering the premises. Failure to remove the vehicle or reentering after notice shall be violations of this section. The property owner shall, after four hours notice, have the right to have the vehicle or personal property removed from the premises by a licensed wrecker service and placed in storage at the expense of the owner of the vehicle or personal property and the wrecker company shall have a lien on the property stored for towing and storage. Notice shall be considered delivered when affixed to the vehicle or personal property.

No warrant for violation of this section shall issue unless the owner or manager of the property makes oath that he has notified the charged party as provided herein.

Any person violating this section shall be fined in an amount determined by the city judge, not to exceed \$500.00. (Ord. #1979-20, May 1979, modified)

CHAPTER 8

MISCELLANEOUS

SECTION

- 11-801. Abandoned refrigerators, etc.
- 11-802. Caves, wells, cisterns, etc.
- 11-803. Posting notices, etc.
- 11-804. Curfew for minors.
- 11-805. Wearing masks.
- 11-806. Boat dock facilities.

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. (Ord. #1970-33, March 1970)

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. (Ord. #1970-33, March 1970)

11-803. Posting notices, etc. No person shall fasten, in any way, any show-card, poster, or other advertising device upon any public or private property unless legally authorized to do so. (Ord. #1970-33, March 1970)

11-804. Curfew for minors. It shall be unlawful for any minor, under the age of eighteen (18) years, to be abroad at night after 12:00 P.M. unless upon a legitimate errand for, or accompanied by, a parent, guardian, or other adult person having lawful custody of such minor. (Ord. #1970-33, March 1970)

11-805. Wearing masks. It shall be unlawful for any person to appear on or in any public way or place while wearing any mask, device, or hood whereby any portion of the face is so hidden or covered as to conceal the identity of the wearer. The following are exempted from the provisions of this section:

- (1) Children under the age of ten (10) years.
- (2) Workers while engaged in work wherein a face covering is necessary for health and/or safety reasons.
- (3) Persons wearing gas masks in civil defense drills and exercises or emergencies.

(4) Any person having a special permit issued by the city recorder to wear a traditional holiday costume. (Ord. #1970-33, March 1970)

11-806. Boat dock facilities. It is hereby declared unlawful for commercial or private boat docking facilities to be established within 500 feet of a public water intake point on Drakes Creek.

The establishment of boat docking facilities shall include the docking inside boathouses or the tying of boats to land or to the outside of boathouses.

Each day that a boat is docked within 500 feet of the water intake shall constitute a separate violation, and each violation shall be subject to a fine of \$500.00. (Ord. #1979-41, Oct. 1979, modified)

CHAPTER 9

MATERIALS HARMFUL TO MINORS

SECTION

11-901. Definitions.

11-902. Offenses.

11-903. Defenses.

11-904. Penalties.

11-901. Definitions. (1) "Minor" means any person under the age of eighteen (18) years.

(2) "Harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, or nudity, sexual conduct, sexual excitement, or sado-masochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors; and

(b) The average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sado-masochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(c) The material or performance lacks serious literary, scientific, educational, artistic, or political value for minors.

(3) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

(4) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

(5) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(6) "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(7) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, picture film, record, recording tape, video tape, compact disc, or video disc.

(8) "Performance" means any motion picture, film, videotape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(9) "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(a) The character and content of any material or performance which is reasonably susceptible of examination by the defendant, and

(b) The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(10) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(11) "A reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor. (Ord. #1987-48, Oct. 1987)

11-902. Offenses. No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks", so that the lower two-thirds of the material is not exposed to view.

(2) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or

(3) Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor. (Ord. #1987-48, Oct. 1987)

11-903. Defenses. It shall be an affirmative defense to any prosecution under this chapter that:

The material or performance involved was displayed, presented or disseminated to a minor at a recognized and established school, church, museum, medical clinic, hospital, public library, governmental agency, quasi-governmental agency and persons acting in their capacity as employees or agents of such

persons or organizations, and which institution displays presents or disseminates such material or performance for a bona fide governmental, educational or scientific purpose. (Ord. #1987-48, Oct. 1987)

11-904. Penalties. Any person who shall be convicted of violating any provision of this chapter is guilty of a violation and shall be fined a sum not exceeding fifty dollars (\$50.00). Each day that any violation of this chapter occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act, thing, or transaction prohibited by this chapter shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this chapter, multiple copies of the same identical material shall constitute a single offense. (Ord. #1987-48, Oct. 1987, modified)