

CHAPTER 38 – OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. - IN GENERAL

Sec. 38-1. - Penalties.

Except as otherwise stated in this chapter, violations of this chapter shall be punished as provided in section 1-10.

Sec. 38-2. - False representations to police or any city department,

It shall be unlawful for any person, knowingly and willfully and with intent thereby to mislead, either in such person's own behalf or in behalf of others, as principal or as agent, to make or file orally or in writing any false representations of fact to any police officer of the city or to any department of the city government.

State law reference- False statements and writings; concealment of facts, O.C.G.A. § 16-10-20.

Sec. 38-3. - Criminal impersonation.

- (a) In this section, "intent to defraud" means the use of deception with the intention to injure another's interest which has economic value.
- (b) A person is guilty of a violation of this Code if such person:
 - (1) Assumes a false identity and does an act in such person's assumed character with the intent to defraud another; or
 - (2) Pretends to be a representative of some person or organization and does an act in such person's pretended capacity with the intent to defraud another.

State law reference— Similar provisions, O.C.G.A. § 16-8-3.

Secs. 38-4—38-22. - Reserved.

ARTICLE II- OFFENSES INVOLVING PROPERTY RIGHTS

Sec. 38-23. - Vandalism.

- (a) *Public property.* It is unlawful for any person to vandalize, deface, or in any way alter the appearance or operation of any public property or park in the city.
- (b) *Private property.*
 - (1) It is unlawful for any person to vandalize, deface, or in any way alter the appearance or operation of any private property without the consent of the owner.
 - (2) This subsection shall not be construed as affecting any remedy the private property owner may have at law. State law reference— Criminal trespass, O.C.G.A. § 16-7-21.

Sec. 38-24. - Graffiti.

- (a) *Property owner responsibility.* It shall be unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of in the city to permit property that is defaced with graffiti to remain defaced for a period in excess of ten days. The city may provide notice of defacement to such owner or responsible person by first class mail or personal service; provided that failure to receive notice shall not alleviate the person's responsibility for removal of the graffiti. Notice shall contain the following information:
 - (1) The street address and/or description of the property sufficient for identification of the property;
 - (2) A description of the graffiti with notice to remove same, and notice that the property owner shall, if the graffiti is not removed within ten days after receipt of the notice, be cited for violation of this section.

- (b) *Exceptions to property owner responsibility.* The removal requirements of subsection (a) of this section shall not apply if the property owner or responsible party can demonstrate that:
- (1) The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or
 - (2) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of 30 days after defacement.
- (c) *Citation of owner, right of city to remove graffiti.* Whenever the owner or person responsible for control or maintenance of private property fails or refuses to remove the graffiti after notice by the city to do so, such owner or responsible person shall be cited for violation of this section. The city may, upon the owner's or responsible person's failure to act, take any necessary action to remove, repaint, or repair the graffiti-damaged property and may use public funds for such action, the cost of which shall be a lien on the property served. Nothing in this section shall be construed to require the city to undertake such repair, repainting or removal.
- (d) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- Graffiti* shall have that meaning ascribed to it in O.C.G.A. § 17-15A-2.
- Graffiti implement or paraphernalia* means any substance or material such as, but not limited to, aerosol paint containers, permanent ink markers, paint sticks, and etchers; also including, but not limited to, tips or nozzles which can be applied to aerosol paint containers.
- (e) *Unlawful possession on public or private property.* It shall be unlawful for any person to possess any graffiti implement or paraphernalia while in, on, at or about any private property without the owner or occupant's permission or any public property including, but not limited to, public parks, playgrounds, swimming pools, recreation facilities, schools, school district facilities, libraries, courthouses, utility stations, storm drains or any other publicly owned, operated and/or maintained facility. This subsection shall not apply to persons located on public sidewalks or streets during each daily period from sunrise to sunset. This subsection shall not apply to any officer, employee or agent of the public entity that owns the public property acting within the scope of their employment.

State law reference— Criminal trespass, O.C.G.A. § 16-7-21; local programs for removal of graffiti, O.C.G.A. § 17-15A-4(b).

Sec. 38-25. - Tampering with utilities.

It is unlawful for any person to disturb, tamper with, or remove any guy wires from any electric power pole, utility pole, water meter, gas meter or telephone pole located within the city.

State law reference— Damaging, injuring, or interfering with property of public utility companies, municipalities, or political subdivisions, O.C.G.A. § 16-7-25.

Sec. 38-26. - Entering automobile.

It shall be unlawful to enter any automobile or other motor vehicle with the intent to commit a theft or a felony therein.

Secs. 38-27—38-53. - Reserved.

ARTICLE III – OFFENSES AGAINST PUBLIC ORDER AND SAFETY

DIVISION 1 – GENERALLY

Sec. 38-54. - Disorderly conduct.

- (a) It shall be unlawful for any person to disturb or endanger the public peace or decency by any disorderly conduct.
- (b) The following acts, among others, are declared to be disorderly conduct:
 - (1) Act in a violent or tumultuous manner toward another whereby any person is placed in fear of the safety of such person's life limb or health;

- (2) Act in a violent or tumultuous manner toward another whereby the property of any person is placed in danger of being damaged or destroyed;
- (3) Cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another;
- (4) Assemble or congregate with another or others for the purpose of gaming;
- (5) Be in or about any place, alone or with others, with the purpose of or intent to engage in any fraudulent scheme, trick or device to obtain any money or valuable thing' or to aid or abet any person doing so;
- (6) Be in or about any place where gaming or illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs are practiced, allowed or tolerated, for the purpose of or intent to engage in gaming or the purchase, use, possession or consumption of such illegal drugs, narcotics or alcohol;
- (7) Direct fighting words toward another, that is, words which by their very nature tend to incite an immediate breach of the peace;
- (8) Interfere, by acts of physical obstruction, with another's pursuit of a lawful occupation;
- (9) Congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic, and to fail to clear that public way after being ordered to do so by a city police officer or other lawful authority;
- (10) Stand or remain in or about any street, sidewalk, overpass, or public way so as to impede the flow of vehicular or pedestrian traffic, and to fail to clear such street, sidewalk, overpass or public way after being ordered to do so by a police officer or other lawful authority;
- (11) Disrupt by actions which tend to cause an immediate breach of the peace the undisturbed activities of any house of worship, hospital, or home for the elderly; or
- (12) Throw bottles, paper, cans, glass sticks, stones, missiles, or any other debris on public property.

State law reference— Disorderly conduct, O.C.G.A. § 16-11-39.

Sec. 38-55. - Panhandling.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - (1) *Aggressive panhandling* means and includes:
 - (1) Intentionally or recklessly making any physical contact with or touching another person or his vehicle in the course of the solicitation without the person's consent;
 - (2) Following the person being solicited, if that conduct is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - (3) Continuing to solicit within five feet of the person being solicited after the person has made a negative response, if continuing the solicitation is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
 - (4) Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest, and acts authorized by a permit issued pursuant to section 38-82 (b)(4) of this chapter shall not constitute obstruction of pedestrian or vehicular traffic;

- (5) Intentionally or recklessly using obscene or abusive language or gestures intended to or likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or words intended to, or reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;
- (6) Approaching the person being solicited in a manner that is intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession, or is intended to, or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.

Public area means an area to which the public or a substantial group of persons has access including, but not limited to, alleys, bridges, buildings, driveways, parking lots, parks, play grounds, plazas, sidewalks, and streets that are open to the general public

Solicit means to request an immediate donation of money or other thing of value from another person, regardless of the solicitor's purpose or intended use of the money or other thing of value, including employment, business or contributions or to request the sale of goods or services. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.

- (b) *Prohibitions.* It shall be unlawful for any person, firm, organization, or corporation to aggressively panhandle within any public area in the city or panhandle or solicit funds for the sole benefit of the solicitor:
 - (1) In any public transportation vehicle, or bus or subway station or stop;
 - (2) Within 15 feet of any entrance or exit of any bank or check cashing business or within 15 feet of any automated teller machine during the hours of operation of such bank, automated teller machine or check cashing business without the consent of the owner or other person legally in possession of such facilities. Provided, however, that when an automated teller machine is located within an automated teller machine facility, such distance shall be measured from the entrance or exit of the automated teller machine facility;
 - (3) On private property if the owner, tenant, or lawful occupant has asked the person not to solicit on the property, or has posted a sign clearly indicating that solicitations are not welcome on the property; or
 - (4) From any operator of a motor vehicle that is in traffic on a public street, whether in exchange for cleaning the vehicle's windows, or for blocking, occupying, or reserving a public parking space; provided, however, that this paragraph shall not apply to services rendered in connection with emergency repairs requested by the operator or passengers of such vehicle.
 - (5) *Applicability.* This article regulates the time, place and manner of solicitations and shall not apply to any persons from exercising their clearly established constitutional right to picket, protest or engage in other constitutionally protected activity.

Sec. 38-56. - Begging and soliciting alms by accosting or forcing oneself upon the company of another.

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

Accosting means approaching or speaking to someone in such a manner as would cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon his person, or upon the property in his immediate possession.

Ask, beg or solicit means and includes, without limitation, the spoken, written or printed word or such other acts as are conducted in furtherance of the purpose of obtaining alms.

Forcing oneself upon the company of another means continuing to request, beg or solicit alms from a person after that person has made a negative response, blocking the passage or the individual addressed or otherwise engaging in conduct which could reasonably be construed as intended to compel or force a person to accede demands.

- (b) *Exceptions.* Except when performed in the manner set forth in subsection (d) of this section, or in any of the locations set forth in subsection (c)(1), (2), (3), or (4) of this section, it shall not be unlawful to ask, beg or solicit money or other things of value.

- (c) *Location.* It shall be unlawful for any person to solicit money or other things of value:
 - (1) Within 15 feet of the entrance to or exit from any public toilet facility;
 - (2) Within 15 feet of any pay telephone, provided that when a pay telephone is located within a telephone booth or other facility, such distance shall be measured from the entrance or exit of the telephone booth or facility;
 - (3) Within 15 feet of any bus stop or taxi stand;
 - (4) From any person who is waiting in line for entry to any building, public or private including, but not limited to, any residence, business or athletic facility;
 - (5) Within 15 feet of the entrance or exit from a building, public or private including, but not limited to, any residence, business, or athletic facility.
- (d) *Manner.* It shall be unlawful for any person to solicit money or other things of value by accosting another or by forcing oneself upon the company of another.
- (e) *Who may press charges.* Persons who may press charges under this section include not only the victim of the prohibited solicitation, but also any person who witnesses such conduct including, but not limited to, police officers, security officers, hotel personnel, and bystanders.

Sec. 38-57. - Street solicitations prohibited.

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

Public area means an area to which the public or a substantial group of persons has access including, but not limited to, alleys, bridges, buildings, driveways, parking lots, parks, play grounds, plazas, sidewalks, and streets that are open to the general public.

Solicit means to request an immediate donation of money or other thing of value from another person including employment, business or contributions or to request the sale or purchase of goods or services.
- (b) It shall be unlawful for any person, firm, organization or corporation to solicit within any public right-of-way in the city.
- (c) This section regulates the time, place, and manner of solicitations and shall not apply to any persons exercising their clearly established constitutional right to picket, protest or engage in other constitutionally protected activity.

Sec. 38-58. - Public urination or defecation.

It shall be unlawful to defecate or urinate on the streets or sidewalks, or in the halls or elevator of public or commercial buildings, or on any property open to public view in the city.

Sec. 38-59. – Spitting

It shall be unlawful for any person to spit upon sidewalks, or upon the floors of places of worship, buses, public halls, theaters or other public places.

Sec. 38-60. - Urban camping prohibited.

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

Camp means residing in or using a public street, sidewalk, or park for private living accommodations, such as erecting tents or other temporary structures or objects providing shelter; sleeping in a single place for any substantial prolonged period of time; regularly cooking or preparing meals; or other similar activities.

Public park means all municipal parks, public playgrounds, public plazas, attractions, and monuments.

Public street means all public streets and highways, public sidewalks, public benches, public parking lots, and medians.

Storing personal property means leaving one's personal effects such as, but not limited to, clothing, bedrolls, cookware, sleeping bags, luggage, knapsacks, or backpacks, unattended for any substantial prolonged length of time. This term shall not include parking a bicycle or other mode of transportation.

- (b) *Public parks.* It shall be unlawful to camp or to store personal property in any park owned by the city. This subsection does not apply to parks as defined in section 42-1.
- (c) *Public streets.* It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public street.
- (d) *Other public property; blocking ingress and egress.* It shall be unlawful to camp, to sleep, to store personal property, to sit or to lie down on any public property so as to interfere with ingress or egress from buildings.
- (e) *Warning.* No person may be arrested for violating this section until he or she has received an oral or written warning to cease the unlawful conduct. If the violator fails to comply with the warning Issued, he or she is subject to arrest for urban camping.
- (f) *Exceptions.* This section shall not be construed to prohibit the following behavior:
 - (1) Persons sitting or lying down as a result of a medical emergency;
 - (2) Persons in wheelchairs sitting on sidewalks;
 - (3) Persons sitting down while attending parades;
 - (4) Persons sitting down while patronizing sidewalk cafes;
 - (5) Persons lying down or napping while attending performances, festivals, concerts, fireworks, or other special events;
 - (6) Persons sitting on chairs or benches supplied by a public agency or abutting private property owner;
 - (7) Persons sitting on seats in bus zones occupied by people waiting for the bus;
 - (8) Persons sitting or lying down while waiting in an orderly line outside a box office to purchase tickets to any sporting event, concert, performance, or other special event;
 - (9) Persons sitting or lying down while waiting in an orderly line awaiting entry to any building, including shelters, or awaiting social services, such as provision of meals; or
 - (10) Children sleeping while being carried by an accompanying person or while sitting or lying in a stroller or baby carriage.

Sec. 38-61. - Residential picketing.

- (a) The term "picket" or "picketing" shall refer to the following types of activity:
 - (1) Patrolling or stationing oneself at a residence, bearing some insignia or sign designed to persuade or protest;
 - (2) Staging a public or private protest of any kind;
 - (3) Obstructing passage to or from a residence; or
 - (4) Promoting a strike or a boycott at an individual residence.
- (b) It shall be unlawful for any person to picket or engage in picketing upon, before or about the private residence or home of any individual.

Sec. 38-62. - Hospitals and doctors to make certain reports to police.

All hospitals, doctors and pharmacists in the city shall immediately report to the police department, the name and nature of the case of any person brought under its or his care who is suffering from wounds of any description, inflicted by a firearm, knife or other weapon or instrument; any unidentified person; and any person who is the victim of an accident or who might come under its or his care and whose case is of a suspicious nature.

Sec. 38-63. - Loitering and prowling.

- (a) It shall be unlawful for a person to be in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.
- (b) Among the circumstances which may be considered in determining whether alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances make it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer failed to comply with the foregoing procedure or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

Secs. 38-64—38-80. - Reserved.

DIVISION 2- NOISE

Sec. 38-81. - Purpose and intent.

- (a) Excessive sound is a serious hazard to the public health, welfare, safety, and the quality of life, and a substantial body of science and technology exists by which excessive sound may be substantially abated, and the people have a right to, and should be ensured an environment free from excessive sound.
- (b) In order to ensure attractive residential and commercial areas, it is necessary that an audibly satisfying environment be maintained. It is the policy of the council to prevent excessive sound that may jeopardize the health, welfare, or safety of the citizens or degrade the quality of life. The city is more likely to attract permanent residents and commercial enterprises if it controls and maintains appropriate noise quality and the residents will ultimately gain financial improvements and protection in their quality of life as a result of these regulations.
- (c) This division shall apply to the control of sound originating from sources within the limits of the city

Sec. 38-82. - Enforcement officers.

- (a) The provisions of this division shall be enforced by the code enforcement officers and/or the police officers of the city.
- (b) The director of the department of community development, or his designee, and the chief of police, or his designee, shall have the power to:
 - (1) Coordinate the noise control activities of all municipal departments and cooperate with all other public bodies and agencies to the extent practicable;
 - (2) Review the actions of other municipal departments and advise such departments to the effect, if any, of such actions on noise control;
 - (3) Review public and private projects, subject to mandatory review or approval by other departments or boards, for compliance with this division; and
 - (4) Grant permits for variances according to the provisions of section 38-86 .
- (c) A code enforcement officer or police officer shall be qualified to enforce the provisions of this article if he has satisfactorily completed any of the following:

- (1) An instructional program in community noise from a certified noise control engineer, as evidenced by certification from the Institute of Noise Control Engineering (INCE);
- (2) An instructional program in community noise from another qualified code enforcement officer or police officer; or
- (3) Education or experience or a combination thereof certified by the director of the department of community development or the chief of police as equivalent to the provisions of subsections (c)(1) or (2) of this section.
- (4) Noise measurements taken by a code enforcement officer or police officer shall be taken in accordance with the procedures specified in section 38-85.

Sec. 38-83. - Duties and responsibilities of other departments.

- (a) All departments and agencies of the municipality shall carry out their programs according to law and shall cooperate with the director of the department of community development and the chief of police in the implementation and enforcement of this division.
- (b) All departments charged with new projects or changes to existing projects that may result in the production of noise shall consult with the director of the department of community development and the chief of police, prior to the approval of such projects, to ensure that such activities comply with the provisions of this division.

Sec. 38-84. - Enforcement procedures.

- (a) Upon occurrence of a violation of this section, code enforcement officers or police officers having jurisdiction in the area where the violation takes place may issue a citation or summons for the violation returnable to the municipal court of the city.
- (b) In lieu of issuing a citation or summons the director of the department of community development and chief of police may issue an order requiring abatement of any sound source alleged to be in violation of this division within a reasonable time period and according to guidelines that the director or chief may prescribe.
- (c) No provision of this division shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this division or from other law.

Sec. 38-85. - Sound measurement and reporting.

The standards to be considered and reported in determining whether a violation of this article has occurred may include, but not limited by, the following:

- (1) Origin of the noise (natural or manmade);
- (2) Proximity of noise to residential areas;
- (3) Zoning and use of the area from which the noise emanates;
- (4) Zoning and use of the area where noise is audible;
- (5) Time of day or night the noise occurs;
- (6) Duration of the noise.

Sec. 38-86. - Variances.

- (a) Variances to the provisions contained in this article may be requested, in writing, at least 48-hours prior to the proposed operation or event, for consideration by the director of the department of community development and the chief of police. Such a request shall state the following:
 - (1) The reasons that variances from the provisions of this article are needed.
 - (2) The impact that the denial of this request will have on the applicant's project or event and the surrounding properties.
 - (3) The steps which have been taken by the applicant to communicate those needs and impacts to owners of surrounding and nearby properties.

- (4) The steps that have or will be taken to limit the impact of the proposed activity upon surrounding and nearby properties.
- (b) No variance shall be approved unless the applicant presents adequate proof that:
 - (1) Noise levels occurring during the period of the variance will not constitute a danger to public health; and
 - (2) Compliance with the division would impose an unreasonable hardship on the applicant with equal or greater benefits to the public.
 - (c) In making the determination of granting a variance, the director of the department of community development and the chief of police shall consider the following:
 - (1) The character and degree of injury to, or interference with, the health and welfare or the reasonable use of the property that is caused or threatened to be caused;
 - (2) The social and economic value of the activity for which the variance is sought; and
 - (3) The ability of the applicant to apply the best practical noise control measures.
 - (d) If the director of the department of community development and the chief of police find that the variance application adequately demonstrates the need for a variation from the provisions of this article and adequately provides for the amelioration of the impact upon surrounding and nearby properties, permission shall be granted for one variation within one 24 hour period. If no complaints are received by the director or the chief of police regarding noise associated with the applicant's activities, the director and the chief may grant for that project or event one additional variation in any 24-hour period.
 - (e) The permit of variance may be revoked by the director of the department of community development and the chief of police if the terms of the permit of variance are violated. A variance may be revoked if there is a:
 - (1) Violation of one or more conditions of the variance;
 - (2) Material misrepresentation of fact in the variance application; or
 - (3) Material change in any of the circumstances relied on in granting the variance.

Sec. 38-87. - Prohibited noises.

- (a) *Noises considered loud or disturbing to health deemed nuisance.* It shall be unlawful for any person to make, continue, or cause to be made or continued any loud, unnecessary, or unusual noise, or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others in the city.
- (b) *Acts declared violations.* The following acts are declared to be loud, disturbing, and unnecessary noise in violation of this section, but this enumeration shall not be deemed to be exclusive:
 - (1) *Horns, signaling devices.* The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any street or public place in the city except as a danger warning, the creation of any unreasonably loud or harsh sound by means of any signaling device and the sounding of any device for an unnecessary and unreasonable period of time, the use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust, and the use of any signaling device when traffic is for any reason held up.
 - (2) *Radios, phonographs and similar devices.* The playing, using or operating, or permitting to be played, used, or operated, of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or at any time with a volume louder than necessary for the convenient hearing of the person who is in the room, vehicle, or chamber, in which the machine or device is operated, and who is a voluntary listener thereto. The operation of any set, instrument, phonograph, machine, or device between the hours of 11:00 p.m. and 7:00 a.m. on weekdays and between the hours of 12:00 a.m. and 7:00 a.m. on weekends and holidays when the audibility of the prohibited noise is measured from property line of adjacent properties or the public right-of-way of the property shall be prima facie evidence of a violation of this section.

- (3) *Loudspeakers and amplifiers for advertising.* The playing, using or operating, or permitting to be played, used, or operated, of any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier, or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.
- (4) *Yelling, shouting, hooting, whistling, or singing.* Yelling, shouting, hooting, 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 persons in any office, dwelling, hotel, or other type of residence or of any person in the vicinity.
- (5) *Animals and birds.* The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.
- (6) *Steam 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.
- (7) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine or motorboat except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (8) *Defect in vehicle or load.* The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or in a manner as to create loud and unnecessary grating, grinding, rattling, or other noise.
- (9) *Loading, unloading and opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates, and containers.
- (10) *Construction or repair.*
- a. Construction of any type, including, but not limited to, the erection (including excavation), demolition, alteration, or repair of any building, as well as the operation of any pile driver, steam shovel, pneumatic hammer, derrick, stream or electric hoist, automatic nailers or staplers, or any similar equipment attended by loud or unusual noise, shall be prohibited during the following times:

Before 7:30 a.m. or after 7:30 p.m. on weekdays, and before 8:00 a.m. or after 5:00 p.m. on Saturdays, and at any time on Sundays and/or legal holidays (New Year's Day (observed), Memorial Day (observed), Independence Day (observed), Labor Day (observed), Thanksgiving Day and Christmas Day (observed)).
 - b. Landscape contractor using any type of motorized mowers or mechanical blowers and other equipment which create loud and excessive noise shall be prohibited, during the following times:

Before 7:30 a.m. or after 7:30 p.m. on weekdays, and before 8:00 a.m. or after 5:00 p.m. on Saturdays, and at any time on Sundays and/or legal holidays (New Year's Day (observed), Memorial Day (observed), Independence Day (observed), Labor Day (observed), Thanksgiving Day and Christmas Day (observed)).
- (11) *Schools, courts, places of worship and hospitals.* The creation of any excessive noise on any street adjacent to any school, institution of learning, place of worship, or court, while in use, or adjacent to any hospital which unreasonably interferes with the normal operation of that institution, or which disturbs or unduly annoys patients in the hospital, provided that conspicuous signs are displayed in those streets indicating a school, hospital, or court street.
- (12) *Hawkers, peddlers and vendors.* The shouting and crying of peddlers, hawkers, and vendors which disturb the peace and quiet of the neighborhood.
- (13) *Noise to attract attention.* The use of any drum or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale.
- (14) *Transportation of metal rails, similar materials.* The transportation of rails, pillars, or columns of iron, steel, or other material over and along streets and other public places so as to cause loud noises or as to disturb the peace and quiet of those streets or other public places.

- (15) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from the blower or fan is muffled and the engine is equipped with a muffler device sufficient to deaden the noise.
- (16) *Sound trucks.* The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other commercial purposes. The use of sound trucks for noncommercial purposes during hours and in places and with volume as would constitute this use as a public nuisance, provided that the provisions of this section shall not apply to or be enforced against:
 - a. Any vehicle of the city while engaged in necessary public business;
 - b. Excavations or repairs of streets by or on behalf of the city, county, or state at night when the public welfare and convenience renders it impossible to perform such work during the day; or
 - c. The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.
- (17) *Motor vehicle brake equipment.* The usage of any and all compression release engine brakes on any motor vehicle is prohibited within the corporate limits of the city. For the purposes of the subsection, "compression release engine brakes" shall be defined as any device which, by the release of compressed air within an engine cylinder prior to the ignition of fuel therein, results in the slowing of said vehicle.

(Amended 2014-1-38-87).

Secs. 38-88—38-117. - Reserved.

ARTICLE IV- OFFENSES INVOLVING PUBLIC MORALS

Sec. 38-118. - Prostitution and related offenses.

- (a) *House of ill fame.*
 - (1) A person, having or exercising control over the use of any place or conveyance within the city which would offer seclusion or shelter for the practice of prostitution, commits the offense of keeping a place of prostitution when such person knowingly grants or permits the use of such place for the purpose of prostitution;¹
 - (2) Those places or conveyances which have been adjudged to be places of prostitution, as provided in this chapter, may be abated as also provided in this chapter.
- (b) *Solicitation for an illicit sexual act.*
 - (1) It shall be unlawful for any person, while in any place open to the public and whether as a pedestrian or in a motor vehicle, to offer or consent to perform any illicit sexual act for money or any other thing of value. Furthermore, it shall be unlawful for any person, while in a place open to the public and whether as a pedestrian or in a motor vehicle, to attempt to induce, entice, solicit, pander, purchase or procure another to commit any illicit sexual act for money or other things of value. An illicit sexual act is defined as one or more of the following:
 - a. Prostitution.
 - b. Sodomy for hire.
 - c. Masturbation for hire.
 - (2) For purposes of subsection (b)(1) of this section, any person shall include solicitors of illicit sexual acts or panderers, who solicit, procure or purchase another to perform any illicit sexual act in exchange for money or other things of value, and who are commonly referred to as "johns" or "tricks." Any person engaging in violation of this section shall be guilty of the offense of idling and loitering for the purposes of committing an illicit sexual act.

State law reference— Similar provisions, O.C.G.A. § 16-6-9 et seq.

Sec. 38-119. - Public indecency.

It shall be unlawful for any person to perform any of the following acts in a public place: An exposure of one's genitals, or of one's breasts, if female, except in a place designed for same.

State law reference— Public indecency, O.C.G.A. § 16-6-8.

Sec. 38-120. - Obscenity and related offenses.

- (a) A person commits the offense of distributing obscene material when the following occurs:
 - (1) He sells, rents, or leases to any person any obscene material of any description, knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so, provided that the word "knowing," as used in this section, shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter.
 - (2) A person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material.
 - (3) The character and reputation of the individual charged with an offense under this law, and the character and reputation of the business establishment involved may be placed in evidence by the defendant on the question of intent to violate this law. Undeveloped photographs, molds, printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.
- (b) Material is obscene if:
 - (1) To the average person applying contemporary community standards, taken as a whole, it predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex, or excretion.
 - (2) The material, taken as a whole, lacks serious literary, artistic, political, or scientific value.
 - (3) The material depicts or describes, in a patently offensive way, sexual conduct specifically defined as follows:
 - a. Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;
 - b. Acts of masturbation;
 - c. Acts involving excretory functions or lewd exhibition of the genitals;
 - d. Acts of bestiality or the fondling of sex organs of animals; or
 - e. Sexual acts of flagellation, torture, or other violence indicating a sadomasochistic sexual relationship.
- (c) Any device designed or marketed as useful primarily for the stimulation of human genital organs is obscene material under this section. However, nothing in this subsection shall be construed to include a device primarily intended to prevent pregnancy or the spread of sexually transmitted diseases.
- (d) It is an affirmative defense under this section that selling, renting, or leasing the material was done for a bona fide medical, scientific, educational, legislative, judicial, or law enforcement purpose.
- (e) A person who commits the offense of distributing obscene material shall be guilty of a violation of this Code. State law reference— Similar provisions, O.C.G.A. § 16-12-80 et seq.

Secs. 38-121—38-138. - Reserved.

ARTICLE V- ALCOHOL RELATED OFFENSES

Sec. 38-139. - Public possession or consumption.

- (a) *Alcohol consumption near package stores.* It shall be unlawful for any person to open or to consume all or any part of any type of alcoholic beverage within 100 feet of any retail store where alcoholic beverages are sold in package form or within the boundary lines of the property on which such retail store is located, whichever constitutes the greater distance.
- (b) *Drinking in public.*
 - (1) It shall be unlawful for any person to drink any vinous, malt or other alcoholic beverage while on any streets, sidewalks, alleyways, parking areas or other open areas operated and controlled by the city.

- (2) Subsection (1) shall not apply to gatherings or activities for which a valid event permit has been issued by the city, subject to any conditions attached to the issuance of the permit.
- (3) A licensee may prepare and serve alcoholic beverages to be consumed within an outdoor dining area as part of the operation of a sidewalk cafe. Open containers of alcoholic beverages shall only be transported into or out of outdoor dining areas by the licensee's working employees as part of their work duties.

Sec. 38-140. - Public intoxication.

It shall be unlawful for any person within the corporate limits of the city to be disorderly while under the influence on the streets, sidewalks or other public places. Any person who acts in a reckless manner so as to create an unreasonable risk to himself, to others or to property in the vicinity while under the influence of alcohol or drugs is in violation of this section.

Sec. 38-141. - Furnishing, purchasing, or possession of alcoholic beverages by person less than 21 years of age.

- (a) Except as otherwise authorized by law:
 - (1) No person directly or through another person shall furnish, cause to be furnished, or permit any person in such person's employ to furnish any alcoholic beverage to any person less than 21 years of age;
 - (2) No person less than 21 years of age shall purchase, drink or knowingly possess any alcoholic beverages;
 - (3) No person less than 21 years of age shall misrepresent such person's age in any manner whatever for the purpose of obtaining illegally any alcoholic beverage;
 - (4) No person knowingly or intentionally shall act as an agent to purchase or acquire any alcoholic beverage for or on behalf of a person less than 21 years of age;
 - (5) No person less than 21 years of age shall misrepresent such person's identity or use any false identification for the purpose of purchasing or obtaining any alcoholic beverages; or
 - (6) No person shall keep or maintain a place where persons less than 21 years of age are allowed and permitted to come and purchase, drink or possess any alcoholic beverage.
- (b) The prohibitions contained in subsections (a)(1), (a)(2) and (a)(4) of this section shall not apply with respect to:
 - (1) The sale, purchase or possession of alcohol beverages for consumption for medical purposes pursuant to a prescription of a physician duly authorized to practice medicine in this state;
 - (2) The sale, purchase or possession of alcohol beverages for consumption at a religious ceremony;
 - (3) The possession of alcoholic beverages for consumption by a person under 21 years of age when the parent or guardian of the person less than 21 years of age gives the alcoholic beverage to the person and when possession is in the home of the parent or guardian and such parent or guardian is present;
 - (4) The sale of alcoholic beverages by a person when such person has been furnished with proper identification showing that the person to whom the alcoholic beverage is sold is 21 years of age or older. For purposes of this subsection, the term "proper identification" means any document issued by a governmental agency containing a description of the person, such person's photograph, or both, and giving such person's date of birth and includes, without being limited to, a passport, military identification card, driver's license, or an identification card authorized under O.C.G.A. §§ 40-5-100 through 40-5-104. The term "proper identification" shall not include a birth certificate.
- (c) If such conduct is not otherwise prohibited pursuant to O.C.G.A. § 3-3-24, nothing contained in this section shall be construed to prohibit any person less than 21 years of age from:
 - (1) Dispensing, serving, selling or handling alcoholic beverages as a part of employment in any licensed establishments;
 - (2) Being employed in any establishment in which alcoholic beverages are distilled or manufactured; or
 - (3) Taking orders for and having possession of alcoholic beverages as a part of employment in a licensed establishment.

- (d) Testimony by any person under 21 years of age, when given in an administrative or judicial proceeding against another person for violation of any provision of this section, shall not be used as an admission in any administrative or judicial proceedings brought against such testifying person less than 21 years of age.
- (e) Any person convicted of violating any prohibition contained in subsection (a) of this section shall be punished by a fine not to exceed \$1,000.00 or imprisonment in the city jail for not more than 180 days, or both; except that any person convicted of violating subsection (a)(2) of this section shall be punished by not more than 30 days imprisonment or a fine of not more than \$300.00 or both. Any defendant charged under this section shall be entitled upon request to have the case against such defendant transferred to the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred. Any person charged with a second or subsequent offense under this section shall be punished as for a misdemeanor of a high and aggravated nature in the court having general misdemeanor jurisdiction in the county in which the alleged offense occurred.
- (f) Whenever any person who has not been previously convicted of any offense under this section or under any other law of the United States or any other state relating to alcoholic beverages pleads guilty to or is found guilty of a violation of subsection (a)(2) or (a)(3) of this section, the court, without entering a judgment of guilt and with the consent of such person, may defer further proceedings and place such person on probation upon such reasonable terms and conditions as the court may require.
 - (1) The terms of probation shall preferably be such as to require the person to undergo a comprehensive rehabilitation program, including, if necessary, medical treatment, not to exceed three years, designed to acquaint such person with the ill effects of alcohol abuse and to provide such person with knowledge of the gains and benefits which can be achieved by being a good member of society.
 - (2) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed accordingly.
 - (3) Upon fulfillment of the terms and conditions of probation, the court shall discharge such person and dismiss the proceedings against such person. Discharge and dismissal under this subsection shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and dismissal under this subsection may occur only once with respect to any person.
- (g) Unless the officer has reasonable cause to believe such person is intoxicated, a law enforcement officer may arrest, by issuance of a citation, a person accused of violating only subsection (a)(2) of this section. The citation shall enumerate the specific charges against the person and either the date upon which the person is to appear and answer the charges or a notation that the person will be later notified of the date upon which the person is to appear and answer the charges. If the person charged shall fail to appear as required, the judge, having jurisdiction of the offense may issue a warrant or other order directing the apprehension of such person and commanding that such person be brought before the court to answer the charges contained within the citation and the charge of such person's failure to appear as required. Nothing in this subsection shall be construed to invalidate an otherwise valid arrest by citation of a person who is intoxicated.

State law reference— Similar provisions, O.C.G.A. §§ 3-3-23, 3-3-23.1, 3-3-24.

Secs. 38-142—38-165. - Reserved.

ARTICLE VI- OFFENSES INVOLVING SCHOOLS

Sec. 38-166. - Unauthorized persons entering school buildings.

No person shall enter or remain in any public, private or parochial school building between the hours of 7:00 a.m. and 6:00 p.m. on days that school is in session, or until 10:00 p.m. at those schools which have extended sessions, who is not a regularly enrolled student, teacher or employee at that school, unless the person shall have first and immediately proceeded to the administrative offices and been identified to the principal or the principal's agent and received written permission to remain on the premises.

Sec. 38-167. - Unauthorized persons not to remain in school buildings when requested to leave.

It shall be unlawful for any person to enter and remain in any public, private or parochial school or on surrounding school grounds after being directed to leave by the principal of the school or designated agent.

Sec. 38-168. - Creating a disturbance.

It shall be unlawful for any person to create a disturbance in any private, public or parochial school or on the surrounding school grounds or on the fields or grounds lawfully used for school activities while such recreational areas are in use or other activities within the school or school activities on the school grounds or fields while such activities are in progress thereon.

Secs. 38-169—38-180. - Reserved.

ARTICLE VII- LITTER CONTROL

Sec. 38-181. - Purpose and intent.

The purpose of this chapter is to protect the public health, safety, environment, and general welfare through the regulation and prevention of litter. The objectives of this chapter are:

- (1) Provide for uniform prohibition throughout the City of Summerville of any and all littering on public or private property; and,
- (2) Prevent the desecration of the beauty and quality of life of the City of Summerville and prevent harm to the public health, safety, environment, and general welfare, including the degradation of water and aquatic resources caused by litter.

Sec. 38-182. – Applicability

This chapter shall apply to all public and private property within the City of Summerville.

Sec. 38-183. - Compatibility with other regulations.

This article is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. The requirements of this chapter should be considered minimum requirements, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

Sec. 38-184. - Severability.

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this chapter shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this chapter.

Sec. 38-185. - Definitions.

Litter means any organic or inorganic waste material, rubbish, refuse, garbage, trash, hulls, peelings, debris, grass, weeds, ashes, sand, gravel, slag, brickbats, metal, plastic, and glass containers, broken glass, dead animals or intentionally or unintentionally discarded materials of every kind and description which are not "waste" as such term is defined in O.C.G.A. § 16-7-51, paragraph 6.

Public or private property means the right-of-way of any road or highway; any body of water or watercourse or the shores or beaches thereof; any park, playground, building, refuge, or conservation or recreation area; timberlands or forests; and residential, commercial, industrial, or farm properties.

Sec. 38-186. - Prohibition against littering public or private property or waters.

It shall be unlawful for any person or persons to dump, deposit, throw or leave or to cause or permit the dumping, depositing, placing, throwing or leaving of litter on any public or private property in this City of Summerville or any waters in this City of Summerville unless:

- (a) The property is designated by the state or by any of its agencies or political subdivisions for the disposal of such litter, and such person is authorized by the proper public authority to use such property;
- (b) The litter is placed into a receptacle or container installed on such property; or,

- (c) The person is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of the owner or tenant, all in a manner consistent with the public welfare.

Sec. 38-187. - Vehicle loads causing litter.

No person shall operate any motor vehicle with a load on or in such vehicle unless the load on or in such vehicle is adequately secured to prevent the dropping or shifting of materials from such load onto the roadway.

Sec. 38-188. - Violations, enforcement and penalties.

- (a) *Violations.* It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person who has violated or continues to violate the provisions of this chapter, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise sentenced in a manner provided by law.
- (b) *Evidence.*
 - (1) Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane, or other conveyance in violation of this chapter, it shall be prima facie evidence that the operator of the conveyance has violated this chapter.
 - (2) Except as provided in subsection (1), whenever any litter which is dumped, deposited, thrown or left on public or private property in violation of this chapter is discovered to contain any article or articles, including but not limited to letters, bills, publications or other writing which display the name of the person thereon in such a manner as to indicate that the article belongs or belonged to such person, it shall be a rebuttable presumption that such person has violated this chapter.
- (c) *Penalties.* Any person who violates this chapter shall be guilty of a violation and, upon conviction thereof, shall be punished as follows:
 - (1) Each and every day that the premises shall remain in a condition in violation of the terms of this article shall constitute a separate offense. This section shall be in addition to the provisions of the abatement of said nuisance and the charge of the cost of the same against the owner of the premises by the city. A fine imposed under this code shall not exceed \$1,000.00 per offense. A sentence of imprisonment under this article shall not exceed 60 days per offense. At the discretion of the Municipal Court judge, any sentence may be probated, altered or amended. Any property owner, occupant or party of interest who violates any other city code within a 24-month period shall immediately be issued a citation and subject to a fine of not less than \$500.00; and
 - (2) In addition to the fine set out in subsection (1) above, the violator shall reimburse the city of Summerville for the reasonable cost of removing the litter when the litter is or is ordered removed by the City of Summerville; and
 - (3) In the sound discretion of the court, the person may be directed to pick up and remove from any public street or highway or public right-of way for a distance not to exceed one mile any litter he has deposited and any and all litter deposited thereon by anyone else prior to the date of execution of sentence; or

In the sound discretion of the court, the person may be directed to pick up and remove any and all litter from any public property, private right-of-way, or with prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it can be established by competent evidence that he has deposited litter. Pick up and removal shall include any and all litter deposited thereon by anyone prior to the date of execution of sentence; and,

The court may publish the names of persons convicted of violating this article.
- (d) *Enforcement.* All law enforcement agencies, officers and officials of this state or any political subdivision thereof, or any enforcement agency, officer or any official of any commission of this state or any political subdivision thereof, are hereby authorized, empowered and directed to enforce compliance with this article.