

AN ORDINANCE AMENDING TITLE 11, MOUNT CARMEL MUNICIPAL CODE,
"MUNICIPAL OFFENSES," TO DECLARE CERTAIN ACTIVITIES TO BE
UNLAWFUL MUNICIPAL OFFENSES

WHEREAS, the public health, safety, and welfare of the citizens of Mount Carmel could be better served by having a more comprehensive listing of municipal offenses; and

WHEREAS, in order to provide greater direction to the peace officers of the Town of Mount Carmel and to assist the City Judge of the Town of Mount Carmel in the prosecution and hearing of municipal offenses, it appears that further delineation of actions or inactions constituting municipal offenses is necessary; and

WHEREAS, the public health, safety, and welfare require it;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF MOUNT CARMEL, TENNESSEE, AS FOLLOWS:

SECTION ONE

TITLE 11, "MUNICIPAL OFFENSES", CHAPTER 2, "ALCOHOL"

AMENDED

Title 11, "Municipal Offenses", Chapter 2, "Alcohol", is amended as follows: (1) "11-201. Public Drunkenness." shall be deleted in its entirety.

(2) There is added to Title 11, Chapter 2, the following section:

11-205. Alcoholic Beverage Restrictions on Persons Under Twenty-One (21). It shall be unlawful for any person under twenty-one (21) years of age to purchase, possess, transport, or consume alcoholic beverages, wine, or beer, with the following exception:

(1) Any person eighteen (18) years of age or older may transport, possess, sell, or dispense alcoholic beverages, wine, or beer in the course of his employment in accordance with the laws of the State of Tennessee.

SECTION TWO

TITLE 15, "MOTOR VEHICLES, TRAFFIC AND PARKING", CHAPTER 1,
MISCELLANEOUS" AMENDED

Title 15, "Motor Vehicles, Traffic and Parking", Chapter 1, "Miscellaneous," shall be amended by adding the following additional sections:

15-124. Size, Weight, and Load. It shall be unlawful for any person to operate any motor vehicle within the corporate limits in any manner whatsoever which is contrary to or in violation of any of the provisions contained in Chapter 7, Title 55, of the Tennessee Code Annotated.

15-125. Operation of Vehicles-Rules of the Road. It shall be unlawful for any person to operate any motor vehicle within the corporate limits unless the operation of such vehicle complies in all respects with the requirements set forth in Chapter 8, Title 55, of the Tennessee Code Annotated. It is hereby declared to be a violation of this chapter to operate any motor vehicle within the corporate limits in a manner contrary to the requirements set forth in Chapter 8, Title 55, of the Tennessee Code Annotated. In any case of a conflict between the provisions of this municipal code and the provisions of Chapter 8, Title 55, of the Tennessee Code Annotated, the more restrictive provision shall apply.

15-126. Registration Requirements for Motor Vehicles. It shall be unlawful for any person to operate any motor vehicle within the corporate limits unless such vehicle is properly registered and meets all of the registration requirements set out in Chapter 4, Title 55, of the Tennessee Code Annotated.

15-127. Driving While License Cancelled, Suspended, or Revoked.

(a) A person who drives a motor vehicle on any public highway within the corporate limits at a time when the person's privilege to do so is cancelled, suspended, or revoked violates this chapter.

(b) No person shall cause or knowingly permit such persons' child or ward under eighteen (18) years of age to drive a motor vehicle upon a highway within the corporate limits when such minor is not authorized to do so under this title or the laws of the State of Tennessee.

(c) No person shall authorize or knowingly permit a motor vehicle owned by such person or under such person's control to be driven upon any highway within the corporate limits by any person who is not authorized under this title or under the laws of the State of Tennessee to do so.

SECTION THREE

MOUNT CARMEL MUNICIPAL CODE 15-704. IMPOUNDMENT OF VEHICLES.

AMENDED TO ADD FEES FOR IMPOUNDMENT

Mount Carmel Municipal Code Section 15-704. "Impoundment of Vehicles." shall be amended by adding thereto the following sentence:

The fee for impounding a vehicle shall be twenty-five dollars (\$25.00) and the storage cost shall be five dollars (\$5.00) for each twenty-four (24) hour period or fraction thereof that the vehicle is stored.

SECTION FOUR

TITLE 11, "MUNICIPAL OFFENSES", CHAPTER 1, "MISDEMEANORS OF THE STATE ADOPTED" IS AMENDED BY ADDING SECTIONS

Title 11, "Municipal Offenses", Chapter 1, "Misdemeanors of the State Adopted," shall be amended by adding the following sections:

11-102. Assault and Battery. It shall be unlawful for any person to commit an assault or an assault and battery upon any person within the corporate limits.

11-103. Disorderly Houses. It shall be unlawful for any person to keep a disorderly house or house of ill fame for the purpose of prostitution or lewdness or where drunkenness, quarreling, fighting, or other breaches of the peace are carried on or permitted to the disturbance of others. Furthermore, it shall be unlawful for any person knowingly to visit any such house for the purpose of engaging in such activities.

11-104. Indecent or Improper Exposure or Dress. It shall be unlawful for any person publically to appear naked or in any dress not appropriate to his or her sex or in any indecent or lewd dress, or otherwise to make any indecent exposure of his or her person.

11-105. Window Peeping. No person shall spy, peer, or peep into any window of any residence or dwelling premise that he does not occupy nor shall he loiter around or within view of any such window with the intent of watching or looking through it.

11-106. Theft of Property. It shall be unlawful for any person within the corporate limits to commit theft of property. A person commits theft of property if, with the intent to deprive the owner of the property, the person knowingly obtains or exercises control over the property without the owner's effective consent.

11-107. Prowling. It shall be unlawful for any person to prowl or wander about the streets, alleys, or other public or private ways or places, or be found abroad at night, between the hours of midnight and six a.m., without any visible or lawful business and when unable to give a satisfactory account of himself.

11-108. Curfew for Certain Minors. It shall be unlawful for any person under the age of sixteen (16) years to be abroad at night between eleven p.m. and five a.m. unless going directly to or from a lawful activity or upon a legitimate errand for, or accompanied by, a parent, guardian, or other adult person having lawful custody or control of such minor.

11-109. Vagrancy. It shall be unlawful for any person to beg or solicit alms or, if without apparent lawful means of support, willfully to neglect to apply himself to some honest occupation.

11-110. 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 in the scope of his employment or unless he is a lawful passenger or is otherwise lawfully entitled to be on such vehicle.

11-111. Abandoned Refrigerators. 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 of latching or locking door without first removing therefrom the latch, door, or lock.

11-112. Posting Notices. 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.

11-113. Littering. A person commits the offense of littering who:

- (1) Knowingly places, drops or throws litter on any public or private property without permission and does not immediately remove it;
- (2) Negligently places or throws glass or other dangerous substances on or adjacent to water to which the public has access for swimming or wading, or on or within fifty feet (50') of a public highway;
- (3) Negligently discharges sewage, minerals, or products or litter into any public waters or lakes within the corporate limits.

11-114. Caves, Wells, Cisterns. 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.

11-115. Theft of Services. It shall be unlawful for any person within the corporate limits to commit theft of services. A person commits theft of services who:

- (1) Intentionally obtains services by deception, fraud, coercion, false pretense, or any other means to avoid payment for the services;
- (2) Having control over the disposition of services to others, knowingly diverts those services to the person's own benefit or to the benefit of another not entitled thereto; or
- (3) Knowingly absconds from establishments where compensation for services is ordinarily paid immediately upon the rendering of them, including, but not limited to, hotels, motels, and restaurants, without payment or a bona fide offer to pay.

11-116. Unauthorized Use of Automobiles or Other Vehicles. It shall be unlawful for any person within the corporate limits to take, use, and operate another's automobile, airplane, motorcycle, bicycle, boat or other vehicle without the consent of the owner when the person does not have the intent to deprive the owner thereof.

11-117. Illegal Possession or Fraudulent Use of Credit or Debit Card.

- (a) A person commits the offense of illegal possession of a credit or debit card who, knowing the person does

not have the consent of the owner or issuer, takes, exercises control over, or otherwise uses such card or information from such card.

(b) A person commits the offense of fraudulent use of a credit or debit card who uses, or allows to be used, the credit or debit card or information from such card, for the purpose of obtaining property, credit, services, or anything else of value with knowledge that:

- (1) The card is forged or stolen;
- (2) The card has been revoked or cancelled;
- (3) The card has expired and the person uses the card with fraudulent intent; or
- (4) For any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit or debit card is issued.

11-118. Worthless Checks. (a) A person commits an offense who, with fraudulent intent or knowingly:

- (1) Issues or passes a check or similar site order for the payment of money or for the purpose of obtaining money, services, labor, credit or any article of value, knowing at the time there are not sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order, as well as all other checks or orders outstanding at the time of such issuance; or
- (2) Stops payment on a check or similar site order for the payment of money for the purpose of obtaining money, services, labor, credit or other article of value; provided, that such money, credit, goods or services was presented at the time of the issuance of the check or similar site order;
- (3) This sub-section shall not apply to a post-dated check or to a check or similar site order where the payee or holder knows or was given sufficient reason to believe the drawer did not have sufficient funds on deposit to his credit with the drawee to insure payment.

(b) For the purposes of this section, the issuer's or passer's fraudulent intent or knowledge or both of insufficient funds may be inferred if:

- (1) The person had no account with the bank or other drawee at the time the person issued or passed the check or similar site order; or
- (2) On presentation within thirty (30) days after issuing or passing the check or similar site order, payment was refused by the bank or other drawee for lack of funds, insufficient funds, or account closed after issuing or passing the check or order, and the issuer or passer fails to make good within ten (10) days after receiving notice of the refusal.

(c) For the purposes of subdivision (b)(2) notice shall be in writing, and, if the address is known, sent by certified mail with return receipt requested, addressed to the issuer or passer at the address shown:

- (1) On the check or similar site order if given; or

(2) If not shown on the check or similar site order, on the records of the bank or other drawee if available.

(d) If notice is given in accordance with sub-section (c) it may be inferred that notice was received no later than five (5) days after it was mailed.

(e) Notice shall not be required:

(1) In the event the situs of the drawee is not in Tennessee;

(2) If the drawer is not a resident of Tennessee or has left the state at the time such check, draft or order is dishonored; or

(3) If the drawer of such check, draft or order did not have an account with the drawee of such check, draft or order at the time the same was issued or dishonored.

11-119. Disorderly Conduct. A person commits an offense who, in a public place and within intent to cause public annoyance or alarm:

(1) Engages in fighting or in violent or in threatening behavior;

(2) Refuses to obey an official order to disburse issued to maintain public safety in dangerous proximity to a fire, hazard or other emergency; or

(3) Creates a hazardous or physically offensive condition by an act that serves no legitimate purpose.

11-120. Simple Possession or Casual Exchange of Controlled Substances. (a) It is an offense for a person to knowingly possess or casually exchange a controlled substance as defined in Chapter 17, Title 39, Tennessee Code Annotated, unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice.

(b) It is an offense for a person to distribute a small amount of marijuana not in excess of one-half ($\frac{1}{2}$) ounce (14.175 grams).

11-121. Unlawful Drug Paraphernalia Uses and Activities. It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia as defined in Chapter 17, Title 39, Tennessee Code Annotated, to plant, propulgate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, re-pack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

11-122. Reckless Endangerment. A person commits an offense who recklessly engages or conduct which places or may place another person in imminent danger of bodily injury.

11-123. Vandalism. (a) A person who within the corporate limits knowingly causes damage to or the destruction of any real or personal property of another or of the state, the United States, or any county, city, or town knowing that he does not have the owner's effective consent is guilty of an offense under this section.

(b) For the purposes of this section:

(1) "Damage" includes, but is not limited to:

(A) Destroying, polluting or contaminating property;

(B) Tampering with property and causing pecuniary loss or substantial inconvenience to the owner or a third person; and

(2) "Polluting" is the contamination by manmade or man-induced alteration of the chemical, physical, biological or radiological integrity of the atmosphere, water, or soil to the material injury of the right(s) of another. Pollutants include dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste.

SECTION FIVE

TITLE 11, "MUNICIPAL OFFENSES", CHAPTER 5, "INTERFERENCE WITH PUBLIC OPERATIONS AND PERSONNEL" AMENDED

Title 11, "Municipal Offenses," Chapter 5, "Interference with Public Operations and Personnel," shall be amended by adding the following sections:

11-504. Interference with Municipal Personnel. It shall be unlawful for any person knowingly to resist or in any way interfere with or attempt to interfere with any officer or employee of the Town while such officer or employee is performing or attempting to perform his municipal duties.

11-505. False Reports. It shall be a municipal offense for any person to:

(1) Report to a law enforcement officer an offense or incident within the corporate limits or the officer's concern;

(A) Knowing the offense or incident did not occur;

(B) Knowing the person reporting has no information relating to the offense or incident; or

(C) Knowing the information relating to the offense is false; or

(2) Intentionally initiate or circulate a report of a past, present, or impending bombing, fire, or other emergency, knowing that the report is false or baseless and knowing:

(A) It will cause action of any sort by an official or volunteer agency organized to deal with those emergencies;

(B) It will place a person in fear of imminent serious bodily injury; or

(C) It will prevent or interrupt the occupation of any building, place of assembly, form of conveyance, or any other place to which the public has access.

11-506. Resisting Stop, Frisk, Halt, Arrest or Search. It is an offense for a person to intentionally prevent or

obstruct anyone known to the person to be a law enforcement officer, or anyone acting in a law enforcement officer's presence and at such officer's direction, from effecting a stop, frisk, halt, arrest or search of any person, including the defendant, by using force against the law enforcement officer or another.

11-507. Evading Arrest. It is unlawful for any person to intentionally flee from anyone the person knows to be a law enforcement officer and the person:

- (1) Knows the officer is attempting to arrest a person;
or
- (2) Has been arrested.

11-508. Failure to Appear. It is unlawful for any person to knowingly fail to appear as directed by a lawful authority if the person:

- (1) Has been lawfully issued a citation in lieu of arrest;
- (2) Has been lawfully released from custody, with or without bail, on condition of subsequent appearance at an official proceeding at a specified time or place; or
- (3) Knowingly goes in hiding to avoid prosecution or court appearance.

SECTION SIX

LEGAL STATUS PROVISIONS

A. Conflict With Other Ordinances

In case of conflict between this ordinance or any part thereof, and the whole or part of any existing or future ordinance of the Town of Mount Carmel, Tennessee, the most restrictive shall in all cases apply.

B. Validity

If any rule, section, or sub-section of this ordinance is held by any court to be invalid or unconstitutional, the same shall not invalidate, otherwise effect any of the other rules, sections, or sub-sections of this ordinance unless it clearly appears that such other rule, section, or sub-sections is wholly or necessarily dependent for its operation upon the rule, section or sub-section so held invalid or unconstitutional.

C. Effective Date

This ordinance shall become effective upon passage, the public welfare requiring.

Passed 1st Reading	<u>April 22, 1993</u>	Ayes	<u>7</u>	Nays	<u>0</u>
Passed 2nd Reading	<u>May 27, 1993</u>	Ayes	<u>7</u>	Nays	<u>0</u>

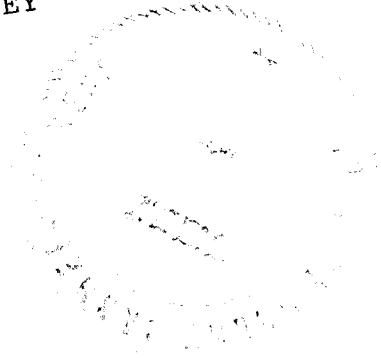
James L. Pearson
MAYOR

ATTEST

Nancy Carter
CITY RECORDER

APPROVED AS TO FORM:

Michael A. Faulk
CITY ATTORNEY



M E M O

TO: Member, Board of Mayor and Aldermen,
Town of Mount Carmel, Tennessee

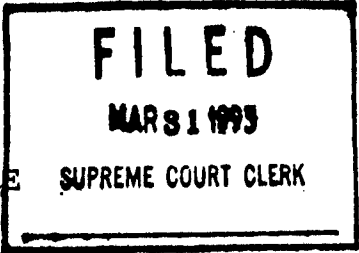
FROM: Michael A. Faulk, City Attorney



DATED: May 10, 1993

RE: Amended Ordinance No. 141, "An Ordinance Amending Title 11, Mount Carmel Municipal Code, 'Municipal Offenses,' to Declare Certain Activities to be Unlawful Municipal Offenses"

The prior copy of Ordinance No. 141 which you passed at the April 22, 1993 Board of Mayor and Aldermen meeting on the very first page included the addition of Section 11-201: "Public Intoxication" to the Mount Carmel Municipal Code. On May 5th I received a copy of the Tennessee Court of Appeals decision in City of Etowah v. Carruth (a copy attached) which says simply that the Town can't pass a public intoxication ordinance because of the state statute that's quoted within this case. Accordingly, I have eliminated this particular provision from Ordinance No. 141 as it was written for the first reading. It may now be passed on a second and final reading with this provision deleted.



IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

CITY OF ETOWAH,)
)
Plaintiff-Appellant) McMINN LAW
) 03A01-9211-CV-00424
v.)
)
EDDIE CARRUTH,)
)
Defendant-Appellee) AFFIRMED

CHARLES C. GUINN, JR., ATHENS, FOR THE APPELLANT
RANDY G. ROGERS, ATHENS, FOR THE APPELLEE

O P I N I O N

Inman, Senior Judge

Eddie Carruth was convicted in the City Court of violating certain ordinances of the City of Etowah which proscribe public intoxication and disorderly conduct. He appealed his conviction to the McMinn County Circuit Court which held that the City Court had no jurisdiction over these offenses and ordered them dismissed.

The trial court relied upon Tenn. Code Ann. § 33-8-203 which, as pertinent here, provides:

All arrests and court proceedings for public intoxication or drunkenness in this state shall be under the provisions of § 39-17-310 (formerly §§ 39-6-925 -- 39-6-928), to the exclusion of any common law or statutory offense now being enforced. No . . . municipality . . . shall adopt any local ordinance rendering public intoxication . . . an offense. . . .

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(3pp)

The City appeals, insisting (1) that it is a home rule municipality and therefore authorized by Tenn. Code Ann. § 6-54-306 to "set maximum penalties of thirty (30) days imprisonment and/or" a fifty-dollar fine for violation of municipal ordinances; and (2) since the prohibition of Tenn. Code Ann. § 33-8-203 does not include disorderly conduct, the City Court may properly adjudicate whether the appellee violated the ordinance.

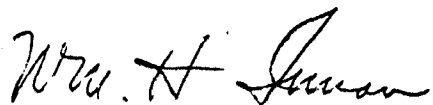
The record on appeal is barely adequate for dispositional purposes, but since the parties stipulated during argument that the City judge was appointed by the Etowah governing body - as distinguished from being elected by the registered voters - we think the case should be concluded upon that principle, superimposed upon Tenn. Code Ann. § 33-8-203.

In State ex rel. Town of South Carthage v. Barrett, 840 S.W.2d 895 (Tenn. 1992), the Supreme Court held that judges of municipal courts exercising concurrent jurisdiction with an inferior court must be popularly elected pursuant to Article VI, section 4 of the Tennessee Constitution. It is not disputed that the Etowah City Judge is appointed, and that the governing body of Etowah incorporated by reference the state laws prohibiting public intoxication and disorderly conduct. The consequence of these factors require the conclusion that the municipal court had no jurisdiction over the offenses charged, as held by the trial court.

The home rule status of Etowah does not affect the constitutional requirement "that judges charged with interpreting the criminal laws of this state should be elected in accordance with Article VI, § 4 of the Tennessee Constitution." Barrett, supra. Had the judge been popularly elected, the

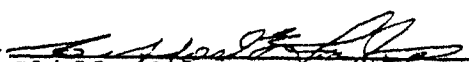
jurisdiction of the municipal court would thereby have been enlarged pursuant to the home rule statute. But an appointed judge is jurisdictionally limited to the imposition of fines of not more than fifty dollars for the violation of ordinances which do not partake of the nature of the state's criminal laws.

The judgment is accordingly affirmed, with costs assessed to the appellant.



William H. Inman, Senior Judge

CONCUR:



Clifford E. Sanders, P.J. (E.S.)



Herschel P. Franks, J.