

ORDINANCE NO. _____

ORDINANCE TO REPEAL CITY CODE
- CHAPTER 73 –
- OFFENSES –
-DEFINITIONS AND UNLAWFUL SOLICITATION-

BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF DECATUR,
ILLINOIS:

Section 1. That Chapter 73, Sections 2(B)-2(G) “Definitions” and Section 20 “Unlawful Solicitation,” of the City Code of the City of Decatur be, and the same is hereby, repealed

Section 2. That the City Clerk be, and she is hereby, authorized and directed to cause the provisions hereof to be appropriately set out in the City Code and to cause the same to be published in pamphlet form according to law.

PRESENTED, PASSED, APPROVED AND RECORDED THIS 1ST day of October,
2018.

JULIE MOORE WOLFE, MAYOR

ATTEST:

CITY CLERK

PUBLISHED this _____ day of _____, 2018.

CITY CLERK

ADDITIONS AND DELETIONS
CHAPTER 73
OFFENSES

1. **WORDS AND PHRASES.** Unless otherwise expressly provided herein, words and phrases used in this Chapter shall have and be given the same meaning and definition as set out in the Criminal Code of 2012 of the State of Illinois. (Amended, Ordinance 2013-09)

2. **DEFINITIONS.**

A. "Sexual genital stimulation" means the touching or manipulating of the genitals, pubes, anus or breasts of a person in a manner intended to arouse, appeal to or gratify the lust, passion or sexual desire of a person.

~~B. "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. The solicitation may be, without limitation, by the spoken, written, or printed word, or by other means of communication.~~

~~C. "Aggressive manner" means and includes:~~

~~(1) Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent;~~

~~(2) Following the person being solicited, if that conduct is: (i) 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 (ii) 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 (5) feet of the person being solicited after the person has made a negative response, if continuing the solicitation is: (i) 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 (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation;~~

Revised 09/2016

~~(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 shall not constitute obstruction of pedestrian or vehicular traffic;~~

~~(5) — Intentionally or recklessly using obscene or abusive language or gestures: (i) 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 (ii) words intended to or reasonably likely to intimidate the person into responding affirmatively to the solicitation; or,~~

~~(6) Approaching the person being solicited in a manner that: (i) 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 (ii) is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.~~

~~D. "Automated teller machine" means a device, linked to a financial institution's account records, which is able to carry out transactions, including, but not limited to: account transfers; deposits; cash withdrawals, balance inquiries, and mortgage and loan payments.~~

~~E. "Automated teller machine facility" means the area comprised of one or more automatic teller machines, and any adjacent space which is made available to banking customers after regular banking hours.~~

~~F. "Financial institution" means any bank, currency exchange, credit union or other similar institution where deposits are received, checks paid or loans made, or where checks, drafts or money orders are cashed for consideration all as licensed, authorized or permitted by the laws of the State of Illinois.~~

~~G. "Public area" means an area to which the public or a substantial group of persons has access, and includes, but is not limited to, alleys, bridges, buildings, driveways, parking lots, parks,~~

playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.

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~~20. UNLAWFUL SOLICITATION.~~ It shall be unlawful for any person to solicit money or other things of value, or to solicit the sale of goods or services:

~~(a) In an aggressive manner in a public area;~~

~~(b) In any public transportation vehicle or bus;~~

~~(c) Within fifteen (15) feet of any entrance or exit of any financial institution or within fifteen (15) feet of any automated teller machine during the hours of operation of such financial institution, or automated teller machine 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; or,~~

~~(d) 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.~~

2021. **PAYMENT OF FINES AND FEES.** Settlement of fines and payment of fees shall be in the form of United States currency, money order or check, which payment shall be made to the Finance Department of the City of Decatur, Illinois, or a private collection enterprise designated in writing by the Director of the Finance Department to collect unpaid fines and fees. It shall be unlawful to pay, or attempt to pay, in any other manner or to make payment of such unreasonable manner as to alarm, disturb, harass, endanger or injure or attempt to alarm, disturb, harass, endanger or injure any City employee or employee of a private collection enterprise lawfully engaged in the collection of unpaid fines and fees. (Amended, Ordinance No. 2005-02, January 18, 2005)

2122. **PUBLIC URINATION/DEFECATION.** It shall be unlawful to urinate or defecate except in urinals or commodes of public restrooms or similar facilities or to expose a person's private body parts in an attempt to urinate or defecate in public places other than public restrooms or similar facilities. (Amended, Ordinance No. 2009-57, August 3, 2009)

2223. **RETALIATION AGAINST OCCUPANT.** It shall be unlawful for an action for eviction, abatement of a nuisance, forcible entry and detainer or other similar proceeding to be threatened or instituted against an occupant of a dwelling solely because such occupant agrees to testify or testifies at a code violation hearing.

2324. **DEFACEMENT OF PROPERTY.**

A. It shall be unlawful for any person to knowingly damage the property of another by defacing, deforming, or otherwise damaging the property by the use of paint or any other similar substance, or by the use of a writing instrument, etching tool, or any other similar device without the consent of said owner.

B. It shall be unlawful for any person to assist, aid, abet, allow, permit or encourage another to violate the provisions of this Section, by words, overt act, failure to act, or by lack of supervision and control over minors.

C. In addition to any other penalties that may be imposed for a violation of this Section, a person convicted of Defacement of Property shall be ordered to abate, reimburse, remediate, repair, and/or remove the effect of the damage of or to the property.

D. In addition to any other penalties that may be imposed for a violation of this Section and as restitution for a violation of this Section, a violator shall pay for the costs of repairing any damages to property caused by that violator's unlawful conduct. When the violator is a person under eighteen (18) years of age, any parent, guardian, or other person having legal custody of the

violator shall be responsible to pay for damages caused by the violator or abatement of the nuisance which is the result of the violator's act.

E. This Section shall not be applicable to the use of water soluble chalk on public sidewalks.

2425. POSSESSION CANNABIS.

A. It shall be unlawful for a person to possess thirty (30) grams or less of any substance containing cannabis. (Amended, Ordinance 2016-63, September 19, 2016)

B. For purposes of this Section, cannabis includes marijuana, hashish and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture or hydrocannabinol (THC) and all other cannabinol derivatives, including its naturally occurring or synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted there from), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.

2526. POSSESSION DRUG PARAPHERNALIA.

A. It shall be unlawful for any person to knowingly possess any item of drug paraphernalia with the intent to use it for the purpose of unlawfully ingesting, inhaling, injecting or otherwise introducing cannabis or a controlled substance into the human body, or in preparing cannabis or a controlled substance for that use.

B. As used in this Section, the following terms shall include and have the following meanings:

(1) Cannabis shall mean and include any substance defined as cannabis in Section 3 of the Illinois Cannabis Control Act, 720 ILCS 550/3.

(2) Controlled substance shall mean and include any substance defined as a controlled substance in the Illinois Controlled Substances Act, 720 ILCS 570/201 et. seq.

(3) Drug paraphernalia means any object or device used, designed for use or intended for use in unlawfully ingesting, smoking, administering, or storing cannabis or a controlled substance. For the purposes of this section, drug paraphernalia includes but is not limited to:

- (a) Metal, wooden, plastic, glass, stone or ceramic pipes, with or without screens;
- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;
- (e) Roach clips;
- (f) Cocaine spoons and vials;
- (g) Bongs;
- (h) One-hitters.

C. This Section shall not apply to a person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act.

D. Drug paraphernalia as defined herein, seized by police officers pursuant to an arrest or issuance of a notice to appear for a violation of this Section, shall be forfeited to the City of Decatur upon a conviction for violation of this Section, or upon payment of a minimum fine in settlement of said violation pursuant to Chapter 29, Section 11 of this Code, without further order of the Court.

2627. LITTERING.

A. It shall be unlawful for any person to dump, deposit, drop, throw, discard, leave, cause or permit the dumping, depositing, dropping, throwing, discarding or leaving of litter upon any public or private property or upon or into any river, lake, pond, or other stream or body of water unless:

(1) the property has been designated by the State or any unit of local government for the disposal of litter and the litter is disposed of on that property in accordance with the applicable rules and regulations of the Pollution Control Board and Illinois Environmental Protection Agency;

(2) the litter is placed into a receptacle or other container intended by the owner or tenant in lawful possession of that property for the deposit of litter;
or,

(3) the person is acting under the direction of proper public officials during special cleanup days.

B. It shall be unlawful for any person to dump, deposit, drop, throw, discard or otherwise dispose of litter from any motor vehicle upon any public highway, upon any public or private property or upon or into any river, lake, pond, stream or body of water except as permitted under any of paragraphs (1) through (3) of Section A.

C. Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle not carrying passengers for hire, the presumption is created that the operator of that motor vehicle has violated this Section.

2728. RESISTING, INTERFERING OR OBSTRUCTING.

A. It shall be unlawful for any person to knowingly resist, interfere or obstruct the performance by one known to the person to be a peace officer or firefighter of any authorized act within the peace officer's or firefighter's official capacity. (Amended, Ordinance 2012-35, June 4, 2012)

B. It shall be unlawful for any person to persist in any attempt to engage a peace officer or firefighter in conversation in person when the person knows the person to be a peace officer or firefighter while the peace officer or firefighter is attempting to control other persons or traffic after a peace officer or firefighter directs the person to cease the attempt at conversation.

2829. DAMAGE TO PROPERTY. It shall be unlawful for any person to damage, destroy, deface or interfere, without lawful authority, the property of another.

2930. TRESPASS.

A. It shall be unlawful for any person to:

- (1) knowingly and without lawful authority, enter or remain within or on a building; or
- (2) enter upon the land of another, after receiving, prior to such entry, notice from the owner or occupant that such entry is forbidden; or
- (3) remain upon the land of another, after receiving notice from the owner or occupant to depart; or
- (4) present false documents or falsely represent his or her identity orally to the owner or occupant of a building or land in order to obtain permission from the owner or occupant to enter or remain in the building or on the land; or

(5) knowingly and without lawful authority enter or remain upon any vehicle, aircraft or watercraft of another; or

(6) enter upon the vehicle, aircraft or watercraft of another, after receiving, prior to such entry, notice from the owner or occupant that such entry is forbidden; or

(7) remain upon the vehicle, aircraft or watercraft of another, after receiving notice from the owner or occupant to depart.

B. A person has received notice from the owner or occupant within the meaning of Subsection A. if he or she has been notified personally, either orally or in writing or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof.

C. This Section shall apply to land owned or supported in whole or in part with City funds, or Federal or State funds administered or granted through the City or any of its agencies, or any building on such land.

3034. TOBACCO and MINORS.

A. No person shall sell, buy for, distribute samples of or furnish any cigar, cigarette, smokeless tobacco or tobacco in any of its forms, to any minor under eighteen (18) years of age.

B. No minor under eighteen (18) years of age shall possess, purchase or attempt to purchase any cigar, cigarette, smokeless tobacco or tobacco in any of its forms.

C. For purposes of this Section, “smokeless tobacco” means any tobacco products that are suitable for dipping or chewing.

3132. RETAIL THEFT.

A. For purposes of this Section, the following definitions shall apply:

- (1) Conceal. To conceal merchandise means that, although there may be some notice of its presence, that merchandise is not visible through ordinary observation.
- (2) Full retail value means the merchant's stated or advertised price of the merchandise.
- (3) Merchandise means any item of tangible personal property.
- (4) Merchant means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator.
- (5) Minor means a person who is less than nineteen (19) years of age, is unemancipated and resides with his/her parents or legal guardian.
- (6) Person means any natural person or individual.
- (7) Peace Officer means that as defined in 720 ILCS 5/2-13.
- (8) Premises of a retail mercantile establishment includes, but is not limited to, the retail mercantile establishment; and common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.
- (9) Retail Mercantile Establishment means any place where merchandise is displayed, held, stored or offered for sale to the public.
- (10) Shopping cart means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile

establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store.

(11) Theft detection shielding device means any laminated or coated bag or device designed and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.

(12) Theft detection device remover means any tool or device specifically designed and intended to be used to remove any theft detection device from any merchandise.

(13) Under-ring means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

B. It shall be unlawful for any person to knowingly:

(1) Take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise; or

(2) Alter, transfer or remove any label, price tag, marking, indicia of value or other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than full retail value with the intention of depriving the merchant of the full retail value of such merchandise; or

(3) Transfer any merchandise displayed, held, stored or offered for sale, in a retail merchandise establishment from the container or place in or on which such merchandise is displayed to any other container or place with the intention of depriving the merchant of the full retail value of such merchandise; or

(4) Under-ring with the intention of depriving the merchant of the full retail value of the merchandise; or

(5) remove a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the possession, use or benefit of such cart; or

(6) Represent to a merchant that he or another is the lawful owner of property, knowing that such representation is false, and convey or attempt to convey the property to a merchant who is the owner of the property in exchange for money, merchandise credit or other property of the merchant; or

(7) Use or possess any theft detection shielding device or theft detection device remover with the intention of using such device to deprive the merchant permanently of the possession, use or benefit of any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment without paying the full retail value of such merchandise; or

(8) Obtain or exert unauthorized control over property of the owner and thereby intend to deprive the owner permanently of the use or benefit of the

property when, as the lessee of the personal property of another, fails to return it to the owner, or fails to pay the full retail value of such property to the lessor in satisfaction of a contractual provision requiring such, within thirty (30) days after written demand from the owner for its return. A notice in writing, given after the expiration of the leasing agreement, by registered mail, to the lessee at the address given by the lessee and shown in the leasing agreement shall constitute property demand; or

(9) Remove or attempt to remove any theft detection device with the intention of depriving the merchant permanently of the possession, use or benefit of any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment without paying the full retail value of such merchandise.

C. A person is presumed to have possessed, carried away or transferred merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise if such person:

(1) Conceals upon his/her person or among his/her belongings, unpurchased merchandise displayed, held, stored or offered for sale in a retail mercantile establishment; and

(2) Removes that merchandise beyond the last known station for receiving payments for merchandise in that retail mercantile establishment without paying the full retail value of such merchandise.

D. Any merchant who has reasonable grounds to believe that a person has committed retail theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

- (1) to request identification;
- (2) to verify such identification;
- (3) to make reasonable inquiry as to whether such person has in his/her possession unpurchased merchandise and, to make reasonable investigation of the ownership of such merchandise;
- (4) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer;
- (5) in the case of a minor, to inform a peace officer, the parents, guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of such minor to such person.

E. A detention as permitted in this Section does not constitute an arrest or an unlawful restraint, as defined in 720 ILCS 5/10-3, nor shall it render the merchant liable to the person so detained.

3233. **THEFT.**

A. It shall be unlawful for a person to obtain control over lost or mislaid property when:

- (1) such person knows or learns the identity of the owner or knows, or is aware of, or learns of a reasonable method of identifying the owner; and,
 - (2) fails to take reasonable measures to restore the property to the owner;
- and,

(3) intends to deprive the owner permanently of the use or benefit of the property.

B. It shall be unlawful for any person to have in his/her possession any burglar's nippers, pick lock, skeleton key, bit jimmy or any other burglar's instrument or tool unless such possession is innocent or for a lawful purpose to make or alter or attempt to make or alter any key or other instrument that will open the lock of a building unless requested to do so by some person having the right and authority to make such request.

C. It shall be unlawful for a person to knowingly:

(1) Obtain or exert unauthorized control over property of the owner; or,

(2) Obtain by deception control over property of the owner; or,

(3) Obtain by threat control over property of the owner; or,

(4) Obtain control over stolen property knowing the property to have been stolen by another or under such circumstances as would reasonably induce the person to believe that the property was stolen, and:

(a) fails to promptly notify the owner or Decatur Police Department of such possession; or,

(b) intends to deprive the owner permanently of the use or benefit of the property; or,

(c) knowingly uses, conceals or abandons the property in such manner as to deprive the owner permanently of such use or benefit; or,

(d) uses, conceals or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such use or benefit.

(5) Obtain the permanent or temporary use of property, labor or services of another which are available only for hire by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor or services.

3334. MOB ACTION. It shall be unlawful for any person to engage in mob action which consists of any of the following:

- (1) The use of force or violence disturbing the public peace by two (2) or more persons acting together and without authority of law; or,
- (2) The assembly of two (2) or more persons to do an unlawful act; or,
- (3) The assembly of two (2) or more persons, without authority of law, for the purpose of doing violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional powers or regulative powers over any person by violence.

3435. ASSAULT. It shall be unlawful for a person, without lawful authority, to engage in conduct which places another in reasonable apprehension of receiving a battery.

3536. BATTERY. It shall be unlawful for a person to intentionally or knowingly without legal justification and by any means to:

- (1) Cause bodily harm to an individual, or,
- (2) Make physical contact of an insulting or provoking nature with an individual.

3637. RECKLESS CONDUCT. It shall be unlawful for any person to cause bodily harm or to endanger the bodily safety of an individual by any means if such person performs the acts

which cause the harm or endangers safety recklessly, whether the acts are otherwise lawful or unlawful.

3738. **TRUANCY.** A. It shall be unlawful for any person under the age of eighteen (18), enrolled in a public, private or parochial school, to absent himself or herself from attendance at school and to be present in any public place or on the premises of any establishment within the City of Decatur during the hours when the school is in session with student attendance required.

B. It shall be unlawful for any parent, guardian or custodian of a person under the age of eighteen (18) and enrolled in a public, private or parochial school, to permit or by insufficient control, to allow the minor to absent himself or herself from attendance at school and to be present in any public place or on the premises of any establishment within the City of Decatur during the hours when the school is in session with student attendance required.

C. It shall be unlawful for any owner, operator or any employee of an establishment to allow a person under the age of eighteen (18) and enrolled in a public, private or parochial school to be present or to remain upon the premises of the establishment in violation of Section A or Section B above during the hours that the Schools are in session with student attendance required.

D. It shall be a defense to Section A, B or C that the minor was:

- (1) Accompanied by the minor's parent, guardian, custodian, or responsible adult; without any detour or stop;
- (2) On an errand at the direction of the minor's parent, guardian, custodian, or responsible adult; without any detour or stop;
- (3) In a motor vehicle involved in interstate travel with the consent or authorization of a parent, guardian, or custodian;

- (4) Engaged in, going to or returning home from an employment activity pursuant to a cooperative school vocation program without any detour or stop;
- (5) Involved in an emergency or going to or returning from a medical appointment without any detour or stop;
- (6) Engaged in, going to or returning from an official school or religious activity or otherwise engaged in an activity which would constitute an excused absence from the school from which the minor would normally attend, including, but not limited to lunch periods;
- (7) Possessing valid proof that the minor is a student with permission to leave the school campus;
- (8) Engaged in a bona fide alternative education or home schooling program.

E. In addition to the defenses set forth in Subsection D above, it shall be a defense under Subsection C if the owner, operator, or employee of the establishment immediately upon discovery of a person reasonably believed to be in violation of this Section notified the Regional Office of Education, asked the person to leave their establishment and the minor refused to leave the establishment after being advised to do so by the owner, operator or employee.

F. In lieu of or in addition to any monetary penalties imposed after conviction, those charged with violation of this Section may be referred to the Macon County Truancy Court, Macon County Teen Court or other similar program.

3839. PENALTY. Any person, firm or corporation who shall violate any of the provisions of this Chapter shall, upon conviction, be fined a minimum of Two Hundred Fifty Dollars

(\$250.00) but not more than Five Hundred Dollars (\$500.00) for each offense, and each day on which a violation occurs or continues shall be considered a separate offense.

3940. **OTHER REMEDIES.** The fine provided for in Section 39 of this Chapter shall not be deemed to be the exclusive remedy for any act or thing constituting a nuisance under the provisions hereof, or under the common law, or to bar or prohibit the exercise of remedies, other than fine, applicable thereto.