

TITLE 11

PEACE, MORALS AND SAFETY

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Chapter 11.04
GENERAL PROVISIONS

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- 11.04.020 Civil Remedies Preserved.
- 11.04.030 State Statutes Incorporated. (Repealed)
- 11.04.040 Public Offenses – Penalties. (Repealed. See 11.04.260)
- 11.04.050 General Definitions.
- 11.04.060 Attempt.
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- 11.04.075 Aiding and Abetting.
- 11.04.080 Defendant Presumed Innocent; Reasonable Doubt as to Guilt.
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- 11.04.190 Use of Force in Defense of a Person. (Repealed)
- 11.04.200 Use of Force in Defense of Dwelling. (Repealed)
- 11.04.210 Use of Force in Defense of Property Other than a Dwelling. (Repealed)
- 11.04.220 Use of Force by an Aggressor. (Repealed)
- 11.04.230 Law Enforcement Officer's Use of Force in Making Arrest. (Repealed)
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- 11.04.270 Severability Clause.
- 11.04.280 Savings Clause.
- 11.04.290 Time Limitations.

11.04.010 Public Offense Code.

This title shall be known as the public offense code of the City. It is supplemental to other ordinances of the City which define offenses and prescribe penalties.

(History: Ord. POC-625 §1, 72)

11.04.020 Civil Remedies Preserved.

This title does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based on conduct which it makes punishable.

(History: Ord. POC-625 §2, 72)

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11.04.030 State Statutes Incorporated.

Repealed.

(History: Ord. POC-1381 §10, 86; POC-625 §3, 72; POC-598 § 4, 70)

11.04.040 Public offenses-Penalties.

Repealed. See 11.04.260.

(History: Ord. POC-1381 §10, 86; POC-625 §4, 72; POC-598 §83; PO-84C, 67; PO-84 §64,61)

11.04.050 General definitions.

The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

- A. "Act" includes a failure or omission to take action.
- B. "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.
- C. "City" means City of Overland Park, Kansas.
- D. "Code" shall refer to the Public Offense Code.
- E. "Conduct" means an act or a series of acts, and the accompanying mental state.
- F. "Conviction" includes a judgment of guilt entered upon a plea of guilty.
- G. "Court" means the Municipal Court of Overland Park, Kansas.
- H. "Crime" means a public offense prohibited by this title.
- I. "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.
- J. To "deprive permanently" means to:
 - 1. Take from the owner the possession, use or benefit of his or her property, without an intent to restore the same; or
 - 2. Retain property without intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
 - 3. Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.
- K. "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.
- L. "He" means "he" or "she."
- M. "His" means "his" or "her."
- N. "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

- O. "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.
- P. "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.
- Q. "Owner" means a person who has any interest in property.
- R. "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.
- S. "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.
- T. "Property" means anything of value, tangible or intangible, real or personal.
- U. "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.
- V. "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."
- W. "Public officer" includes the following, whether elected or appointed:
 1. An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.
 2. A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.
 3. A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.
 4. A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.
 5. A law enforcement officer.
 6. Any other person exercising the functions of a public officer under color of right.
- X. "Real property" or "real estate" means every estate, interest, and right in lands tenements and hereditaments.
- Y. "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

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- Z. "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.
- AA. "Statute" means a state law, a section of the ordinances codified in this title or the entire title whichever is applicable.
- BB. "Telecommunication service" means any telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph or over telephone or telegraph facilities.
- CC. "Stolen property" means property over which control has been obtained by theft.
- DD. "This code" means the ordinances codified in this title.
- EE. "Threat" means a communicated intent to inflict physical or other harm on any person or on property.
- FF. "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(History: KSA 21-3110; Ord. POC-1381 §1, 86; POC-598 §3, 70)

11.04.060 Attempt.

An "attempt" is any overt act toward the perpetration of a public offense done by a person who intends to commit such offense but fails in the perpetration thereof or is prevented or intercepted in executing such offense. It is not a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of such offense was not possible.

(History: KSA 21-3301; Ord. POC-1381 §1, 86; POC-625 §5, 72; POC-598 §11 & 12, 70; PO-84 §5, 61)

11.04.070 Conspiracy.

A "conspiracy" is an agreement with another person to commit a public offense or to assist to commit a public offense. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by him or by a co-conspirator. It is a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of his co-conspirators, before any overt act and furtherance of the conspiracy has been committed by him or by a co-conspirator.

(History: KSA 21-3302; Ord. POC-1381 §1, 86; POC-625 §6, 72)

11.04.075 Aiding and Abetting.

It shall be unlawful to knowingly conceal or aide a person who has been convicted of or who has been charged with committing a violation of this code with the intent that such person shall avoid or escape from arrest, trial, conviction or punishment for such violation.

(History: KSA 21-3205; Ord. POC-1381 §1, 86; POC-598 §10, 70; PO-84 §4, 61)

11.04.080 Defendant Presumed Innocent; Reasonable Doubt as to Guilt.

A defendant is presumed to be innocent until the contrary is proved. When there is a reasonable doubt as to his guilt, he must be acquitted. When there is a reasonable doubt as to which of two or more degrees of an offense he is guilty, he may be convicted of the lowest degree only.

(History: KSA 21-3109; Ord. POC-1381 §1, 86)

11.04.090 Criminal Intent.

1. Except as otherwise provided, criminal intent is an essential element of every crime defined by this code. Criminal intent may be established by proof that the conduct of the accused person was intentional or reckless. Proof of intentional conduct shall be required to establish criminal intent, unless the statute defining the crime expressly provides that the prohibited act is criminal if done in a reckless manner.
2. Intentional conduct is conduct that is purposeful and willful and not accidental. As used in this code, the terms "knowing," "willful," "purposeful," and "on purpose" are included within the term "intentional."
3. Reckless conduct is conduct done under circumstances that show a realization of the imminence of danger to the person of another and a wanton disregard or complete indifference and unconcern for the probable consequences of such conduct. The terms "gross negligence," "culpable negligence," "wanton negligence," and "wantonness" are included within the term "recklessness" as used in this code.

(History: KSA 21-3201; Ord. POC-1801 §1, 93; POC-1381 §1, 86)

11.04.100 Criminal Intent; Exclusions.

1. Proof of criminal intent does not require proof of knowledge of the existence or constitutionality of the ordinance under which the accused is prosecuted, or the scope or meaning of the terms used in that ordinance.
2. Proof of criminal intent does not require proof that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which he is charged.

(History: KSA 21-3202; Ord. POC-1381 §1, 86)

11.04.110 Ignorance or Mistake.

1. A person's ignorance or mistake as to a matter of either fact or law, except as provided in 11.04.100, is a defense if it negatives the existence of the mental state which the ordinance prescribes with respect to an element of the crime.

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2. A person's reasonable belief that his conduct does not constitute a crime is a defense if:
 - a. The crime is defined by an administrative regulation or order which is not known to him and has not been published in the Kansas administrative regulations or an annual supplement thereto, as provided by law; and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him; or
 - b. He acts in reliance upon an ordinance which later is determined to be invalid; or
 - c. He acts in reliance upon an order or opinion of the Supreme Court of Kansas or a United States appellate court later overruled or reversed;
 - d. He acts in reliance upon an official interpretation of the ordinance, regulation or order defining the crime made by a public officer or agency legally authorized to interpret such ordinance.
3. Although a person's ignorance or mistake of fact or law, or reasonable belief, as described in subsection (2) of this section, is a defense to the crime charged, he may be convicted of an included crime of which he would be guilty if the fact or law were as he believed it to be.

(History: KSA 21-3203; Ord. POC-1381 §1, 86)

11.04.120 Guilt Without Criminal Intent, When.

A person may be guilty of an offense without having criminal intent if the crime is an ordinance or traffic infraction and the ordinance defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

(History: KSA 21-3204; Ord. POC-1381 §1, 86)

11.04.130 Liability for Crimes of Another.

1. A person is criminally responsible for a crime committed by another if he intentionally aids, abets, advises, hires, counsels or procures the other to commit the crime.
2. A person liable under subsection (1) hereof is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by him as a probable consequence or committing or attempting to commit the crime intended.
3. A person liable under this section may be charged with and convicted of the crime although the person alleged to have directly committed the act constituting the crime lacked criminal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(History: KSA 21-3206; Ord. POC-1381 §1, 86)

11.04.140 Corporations; Criminal Responsibility.

1. A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.

2. "Agent" means any director, officer, servant, employee or other person who is authorized to act in behalf of the corporation.
3. A person liable under this section may be charged with and convicted of the crime although the person alleged to have directly committed the act constituting the crime lacked criminal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(History: KSA 21-3206; Ord. POC-1381 §1, 86; POC-598 §5, 70)

11.04.150 Individual Liability for Corporate Crime.

1. An individual who performs criminal acts, or causes such acts to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in his own name or on his own behalf.
2. An individual who has been convicted of a crime based on conduct performed by him for and on behalf of a corporation is subject to punishment as an individual upon conviction of such crime, although a lesser or different punishment is authorized for the corporation.

(History: KSA 21-3207; Ord. POC-1381 §1, 86; POC-598 §6, 70)

11.04.160 Intoxication.

1. The fact that a person charged with a crime was in an intoxicated condition at the time the alleged crime was committed is a defense only if such condition was involuntarily produced and rendered such person substantially incapable of knowing or understanding the wrongfulness of his conduct and of conforming his conduct to the requirements of law.
2. An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

(History: KSA 21-3208; Ord. POC-1381 §1, 86; POC-598 §7 & 54, 70)

11.04.170 Compulsion.

1. A person is not guilty of a crime under this code by reason of conduct which he performs under the compulsion or threat of the imminent infliction of death or great bodily harm, if he reasonably believes that death or great bodily harm will be inflicted upon him or upon his spouse, parent, child, brother or sister if he does not perform such conduct.
2. The defense provided by this section is not available to one who willfully or wantonly places himself in a situation in which it is probable that he will be subjected to compulsion or threat.

(History: KSA 21-3209; Ord. POC-1381 §1, 86; POC-598 §8, 70)

11.04.180 Entrapment.

A person is not guilty of a crime if his criminal conduct was induced or solicited by a public officer or his agent for the purposes of obtaining evidence to prosecute such person, unless:

- (a) The public officer or his agent merely afforded an opportunity or facility for committing the crime in furtherance of a criminal purpose originated by such person or a co-conspirator; or
- (b) The crime was of a type which is likely to occur and recur in the course of such person's business, and the public officer or his agent in doing the inducing or soliciting did not mislead such person into believing his conduct to be lawful.

(History: KSA 21-3210; Ord. POC-1381 §1, 86; POC-598 §9, 70)

11.04.190 Use of Force in Defense of a Person.

Repealed.

(History: KSA 21-3211; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.200 Use of Force in Defense of Dwelling.

Repealed.

(History: KSA 21-3212; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.210 Use of Force in Defense of Property Other than a Dwelling.

Repealed.

(History: KSA 21-3213; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.220 Use of Force by an Aggressor.

Repealed.

(History: KSA 21-3214; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.230 Law Enforcement Officer's Use of Force in Making Arrest.

Repealed.

(History: Ord. POC-1703 §1, 91; POC-1381 §1, 86)

11.04.240 Private Person's Use of Force in Making Arrest.

Repealed.

(History: KSA 21-3216; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.250 Use of Force in Resisting Arrest.

Repealed.

(History: KSA 21-3217; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.260 Public Offenses - Penalties.

A It is unlawful for any person to commit any of the offenses hereinafter described in this title, and any person so offending is guilty of a public offense and, upon conviction thereof, shall be punished as set forth herein.

B. Classes of violations and confinement.

For the purpose of sentencing, the following classes of public offense violations and the punishment and the terms of confinement authorized for each class are established:

1. Persons convicted of a class A violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one year.
2. Persons convicted of a class B violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed six months.
3. Persons convicted of a class C violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one month.
4. Unclassified violations, which shall include all offenses without specification as to class, the sentence for which shall be in accordance with the sentence specified in the section that defines the offense; if no penalty is provided in such section, the penalty shall be the same penalty as provided herein for a class C violation.

C. Upon conviction of a violation, a person may be punished by a fine, as provided in paragraph E, instead of or in addition to confinement, as provided in this section.

D. In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the violation was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

E. Fines.

1. A person convicted of a public offense violation may, in addition to or instead of the confinement set forth in paragraph B above, be sentenced to pay a fine which shall be fixed by the court as follows:
 - a. Class A violation, a sum not exceeding \$2,500.
 - b. Class B violation, a sum not exceeding \$1,000.
 - c. Class C violation, a sum not exceeding \$500.
 - d. Unclassified violation, any sum authorized by the section that defines the offense or if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C violation.
2. As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(History: K.S.A. Supp. 21-4502; K.S.A. 21-4503a; Ord. POC-2055 §1, 97; POC-1986 §1, 96; POC- 1381 §1, 86)

11.04.270 Severability Clause.

If any part or parts of this title shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this title. The governing body hereby declares that it would have passed the remaining parts of this title if it had known that such part or parts thereof would be declared invalid.

(History: Ord. POC-1381 §1, 86)

11.04.280 Savings Clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. POC-1381 §1, 86)

11.04.290 Time Limitations.

- A. Except as provided by Subsections B and C a prosecution for any offense must be commenced within five (5) years after it is committed.
- B. The period within which a prosecution must be commenced shall not include any period in which:
 - 1. the accused is absent from the State;
 - 2. the accused is concealed within the State so that process cannot be served upon the accused;
 - 3. the fact of the crime is concealed;
 - 4. a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;
 - 5. an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of Article 41 of Chapter 25 and Article 2 of Chapter 46 of the Kansas Statutes Annotated which may be discovered as a result thereof regardless of who obtains the order of restraint; or
- C. Whether or not the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: (i) The victim was a child under 15 years of age at the time of the crime; (ii) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime; (iii) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and (iv) there is substantially competent expert testimony indicating the victim

psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this Section later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime. 'Parent or other legal authority' shall include but not be limited to natural and stepparents, grandparents, aunts, uncles or siblings.

- D. An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.
- E. A prosecution is commenced when a complaint and notice to appear are filed and served.

(History: Ord. POC-2928 §1, 2011)

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Chapter 11.08
OFFENSES AGAINST PERSONS

Sections:

- 11.08.010 Assault.
- 11.08.020 Battery.
- 11.08.021 Domestic Battery.
- 11.08.030 Creating a Hazard.
- 11.08.040 Denial of Civil Rights.
- 11.08.050 Interference with Custody of Committed Person.
- 11.08.060 Interference with Parental Custody.
- 11.08.070 Minors Locked in Cars.
- 11.08.080 Mistreatment of Confined Person.
- 11.08.090 Unlawful Interference with Firefighter or Persons Who Provide Emergency Medical Treatment.
- 11.08.100 Unlawful Restraint.
- 11.08.110 Assault of a Law Enforcement Officer.
- 11.08.120 Battery Against a Law Enforcement Officer.
- 11.08.130 Criminal Defamation.
- 11.08.140 Maliciously Circulating False Rumors Concerning Financial Status.
- 11.08.150 Maliciously Exposing a Paroled or Discharged Person.
- 11.08.160 Hazing.
- 11.08.170 Eavesdropping.

11.08.010 Assault.

Assault is intentionally placing another person in reasonable apprehension of immediate bodily harm.

(History: KSA 21-3408; Ord. POC-1801 §2, 93; POC-625 §7, 72; POC-598 §13, 70; PO-84 §7, 61)

11.08.020 Battery.

Battery is:

- A. intentionally or recklessly causing bodily harm to another person; or
- B. intentionally causing physical contact with another person when done in a rude, insulting or angry manner.
- C. Battery is a class B violation.

(History: Ord. POC-2620 §2, 2006; POC-1986 §2, 96; POC-1801 §3, 93; POC-625 §8, 72; POC-598 §13 & 78, 70; PO-84 §7, 61)

11.08.021 Domestic Battery.

A. Domestic battery is:

- 1. Intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or

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2. Intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.
- B. As used in this section "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past and persons who have a child in common regardless of whether they have been married or who have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.
- C.
1. Upon a first conviction of a violation of domestic battery, a person shall be guilty of a class B violation and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500, and/or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.
 2. If, within five years immediately preceding commission of the crime, a person is convicted of a violation of this section a second time under circumstances which constitute a domestic battery, having at least one time before within such period been convicted for such crime or a violation of a comparable crime under the laws of any municipality, state, federal government or foreign government, such person shall be guilty of a class A violation and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.
 3. A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of domestic battery only twice during any three-year period.

4. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:
 - a. "Conviction" includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;
 - b. "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;
 - c. only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offence, whichever is applicable; and
 - d. it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(History: Ord. POC-2665 §1, 2007; POC-2620 §3, 2006)

11.08.030 Creating a Hazard.

"Creating a hazard" is:

- A. Storing or abandoning in any place accessible to children, a container which has a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container;
- B. Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located, and knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or
- C. Exposing, abandoning or otherwise having any explosive or dangerous substance in a place accessible to children.

(History: KSA 21-4212; Ord. POC-625 §68, 72; POC-598 §66, 70; PO-84 §27, 61)

11.08.040 Denial of Civil Rights.

- A. "Denial of civil rights" is denying to another, on account of race, color, ancestry, national origin or religion of such other:
 1. The full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof; or

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2. The full and equal use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any establishment which provides lodging to transient guests for hire, or any establishment which is engaged in selling food or beverage to the public for consumption upon the premises, or any place of recreation, amusement, exhibition or entertainment which is open to members of the public; or
 3. The full and equal use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods; or
 4. The full and equal use and enjoyment of the services, facilities, privileges and advantages of any establishment which offers personal or professional services to members of the public; or
 5. The full and equal exercise of the right to vote in any election held pursuant to the laws of Kansas or the ordinances of the City.
- B. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.
- (History: KSA 21-4003; Ord. POC-1381 §2, 86; POC-625 §50, 72; POC-598 §46, 70)

11.08.050 Interference with Custody of Committed Person.

- A. "Interference with custody of a committed person" is knowingly taking or enticing any committed person away from the control of his lawful custodial without privilege to do so. A "committed person" is any person committed other than by criminal process to any institution or other custodian by any court or other officer or agency authorized by law to make such commitment.
- B. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.
- (History: KSA 21-3423; Ord. POC-1381 §2, 86; POC-625 §14, 72)

11.08.060 Interference with Parental Custody.

- A. "Interference with parental custody" is leading, taking, carrying away, decoying or enticing away any child under the age of 16 years, with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child.
- B. It is not a defense to a prosecution under this section that the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.
- C. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.
- (History: KSA 21-3422; Ord. POC-1381 §2, 86; POC-625 §13, 72; POC-598 §15, 70)

11.08.070 Minors Locked in Cars.

No minor shall be locked in an unattended vehicle by any adult unless such child has the present ability to release himself from such vehicle.

(History: Added during codification in accordance with KSA 12-3015)

11.08.080 Mistreatment of Confined Person.

- A. "Mistreatment of a confined person" is the intentional abuse, neglect or ill-treatment of any person who is physically disabled or mentally ill or whose detention or confinement is involuntary, by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution or any public or private hospital or nursing home.
- B. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: KSA 21-3425; Ord. POC-1381 §2, 86; POC-625 §15, 72)

11.08.090 Unlawful Interference with Firefighter or Persons Who Provide Emergency Medical Treatment.

"Unlawful interference with a firefighter or persons who provide emergency medical treatment" is knowingly and intentionally interfering with, molesting or assaulting, as defined in 11.08.010, any firefighter or persons who provide emergency medical treatment while engaged in the performance of his duties, when knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter or persons who provide emergency medical treatment to reach the location of the fire or accident.

(History: KSA 21-3416; Ord. POC-2119 §1, 98; POC-625 §9, 72; POC-598 §14, 70)

11.08.100 Unlawful Restraint.

- A. Unlawful restraint is knowingly and without legal authority restraining another so as to interfere substantially with his liberty.
- B. This section shall not apply to acts done in the performance of duty by any law enforcement officer of the state of Kansas or any political subdivision thereof.
- C. Any merchant, his agent or employee, who has probable cause to believe that a person has actual possession of and (1) has wrongfully taken, or (2) is about to wrongfully take merchandise from a mercantile establishment, may detain such person (1) on the premises or (2) in the immediate vicinity thereof, in a reasonable manner and for a reasonable period of time for the purpose of investigating the circumstances of such possession. Such reasonable detention shall not constitute an arrest nor an unlawful restraint.
- D. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: KSA 21-3424; Ord. POC-1381 §2, 86)

11.08.110 Assault of a Law Enforcement Officer.

Assault of a law enforcement officer is an assault, as defined in 11.08.010: 1) committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of his or her duty; or 2) committed against a uniformed or properly identified university police officer or campus police officer while such officer is engaged in the performance of his or her duty. A "university police officer" means a police officer employed by the chief executive officer of: (1) any state educational institution under the control and supervision of the state board of regents; or (2) a municipal university. A "campus police officer" means a school security officer designated as a campus police officer pursuant to KSA 72-8222, as amended.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: KSA 21-3409; Ord. POC-2497 §1, 2004; POC-1381 §2, 86)

11.08.120 Battery Against a Law Enforcement Officer.

A. Battery against a law enforcement officer is:

1. intentionally causing physical contact with another person when done in a rude, insulting or angry manner committed against:
 - a. a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or
 - b. a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty; or
2. intentionally or recklessly causing bodily harm to another person when committed against:
 - a. a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or
 - b. a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty; or
3. intentionally causing physical contact with another person when done in a rude, insulting or angry manner or intentionally or recklessly causing bodily harm to another person when committed against:

- a. a state correctional officer or employee by a person in custody of the Secretary of Corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;
 - b. a juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;
 - c. a juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;
 - d. a city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.
- B. Battery against a law enforcement officer as defined in subsection (A)(1) above is a class A violation. Battery against a law enforcement officer as defined in subsection (A)(2) and (A)(3) above is a felony charge that is not subject to the jurisdiction of the Municipal Court and must be charged in the District Court.
- C. As used in this section:
- 1. "Correctional institution" means any institution or facility under the supervision and control of the Secretary of Corrections.
 - 2. "State correctional officer or employee" means any officer or employee of the Kansas Department of Corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.
 - 3. "Juvenile correctional facility officer or employee" means any officer or employee of the juvenile authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 38-1602 and amendments thereto.
 - 4. "Juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 38-1602 and amendments thereto.
 - 5. "City or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility.

(History: KSA 21-3413; Ord. POC-2620 §4, 2006; POC-2497 §2, 2004; POC-1381 §2, 86)

11.08.130 Criminal Defamation.

- 1. Criminal defamation is maliciously communicating to a person orally, in writing, or by any other means, false information tending to expose another living person to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social acceptance, or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke his surviving relatives and friends.

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2. In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal defamation if it is found that such matter was true.
3. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: KSA 21-4004; Ord. POC-1381 §, 86)

11.08.140 Maliciously Circulating False Rumors Concerning Financial Status.

Maliciously circulating false rumors concerning financial status is maliciously and without probable cause circulating or causing to be circulated any false rumor with intent to injure the financial standing or reputation of any bank, financial or business institution or the financial standing of any individual in this state, or making any statement or circulating or assisting in circulating any false rumor or report for the purpose of injuring the financial standing of any bank, financial or business institution or of any individual in this state.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: KSA 21-4005; Ord. POC-1381 §2, 86)

11.08.150 Maliciously Exposing a Paroled or Discharged Person.

Maliciously exposing a paroled or discharged person is maliciously and willfully communicating or threatening to communicate to another any oral or written statement that any person has been charged with or convicted of a felony, with intent to interfere with the employment or business of the person so charged or convicted. Provided, that the above shall not apply to any person or organization who furnishes information about a person to another person or organization requesting the same.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: KSA 21-4006; Ord. POC-1381 §2, 86)

11.08.160 Hazing.

- A. No social or fraternal organization shall promote or permit hazing.
- B. Hazing is intentionally coercing, demanding or encouraging another person to perform as a condition of a membership in a social or fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death or which is done in a manner whereby great bodily, disfigurement or death could be inflicted.

(History: Ord. POC-1801 §4, 93; POC-1381 §2, 86)

11.08.170 Eavesdropping.

- A. Eavesdropping is knowingly and without lawful authority:
1. Entering into a private place with intent to listen surreptitiously to private conversations or to observe surreptitiously the personal conduct of any other person or persons therein;
 2. Installing or using outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;
 3. Installing or using any device or equipment for the interception of any telephone, telegraph or other wire communication without the consent of the person in possession or control of the facilities for such wire communication; or
 4. Installing or using a concealed camcorder, motion picture camera or photographic camera of any type to secretly videotape, film, photograph or record by electronic means another, identifiable person under or through the clothing being worn by that other person or another, identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.
- B. A "private place" within the meaning of this section is a place where one may reasonably expect to be safe from uninvited intrusion or surveillance, but does not include a place to which the public has lawful access.
- C. It shall not be unlawful for an operator of a switchboard, or any officer, employee, or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the, normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such utility.
- D. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2500 or both such fine and imprisonment.

(History: Ord. POC-2235 §1, 2000)

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Chapter 11.12
OFFENSES AGAINST PROPERTY

Sections:

- 11.12.010 Automobile Master Key Violation.
- 11.12.020 Criminal Damage to Property.
- 11.12.030 Criminal Trespass.
- 11.12.035 Criminal Trespass on Public Property.
- 11.12.040 Defrauding Owner or Keeper of Restaurant or Lodging House.
- 11.12.050 Fraud - Proof.
- 11.12.060 Criminal Littering
- 11.12.070 Opening, Damaging or Removing Coin-operated Machines.
- 11.12.080 Possession of Tools for Opening, Damaging or Removing Coin-operated Machines.
- 11.12.090 Tampering with Landmark.
- 11.12.100 Tampering with Public Notice.
- 11.12.110 Tampering with Traffic Signal.
- 11.12.120 Theft.
- 11.12.125 Prima Facie Evidence of Intent to Permanently Deprive Owner or Lessor of Possession, Use or Benefit of Property.
- 11.12.130 Theft of Lost or Mislaid Property.
- 11.12.135 Theft of Motor Fuel.
- 11.12.140 Theft of Services.
- 11.12.145 Theft of CATV Services.
- 11.12.147 Unlawful Use of a Recording Device.
- 11.12.150 Criminal Deprivation of Property.
- 11.12.155 Unlawful Hunting.
- 11.12.160 Unlawful Manufacture or Disposal of False Tokens.
- 11.12.170 Unlawful Possession of Caustic.
- 11.12.180 Criminal Use of Financial Card.
- 11.12.185 Counterfeiting.
- 11.12.190 Window Peeping.
- 11.12.200 Throwing or Otherwise Casting Rocks or Other Objects onto a Street, Highway or Railroad Right-of-way.
- 11.12.210 Unlawfully Selling Scrap Metal.
- 11.12.220 Unlawfully Buying Scrap Metal.
- 11.12.230 Purchasing Scrap Metal Without Being Registered.

11.12.010 Automobile Master Key Violation.

"Automobile master key violation" is either:

- A. Selling or offering to sell a motor vehicle master key knowingly designed to fit the ignition switch of more than one motor vehicle to a person who is not regularly carrying on the business of garage proprietor or locksmith or employed as a law enforcement officer;

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- B. Possession of a motor vehicle master key designed to fit the ignition switch of more than one motor vehicle by a person knowing it to be such a key who is not regularly carrying on the business of garage proprietor or locksmith or employed as a law enforcement officer.

It is lawful for the owner of two or more vehicles to possess a motor vehicle master key for any or all of the motor vehicles so owned, nor shall the sale of such master keys to such owner be unlawful. It is a defense that the defendant is within this exemption. (KSA 21-3738)
(History: Ord. POC-625 §39, 72)

11.12.020 Criminal Damage to Property.

"Criminal damage to property" is by means other than by fire or explosives:

- A. Intentionally injuring, damaging, mutilating, defacing, destroying or substantially impairing the use of any property in which another has an interest without the consent of such other person; or
- B. injuring, damaging, mutilating, defacing, destroying or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.
- C. Criminal damage to property is a class B violation if the property damaged is of the value of less than \$1,000 or is of the value of \$1,000 or more and is damaged to the extent of less than \$1,000. Criminal damage to property is a felony charge if the property damaged is of the value of \$1,000 or more. A felony charge is not subject to the jurisdiction of the Municipal Court and must be charged in the District Court.

(History: KSA 21-3720; Ord. POC-2620 §5, 2006; POC-1872 §1, 94; POC-1801 §5, 93; POC-1381 §3, 86; POC-625 §29, 72; POC-598 §76; PO-84D; PO-84 §41 & 42)

11.12.030 Criminal Trespass.

- A. "Criminal trespass" is
 - 1. entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft other than railroad property or nuclear generating facility by a person with knowledge that such person is not authorized or privileged to do so, and:
 - a. Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or
 - b. Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or
 - c. Such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107, 60-31a05 or 60-31a06 or section 38, 39 or 50 of Chapter 200 of the 2006 Session Laws of Kansas, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

2. entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person. As used in this section:
 - a. "Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where service of a health care provider are provided directly to patients.
 - b. "Health care provider" means any person: (1) Licensed to practice a branch of the healing arts; (2) licensed to practice psychology; (3) licensed to practice professional or practical nursing; (4) licensed to practice dentistry; (5) licensed to practice optometry; (6) licensed to practice pharmacy; (7) registered to practice podiatry; (8) licensed as a social worker; or (9) registered to practice physical therapy.
- B. Criminal trespass is a class B violation. Upon a conviction of a violation of subsection (A)(1)(c) a person shall be sentenced to not less than 48 consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.
- C. This section shall not apply to a land surveyor, licensed pursuant to Article 70 of Chapter 74 of the Kansas Statutes Annotated, and amendments thereto, nor shall it apply to such surveyor's authorized agents and employees who enter upon lands, waters and other premises in the making of a survey.

(History: Ord. POC-2620 §6, 2006; POC-2499 §1, 2004; POC-1986 § 3, 96; POC-1801 §6, 93; POC-1749 §1, 92; POC-1381 §3, 86; POC-1099 §1, 80; POC-1053 §1, 79; POC-625 §30; POC-598 §30; PO-84D; PO-84 §60 & 61)

11.12.035 Criminal Trespass on Public Property.

- A. It shall be unlawful for any person to criminally trespass on public property.
- B. Criminal trespass on public property is entering or remaining upon or in any land, structure, vehicle, aircraft, or watercraft owned or controlled by a public entity, including but not limited to, cities, school districts, counties, a taxing subdivision of the state, or any agency thereof, by any person who knows, or reasonably should know, that he or she is not authorized or privileged to do so, and:
 1. Such person enters or remains thereon in defiance of an order not to enter or to leave such premises or property personally communicated to such person by any law enforcement officer or other authorized person;
 2. Such premises or property are posted in a manner reasonably likely to come to the attention of intruders or are locked or fenced or otherwise enclosed or shut or secured against passage or entry or such property is reasonably identifiable as property of a public entity due to physical markings or equipment on or in such property; or

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3. Such person enters or remains therein in defiance of any order by a court.
- C. This ordinance shall not interfere with the enforcement of any other ordinance, rule or regulation concerning the use or control of public property.

(History: Ord. POC-1401 §1, 86; POC-598 §77; PO-84D)

11.12.040 Defrauding Owner or Keeper of Restaurant or Lodging House.

Any person who obtains food, lodging or other accommodation at any restaurant, hotel, boardinghouse, apartment house or rooming house by means of any trick, deception or false representation, statement or pretense, with intent to defraud the owner or keeper thereof, and fails or refuses to pay therefor, is guilty of a public offense and upon the conviction thereof, shall be punished as provided in Section 1.12.010.

(History: Amended during codification in accordance with K.S.A. 12-3015; Ord. FCA-330 §1, 65)

11.12.050 Fraud - Proof.

Proof that lodging, food or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that he gave in payment for such food, lodging or other accommodation, a check or other negotiable paper on which payment was refused, or that he left the inn, hotel, boarding house, apartment house, or rooming house without paying or offering to pay for such food, lodging, or other accommodation, or that he surreptitiously removed or attempted to remove, his baggage or other property, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in 11.12.040.

(History: Ord. FCA-330 §2, 65; PO-84 §12, 61)

11.12.060 Criminal Littering.

Except as provided in 12.04.104, criminal littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:

- A. Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law or ordinance to direct or permit such acts; or
- B. Any private property without the consent of the owner or occupant of such property.
- C. Upon a first conviction, a fine shall be imposed of no less than \$250 nor more than \$1,000; upon a second conviction, a fine shall be imposed of no less than \$1,000 nor more than \$2,000; and upon a third or subsequent conviction, a fine shall be imposed of no less than \$2,000 nor more than \$4,000. In addition to any fines imposed pursuant to this subsection, a person convicted of littering shall be required to pick up litter for a time prescribed by and a place within the city limits of Overland Park, Kansas.

(History: KSA 21-3722; Ord. POC-2499 §2, 2004; POC-1801 §7, 93; POC-625 §31, 72; POC-598 §31)

11.12.070 Opening, Damaging or Removing Coin-operated Machines.

"Opening, damaging, or removing coin-operated machines" is willfully and knowingly opening, removing or damaging any parking meter, coin telephone, vending machine dispensing goods or

services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services or any part thereof, with intent to commit theft.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: KSA 21-3740; Ord. POC-1381 §3, 86; POC-625 §41, 72)

11.12.080 Possession of Tools for Opening, Damaging or Removing Coin-Operated Machines.

"Possession of tools for opening, damaging or removing coin-operated machines" is the possession of any key, tool, instrument or other device, or any drawing, print or mold of a key or other device or any explosive specifically designed for or suitable for the use in opening or breaking into any parking meter, coin telephone, vending machine dispensing goods or services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services or any part thereof, with intent to commit theft.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: KSA 21-3741; Ord. POC-1381 §3, 86; OC-625 §42, 72)

11.12.090 Tampering with Landmark.

"Tampering with a landmark" is willfully and maliciously:

- A. Removing any monument of stone or of other durable material, established or created for the purpose of designating the corner of or any other point upon the boundary of any lot or tract of land or of the state, or any legal subdivision thereof; or
- B. Defacing or altering marks upon any tree, post or other monument, made for the purpose of designating any point on such boundary; or
- C. Cutting down or removing any tree, post or other monument upon which any such marks shall be made for such purpose, with intent to destroy such mark; or
- D. Breaking, destroying, removing or defacing any milepost, milestone or guideboard erected by authority of law on any public highway, street, or road; or
- E. Defacing or altering any inscription on any such marker or monument; or
- F. Altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of KSA 58-2011 (1985 Supp.) and any amendments thereto.

(History: KSA 21-3724; Ord. POC-1381 §3, 86; POC-625 §32, 72; PO-84 §45)

11.12.100 Tampering with Public Notice.

"Tampering with public notice" is knowingly and without lawful authority altering, defacing, destroying, removing or concealing any public notice posted according to state law or city ordinance, during the time the notice is required or authorized to remain posted.

(History: KSA 21-3822; Ord. POC-625 §47, 72)

11.12.110 Tampering with Traffic Signal.

"Tampering with a traffic signal" is intentionally manipulating, altering, destroying or removing any light, sign, marker, railroad switching device or other signal device erected or installed for the purpose of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft.

(History: KSA 21-3725; Ord. POC-979 §1, 78; POC-625 §33, 72; POC-598 §32)

11.12.120 Theft.

"Theft" is any of the following acts done with intent to permanently deprive the owner of the possession, use or benefit of his property:

- A. Obtaining or exerting unauthorized control over property; or
- B. Obtaining by deception control over property; or
- C. Obtaining by threat control over property; or
- D. Obtaining control over property without the owner's consent knowing the property to have been obtained by another by acts described in this section.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. Theft of property of the value of less than \$1,000 is a Class A violation.

(History: KSA 21-3701; Ord. POC-2665 §2, 2007; POC-2499 §3, 2004; POC-2119 §2, 98; POC-1872 §2, 94; POC-1676 §1, 91; POC-1381 §3, 86; POC-625 §25, 72; POC-598 §25; PO-84A §1; PO-84 § 43 & 44)

11.12.125 Prima Facie Evidence of Intent to Permanently Deprive Owner or Lessor of Possession, Use or Benefit of Property.

- A. In any prosecution under this code, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:
 - 1. The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;
 - 2. the failure of a person who leases or rents personal property to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing said property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;
 - 3. destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property; or destruction of or substantially altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;

4. destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;
 5. the failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles; or
 6. the failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying: (a) the time and place to return the vehicle; and (b) that failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.
- B. In any prosecution for a violation of 11.12.120 in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.
- C. The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting, or borrowing or to such person's last known address.

(History: KSA 21-3702; Ord. POC-2766 §1, 2008; POC-1934 §1, 95; POC-1381 §3, 86)

11.12.130 Theft of Lost or Mislaid Property.

"Theft of lost or mislaid property" is failure to take reasonable measures to restore lost or mislaid property to the owner by a person who has obtained control of such property, who knows or learns the identity of the owner thereof and who intends to deprive the owner permanently of the possession, use or benefit of the property.

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Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: KSA 21-3703; Ord. POC-1381 §3, 86; POC-625 §26, 72; POC-598 §26)

11.12.135 Theft of Motor Fuel.

- A. "Theft of motor fuel" is leaving the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of a motor vehicle and driving away in that motor vehicle without having made due payment or authorized charge for the motor fuel so dispensed, with the intent to defraud the retail establishment.
- B. The failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement shall be prima facie evidence of the intent to defraud under the provisions of subsection (A).
- C. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: Ord. POC-2235 §4, 2000; POC-2119 §5, 98)

11.12.140 Theft of Services.

- A. "Theft of services" is obtaining services from another by deception, threat, coercion, stealth, tampering or use of false token or device
- B. "Services" within the meaning of this section includes, but is not limited to, labor, professional services, cable television service, public or municipal utility or transportation service, telephone service, lodging, entertainment and the supplying of equipment for use. For purposes of this section, rural water districts and rural electric cooperatives shall be considered public utilities.
- C. "Tampering" within the meaning of this section, includes, but is not limited to:
 - 1. Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;
 - 2. Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;
 - 3. Preventing any such meters from properly measuring or registering;
 - 4. Knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity, water or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or
 - 5. Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts.

- D. In any prosecution under this section, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, specified in subsection (c), shall be prima facie evidence of intent to violate the provisions of this section by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.
- E. Theft of services valued at less than \$1,000 is a class A violation. Theft of services valued at \$1,000 or more is a felony charge that is not subject to the jurisdiction of the Municipal Court and must be charged in the District Court.

(History: KSA 21-3704; Ord. POC-2620 §7, 2006; POC-1801 §8, 93; POC-1381 §3, 86; POC-625 §27, 72; POC-598 §27)

11.12.145 Theft of CATV Services.

Theft of cable television services is obtaining cable television services from another by means of threat, deception, electrical or mechanical tampering or electronic tampering.

(History: Ord. POC-979 §2, 78)

11.12.147 Unlawful Use of a Recording Device.

- A. Unlawful use of a recording device is knowingly operating, in a motion picture theatre, while a motion picture is being exhibited, an audiovisual recording function of a device without the consent of the owner or lessee of such theatre.
- B. This section shall not apply to a person operating an audiovisual recording device as part of such person's lawfully authorized investigative, law enforcement, protective or intelligence gathering duties as a lawfully authorized investigative, law enforcement, protective or intelligence gathering employee or agent of the state or federal government.
- C. As used in this section:
 - 1. "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.
 - 2. "Motion picture theatre" means a movie theatre, screening room or other venue when used primarily for the exhibition of a motion picture.
- D. Every person convicted of a first violation of this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. The municipal court shall not have jurisdiction to hear cases involving second or subsequent violations of this section or any other felony violation.

(History: Ord. POC-2499 §4, 2004)

11.12.150 Criminal Deprivation of Property.

- A. "Criminal deprivation of property" is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use, or benefit of his property.
- B. Upon a first conviction of criminal deprivation of property that is a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than \$100. Upon a second conviction, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than \$200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.
- C. Upon a second or subsequent conviction of criminal deprivation of property other than a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100 unless application of this subsection would result in a manifest injustice.
- D. Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

(History: KSA 21-3705; Ord. POC-2766 §2, 2008; POC-1801 §9, 93; POC-1381 §3, 86; POC-625 §28, 72; POC-598 §28)

11.12.155 Unlawful Hunting.

- A. It shall be unlawful for any person to shoot or hunt any animal or bird within the City unless that person:
 - 1. Is in possession of a valid Kansas hunting license or other permit authorizing the taking of wildlife, or is exempted from possessing a hunting license by the State of Kansas; and
 - 2. Is hunting on land that is primarily rural or devoted to agricultural use; and
 - 3. Is in possession of the written permission of the landowner where the hunting is occurring; and
 - 4. When hunting with a firearm, is in possession of the written permission of all landowners or persons in possession of land contiguous to the land where the hunting is occurring when on land that contains less than 40 acres; and
 - 5. When hunting with a bow, is in possession of the written permission of all landowners or persons in possession of land contiguous to the land where the hunting is occurring when on land that contains less than 30 acres; and
 - 6. Utilizes a shotgun with shot shells containing pellets of 00 buckshot or smaller shot, or utilizes a rifle or pistol with a bore diameter of .224 caliber or less and the ammunition is of rim fire configuration.

- B. It shall be unlawful for any person, unless authorized by special permit issued by the State of Kansas to hunt by:
1. Taking any game animal or furbearing animal from a motorboat, airplane, motor vehicle or other water, air or land vehicle unless such person holds a valid handicapped hunting and fishing permit.
 2. Providing or receiving information concerning the location of any game animal or furbearing animal by radio or other mechanical device for purposes of taking such bird or animal.
 3. Using sodium fluoroacetate, commonly called formula 1080, except as permitted by rules and regulations of the Secretary of Wildlife and Parks of the State of Kansas.
 4. Using poison, poisonous gas, smoke or ferrets, or any smoke gun or other device for forcing smoke or any other asphyxiating or deadly gas or liquid into the holes, dens, runways, or houses of wildlife, except as permitted by rules and regulations of the Secretary of Wildlife and Parks of the State of Kansas.
 5. Throwing or casting the rays of a spotlight, headlight or other artificial light on any highway, or in any field, grassland, woodland, or forest for the purpose of spotting, locating or taking any animal, except furbearing animals when treed with the aid of dogs, while having in possession or control either singly or as one of a group of persons, any rifle or pistol, shotgun, bow or other implement whereby wildlife could be taken.
 6. Utilizing a rifle or pistol having a bore diameter greater than .224 caliber and the ammunition must be of rim fire configuration, provided slugs in shotguns are permitted on land of more than 100 acres.
- C. It shall be unlawful for any person otherwise lawfully hunting within the City to discharge a firearm or other projectile within 500 feet of a residence, school, church, airport, cemetery, or public recreation facility to include all adjacent or contiguous property owned or used for such purposes.
- D. The provisions of this Section shall not apply to persons hunting on any property zoned RUR that is annexed into the City pursuant to Ordinance No. A-2719, unless and until such property is rezoned, subject to the following provisions:
1. No one shall discharge any shotgun, muzzleloader, rimfire rifle, or any handgun within 200 yards of a building inhabited by people or within 200 yards of a feedlot unless the owner, if owner-occupied, or legal tenant, if tenant-occupied, of the building or feedlot has given written consent to do so. "Feedlot" shall mean any yard, enclosure or coral where livestock are confined for purposes of feeding and growth prior to slaughter. Pastures, hayfields, or cropfields where animals are allowed to graze are not deemed to be a "feedlot."

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2. No one shall discharge a center-fire rifle except from an elevated stand or platform of not less than 10 feet above the ground surface, and no one shall discharge any center-fire rifle within 500 yards of a building inhabited by people or within 500 yards of a feedlot unless the owner, if owner-occupied, or legal tenant, if tenant-occupied, of the building or feedlot has given written consent to do so. "Feedlot" shall have the meaning given to it in the immediately preceding subsection.

(History: Ord. POC-2788 §2, 2008; POC-2729 §1, 2008, modified during codification under authority of K.S.A. 12-3015; POC-2403 §1, 2002; POC-1771 §1, 92; POC-1646 §1, 90; POC-1578 §1, 89; POC-1381 §3, 86; POC-625 §35, 72; POC-598 §34)

11.12.160 Unlawful Manufacture or Disposal of False Tokens.

The "unlawful manufacture or disposal of false tokens" is manufacturing for sale, offering for sale or giving away any false token, slug, substance, false or spurious coin or other device intended or calculated to be placed or deposited in any automatic vending machine, coin-operated telephone, parking meter or other such receptacle with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of such automatic vending machine, coin-operated telephone, parking meter or other receptacle designed to receive coins or currency of the United States of America in connection with the sale, use or enjoyment of property or service.

The manufacture for sale, advertising, offering for sale or distribution of any such false token, slug, substance, false or spurious coin or other device, shall be prima facie evidence of an intent to cheat or defraud within the meaning of this section.

(History: KSA 21-3730; Ord. POC-1801 §10, 93; POC-625 §37, 72)

11.12.170 Unlawful Possession of Caustic.

"Unlawful possession of caustic" is the willful possession, transportation, use or throwing of any acid or other chemical material or substance which causes or could cause damage or injury to property or persons with the intent to cause such damage or injury.

(History: Ord. POC-625 §75, 72)

11.12.180 Criminal Use of Financial Card.

1. Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, services or communication services, other than telecommunication services:
 - a. Using a financial card without the consent of the cardholder; or
 - b. Knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or
 - c. Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

2. For the purposes of this section:
 - a. "Financial card" means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.
 - b. "Cardholder" means the person or entity to whom or for whose benefit a financial card is issued.
3. For the purposes of subsection 1(b) hereof, a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.
4. Criminal use of a financial card is a class A violation if the money, goods, property, services or communication services obtained within a seven-day period are of the value of less than \$1,000. Criminal use of a financial card is a felony charge if the money, goods, property, services or communication services obtained within a seven-day period are of the value of \$1,000 or more. A felony charge is not subject to the jurisdiction of the Municipal Court and must be charged in the District Court.

(History: KSA 21-3729; Ord. POC-2620 §8, 2006; POC-1801 §11, 93; POC-1381 §3, 86; POC-979 §3, 78; POC-625 §35, 72)

11.12.185 Counterfeiting.

- A. Counterfeiting is intentionally manufacturing, using, displaying, advertising, distributing, offering for sale, selling or possessing with intent to sell or distribute any item or services bearing or identified by a counterfeit mark and valued at less than \$500.
- B. No person shall intentionally manufacture, use, display, advertise, distribute, offer for sale, sell or possess with intent to sell or distribute any item or service bearing or identified by a counterfeit mark and valued at less than \$500.
- C. A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess such items with intent to sell or distribute.
- D. Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.
- E. As used in this section:
 1. "Counterfeit mark" means:
 - a. Any unauthorized reproduction or copy of intellectual property; or
 - b. intellectual property affixed to any item knowingly sold, offered for sale, manufactured or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.
 2. "Intellectual property" means any trademark, service mark or trade name as such terms are defined in K.S.A. 1999 Supp. 81-202, and amendments thereto.

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3. "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.
 4. The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses.
- F. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2500, or by both such fine and imprisonment.
(History: Ord. POC-2235 §2, 2000)

11.12.190 Window Peeping.

Window peeping is the going upon property owned or occupied by another without such person's consent for the purpose of looking into any window, door, sky light, or other opening into a house, room, or building.

(History: Ord. POC-625 §80, 72; POC-598 §80; PO-84 §59)

11.12.200 Throwing or Otherwise Casting Rocks or Other Objects onto a Street, Highway or Railroad Right-Of-Way.

- A. It shall be unlawful for any person to intentionally throw, push, pitch or otherwise cast any rock, stone or other object, matter or thing onto a street, roadway, highway, railroad right-of-way, or upon any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock thereon.
- B. Every person convicted of violating this section shall be guilty of a class B violation.
- C. Any person violating subsection (A) who damages any vehicle, engine, car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock on a street, road, highway or railroad right-of-way by the thrown or cast rock, stone or other object is guilty of a class A violation.

(History: KSA 21-3809; Ord. POC-1986 §4, 96; POC-1381 §3, 86; POC-598 §75; PO-84 §35)

11.12.210 Unlawfully Selling Scrap Metal.

- A. It shall be unlawful for any person to sell any item or items of regulated scrap metal to a scrap metal dealer or employee or agent of a dealer, in this City unless such person presents to such scrap metal dealer or employee or agent of a dealer, at or before the time of sale, the following information: the seller's name, address, sex, date of birth and the identifying number from the seller's driver's license, military identification card, passport or personal identification license. The identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller.

- B. Every scrap metal dealer shall keep a register in which the dealer or employee or agent of the dealer shall at the time of purchase or receipt of any items for which such information is required to be presented, cross-reference to previously received information, or accurately and legibly record at the time of sale the following information:
1. The time, date and place of transaction;
 2. the seller's name, address, sex, date of birth and the identifying number from the seller's driver's license, military identification card, passport or personal identification license; the identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller;
 3. a copy of the identification card or document containing such identifying number;
 4. the license number, color and style or make of any motor vehicle in which the junk vehicle or other regulated scrap metal property is delivered in a purchase transaction;
 5. a general description, made in accordance with the custom of the trade, of the predominant types of junk vehicle or other regulated scrap metal property purchased in the transaction;
 6. the weight, quantity or volume, made in accordance with the custom of the trade, of the regulated scrap metal property purchased;
 7. if a junk vehicle or vehicle part is being bought or sold, a description of the junk vehicle or vehicle part, including the make, model, color, vehicle identification number and serial number if applicable;
 8. the amount of consideration given in a purchase transaction for the junk vehicle or other regulated scrap metal property; and
 9. the name of the individual acting on behalf of the regulated scrap metal dealer in making the purchase.
- C. The scrap metal dealer's register, including copies of identification cards, may be kept in electronic format.
- D. Notwithstanding the foregoing, this Section shall not apply to:
1. Transactions involving regulated scrap metal, except for catalytic converters, for which the total sale price for all regulated scrap metal is \$50.00 or less;
 2. Transactions involving only catalytic converters for which the total sale price is \$30.00 or less;
 3. Transactions in which the seller is also a scrap metal dealer; or
 4. Transactions for which the seller is known to the purchasing scrap metal dealer to be an established business that operates out of a fixed business location and that can reasonably be expected to generate regulated scrap metal.
- E. The exceptions contained in subsections (D)(1) and (D)(2) shall not apply to any purchase from any seller of the following materials:
- (1) Catalytic converters purchased separate from a vehicle;

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- (2) coated or insulated wire or stripped wire or burnt wire;
 - (3) refrigeration condensing units or air conditioning coils of any type; or
 - (4) copper tubing, bars, plate, buss bar and sheet copper.
- F. It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to pay for any of the items described in subsections (E)(1) through (4) by any means other than:
- 1. A prenumbered check drawn on a regular bank account in the name of the scrap metal dealer and with such check made payable to the person documented as the seller in accordance with subsection (b); or
 - 2. a system for automated cash or electronic payment distribution which photographs or videotapes the payment recipient and identifies the payment with a distinct transaction in the register maintained in accordance with subsection (b).
- G. Any person intentionally violating the provisions of this Section shall be guilty of a class C violation. Any person convicted of violating the provisions of this Section for the third and subsequent time within a two-year period shall be guilty of a class A violation.

(History: KSA Supp. 50-6, 110; Ord. SM-2931 §2, 2011; POC-2821 §1, 2009)

11.12.220 Unlawfully Buying Scrap Metal.

- A. It shall be unlawful for any such scrap metal dealer or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which Section 11.12.210, and amendments thereto, requires information to be presented by the seller, without demanding and receiving from the seller that information. Every scrap metal dealer shall file and maintain a record of information obtained in compliance with the requirements in Section 11.12.210, and amendments thereto. All records kept in accordance with the provisions of this Section shall be open at all times to peace or law enforcement officers and shall be kept for two years. If the required information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to peace or law enforcement officers upon request.
- B. It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which Section 11.12.210, and amendments thereto, requires information to be presented by the seller, without obtaining from the seller a signed statement that: (1) each item is the seller's own personal property, is free of encumbrances and is not stolen; or (2) that the seller is acting for the owner and has permission to sell each item.
- C. It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any junk vehicle in a transaction for which Section 11.12.210, and amendments thereto, requires information to be presented by the seller, without: (1) inspecting the vehicle offered for sale and recording the vehicle identification number; and (2) obtaining an appropriate vehicle title or bill of sale issued by a governmentally operated vehicle impound facility if the vehicle purchased has been impounded by such facility or agency.

- D. It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase or receive any regulated scrap metal from a minor.
- E. It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any of the following items of regulated scrap metal property without obtaining proof that the seller is an employee, agent or person who is authorized to sell the item of regulated scrap metal property on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization or scrap metal dealer:
 - 1. Utility access cover;
 - 2. street light poles or fixtures;
 - 3. road or bridge guard rails;
 - 4. highway or street sign;
 - 5. water meter cover;
 - 6. traffic directional or traffic control signs;
 - 7. traffic light signals;
 - 8. any metal marked with any form of the name or initials of a governmental entity;
 - 9. property owned and marked by a telephone, cable, electric, water or other utility provider or any such wire or cable that has had the sheathing removed, making ownership identification impossible;
 - 10. property owned and marked by a railroad;
 - 11. funeral markers or vases;
 - 12. historical markers;
 - 13. bales of regulated metal;
 - 14. beer kegs;
 - 15. manhole covers;
 - 16. fire hydrants or fire hydrant caps;
 - 17. junk vehicles with missing or altered vehicle identification numbers;
 - 18. real estate signs;
 - 19. bleachers or risers, in whole or in part; and
 - 20. Twisted pair copper telecommunications wiring of 25 pair or greater existing in 19, 22, 24 or 26 gauge.
- F. It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the Overland Park Police Department or other law enforcement agency for 30 days, exclusive of weekends and holidays.
- G. Any person intentionally violating the provisions of this Section shall be guilty of a class C violation. Any person convicted of violating the provisions of this Section for the third and subsequent times within a two-year period shall be guilty of a class A violation.

(History: KSA Supp. 50-6, 111; Ord. SM-2931 §3, 2011; POC-2821 §2, 2009)

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11.12.230 Purchasing Scrap Metal Without Being Registered.

- A. On or after January 1, 2012, no business shall purchase any regulated scrap metal without having first registered each place of business with the Governing Body.
- B. As used herein, “regulated scrap metal,” means the same as in K.S.A. 2010 Supp. 50-6,109, and amendments thereto.

(History: KSA Supp 50-6, 109; Ord. POC-2928 §2, 2011)

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Chapter 11.16
OFFENSES AFFECTING RECORDS, CURRENCY,
WRITTEN INSTRUMENTS AND SECURITIES

Sections:

11.16.010 False Signing.

11.16.020 Computer Trespass - Computer Password Disclosure.

11.16.010 False Signing.

False signing of petition is the affixing of any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the City Council or any agency or officer of the City. (KSA 21-3823)

(History: Ord. POC-625 ' 48, 72; POC-598 ' 43, 70)

11.16.020 Computer Trespass - Computer Password Disclosure.

A. As used in this section:

1. "Access" means to instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system or computer network.
2. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic or communication and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network.
3. "Computer Network" means the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals, or a complex consisting of two or more interconnected computers.
4. "Computer Program" means a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
5. "Computer Software" means computer programs, procedures and associated documentation concerned with the operation of a computer system.
6. "Computer System" means a set of related computer equipment or devices and computer software which may be connected or unconnected.
7. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, debit card or marketable security.
8. "Property" includes, but is not limited to, financial instruments, information, electronically produced or stored data, supporting documentation and computer software in either machine or human readable form.

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9. "Services" include, but are not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work.
 10. "Supporting Documentation" includes, but is not limited to, all documentation used in the construction, classification, implementation, use or modification of computer software, computer programs or data.
- B. "Computer Password Disclosure" is the unauthorized and intentional disclosure of a number, code, password or other means of access to a computer or computer network.
- C. "Computer Trespass" is intentionally, and without authorization accessing or attempting to access any computer, computer system, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network. (K.S.A. 21-3755, as amended)

Computer password disclosure is a Class A violation. Computer trespass is a Class A violation.
(History: Ord. POC-2055 ' 2, 97)

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Chapter 11.20
CRIMES AFFECTING THE ADMINISTRATION OF JUSTICE

Sections:

- 11.20.010 Resisting Arrest.
- 11.20.030 Escape from Custody.
- 11.20.040 Failure to Appear.
- 11.20.045 Failure to Comply with Traffic Citation.
- 11.20.050 Falsely Reporting Public Offense.
- 11.20.060 Obstructing Legal Process or Official Duty.
- 11.20.065 Interference: Administration of Justice.
- 11.20.070 Unlawful Failure to Report Wound.
- 11.20.080 Unlawful Interference with Law Enforcement Officer.
- 11.20.085 Law Enforcement Canines and Arson Canines.
- 11.20.090 False Impersonation.
- 11.20.100 Criminal Disclosure of a Warrant.
- 11.20.110 Witness or Victim Intimidation, Definitions.
- 11.20.120 Same, Crime of Intimidation of a Witness or Victim.
- 11.20.130 Same, Civil Remedies, Court Orders Authorized.
- 11.20.140 Same, Violation of Court Orders, Penalties.
- 11.20.150 Unlawful Use of Names Derived from Public Records.

11.20.010 Resisting Arrest.

“Resisting arrest” is knowingly and intentionally obstructing, resisting, opposing or interfering with a law enforcement officer while such officer is engaged in making an arrest.

(History: Ord. POC-625 §11, 72)

11.20.030 Escape from Custody.

"Escape from custody" is escaping while held in lawful custody on a charge or conviction of a public offense. As used in this section "escape" means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court.

As used in this section "custody" means arrest, detention in a facility for holding persons charged with or convicted of crimes, detention for extradition or deportation, detention in a hospital or other facility pursuant to court order or imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; or any other detention for law enforcement purposes. "Custody" does not include general supervision of a person on probation or parole or constraint incidental to release on bail.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. (KSA 21-3809)

(History: Ord. POC-1381 §4, 86; POC-625 §44, 72; POC-598 §37; PO-84 §29 & 30)

11.20.040 Failure to Appear.

"Failure to appear" is intentionally incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days following the date of such forfeiture by one who is charged with a public offense, has been released on bond for appearance before the municipal court of this city for trial or other proceeding prior to conviction, or intentionally incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days after his conviction of a public offense has become final by one who has been released on an appearance bond by any court. Any person who is released upon his own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, is a person released on bond for appearance within the meaning of this section. The provisions of this section do not apply to any person who forfeits a cash bond supplied pursuant to law or city ordinance upon an arrest for a traffic offense.

(History: Ord. POC-1801 §12, 93; POC-625 §45, 72)

11.20.045 Failure to Comply with Traffic Citation.

"Failure to comply with a traffic citation" means failure to either (a) appear before the municipal court of this city in response to a traffic citation and pay in full any fine and court costs, if any, imposed; or: (b) otherwise comply with a traffic citation.

(History: Ord. POC-1381 §4, 86; POC-625 §45; POC-598 §38)

11.20.050 Falsely Reporting Public Offense.

"Falsely reporting a public offense" is informing a City law enforcement officer, Community Service Aide, or any other person designated the responsibility of receiving information concerning public offenses, that a public offense has been committed, knowing that such information is false and intending that said officer or person shall act in reliance upon such information.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. (KSA 21-3818)

(History: Ord. POC-1769 §1, 92; POC-1381 §4, 86; POC-625 §46, 72; POC-598 §40)

11.20.060 Obstructing legal process or official duty.

"Obstructing legal process or official duty" is knowingly and willfully obstructing, resisting or opposing any person authorized by federal law, state law or city ordinance to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, administrative agency, body, person or office having authority to so act in compliance with federal, state or city laws, ordinances or regulations or in the discharge of any official duty provided that the mere utterance of oral communication, verbal expression or other forms of vocalizing the spoken word shall not be unlawful unless said utterance rises to the level of "fighting words." Fighting words are those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. (KSA 21-3808)

(History: Ord. POC-1435 §1, 87; POC- 1381 §4, 86; POC-625 §43, 72; POC-598 §53 & 40, 70)

11.20.065 Interference: Administration of Justice.

- A. Interference with the administration of justice is communicating in any manner a threat of violence to any judicial officer or any prosecuting attorney, or harassing a judicial officer or prosecuting attorney by repeated vituperative communication, or picketing, parading or demonstrating in or near a building housing a judicial officer or prosecuting attorney, or near such officer's residence or place of abode with intent to influence, impede or obstruct the finding, decision, ruling order, judgment or decree of such judicial officer or prosecuting attorney on any matter then pending before the officer or prosecuting attorney.
- B. As used in this section, the term "prosecuting attorney" has the meaning ascribed thereto in K.S.A. 22-2202 and amendments thereto.
- C. Nothing contained in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt. (K.S.A. 21-3816 as amended).

(History: Ord. POC-1986 §5, 96; POC-598 §39)

11.20.070 Unlawful Failure to Report Wound.

"Unlawful failure to report a wound" is the failure by an attending physician or other person to report his treatment of any wound, described in subsections 1 and 2 hereafter, to the office of chief of police:

- 1. Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or
- 2. Any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick, or other sharp or pointed instrument.

(History: KSA 21-4213; Ord. POC-625 §69, 72)

11.20.080 Unlawful Interference with Law Enforcement Officer.

"Unlawful interference with a law enforcement officer" is:

- A. Knowingly and intentionally obstructing, interfering with or impeding the efforts of any City law enforcement officer to reach the location where a public offense has been committed or a public offender is present; or
- B. Knowingly and intentionally giving false information to any City law enforcement officer with the intent of concealing the actual identity, age, date of birth, or address of the person about whom the law enforcement officer seeks the information, or with the intent of concealing the facts of a public offense, and with the intent that a law enforcement officer shall act in reliance upon such information.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: Ord. POC-2405 §1, 2002; POC-1435 §2, 87; POC-1381 §4, 86; POC-924 §1, 77; POC-625 §10, 72; PO-84 §51 & 52)

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11.20.085 Law Enforcement Canines and Arson Canines.

All canines used by the City Police Department or Fire Departments, whether owned, leased, rented or borrowed for the purpose of aiding law enforcement officers in their duties shall be considered the property and responsibility of the police department canine unit or the fire department canine unit and shall be designated law enforcement canines or arson canines.

- A. It is unlawful for any person to strike, hit, beat, abuse, harass, tease, assault, injure or kill any law enforcement canine or arson canine whether the canine is being used in an official capacity or not.
- B. It is unlawful for any person to interfere or attempt to interfere with a law enforcement canine or its handler or arson canine or its handler in such a manner as to inhibit, restrict or impede the canine in accomplishing its law enforcement or arson detecting purpose or the canine handler in the control of the canine.
- C. Anyone convicted of a violation of this chapter shall be fined not less than \$100 nor more than \$1,000, confined in the county jail for not more than 30 days, or by both such fine and imprisonment.

(History: Ord. POC-2119 §3, 98; POC-1607 §1, 89)

11.20.090 False Impersonation.

"False Impersonation" is representing oneself to be a law enforcement officer, public officer or employee or a person licensed to practice or engage in any profession or vocation for which a license is required by the laws of the state of Kansas, with knowledge that such representation is false. (KSA 21-3824)

(History: Ord. POC-924 §2, 77; POC-598 §44; PO-84 §37 & 38)

11.20.100 Criminal Disclosure of a Warrant.

A criminal disclosure of a warrant is making public in any way, except at the request of a law enforcement officer for the purpose of assisting in the execution of such warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such warrant is based, prior to the execution thereof but the above shall not apply to personnel of a law enforcement agency disclosing a warrant: (1) For the purpose of encouraging the person named in the warrant to voluntarily surrender; or (2) issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant. (KSA 21-3827)

(History: Ord. POC-1801 §13, 93; POC-1381 §4, 86)

11.20.110 Witness or Victim Intimidation, Definitions.

- A. "Civil injury or loss" means any injury or loss for which a civil remedy is provided under the laws of this state, any other state or the United States.
- B. "Malice" means an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice.
- C. "Victim" means any individual: (1) Against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or (2) who suffers a civil injury or loss.

- D. "Witness" means any individual: (1) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law; (2) whose declaration under oath is received or has been received as evidence for any purpose; (3) who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer; (4) who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or (5) who would be believed by any reasonable person to be an individual described in paragraph (1), (2), (3) or (4).

(History: Ord. POC-1318 §4, 86)

11.20.120 Same, Crime of Intimidation of a Witness or Victim.

Intimidation of a witness or victim is knowingly and maliciously preventing or dissuading, or attempting to prevent or dissuade:

- A. Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or
- B. any witness, victim or person acting on behalf of a victim from: (1) Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer; (2) causing a complaint, indictment or information to be sought and prosecuted, or causing a violation of probation, parole, or assignment to a community correctional services program to be reported and prosecuted, and assisting in its prosecution; (3) causing a civil action to be filed and prosecuted and assisting in its prosecution; or (4) arresting or causing or seeking the arrest of any person in connection with the victimization of a victim. (KSA 21-3832)

(History: Ord. POC-1381 §4, 86)

11.20.130 Same, Civil Remedies, Court Orders Authorized.

- A. In its discretion and upon good cause (which may include but is not limited to the declaration of a party's attorney) to believe that intimidation or dissuasion of any victim or witness has occurred or is reasonably likely to occur, the court may issue any reasonable order necessary to remedy or prevent the intimidation or dissuasion, including but not limited to an order that:
1. Any person before the court, including but not limited to a party, subpoenaed witness or other person entering the courtroom of the court, not violate any provision of this code;
 2. any person described in this section maintain a prescribed geographic distance from any specified witness or victim;
 3. any person described in this section have no communication whatsoever with any specified witness or victim, except through an attorney under such reasonable restrictions as the court imposes;

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4. calls for a hearing to determine if an order described in subsection (1), (2) or (3) should be issued; or
5. a particular law enforcement agency within the jurisdiction of the court provide protection for a victim or witness.

B. Actions by a law enforcement agency pursuant to an order issued under subsection (a)(5) are considered to be police protection within the exemption from liability under the Kansas tort claims act for damages resulting from the failure to provide, or the method of providing, police protection. (KSA 21-3834)

(History: Ord. POC-1381 §4, 86)

11.20.140 Same, Violation of Court Orders, Penalties.

Violation of an order entered pursuant to 11.20.130 may be punished in any of the following ways:

- A. In the manner provided by 11.20.120, when applicable.
- B. As a contempt of the court making the order. No finding of contempt shall be a bar to prosecution for a violation of 11.12.120, but:
 1. Any person held in contempt shall be entitled to have any punishment imposed for contempt to be credited against any sentence imposed upon conviction of a violation of 11.12.120; and
 2. any conviction or acquittal of a violation of 11.12.120 shall be a bar to subsequent punishment for contempt arising out of the same act.
- C. By revocation of any form of pretrial release of a criminal defendant or by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant into custody. After a hearing and upon a showing by clear and convincing evidence, the court, in its sound discretion, may order the revocation whether the violation was committed by the defendant personally or in any way caused or encouraged it to be committed. (KSA 21-3835)

(History: Ord. POC-1318 §4, 86)

11.20.150 Unlawful Use of Names Derived from Public Records.

No person shall knowingly sell, give or receive, for the purpose of selling or offering for sale any property or service to persons listed therein, any list of names and addresses contained in or derived from public records except:

1. Lists of names and addresses from public records of the division of vehicles obtained under K.S.A. 74-2012 (1985), and any amendments thereto;
2. lists of names and addresses of persons licensed, registered or issued certificates or permits to practice a profession or vocation may be sold or given to, and received by, an organization of persons who practice that profession or vocation for membership, informational or other purposes related to the practice of the profession or vocation;
3. lists of names and addresses of persons applying for examination for licenses, registrations, certificates or permits to practice a profession or vocation shall be sold or

given to, and received by, organizations providing professional or vocational educational materials or courses to such persons for the sole purpose of providing such persons with information relating to the availability of such materials or courses; and

4. to the extent otherwise authorized by law.

(History: Ord. POC-1381 §4, 86)

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Chapter 11.24
CRIMES AGAINST PUBLIC MORALS AND DECENCY

Sections:

Article I. Sex Offenses

- 11.24.010 Adultery.
- 11.24.020 Indecent Solicitation of a Child (Repealed).
- 11.24.030 Lewd and Lascivious Behavior.
- 11.24.035 Urinating/defecating in Public Prohibited.
- 11.24.040 Patronizing a Prostitute.
- 11.24.045 Harassment by Telecommunication Device.
- 11.24.050 Promoting Prostitution.
- 11.24.060 Prostitution.
- 11.24.070 Sodomy.

Article II. Fortunetelling

- 11.24.080 Findings of Governing Body (Repealed).
- 11.24.090 Definitions (Repealed).
- 11.24.100 Prohibitions (Repealed).
- 11.24.110 Exception to Article (Repealed).
- 11.24.120 Penalty for Violation of City Ordinances (Repealed).

Article III. Desecration

- 11.24.130 Desecration (Repealed).
- 11.24.140 Desecrating a Cemetery (Repealed).
- 11.24.150 Desecrating a Dead Body (Repealed).
- 11.24.155 Criminal Desecration.

Article IV. Miscellaneous Offenses

- 11.24.160 Contributing to a Child's Misconduct or Deprivation.
- 11.24.165 Regulation of Materials Harmful to Minors.
- 11.24.170 Hypnotic Exhibition (Repealed).
- 11.24.180 Promoting Obscenity.
- 11.24.185 Promoting Obscenity to Minors.
- 11.24.190 Vagrancy (Repealed).
- 11.24.195 Definitions.
- 11.24.200 Nudity In a Public Place.
- 11.24.205 Exemptions.

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ARTICLE I. SEX OFFENSES

11.24.010 Adultery.

"Adultery" is sexual intercourse by a person with another who is not his spouse if:

- A. Such person is married; or
- B. Such person is not married and knows that the other person involved in such intercourse is married.

(History: KSA 21-3507; Ord. POC-625 §17, 72)

11.24.020 Indecent Solicitation of a Child.

Repealed.

(History: KSA 21-3510; Ord. POC-1801 §18, 93; POC-625 §19,72; POC-598 §18; PO-84 §13, 61)

11.24.030 Lewd and Lascivious Behavior.

Lewd and lascivious behavior is:

- A. Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or
- B. publicly exposing a sex organ or female breast or exposing a sex organ or female breast in the presence of a person who is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(History: KSA 21-3508; Ord. POC-2119 §4, 98; POC-1801 §14, 93; POC-625 §18, 72; POC-598 §17; PO-84 §28 & 32, 61)

11.24.035 Urinating/Defecating in Public Prohibited.

No person shall urinate or defecate in or upon any street, sidewalk, alley, plaza, park, public building, public property, private parking lot, or in any place open to the public or exposed to public view. This section shall not apply to urination or defecation utilizing appropriate fixtures in any restroom or other facility designed for the sanitary disposal of human waste.

(History: Ord. POC-1225 §1, 83)

11.24.040 Patronizing a Prostitute.

"Patronizing a prostitute" is either:

- A. Knowingly entering or remaining in a house of prostitution with intent to engage in sexual intercourse, sodomy or any unlawful sexual act with a prostitute; or
- B. Knowingly hiring a prostitute to engage in sexual intercourse, sodomy or any unlawful sexual act.

(History: KSA 21-3515; Ord. POC-625 §22, 72; POC-598 §21; PO-84 §47)

11.24.045 Harassment by Telecommunication Device.

- A. Harassment by telecommunication device is the use of:
1. A telecommunication device to:
 - a. knowingly make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious or indecent;
 - b. make or transmit a call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the receiving end;
 - c. make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;
 - d. make or cause a telecommunication device to repeatedly ring or activate, with intent to harass any person at the receiving end;
 - e. knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall identify itself or himself or herself and state that it is a recording; or
 - f. knowingly permit any telecommunication device under one's control to be used for any of the purposes mentioned herein.
 2. Telefacsimile communication to send or transmit such communication to a court in the State of Kansas for a use other than court business, with no requirement of culpable mental state.
- B. Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this Section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING."
- C. As used in this Section, "telecommunications device" includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto.
- D. Every person convicted of violating this Section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. (KSA 21-6206)

(History: Ord. POC-2928 §3, 2011; POC-1778 §1, 93; POC-1381 §5, 86; POC-979 §4, 78; POC-625 §57)

11.24.050 Promoting Prostitution.

1. "Promoting prostitution" is:
 - a. Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof; or
 - b. Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution; or

- c. Procuring a prostitute for a house of prostitution; or
 - d. Inducing another to become a prostitute; or
 - e. Soliciting a patron for a prostitute or for a house of prostitution; or
 - f. Procuring a prostitute for a patron; or
 - g. Procuring transportation for, paying for the transportation of, or transporting a person within this city with the intention of assisting or promoting that person's engaging in prostitution; or
 - h. Being employed to perform an act which is prohibited by this section.
2. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. (KSA 21-3513)

(History: Ord. POC-1381 §5, 86; POC-625 §21, 72; POC-598 §20 & 21; PO-84 §48 & 49,61)

11.24.060 Prostitution.

"Prostitution" is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

- A. Sexual intercourse; or
- B. Oral or anal copulation; or
- C. Manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another. (KSA 21-3512)

(History: Ord. POC-1099 §2, 80; POC-625 §20, 72; POC-598 §19; PO-84 §46)

11.24.070 Sodomy.

"Sodomy" is oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex or between a person and an animal, or coitus with an animal. Any penetration, however slight, is sufficient to complete the public offense of sodomy.

(History: KSA 21-3505; Ord. POC-625 §16, 72)

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ARTICLE II. FORTUNETELLING

11.24.080 Findings of Governing Body.

Repealed.

(History: Ord. POC-2090 ' 1, 97; Ord. FT-708 ' 1, 72)

11.24.090 Definitions.

Repealed.

(History: Ord. POC-2090 ' 1, 97; Ord. FT-708 ' 2, 72)

11.24.100 Prohibitions.

Repealed.

(History: Ord. POC-2090 ' 1, 97; Ord. FT-718 ' 1, 72; Ord. FT-708 ' 3, 72; POC-84 ' 19)

11.24.110 Exceptions to Article.

Repealed.

(History: Ord. POC-2090 ' 1, 97; Ord. FT-718 ' 2, 72; FT-708 ' 4, 72)

11.24.120 Penalty for Violation of City Ordinances.

Repealed.

(History: Ord. POC-1381 ' 10, 86; FT-708 ' 5, 72)

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ARTICLE III. DESECRATION

11.24.130 Desecration.

Repealed.

(History: KSA 21-4114; Ord. POC-2620 §11, 2006; POC-1381 §5, 86; POC-805 §1, 74; POC-625 §60, 72; POC-598 §56; PO-84 §36, 61)

11.24.140 Desecrating a Cemetery.

Repealed.

(History: KSA 21-4115; Ord. POC-2620 §11, 2006; POC-625 §62, 72; PO-84 §26, 61)

11.24.150 Desecrating a Dead Body.

Repealed.

(History: KSA 21-4112; Ord. POC-2620 §11, 2006; POC-625 §61, 72)

11.24.155 Criminal Desecration.

A. Criminal desecration is:

1. Obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being;
2. by means other than by fire or explosive:
 - a. Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;
 - b. damaging, defacing or destroying any public monument or structure;
 - c. damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or
 - d. damaging, defacing or destroying a place of worship.

B. Criminal desecration as described in subsections (A)(2)(b), (A)(2)(c) and (A)(2)(d) is a class A violation if the property is damaged to the extent of less than \$1,000. Criminal desecration as described in subsections (A)(1) and (A)(2)(a) is a class A violation. Criminal desecration as described in subsections (A)(2)(b), (A)(2)(c) and (A)(2)(d) is a felony charge if the property is damaged to the extent of \$1,000 or more. A felony charge is not subject to the jurisdiction of the Municipal Court and must be charged in the District Court.

(History: Ord. POC-2620 §9, 2006)

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ARTICLE IV. MISCELLANEOUS OFFENSES**11.24.160 Contributing to a Child's Misconduct or Deprivation.**

1. Contributing to a child's misconduct or deprivation is:
 - a. Causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the Kansas code for care of children;
 - b. causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 1991 Supp. 74-8810 and amendments thereto;
 - c. failure to reveal, upon inquiry by a uniformed or properly identified law enforcement officer engaged in performance of such officer's duty, any information one has regarding a runaway, with intent to aid the runaway in avoiding detection or apprehension;
 - d. sheltering or concealing a runaway with intent to aid the runaway in avoiding detection or apprehension by law enforcement officers; or
 - e. causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a felony.
 - f. causing or encouraging a child to violate the terms or conditions of the child's probation or conditional release pursuant to subsection (a)(1) of K.S.A. 38-1663, and amendments thereto.
2. A person may be found guilty of this section even though no prosecution of the child, whose misconduct or deprivation the defendant caused or encouraged, has been commenced pursuant to the Kansas juvenile code, Kansas Code for Care of Children, Kansas Juvenile Offenders Code, or Kansas code of criminal procedure.
3. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment. (KSA 21-3612, as amended)

(History: Ord. POC-2055 ' 3, 97; POC-1801 ' 15, 93; POC-1381 ' 5, 86; POC-979 ' 5, 78; POC- 625 ' 23, 72; POC-598 ' 22)

11.24.165 Regulation of Materials Harmful to Minors.

- A. No person having custody, control or supervision of any commercial establishment shall knowingly:
 1. Display any material which is harmful to minors in such a way that minors, as part of the invited general public, will be exposed to view such material or device;
 2. Sell, furnish, present, distribute or disseminate to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or
 3. Present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.
- B. Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section that:

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1. The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.
 2. The defendant is an officer, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.
 3. An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.
 4. With respect to a prosecution for an act described by subsection (A)(1), the allegedly harmful material was kept behind blinder racks.
 5. With respect to a prosecution for an act described by subsection (A)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.
 6. With respect to a prosecution for an act described by subsection (A)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.
- C. As used in this section:
1. "Blinder rack" means a device in which material displayed in such a manner that the lower 2/3 of the material is not exposed to view.
 2. "Harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (A)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:
 - a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;
 - b. The average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
 - c. A reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors.

3. "Material" means any book, magazine, newspaper, pamphlet, poster, print, figure, image, description, motion picture film, record, recording tape or video tape.
 4. "Minor" means any unmarried person under 18 years of age.
 5. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement.
 6. "Performance" means any motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
 7. "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
 8. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.
 9. "Sexual excitement" means the condition of human male or female genitals when in the state of sexual stimulation or arousal.
- D. The provisions of this act shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting, distributing or disseminating such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.
- E. If any provision or clause of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(History: Ord. POC-1557 ' 1, 89; PO-84 ' 50)

11.24.170 Hypnotic Exhibition.

Repealed.

(History: POC-2070 ' 1, 97; POC-979 ' 6, 78; POC-625 ' 51, 72)

11.24.180 Promoting Obscenity.

1. Promoting obscenity is knowingly or recklessly:
 - a. Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device; or

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- b. Possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or device; or
 - c. Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material or obscene device; or
 - d. Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.
 2. Evidence that materials or devices were promoted to emphasize their prurient appeal or sexually provocative aspect shall be relevant in determining the question of the obscenity of such materials, or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if
 - a. The materials or devices were promoted to emphasize their prurient appeal or sexually provocative aspect; or
 - b. the person is not a wholesaler and promotes the materials or devices in the course of the person's business.
 3.
 - a. Any material or performance is "obscene" if the average person applying contemporary community standards would find that:
 - (i) The material or performance, taken as a whole, appeals to the prurient interest;
 - (ii) the material or performance has patently offensive representations or descriptions of (A) ultimate sexual acts, normal or perverted actual or simulated, including sexual intercourse or sodomy, or (B) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and
 - (iii) the material or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.
 - b. "Material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.
 - c. "Obscene device" means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.
 - d. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.
 - e. "Sexual intercourse" and "sodomy" have the meanings provided by K.S.A. 21-3501 and amendments thereto.

- f. "Wholesaler" means a person who sells, distributes or offers for sale or distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.
4. It is a defense to a prosecution for obscenity that:
 - a. The persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance consisted of persons or institutions having scientific, educational, or governmental justification for possessing or viewing the same;
 - b. The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or
 - c. The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
 5. The provisions of this section prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.
 6. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.
 7. Upon any conviction for a violation of this section, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance. (KSA 21-4301)

(History: Ord. POC-1381 ' 5, 86; POC- 1099 ' 3, 81; POC-869 ' 1, 76; POC-625 ' 52 & 70, 72; POC-598 ' 67, 70)

11.24.185 Promoting Obscenity to Minors.

1. Promoting obscenity to minors is promoting obscenity, as defined in 11.24.180, where the recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.
2. Notwithstanding the provisions of 11.04.100 to the contrary, it shall be an affirmative defense to any prosecution under this section that:

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- a. The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official document purporting to establish that such minor was 18 years old or more.
 - b. The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
 - c. The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.
 - d. An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.
3. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment. (KSA 21-4301a)
 4. Upon any conviction for a violation of this section, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such conviction, the defendant shall forfeit the recognizance. (KSA 21-4301a)

(History: Ord. POC-1381 ' 5, 86; POC- 1099 ' 4, 81; POC-869 ' 2, 76)

11.24.190 Vagrancy.

Repealed.

(History: Ord. POC-1857 ' 1, 94; KSA 21-4108; Ord. POC-625 ' 57, 72; POC-598 ' 53; PO-84 ' 55)

11.24.195 Definitions.

The following words and phrases shall, for the purpose of O.P.M.C 11.24.200 and 11.24.205, have the meanings respectively ascribed to them in this section unless otherwise defined in the text of the section.

Nudity - the exposure of the human bare buttocks, anus, genitals, the areola or the nipple of the female breast or a state of dress which fails to opaquely or fully cover the anus, genitals or the areola or the nipple of the female breast; the showing of the covered male genitals in a discernibly turgid state; the exposure of any device, costume, or covering which gives the

realistic appearance of or simulates the human bare buttocks, anus, genitals, the areola or the nipple of the female breast.

Public Place – any location open to the public, or any location visible from public property or public right-of-way. These locations shall be considered public places regardless of whether they are for profit or not for profit and regardless of whether they are open to the public at large or whether entrance is limited by a cover charge or membership requirement.

(History: Ord. POC-2375 ' 1, 2002)

11.24.200 Nudity In a Public Place

It shall be unlawful for a person to knowingly or intentionally appear in a state of Nudity in a Public Place.

(History: Ord. POC-2375 ' 2, 2002)

11.24.205 Exemptions

The prohibitions of O.P.M.C. 11.24.200 shall not apply to:

1. Any child under ten (10) years of age.
2. The appearance of the areola or the nipple of the female breast in the process of breastfeeding a child.
3. Nudity in any theatrical production performed in a theater by a professional or amateur theatrical or musical company wherein the persons attending have been informed of the nudity involved in the production.
4. Nudity in a Public Place where a reasonable person would necessarily and customarily expect such Nudity outside of the home unless prohibited by the owners or others having lawful control of the property.
5. Adult businesses, as adult businesses are regulated in Chapter 5 of the Overland Park Municipal Code.

(History: Ord. POC-2375 ' 3, 2002)

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Chapter 11.28
OFFENSES AGAINST THE PUBLIC PEACE

Sections:

- 11.28.010 Attempt. (Repealed. See 11.04.060)
- 11.28.020 Conspiracy. (Repealed. See 11.04.070)
- 11.28.030 Criminal Use of Noxious Matter.
- 11.28.040 Disorderly Conduct.
- 11.28.050 Giving False Alarm.
- 11.28.060 Interference with Conduct of Public Business.
- 11.28.061 Unauthorized Possession of a Weapon in City-Owned Buildings.
- 11.28.064 Funeral Picketing.
- 11.28.065 Residential Picketing.
- 11.28.070 Obstructing Ingress or Egress.
- 11.28.080 Remaining at Unlawful Assembly.
- 11.28.090 Riot.
- 11.28.095 Noise Abatement. (Repealed)
- 11.28.100 Unlawful Assembly.
- 11.28.110 Harming or Killing Certain Dogs. (Repealed)
- 11.28.115 Interference with Police Dogs.

11.28.010 Attempt.

Repealed. See 11.04.060

(History: Ord. POC-1381 §10, 86; POC-625 §5, 72)

11.28.020 Conspiracy.

Repealed. See 11.04.070.

(History: Ord. POC-1381 §10, 86; POC-625 §6, 72)

11.28.030 Criminal Use of Noxious Matter.

- A. "Criminal use of noxious matter" is the possession, manufacture or transportation of any noxious matter with intent to use such matter for an unlawful purpose, or the use of such matter to the injury of persons or property, or the placing or depositing of such matter upon or about the premises of another person without the consent of such person.
- B. "Noxious matter," as used in this section, means any bomb, compound or substance which may give off dangerous or disagreeable odors or cause distress to persons exposed thereto.
- C. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.

(History: KSA 21-3733; Ord. POC-1381 §6, 86; POC-625 §38, 72; POC-598 §36)

11.28.040 Disorderly Conduct.

"Disorderly conduct" is, with knowledge or probable cause to believe that such acts will alarm, anger or tend to provoke an assault or other breach of peace:

- A. Engaging in brawling or fighting; or
- B. Disturbing an assembly, meeting, or procession, not unlawful in its character; or
- C. Using offensive, obscene, or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

Disorderly conduct is a Class C violation.

(History: KSA 21-4104; Ord. POC-2742 §1, 2008; POC-625 §52, 72; POC-598 §47; PO-84 §14 & 31)

11.28.050 Giving False Alarm.

"Giving a false alarm" is:

- A. Transmitting in any manner to a publicly or privately operated fire department a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists.
- B. Making a call in any manner for emergency assistance including police, fire, medical, or other emergency services knowing at the time of such call that there is no reasonable ground for believing such assistance is needed.
- C. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: KSA 21-4110, as amended; Ord. POC-2055 §4, 97; POC-1381 §6, 86; POC-625 §59, 72; POC-598 §55; PO-84 §11)

11.28.060 Interference with Conduct of Public Business.

"Interference with the conduct of public business" is:

- A. Conduct at or in any public building owned, operated or controlled by the federal government, the state or any of its political subdivisions so as to willfully deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities, or to leave, any such public building; or
- B. Intentionally impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof; or
- C. Intentionally refusing or failing to leave any such public building on being requested to do so by the chief administrative officer, or his designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with or obstruct the lawful missions, processes, procedures, or functions being carried on in such public building; or

- D. Intentionally impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official by any act of intrusion into the chamber or other areas designated for the use of the body, or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body, or any official engaged in the performance of duties at such meeting or session; or
- E. Intentionally impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.
- F. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: KSA 21-3828; Ord. POC-1872 §3, 94; POC-1381 §6, 86; POC-625 §49, 72; PO-84 §15)

11.28.061 Unauthorized possession of a weapon in City-owned buildings.

- A. It is unlawful to possess a weapon, concealed or unconcealed, in the following City-owned buildings:
 - 1. 12400 Foster known as the W. Jack Sanders Justice Center;
 - 2. 8500 Santa Fe known as City Hall;
 - 3. 8500 Antioch known as the Myron E. Scafe Building;
 - 4. 11900 Westgate known as Westgate Police Station; and
 - 5. any other City-owned building if said building is posted in a manner reasonably likely to come to the attention of persons entering the premises, such posting indicating weapons are prohibited in the building.
- B. This Section shall not apply to:
 - 1. commissioned law enforcement officers, City employed security officers, City employed animal control officers, fire personnel authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, or military personnel when the above listed individuals are engaged in their duties and to the extent they are allowed to be armed by federal, state or municipal law and the Overland Park Police Department or Overland Park Fire Department policy. However, the exception for City employed animal control officers shall not allow them to carry weapons into the Overland Park Municipal Court as set forth in Overland Park Municipal Court Administrative Order 2007-03.
 - 2. Attorneys when the weapon is possessed solely for the purpose of seeking to submit the items into evidence or seeking to examine said items in the course of a pending court proceeding.
- C. For purposes of this Section, a weapon is any object that is calculated or reasonably likely to produce death or serious bodily injury and shall include but not be limited to, a dagger, dirk, billy, blackjack, slung-shot, knife, straight-edged razor, switchblade, ballistics knife, stiletto, throwing star, nunchaku, metal knuckles, tear gas, smoke bomb or projector, pepper spray or any object containing a noxious liquid, gas or substance,

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stun gun, Taser gun, handgun, pistol, revolver, rifle, shotgun, any other firearm, any dangerous or deadly weapon or instrument. The definitions contained at O.P.M.C. Section 11.60.005 shall apply to the words used herein.

- D. A person who enters a City-owned building with a handgun and who is licensed to carry the handgun concealed under the Personal and Family Protection Act, and amendments thereto, will not be charged under this Section, but will be charged through District Court with any such violation.
- E. Nothing in this Section shall restrict enforcement of any provisions contained at O.P.M.C. Section 11.60.005 et seq.
- F. Nothing in this Section shall restrict the ability of the Overland Park Municipal judge to find any person in violation of these provisions in direct contempt of court as otherwise provided by law.
- G. A person who enters a City-owned building with a weapon in violation of this Section may be required to forfeit any weapon so possessed, either temporarily or permanently and may be ordered to leave the premises regardless of the public nature of the facility.
- H. Every person convicted of violating this Section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: Ord. POC-2755 §1, 2008; POC-2690 §1, 2007; POC-2644 §1, 2007; POC-2541 §1, 2005)

11.28.064 Funeral Picketing.

- A. Definitions:
 - 1. As used in this section, "funeral" means the ceremonies, processions and memorial services held in connection with the burial or cremation of the dead, as well as memorial services held in connection with the death of any person.
 - 2. "Public demonstration" means:
 - a. any picketing or similar conduct, or
 - b. any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral.
- B. It is unlawful for any person to:
 - 1. engage in a public demonstration at any public location within 150 feet of any entrance to any cemetery, church, mortuary or other location where a funeral is held or conducted, within one hour prior to the scheduled commencement of a funeral, during a funeral or within two hours following the completion of a funeral;
 - 2. knowingly obstruct, hinder, impede or block another person's entry to or exit from a funeral; or
 - 3. knowingly impede vehicles which are part of a funeral procession.
- C. Each day on which a violation of this section occurs shall constitute a separate offense.

(History: Ord. POC-2766 §3, 2008; POC-2605 §1, 2006; POC-1792 §1, 93)

11.28.065 Residential Picketing.

Residential picketing proceeding on a definite course or route in front of a home and directed at picketing a single residence is prohibited and unlawful.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not more than \$2,500 or by both such fine and imprisonment, provided that any person convicted of a second or subsequent conviction shall be required to be confined to not less than five consecutive days in the county jail in addition to any penalty assessed; which period of imprisonment shall not be suspended nor the defendant placed on probation until the five consecutive days is served; provided in lieu of confinement in the county jail, the court may place the person convicted under a house-arrest program pursuant to K.S.A. 21-4603b and amendments thereto.

(History: Ord. POC-1796 §1, 93; POC-1792 §2, 93; POC-1556 §1, 88; REP-1196 §1, 83; SOL-808 §1, 74) [See 5.64 for solicitation]

11.28.070 Obstructing Ingress and Egress.

It shall be illegal for any person to obstruct any public street, public highway, public sidewalk or public building or any other place of public access by hindering or impeding or tend to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians or to commit in or upon any public street, public highway, public sidewalk or public building or any other place of public access any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in or upon or facing or fronting on any such public street, public highway, public sidewalk or public building or any other place of public access, all of which prevents the free and uninterrupted ingress, egress, and regress therein, thereon, and thereto.

When any person causes or commits any of the conditions enumerated in this section, a law enforcement officer shall order that person to stop causing or committing such conditions and to move on or disperse. Any person who fails or refuses to obey such order is guilty of a violation of this section.

(History: Ord. POC-1856 §1, 94; POC-625 §58, 72; PO-84 §33 & 55)

11.28.080 Remaining at Unlawful Assembly.

"Remaining at an unlawful assembly" is willfully failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: KSA 21-4103; Ord. POC-1381 §6, 86; POC-625 §54, 72; POC-598 §48 & 49; PO-84 §8)

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11.28.090 Riot.

"Riot" is any use of force or violence which produces a breach of the public peace, or any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, by five or more persons acting together and without authority of law.

Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

(History: KSA 21-4104; Ord. POC-1381 §6, 86; POC-625 §55, 72; POC-598 §50; PO-84 §53)

11.28.095 Noise Abatement.

Repealed.

(History: Ord. NOI-2287 §11, 2001; POC-1225 §2, 83; POC-598 §51, 52, 53)

11.28.100 Unlawful assembly.

"Unlawful assembly" is the meeting or coming together of not less than five persons and engaging in conduct constituting disorderly conduct as defined in 11.28.040.

(History: KSA 21-4102; Ord. POC-625 §53, 72)

11.28.110 Harming or Killing Certain Dogs.

Repealed.

(History: KSA 21-4318; Ord. POC-2620 §11, 2006; POC-2502 §1, 2004)

11.28.115 Interference with Police Dogs.

- A. It shall be unlawful for any person to strike, abuse, tease, harass, or assault any dog being used by the city for the purpose of performing the duties of police dog regardless of whether the dog is on duty or off.
- B. It shall be unlawful for any person to interfere with a dog being used by the police department or attempt to interfere with the handler of the dog in such a manner as to inhibit, restrict or deprive the handler of his or her control of the dog.
- C. For purposes of this section, "Police dog" shall have the meaning provided in 11.28.110.

(History: Ord. POC-2502 §2, 2004)

[Next Page is 11-1200]

Chapter 11.32
ADVERTISEMENTS AND PUBLICATIONS

Sections:

11.32.010 Misleading Real Estate Advertisement.

11.32.020 Posting of Pictures and Advertisements.

11.32.010 Misleading Real Estate Advertisement.

"Misleading real estate advertisement" is the placement of an advertisement or sign which recites that real property is zoned for land uses or will be zoned for land uses in the future under the zoning rules and regulations of the City when, in fact, such real estate is not so zoned and there is no assurance from the City at the time of such advertisement or placement that such future zoning use will occur and such person has knowledge of such facts.

(History: Ord. POC-625 ' 76, 72)

11.32.020 Posting of Pictures and Advertisements.

"Unlawful posting of pictures and advertisements" is:

- A. The putting up, affixing or fastening of either or both to a traffic-control device or traffic-control standard or a telegraph, telephone, electric light, power, or other utility pole but it is not unlawful to affix official traffic-control devices to such poles; or
- B. The placement of either or both on public property other than as prescribed in (C); or
- C. The placement of either or both on right-of-way without the consent of the landowner or the person in possession whose land lies along the right-of-way where such picture of advertisement is placed; or
- D. The placement of either on private property without the consent of the landowner or the person in possession of such property.

(History: KSA 21-3739; Ord. POC-625 ' 40, 72)

[Next Page is 11-1300]

Chapter 11.36
ANIMALS AND NUISANCES
(This entire chapter has been repealed - See Chapter 6.09)

Sections:

- 11.36.010 Cruelty to Animals. (Repealed. See 6.09.010)
- 11.36.015 Seizure and Disposition of Animals. (Repealed. See 6.09.020)
- 11.36.020 Injury to a Domestic Animal. (Repealed. See 6.09.030)
- 11.36.030 Permitting Dangerous Animal to be at Large. (Repealed)
- 11.36.040 Unlawful Trapping. (Repealed. See 6.09.040)
- 11.36.050 Unlawful Trading in Animals. (Repealed. See 6.09.050)

11.36.010 Cruelty to Animals.

Repealed. See: 6.09.010

(History: Ord. DAC-1311 §27, 85; POC- 949 §1, 77; POC-625 §74, 72)

11.36.015 Seizure and Disposition of Animals.

Repealed. See: 6.09.020

(History: Ord. DAC-1311 §27, 85; POC-949 §2, 77)

11.36.020 Injury to a Domestic Animal.

Repealed. See: 6.09.030

(History: Ord. DAC-1311 §27, 85; POC-625 §34, 72)

11.36.030 Permitting Dangerous Animal to be at Large.

Repealed.

(History: Ord. DAC-1311 §27, 85; POC-625 §12, 72)

11.36.040 Unlawful Trapping.

Repealed. See: 6.09.040

(History: Ord. DAC-1311 §27, 85; POC-881 §1, 76)

11.36.050 Unlawful Trading in Animals.

Repealed. See: 6.09.050

(History: Ord. DAC-1311 §27, 85; POC-881 §2, 76)

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Chapter 11.40
BUILDINGS AND PROPERTIES
(This entire chapter has been repealed)

Sections:

11.40.010 Blocking Aisles. (Repealed)

11.40.010 Blocking Aisles.

Repealed.

(History: Ord. POC-2119 §6, 98; POC-625 §79, 72; POC-598 §79; PO-84 §54)

[Next Page is 11-1500]

Chapter 11.44
LOTTERIES, SLOT MACHINES AND GAMBLING

Sections:

- 11.44.010 Bet Defined.
- 11.44.020 Gambling Defined.
- 11.44.030 Gambling Device Defined.
- 11.44.040 Permitting Premises to Be Used for Commercial Gambling.
- 11.44.050 Possession of Gambling Device.

11.44.010 Bet Defined.

A "bet" is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

- A. Bona fide business transactions which are valid under the law of contracts including but not limited to contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
- B. Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such a contest. (KSA 21-4302)

(History: Ord. POC-625 ' 71(part), 72)

11.44.020 Gambling Defined.

"Gambling" is

- A. Making a bet; or
- B. Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

(History: Ord. POC-625 ' 71(part),72; POC-598 ' 68,70; PO-84 ' 21,61)

11.44.030 Gambling Device Defined.

A "gambling device" is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(History: Ord. POC-625 ' 71(part),72)

11.44.040 Permitting Premises to Be Used for Commercial Gambling.

"Permitting premises to be used for commercial gambling" is intentionally:

- A. Granting the use or allowing the continued use of a place as a gambling place; or
- B. Permitting another to set up a gambling device for use in a place under the defendant's control.

(History: KSA 21-4305; Ord. POC-625 ' 72,72; POC-598 ' 70)

Chapter 11.44

11.44.050 Possession of Gambling Device.

- A. "Possession of a gambling device" is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise, of any gambling device.
- B. It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950. (KSA 21-4307)

(History: Ord. POC-1053 ' 2, 79; POC- 625 ' 73, 72; POC-598 ' 71; PO-84 ' 20)

[Next Page is 11-1600]

Chapter 11.48
INTOXICATING LIQUOR

Sections:

- 11.48.010 Furnishing Intoxicant to a Minor. (Repealed)
- 11.48.020 Minors Accepting Alcoholic Liquor. (Repealed)
- 11.48.030 Public Intoxication. (Repealed)
- 11.48.040 Transportation of Liquor or Cereal Malt Beverages in Open Containers.
(Repealed. See 12.04)
- 11.48.045 Consumption of Cereal Malt Beverages While Driving, Prohibited. (Repealed.
See 12.04)
- 11.48.050 Violation-Penalties. (Repealed)
- 11.48.100 Definitions and Identification Standards.
- 11.48.110 Persons under 21 Years of Age - Possession, Consumption and Receiving
Intoxicating Liquor - Prohibited.
- 11.48.120 Furnishing Intoxicating Liquor to Persons under the Age of 21.
- 11.48.125 Unlawfully Hosting Minors.
- 11.48.130 Persons under 21 -Alcoholic Liquor -Prohibitions. (Repealed)
- 11.48.140 Furnishing Alcoholic Liquor to Persons under 21. (Repealed)
- 11.48.150 Furnishing Intoxicating Liquor to Incapacitated Persons.
- 11.48.155 Alcohol Without Liquid Prohibition.
- 11.48.160 Intoxicating Liquor in Public Places - Unlawful Acts.
- 11.48.162 Prohibited Hours.
- 11.48.165 Penalty.

11.48.010 Furnishing Intoxicants to a Minor.

Repealed.

(History: Ord. POC-1321 §9, 85; POC-1146 §1, 81; POC-625 §24, 72)

11.48.020 Minors Accepting Alcoholic Liquor.

Repealed.

(History: Ord. POC-1321 §9, 85; POC-625 §82, 72)

11.48.030 Public Intoxication.

Repealed.

(History: Ord. POC-1146 §2, 81; DIP-701)

11.48.040 Transportation of Liquor or Cereal Malt Beverages in Open Containers.

Repealed. See 12.04.

(History: Ord. REP-1191 §1, 82; POC-1146 §3, 81; POC-625 §81, 72)

11.48.045 Consumption of Cereal Malt Beverages While Driving, Prohibited.

Repealed. See 12.04.

(History: Ord. POC-1321 §9, 85; REP-1191 §1, 82; POC-1146 §4, 81)

11.48.050 Violation-Penalties.

Repealed.

(History: Ord. POC-1321 §9, 85; DIP-701 §2, 72)

11.48.100 Definitions and Identification Standards.

- A. "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.
- B. "Alcoholic liquor" means alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than 3.2% alcohol by weight.
- C. "Beer," when its meaning is not enlarged, modified, or limited by other words, means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
- D. "Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2% alcohol by weight or less than 0.5% alcohol by volume.
- E. "Intoxicating Liquors" as used in this chapter shall mean any alcoholic liquor, beer, cereal malt beverage, non-alcoholic malt beverage, spirit or wine as defined herein.
- F. "Legal age" for consumption of intoxicating liquor means 21 years of age.
- G. "Non-alcoholic malt beverage" means a beverage containing less than 0.5% alcohol by volume obtained by alcohol fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
- H. "Person" includes individuals, firms, copartnerships, corporations and associations.
- I. "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.
- J. "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

(History: Ord. POC-1655 §1, 90; POC-1631 §1, 90; POC-1596 §1, 89; POC-1459 §1, 87; POC-1381 §6, 86; POC-1321 §1, 85)

11.48.110 Persons under 21 Years of Age - Possession, Consumption and Receiving Intoxicating Liquor - Prohibited.

- A. No person under the age of 21 shall possess, consume, obtain, purchase or attempt to obtain or purchase any intoxicating liquor except as authorized by law.
- B. This section shall not apply to the possession and consumption of cereal malt beverage by a person under the age of 21 when the possession and consumption are permitted and supervised and the beverage is furnished by the person's parent or legal guardian.
- C. Provided further, this section shall not prohibit any person 18 or over from dispensing or selling intoxicating liquor at establishments as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 or 41-2727 and amendments thereto and subject to any rules and regulations adopted pursuant to such statutes.
- D. Any person who is convicted of a violation of this section or diverted in lieu of further criminal proceedings shall be required to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee for such evaluation.
- E. Violations of this section shall be punishable by a fine of not less than \$200 and not more than \$500. In addition, the Court may assess a jail sentence of not more than thirty days.
- F. In addition to any other penalty provided for a violation of this section,
 - (1) The court may order the offender to do either or both of the following:
 - (a) perform 40 hours of public service; or
 - (b) attend and satisfactorily complete a suitable education or training program dealing with the effects of alcohol or other chemical substances when ingested by humans; and
 - (2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privileges of such offender for 30 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not the person has a driver's license.
 - (3) Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privileges of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not the person has a driver's license.
 - (4) Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privileges of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not the person has a driver's license.

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- G. A law enforcement officer may request a person under 21 years of age to submit to a preliminary screening test of the person's breath to determine if alcohol has been consumed by such person if the officer has reasonable grounds to believe that the person has alcohol in the person's body except that, if the officer has reasonable grounds to believe the person has been operating or attempting to operate a vehicle under the influence of alcohol, the provisions of K.S.A. 8-1012, and amendments thereto, shall apply. No waiting period shall apply to the use of a preliminary breath test under this subsection. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether to charge a violation of this section. A law enforcement officer may charge a person based in whole or in part upon the results of a preliminary screening test. Such results or a refusal to submit to a preliminary breath test shall be admissible in court in any criminal action, but are not per se proof that the person has violated this section. The person may present to the court evidence to establish the positive preliminary screening test was not the result of a violation of this section.

(History: Ord. POC-2751 §1, 2008; POC-2500 §1, 2004; POC-2311 §1, 2001; POC-2200 §1, 99; POC-1631 §2, 90; POC-1597 §1, 89; POC-1459 §2, 87; POC-1321 §2, 85; POC-625; POC-598) [Prior source of law: 5.12.120]

11.48.120 Furnishing Intoxicating Liquor to Persons under the Age of 21.

- A. Furnishing intoxicating liquor to a minor is buying for or selling, giving or furnishing, whether directly or indirectly, any intoxicating liquor to any person under the legal age for consumption of intoxicating liquor.
- B. This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child or ward's parent or legal guardian.
- C. It shall be a defense to a prosecution under this section if:
1. the defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof;
 2. the defendant sold the intoxicating liquor to the person with reasonable cause to believe that such person was of legal age for consumption of intoxicating liquor; and
 3. to purchase the intoxicating liquor, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the minor and purporting to establish that such person was of legal age for consumption of intoxicating liquor.
- D. Violation of this section shall be punishable by a fine of not less than \$200 and not more than \$500. In addition, the Court may assess a jail sentence of not more than thirty days.

(History: KSA 21-3610a; Ord. POC-2500 §2, 2004; POC-2200 §2, 99; POC-1801 §16, 93; POC-1631 §3, 90; POC-1459 §3, 87; POC-1321 §3, 85; CMB-1145 §5, 81; POC-625 §24; POC-598 §24; CMB-SM-179)

11.48.125 Unlawfully Hosting Minors.

- A. Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is intentionally or recklessly permitting a person's residence or any land, building, structure, or room owned, occupied or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor.
- B. Violation of this Section shall be a class A violation, provided that the minimum fine imposed shall be not less than \$1,000. If the court sentences the offender to perform community or public service work as a condition of probation, as described in O.P.M.C. Section 2.33.294(e)(10), the court shall consider ordering the offender to serve the community or public service at an alcohol treatment facility.

(History: Ord. POC-2821 §3, 2009; POC-2665 §3, 2007; POC-2620 §10, 2006; POC-2500 §3, 2004)

11.48.130 Persons Under 21 - Alcoholic Liquor-Prohibitions.

Repealed.

(History: Ord. POC-1631 §8, 90; POC-1451 §1, 87; POC-1321 §4, 85; POC-598 §81, 70)

11.48.140 Furnishing Alcoholic Liquor to Persons under 21.

Repealed.

(History: Ord. POC-1631 §8, 90; POC- 1321 §5, 85; POC-625 §24; POC-24)

11.48.150 Furnishing Intoxicating Liquor to Incapacitated Persons.

No person shall knowingly sell, give away, furnish, dispose of, procure, exchange or deliver or permit the selling, giving away, furnishing, disposing of or procuring of any intoxicating liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of drugs or intoxicating liquors.

(History: KSA 41-715; Ord. POC-1631 §5, 90; POC-1321 §6, 85)

11.48.155 Alcohol Without Liquid Prohibition.

- A. It shall be unlawful for any person to:
 - 1. Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or
 - 2. Purchase, sell or offer for sale an alcohol without liquid machine.
- B. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment.
- C. As used in this section, "alcohol without liquid machine" means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

(History: Ord. POC-2565 §1, 2005)

11.48.160 Intoxicating Liquor in Public Places - Unlawful Acts.

It is unlawful for any person to sell, serve, dispense, drink or consume any intoxicating liquor in or upon any public street, road, highway, avenue, alley or sidewalk, public way, public or private parking lot, or upon any public property, or within any vehicle in or upon any such place. In addition, it is unlawful for any person to possess in any such place, any open container of intoxicating liquor. Provided, however:

- A. The Governing Body may authorize the sale and consumption of cereal malt beverages on public property pursuant to a valid application being submitted to said body and when said body determines that such activity would not be detrimental to the health, safety, and morals of the community.
- B. Intoxicating liquor may be sold, served, dispensed and consumed in or on designated parking or sidewalk areas of a licensed drinking establishment if title to the public area lies with the City and the licensee has received authorization to expand the premises from Kansas Alcohol Beverage Control, has received authorization from the Governing Body pursuant to the provisions of O.P.M.C. Section 5.20.075, and the licensee is complying with the security and other provisions of that Section.
- C. Intoxicating liquor may be sold, served, dispensed and consumed on the Corporate Woods Founder's Park during the Jazz Festival and the July 4th celebration provided the sale, serving, dispensing and consumption shall be in accordance with the written standards approved by the Director, Parks Services.
- D. Cereal malt beverages, beer and wine as those terms are defined in O.P.M.C. Section 11.48.100 may be sold, served, dispensed and consumed at the Overland Park Fire Training Facility located at 12401 Hemlock, Overland Park, Kansas, in conjunction with professional and social events authorized by the Director of the Overland Park Fire Training Facility.
- E. Intoxicating liquor may be sold, served, dispensed and consumed on the Sykes/Lady Overland Park Golf Complex, including the Westlinks Course, located at 12501 Quivira Road and the St. Andrews Golf Course located at 11099 W. 135th Street, Overland Park, Kansas, provided the sale, serving, dispensing and consumption of alcoholic liquor shall be in accordance with written standards approved by the Director, Recreation Services.
- F. Intoxicating liquor may be sold, served, dispensed and consumed on real property leased by the City to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, provided such real property is actually being used for hotel or motel purposes or purposes incidental thereto.
- G. Intoxicating liquor may be sold, served, dispensed and consumed on any property that is located within the corporate limits of the City and is under the control of the Kansas State Board of Regents and the Board of Regents has exempted said property from the provisions of K.S.A. 41-719, and amendments thereto, and the property is not being used for classroom instruction.

- H. Cereal malt beverages, beer, wine and champagne may be sold, served, dispensed and consumed on the premises of the Overland Park Arboretum Environmental Education Visitors Center to include designated patio and reception areas, provided the sale, serving, dispensing and consumption of these beverages shall be in accordance with written standards approved by the Director, Parks Services.
- I. Intoxicating liquor may be sold, served, dispensed and consumed on the land platted as Convention Center Plaza in the City of Overland Park, Kansas, in accordance with and to the extent allowed by the written standards relating to intoxicating liquor promulgated by the City Manager or his designees.
- J. Cereal malt beverages, beer, wine and champagne may be sold, served, dispensed and consumed on the premises of the Kemper Farm Property, provided the sale, serving, dispensing and consumption of those beverages shall be in accordance with written standards approved by the Director, Parks Services.
- K. Intoxicating liquor may be sold, served, dispensed and consumed at the City of Overland Park Community Centers, in accordance with written standards approved by the Director, Parks Services.
- L. Cereal malt beverages, beer, wine and champagne may be sold, served, dispensed and consumed at the Deanna Rose Farmstead provided the sale, serving, dispensing and consumption shall be in accordance with written standards approved by the Director, Parks Services.
- M. Cereal malt beverages may be sold, served, dispensed and consumed in the food court area at the Overland Park Soccer Complex provided the sale, serving, dispensing and consumption shall be in accordance with written standards approved by the Director, Recreation Services.
- N. Cereal malt beverages and beer may be sold, served, dispensed and consumed within the boundaries of the Santa Fe Commons Park during the Overland Park Fall Festival in accordance with and to the extent allowed by the written standards approved by the Director, Parks Services.
- O. Alcoholic liquor may be consumed at a special event held on public streets, alleys, roads, sidewalks or highways when a temporary permit has been issued pursuant to K.S.A 41-2645, and amendments thereto, for such special event and the Governing Body has approved the special event by ordinance or resolution. Special events may occur on a street, alley, road, sidewalk or highway only if the Governing Body closes the streets, alley, road, sidewalk or highway to motor vehicle traffic during the special event. For the purposes of this Section, "special event" means a picnic, bazaar, festival or other similar community gathering approved by the Governing Body. The boundaries of any such event shall be clearly designated in any application for the special event and shall be clearly designated in any approval granted by the Governing Body. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event. No person shall remove any alcoholic

liquor from inside the boundaries of a special event, and no alcoholic liquor may be consumed inside vehicles while on public streets, alleys, roads or highways at any such special event. No person shall possess or consume alcoholic liquor inside the premises licensed as a special event that was not sold or provided by the licensee holding the temporary permit for such special event. Drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event. Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

Any licensed caterer selling, serving and dispensing alcohol on public property listed herein must receive authorization from Kansas Alcohol Beverage Control, authorization from the Governing Body pursuant to the provisions of O.P.M.C. Section 5.20.075, and must comply with the security and other provisions of that Section.

- P. Any person under the age of 21 who is convicted of a violation of this Section or diverted in lieu of further criminal proceedings shall be required to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee for such evaluation.

(History: Ord. POC-2941 §1, 2011; POC-2915 §1, 2011; POC-2821 §4, 2009; POC-2742 §2, 2008; POC-2654 §1, 2007; POC-2589 §1, 2005; POC-2561 §1, 2005; POC-2396 §1, 2002; POC-2209 §1, 2000; POC-2177 §1, 99; POC-2046 §1, 97; POC-2039 §1, 97; POC-2010 §1, 96; POC-1631 §6, 90; POC-1597 §2, 89; POC-1321 §7, 85; PO-84 §16; CMB-76E §1, 69; CMB-76C §1, 66; CMB-76 §11, 60) [Prior source of law: 5.12.110]

11.48.162 Prohibited Hours.

No person shall permit the serving, mixing, or consumption of alcoholic liquor on the premises of a drinking establishment, caterer, or temporary permit holder licensed under the provisions of K.S.A. 41-2601 et seq., or O.P.M.C. 5.20, between the hours of 2:00 a.m. and 9:00 a.m. on any day of the week. In addition, no caterer, or any owner, officer or employee thereof, shall allow the serving, mixing, or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day an event is catered by such caterer.

(History: Ord. POC-2010 §2, 96)

11.48.165 Penalty.

Unless a specific penalty is otherwise provided, a violation of the provisions of this chapter shall be punishable by a fine of not less than \$100 nor more than \$500 or up to thirty days imprisonment. In addition, the court shall order the offender to attend an alcohol and drug education program.

(History: Ord. POC-2200 §3, 99; POC-1631 §7, 90)

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Chapter 11.52
CIGARETTES (TOBACCO)

Sections:

- 11.52.010 Unlawful Purchase of Cigarettes. (Repealed)
- 11.52.020 Unlawful Sale of Cigarettes. (Repealed)
- 11.52.030 Smoking in Stores. (Repealed)
- 11.52.040 "No Smoking" Signs. (Repealed)
- 11.52.050 Violations of 11.52.030 or 11.52.040 - Penalty. (Repealed)
- 11.52.055 Definitions of Ordinance, Cigarette or Tobacco Infraction.
- 11.52.060 Purchase of Tobacco Products, Persons Under 18.
- 11.52.065 Possession of Tobacco Products, Persons Under 18.
- 11.52.070 Selling, Giving or Furnishing Cigarettes or Tobacco Products to Persons under the Age of 18.
- 11.52.080 Violations of Sections 11.52.060 and 11.52.065; Penalties.
- 11.52.090 Purpose. (Repealed)
- 11.52.095 Definitions. (Repealed)
- 11.52.100 Prohibited Smoking Areas. (Repealed)
- 11.52.101 Construction, Reconstruction or Alteration of Food Service Establishments. (Repealed)
- 11.52.105 Prohibited Smoking – Places of Employment. (Repealed)
- 11.52.106 Required Signage - Office and Multi-Use Buildings. (Repealed)
- 11.52.110 No Smoking Signs. (Repealed)
- 11.52.120 Violations of Sections 11.52.100 through 11.52.110; Penalties; Civil Actions. (Repealed)
- 11.52.130 Severability. (Repealed)
- 11.52.140 Purpose.
- 11.52.150 Definitions.
- 11.52.160 Prohibition of Smoking in Enclosed Places of Employment and all Enclosed Public Places.
- 11.52.170 Where Smoking is Not Regulated.
- 11.52.180 Responsibilities of Proprietors, Owners and Managers.
- 11.52.190 Penalty for Violation of Ordinance.
- 11.52.210 Severability.

11.52.010 Unlawful Purchase of Cigarettes.

Repealed.

(History: Ord. POC-1285 §4, 84; POC-625 §78, 72)

11.52.020 Unlawful Sale of Cigarettes.

Repealed.

(History: Ord. POC-1285 §4, 84; POC-625 §77, 72)

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11.52.030 Smoking in Stores.

Repealed.

(History: Ord. POC-1285 §4, 84; NS-468 §1, 67)

11.52.040 "No Smoking" Signs.

Repealed.

(History: Ord. POC-1285 §4, 84; NS-468 §2, 67)

11.52.050 Violations of Sections 11.52.030 or 11.52.040-Penalty.

Repealed.

(History: Ord. POC-1285 §4, 84; NS-468 §3, 67)

11.52.055 Definitions of Ordinance, Cigarette or Tobacco Infraction.

The term "ordinance, cigarette or tobacco infraction" shall mean a violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto, to include, but not limited to, O.P.M.C. 11.52.060 and O.P.M.C. 11.52.065.

(History: Ord. POC-1986 §6, 96)

11.52.060 Purchase of Tobacco Products, Persons under 18.

It shall be unlawful for any person under the age of 18 to purchase or attempt to purchase cigarettes or tobacco products in any form.

(History: Ord. POC-1986 §7, 96; POC- 1285 §1, 84)

11.52.065 Possession of Tobacco Products, Persons under 18.

It shall be unlawful for any person under the age of 18 to possess or attempt to possess cigarettes or tobacco products.

(History: Ord. POC-1986 §8, 96)

11.52.070 Selling, Giving or Furnishing Cigarettes or Tobacco Products to Persons under the Age of 18.

A. It shall be unlawful for any person, directly or indirectly, to:

1. Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or
2. Buy any cigarettes or tobacco products for any person under 18 years of age. In determining the penalty to be imposed for a violation of this subsection by a licensed retail dealer whose employee sold, furnished or distributed the cigarettes or tobacco products, the court shall consider it to be a mitigating circumstance if the employee had completed a training program, approved by the secretary of revenue or the secretary's designee, in avoiding sale, furnishing or distributing of cigarettes and tobacco products to persons under 18 years of age.

B. It shall be a defense to a prosecution under this subsection if:

1. The defendant is a licensed retail dealer or a person authorized by law to distribute samples; and

2. The defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and
 3. To purchase or receive the cigarettes or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products.
- C. It shall be a defense to a prosecution under this subsection if:
1. The defendant engages in the lawful sale, furnishing or distribution of cigarettes or tobacco products by mail; and
 2. The defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 18 or more years of age. (K.S.A. 79-3322 as amended).

Violations of this Section shall constitute a Class B violation punishable by a minimum fine of \$200.00.

(History: Ord. POC-1986 §9, 96; POC- 1285 §2, 84)

11.52.080 Violations of Sections 11.52.060 and 11.52.065; Penalties.

Any person who violates any of the provisions of Sections 11.52.060 and 11.52.065 shall be guilty of an ordinance cigarette or tobacco infraction for which the fine shall be \$25.00.

(History: Ord. POC-1986 §10, 96; POC-1285 §3, 84)

11.52.090 Purpose.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1283 §1, 84)

11.52.095 Definitions.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-2182 §1, 2000; NS-1914 §1, 95; NS-1836 §1, 94; POC-1462 §1, 87)

11.52.100 Prohibited smoking areas.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-2182 §2, 2000; NS-1914 §2, 95; NS-1836 §2, 94; POC-1462 §2, 87; NS-1283 §2, 84)

11.52.101 Construction, Reconstruction or Alteration of Food Service Establishments.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-2182 §3, 2000)

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11.52.105 Prohibited Smoking - Places of Employment.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1914 §3, 95; NS-1836 §3, 94; POC- 1462 §3, 87)

11.52.106 Required Signage - Office and Multi-Use Buildings.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1914 §4, 95)

11.52.110 No Smoking signs.

Repealed.

(History: Ord. NS-1914 §5, 95; NS-1836 §4, 94; NS-1283 §3, 84)

11.52.120 Violations of Sections 11.52.100 through 11.52.110; Penalties; Civil Actions.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1283 §4, 84)

11.52.130 Severability.

Repealed.

(History: Ord. POC-2632 §9, 2008; NS-1283 §5, 84)

11.52.140 Purpose.

It is the purpose of this Ordinance that the City promotes public health by decreasing citizen's exposure to secondhand smoke and creates smoke free environments for workers and citizens through regulation in the work place and all public places.

(History: Ord. POC-2632 §1, 2008)

11.52.150 Definitions.

For the purposes of this Ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

Employee

Any person who performs services for an employer, with or without compensation.

Employer

A person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.

Enclosed

A space bound by walls (with or without windows) continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, "office landscaping" or similar structures and halls.

Open Office Landscaping

Indoor areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.

Place of Employment

Any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, hotel or motel sleeping rooms, private rooms in nursing homes, private meeting/conference rooms and halls not open to the general public while being used for private functions or located within private clubs and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

Public Place

Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place.”

Service Line

Any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking

Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

Sports Arena

Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(History: Ord. POC-2632 §2, 2008)

11.52.160 Prohibition of Smoking in Enclosed Places of Employment and all Enclosed Public Places.

- A. Smoking shall be prohibited in all enclosed places of employment within the City.
- B. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed facilities.

- C. The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this Ordinance.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- E. Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:
 - 1. Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs.
 - 2. Elevators.
 - 3. Restrooms.
 - 4. Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries.
 - 5. Any health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices.
 - 6. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
 - 7. Service lines.
 - 8. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; provided, however, that smoking may take place on stage during live theatrical performances, where smoking is integral to the plot or storyline and prior notice is given to the audience.
 - 9. Shopping malls.
 - 10. Sports arenas, including enclosed places in outdoor arenas.
 - 11. Bars.
 - 12. Restaurants.
 - 13. Convention facilities.
 - 14. All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities.
 - 15. Any other area used by the public or serving as a place of work, including open office landscaping.
 - 16. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to joint committees, or agencies of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
 - 17. All enclosed facilities owned by the City.

18. Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.
19. Within 10 feet of any public entrance to a public place; provided, however, that this prohibition shall not apply to the following: any portion of the public right of way that may be within 10 feet of said entrance, and the outdoor seating area of a restaurant or drinking establishment where smoking is allowed. With respect to said outdoor seating area, smoking may be allowed only if reasonable efforts are made to minimize the chance of smoke affecting the inside occupants of the establishment.

(History: Ord. POC-2632 §3, 2008)

11.52.170 Where Smoking is Not Regulated.

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this Ordinance:

- A. Private residences, not serving as enclosed places of employment or an enclosed public place.
- B. An existing retail establishment whose primary business is the sale of tobacco products and new retail establishments whose primary business is the sale of tobacco products which are located in a stand-alone building not attached to or the part of any building devoted to other uses.

(History: Ord. POC-2632 §4, 2008)

11.52.180 Responsibilities of Proprietors, Owners and Managers.

The person having control of a place, business, office or other establishment or activity subject to this Ordinance shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Ordinance in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this Ordinance. "Necessary steps" means to take all reasonable actions to prevent smoking in violation of this Ordinance by employees, patrons and visitors in the place, business, office or establishment, including: posting no-smoking signs and removing all ashtrays; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this Ordinance is hard of hearing, the communications with that person may be written, in sign language or other effective means of communication.

(History: Ord. POC-2632 §5, 2008)

11.52.190 Penalty for Violation of Ordinance.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of a public offense, punishable by a fine not exceeding fifty dollars (\$50).

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- B. A person having control of a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of a public offense, punishable by:
1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.
- D. In addition to the fines established by this Section, violation of this Ordinance by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(History: Ord. POC-2632 §6, 2008)

11.52.210 Severability.

If any section, subsection, paragraph, sentence, clause or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof.

(History: Ord. POC-2632 §7, 2008)

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Chapter 11.56
MISCELLANEOUS OFFENSES

Sections:

Article I. Public Nuisances

11.56.010 Maintaining a Public Nuisance. (Repealed. See 7.04.160 et al.)

Article II. Inoperative Vehicles

11.56.030 Findings of Governing Body. (Repealed. See 7.26.182)

11.56.040 Definitions. (Repealed. See 7.26.025)

11.56.050 Prohibitions. (Repealed. See 7.26.186)

11.56.060 Temporarily Disabled Vehicle. (Repealed. See 7.26.184)

11.56.070 Screening. (Repealed. See 7.26.186)

11.56.080 Presumptions. (Repealed)

11.56.090 Administrative Procedure. (Repealed)

11.56.100 Zoning Provisions Control. (Repealed. See 7.26.186)

11.56.110 Violation of Article – Penalty. (Repealed)

11.56.120 Adoption Authority For Article. (Repealed)

Article III. Drugs

11.56.130 Definitions.

11.56.140 Unlawful Possession of Drugs-Exceptions.

11.56.150 Exemptions from Article.

11.56.160 Records and Inventories by Certain Persons.

11.56.170 Access to Records - Inspection.

11.56.175 Sale of Drugs from Vending Machine.

11.56.180 Violation of Article - Penalty.

11.56.185 Control of Drug Paraphernalia and Control of Simulated Drugs and Simulated Drugs and Simulated Controlled Substances.

Article IV. Model Glue and Other Toxic Solvent

11.56.190 Toxic Vapors Defined.

11.56.200 Abusing Toxic Vapors Prohibited.

11.56.210 Aiding and Abetting. (Repealed)

11.56.212 Exemptions.

11.56.220 Use as to Minors. (Repealed)

11.56.230 Procedure as to Minors. (Repealed)

11.56.240 Violation of Article - Penalty.

Article V. Explosives or Incendiary Devices

11.56.250 Possession Unlawful.

11.56.260 Violation of Article - Penalty. (Repealed)

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Article VI. Automatic Dial Protection Services

- 11.56.270 Automatic Dial Protection Devices. (Repealed. See 5.06)
- 11.56.280 Definitions. (Repealed. See 5.06)
- 11.56.290 Prohibition. (Repealed. See 5.06)
- 11.56.300 Limitation. (Repealed. See 5.06)
- 11.56.310 Violation-Penalty. (Repealed. See 5.06)
- 11.56.320 Definitions. (Repealed)
- 11.56.330 Possession of Monitors Restricted, Exceptions. (Repealed)
- 11.56.340 Permits; Applications. (Repealed)
- 11.56.350 Permits Not Transferable. (Repealed)
- 11.56.360 Use of Police, Fire or Emergency Medical Communications.
- 11.56.370 Penalty.
- 11.56.380 Separability.

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ARTICLE I. PUBLIC NUISANCES

11.56.010 Maintaining a Public Nuisance.

Repealed. See 7.04.160 et al.

(History: Ord. REP-1580 §1, 89;KSA 21-4106; POC-625 §56, 72)

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ARTICLE II. INOPERATIVE VEHICLES

11.56.030 Findings of Governing Body.

Repealed. See 7.26.182

(History: Ord. REP-1580 §1, 89; IV-677 §1, 72)

11.56.040 Definitions.

Repealed. See 7.26.025

(History: Ord. REP-1580 §1, 89; IV-677 §2, 72)

11.56.050 Prohibitions.

Repealed. See 7.26.186

(History: Ord. REP-1580 §1, 89; IV-677 §3, 72)

11.56.060 Temporarily Disabled vehicle.

Repealed. See 7.26.184

(History: Ord. REP-1580 §1, 89; IV-677 §4, 72)

11.56.070 Screening.

Repealed. See 7.26.186

(History: Ord. REP-1580 §1, 89; IV-677 §5, 72)

11.56.080 Presumptions.

Repealed.

(History: Ord. REP-1580 §1, 89; IV-677 §6, 72)

11.56.090 Administrative Procedure.

Repealed.

(History: Ord. REP-1580 §1, 89; IV-677 §7, 72)

11.56.100 Zoning Provisions Control.

Repealed. See 7.26.186

(History: Ord. REP-1580 §1, 89; IV-677 §8, 72)

11.56.110 Violation of Article - Penalty.

Repealed.

(History: Ord. REP-1580 §1, 89; POC-1381 §10, 86; IV-677 §9, 72)

11.56.120 Adoption Authority for Article.

Repealed.

(History: Ord. REP-1580 §1, 89; IV-677 §10, 72)

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ARTICLE III. DRUGS**11.56.130 Definitions.**

As used in this article:

- A. "Controlled substance" means any drug or substance included in the Uniform Controlled Substances Act found in Chapter 21 of the Kansas Statutes Annotated, and amendments thereto.
- B. "Drug" means:
1. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;
 2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;
 3. Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 4. Substances intended for use as a component of any article specified in clause 1, 2, or 3 of this subsection. It does not include devices or their components, parts or accessories.
- C. "Dangerous drug" means one that is unsafe for use except under the supervision of a practitioner because of its toxicity or other potentiality for human effect, method of use, or collateral measures necessary to use; "Dangerous Drugs" shall include all other drugs or compounds, preparations or mixtures thereof which the state board of health shall find and declare by rule or regulation duly promulgated after reasonable public notice and opportunity for hearing to have a dangerous hallucinogenic hypnotic, somnifacient or stimulating effect of the body of a human or animal.
- D. "Deliver" or "delivery" means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.
- E. "Marijuana " means all parts of all varieties of the plant Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.
- F. "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:

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1. By a practitioner or his agent pursuant to a lawful order of a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 2. By a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or hospital as an incident to his or its dispensing of a controlled substance.
- G. "Patient" means, as the case may be:
1. The individual for whom a drug is prescribed or to whom a drug is administered; or
 2. The owner or the agent of the owner of the animal for which a drug is prescribed or to which a drug is administered; provided, that the prescribing or administering referred to in 1 and 2 of this subsection is in good faith and in the course of professional practice only;
- H. "Person" means any individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.
- I. "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.
- J. "Practitioner" means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.
- K. "Prescription" means a written order, and in cases of emergency, a telephonic order, issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.
- L. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
- M. "Somnifacient" and "stimulating" have the meaning attributable in standard medical lexicons.
- N. "Warehouseman" means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.
- O. "Wholesaler" means a person engaged in the business of distributing drugs to persons included in any of the classes named in clauses a to be inclusive of Section 11.56.150(A)(2).
- P. "Drug paraphernalia" means any device intended for use in ingesting, smoking, administering or preparing marijuana, cocaine, phencyclidine, opium or any derivative thereof, or any other controlled substance.

For purposes of this subsection, the phrase "intended for use" shall refer to the intent of the person selling, offering to sell, dispensing, giving away or displaying the drug paraphernalia herein defined.

In determining whether an item constitutes drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Whether a person charged with violating this ordinance is a licensed distributor or dealer of tobacco products under Chapter 79, Article 33 of the Kansas Statutes Annotated.
2. Expert testimony as to the use of the item.
3. Evidence concerning the total business of a person or business establishment and the type of items involved in the business.
4. National and local advertising concerning the use of the item of which the person charged with violating this ordinance has knowledge.
5. Evidence of advertising concerning the nature of the business establishment.
6. Statements by a person charged with violating this ordinance concerning the use of the item.
7. Prior convictions, if any, of a person charged with violating this ordinance, under any state, federal or municipal law relating to any controlled substance.
8. Instructions, oral or written, provided with the item concerning its use.
9. Descriptive materials accompanying the item which explain or depict its use.
10. Catalogues or other promotional materials concerning the item of which the person charged with violating this ordinance has knowledge.

- Q. "Minor" shall mean any person who has not attained 18 years of age.
- R. "Premises open to minors" means any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.
- S. "Simulated drugs" and "simulated controlled substances" are any products which identify themselves by using a common name or slang term associated with a controlled substance or indicate by label or accompanying promotional material that the product simulates the effect of a controlled substance or drug.
- T. "Place of display" means any museum, library, school or other similar public place upon which business is not transacted for a profit.
- U. "School" means any public or private elementary, junior high, or high school.
- V. "Close proximity" means within 500 feet on a straight line commencing at the property lines nearest to each other.
- W. "Premises" means a business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons. (K.S.A. 65-4101 et seq.)

(History: Ord. POC-2821 §5, 2009; POC-2690 §2, 2007; RD-1103 §1, 81; RD-1048 §1, 79)

11.56.140 Unlawful Possession of Drugs - Exceptions.

- A. It is unlawful for any person to deliver, possess, manufacture, have under his control, sell, or offer for sale any drug controlled substance or marijuana all as defined in 11.56.130, unless:
1. Such drug is delivered by a pharmacist, or his authorized agent, in good faith upon prescription and there is affixed to the immediate container in which such drug is delivered a label bearing:
 - a. The name and address of the owner of the establishment from which such drug was delivered,
 - b. The date on which the prescription for such drug was filled,
 - c. The number of such prescription as filed in the prescription files of the pharmacist who filled such prescription,
 - d. The name of the practitioner who prescribed such drug,
 - e. The name and address of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal, and
 - f. The direction for use of the drug and cautionary statements, if any, as contained in the prescription; and
 2. In the event that such delivery is pursuant to telephonic order, such prescription shall be promptly reduced to writing and filed by the pharmacist; or
 3. Such drug is delivered by a practitioner in good faith and in the course of his professional practice only.
- B. It is unlawful for any person to refill any prescription for a drug unless such refilling is specifically authorized by the prescriber.
- C. It is unlawful for any person to fail to keep the records required by 11.56.160.
- D. It is unlawful for any person to possess a drug unless such person obtained such drug on the prescription of a practitioner or in accordance with subsection A(3) of this section or from a person licensed by the laws of any other state or the District of Columbia to prescribe or dispense drugs.
- E. It is unlawful for any person to refuse to make available and to accord full opportunity to check any record, file, stock or inventory as required by 11.56.170.
- F. It is unlawful for any person to use to his own advantage, or to reveal other than to a public officer or employee charged with the duty of enforcing laws relating to the handling, sale and distribution of drugs, or to a court when relevant in a judicial proceeding, any information acquired under the authority of 11.56.170 concerning any method or process which as a trade secret is entitled to protection.
- G. It is unlawful for any person to obtain or attempt to obtain a drug by fraud, deceit, misrepresentation or subterfuge; or by the forgery or alteration of a prescription; or by the use of a false name or the giving of a false address.
- H. It is unlawful for any person to sell, offer for sale or have in his possession with the intent to sell any hallucinogenic or stimulating drug described in 11.56.130.

(History: Ord. RD-950 §1, 77;RD-539 §2, 70)

11.56.150 Exemptions from Article.

- A. The provisions of paragraphs A and E of 11.56.140 shall not be applicable:
1. To the delivery of drugs for medical or scientific purposes only to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or
 2. To the possession of drugs by such persons or their agents or employees for such use:
 - a. Pharmacists,
 - b. Practitioners,
 - c. Persons who procure drugs: (i) for disposition by or under the supervision of pharmacists or practitioners employed by them or (ii) for the purpose of lawful research, teaching, or testing and not for resale.
 - d. Hospitals and other institutions which procure drugs for lawful administration by or under the supervision of practitioners,
 - e. Manufacturers and wholesalers,
 - f. Carriers and warehousemen.
- B. Nothing contained in 11.56.140 shall make it unlawful for a public officer, agent or employee, or person aiding such public officer in performing his official duties to possess, obtain, or attempt to obtain a drug for the purpose of enforcing the provisions of any law of this state or of the United States relating to the regulation of the handling, sale or distribution of drugs.
- C. Nothing in this ordinance shall apply to a compound, mixture, or preparation containing a drug which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this ordinance if such compound, mixture, or preparation contains a sufficient quantity of another therapeutic agent or agents, in addition to such a drug, to cause it to prevent the ingestion of a sufficient amount of drug to cause a dangerous hypnotic somnifacient or stimulating action.

(History: Ord. RD-539 §3, 70)

11.56.160 Records and Inventories by Certain Persons.

- A. Persons (other than carriers) to whom the exemptions of 11.56.150 are applicable shall maintain detailed, but not necessarily separate, records and inventories relating to drugs manufactured, purchased, sold, distributed and handled and retain all such records and inventories required by this subsection A for not less than two calendar years after the date of the transaction shown by such record and inventory.
- B. Pharmacists shall, in addition to complying with the provisions of subsection A of this section, retain each prescription and written record of telephonic order for a drug filled by them, for not less than two calendar years immediately following the date of the filling or the date of the last refilling of such prescription whichever is the later date.

(History: Ord. RD-539 §4, 70)

11.56.170 Access to Records - Inspection.

Persons required by 11.56.160 to keep files, inventories or records relating to drugs shall, upon the written request of a public officer or employee charged with the duty of enforcing laws relating to the handling, sale and distribution of drugs:

- A. Make such files, inventories or records available to such officer or employee, at all reasonable hours, for inspection and copying; and
- B. Accord to such officer or employee full opportunity to check the correctness of such files, inventories or records, including opportunity to make inventory of all stocks of drugs on hand.

(History: Ord. RD-539 §5, 70)

11.56.175 Sale of Drugs From Vending Machine.

- A. It is unlawful for any person, firm or corporation to offer for sale, sell or distribute any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison through or by means of any vending machine or other mechanical device, or to use any vending machine in or for the sale or distribution of any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison.
- B. No nonprescription drugs shall be offered for sale or sold through a vending machine in anything other than the manufacturer's original tamper-evident and expiration-dated packet. No more than 12 different nonprescription drugs products shall be offered for sale or sold through any one vending machine. Any vending machine in which nonprescription drugs are offered for sale or sold shall be located so that the drugs stored in such vending machine are stored in accordance with drug manufacturer's requirements. Drugs offered for sale or sold in such vending machine shall not be older than the manufacturer's expiration date. Each vending machine through which nonprescription drugs are offered for sale or sold shall have an obvious and legible statement on the machine that identifies the owner of the machine, a toll-free telephone number at which the consumer may contact the owner of the machine, a statement advising the consumer to check the expiration date of the product before using the product and the telephone number of the state board of pharmacy. As used in this subsection, "nonprescription drug" does not include any prescription medicine; prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison.
- C. Every person convicted of violating this section shall be fined not less than \$25 nor more than \$500.

(History: Ord. POC-2235 §3, 2000)

11.56.180 Violation of Article - Penalty.

Any person violating 11.56.140, 11.56.160, 11.56.170, or 11.56.185 shall be punished as follows:

- A. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 30 days nor more than six months imprisonment, and fined not less than \$200 nor more than \$500. The person convicted must serve a minimum of 48 consecutive hours before or as a condition of any grant of probation, suspension or reduction of sentence or parole. In addition, the court shall enter a sentencing order that requires:
1. That the convicted person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided by K.S.A. 8-1008 and any amendments thereto; and
 2. That as a condition of parole the convicted person not consume any alcohol or illegal drugs during the period of probation and submit to any testing of breath or bodily fluids to verify compliance with this requirement; and
 3. That should the convicted person violate any of the conditions of parole, the convicted person serve the remaining period of imprisonment set forth in the sentencing order of the court.
- B. Upon a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days' nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted must serve a minimum of five consecutive days' imprisonment before or as a condition of any grant of probation, suspension or reduction of sentence or parole. In addition, the court shall enter a sentencing order that requires:
1. That the convicted person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided by K.S.A. 8-1008 and any amendments thereto; and
 2. That as a condition of parole the convicted person not consume any alcohol or illegal drugs during the period of probation and submit to any testing of breath or bodily fluids to verify compliance with this requirement; and
 3. That should the convicted person violate any of the conditions of parole, the convicted person serve the remaining period of imprisonment set forth in the sentencing order of the court.
- C. Upon a third and subsequent conviction of a violation of this section, a person shall be sentenced to not less than 180 days' nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted must serve a minimum of 90 days imprisonment before or as a condition of any grant of probation, suspension or reduction of sentence or parole. In addition, the court shall enter an order of sentencing that requires:
1. That the convicted person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided by K.S.A. 8-1008 and any amendments thereto; and
 2. That as a condition of parole the convicted person not consume any alcohol or illegal drugs during the period of probation and submit to any testing of breath or bodily fluids to verify compliance with this requirement; and
 3. That should the convicted person violate any of the conditions of parole, the convicted person serve the remaining period of imprisonment set forth in the sentencing order of the court.

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- D. The court may place a person convicted under this section in a house-arrest program, pursuant to K.S.A. 21-6609, and amendments thereto; provided, placement in a house-arrest program shall be ordered only after a person has served a minimum of 48 consecutive hours' imprisonment.
- E. The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.
- F. In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5.00 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
- G. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:
 - 1. "conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;
 - 2. "conviction" includes being convicted of a violation of a law of this state or of any state or of an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;
 - 3. only convictions occurring in the immediately preceding five years, including prior to the effective date of this ordinance, shall be taken into account for mandatory sentencing purposes, however, the court may consider other prior drug-related convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and
 - 4. it is irrelevant whether an offense occurred before or after a conviction for a previous offense.
- H. The prosecution shall not plea bargain charges filed pursuant to this section for the purpose of avoiding the mandatory sentencing requirement set forth herein; provided, however, only first time offenders may be diverted on said charges; provided further, all persons diverted on charges filed pursuant to this section shall pay a minimum diversion fee of \$200 and shall attend and successfully complete an alcohol and drug education and/or treatment program.

(History: Ord. POC-2928 §4, 2011; POC-1796 §2, 93; POC-1634 §1, 90; POC-1624 §1, 90; POC-1597 §3, 89; POC-1381 §8, 86; RD-539 §6, 70)

11.56.185 Drug Paraphernalia, Simulated Drugs and Controlled Substances; Display, Sale, Possession or Delivery Prohibited.

No person shall sell or offer for sale, use or possess with intent to use:

- A.
 - 1. Any simulated controlled substance;
 - 2. Any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act and any amendments thereto; or
 - 3. Any drug paraphernalia to plant, propagate, cultivate, grow or harvest less than five marijuana plants.
- B. The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.
- C. No person shall deliver, possess with intent to deliver, manufacture with intent to deliver or cause to be delivered within this City any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act and amendments thereto.
- D. It shall be unlawful for any person to display for sale any drug paraphernalia or simulated controlled substance or simulated drug in or upon any premises.
 - 1. Nothing in this Section shall be construed to prohibit the selling, dispensing, or giving away of such items by a practitioner or pharmacist to a patient for lawful purposes.
 - 2. In addition to any penalty authorized by 11.56.180, a violation of 11.56.185.C. is hereby declared to be a public nuisance.

(History: Ord. POC-2690 §3, 2007; RD-1103 §2, 81; RD-1048)

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ARTICLE IV. MODEL GLUE OR OTHER TOXIC SOLVENT

11.56.190 Toxic Vapors Defined.

As used in this article, "toxic vapors" means the following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl or butyl;
 - (2) Aliphatic acetates, including ethyl, methyl, propyl or methyl celosolve acetate;
 - (3) Acetone;
 - (4) Benzene;
 - (5) Carbon tetrachloride;
 - (6) Cyclohexane;
 - (7) Freons, including freon 11 and freon 12;
 - (8) Hexane;
 - (9) Methyl ethyl ketone;
 - (10) Methyl isobutyl ketone;
 - (11) Naptha;
 - (12) Nitrous oxide
 - (13) Perchlorethylene;
 - (14) Toluene;
 - (15) Trichloroethane;
 - (16) Xylene; or
 - (17) Any product containing compressed 1,1-Difluoroethane (HFC-152a) as a propellant.
- (History: Ord. POC-2821 §6, 2009; POC-2387 §1, 2002; POC-2194 §1, 99; MG-405 §1, 66)

11.56.200 Abusing Toxic Vapors Prohibited.

Abusing toxic vapors is prohibited. Abusing toxic vapors is knowingly possessing, buying, using, smelling or inhaling the fumes of toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system. In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in O.P.M.C. 11.56.190 as one of its ingredients shall be prima facie evidence that the substance in such container contains toxic vapors and emits the fumes thereof.

(History: Ord. POC-2387 §2, 2002; POC-2194 §2, 99; MG-405-A §1, 66; MG-405 §2, 66)

11.56.210 Aiding and Abetting.

Repealed.

(History: Ord. POC-2387 §5, 2002; POC-2194 §3, 99; MG-405 §3, 66)

11.56.212 Exemptions.

This Article shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(History: Ord. POC-2387 §3, 2002)

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11.56.220 Use as to Minors.

Repealed.

(History: Ord. POC-2194 §4, 99; MG-405-B §1, 67; MG-405 §4, 66)

11.56.230 Procedure as to Minors.

Repealed.

(History: Ord. POC-2194 §4, 99; MG-405 §5, 66)

11.56.240 Violation of Article - Penalty.

Any person violating any of the provisions of this article is guilty of a public offense and upon conviction thereof shall be punished as provided in 1.12.010. In addition to any sentence or fine imposed, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs.

(History: Ord. POC-2387 §4, 2002; POC-1597 §4, 89; Amended during codification in accordance with K.S.A. 12-3015; MG-405 §6, 66)

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ARTICLE V. EXPLOSIVES OR INCENDIARY DEVICES

11.56.250 Possession Unlawful.

It is unlawful at any time for any person, partnership, company, corporation or association to have in their possession or under their control or supervision; or to make, manufacture, offer for sale, and sell, or distribute, whether the same be with or without consideration, any type of gasoline or other inflammable explosive or incendiary bombs, including all such devices commonly known as a Molotov cocktail, within the corporation limits of the city.

(History: Ord. MC-496 §1, 68; POC-625 § 35, 61 - 64; POC-598 § 35; PO-84 § 10, 61)

11.56.260 Violation of Article -Penalty.

Repealed.

(History: Ord. POC-1381 §10, 86; MC-496 §2, 68)

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ARTICLE VI. AUTOMATIC DIAL PROTECTION DEVICES

11.56.270 Automatic Dial Protection Devices.

Repealed. See 5.06.

(History: Ord. APD-713 §1, 72)

11.56.280 Definitions.

Repealed. See 5.06.

(History: Ord. APD-713 §2, 72)

11.56.290 Prohibition

Repealed. See 5.06

(History: Ord. APD-713 §3, 72)

11.56.300 Limitation.

Repealed. See 5.06

(History: Ord. APD-713 §4, 72)

11.56.310 Violation-Penalty

Repealed. See 5.06

(History: Ord. APD-713 §5, 72)

11.56.320 Definitions.

Repealed.

(History: Ord. PRM-2212 §1, 2000; PRM-1859 §1, 94; PRM-807 §1, 74)

11.56.330 Possession of Monitors Restricted, Exceptions.

Repealed.

(History: Ord. PRM-2212 §2, 2000; PRM-1859 §2, 94; POC-1649 §1, 91; PRM-807 §2, 74)

11.56.340 Permits; Applications.

Repealed.

(History: Ord. PRM-2212 §3, 2000; PRM-807 §3, 74)

11.56.350 Permits not Transferable.

Repealed.

(History: Ord. PRM-2212 §4, 2000; PRM-807 §4, 74)

11.56.360 Use of Police, Fire or Emergency Medical Communications.

It shall be illegal for any person to intercept any message or transmission made on or over any police, fire or emergency medical communications system and to use the information obtained thereby to facilitate the commission or the attempt to commit a crime or a violation of any law, or use the same in a manner which interferes with the discharge of police, fire or emergency medical operations, or to follow up or answer any such call.

(History: Ord. PRM-1859 §3, 94; PRM-807 §5, 74)

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11.56.370 Penalty.

Any person who violates the provisions of this chapter shall be guilty of a public offense and shall be subject, upon conviction, to the general penalty provisions of 1.12.010.

(History: Ord. PRM-807 §6, 74)

11.56.380 Separability.

Should any court declare any section, clause or provision of this chapter to be unconstitutional or invalid, such decision shall affect only such section, clause or provision so declared unconstitutional or invalid and shall not affect any other section, clause or provision.

(History: Ord. PRM-807 §7, 74)

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Chapter 11.60
MACHINE GUNS AND OTHER FIREARMS

Sections:

- 11.60.005 Definitions.
- 11.60.010 Criminal Use of Weapons.
- 11.60.010.5 Concealed Carry; Prohibitions. (Repealed)
- 11.60.020 Exceptions to 11.60.010. (Repealed. See 11.60.010.5)
- 11.60.030 Nonapplication of 11.60.010 (D and E) to Certain Persons. (Repealed. See 11.60.010.5)
- 11.60.035 Criminal Disposal of Firearms.
- 11.60.040 Unlawful Discharge of Firearm.
- 11.60.040.1 Exceptions. (Repealed. See 11.60.040)
- 11.60.040.2 Penalty. (Repealed. See 11.60.040)
- 11.60.045 Prohibition; School Property.
- 11.60.045.1 Failure to Surrender or Remove.
- 11.60.045.2 Exceptions.
- 11.60.045.3 Report of Violation.
- 11.60.045.4 Penalties.
- 11.60.050 B-B Guns.
- 11.60.060 Carrying Concealed Explosives.
- 11.60.070 Unlawful Use of Projectiles.
- 11.60.080 Confiscation, Disposition of Weapons.
- 11.60.090 Severability Clause.

11.60.005 Definitions.

As used in this article:

- A. "Billy" shall mean a short wooden club;
- B. "Blackjack" shall mean a small leather-covered bludgeon with a short flexible shaft or strap;
- C. "Bludgeon" shall mean a short, heavy club, usually of wood, that has one end loaded or thicker than the other;
- D. "Dagger" shall mean a short pointed weapon with sharp edges;
- E. "Dirk" shall mean a dagger;
- F. "Metal knuckles" shall mean a weapon consisting of a metal strip or chain with holes or links into which the fingers fit;
- G. "Nunchaku" shall mean a weapon that consists of two hardwood sticks joined at their ends by a short length of rawhide, cord, or chain;
- H. "Slung shot" shall mean a small heavy weight attached to a thong;
- I. "Stiletto" shall mean a small dagger with a slender tapering blade;
- J. "Throwing star" shall mean any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

(History: Ord. POC-1415 §1, 86; POC-1381 §9, 86)

11.60.010 Criminal Use of Weapons.

- A. "Criminal use of weapons" is knowingly;
1. Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, nunchaku, any gun that emits an electrical charge including, but not limited to, a gun commonly referred to as a stun gun or Taser gun, metal knuckles, or throwing star, or any knife, commonly referred to as a switchblade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement; or any knife, the blade of which can be fired, including but not limited to a knife commonly referred to as a ballistics knife; or
 2. Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slung-shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character; provided, an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument; or
 3. Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance; or
 4. Carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business; or
 5. Carrying any pistol, revolver or other firearm unconcealed on one's person except when on the person's land or in the person's abode or fixed place of business; or
 6. Transporting any pistol, revolver or other firearm unless it is unloaded and encased in a container which completely encloses it; or
 7. Setting a spring gun.
- B. Subsections (A)(1), (2), (3), (4), (5) and (6) do not apply to or affect any of the following:
1. Law enforcement officers, or any person summoned by any such officers or summoned by any other lawfully authorized public officers to assist in making arrests or preserving the peace while actually engaged in assisting such officers; or
 2. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime while acting within the scope of their authority; or
 3. Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or
 4. Manufacture of, transportation to, or sale of weapons to persons authorized under this exemption to possess such weapons; or

5. Use and possession of the martial arts weapon "nunchaku" by students, instructors, and/or demonstrator instructors provided that such use, possession, instruction or demonstration shall be permitted only on the premises of individuals conducting a course of martial arts instruction for a fee and who have no fewer than five students enrolled in the instructional program at any given time, and only on premises zoned for such instruction within the City zoning ordinance, provided further that the "nunchaku" weapons shall be transported to and from the training or demonstration in a compartment or area of a motor vehicle not directly accessible from the passenger compartment. In addition, the use of nunchaku weapons is permitted at tournament locations approved by the Chief of Police. (K.S.A. 21-4201)
- C. Subsections (A)(4), (5) and (6) do not apply to or affect the following:
1. Watchmen while actually engaged in the performance of the duties of their employment; or
 2. Licensed hunters or fishermen while engaged in hunting and fishing; or
 3. Private detectives licensed by the state of Kansas to carry the firearm involved, while actually engaged in the duties of their employment; or
 4. Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or
 5. The state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and any amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and any amendments thereto; or
 6. Special deputy sheriffs in counties over 100,000 population who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer.
- D. Subsection (A)(4) and (6) shall not apply to persons authorized to carry a concealed weapon pursuant to K.S.A. 75-7c01 et seq.
- E. Subsection (A)(1) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the National Firearms Registration and Transfer Record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.
- F. Violation of this Section is a Class A violation.
- (History: Ord. POC-2742 §3, 2008; POC-2690 §4, 2007; POC-2665 §4, 2007; POC-2644 §2, 2007; POC-2570 §1, 2005; POC-2556 §1, 2005; POC-1801 §17, 93; POC-1415 §2, 86; POC-1381 §9, 86; POC-1146 §5, 81; POC-979 §7, 78; POC-625 §63, part, 72; POC-598 § 58; PO-84B; PO-84 § 56)

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11.60.010.5 Concealed Carry; Prohibitions.

Repealed.

(History: Ord. POC-2665 §5, 2007; POC-2652 §1, 2007; POC-2644 §3, 2007)

11.60.020 Exceptions to 11.60.010.

Repealed. See 11.60.010.5.

(History: Ord. POC-2644 §9, 2007; POC-2570 §2, 2005; POC-1483 §1, 87; POC-1381 §9, 86; POC-1146 §6, 81; POC-979 §8, 78; POC-625 §63, part, 72; POC-598 § 60; PO-84 §57)

11.60.030 Nonapplication of 11.60.010(D and E) to Certain Persons.

Repealed. See 11.60.010.5.

(History: KSA 21-4201; Ord. POC-2644 §9, 2007; POC-2570 §3, 2005; POC-1986 §11, 96; POC-1381 §9, 86; POC-1146 §7, 81; POC-979; POC-625 §63part 72)

11.60.035 Criminal Disposal of Firearms.

Criminal disposal of firearms is knowingly:

- A. Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;
 - B. Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;
 - C. Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in Subsection (F), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was found not to have been in possession of a firearm at the time of the commission of the offense;
 - D. Selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, that was not found to have been in the possession of a firearm at the time of the commission of the offense, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or
 - E. Selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the offense.
 - F. Subsection (D) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, or 65-4127b, or Supp. 21-3442 or 65-4160: 65-4164, and amendments thereto, or any crime under a law of another jurisdiction which is substantially the same as such felony.
 - G. Violation of this Section is a Class A violation.
- (History: Ord. POC-2644 §4, 2007; POC-2055 § 5, 97)

11.60.040 Unlawful Discharge of Firearm.

- A. It shall be unlawful for any person other than those excepted by Sections 11.60.010(B) (1), (2) or (3) to discharge or shoot off any gun, pistol or other firearm within the corporate City limits except as provided below.
1. The discharge of a pistol, revolver, rifle of not more than .224 caliber or shotgun by a duly licensed hunter as described in Section 11.60.010(C), provided the requirements of Section 11.12.155 are complied with.
 2. The discharge of a gun, pistol or other firearm at any legally operated shooting gallery, pistol range, or gun club approved by the Chief of Police in writing.
 3. The discharge of a shotgun, gun, pistol or other firearm in the process of target or skeet shooting on land that is primarily rural, or devoted to agricultural use as defined in Section 18.110.040, if written permission is obtained from the landowner where the target or skeet shooting is occurring. When on land of less than 40 acres, the person discharging the firearm must have in his or her possession written permission of all landowners or persons in possession of land contiguous to the land where the target or skeet shooting is occurring. It shall be unlawful for a person otherwise lawfully target or skeet shooting within the City to discharge a firearm or other projectile within 500 feet of any property on which a residence, school, church, airport, cemetery, or public recreation facility is located to include all adjacent or contiguous property owned for such purposes.
 4. The discharge of a gun, pistol or other firearm by any duly licensed watchman, detective, special agent or other person described in Section 11.60.010(C) if such action is reasonably necessary for the protection of life or property.
 5. The discharge of a gun, pistol or other firearm with blank ammunition only by an honor guard, composed of members of the armed forces, law enforcement officers or members of veterans service organizations listed in Part I of the most recent edition of the Directory of Veterans Service Organizations issued by the Department of Veterans Affairs, in a "salute" or "honor" to an individual, in conjunction with a funeral or other "honor" ceremony, provided that the Chief of Police must approve the discharge of firearms by the honor guard, to include the type of firearm, ammunition to be used, and the location and time of the discharge. This information must be provided to the Chief of Police at least twenty-four hours prior to the proposed date of the firearms discharge provided the Chief of Police may approve the discharge on an emergency basis, as he or she deems appropriate.
- B. Notwithstanding the provisions for target and skeet shooting set forth in Section A 3, above, persons may engage in target or skeet shooting on any property zoned RUR that is annexed into the City pursuant to Ordinance No. A-2719, unless and until such property is rezoned. However, no one shall discharge any shotgun, muzzleloader, rimfire rifle, or any handgun in the direction of any property that is within 200 yards of the point of discharge where such property contains a building inhabited by people or a

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feedlot, or in the case of a center-fired rifle, in the direction of any property that is within 500 yards of the point of discharge where such property contains a building inhabited by people or a feedlot, unless the owner, if owner-occupied, or legal tenant, if tenant-occupied, of the building or feedlot has given written consent to do so. The 200 and 500 yard limitations shall be measured from the point of discharge to the property line of the property on which the inhabited building or feedlot is located. "Feedlot" shall mean any yard, enclosure or corral where livestock are confined for purposes of feeding and growth prior to slaughter. Pastures, hayfields, or cropfields where animals are allowed to graze are not deemed to be a "feedlot." Any person engaged in target or skeet shooting shall use their best efforts to ensure that no projectile or buck shot shall land outside the boundaries of the property on which the target or skeet shooting is taking place unless the owner of the property outside the boundaries on which the target or skeet shooting is taking place has given his or her written consent to such activity.

C. Violation of this Section is a Class C violation.

(History: Ord. POC-2788 §1, 2008; POC-2644 §5, 2007; POC-2403 §2, 2002; POC-1958 §1, 95; POC-1647 §1, 90; POC-1381 §9, 86; POC-1345 §1, 85; POC-1069 §1, 80; POC-968 §1, 78; POC-625 §64, 72; PO-84B; PO-84 § 58 & 59)

11.60.040.1 Exceptions.

Repealed. See 11.60.040.

(History: Ord. POC-2644 §9, 2007; POC-2403 §3, 2002)

11.60.040.2 Penalty.

Repealed. See 11.60.040.

(History: Ord. POC-2644 §9, 2007; POC-2403 §4, 2002)

11.60.045 Prohibition; School Property.

It shall be unlawful for any person, other than a law enforcement officer whether on duty or not, or a person on active military service while actually performing duties on the property, to possess any firearm, BB gun, or dangerous weapon as the word dangerous weapon is defined or regulated by Section 11.60.010, while on any school property or grounds upon which is located a building or structure used by a unified school district, an accredited non-public school for student instruction, junior college or university, when that property or grounds are used for student attendance or extracurricular activities of students enrolled in kindergarten, any of the grades 1 through 12, or post secondary school education, or at any regularly scheduled school sponsored activity or event.

(History: Ord. POC-1690 §1, 91)

11.60.045.1 Failure to Surrender or Remove.

It shall be a separate violation of this section for a person to refuse to surrender or immediately remove from school property or grounds any firearm found to be possessed in violation of 11.60.045 herein.

(History: Ord. POC-1690 §2, 91)

11.60.045.2 Exceptions.

Section 11.60.045 shall not apply to:

- A. Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school; or
- B. Possession of a firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any school, college or university; or
- C. Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian, or someone authorized to act in such person's behalf who is delivering or picking up a student; or
- D. Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day.

(History: Ord. POC-1690 §3, 91)

11.60.045.3 Report of Violation.

The principal or senior administrator of any school, college or university shall immediately report the violation of any provisions of Sections 11.60.045 through and including 11.60.045.2 to the Overland Park Police Department.

(History: Ord. POC-1690 §4, 91)

11.60.045.4 Penalties.

Persons convicted of violating the provisions of Sections 11.60.045 through and including 11.60.045.2 shall be fined not less than \$100 nor more than \$1,000. In addition to these fines, the court may sentence the person to incarceration in jail for a period not to exceed 30 days. The penalty provisions of this section shall not apply to Section 11.60.045.3 concerning mandatory reporting requirements.

(History: Ord. POC-1690 §5, 91)

11.60.050 B-B Guns.

"Unlawful use of air rifles, air pistols, B-B guns, or pellet guns" is the discharge of such guns within the City limits, except upon land with the written consent in his or her possession of the landowner whose land is primarily rural or devoted to agriculture and contains in area 15 acres or more. It is a defense that the defendant is within the exemption authorized under this section.

(History: Ord. POC-1349 §1, 86; POC-979 §10, 78; POC- 625 §65, 72)

11.60.060 Carrying Concealed Explosives.

"Carrying concealed explosives" is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner. Violation of this Section is a Class C violation.

(History: Ord. POC-2644 §6, 2007; POC-625 §67, 72)

11.60.070 Unlawful Use of Projectiles.

It shall be unlawful for any person to shoot, launch, throw or project any arrow, dart or stone capable of doing grievous bodily harm to persons or animals except upon property of 30 acres or more, with the written consent of the occupant or landowner, provided no projectile shall be

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launched, thrown or shot within 500 feet of a residential dwelling. The sport of archery and archery exhibits, contests and events may be conducted at any legally operated archery range or club, or at an appropriate special event location, upon the written determination of the Chief of Police that such activity will be conducted according to generally accepted standards of safety and that the participants, spectators and the public will not be placed at risk. The Chief of Police may impose conditions on approval of this activity that are deemed necessary to ensure public safety including, without being limited to, the obtaining of appropriate liability insurance coverage.

(History: Ord. POC-2059 § 1, 97; POC-1648 §1, 90; POC-1349 §2, 86; POC-625 §66, 72)

11.60.080 Confiscation, Disposition of Weapons.

- A. Upon conviction of a violation of this Chapter 11.60, any weapon seized in connection therewith shall remain in the custody of the trial court.
- B. Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court be:
 - 1. Destroyed;
 - 2. Forfeited to the law enforcement agency seizing the weapon for use within such agency, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency's use; or
 - 3. Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, comparison, or destruction by the Kansas Bureau of Investigation forensic laboratory.
- C. If weapons are sold as authorized by Subsection (B), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency. (K.S.A. Supp. 21-4206)

(History: Ord. POC-2644 §7, 2007)

11.60.090 Severability Clause.

If any section, subsection, paragraph, sentence, clause or phrase in this Chapter or any part thereof, is for any reason held to be unconstitutional, or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portion of this Chapter or any part, thereof.

(History: Ord. POC-2644 §8, 2007)

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