

## TITLE 9

### OLATHE PUBLIC OFFENSE CODE

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## CHAPTER 9.01

### SCOPE AND APPLICATION

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**9.01.010 Title and Construction.** This code is called and may be cited as the City of Olathe public offense code. (Ord. 83-75 § 2, 1983.)

#### **9.01.020 Scope and Application.**

(1) No conduct constitutes a crime against the City of Olathe unless it is made criminal in this code or in another ordinance of this city, but where an offense is denounced by any ordinance of this city, but not defined, the definition of such offense at common law shall be applied.

(2) Unless expressly stated otherwise, or the context otherwise requires, the provisions of this code apply to offenses created by ordinance other than in this code.

(3) This code does not affect the power of the municipal court to punish for contempt or to employ any sanction authorized by law for the enforcement of a conviction, judgment, order or sentence.

(4) This code has no application to offenses committed prior to its effective date. An offense is committed prior to the effective date of the code if any of the essential elements of the offense as then defined occurred before that date. Prosecutions for prior offenses shall be governed, prosecuted and punished under the laws existing at the time such offenses were committed. (Ord. 83-75 § 2, 1983.)

**9.01.030 Application; Kansas Criminal Code.** The provisions of the Kansas Criminal Code and amendments thereto which are in their nature applicable to the jurisdiction of the City of Olathe and in respect to which no special provision is made by ordinance of the city are applicable to this public offense code. (Ord. 83-75 § 2, 1983.)

**9.01.040 Civil Remedies Preserved.** This code does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based upon conduct which this code makes punishable; and the civil injury caused by criminal conduct is not merged in the offense. (Ord. 83-75 § 2, 1983.)

#### **9.01.050 Territorial Applicability.**

(1) A person is subject to prosecution and punishment under the law of this city if:

(a) Such person commits an offense wholly or partly within the corporate limits of this city; or

(b) Being outside the city, such person counsels, aids, abets, or conspires with another to commit an offense within this city; or

(c) Being outside the city, such person commits an act which constitutes an attempt to commit an offense within this city.

(2) An offense is committed partly within the city if either an act which is a constituent and material element of the offense, or the proximate result of such act, occurs within the city.

(3) An offense which is based on an omission to perform a duty imposed by the law of this city, is committed within the city, regardless of the location of the person omitting to perform such duty at the time of the omission.

(4) It is not a defense that the defendant's conduct is also violative of the laws of the State of Kansas or of another state or of the United States or of another country.

(5) This city includes the land and water and air space above such land and water with respect to the limits and boundaries of the City of Olathe. (Ord. 07-135 § 1, 2007; Ord. 83-75 § 2, 1983.)

**9.01.060 Public Offenses Defined; Classes of Offenses.** A public offense is an act or omission defined by law and for which, upon conviction, a sentence of imprisonment or fine, or both imprisonment and fine, is authorized.

Offenses are classified as Class A, B, C and unclassified public offenses. (Ord. 83-75 § 2, 1983.)

**9.01.070 Time Limitations.**

1. Except as otherwise provided in this section, a prosecution for all other offenses must be commenced within five (5) years after it is committed.

2. The period within which a prosecution must be commenced shall not include any period in which:

- A. The accused is absent from the state;
- B. The accused is concealed within the state so that process cannot be served upon the accused;
- C. The fact of the offense is concealed;
- D. A prosecution is pending against the defendant for the same conduct, even if the notice to appear and/or complaint which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal.

3. 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 begins to run on the day after the offense is committed.

4. A prosecution is commenced when a notice to appear and/or complaint is filed and a warrant thereon is delivered to the Police Department or an officer for execution, or a notice to appear is delivered to the Police Department for service upon the accused, or when the accused has been served with a notice to appear and the complaint is filed with the municipal court. (Ord. 14-26 § 1, 2014; Ord. 83-75 § 2, 1983.)

**9.01.080 Multiple Prosecutions for Same Act.**

(1) When the same conduct of a defendant may establish the commission of more than one offense under the laws of the city, the defendant may be prosecuted for each of such offenses. Each of such offenses may be alleged as a separate count in a single complaint and/or notice to appear.

(2) Upon prosecution for an offense, the defendant may be convicted of either the offense charged or an included offense, but not both. An included offense may be any of the following:

- (a) A lesser degree of the same offense;
- (b) An attempt to commit the offense charged;
- (c) An attempt to commit a lesser degree of the offense charged; or
- (d) An offense necessarily proved if the offense charged were proved.

Whenever charges are filed against a person, accusing such person of an offense which includes another offense of which the person has been convicted, the conviction of such included offense shall not bar prosecution or conviction of the offense charged if such offense charged was not consummated at the time of conviction of the included offense, but the conviction of such included offense shall be annulled upon the filing of such charges. Evidence of such person's plea or any admission or statement made by such person in connection therewith in any of the proceedings which resulted in such person's conviction of the included offenses shall not be admissible at the trial of the offense charged. If such person is convicted of the offense charged, or of an included offense, the person so convicted shall receive credit against any sentence imposed or fine to be paid for the period of confinement actually served or the amount of any fine actually paid under the sentence imposed for such annulled conviction. (Ord. 83-75 § 2, 1983.)

#### **9.01.090 Effect of Former Prosecution.**

(1) A prosecution is barred if the defendant was formerly prosecuted for the same offense, based upon the same facts, if such former prosecution:

- (a) Resulted in either a conviction or an acquittal or in a determination inconsistent that the evidence was insufficient to warrant a conviction; or
- (b) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution; or
- (c) Was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of the illness or death of an indispensable party. A defendant is in jeopardy when he or she is put on trial in a court of competent jurisdiction upon an indictment, information, complaint and/or notice to appear, sufficient in form and substance to sustain a conviction or where the case is tried to the court, when the court has begun to hear evidence.

A conviction of an included offense is an acquittal of the offense charged.

(2) A prosecution is barred if the defendant was formerly prosecuted for a different offense, or for the same crime based upon different facts, if such former prosecution:

- (a) Resulted in either a conviction or an acquittal and the subsequent prosecution is for an offense or offenses of which evidence has been admitted in the former prosecution and which might have been included as other counts in the complaint and/or notice to appear, indictment or information filed in such former prosecution or upon which the prosecution then might have elected to reply; or was for a crime which involves the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the offense was not consummated when the former trial began; or
- (b) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution; and
- (c) Was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of the illness or death of an indispensable party.

(3) A prosecution is barred if the defendant was formerly prosecuted in a district court of the United States or in a court of proper jurisdiction of a sister state or in the municipal court of another city or a district court of Kansas for a crime which is within the concurrent jurisdiction of this city, if such former prosecution:

(a) Resulted in either a conviction or an acquittal, and the subsequent prosecution is for the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the offense was not consummated when the former trial began; or

(b) Was terminated by a final order of judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the prosecution in this state.

(4) A prosecution is not barred under this section:

(a) By a former prosecution before a court which lacked jurisdiction over the defendant or the offense; or

(b) By a former prosecution procured by the defendant without the knowledge of a prosecuting officer authorized to commence a prosecution for the maximum offense which might have been charged on the facts known to the defendant, and with the purpose of avoiding the sentence which otherwise might be imposed; or

(c) If subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty.

(5) In no case where a conviction for a lesser included crime has been invalidated, set aside, reversed or vacated shall the defendant be subsequently prosecuted for a higher degree of the crime for which such defendant was originally convicted. (Ord. 83-75 § 2, 1983.)

**9.01.100 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. (Ord. 83-75 § 2, 1983.)

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

**Act:** Shall also include a failure or omission to take action.

**Air Gun or Rifle:** Any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any pellet or BB shot, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.

**Alcohol Concentration:** The number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

**Alcohol Without Liquid Machine:** 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.

**Alcoholic Liquor or Alcoholic Beverage:** Includes the four varieties of liquor, namely alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer capable of being consumed as a beverage by a human being, but shall not include cereal malt beverage.

**Animal:** Any live, vertebrate creature, domestic or wild, other than humans.

**Another:** A person or persons as defined in this Title other than the person whose act is claimed to be an offense.

**Audiovisual Recording Function:** 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.

**Beer:** 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.

**Body Piercing:** Puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting jewelry or other objects in or through the human body, except puncturing the external part of the human ear shall not be included in this definition.

**Cardholder:** The person or entity to whom or for whose benefit a financial card is issued.

**Caterer:** An individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

**Cereal Malt Beverage:** Means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt substitute, but does not include any such liquor which is more than three and two-tenths percent (3.2%) alcohol by weight.

**Cigarette:** Any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.

**City or this City:** The City of Olathe, Kansas, and all land and water within the corporate limits of the City of Olathe and the air space above such land and water.

**City or County Correctional Officer or Employee:** 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.

**Conduct:** An act or series of acts, and the accompanying mental state.

**Conviction:** A judgment of guilt entered upon a plea or finding of guilty.

**Court Appointed Guardian:** One who is appointed by a court and has legal authority and duty to care for another person, especially because of the other's infancy, incapacity or disability.

**Deception:** Knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

**Deprive Permanently:**

A. To take from the owner the possession, use or benefit of his or her property without an intent to restore the same; or

B. To retain property without intent to restore the same or with 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

C. To sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

**Distribute:** The actual or constructive transfer from one person to another of some item whether or not there is an agency relationship. **Distribute** includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one person to another. **Distribute** does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

**Drinking Establishment:** Premises which may be open to the general public, where alcoholic liquor by the individual drink is sold. Drinking establishment includes a railway car.

**Dwelling:** 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.

**Dwelling Unit:** A single-family residence, multiple-family residence and each living unit in a mixed-use building.

**Electronic Cigarette:** A battery-powered device, whether or not such device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

**Equine:** A horse, pony, mule, jenny, donkey or hinny.

**Farm Animal:** An animal raised on a farm or ranch and used or intended for use as food or fiber.

**Fighting Words:** Words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.

**Financial Card:** 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 or services or to conduct other financial transactions.

**Fire Department:** A public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district.

**Firearm:** Any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

**Funeral:** The ceremonies, processions, and memorial services held in connection with the burial or cremation of a person.

**Gamecock:** A domesticated fowl that is reared or trained for the purpose of fighting with other fowl.

**Health Care Facility:** 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 services of a health care provider are provided directly to patients.

**Health Care Provider:** Any person:

- A. Licensed to practice a branch of the healing arts;
- B. Licensed to practice psychology;
- C. Licensed to practice professional or practical nursing;
- D. Licensed to practice dentistry;
- E. Licensed to practice optometry;
- F. Licensed to practice pharmacy;
- G. Registered to practice podiatry;
- H. Licensed as a social worker; or
- I. Registered to practice physical therapy.

**Identification Document:** Any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be driver's licenses, non-driver's identification cards, birth certificates, social security cards and employee identification cards.

**Intent to Defraud:** 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.

**Juvenile Detention Facility Officer or Employee:** Any officer or employee of a juvenile detention facility as defined in K.S.A. 38-2302, and amendments thereto.

**Knife:** A cutting instrument, including a sharpened or pointed blade, a dagger, dirk, switchblade, stiletto, straight-edged razor or any other dangerous or deadly cutting instrument of like character.

**Law Enforcement Officer:**

A. Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses whether that duty extends to all offenses or is limited to specific offenses.

B. Any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

**Maliciously:** A state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

**Motion Picture Theater:** A movie theater, screening room or other venue when used primarily for the exhibition of a motion picture.

**Motor Vehicle:** Every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

**Motorboat:** Any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion.

**Obtain:** To bring about a transfer of interest in or possession of property, whether to the offender or to another.

**Obtains or Exert 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.

**Ordinance Cigarette or Tobacco Infraction:** 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.

**Owner:** A person who has an interest in property.

**Paint Ball Gun:** Any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any paint ball, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.

**Person:** An individual, public or private corporation, government, partnership, or unincorporated association.

**Personal Property:** 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.

**Police Dog:** Any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders.

**Possession:** Having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

**Private Place:** A place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

**Property:** Anything of value, tangible or intangible, real or personal.

**Prosecution:** All legal proceedings by which a person's liability for an offense is determined.

**Public Employee:** A person employed by or acting for the state or the City or by or for a county, another 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.

**Public Offense or Offense:** An act or omission defined by this Title which, upon conviction, is punishable by fine, confinement or both fine and confinement.

**Public Officer:** Includes the following, whether elected or appointed:

A. An executive or administrative officer of the City or of the state, or a county, another municipality or other subdivision or governmental instrumentality of or within the state.

B. A member of the legislature or the governing body or of a governing board of a county, municipality, or other subdivision of or within the city or state.

C. A judicial officer, which shall include a judge of the district or municipal court, juror, master or any other person appointed by a judge or court, to hear or determine a cause or controversy.

D. 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.

E. A law enforcement officer.

F. Any other person exercising the functions of a public officer under color of right or law.

**Railroad Property:** Includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad company.

**Real Property or Real Estate:** Every estate, interest and right in lands, tenements and hereditaments.

**Retail Dealer:** A person, other than a vending machine operator, in possession of cigarettes or electronic cigarettes for the purpose of sale to a consumer.

**Runaway:** A child under 18 years of age who is voluntarily absent from:

- A. The child's home without the consent of the child's parent or other custodian; or
- B. A court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee.

**Sail Board:** A surfboard using for propulsion a free sail system comprising one or more swivel-mounted rigs (mast, sail and booms) supported in an upright position by the crew and the wind.

**Sailboat:** Any vessel, other than a sail board, that is designed to be propelled by wind action upon a sail for navigation on the water.

**Sample:** Cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

**School Employee:** Any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.

**Scrap Metal Dealer:** Any person that operates a business out of a fixed location, and that is also either:

- A. Engaged in the business of buying and dealing in regulated scrap metal;
- B. Purchasing, gathering, collecting, soliciting or procuring regulated scrap metal; or
- C. Operating, carrying on, conducting, or maintaining a regulated scrap metal yard or place where regulated scrap metal is gathered together and stored or kept for shipment, sale, or transfer.

**Sexual Intercourse:** Any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. Sexual Intercourse does not include penetration of the female sex organ by a finger or object in the course of the performance of:

- A. Generally recognized health care practices; or
- B. A body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

**Smoke Detector:** A device or combination of devices which operate from a power supply in the dwelling unit or at the point of installation for the purpose of detecting visible or invisible particles of combustion. Such term shall include smoke detectors approved or listed for the purpose for which they are intended by an approved independent testing laboratory.

**Sodomy:** Oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. Sodomy does not include penetration of the anal opening by a finger or object in the course of the performance of:

- A. Generally recognized health care practices; or
- B. A body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

**Solicit or Solicitation:** To command, authorize, urge, incite, request or advise another to commit an offense.

**Spouse:** A lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

**State or this State:** 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 space above such land and water.

**State Correctional Officer or Employee:** 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.

**Stolen Property:** Property over which control has been obtained by theft.

**Tattooing:** The process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

**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.

**Telefacsimile Communication:** The use of electronic equipment to send or transmit a copy of a document via telephone line.

**Temporary Permit:** A temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto.

**Threat:** A communicated intent to inflict physical or other harm on any person or on property.

**Throwing Star:** 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.

**Tobacco Products:** Cigars, cheroots, stogies, periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. Tobacco products do not include cigarettes.

**Toxic Vapors:** Vapors from the following substances or products containing such substances:

- A. Alcohols, including, but not limited to, methyl, isopropyl, propyl, or butyl;
- B. Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
- C. Acetone;
- D. Benzene;
- E. Carbon tetrachloride;
- F. Cyclohexane;
- G. Freons, including, but not limited to, Freon 11, Freon 12, and other halogenated hydrocarbons;

- H. Hexane;
- I. Methyl ethyl ketone;
- J. Methyl isobutyl ketone;
- K. Naptha;
- L. Perchloroethylene;
- M. Toluene;
- N. Trichloroethane; or
- O. Xylene.

**Unlawful Sexual Act:** Any lewd and lascivious behavior or sexual battery as defined in this Title.

**Vessel:** Any water craft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water.

**Wildlife:** Any member of the animal kingdom, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg or offspring thereof, or the dead body or parts thereof. Wildlife does not include agricultural livestock (cattle, swine, sheep, goats, horses, mules and other equines) and poultry (domestic chickens, turkeys and guinea fowl).

**Written instrument:** 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. (Ord. 15-66 § 1, 2015; Ord. 14-63 § 1, 2014; Ord. 14-42 § 1, 2014; Ord. 12-38 § 1, 2012; Ord. 09-59 § 1, 2009; Ord. 07-135 § 2, 2007; Ord. 99-24 § 1, 1999; Ord. 93-09 § 1, 1993; Ord. 87-30 § 28, 1987; Ord. 83-75 § 2, 1983.)

## CHAPTER 9.02

### PRINCIPLES OF CRIMINAL LIABILITY

#### Sections:

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#### **9.02.010 Criminal Intent.**

(1) Except as otherwise provided, a 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 intentional 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. (Ord. 93-09 § 2, 1993; Ord. 83-75 § 2, 1983.)

#### **9.02.020 Criminal Intent; Exclusions.**

(1) Proof of criminal intent does not require proof of knowledge of the existence or constitutionality of the ordinance section under which the accused is prosecuted, or the scope or meaning of the terms used in that ordinance section.

(2) Proof of criminal intent does not require proof that the accused had knowledge of the age of a minor, though age is a material element of the crime with which he is charged. (Ord. 83-75 § 2, 1983.)

#### **9.02.030 Ignorance or Mistake.**

A. A person's ignorance or mistake as to a matter of either fact or law, except as provided in Section 9.02.020, is a defense if it negates the existence of the mental state which the statute prescribes with respect to an element of the crime.

B. A person's reasonable belief that his conduct does not constitute a crime is a defense if:

1. He acts in reliance upon a statute or ordinance which later is determined to be invalid; or
2. He acts in reliance upon an order of the Olathe municipal court, opinion of the district court, supreme court of Kansas or an United States appellate court later overruled or reversed; or

3. He acts in reliance upon an official interpretation of a statute, regulation, ordinance or order defining the crime made by a public officer or agency legally authorized to interpret such statute; or

4. 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.

C. Although a person's ignorance or mistake of fact or law, or reasonable belief, as described in subsection B. 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. (Ord. 14-63 § 2, 2014; Ord. 83-75 § 2, 1983.)

**9.02.040 Absolute Liability.** A person may be guilty of an offense without having criminal intent if the ordinance section defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described. (Ord. 83-75 § 2, 1983.)

**9.02.050 Liability for Offenses of Another.**

(1) A person is criminally responsible for an offense committed by another if such person intentionally aids, abets, advises, hires, counsels or procures the other to commit the offense.

(2) A person liable under subsection (1) hereof is also liable for any other offense committed in pursuance of the intended offense if reasonably foreseeable by such person as a probable consequence of committing or attempting to commit the offense intended.

(3) A person liable under this section may be charged with and convicted of the offense although the person alleged to have directly committed the act constituting the offense lacked criminal capacity or has not been convicted or had been acquitted or has been convicted of some other degree of the offense or of some other offense based on the same act. (Ord. 07-135 § 3, 2007; Ord. 83-75 § 2, 1983.)

**9.02.060 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. (Ord. 83-75 § 2, 1983.)

**9.02.070 Individual Liability for Corporate Offenses.**

(1) An individual who commits public offenses, or causes public offenses 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/her own name or on his/her own behalf.

(2) An individual who has been convicted of an offense based on conduct performed by the individual for and on behalf of a corporation is subject to punishment as an individual upon conviction of such an offense although a lesser or different punishment is authorized for the corporation (Ord. 07-135 § 4, 2007; Ord. 83-75 § 2, 1983.)

### **9.02.080 Intoxication.**

(1) The fact that a person charged with an offense was in an intoxicated condition at the time the alleged offense 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 offensive by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular offense, the fact of intoxication may be taken into consideration in determining such intent or state of mind. (Ord. 83-75 § 2, 1983.)

### **9.02.090 Compulsion.**

(1) A person is not guilty of an offense 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. (Ord. 83-75 § 2, 1983.)

**9.02.100 Entrapment.** A person is not guilty of an offense 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 offense in furtherance of a criminal purpose originated by such person or a co-conspirator; or

(b) The offense 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. (Ord. 83-75 § 2, 1983.)

**9.02.110 Force.** The provisions of the Kansas Criminal Code and amendments thereto relating to the use of force in defense of a person; use of force in defense of dwelling; use of force in defense of property other than a dwelling; use of force by an aggressor; law enforcement officer's use of force in making arrest; private person's use of force in making arrest; and use of force in resisting arrest, are hereby incorporated by reference as though set forth fully in this code. (Ord. 83-75 § 2, 1983.)

**CHAPTER 9.03**  
**PROHIBITED CONDUCT**

**Sections:**

9.03.010      Attempt.  
9.03.020      Conspiracy.

**ANTICIPATORY OFFENSES**

**9.03.010 Attempt.**

(1) An attempt is any overt act toward the perpetration of an offense done by a person who intends to commit the said offense but fails in the perpetration thereof or is prevented or intercepted in executing the said offense.

(2) It shall not be 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 the offense was not possible.

(3) An attempt to commit a Class A Public Offense is a Class B Public Offense. An attempt to commit a Class B or C Public Offense is a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

**9.03.020 Conspiracy.**

A. A conspiracy is an agreement with another person to commit an offense or to assist to commit an 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 such person or by a conspirator.

B. It is immaterial to the criminal liability of a person charged with conspiracy that any other person with whom the accused person conspired lacked the actual intent to commit the underlying crime provided that the accused person believed the other person did have the actual intent to commit the underlying crime.

C. It shall be 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 the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

D. A conspiracy to commit a public offense is a Class C Public Offense. (Ord. 12-38 § 2, 2012; Ord. 07-135 § 5, 2007; Ord. 83-75 § 2, 1983.)

## CHAPTER 9.04

### OFFENSES AGAINST PERSONS

#### Sections:

9.04.010	Assault.
9.04.020	Assault of a Law Enforcement Officer.
9.04.030	Battery.
9.04.035	Domestic Battery.
9.04.040	Battery Against a Law Enforcement Officer.
9.04.050	Unlawful Interference with a Firefighter or Person Who Provides Emergency Medical Treatment.
9.04.060	Terroristic Threat. (Repealed 2/16/99)
9.04.070	Interference with Parental Custody.
9.04.080	Interference with Custody of Committed Person.
9.04.090	Criminal Restraint.
9.04.100	Mistreatment of a Confined Person.
9.04.110	Extortion.
9.04.115	Violation of Protection from Abuse Order.
9.04.120	Violation of a Protective Order.
9.04.130	Criminal Defamation.
9.04.140	Unlawful Administration of a Substance.
9.04.150	Battery Against a School Employee.
9.04.160	Promoting or Permitting Hazing.
9.04.170	Mistreatment of a Dependent Adult.

**9.04.010 Assault.** Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm. Assault is a Class B Public Offense. (Ord. 11-47 § 1, 2011; Ord. 03-78 § 1, 2003; Ord. 93-09 § 3, 1993; Ord. 83-75 § 2, 1983.)

**9.04.020 Assault of a Law Enforcement Officer.** Assault of a law enforcement officer is an assault, as defined in Section 9.04.010, 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. Assault of a law enforcement officer is a Class A Public Offense. (Ord. 03-78 § 2, 2003; Ord. 99-24 § 2, 1999; Ord. 83-75 § 2, 1983.)

**9.04.030 Battery.** Battery is

(1) Intentionally or recklessly causing bodily harm to another person; or

(2) intentionally causing physical contact with another person when done in a rude, insulting or angry manner. Battery is a Class A Public Offense. (Ord. 93-09 § 4, 1993; Ord. 83-75 § 2, 1983.)

**9.04.035 Domestic Battery.**

A. Domestic battery is:

1. knowingly or recklessly causing bodily harm by a family or household member against a family or household member; or
2. knowingly 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. 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. The court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, or in the alternative, the court may require the offender to enroll in and successfully complete a domestic violence prevention program or an anger control program.

2. If, within five years immediately preceding commission of the instant crime, the offender was convicted of a violation of domestic battery, then upon a second conviction, such offender 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 shall 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 undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court.

C. As used in this section:

1. 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; and

2. for the purpose of determining whether a conviction is a first or second 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 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 or second offender, whichever is applicable; and

d. It is irrelevant whether an offense occurred before or after conviction for a previous offense.

e. A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any five-year period. (Ord. 12-38 § 3, 2012; Ord. 10-71 § 5, 2010.)

#### **9.04.040 Battery Against a Law Enforcement Officer.**

A. Battery against a law enforcement officer is a battery, as defined in OMC 9.04.030, committed against:

1. a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
2. 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, or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty.
3. judge, while such judge is engaged in the performance of such judge's duty;
4. attorney, while such attorney is engaged in the performance of such attorney's duty; or
5. community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty.

B. As used in this Section:

1. **Judge** means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge;

2. **Attorney** means a:

a. city attorney, assistant city attorney, special assistant city attorney, city prosecutor, assistant city prosecutor, special prosecutor, county attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district attorney, special assistant district attorney, attorney general, assistant attorney general or special assistant attorney general; and

b. public defender, assistant public defender, contract counsel for the state board of indigents' defense services or an attorney who is appointed by the court to perform services for an indigent person as provided by article 45 of chapter 22 of the Kansas Statutes Annotated and amendments thereto;

3. **Community Corrections Officer** means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs; and

4. **Court Services Officer** means an employee of the Kansas judicial branch, local judicial district, or City responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court.

C. Battery against a law enforcement officer is a Class A Public Offense. (Ord. 15-66 § 2, 2015; Ord. 06-71 § 1, 2006; Ord. 03-78 § 3, 2003; Ord. 99-24 § 3, 1999; Ord. 83-75 § 2, 1983.)

**9.04.050 Unlawful Interference with a Firefighter or a Person Who Provides Emergency Medical Treatment.** Unlawful interference with a firefighter or a person who provides emergency medical treatment is knowingly and intentionally interfering with, molesting or assaulting, as defined in Section 9.04.010, any firefighter or a person who provides emergency medical treatment while engaged in the performance of his or her duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter or a person who provides emergency medical treatment while engaged in the performance of his or her duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter or a person who provides emergency medical treatment to reach the location of a fire or accident. Unlawful interference with a firefighter or a person who provides emergency medical treatment is a Class B Public Offense. (Ord. 03-78 § 4, 2003; Ord. 83-75 § 2, 1983.)

**9.04.060 Terroristic Threat.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 83-75 § 2, 1983.)

#### **9.04.070 Interference with Parental Custody.**

A. Interference with parental custody is leading, taking, carrying away, decoying or enticing away any child under the age of sixteen (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 accused 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. Interference with parental custody is a Class A Public Offense if the perpetrator 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. (Ord. 03-78 § 5, 2003; Ord. 87-149 § 1, 1987; Ord. 83-75 § 2, 1983.)

**9.04.080 Interference with Custody of Committed Person.** Interference with custody of a committed person is knowingly taking or enticing any committed person away from the control of his or her lawful custodian 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. Interference with custody of a committed person is a Class A Public Offense. (Ord. 03-78 § 6, 2003; Ord. 83-75 § 2, 1983.)

#### **9.04.090 Criminal Restraint.**

(1) Criminal restraint is knowingly and without legal authority restraining another so as to interfere substantially with his or her liberty.

(2) This section shall not apply to acts done in the performance of duty by any law enforcement officer of the State of Kansas, City of Olathe or the United States of America.

(3) Any merchant, or a merchant's agent or employee, who has probable cause to believe that a person has actual possession of and has wrongfully taken, or is about to wrongfully take merchandise from a mercantile establishment, may detain such person on the premises or 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 criminal restraint. Criminal restraint is a Class A Public Offense. (Ord. 03-78 § 7, 2003; Ord. 83-75 § 2, 1983.)

**9.04.100 Mistreatment of a Confined Person.** Mistreatment of a confined person is the intentional abuse, neglect or ill-treatment of any person who is detained or confined and who is physically disabled, or mentally ill or retarded 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. Mistreatment of a confined person is a Class A Public Offense. (Ord. 87-149 § 2, 1987; Ord. 83-75 § 2, 1983.)

**9.04.110 Extortion.** Extortion is verbally or by written or printed communication and with intent to extort or gain any thing of value from another or to compel another to do an act against his will:

(a) Accusing or threatening to accuse any person of a crime or conduct which would tend to degrade and disgrace the person accused; or

(b) Exposing or threatening to expose any fact, report or information concerning any person which would in any way subject such person to the ridicule or contempt of society, coupled with the threat that such accusation or exposure will be communicated to a third person or persons unless the person threatened or some other person pays or delivers to the accuser or some other person something of value or does some act against his will. Extortion is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

#### **9.04.115 Violation of Protection from Abuse Order.**

A. If a person enters or remains on premises or property violating an order issued pursuant to K.S.A. Supp. 60-3107(a)(2), and amendments thereto, such violation shall constitute criminal trespass.

B. If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to K.S.A. Supp. 60-3107(a)(1), and amendments thereto, such violation may constitute assault, battery, or domestic battery and violation of a protective order. (K.S.A. Supp. 60-3107).

C. Violation of a Protection from Abuse Order is a Class A Public Offense. (Ord. 12-38 § 14, 2012)

#### **9.04.120 Violation of a Protective Order.**

A. Violation of a protective order is knowingly or intentionally violating:

1. A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106, or 60-3107, and amendments thereto;
2. A protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;
3. A restraining order issued pursuant to K.S.A. 2012 Supp. 23-2707, K.S.A. 38-2243, 38-2244 or 38-2255, and amendments thereto, or 60-1607, prior to its transfer;
4. An order issued in this city or state or any other city or state as a condition of pretrial release, diversion, probation, suspended sentence, post-release supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person or persons; or
5. An order issued in this city or state or any other city or state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person or persons; or
6. A protection from stalking order issued pursuant to K.S.A. 2002 Supp. 60-31a05 or K.S.A. 2002 Supp. 60-31a06, and amendments thereto.

B. As used in this section, 'order' includes any order issued by a municipal or district court.

C. No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in any civil or criminal proceeding, from contacting the protected party for a legitimate purpose within the scope of the civil or criminal proceedings. The attorney, or person acting on the attorney's behalf, shall be identified in any such contact.

D. Violation of a protective order is a Class A Public Offense. (Ord. 13-33 § 1, 2013; Ord. 08-111 § 1, 2008; Ord. 07-135 § 6, 2007; Ord. 03-78 § 8, 2003; Ord. 99-24 § 4, 1999; Ord. 93-09 § 5, 1993.)

#### **9.04.130 Criminal Defamation.**

(a) Criminal defamation is communicating to a person orally, in writing, or by any other means, information, knowing the information to be false and with actual malice, tending to expose another living person to public hatred, contempt or ridicule; tending to deprive such person 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 surviving relatives and friends.

(b) In all prosecution 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. (K.S.A. 21-4004). Criminal defamation is a Class A Public Offense. (Ord. 99-24 § 5, 1999)

#### **9.04.140 Unlawful Administration of a Substance.**

(1) Unlawful administration of a substance is the intentional and knowing administration of a substance to another person without consent for the purpose of impairing such other person's physical or mental ability to appraise or control such person's conduct.

(2) "Unlawful administration of a substance" means any method of causing the ingestion by another person of a controlled substance, including gamma hydroxybutyric acid, or any controlled substance analog, as defined in K.S.A. 65-4101, of gamma hydroxybutyric acid, including gamma butyrolactone; butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with CAS No. 96-48-0; 1,4 butanediol; butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol, into any food, beverage or other consumable that the person knows, or should know, would be consumed by such other person.

(3) This section shall not prohibit administration of any substance described in subsection (b) for lawful medical or therapeutic treatment.

(4) Unlawful administration of a substance is a Class A Public Offense. (Ord. 03-78 § 9, 2003; Ord. 00-102 § 1, 2000; Ord. 99-24 § 5, 1999.)

#### **9.04.150 Battery Against a School Employee.**

A. Battery against a school employee is a battery, as defined in Olathe Municipal Code Section 9.04.030, and amendments thereto, committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through twelve or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

B. Battery against a school employee is a Class A Public Offense. (Ord. 15-66 § 3, 2015; Ord. 03-78 § 10, 2003.)

#### **9.04.160 Promoting or Permitting 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 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 harm, disfigurement or death could be inflicted.

C. Promoting or permitting hazing is a Class B Public Offense. (Ord. 03-78 § 11, 2003.)

**9.04.170 Mistreatment of a Dependent Adult.**

1. Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

a. Taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person if the aggregate amount of the value of the resources is less than One Thousand Dollars (\$1,000.00); or

b. Omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

2. No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

3. For purposes of this section: "Dependent adult" means an individual 18 years of age or older who is unable to protect their own interest. Such term shall include:

a. Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

b. Any adult cared for in a private residence;

c. Any individual kept, cared for, treated, boarded or otherwise accommodated in a medical care facility;

d. Any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;

e. Any individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

f. Any individual kept, cared for, treated, boarded or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

4. Mistreatment of a dependent adult is a Class A Public Offense. (Ord. 06-71 § 2, 2006; Ord. 03-78 § 12, 2003.)

## CHAPTER 9.05

### SEX OFFENSES

#### Sections:

9.05.010	Definitions.
9.05.020	Lewd and Lascivious Behavior.
9.05.030	Enticement of a Child. (Repealed 2/16/93)
9.05.040	Indecent Solicitation of a Child. (Repealed 2/16/99)
9.05.050	Sexual Exploitation of a Child. (Repealed 2/16/93)
9.05.060	Selling Sexual Relations.
9.05.070	Promoting Prostitution. (Repealed 12/15/15)
9.05.080	Buying Sexual Relations.
9.05.090	Criminal Sodomy.
9.05.100	Sexual Battery.
9.05.110	Soliciting for Immoral Purposes.

**9.05.010 Definitions.** The following definition shall apply in this Chapter unless a different meaning is plainly required:

“Public place” means any area generally visible to public view, and includes, but is not limited to, streets, sidewalks, bridges, alleys, plazas, parks, public restrooms, driveways, parking lots, automobiles (whether moving or not) and buildings open to the general public, including those which serve food or drink or provide entertainment, and the doorways and entrances to those buildings or dwellings and the grounds enclosing them. (Ord. 15-66 § 4, 2015; Ord. 03-81 § 1, 2003; Ord. 83-75 § 2, 1983.)

#### **9.05.020 Lewd and Lascivious Behavior.**

A. It shall be unlawful for any person in a public place, or in any other place under circumstances where such act could be observed by any member of the public, to intentionally:

1. Perform an otherwise lawful act of sexual intercourse or sodomy; or
2. Fondle or caress his or her genitals or the genitals of another person of the same or opposite sex; or
3. Expose a sex organ in the presence of a person who has not consented thereto with intent to arouse or gratify the sexual desires of the offender or another.

B. Lewd and lascivious behavior is a Class A Public Offense if committed in the presence of a person sixteen (16) or more years of age. (Ord. 14-63 § 3, 2014; Ord. 07-135 § 7, 2007; Ord. 03-73 § 1, 1993; Ord. 93-09 § 6, 1993; Ord. 83-75 § 2, 1983.)

**9.05.030 Enticement of a Child.** Repealed 2/16/93. (Ord. 93-09 § 38, 1993; Ord. 83-75 § 2, 1983.)

**9.05.040 Indecent Solicitation of a Child.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 83-75 § 2, 1983.)

**9.05.050 Sexual Exploitation of a Child.** Repealed 2/16/93. (Ord. 93-09 § 38, 1993; Ord. 89-151 § 1, 1990; Ord. 87-149 § 3, 1987; Ord. 83-75 § 2, 1983.)

#### **9.05.060 Selling Sexual Relations.**

A. **Selling Sexual Relations** is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

1. Sexual intercourse; or
2. Sodomy; or
3. 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.
4. It shall be an affirmative defense to any prosecution under this Section that the defendant committed the violation of this Section because such defendant was subjected to human trafficking or aggravated human trafficking, as defined by K.S.A. Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, as defined by K.S.A. Supp. 21-6422, and amendments thereto.

B. Prostitution is a Class A Public Offense. (Ord. 15-66 § 5, 2015; Ord. 83-75 § 2, 1983.)

**9.05.070 Promoting Prostitution.** Repealed 12/15/15 (Ord. 15-66 § 6, 2015; Ord. 99-24 § 6, 1999; Ord. 83-75 § 2, 1983.)

**9.05.080 Buying Sexual Relations.**

A. Buying sexual relations is knowingly:

1. Entering or remaining in a place where sexual relations are being sold or offered for sale with intent to engage in 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, sexual intercourse, sodomy or any unlawful sexual act with a person selling sexual relations who is 18 years of age or older; or
2. hiring a person selling sexual relations who is 18 years of age or older to engage in 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, sexual intercourse, sodomy or an unlawful sexual act.

B. Buying Sexual Relations is a Class A Public Offense on conviction of a first offense. In addition to any other sentence imposed, a person convicted under this Section shall be fined \$2,500. All fines collected pursuant to this Subsection shall be remitted to the human trafficking victim assistance fund. (Ord. 15-66 § 7, 2015; Ord. 83-75 § 2, 1983.)

**9.05.090 Criminal Sodomy.** Criminal sodomy is sodomy between a person and an animal. Criminal sodomy is a Class A Public Offense. (Ord. 03-73 § 2, 1993; Ord. 93-09 § 7, 1993; Ord. 83-75 § 2, 1983.)

**9.05.100 Sexual Battery.**

(1) Sexual battery is the intentional touching of the person of another who is sixteen (16) or more years of age, who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(2) Sexual battery is a Class A Public Offense. (Ord. 93-09 § 8, 1993; Ord. 83-75 § 2, 1983.)

**9.05.110 Soliciting for Immoral Purposes.**

A. Soliciting for immoral purposes is soliciting any person in a public place to engage in buying sexual relations, selling sexual relations, lewd and lascivious behavior or sodomy for hire.

B. Soliciting for immoral purposes is a Class A Public Offense. (Ord. 15-66 § 8, 2015; Ord. 03-81 § 2, 2003; Ord 89-151 § 2, 1990.)

## CHAPTER 9.06

### OFFENSES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN

#### Sections:

9.06.010	Endangering a Child.
9.06.020	Furnishing Alcoholic Liquor or Cereal Malt Beverage to a Minor.
9.06.021	Consumption on Public Property.
9.06.022	Possession on Public Property.
9.06.023	Consumption on Private Property – Exceptions.
9.06.024	Possession on Private Property.
9.06.025	Sale of Liquor to Incapacitated or Intoxicated Person.
9.06.026	Open Saloon.
9.06.030	Furnishing Cereal Malt Beverage to a Minor (Repealed 10/21/03).
9.06.040	Contributing to a Child's Misconduct or Deprivation.
9.06.050	Tattoos and Body Piercing.
9.06.060	Purchase or Possession of Cigarettes, Electronic Cigarettes, Liquid Nicotine or Tobacco Products by a Minor.
9.06.070	Selling, Giving or Furnishing Cigarettes, Electronic Cigarettes, Liquid Nicotine, or Tobacco Products to a Minor.
9.06.080	Purchase or Consumption of Alcoholic or Cereal Malt Beverage by Minor; Penalty.
9.06.090	Unlawful Hosting

#### **9.06.010 Endangering a Child.**

(1) Endangering a child is intentionally and unreasonably causing or permitting a child under the age of eighteen (18) years to be placed in a situation in which the child's life, body or health may be injured or endangered.

(2) Nothing in this section shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(3) Endangering a child is a Class A Public Offense. (Ord. 03-90 § 1, 2003; Ord. 93-09 § 9, 1993; Ord. 83-75 § 2, 1983.)

#### **9.06.020 Furnishing Alcoholic Liquor or Cereal Malt Beverage to a Minor.**

A. Furnishing alcoholic liquor or cereal malt beverage to a minor is directly or indirectly, selling to, buying for, giving or furnishing any alcoholic liquor or cereal malt beverage to any person under 21 years of age.

B. Except as provided by subsections D and E, furnishing alcoholic liquor or cereal malt beverage to any person under 21 years of age is a Class A Public Offense for which the minimum fine is:

1. Upon a first violation, a fine of Two Hundred Fifty Dollars (\$250.00);
2. Upon a second violation charged within a three (3) year period of a prior violation, a fine of Five Hundred Dollars (\$500.00);
3. Upon a third violation charged within a three (3) year period of a prior violation, a fine of Seven Hundred Fifty Dollars (\$750.00), and
4. Upon a fourth violation charged within a three (3) year period of a prior violation, a fine of One Thousand Dollars (\$1,000.00).

5. The three (3) year time period is calculated from the date the defendant is found guilty of the first violation. Any violation charged during the ensuing three (3) year time period (irrespective of the date the defendant is found guilty) is calculated towards the enhanced penalty.

C. As used in this section, terms have the meanings provided by K.S.A. 41-102, 41-2601 and 41-2701, and amendments thereto.

D. 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; and

2. The defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and

3. To purchase the alcoholic liquor or cereal malt beverage, 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 minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage. (K.S.A. 21-3610).

E. 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.

F. Upon a conviction, plea of no contest, or guilty plea for a violation of this section, the municipal judge may order such person to complete an alcohol intervention program that trains individuals to serve and/or sell alcohol responsibly in any setting. The municipal judge may order such person to complete Training for Intervention Procedures on Premise (TIPS) or a similar alcohol intervention program. (Ord. 15-24 § 1, 2015; Ord. 13-08 § 2, 2013; Ord. 10-52 § 1, 2010; Ord. 03-90 § 2, 2003; Ord. 99-24 § 7, 1999; Ord. 93-09 § 10, 1993; Ord. 88-123 § 1, 1988; Ord. 83-75 § 2, 1983.)

#### **9.06.021 Consumption on Public Property.**

A. It shall be unlawful for any person to drink or consume alcoholic liquor or cereal malt beverages upon the public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys, roads or highways.

B. It shall be unlawful for any person to drink or consume any alcoholic liquor or cereal malt beverages on City-owned property. However, this prohibition shall not apply to the Mahaffie House and Farmstead, which is located on property owned by the City legally described as Tracts A and B, MAHAFFIE HOUSE ADDITION, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, to the Heritage Center, which is located on property owned by the City legally described as Lot 1, MAHAFFIE HOUSE EAST ADDITION, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, or to the Olathe Community Center, which is located on property owned by the City legally described as Lot 1, KANSAS CITY ROAD PARK SOUTH, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, or on City-owned property or City right-of-way, if such real property is actually being used in association with a City-issued caterer or temporary event permit, or on real property leased by the City to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes, or purposes incidental thereto.

C. Upon a conviction, plea of no contest, or guilty plea for a violation of this Section by a person 18 or more years of age but less than 21 years of age, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation with an approved provider licensed by the behavioral sciences regulatory board pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee to the provider at the time of service not to exceed the fee established by that statute for such evaluation. If the person is indigent, the court may order the evaluation fee to be paid to the provider as part of the judgment. The person must comply with the recommendations of the alcohol and drug evaluation as directed by the court.

D. Violation of any provision of this Section is an Unclassified Public Offense, punishable by a fine of not less than Fifty Dollars (\$50.00) or more than Two Hundred Dollars (\$200.00) or by imprisonment for not more than six (6) months, or both. (Ord. 15-66 § 9, 2015; Ord. 15-24 § 2, 2015.)

#### **9.06.022 Possession on Public Property.**

A. It shall be unlawful for any person to have in his or her possession any open container of alcoholic liquor or cereal malt beverage upon the public streets, alleys, roads or highway.

B. It shall be unlawful for any person to have in his or her possession any open container of alcoholic liquor or cereal malt beverage on City-owned property. However, this prohibition shall not apply to the Mahaffie House and Farmstead, which is located on property owned by the City legally described as Tracts A and B, MAHAFFIE HOUSE ADDITION, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, to the Heritage Center, which is located on property owned by the City legally described as Lot 1, MAHAFFIE HOUSE EAST ADDITION, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, or to the Olathe Community Center, which is located on property owned by the City legally described as Lot 1, KANSAS CITY ROAD PARK SOUTH, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof, or on City-owned property or City right-of-way, if such real property is actually being used in association with a City-issued caterer or temporary event permit, or on real property leased by the City to others under the provisions of K.S.A. 12-1740 through 12-1749, and amendments thereto, if such real property is actually being used for hotel or motel purposes, or purposes incidental thereto.

C. Upon a conviction, plea of no contest, or guilty plea for a violation of this Section by a person 18 or more years of age but less than 21 years of age, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation with an approved provider licensed by the behavioral sciences regulatory board pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee to the provider at the time of service not to exceed the fee established by that statute for such evaluation. If the person is indigent, the court may order the evaluation fee to be paid to the provider as part of the judgment. The person must comply with the recommendations of the alcohol and drug evaluation as directed by the court.

D. Violation of any provision of this Section is an Unclassified Public Offense, punishable by a fine of not less than Fifty Dollars (\$50.00) or more than Two Hundred Dollars (\$200.00) or by imprisonment for not more than six (6) months, or both. (Ord. 15-66 § 10, 2015; Ord. 15-24 § 3, 2015.)

**9.06.023 Consumption on Private Property--Exceptions.** It shall be unlawful for any person to consume or drink alcoholic liquor or cereal malt beverage on private property except:

A. On premises where the sale of liquor or cereal malt beverage by the individual drink is authorized by the Club and Drinking Establishment Act and this Title;

B. Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or cereal malt beverage, or for any substance mixed with any alcoholic liquor or cereal malt beverage and if no sale of alcoholic liquor in violation of K.S.A. 41-803 or cereal malt beverage in violation of K.S.A. 41-2704, and amendments thereto, takes place;

C. In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or an organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 or cereal malt beverage in violation of K.S.A. 1988 Supp. 41-308b, and amendments thereto, takes place; or

D. On the premises of a microbrewery or farm winery, if authorized by K.S.A. 41-803a or K.S.A. 41-308b.

E. Upon a conviction, plea of no contest, or guilty plea for a violation of this section by a person 18 or more years of age but less than 21 years of age, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation with an approved provider licensed by the behavioral sciences regulatory board pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee to the provider at the time of service not to exceed the fee established by that statute for such evaluation. If the person is indigent, the court may order the evaluation fee to be paid to the provider as part of the judgment. The person must comply with the recommendations of the alcohol and drug evaluation as directed by the court.

F. Violation of any provision of this section is an Unclassified Public Offense, punishable by a fine of not less than Fifty Dollars (\$50.00) or more than Two Hundred Dollars (\$200.00) or by imprisonment for not more than six (6) months, or both. (Ord. 15-24 § 4, 2015)

**9.06.024 Possession on Private Property.** It shall be unlawful for any person to have in his or her possession any open alcoholic liquor or cereal malt beverage on private property, except:

A. On premises where the sale of liquor or cereal malt beverage by the individual drink is authorized by the Club and Drinking Establishment Act;

B. Upon private property by a person occupying such property as an owner or lessee of an owner or by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or cereal malt beverage, or for any substance mixed with alcoholic liquor or cereal malt beverage and if no sale of alcoholic liquor in violation of K.S.A. 41-803 or cereal malt beverage in violation of K.S.A. 41-2704, and amendments thereto, takes place;

C. In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guest of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or cereal malt beverage, or for any substance mixed with any alcoholic liquor or cereal malt beverage and if no sale of alcoholic liquor in violation of K.S.A. 41-803 or cereal malt beverage in violation of K.S.A. 41-2704, and amendments thereto, takes place;

D. In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or an organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. 41-803 or cereal malt beverage in violation of K.S.A. 41-2704 and amendments thereto, takes place; or

E. On the premises of a microbrewery or farm winery, if authorized by K.S.A. 41-308a or K.S.A. 41-308b, and amendments thereto.

F. Upon a conviction, plea of no contest, or guilty plea for a violation of this section by a person 18 or more years of age but less than 21 years of age, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation with an approved provider licensed by the behavioral sciences regulatory board pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee to the provider at the time of service not to exceed the fee established by that statute for such evaluation. If the person is indigent, the court may order the evaluation fee to be paid to the provider as part of the judgment. The person must comply with the recommendations of the alcohol and drug evaluation as directed by the court.

G. Violation of any provision of this section is an Unclassified Public Offense, punishable by a fine of not less than Fifty Dollars (\$50.00) or more than Two Hundred Dollars (\$200.00) or by imprisonment for not more than six (6) months, or both. (Ord. 15-24 § 5, 2015)

#### **9.06.025 Sale of Liquor to Incapacitated or Intoxicated Person.**

A. It shall be unlawful for any person to knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor or cereal malt beverage, to any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such alcoholic liquor or cereal malt beverage.

B. Upon a conviction, plea of no contest, or guilty plea for a violation of this section, the municipal judge may order such person to complete an alcohol intervention program that trains individuals to serve and/or sell alcohol responsibly in any setting. The municipal judge may order such person to complete Training for Intervention Procedures on Premise (TIPS) or a similar alcohol intervention program.

C. Violation of any provision of this section is an Unclassified Public Offense, punishable by a fine of not less than One Hundred Dollars (\$100.00) or more than Two Hundred Dollars (\$200.00) or by imprisonment for not more than thirty (30) days, or both. (Ord. 15-24 § 6, 2015)

#### **9.06.026 Open Saloon.**

A. It is unlawful for any person to own, maintain, operate or conduct, either directly or indirectly, an open saloon.

B. For the purpose of this section, the words "Open Saloon" mean any place, public or private, where alcoholic liquor is sold or offered or kept for sale by the drink or in any quantity of less than one hundred millimeters (3.4 fluid ounces) or sold or offered or kept for sale for consumption on the premises where sold, but does not include any premises where the sale of liquor is authorized by the Club and Drinking Establishment Act or this Title.

C. Any violation of the provisions of this section is a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00) and by imprisonment for not more than ninety (90) days. (Ord. 15-24 § 7, 2015)

**9.06.030 Furnishing Cereal Malt Beverage to a Minor.** Repealed 10/21/2003. (Ord. 03-90 § 6, 1999; Ord. 99-24 § 8, 1999; Ord. 93-09 § 11, 1993.)

#### **9.06.040 Contributing to a Child's Misconduct or Deprivation. The**

A. Contributing to a child's misconduct or deprivation is:

1. Knowingly causing or encouraging a child under eighteen (18) years of age to become or remain a child in need of care as defined by the Kansas code for care of children; or

2. Knowingly causing or encouraging a child under eighteen (18) years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or public offense, or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810 and amendments thereto; or

3. Failure to reveal, upon inquiry by a uniformed or properly identified law enforcement officer engaged in the performance of such officer's duty, any information one has regarding a runaway, with intent to aid the runaway in avoiding detection or apprehension; or

4. Knowingly 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. 38-2361, and amendments thereto. (K.S.A. 21-5603 and amendments thereto).

B. A person may be found guilty of contributing to a child's misconduct or deprivation even though no prosecution of the child whose misconduct or deprivation the defendant caused or encouraged has been commenced in municipal or district court.

C. Contributing to a child's misconduct or deprivation is a Class A Public Offense. (Ord. 15-66 § 11, 2015; Ord. 14-63 § 4, 2014; Ord. 03-90 § 3, 2003; Ord. 99-24 § 9, 1999; Ord. 93-09 § 12, 1993; Ord. 83-75 § 2, 1983.)

#### **9.06.050 Tattoos and Body Piercing.**

(1) No person shall perform body piercing or tattooing on or to any person under 18 years of age without prior written and notarized consent of the parent or court appointed guardian of such person and the person giving such consent must be present during the body piercing or tattooing procedure. The written permission and a copy of the letters of guardianship when such permission is given or granted by a guardian, shall be retained by the person administering such body piercing or tattooing for a period of five years.

(2) No person, including a permanent color technician and tattoo artist, shall perform tattooing, display a sign or in any other way advertise or purport to be a permanent color technician and tattoo artist unless that person holds a valid license issued by the Kansas State Board of Cosmetology. No person shall perform body piercing, display a sign or in any other way advertise or purport to be in the business of body piercing unless that person holds a valid license issued by the Kansas State Board of Cosmetology.

This act does not prevent or affect the use of tattooing, permanent color technology or body piercing by a physician, a person under the control and supervision of a physician, a licensed dentist, a person under the control and supervision of a licensed dentist, an individual performing tattooing, permanent color technology or body piercing solely on such individual's body or any other person specifically permitted to use electrolysis or tattooing by law.

(3) Definitions as used in this section, unless the context otherwise requires:

(a) "Body Piercing" means puncturing the skin of a person by aid of needles or other instruments designed or used to puncture the skin for the purpose of inserting jewelry or other objects in or through the human body, except puncturing the external part of the human ear shall not be included in this definition.

(b) "Tattoo" means the indelible mar, figure or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being.

(c) "Tattooing" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

(4) A violation of this section is a Class A Public Offense. (Ord. 07-135 § 8, 2007; Ord. 05-103 § 1, 2005; Ord. 99-24 § 10, 1999; Ord. 96-24 § 1, 1996).

**9.06.060 Purchase or Possession of Cigarettes, Electronic Cigarettes, Liquid Nicotine or Tobacco Products by a Minor.**

A. It shall be unlawful for any person who is under eighteen (18) years of age to possess or attempt to possess cigarettes, electronic cigarettes, liquid nicotine or tobacco products (K.S.A. 79-3321, as amended).

B. It shall be unlawful for any person who is under twenty-one (21) years of age to purchase or attempt to purchase cigarettes, electronic cigarettes, liquid nicotine or tobacco products.

C. For the purposes of this Section, the terms are defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

D. Violation of this Section is a cigarette or tobacco infraction for which the fine shall be Twenty-five Dollars (\$25.00). The judge will require a person charged with violating this Section to appear in court and may require completion of a tobacco education program. (Ord. 16-09 § 1, 2016; Ord. 12-38 § 4, 2012; Ord. 99-24 § 11, 1999; Ord. 96-82 § 1, 1996.)

**9.06.070 Selling, Giving or Furnishing Cigarettes, Electronic Cigarettes, Liquid Nicotine, or Tobacco Products to a Minor.**

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

1. Sell, give or furnish any cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under twenty-one (21) years of age; or
2. Buy any cigarettes, electronic cigarettes, liquid nicotine or tobacco products for any person under twenty-one (21) 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 employee thereof, or a person authorized by law to distribute samples; and
2. The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, liquid nicotine or tobacco products to the person under twenty-one (21) years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products; and
3. To purchase or receive the cigarettes, electronic cigarettes, liquid nicotine or tobacco products, the person under twenty-one (21) years of age exhibited to the defendant a driver's license, Kansas non-driver'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, electronic cigarettes, liquid nicotine 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, electronic cigarettes, liquid nicotine or tobacco products by mail; and
2. The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, liquid nicotine 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 twenty-one (21) or more years of age. (K.S.A. 79-3322, as amended).

D. For the purposes of this Section, the terms are defined in K.S.A. 79-3301, and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

E. For purposes of this Section, the person who violates this Section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under twenty-one (21) years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

F. Violations of this Section shall constitute a Class B public offense punishable by a minimum fine of Two Hundred Dollars (\$200.00). The court shall order the offender to complete a training program, approved by the Secretary of Revenue or the Secretary's designee, in avoiding sale, furnishing or distribution of cigarettes, electronic cigarettes, liquid nicotine and tobacco products to persons less than twenty-one (21) years of age. (Ord. 16-09 § 2, 2016; Ord. 14-63 § 5, 2014; Ord. 12-38 § 5, 2012; Ord. 03-90 § 4, 2003; Ord. 99-24 § 12, 1999; Ord. 96-82 § 2, 1996)

#### **9.06.080 Purchase or Consumption of Alcoholic or Cereal Malt Beverage by Minor; Penalty.**

A. Except with regard to serving of alcoholic liquor or cereal malt beverage 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, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.

B. Upon a conviction, plea of no contest, or guilty plea for violation of this section by a person 18 or more years of age but less than 21 years of age, the municipal judge shall order such person to submit to and complete an alcohol and drug evaluation with an approved provider licensed by the behavioral sciences regulatory board pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee to the provider at the time of service not to exceed the fee established by that statute for such evaluation. If the person is indigent, the court may order the evaluation fee to be paid to the provider as part of the judgment. The person must comply with the recommendations of the alcohol and drug evaluation as directed by the court.

C. In addition to or in lieu of 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 educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans.

2. Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for thirty (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 that 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 privilege of such offender for ninety (90) days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for ninety (90) days whether or not that 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 privilege of such offender for one (1) year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one (1) year whether or not that person has a driver's license.

D. This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.

E. Violation of this section by a person 18 or more years of age but less than 21 years of age is a Class C Public Offense for which the minimum fine is Two Hundred Dollars (\$200.00).

F. 1. A person and, if applicable, one or two other persons acting in concert with such person are immune from criminal prosecution for a violation of this Section, if such person:

- a. i. Initiated contact with law enforcement or emergency medical services and requested medical assistance on such person's behalf because such person reasonably believed such person was in need of medical assistance; and
- ii. Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance;
- b. i. Initiated contact with law enforcement or emergency medical services, or was one of one or two other persons who acted in concert with such person, and requested medical assistance for another person who reasonably appeared to be in need of medical assistance;
- ii. Provided their full name, the name of one or two other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services;
- iii. Remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrived; and
- iv. Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance; or
- c. i. Was the person who reasonably appeared to be in need of medical assistance as described in subsection (F)(1)(b) but did not initiate contact with law enforcement or emergency medical services; and
- ii. Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.

2. A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer's employer, based on the officer's compliance or failure to comply with this subsection. (Ord. 16-47 § 1, 2016; Ord. 15-24 § 8, 2015; Ord. 04-85 § 1, 2004; Ord. 03-90 § 5, 2003)

#### **9.06.090 Unlawful Hosting.**

A. It shall be unlawful to host minors consuming alcoholic liquor or cereal malt beverages by 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. The provisions of this section shall not be deemed to create any civil liability for any lodging establishment, as defined in K.S.A. 36-501, and amendments thereto. (K.S.A. 21-3610c, as amended)

C. Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a Class A Public Offense, for which the minimum fine is One Thousand Dollars (\$1,000.00). If the court sentences the offender to perform community or public service work as a condition of probation as described in K.S.A. 21-4610 (c) (10), and amendments thereto, the court shall consider ordering the offender to serve the community or public service at an alcohol treatment facility.

D. As used in this section, terms have the meanings provided by K.S.A. 41-102, and amendments thereto, except for the purposes of this section, "minor" means a person under the age of twenty-one (21) years of age. (Ord. 09-59 § 2, 2009; Ord. 07-135 § 9, 2007; Ord. 06-71 § 3, 2006; Ord. 04-85 § 3, 2004)

## CHAPTER 9.07

### OFFENSES AGAINST PROPERTY

#### Sections:

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9.07.360	Serial Numbers.

**9.07.010 Theft.** Theft is any of the following acts done with the intent to deprive the owner permanently of the possession, use or benefit of the owner's property or services:

- A. Obtaining or exerting unauthorized control over property or services;
- B. Obtaining by deception control over property or services;
- C. Obtaining by threat control over property or services;
- D. Obtaining control over stolen property or services knowing the property or services to have been stolen by another;

E. Knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel; or

F. Obtaining services by coercion, stealth, mechanical tampering, or use of false token or device.

G. Theft of property or services of the value of less than \$1,500 is a Class A Public Offense except:

1. When the theft is of property or services of the value of at least \$50 but less than \$1,500 if committed by a person who has, within five years immediately preceding commission of the crime, excluding any period of imprisonment, been convicted of theft two or more times;

2. When the theft is of property or services of the value of less than \$1,500 from three (3) separate mercantile establishments within a period of seventy-two (72) hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or

3. When theft is of property which is a firearm.

In such cases theft is a felony under state statutes.

H. Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

I. 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, telephone service or cable television service, 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, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, telephone service or cable television service which has not been authorized or measured.

J. As used in this section:

1. "Convicted" includes being convicted of a violation of K.S.A 21-3701, prior to its repeal, this section or a municipal ordinance which prohibits the acts that this section prohibits;

2. "Regulated scrap metal" means the same as in K.S.A. 50-6,109, and amendments thereto. If the property which is the subject of a theft is regulated scrap metal, "value" means the value of the property or the cost to restore the site of the theft of such regulated scrap metal to its condition at the time immediately prior to the theft of such regulated scrap metal, whichever is greater.

3. "Services" within the meaning of this section, includes, but is not limited to, labor, professional service, cable television service, public or municipal utility or transportation service, telephone service, lodging, entertainment and the supplying of equipment for use.

4. "Tampering" within the meaning of this section includes but is not limited to:

(a) Making a connection of any wire, conduit or device, to any service or transportation line owned by a public or municipal utility, or by a cable television provider;

(b) Defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, telephone service or cable television services;

(c) Preventing any such meters from properly measuring or registering;

(d) Knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity, or natural gas, which has not been measured; or any telephone or cable television service which has not been authorized; or

(e) Causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts. (Ord. 16-47 § 2, 2016; Ord. 14-63 § 6, 2014; Ord. 11-47 § 2, 2011; Ord. 07-135 § 10, 2007; Ord. 04-109 § 1, 2004; Ord. 88-123 § 3, 1988; Ord. 83-75 § 2, 1983.)

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

A. In any prosecution under this Public Offense 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 buying, selling, leasing, trading, gathering, collecting, soliciting, procuring, receiving, dealing or otherwise obtaining or exerting control over the property;

2. The failure of a person who leases or rents personal property to return the same within ten (10) days after the date set forth in the lease or rental agreement for the return of said property, if notice is given to the person renting or leasing the property to return the property within seven (7) days after receipt of said 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;

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 Olathe Police Department of the failure of the lessee to return such motor vehicle and the Olathe Police Department 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 Olathe Police Department of the failure of the person to return such motor vehicle and the Olathe Police Department shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.

7. removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase.

B. In any prosecution, under this Public Offense Code 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 thirty (30) days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the thirty (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 (3) 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 such person's last known address.

D. In a prosecution for theft as defined in OMC Section 9.07.010, and such theft is of regulated scrap metal as defined in K.S.A. 2014 Supp. 50-6,109, and amendments thereto, either in whole or in part, the failure to give information or the giving of false information to a scrap metal dealer pursuant to the requirements of the scrap metal theft reduction act, the transportation of regulated scrap metal outside the county from where it was obtained, the transportation of regulated scrap metal across state lines or the alteration of any regulated scrap metal prior to any transaction with a scrap metal dealer shall be prima facie evidence of intent to permanently deprive the owner of the regulated scrap metal of the possession, use or benefit thereof. (Ord. 15-66 § 12, 2015; Ord. 08-111 § 2, 2008; Ord. 99-24 § 13, 1999; Ord. 87-149 § 4, 1987; Ord. 83-75 § 2, 1983.)

#### **9.07.030 Theft of Lost or Mislaid or Delivered by Mistake Property.**

A. Theft of lost or mislaid or delivered by mistake property is failure to take reasonable measures to restore lost or mislaid or delivered by mistake 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.

B. As used in this Section, property delivered by mistake includes, but is not limited to, a mistake as to the: 1) nature or amount of the property; or 2) identity of the recipient of the property.

C. Theft of lost or mislaid or delivered by mistake property is a Class A Public Offense if the value of the property is less than \$1,000. (Ord. 14-63 § 7, 2014; Ord. 83-75 § 2, 1983.)

**9.07.040 Theft of Services.** Repealed 9/20/16. (Ord. 16-47 § 4, 2016; Ord. 04-109 § 2, 2004; Ord. 03-117 § 1, 2003; Ord. 99-24 § 14, 1999; Ord. 88-123 § 4, 1988; Ord. 83-75 § 2, 1983.)

#### **9.07.050 Defrauding an Innkeeper.**

(1) Defrauding an innkeeper is obtaining any food, lodging, or other accommodation at any inn, restaurant, hotel, boarding house, apartment house, dwelling unit or rooming house by means of any trick, deception or false representation, statement or pretense, with intent to defraud the owner or keeper thereof.

(2) As used in this section, "Dwelling Unit" means a structure or a part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(3) The following shall be prima facie evidence of the intent to defraud an owner or innkeeper as provided in this section:

- (a) Obtaining lodging, food or other accommodations by false pretense or by false or fictitious show or pretense of any baggage or other property;
- (b) Paying for such food, lodging or other accommodation by a check or other negotiable paper on which payment had been refused;
- (c) Leaving the inn, restaurant, hotel, boarding house, apartment house, dwelling unit or rooming house without paying or offering to pay for such food, lodging or other accommodation;
- (d) Surreptitiously removing or attempting to remove baggage or other property;
- (e) Registering under a fictitious name.

Defrauding an innkeeper of the value of less than Five Hundred Dollars (\$500.00) is a Class A Public Offense. (Ord. 03-117 § 2, 2003; Ord. 87-149 § 5, 1988; Ord. 83-75 § 2, 1983.)

#### **9.07.060 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 such owner's property.

B. Criminal deprivation of property that is a motor vehicle, as defined in K.S.A. 8-1437 and amendments thereto, upon a first or second conviction is a Class A public offense. Upon a first conviction of this subsection, a person shall be sentenced to not less than thirty (30) days nor more than one (1) year's imprisonment and fined not less than One Hundred Dollars (\$100). Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than sixty (60) days nor more than one year's imprisonment and fined not less than Two Hundred Dollars (\$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. Criminal deprivation of property other than a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, is a Class A public offense. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than thirty (30) days imprisonment and fined not less than \$100, except that the provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

D. Criminal deprivation of property that is a firearm is a felony. (Ord. 14-63 § 8, 2014; Ord. 08-111 § 3, 2008; Ord. 00-45 § 1, 2000; Ord. 93-09 § 13, 1993; Ord. 83-75 § 2, 1983.)

**9.07.070 Fraudulently Obtaining Execution of a Document.** Fraudulently obtaining execution of a document is causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred. Fraudulently obtaining execution of a document is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

#### **9.07.080 Criminal Damage to Property.**

(1) Criminal damage to property is, by means other than by fire or explosive:

- (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 lien-holder.

(2) Criminal damage to property is a Class A Public Offense if the property damaged is of the value of less than One Thousand Dollars (\$1,000.00) or is of the value of One Thousand Dollars (\$1,000.00) or more and is damaged to the extent of One Thousand Dollars (\$1,000.00) or less. (Ord. 06-71 § 4, 2006; Ord. 99-24 § 15, 1999; Ord. 83-75 § 2, 1983.)

#### **9.07.090 Criminal Trespass.**

A. Criminal trespass is:

1. Entering or remaining upon or in any land, non-navigable body of water, structure, vehicle, aircraft or watercraft other than railroad property as defined in Section 9.07.095 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 as provided in K.S.A. 32-1013, and amendments thereto, or in any other 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. 2002 Supp. 60-31a05, K.S.A. 2002 Supp. 60-31a06, K.S.A. 60-1607, 60-3105, 60-3106 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, Section 9.04.120 of the Olathe Municipal Code, or a court of competent jurisdiction 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.

B. 1. Criminal trespass is a Class B Public Offense.

2. 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:

1. a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters, and other premises in the making of a survey.

2. railroad property as defined in K.S.A. 2014 Supp. 21-5809, and amendments thereto, or nuclear generating facility as defined in K.S.A. 2014 Supp. 66-2302, and amendments thereto. (Ord. 15-66 § 13, 2015; Ord. 14-63 § 9, 2014; Ord. 13-33 § 2, 2013; Ord. 03-117 § 3, 2003; Ord. 99-24 § 16, 1999; Ord. 93-09 § 14, 1993; Ord. 83-75 § 2, 1983.)

#### **9.07.095 Trespass on Railroad Property.**

A. It shall be unlawful for any person to:

1. Without consent of the owner or the owner's agent, enter or remain on railroad property, knowing that it is railroad property; or
2. Recklessly cause in any manner the derailment of a train, railroad car or rail-mounted work equipment.

B. Subsection A. shall not be construed to interfere with the lawful use of a public or private crossing.

C. Nothing in this Section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the Railway Labor Act (45 U.S.C. 151, et seq.) and other federal labor laws. (Ord. 15-66 § 14, 2015; Ord. 14-63 § 10, 2014; Ord. 99-24 § 17, 1999.)

**9.07.100 Prowling.** Prowling is willfully entering upon property owned or occupied by another with the intent of observing, looking or peeping into any window, door, skylight, or other opening in a house, room or building, or to remain in a public street, alley, parking lot or other parking place with the intent of wrongfully observing the actions of occupants of any such house, room, building or structure occupying an area where one would reasonably expect privacy and safety from uninvited intrusion or surveillance. Prowling is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

**9.07.110 Unauthorized Presence.** Unauthorized presence is entering or remaining upon or in any public parking area, lot or business premises in violation of restrictions upon access plainly posted, in a manner reasonably likely to come to the attention of the public, indicating restricted business hours, restrictions upon public presence, intrusion, permissible activity or other limitations upon public access to the posted area or premises. Unauthorized presence is an unclassified Public Offense. (Ord. 83-75 § 2, 1983.)

**9.07.120 Trespassing for Purpose of Parking Vehicle.** Trespassing for the purpose of parking a vehicle is the going upon the property owned or occupied by another person for the purpose of parking any vehicle upon such property, without the authority to enter upon the premises. Trespassing for the purpose of parking a vehicle is a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

**9.07.130 Littering.** 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, except by direction of some public officer or employee authorized by law to direct or permit such acts;

(b) Any private or public lake, river, stream, ditch, watercourse, retention or detention basin or other body of water that regularly or periodically carries surface water; or

(c) Any private property without the consent of the owner or occupant of such property. Littering is a Class C Public Offense. (Ord. 03-117 § 4, 2003; Ord. 93-56 § 1, 1993; Ord. 83-75 § 2, 1983.)

**9.07.140 Tampering with a Landmark.** Tampering with a landmark is willfully and maliciously:

(1) Removing any monument of stone or 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

(2) defacing or altering marks upon any tree, post or other monument, made for the purpose of designating any point on such boundary; or

(3) 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 marks; or

(4) breaking, destroying, removing or defacing any mile post, mile stone or guide board erected by authority of law on any public highway or road; or

(5) defacing or altering any inscription on any such marker or monument; or

(6) altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of K.S.A. 58-2011. (Ord. 93-09 § 15, 1993; Ord. 83-75 § 2, 1983.)

**9.07.150 Tampering with a 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. Tampering with a traffic signal is a Class B Public Offense. (Ord. 03-117 § 5, 2003; Ord. 83-75 § 2, 1983.)

#### **9.07.160 Unlawful Hunting.**

A. It shall be unlawful for any person to fish, shoot, hunt or pursue any bird or animal within the City of Olathe unless that person:

1. Is in possession of either a valid Kansas hunting license or other permit authorizing the taking of wildlife or a valid Kansas fishing license (unless exempt); and

2. Is hunting or fishing on land that is primarily rural or devoted to agricultural use or fishing on City of Olathe lakes designated for fishing; and

3. For private lands is in possession of the written permission of the landowner where the hunting or fishing is occurring; and

4. When on land that contains less than forty (40) acres has in their possession the written permission of all landowners or persons in possession of land contiguous to the land where the hunting is occurring.

B. Unlawful hunting is a Class C Public Offense. (Ord. 14-63 § 11, 2014; Ord. 99-24 § 18, 1999; Ord. 83-75 § 2, 1983.)

#### **9.07.170 Criminal Use of a Financial Card.**

A. 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 the telecommunication services as defined by K.S.A. 21-3745 and amendments thereto:

1. Using a financial card without the consent of the cardholder; or

2. knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or

3. using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

B. For the purposes of Subsection A.2. 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.

C. Criminal use of a financial card is a Class A Public Offense if the money, goods, property, services or communication services obtained within a seven-day period is of value of less than One Thousand Dollars (\$1,000.00). (Ord. 15-66 § 15, 2015; Ord. 06-71 § 5, 2006; Ord. 93-09 § 16, 1993; Ord. 83-75 § 2, 1983.)

### **9.07.180 Unlawful Manufacture or Disposal of False Tokens.**

(1) The unlawful manufacture or disposal of false tokens is manufacturing, 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 services.

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

(3) Unlawful manufacture or disposal of false tokens is a Class B Public Offense. (Ord. 99-24 § 19, 1999; Ord. 83-75 § 2, 1983.)

### **9.07.190 Criminal Use of Noxious Matter.**

(1) 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 or attempt to use noxious matter to the injury of persons and property, or the placing or depositing of such matter upon or about the premises of another person without the consent of such person.

(2) "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.

(3) Criminal use of noxious matter is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

### **9.07.200 Automobile Master Key Violation.**

(1) 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; or

(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.

(2) It shall not be unlawful for the owner of two (2) 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.

(3) Automobile master key violation is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.07.210 Posting of Advertisements.** Unlawful posting of advertisements is the putting up, affixing or fastening of either or both a picture or an advertisement to a telegraph, telephone, electric light or power pole or any sign or structure owned or maintained by the City of Olathe.

Unlawful posting of pictures and advertisements is an Unclassified Public Offense. (Ord. 83-75 § 2, 1983.)

**9.07.220 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.

Opening, damaging or removing coin-operated machines is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

**9.07.230 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 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 with intent to commit theft.

Possession of tools for opening, damaging or removing coin-operated machines is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.07.240 Unlawful Throwing of Objects.** Unlawful throwing of objects is intentionally throwing, pushing, pitching or otherwise casting any rock, stone or other object, matter or thing onto a street, road, 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. Unlawful throwing of objects is a Class A Public Offense. Any person violating this section who injures another person, upon conviction, is guilty of a felony. (Ord. 03-117 § 6, 2003; Ord. 99-24 § 20, 1999; Ord. 83-75 § 2, 1983.)

**9.07.250 Theft of Cable Television Services.** Theft of cable television services is obtaining cable television services, including internet services, from another by means of threat, deception, electrical or mechanical tampering or electronic tampering. Theft of cable television services is a Class A Public Offense. (Ord. 03-117 § 6, 2003; Ord. 83-75 § 2, 1983.)

**9.07.260 Tampering with Utility Equipment or Service.**

(1) It shall be unlawful for any person to commit, authorize, solicit, aid, abet or attempt any of the following acts:

- (a) Divert, or cause to be diverted, utility services by any means whatsoever; or
- (b) Make, or cause to be made, any connection or reconnection with property owned or used by a utility to provide utility service without the authorization or consent of the utility; or
- (c) Prevent any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by other means; or
- (d) Tamper with any property owned or used by a utility to provide utility services; or
- (e) Use or receive the direct benefit of all, or a portion, of a utility service with knowledge of, or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility; or

(f) Publish the number or code of an existing, canceled, revoked or nonexistent telephone number, credit number or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers or other credit devices under circumstances evidencing an intent to have the telephone number, credit number, credit device or method of numbering or coding used to avoid the payment of a lawful charge for any telecommunication service, or knowing or having reason to believe that the same may be used to avoid the payment of any such charge; or

(g) Obtain credit for or purchase any utility service by the use of any false, fictitious or counterfeit telephone number, credit number or other credit device, or by the use of any telephone number, credit number or other credit device without the authority of the person to whom the number or device was issued, or by the use of any telephone number, credit number or other credit device knowing that such number or device has been revoked; or

(h) Avoid the lawful charges, in whole or in part, for a utility service, by the use of any fraudulent scheme, device, means or method.

(2) Definitions. As used in this act:

(a) "Customer" means the person in whose name a utility service is provided.

(b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility.

(c) "Person" means any individual, partnership, firm, association or corporation.

(d) "Reconnection" means the commencement of utility service, other than by a utility, to a customer or other person after service has been discontinued by the utility.

(e) "Tamper" means to rearrange, injure, alter, interfere with or otherwise to prevent from performing normal or customary function.

(f) "Utility" means any "public utility" as defined in K.S.A. and also includes any electrical, gas or water system operated by any public or private agency.

(g) "Utility service" means the provision of electricity, gas, water, telecommunication or any other service or commodity furnished by the utility for compensation.

(h) "Telecommunication service" means any telephone service or the transmission of a message, signal or other communication by telephone or telegraph or over telephone or telegraph facilities.

(3) Tampering with utility equipment or service is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

### **9.07.270 Criminal Trespass on Public Property.**

A. Criminal Trespass on public property is entering or remaining upon or in any public property in violation of restrictions upon access plainly posted, in a manner reasonably likely to come to the attention of the public, indicating restricted hours, restrictions upon public presence, intrusion, permissible activity or other limitations upon public access to the posted area or premises. Criminal trespass on public property is a Class B Public Offense.

B. It shall be unlawful for any person to criminally trespass on public property.

C. 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 thereof 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 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

3. Such person enters or remains therein in defiance of any order by a court.

D. This Section shall not interfere with the enforcement of any other ordinance, rule or regulation concerning the use or control of public property. (Ord. 14-63 § 12, 2014; Ord. 87-149 § 6, 1987.)

#### **9.07.280 Unlawful Juvenile Activity.**

(a) It shall be unlawful for any juvenile to loiter on or about any street, road, highway, sidewalk, curb gutter, building, parking lot, alley, vacant lot, park, playground or yard, whether public or private, without the consent or permission of the owner or occupant thereof, during the hours between 11 P.M. and 6 A.M. unless accompanied by a parent, legal guardian, or other adult person over the age of twenty-one (21) years, who has been given custody or control over the juvenile by the juvenile's parent or legal guardian.

(b) It shall be unlawful for the parent, legal guardian, or any other person having custody or control of any juvenile to permit, or by insufficient control, to allow such juvenile to violate subsection (a) of this section.

(c) As used in this section:

"Loiter" shall mean remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include but be not limited to standing around, hanging out, sitting, kneeling sauntering and prowling.

"Juvenile" shall mean any person under the age of eighteen (18) years.

(d) Violation of this Section is a Class B Public Offense. (Ord. 93-64 § 1, 1993)

#### **9.07.290 Unlawful Acts Concerning Computer.**

A. It is unlawful for any person to:

1. Knowingly and without authorization, disclose a number, code, password or other means of access to a computer, computer network, social networking website or personal electronic content; or

2. Knowingly and without authorization, access or attempt to access any computer, computer system, social networking website, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network.

B. 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. Personal electronic content means the electronically stored content of an individual including, but not limited to, pictures, videos, email and other data files.

9. 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.

10. Services includes, but is 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.

11. Social networking website means a privacy-protected internet website which allows individuals to construct a public or semi-public profile within a bounded system created by the service, create a list of other users with whom the individual shares a connection within the system and view and navigate the list of users with whom the individual shares a connection and those lists of users made by others within the system.

12. 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.

C. Unlawful Acts Concerning Computer is a Class A Public Offense. (Ord. 14-63 § 13, 2014; Ord. 99-24 § 21, 1999.)

### **9.07.300 Counterfeiting.**

(1) 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.

(2) 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.

(3) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(4) As used in this section:

(a) "Counterfeit mark" means:

- 1) Any unauthorized reproduction or copy of intellectual property; or
- 2) 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.

(b) "Intellectual property" means any trademark, service mark or trade name as such terms are defined in K.S.A. 2005 Supp. 81-202, and amendments thereto.

(c) "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.

(d) 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.

(5) Counterfeiting of the retail value of less than One Thousand Dollars (\$1,000.00) is a Class A Public Offense. (Ord. 06-71 § 6, 2006; Ord. 00-102 § 2, 2000.)

#### **9.07.310 Failing to Pay for Motor Fuel; Penalties.**

(a) Any person who leaves the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of a motor vehicle by driving away in that motor vehicle without having made due payment or authorized charge for the motor fuel so dispensed, shall be guilty of a class A public offense and upon any subsequent conviction, the Division shall:

(1) Upon a person's second conviction, suspend the person's driving privileges for six months; and

(2) Upon a person's third or subsequent conviction, suspend the person's driving privileges for one year.

(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) Any person whose driving privileges have been suspended under subsection (a) shall pay a reinstatement fee in the amount of \$100 to the Division. The Division of Vehicles shall, at least monthly, deposit such fees with the State Treasurer, who shall credit such moneys to the State Highway Fund.

(d) As used in this section:

(1) "Division" means the Division of Vehicles of the Department of Revenue;

(2) "Conviction" means a final conviction without regard whether sentence was suspended or probation granted after such conviction. Forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. (Ord. 01-93 § 1, 2001.)

**9.07.320 Withholding Possession of Public Property.** It shall be unlawful for any person to unlawfully take possession of any property, real or personal belonging to the City, or to the possession of which the City shall be entitled or to commit any trespass thereon or to unlawfully withhold any property from the City. The unlawful withholding of the possession of any property belonging to the City after demand therefore has been made under the direction of the Governing Body of the City shall be deemed a new and separate offense for each day the possession is withheld after such demand. Withholding possession of public property is a Class C Public Offense. (Ord. 03-117 § 8, 2003.)

#### **9.07.330 Personal Conduct Limitations and Animal Restrictions on Public Grounds.**

(A) No person shall climb upon or hang over any rotunda, hall or portico, railing, or stair railing located in or upon any city property.

(B) No person shall run up or down the halls or stairways or crowd, push or shove any other person upon the stairways located on city property.

(C) No person shall swim or wade in any fountain located on the grounds of city property, nor shall any person permit any animal under the person's care to enter the fountain.

(D) Except for guide dogs, hearing assistance dogs, service dogs and the animal control facilities, no person shall bring any animals into any city building.

A person convicted of violating this section shall be guilty of a Class C Public Offense. (Ord. 04-109 § 4, 2004.)

**9.07.340 Unlawfully Selling Scrap Metal.** Repealed 12/15/15. (Ord. 15-66 § 16, 2015; Ord. 11-47 § 3, 2011; Ord. 09-59 § 3, 2009; Ord. 08-111 § 9, 2008.)

**9.07.350 Unlawfully Buying Scrap Metal.** Repealed 12/15/15. (Ord. 15-66 § 17, 2015; Ord. 12-38 § 6, 2012; Ord. 11-47 § 4, 2011; Ord. 09-59 § 4, 2009; Ord. 08-111 § 10, 2008.)

**9.07.360 Serial Numbers.**

A. It shall be unlawful for any person to willfully change, cover, alter, remove, obliterate or deface any serial numbers or other manufacturer's numbers or any identification letters, words, or numbers of any machine, apparatus, or article that carries a manufacturer's serial number or any other identification letters, words or numbers, with the intent to conceal the identity of such machine, apparatus, or article from the rightful owner thereof or from law enforcement personnel.

B. It shall be unlawful for any person to knowingly buy, sell, receive, barter, trade, dispose of or have in his or her possession any articles, devices, apparatuses, or machines from which the manufacturer's number or identification letters, words or numbers have been changed, covered, altered, removed, obliterated, defaced or destroyed with the intent to conceal the identity thereof from the rightful owner or from law enforcement personnel.

C. Possession of any of a manufacturer's articles, devices, apparatuses or machines from which the manufacturer's serial number or other manufacturer's number or identification mark, or the name of the manufacturer or make or model, or any other identification letters, words, or numbers have been changed, covered, altered, removed, obliterated, defaced, or destroyed shall be prima facie evidence that the possessor has changed, covered, altered, removed, obliterated, defaced or destroyed the same with the intent to cancel, destroy or misrepresent the identity or type, or ownership of such machine, apparatus, or article.

D. Violation of this Section is a Class B Public Offense. (Ord. 14-63 § 14, 2014.)

## CHAPTER 9.08

### OFFENSES AFFECTING GOVERNMENTAL FUNCTIONS

#### Sections:

9.08.010	Perjury. (Repealed 2/16/99)
9.08.020	Compounding a Crime.
9.08.030	Interference with Law Enforcement.
9.08.040	Disobeying the Lawful Order of a Police Officer.
9.08.050	Failure to Obey Citation.
9.08.060	Escape from Custody.
9.08.070	Failure to Appear.
9.08.080	Interference with the Administration of Justice.
9.08.090	Falsely Reporting a Crime or Public Offense.
9.08.100	Performance of an Unauthorized Official Act.
9.08.110	Simulating Legal Process.
9.08.120	Tampering with a Public Record.
9.08.130	Tampering with Public Notice.
9.08.140	False Signing of a Petition.
9.08.150	False Impersonation.
9.08.160	Interference with Conduct of Public Business in Public Buildings, Facilities or on Public Lands.
9.08.170	Dealing in False Identification Documents. (Repealed 2/16/99)
9.08.180	Resisting Arrest.
9.08.190	Possession of False Identification Documents.
9.08.200	Witness or Victim Intimidation, Definitions.
9.08.210	Crime of Intimidation of a Witness or Victim.
9.08.220	Civil Remedies, Court Orders Authorized.
9.08.230	Violation of Court Orders, Penalties.
9.08.240	Law Enforcement Canines and Fire Enforcement Canines.
9.08.250	Harassment of a Court by Telefacsimile Communication.

**9.08.010 Perjury.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 93-09 § 17, 1993; Ord. 89-151 § 3, 1990; Ord. 83-75 § 2, 1983.)

#### **9.08.020 Compounding a Crime.**

(1) Compounding a crime is accepting or agreeing to accept anything of value as consideration for a promise:

- (a) Not to initiate or aid in the prosecution of a person who has committed a crime;
- or
- (b) to intentionally conceal or destroy evidence of a crime.

(2) Compounding a crime is a Class A Public Offense. (Ord. 93-09 § 18, 1993; Ord. 83-75 § 2, 1983.)

#### **9.08.030 Interference with Law Enforcement.** Interference with law enforcement is:

A. Falsely reporting to a law enforcement officer, law enforcement agency or state investigative agency:

- 1. That a particular person has committed a crime, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or
- 2. any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty; or

3 any information for the purpose of hindering the apprehension, prosecution, conviction or punishment of any person for a crime; or

4. that a crime has been committed or any information concerning a crime or suspected crime, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information;

B. Concealing, materially altering or destroying evidence or tampering with a witness, informant, document or other source of information, regardless of its admissibility in evidence with the intent to prevent or hinder the apprehension, prosecution, conviction or punishment of any person; or

C. Knowingly and willfully obstructing, resisting or opposing any person authorized by law 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, or in the discharge of any official duty; or

D. Knowingly and willfully obstructing, resisting or opposing any properly identified law enforcement officer in the discharge of any official duty or investigation; or

E. Providing a false name, address, birth date, driver's license or other identification document to a law enforcement officer engaged in the discharge of any official duty or investigation.

F. Interference with Law Enforcement is a Class A Public Offense. (Ord. 13-33 § 3, 2013; Ord. 12-38 § 7, 2012; Ord. 83-75 § 2, 1983.)

**9.08.040 Disobeying the Lawful Order of a Police Officer.** No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer while the said officer is engaged in directing, controlling or regulating traffic during an emergency or accident investigation. Disobeying the lawful order of a police officer is a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

**9.08.050 Failure to Obey Citation.** It shall be unlawful for any person to violate his or her written promise to appear given to a law enforcement officer upon the issuance of a Uniform Complaint and Notice to Appear regardless of the disposition of the charge for which such complaint and notice to appear was originally issued.

Failure to obey citation is a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

**9.08.060 Escape from Custody.**

A. Escape from custody is escaping while held in lawful custody on a charge, arrest for or conviction of a public offense, or on a charge, arrest or adjudication as a juvenile offender, where the act, if committed by an adult, would constitute a public offense, or on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a public offense or by a person 18 years of age or over who is being held in lawful custody on an adjudication of a misdemeanor or public offense.

B. As used in this section:

1. Custody means arrest; detention in a facility for holding persons charged with or convicted of offenses or charged or adjudicated as a juvenile offender, where the act, if committed by an adult, would constitute an offense; detention in a facility for holding persons adjudicated as juvenile offenders; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto; 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.

2. "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.

3. As used in this section, the term charge shall not require that the offender was held on a written charge contained in a complaint, information or indictment, if such offender was arrested prior to such offender's escape from custody.

C. Escape from custody is a Class A Public Offense. (Ord. 12-38 § 8, 2012; Ord. 99-24 § 22, 1999; Ord. 83-75 § 2, 1983.)

#### **9.08.070 Failure to Appear.**

(1) Failure to appear is intentionally incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days following the date of such forfeiture by one who is charged with a public offense and has been released on bond for appearance before the municipal court of Olathe, for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days after his or her conviction of a public offense has become final by one who has been released on an appearance bond by the municipal court of Olathe.

(2) Any person who is released upon his or her own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of subsection (1) of this section.

(3) The provisions of subsection (1) of this section shall not apply to any person who forfeits a cash bond supplied pursuant to law upon an arrest for a traffic offense.

Failure to appear is a Class B Public Offense. (Ord. 04-38 § 1, 2004; Ord. 83-75 § 2, 1983.)

#### **9.08.080 Interference with the Administration of Justice.**

(1) 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 a prosecuting attorney by repeated vituperative communication, or picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecuting attorney or near such officer's or prosecuting attorney's residence or place of abode, with intent to influence, impede or obstruct the prosecution, 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.

(2) Nothing in this section shall limit or prevent the exercise by any court of this city or state of its power to punish for contempt.

(3) Interference with the administration of justice is a Class A Public Offense.

(4) As used in this section, 'prosecuting attorney' has the meaning ascribed thereto in K.S.A. 22-2202, and K.S.A. 12-4110 and amendments thereto. (Ord. 99-24 § 23, 1999; Ord. 83-75 § 2, 1983.)

**9.08.090 Falsely Reporting a Crime or Public Offense.** Falsely reporting a crime or public offense is informing a law enforcement officer that a crime has been committed, knowing that such information is false and intending that the officer shall act in reliance upon such information. Falsely reporting a crime is a Class A Public Offense. (Ord. 04-38 § 2, 2004; Ord. 83-75 § 2, 1983.)

**9.08.100 Performance of an Unauthorized Official Act.**

(1) Performance of an unauthorized official act is knowingly and without lawful authority:

- (a) Conducting a marriage ceremony; or
- (b) Certifying an acknowledgment of the execution of any document which by law may be recorded.

(2) Performance of an unauthorized official act is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.08.110 Simulating Legal Process.**

A. Simulating legal process is:

- 1. Distributing to another any document which simulates or purports to be, or is reasonably designed to cause others to believe it to be, a summons, petition, complaint, or other judicial process, with intent thereby to mislead the recipient and cause the recipient to take action in reliance thereon; or
- 2. Printing, distributing or offering for sale any such document, knowing or intending that it shall be so used.

B. Subsection A. of this section does not apply to the printing, distribution or sale of blank forms of legal documents intended for actual use in judicial proceedings.

C. Simulating legal process is a Class A Public Offense. (Ord. 12-38 § 9, 2012; Ord. 83-75 § 2, 1983.)

**9.08.120 Tampering with a Public Record.** Tampering with a public record is knowingly and without lawful authority altering, destroying, defacing, removing or concealing any public record.

Tampering with a public record is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

**9.08.130 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 law, during the time said notice is required or authorized to remain posted.

Tampering with public notice is a Class C Public Offense. (Ord. 83-75 §, 1983.)

**9.08.140 False Signing of a Petition.** False signing of a petition is the affixing of any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the Governing Body of the City of Olathe, or to any agency or officer of the City of Olathe.

False signing of an official petition is a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

**9.08.150 False Impersonation.** False impersonation is representing one's self to be a public officer or public 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;

False impersonation is a Class A Public Offense. (Ord. 93-09 § 19, 1993; Ord. 83-75 § 2, 1983.)

**9.08.160 Interference with Conduct of Public Business in Public Buildings, Facilities or on Public Lands.**

A. Interference with the conduct of public business in public buildings, facilities, or on public lands is:

1. Conduct at or in any public building, facility or on land owned, operated or controlled by the county, state or the City so as to intentionally 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, or to leave, any such public building, facility or land; or
2. 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
3. intentionally refusing or failing to leave any such public building, facility or land upon being requested to do so by a law enforcement officer or the City Manager, or designee, charged with maintaining order in such public building, facility or land 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, facility or land; or
4. intentionally impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building, facility or land 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
5. 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.

B. Interference with the conduct of public business in public buildings is a Class A Public Offense. (Ord. 14-63 § 15, 2014; Ord. 12-38 § 10, 2012; Ord. 04-38 § 3, 2004; Ord. 83-75 § 2, 1983.)

**9.08.170 Dealing in False Identification Documents.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 83-75 § 2, 1983.)

**9.08.180 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. Resisting arrest is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.08.190 Possession of False Identification Documents.**

(a) It shall be unlawful for any person to possess or have under such person's control or display a false document which

- (1) simulates, purports to be or is designed so as to cause others reasonably to believe it to be an identification document; and
- (2) bears a fictitious name or other false information.

(b) As used in this section, 'identification document' means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, motor vehicle liability insurance cards, birth certificates, Social Security cards and employee identification cards.

(c) Dealing in false identification documents is an unclassified public offense.

(d) This section shall not apply to law enforcement officers acting within their scope of employment. (Ord. 00-45 § 2, 2000.)

#### **9.08.200 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 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). (Ord. 04-38 § 4, 2004.)

**9.08.210 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.

(c) Intimidation of a witness or victim is a Class B Public Offense. (Ord. 04-38 § 5, 2004.)

#### **9.08.220 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;

(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. (Ord. 04-38 § 6, 2004.)

**9.08.230 Violation of Court Orders, Penalties.** Violation of an order entered pursuant to 9.08.220 may be punished in any of the following ways:

(a) In the manner provided by 9.08.210 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 9.08.210, 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 9.08.210; and

(2) Any conviction or acquittal of a violation of 9.08.210 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. (Ord. 04-38 § 7, 2004.)

#### **9.08.240 Law Enforcement Canines and Fire Enforcement Canines.**

A. All canines used by the City Police Department or Fire Department, whether owned, leased, rented or borrowed for the purposes 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 or fire enforcement canines.

B. It shall be unlawful for any person:

1. to strike, tease, torment, harass, or assault a law enforcement or fire enforcement canine whether or not the dog is being used in an official capacity; or

2. to interfere or attempt to interfere with a law enforcement or fire enforcement canine or its handler in such a manner as to inhibit, restrict or impede the dog in accomplishing its law enforcement or fire enforcement purpose or the handler in the control of the law enforcement or fire enforcement canine; or

3. to inflict harm, disability or death to a law enforcement or fire enforcement canine. Inflicting harm, disability or death is knowingly and intentionally and without lawful cause or justification poisoning, inflicting bodily harm, permanent disability or death, upon a law enforcement or fire enforcement canine.

C. Penalties. Violations of Sections B.1. and B.2. are unclassified public offenses. Violations of Section B.3. are a Class A Public Offense. (Ord. 14-63 § 16, 2014; Ord. 04-38 § 8, 2004.)

**9.08.250 Harassment of a Court by Telefacsimile Communication.**

(a) Harassment of a court by telefacsimile communication is the use of telefacsimile communication to send or transmit such communication to a court in the state of Kansas for a use other than court business.

(b) As used in this section, telefacsimile communication means the use of electronic equipment to send or transmit a copy of a document via telephone line.

(c) Harassment by telefacsimile communication is a Class A Public Offense. (Ord. 05-103 § 2, 2005.)

## CHAPTER 9.09

### OFFENSES AFFECTING PUBLIC TRUSTS

#### Sections:

9.09.010	Official Misconduct.
9.09.020	Compensation for Past Official Acts.
9.09.030	Presenting a False Claim.
9.09.040	Permitting a False Claim.
9.09.050	Discounting a Public Claim.
9.09.060	Unlawful Interest in Insurance Contract.
9.09.070	Unlawful Procurement of Insurance Contract.
9.09.080	Unlawful Use of City Postage.

#### 9.09.010 Official Misconduct.

(a) Official misconduct is any of the following acts committed by a public officer or employee in his public capacity or under color of his office or employment:

(1) Using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another.

(2) Knowingly and willing failing to serve civil process when required by law.

(3) Using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to maliciously cause harm to another. As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

(4) Except as authorized by law, knowingly, willfully and with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) Accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) Altering any bid or proposal submitted by a bidder on a contract or proposed contract.

(5) Except as authorized by law, knowingly destroying, tempering with or concealing evidence of a crime.

(6) Knowingly and willfully submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or

(2) Constitutes misuse of public funds, as defined in K.S.A. 21-3910 and amendments thereto.

(c) (1) Official misconduct as defined in subsections (a)(1) through (a)(4) is a Class A Public Offense.

(2) Official misconduct as defined in subsection (a)(5) is a Class A Public Offense if the evidence is evidence of a crime which is a misdemeanor.

(3) Official misconduct as defined in subsection (a)(6) is a Class A Public Offense for a claim of less than One Thousand Dollars (\$1,000.00).

(4) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee's office or employment. (Ord. 06-71 § 7, 2006; Ord. 83-75 § 2, 1983.)

#### **9.09.020 Compensation for Past Official Acts.**

(1) Compensation for past official acts is giving or offering to give to any public officer or employee any benefit, reward or consideration for having given, in his official capacity as such public officer or employee, a decision, opinion, recommendation or vote favorable to the person giving or offering such benefit, reward or consideration, or for having performed an act of official misconduct.

(2) Subsection (1) of this section shall not apply to the following:

(a) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationships independent of the official status of the receiver; or

(b) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(3) Compensation for past official acts is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.09.030 Presenting a False Claim.** Presenting a false claim is knowingly and with intent to defraud presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

Presenting a false claim for less than One Thousand Dollars (\$1,000.00) is a Class A Public Offense. (Ord. 06-71 § 8, 2006; Ord. 83-75 § 2, 1983.)

**9.09.040 Permitting a False Claim.** Permitting a false claim is the auditing, allowing, or paying of any claim or demand made upon the City of Olathe or other municipal governmental instrumentality within the city by a public officer or employee who knows such claim or demand is false or fraudulent in whole or in part.

Permitting a false claim for less than One Thousand Dollars (\$1,000.00) is a Class A Public Offense. (Ord. 06-71 § 9, 2006; Ord. 83-75 § 2, 1983.)

**9.09.050 Discounting a Public Claim.** Discounting a public claim is the act of a public officer or employee, who in his private capacity either directly or indirectly, purchases for less than full value or discounts any claim held by another against the City of Olathe or a municipal subdivision thereof.

Discounting a public claim is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

#### **9.09.060 Unlawful Interest in Insurance Contract.**

(1) An unlawful interest in an insurance contract is the act of a public officer or employee who:

(a) Represents in any capacity or divides commissions with any surety company or other writer of a surety bond in the writing of any bond or contract subject to the approval of such public officer or employee; or

(b) Represents in any capacity or divides commissions with an insurance company or other insurer in the writing of any policy of fire, casualty, workmen's compensation or other insurance which is paid for from the public funds of the political unit served by such officer or employee.

(2) Unlawful interest in an insurance contract is a Class A Public Offense. (Ord. 83-75 § 21, 1983.)

**9.09.070 Unlawful Procurement of Insurance Contract.** An unlawful procurement of an insurance contract is the act of any surety company or other writer of surety bonds or any insurance company or other insurer who employs or contracts with a public officer or employee to represent such writer of surety bonds or insurer in any capacity or to share commissions on any surety bond or contract subject to the approval of such public officer or employee, or any policy of fire, casualty, workmen's compensation or other insurance which is paid for from the public funds of the political unit served by such officer or employee.

Unlawful procurement of an insurance contract is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

**9.09.080 Unlawful Use of City Postage.**

(a) It shall be unlawful for any person to use for such person's personal use, or to allow any unauthorized person to use, any form of postage paid for with city funds.

(b) Violation of this section shall constitute a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

## CHAPTER 9.10

### OFFENSES INVOLVING VIOLATIONS OF PERSONAL RIGHTS

#### Sections:

- 9.10.010 Eavesdropping. (Repealed 11-1-2011)
- 9.10.020 Breach of Privacy.
- 9.10.030 Smoking In a Public Place. (Repealed 8-15-2006)
- 9.10.040 Denial of Civil Rights.

**9.10.010 Eavesdropping.** Repealed 11-1-2011. (Ord. 11-47 § 5, 2011; Ord. 04-109 § 3, 2004; Ord. 00-102 § 3, 2000; Ord. 83-75 § 2, 1983.)

#### **9.10.020 Breach of Privacy.**

A. Breach of privacy is knowingly and without lawful authority:

1. Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;
2. Divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the course of employment with an agency in transmitting it;
3. Entering or peeping into a private place with intent to listen surreptitiously to private conversation or to observe the personal conduct of any other person or persons therein;
4. Installing or using inside or 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 without the use of such device, without the consent of the person or persons entitled to privacy therein; or
5. Installing or using any device or equipment for the interception of any telephone, telegraph, or other wire or wireless communication without the consent of the person in possession or control of the facilities for such communication.

B. Subsection A.1. of this Section shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

C. The provisions of this section shall not apply to:

1. 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 public utility;
  2. a provider of an interactive computer service, as defined in 47 U.S.C. § 230, for content provided by another person;
  3. a radio common carrier, as defined in K.S.A. 66-1,143, and amendments thereto;
- or
4. a local exchange carrier or telecommunications carrier as defined in K.S.A. 66-1,187, and amendments thereto.

D. Breach of privacy is a Class A Public Offense. (Ord. 16-47 § 3, 2016; Ord. 15-66 § 18, 2015; Ord. 11-47 § 6, 2011; Ord. 04-85 § 2, 2004; Ord. 83-75 § 2, 1983.)

**9.10.030 Smoking In a Public Place.** Repealed 8-15-2006. (Ord. 06-97 § 2, 2006; Ord. 87-149 § 7, 1987; Ord. 83-75 § 2, 1983.)

**9.10.040 Denial of Civil Rights.** Denial of civil rights is denying to another, on account of the race, color, ancestry, national origin, age, sex, disability 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;

(2) The full and equal use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations or any establishment which provides lodging to transient guest(s) 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;

(3) The full equal use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods;

(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.

(5) The full and equal exercise of the right to vote in any election held pursuant to the laws of Kansas. (K.S.A. 21-4003).

(6) Denial of civil rights is a Class A Public Offense. (Ord. 99-24 § 24, 1999; Ord. 93-09 § 20, 1993.)

## CHAPTER 9.11

### OFFENSES AGAINST THE PUBLIC PEACE

#### Sections:

9.11.010	Disorderly Conduct.
9.11.020	Unlawful Assembly.
9.11.030	Remaining At An Unlawful Assembly.
9.11.040	Riot.
9.11.050	Incitement to Riot. (Repealed 2/16/99)
9.11.060	Maintaining a Public Nuisance.
9.11.070	Permitting a Public Nuisance.
9.11.080	Unlawful Begging.
9.11.090	Giving a False Alarm.
9.11.100	Criminal Desecration.
9.11.110	Desecrating a Dead Body.
9.11.120	Harassment by Telecommunications Device.
9.11.130	Desecration of Flags. (Repealed 2/16/93)
9.11.140	Desecrating a Cemetery. (Repealed 2/16/93)
9.11.145	Loud Sound Amplification Systems Prohibited. (Repealed 2/16/99)
9.11.150	Unlawful Noise Disturbance.
9.11.160	Stalking.
9.11.170	Funeral Privacy; Unlawful Acts; Penalty.
9.11.180	Keeping Disorderly Premises
9.11.190	Reporting Nuisance and Disorderly Premises Convictions to Licensing Authorities of Clubs, Drinking Establishments and Cereal Malt Beverage Retailers.

#### **9.11.010 Disorderly Conduct.**

A. Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace:

1. Brawling or fighting; or
2. Disturbing an assembly, meeting, or procession, not unlawful in its character; or
3. The use of offensive, obscene, abusive, combative or fighting language or engaging in noisy conduct tending reasonably to arouse alarm, anger, resentment or combat in others.

B. Disorderly conduct is a Class B Public Offense. (Ord. 15-66 § 19, 2015; Ord. 83-75 § 2, 1983.)

**9.11.020 Unlawful Assembly.** Unlawful assembly is the meeting or coming together of not less than five (5) persons with the intent to engage in conduct constituting either disorderly conduct, as defined by Section 9.11.010, or a riot, as defined by Section 9.11.040, or when in a lawful assembly of not less than five (5) persons, agreeing to engage in conduct constituting disorderly conduct or riot.

Unlawful assembly is a Class B Public Offense. (Ord. 11-47 § 7, 2011; Ord. 83-75 § 2, 1983.)

**9.11.030 Remaining At An Unlawful Assembly.** Remaining at an unlawful assembly is intentionally failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer. Remaining at an unlawful assembly is a Class A Public Offense. (Ord. 11-47 § 8, 2011; Ord. 99-24 § 25, 1999; Ord. 83-75 § 2, 1983.)

**9.11.040 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 (5) or more persons acting together and without authority of law.

Riot is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

**9.11.050 Incitement to Riot.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 83-75 § 2, 1983.)

**9.11.060 Maintaining a Public Nuisance.** Maintaining a public nuisance is knowingly causing or permitting a condition to exist which injures or endangers the public health, safety or welfare. Maintaining a public nuisance is a Class B Public Offense. (Ord. 11-47 § 9, 2011; Ord. 83-75 § 2, 1983.)

**9.11.070 Permitting a Public Nuisance.** Permitting a public nuisance is knowingly permitting property under the control of the offender to be used to maintain a public nuisance, as defined in Section 9.11.060. Permitting a public nuisance is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.11.080 Unlawful Begging.** Unlawful begging is the begging or solicitation of funds, United States currency, or other thing of value in a public building, public thoroughfare, transportation terminal, residential neighborhood or other place open to the public. Unlawful begging is a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

**9.11.090 Giving a False Alarm.** The giving a false alarm is:

(1) Initiating or circulating a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is baseless and under such circumstances that it is likely to cause evacuation of a building, place of assembly, or facility of public transport or to cause public inconvenience or alarm;

(2) Transmitting in any manner to the fire department of any city, township or other municipality a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or

(3) Making a call in any manner for emergency service assistance, including police, fire, medical or other emergency service provided under K.S.A. 12-5301, *et seq.*, and amendments thereto, knowing at the time of such call there is no reasonable ground for believing such assistance is needed.

(4) Giving a false alarm is a Class A Public Offense. (Ord. 93-09 § 21, 1993; Ord. 83-75 § 2, 1983.)

**9.11.100 Criminal Desecration.** 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 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 the state in which another has a property interest without the consent of other such persons;

(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 other property in a cemetery; or

(d) Damaging, defacing or destroying any place of worship.

(3) Criminal desecration as described in subsections (2)(b), (2)(c) and (2)(d) is a Class A Public Offense if the property is damaged to the extent of less than One Thousand Dollars (\$1,000.00).

(4) Criminal desecration as described in Section (1) and subsection (2)(a) is a Class A Public Offense. (Ord. 06-71 § 10, 2006; Ord. 05-103 § 3, 2005; Ord. 93-09 § 22, 1993; Ord. 83-75 § 2, 1983.)

**9.11.110 Desecrating a Dead Body.** Desecrating a dead body is knowingly and without authorization of law:

(a) Opening a grave or other place of interment or sepulcher with intent to remove the dead body or remains of any human being or any coffin, vestment or other article interred with such body; or

(b) Removing the dead body or remains of any human being, or the coffin, vestment or other article interred with such body, from the grave or other place of interment or sepulcher; or

(c) Receiving the dead body or remains of any human being knowing the same to have been disinterred unlawfully.

Desecrating a dead body is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

**9.11.120 Harassment by Telecommunications Device.** Harassment by telecommunications is the use of:

A. A telecommunications device to:

1. knowingly make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious, or indecent;

2. make or transmit a call, whether or not conversation ensues, with the intent to abuse, threaten or harass any person at the receiving end;

3. make or transmit any comment, request, suggestion, proposal, image or text with the intent to abuse, threaten or harass any person at the receiving end;

4. make or cause to a telecommunication device to repeatedly ring or activate with the intent to harass any person at the receiving end;

5. 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 be identified and state that it is a recording; or

6. knowingly permit any telecommunications device under one's control to be used in violation of this Section.

B. 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.

Harassment by telecommunications device is a Class A Public Offense. (Ord. 15-66 § 20, 2015; Ord. 11-47 § 10, 2011; Ord. 93-09 § 23, 1993; Ord. 83-75 § 2, 1983.)

**9.11.130 Desecration of Flags.** Repealed 2/16/93. (Ord. 93-09 § 38, 1993; Ord. 83-75 § 2, 1983.)

**9.11.140 Desecrating a Cemetery.** Repealed 2/16/93. (Ord. 93-09 § 38, 1993; Ord. 83-75 § 2, 1983.)

**9.11.145 Loud Sound Amplification Systems Prohibited.** Repealed 2/16/99. (Ord 99-24 § 25, 1999; Ord. 95-50 § 1, 1995.)

### **9.11.150 Unlawful Noise Disturbance.**

A. It shall be unlawful for any person to make, continue, maintain, authorize or cause to be made or continued any excessive, unnecessary, unreasonable or unusually loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the City of Olathe.

B. It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, musical instrument, phonograph, loud speaker or other machine or device for the producing, reproducing, or amplification of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. "Neighboring inhabitants" shall include persons living or occupying single or multiple-family dwellings, including but not limited to, inhabitants, guests or occupants of apartments, high-density residential districts, hotels, motels and other places of temporary housing or lodging.

C. Prima facie violation. The operation of any electronic device, set, instrument, television, phonograph, machine or other sound-producing, reproducing or amplification device at any time between the hours of 10:00 p.m. and 10:00 a.m. in such a manner as to be plainly audible at a distance of fifty (50) or more feet from the sound source or plainly audible at the adjacent property line, whether such adjacent property consists of single or multi-family dwellings, including, but not limited to, multiple-unit dwellings, apartments, high-density residential districts, hotels, motels and other places of temporary housing or lodging, shall be prima facie evidence of a violation of this section. "Plainly audible" shall mean any sound which can be heard at a distance of fifty (50) feet or more by the auditory senses. Words or phrases need not be discernible and bass reverberations are an included sound source.

D. Upon a first conviction, Unlawful Noise Disturbance is a Class C Public Offense punishable by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine or imprisonment.

E. Upon a second or subsequent conviction, Unlawful Noise Disturbance is a Class B Public Offense and shall be punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for not more than one hundred eighty (180) days, or by both such fine or imprisonment. (Ord. 09-31 § 1, 2009; Ord. 83-75 § 2, 1983.)

### **9.11.160 Stalking.**

A. Stalking is:

1. Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.

2. Engaging in a course of conduct targeted at a specific person which the individual knows will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family.

3. After being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, prior to its repeal or K.S.A. 2012 Supp. 21-5924, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in fear.

B. Upon a first conviction, stalking as described in subsection A.1. or A.2. is a Class A public offense. Second or subsequent convictions constitute felonies. Stalking as described in subsection A.3. is a felony.

C. For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a uniformed law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted intentionally as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

D. In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

E. The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

F. As used in this section:

1. **Course of conduct** means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

- a. Threatening the safety of the targeted person or a member of such person's immediate family;
- b. Following, approaching or confronting the targeted person or a member of such person's immediate family;
- c. Appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family;
- d. Causing damage to the targeted person's residence or property or that of a member of such person's immediate family;
- e. Placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;
- f. Causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family; or
- g. Any act of communication.

2. **Communication** means to impart a message by any method of transmission, including, but not limited to: telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer.

3. **Computer** means a programmable, electronic device capable of accepting and processing data.

4. **Conviction** includes being convicted of a violation of this section or being convicted of a law of another state which prohibits the acts that this section prohibits.

5. **Immediate family** means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person. (Ord. 14-63 § 17, 2014; Ord. 09-59 § 5, 2009; Ord. 08-111 § 11, 2008; Ord. 99-24 § 35, 1999; Ord. 94-89 § 1, 1994; Ord. 93-09 § 24, 1993.)

**9.11.170 Funeral Privacy; Unlawful Acts; Penalty.**

A. This section shall be known as and may be cited as the Olathe Funeral Privacy Act.

B. The Governing Body finds that:

1. Family members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degrade the rites and respect they seek to accord to the deceased person who was once their own.

2. The state has a substantial interest in protecting the legitimacy of funerals and ensuring freedom from disturbance.

3. Due to the nature of funerals, the funeral attendees constitute a captive audience.

4. Full opportunity exists under the terms and provisions of this section for the exercise of freedom of speech and other constitutional rights at times other than within one hour prior to, the scheduled commencement of a funeral, during a funeral, or within two hours following the completion of a funeral.

C. The purposes of this section are to:

1. Protect the privacy of grieving families; and

2. preserve the substantial privacy interest in funerals.

D. As used in this section:

1. "Funeral" means the ceremonies, processions and memorial services held in connection with the burial or cremation of a 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.

E. 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.

A violation of this subsection is a class B public offense. Each day on which such violation occurs shall constitute a separate offense.

F. If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or application. To this end the provisions of this section are severable. (Ord. 11-47 § 11, 2011; Ord. 09-59 § 6, 2009; Ord. 08-111 § 4, 2008; Ord. 99-24 § 26, 1999)

**9.11.180 Keeping Disorderly Premises.** A person commits the crime of keeping a disorderly premises if he/she shall permit, allow or encourage any offense against the public peace, as defined in Section 9.11.010, to occur or continue on premises owned or controlled by him. Keeping disorderly premises is a Class A Public Offense. (Ord. 04-88 § 1, 2004)

**9.11.190 Reporting Nuisance and Disorderly Premises Convictions to Licensing Authorities of Clubs, Drinking Establishments and Cereal Malt Beverage Retailers.**

(a) Upon a conviction of a violation of Olathe Municipal Code Sections 9.11.060, 9.11.070 or 9.11.180, and amendments thereto, for keeping disorderly premises for maintaining or permitting a public nuisance on the premises of a club or drinking establishment licensed under the club and drinking establishment act, the court shall report such conviction to the director of alcoholic beverage control.

(b) Upon a conviction of a violation of Olathe Municipal Code Sections 9.11.060, 9.11.070 or 9.11.180, and amendments thereto, for keeping disorderly premises or for maintaining or permitting a public nuisance on the premises of a retailer licensed under Chapter 7.14 of the Olathe Municipal Code and K.S.A. 41-2701 et seq., and amendments thereto, the court shall report such conviction to the Governing Body of the city which issued the license. (Ord. 05-103 § 4, 2005.)

## CHAPTER 9.12

### OFFENSES AGAINST THE PUBLIC SAFETY

#### Sections:

9.12.010	Definitions.
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9.12.030	Criminal Disposal of Firearms.
9.12.040	Criminal Possession of a Firearm.
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9.12.210	Drawing a Weapon Upon Another.
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9.12.230	Carry Concealed Weapons; Prohibited Acts.
9.12.240	Carry Unconcealed Firearm; Prohibited Acts.
9.12.250	Liability.

**9.12.010 Definitions.** For the purposes of this chapter, the following terms shall have the meaning ascribed to them in this section:

'Explosives' means any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

'Firearm' means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion, expanding gases or other combustion. This definition shall include devices using a fuelant and ignition device to launch or shoot a potato or other projectile from a cylinder or similar device, commonly known as 'spud or potato guns.' This term shall not include a firearm 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.*, and any amendments thereto.

'Knife' means a cutting instrument, including a sharpened or pointed blade, a dagger, dirk, switchblade, stiletto, straight-edged "razor or any other dangerous or deadly cutting instrument of like character.

'Minor' means a person who is under the age of eighteen (18) years.

'Weapon' means any instrument used or designed to be used to injure or kill someone, including, but not limited to, any explosives, firearm, throwing star, or other instrument identified in Sections 9.12.020 or 9.12.060. (Ord. 14-42 § 2, 2014; Ord. 13-22 § 1, 2013; Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

#### **9.12.020 Criminal Use of Weapons.**

A. Criminal use of weapons is knowingly:

1. selling, manufacturing, purchasing, possessing any bludgeon, sandclub, metal knuckles or throwing star;
2. possessing with intent to use the same unlawfully against another, a billy, blackjack, slungshot, martial arts fighting sticks, or any other dangerous or deadly weapon or instrument of like character;
3. setting a spring gun; or
4. possessing or transporting any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device, commonly known as a Molotov cocktail or a pipe bomb.

B. Subsections A 1, 2, 3, and 4 shall not apply to or affect any of the following:

1. law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
2. wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
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 a person authorized under 1 through 3 of this subsection to possess such weapons.

C. Criminal use of weapons is a Class A Public Offense. (Ord. 16-27 § 1, 2016; Ord. 14-42 § 3, 2014; Ord. 13-33 § 4, 2013; Ord. 10-71 § 1, 2010; Ord. 09-59 § 7, 2009; Ord. 06-44 § 1, 2006; Ord. 05-58 § 1, 2005; Ord. 99-24 § 27, 1999; Ord. 94-08 § 2, 1994; Ord. 87-149 § 8, 1987; Ord 83-75 § 2, 1983; Ord. 93-09 § 25, 1993.)

#### **9.12.030 Criminal Disposal of Firearms.**

A. Criminal disposal of firearms is knowingly:

1. Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;
2. Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;
3. 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 6, 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;
4. 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, but 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

5. 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.

6. Subsection 4 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, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, K.S.A. 2009 Supp. 21-36a05 or 21-36a06, and amendments thereto or K.S.A. 65-4127a, 65-4127b, or 65-4159 through 65-4165, and 65-7006, prior to such section's repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.

B. Criminal disposal of firearms is a Class A Public Offense. (Ord. 14-42 § 4, 2014; Ord. 10-71 § 2, 2010; Ord. 09-59 § 8, 2009; Ord. 99-24 § 28, 1999; Ord. 94-89 § 2, 1994; Ord. 94-08 § 2, 1994; Ord. 93-09 § 26 1993; Ord. 83-75 § 2, 1983.)

#### **9.12.040 Criminal Possession of a Firearm.**

A. Criminal carrying of a weapon is knowingly carrying:

1. Any bludgeon, sandclub, metal knuckles or throwing star;
2. Concealed on one's person, a billy, blackjack, slungshot or any other, dangerous or deadly weapon or instrument of like character;
3. 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.

B. Subsection A. shall not apply to:

1. Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
2. Wardens, superintendents, directors, security personnel 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;
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. The manufacture of, transportation to, or sale of weapons to a person authorized under subsections B.1, B.2 and B.3 to possess such weapons.

C. Criminal carrying of a weapon is a Class A violation. (Ord. 16-27 § 2, 2016; Ord. 15-66 § 21, 2015; Ord. 14-42 § 5, 2014; Ord. 10-71 § 3, 2010; Ord. 09-59 § 9, 2009; Ord. 94-89 § 3, 1994; Ord. 94-08 § 2, 1994; Ord. 93-09 § 27, 1993; Ord. 83-75 § 2, 1983.)

#### **9.12.050 Unlawful Discharge of Firearms.**

A. Unlawful discharge of firearms is the reckless discharging or firing of any gun, rifle, pistol, revolver or other firearm within the City. This section shall not be construed to apply:

1. To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his official duties;
2. To the discharge of a firearm by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;
3. To the discharge of firearms in any licensed private or public shooting gallery or range;
4. To a legitimate gunsmith in pursuit of his trade;
5. To any duly licensed hunter to fire or discharge only a pistol, revolver, rifle of not more than .22 caliber or shotgun provided the requirements of 9.07.160 are complied with;

6. To firing squads for ceremonials or in connection with a public event if the firearms will only discharge blank ammunition and provided that the Chief of Police pursuant to subsection B approves the discharge of firearms;

7. To the discharge of a firearm in the lawful defense of one's person, another person or one's property; or

8. To the discharge of a firearm in lawful self-defense or defense of another person against an animal attack.

B. Approval for ceremonial firing squads or public events shall be issued by the Chief of Police or a designated representative upon application by the person, organization or sponsor of the ceremonial or public event. The permit shall set forth with particularity the date and place the event is to be held, the type of firearm, ammunition to be used and the time the discharge will occur. The 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. (Ord. 14-42 § 6, 2014; Ord. 13-33 § 5, 2013; Ord. 99-24 § 29, 1999; Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.060 Air Gun, Air Rifle, Bow and Arrow, Slingshot, BB Gun, Blowgun, Blowdart Gun.** The unlawful operation of an air gun, air rifle, bow and arrow, slingshot, BB gun, blowgun, or blowdart gun is the shooting, discharging or operating of any air gun, air rifle, bow and arrow, slingshot, BB gun, blowgun, or blowdart gun within the City, except within the confines of the building or other structure from which the projectiles cannot escape or during participation in an accredited educational or instructional program. Unlawful operation of an air gun, air rifle, bow and arrow, slingshot, BB gun, blowgun, or blowdart gun is a Class C Public Offense. (Ord. 15-66 § 22, 2015; Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.070 Seizure of Weapon.** The Chief of Police of the City or his or her duly authorized representative is hereby empowered to seize and hold any air gun, air rifle, bow and arrow, slingshot, BB gun, blowgun, or blowdart gun used in violation of Section 9.12.060 and is further empowered to seize and hold as evidence pending a hearing before a court of competent jurisdiction any air gun, air rifle, bow and arrow, slingshot, BB gun, blowgun, or blowdart gun used in violation of Section 9.12.060. (Ord. 15-66 § 23, 2015; Ord. 94-08 § 2, 1994; Ord. 93-09 § 28, 1993.)

**9.12.080 Unlawful Aiding, Abetting.**

(1) It shall be unlawful for any person to conspire to or aid and abet in the operation or discharging or causing to be operated or discharged any air gun, air rifle, bow and arrow, BB gun or slingshot except as provided in Section 9.12.060 within the City, whether individually or in connection with one or more persons or as principal, agent or accessory, and it is further unlawful for every parent or guardian of a minor child who willfully or knowingly permits or directs the operation or discharge of any air gun, air rifle, bow and arrow, BB gun or slingshot by such minor child within the City except as provided in Section 9.12.060.

(2) Violation of this Section is a Class C Public Offense. (Ord. 94-08 § 2, 1994; Ord. 93-09 § 29, 1993.)

**9.12.090 Possession of a Firearm by a Minor Prohibited, Exceptions.** Repealed 6/17/2014. (Ord. 14-42 § 7, 2014; Ord. 94-08 § 1, 1994.)

**9.12.100 Defacing Identification Marks of a Firearm.** Repealed 11/4/08. (Ord. 08-111 § 5, 2008; Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.110 Confiscation and Disposition of Weapons.** Repealed 12/15/15. (Ord. 15-66 § 24, 2015; Ord. 14-42 § 8, 2014; Ord. 99-24 § 30, 1999; Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

### **9.12.120 Failure to Register Sale of Explosives.**

(1) Failure to register sale of explosives is the omission, by the seller of any explosive or detonating substance, to keep a register of every sale or other disposition of such explosives made by him as required by this Section.

(2) The register of sales required by this Section shall contain the date of the sale or other disposition, the name, address, age and occupation of the person to whom the explosive is sold or delivered, the kind and amount of explosive delivered, the place at which it is to be used and for what purposes it is to be used. Said register and said record of sale or other disposition shall be open for inspection by any law enforcement officer, mine inspector or fire marshal of this state for a period of not less than one (1) year after said sale or other disposition.

(3) Failure to register sale of explosives is a Class A public Offense. (Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.130 Failure to Register Receipt of Explosives.** Failure to register receipt of explosives is the omission, by any person to whom delivery of any quantity of explosive or other detonating substance is made, to acknowledge the receipt thereof by signing his name in the register provided in Section 9.12.120 on the page where the record of such delivery is entered.

Failure to register receipt of explosives is a Class B Public Offense. (Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.140 Criminal Disposal of Explosives.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 94-89 § 4, 1994; Ord. 94-08 § 2, 1994; Ord. 93-09 § 30, 1993; Ord. 83-75 § 2, 1983.)

**9.12.150 Criminal Possession of Explosives.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 94-08 § 2, 1994; Ord. 93-09 § 31, 1993; Ord. 83-75 § 2, 1983.)

**9.12.160 Carrying Concealed Explosives.** Carrying concealed explosives is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner.

Carrying concealed explosives is a Class A Public Offense. (Ord. 12-38 § 11, 2012; (Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.170 Unlawful Failure to Report Lost or Stolen Explosives.** Unlawful failure to report lost or stolen explosives is the failure by and owner, seller or other custodian of explosives, to report lost, misplaced or stolen explosives or explosives otherwise unaccounted for, within ten (10) days of discovering the loss or theft of said explosives. Unlawful failure to report lost or stolen explosives is a Class B Public Offense. (Ord. 94-08 § 2 1994; Ord. 83-75 § 2, 1983.)

### **9.12.180 Creating a Hazard.**

(1) 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 contained; or

(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 leaving any explosive or dangerous substance in a place accessible to children.

(2) Creating a hazard is a Class B Public Offense. (Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.185 Endangerment.** Endangerment is recklessly exposing another person to a danger of great bodily harm or death.

Endangerment is a Class A Public Offense. (Ord. 12-38 § 15, 2012)

**9.12.190 Unlawful Failure to Report a Wound.**

(1) Unlawful failure to report a wound is the failure by an attending physician or other person to report to the Police Department his or her treatment of:

(a) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(b) 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.

(2) Unlawful failure to report a wound is a Class C Public Offense. (Ord. 94-08 § 2, 1994; Ord. 93-09 § 32, 1993; Ord. 83-75 § 2, 1983.)

**9.12.200 Criminal Use of Explosives.** (Ord. 99-24 § 35, 1999; Ord. 94-89 § 5, 1994; Ord. 94-08 § 2, 1994; Ord. 83-75 § 2, 1983.)

**9.12.210 Drawing a Weapon Upon Another.**

(a) Drawing a weapon upon another is the drawing of a pistol, revolver, knife or other deadly weapon upon another person by a person not an officer of the law in execution of his or her duty.

(b) It shall be a defense that the defendant was acting within the scope of K.S.A. 21-3211, K.S.A. 21-3212, K.S.A. 21-3213, K.S.A. 21-3215 or K.S.A. 21-3216.

(c) Drawing a weapon upon another is a Class A Public Offense. (Ord. 99-24 § 31, 1999)

**9.12.220 Sending or Placing a Hoax or Facsimile Explosive Device.**

(1) It shall be unlawful:

(a) for any person to send, give, mail or cause to be delivered any facsimile or hoax explosive device to another person, or cause such device to be placed in a public or private place; or

(b) for any person to possess any facsimile or hoax device with the intent to cause another person to fear for their personal safety or the safety of others.

(2) Sending or placing a hoax or facsimile explosive device is a Class A Public Offense. (Ord. 99-24 § 32, 1999)

**9.12.230 Carry Concealed Firearm; Prohibited Acts.**

A. The carrying of a concealed handgun shall not be prohibited in a municipal building unless such building has adequate security measures to ensure that no weapons are permitted to be carried into such building and the building is conspicuously posted in accordance with K.S.A. 2013 Supp. 75-7c10, and amendments thereto.

B. Any municipal building which contains both public access entrances and restricted access entrances shall provide adequate security measures at the public access entrances in order to prohibit the carrying of any weapons into such building.

C. No municipality shall prohibit an employee from carrying a concealed handgun at the employee's work place unless the building has adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2013 Supp. 75-7c10, and amendments thereto.

D. It shall not be a violation of the personal and family protection act for a person to carry a concealed handgun into a municipal building so long as that person has authority to enter through a restricted access entrance into such building which provides adequate security measures and the building is conspicuously posted in accordance with K.S.A. 2013 Supp. 75-7c10, and amendments thereto.

E. A municipality which provides adequate security measures in a municipal building and which conspicuously posts signage in accordance with K.S.A. 2013 Supp. 75-7c10, and amendments thereto, prohibiting the carrying of a concealed handgun in such building shall not be liable for any wrongful act or omission relating to actions of persons carrying a concealed handgun concerning acts or omissions regarding such handguns.

F. A municipality which does not provide adequate security measures in a municipal building and which allows the carrying of a concealed handgun shall not be liable for any wrongful act or omission relating to actions of persons carrying a concealed handgun concerning acts or omissions regarding such handguns.

G. Nothing in this act shall limit the ability of a corrections facility, a jail facility or a law enforcement agency to prohibit the carrying of a handgun or other firearm concealed or unconcealed by any person into any secure area of a building located on such premises, except those areas of such building outside of a secure area and readily accessible to the public shall be subject to the provisions of Subsection B.

H. Nothing in this Section shall limit the ability of the chief judge of each judicial district to prohibit the carrying of a concealed handgun by any person into courtrooms or ancillary courtrooms within the district provided that other means of security are employed such as armed law enforcement or armed security officers.

I. The governing body or the chief administrative officer, if no governing body exists, of a municipal building, may exempt the building from this Section until January 1, 2014, by notifying the Kansas attorney general and the law enforcement agency of the local jurisdiction by letter of such exemption. Thereafter, such governing body or chief administrative officer may exempt a municipal building for a period of only four years by adopting a resolution, or drafting a letter, listing the legal description of such building, listing the reasons for such exemption, and including the following statement: "A security plan has been developed for the building being exempted which supplies adequate security to the occupants of the building and merits the prohibition of the carrying of a concealed handgun." A copy of the security plan for the building shall be maintained on file and shall be made available, upon request, to the Kansas attorney general and the law enforcement agency of local jurisdiction. Notice of this exemption, together with the resolution adopted or the letter drafted, shall be sent to the Kansas attorney general and to the law enforcement agency of local jurisdiction. The security plan shall not be subject to disclosure under the Kansas open records act.

J. The governing body or the chief administrative officer, if no governing body exists, of any of the following institutions may exempt any building of such institution from this Section for a period of only four years by stating the reasons for such exemption and sending notice of such exemption to the Kansas attorney general:

1. A municipal-owned medical care facility, as defined in K.S.A. 65-425, and amendments thereto;
2. a municipal-owned adult care home, as defined in K.S.A. 39-923, and amendments thereto;
3. a community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto;
4. an indigent health care clinic, as defined by K.S.A. 2013 Supp. 65-7402, and amendments thereto; or
5. a postsecondary educational institution, as defined in K.S.A. 74-3201b, and amendments thereto, including any buildings located on the grounds of such institution and any buildings leased by such institution.

K. The provisions of this Section shall not apply to any building located on the grounds of the Kansas state school for the deaf or the Kansas state school for the blind.

L. For purposes of this Section:

1. “Adequate security measures” means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of any weapons into the municipal building, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes to ensure that weapons are not permitted to be carried into such building by members of the public. Adequate security measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options may be provided at public entrances.
2. The terms “municipality” and “municipal” are interchangeable and have the same meaning as the term “municipality” is defined in K.S.A. 75-6102, and amendments thereto, but does not include school districts.
3. “Restricted access entrance” means an entrance that is restricted to the public and requires a key, keycard, code, or similar device to allow entry to authorized personnel.
4. “State” means the same as the term is defined in K.S.A. 75-6102, and amendments thereto.
5. “Municipal building” means a building owned or leased by such public entity. It does not include a building owned by a municipality which is leased by a private entity whether for profit or not-for-profit or a building held in title by a municipality solely for reasons of revenue bond financing. (Ord. 15-66 § 25, 2015; Ord. 14-42 § 9, 2014; Ord. 07-135 § 11, 2007; Ord. 06-44 § 2, 2006.)

#### **9.12.240 Carry Unconcealed Firearm; Prohibited Acts.**

A. Provided that the building is conspicuously posted in accordance with rules and regulations adopted by the attorney general as a building where carrying an unconcealed firearm is prohibited, it shall be unlawful to carry an unconcealed firearm into such building.

B. Nothing in this section shall be construed to prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer’s duties.

C. It shall be a violation of this section to carry an unconcealed firearm if the building is posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection D. Any person who violates this section shall not be subject to a criminal penalty but may be subject to denial to such premises or removal from such premises.

D. 1. The attorney general shall adopt rules and regulations prescribing the location, content, size and other characteristics of signs to be posted on a building where carrying an unconcealed firearm is prohibited pursuant to subsection A. Such regulations shall prescribe, at a minimum, that:

- a. The signs be posted at all exterior entrances to the prohibited buildings;
- b. the signs be posted at eye level of adults using the entrance and not more than 12 inches to the right or left of such entrance;
- c. the signs not be obstructed or altered in any way;
- d. signs which become illegible for any reason be immediately replaced; and
- e. except as provided in paragraph 2, signs shall include the following, which shall be printed in large, conspicuous print: “The open carrying of firearms in this building is prohibited.

2. Such rules and regulations shall provide that the same signage used to prohibit the carrying of concealed handguns under K.S.A. 75-c01 et seq., and amendments thereto, may be used to also prohibit the carrying of unconcealed firearms. (Ord. 14-42 § 10, 2014.)

**9.12.250 Liability.** Neither the City, its employees, members of the City Council, employees from other cities or county, or volunteers, shall be liable for any wrongful act or omission relating to the actions of any person carrying a firearm, including employees of such municipality, concerning acts or omissions regarding such firearm. (Ord. 14-42 § 11, 2014.)

## CHAPTER 9.13

### OFFENSES AGAINST THE PUBLIC MORALS

#### Sections:

9.13.010	Promoting Obscenity.
9.13.020	Prohibition of Sex Bookstores, Coin-operated Motion Picture Devices Showing Sex Movies, and Eating or Drinking Establishments Featuring Nude or Semi-Nude Dancers, Strippers or Similar Entertainment.
9.13.030	Promoting Obscenity to Minors.
9.13.033	Material or Performances Harmful to Minors.
9.13.035	Promoting Sexual Performance by a Minor.
9.13.040	Gambling, Definitions.
9.13.050	Gambling.
9.13.060	Illegal Bingo Operation.
9.13.070	Commercial Gambling.
9.13.080	Permitting Premises to be Used for Commercial Gambling.
9.13.090	Dealing in Gambling Devices; Defense. (Repealed 2/16/99)
9.13.100	Possession of a Gambling Device; Defense.
9.13.110	Public Indecency.
9.13.120	Mixed Sex Nudity.
9.13.130	Cockfighting.

#### 9.13.010 Promoting Obscenity.

A. Promoting obscenity is knowingly or recklessly:

1. Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material; or obscene devices; or

2. 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

3. 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

4. Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

B. Evidence that materials or devices were promoted to emphasize their prurient appeal 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:

1. The materials or devices were promoted to emphasize their prurient appeal; or  
2. The person is not a wholesaler or promotes the materials or devices in the course of the person's business.

C. 1. Any material or performance is "obscene" if:

a. The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

b. The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of

- (1) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy, or
- (2) Masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of genitals; and

c. Taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value.

2. "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.

3. "Obscene Device" means a device, including a dildo or artificial vagina designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

4. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

5. "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.

D. It is a defense to a prosecution for obscenity that:

1. 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;

2. 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

3. 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 a part of or incident to an approved course or program of instruction at such school.

E. 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.

F. Promoting obscenity is a Class A Public Offense on conviction of the first offense. Conviction of second or subsequent offense is a felony. (Ord. 15-66 § 26, 2015; Ord. 08-111 § 6, 2008; Ord. 06-71 § 11, 2006; Ord. 06-20 § 1, 2006; Ord. 88-123 § 6, 1988; Ord. 87-149 § 9, 1987; Ord. 83-75 § 2, 1983.)

### **9.13.020 Prohibition of Sex Bookstores, Coin-operated Motion Picture Devises Showing Sex Movies, and Eating or Drinking Establishments Featuring Nude or Semi-nude Dancers, Strippers or Similar Entertainment.**

(1) Purpose and intent. It is declared to be the purpose and intent of this section to protect the public health, safety, welfare and morals of the community to promote the stability of property values, and impose restrictions upon those activities which pander to gross sexuality in a manner that would detract from the neighborhood, adversely affect the property values, increase crime and violence, and be repugnant to the morals of the community.

In recognition of the protections afforded to the citizens under the First and Fourteenth Amendments, it is not the intent of this section to inhibit freedom of speech or the press, but rather to deter those of low morals from imposing their lack of morals upon the rest of the community; and further recognizing that those parts of a community, which become centers of loose moral conduct, frequently become places of rowdiness, criminality, and indecent behavior. It is further the belief that just as advertising is designed to stimulate one's appetite for desiring goods or a service, an over-abundance of preoccupation with sexual displays or material arouses the appetites of those so preoccupied and encourages violations of the criminal statutes involving sexual offenses and is contrary to the health, safety and welfare of the community.

(2) Definitions.

(a) For the purpose of this section, "specified sexual activities" is defined as:

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(b) For the purposes of this section, "specified anatomical areas", is defined as:

- (1) Less than completely and opaquely covered:
  - (a) Human genitals, pubic region,
  - (b) Buttock, and
  - (c) Female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(c) For the purpose of this section, "eating or drinking establishments" are defined as: any premises which may be open to the general public in which any food as defined by K.S.A. 36-501 or any beverage is sold, distributed or consumed or any premises operated for profit by a corporation, partnership or individual, to which members of such establishment may resort for the consumption of food or any beverage and/or for entertainment.

(d) Book sales. No person, firm or corporation shall establish any bookstore or book department of a store in which a substantial or significant portion of its stock in trade is in books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".

(e) Mini-motion picture displays. No person, firm or corporation shall offer for viewing, for money consideration, movie or video films or pictures or other materials distinguished or characterized by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as herein specified for observation by patrons therein.

(f) Eating or drinking establishments. No person, firm or corporation shall feature or permit dancers or any other employee or persons to be engaged in specified sexual activities or to expose to view or display specified anatomical areas.

(g) Any person, firm or corporation violating any provision of this section shall be guilty of a Class A Public Offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (Ord. 93-09 § 33, 1993; Ord. 83-75 § 2, 1983.)

### **9.13.030 Promoting Obscenity to Minors.**

(1) Promoting obscenity to minors is promoting obscenity as defined by Section 9.13.010 and amendments thereto, 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) It shall be an affirmative defense to any prosecution under this section that:

(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 or apparently 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) Promoting obscenity to minors is a Class A Public Offense on conviction of the first offense. Conviction of second or subsequent offense is a felony. (Ord. 08-111 § 7, 2008; Ord. 06-20 § 2, 2006; Ord. 87-149 § 10, 1987; Ord. 83-75 § 2, 1983.)

### **9.13.033 Material or Performances 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 a part of the invited general public will be exposed to view such materials;
2. Sell, furnish, present, distribute or disseminate to a minor, or otherwise allowing 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; or
4. Display, sell, furnish, present, distribute or disseminate to a minor or otherwise allow a minor to view, with or without consideration, any device designed or marketed as useful primarily for the stimulation of human genital organs.

B. Violation of subsection A. is a Class A Public Offense.

C. Notwithstanding the provisions of K.S.A. 21-5204 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section that:

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 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 or instruction at such school.

2. The defendant is an officer, director, 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.1. or A.3., the defendant had reasonable cause to believe that the minor was eighteen (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 eighteen (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 of such minor's legal guardian.

7. With respect to prosecution for an act described by subsection 4., the minor (i) presented to the defendant a prescription indicating that the device designed or marketed as useful primarily for the stimulation of human genital organs was needed for medical or psychological therapy; or (ii) the device was viewed by the minor in the presence of such minor's parent or legal guardian.

D. As used in this section:

1. "Blinder Rack" means device in which material is displayed in such a manner that the lower two thirds 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, picture, figure, image, description, motion picture film, record, recording tape or videotape.

4. "Minor" means any unmarried person under eighteen (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 breasts 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, videotape, 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 a state of sexual stimulation or arousal.

E. 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.

F. If any provisions or clause of this section or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provisions or application, and to this end the provisions of this section are declared to be severable. (Ord. 14-63 § 18, 2014; Ord. 06-20 § 3, 2006; Ord. 93-09 § 34, 1993; Ord. 88-123 § 6, 1988.)

**9.13.035 Promoting Sexual Performance by a Minor.** Promoting sexual performance by a minor is promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

Promoting sexual performance by a minor is a Class A Public Offense. (Ord. 87-149 § 11, 1987.)

#### **9.13.040 Gambling, Definitions.**

A. 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:

1. 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;
2. 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;
3. A lottery as defined in this Section;
4. Any bingo game by or for participants managed, operated or conducted in accordance with the laws of the State of Kansas by an organization licensed by the State of Kansas to manage, operate or conduct games of bingo;
5. A lottery operated by the state pursuant to the Kansas Lottery Act; or
6. Any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas Pari-mutuel Racing Act;
7. Tribal gaming;
8. Charitable raffles as defined by Section 3 of Senate Sub. For HB 2155, and amendments thereto; or
9. A fantasy sports league as defined in this Section.

B. A "lottery" is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. As used in this Subsection, a lottery does not include a lottery operated by the state pursuant to the Kansas Lottery Act or tribal gaming.

C. "Consideration" as used in this Section means anything which is a commercial or financial advantage to the promoter or a disadvantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. As used in this Subsection, consideration does not include:

1. sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the State of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the State of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of Subsection (c) or (d) of Section 501 of the Internal Revenue Code of 1986 and as set forth in K.S.A. 79-4701 and amendments thereto;
2. Sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas Lottery Act;
3. Sums of money paid by or for participants in any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas Pari-mutuel Racing Act; and
4. Sums of money paid by or for a person to participate in tribal gaming.

D. "Fantasy sports league" means any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

1. All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;
2. all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real-world sporting events; and
3. no winning outcome is based:
  - a. On the score, point spread or any performance or performances of any single real-world team or any combination of such teams; or
  - b. solely on any single performance of an individual athlete in any single real-world sporting event.

E. 1. "Gambling device" means:

- a. Any so-called "slot machine" or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and (i) which when operated may deliver, as a result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property.
- b. Any other machine, mechanical device, electronic device or other contrivance (including, but not limited to, roulette wheels and similar devices) which is equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and (i) which when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

c. Any subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or

d. Any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet.

The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

2. Gambling device does not include:

a. Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

b. Any machine, mechanical device, electronic device or other contrivance, such as a coin-operated bowling alley, shuffleboard, marble machine (a so called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (i) which when operated does not deliver, as a result of chance, any money, or (ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;

c. Any so-called claw, crane, or digger machine and similar devices which are designed and manufactured primarily for use at carnivals or county or state fairs; or

d. Any machine, mechanical device, electronic device or other contrivance used in tribal gaming.

F. A "gambling place" is any place, room, building, vehicle, tent or location which is used for any of the following:

Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

G. "Tribal gaming" has the meaning provided by K.S.A. 74-9802 and amendments thereto.

H. "Tribal gaming commission" has the meaning provided by K.S.A. 74-9802 and amendments thereto. (Ord. 15-66 § 27, 2015; Ord. 06-20 § 4, 2006; Ord. 89-151 § 4, 1990; Ord. 83-75 § 2, 1983.)

**9.13.050 Gambling.** 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 pay a gambling device.

Gambling is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

### **9.13.060 Illegal Bingo Operation.**

(1) Illegal bingo operation is the management, operation or conduct of games of bingo in violation of the laws of the State of Kansas pertaining to the regulation, licensing and taxing of games of bingo or rules and regulations, adopted pursuant thereto.

(2) Illegal bingo operation is a Class A Public Offense. (Ord. 06-20 § 5, 2006; Ord. 83-75 § 2, 1983.)

### **9.13.070 Commercial Gambling.** Commercial gambling is:

- (a) Operating or receiving all or part of the earnings of a gambling place; or
- (b) Receiving, recording, or forwarding bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possessing facilities to do so; or
- (c) For gain, becoming a custodian of anything of value bet or offered to be bet; or
- (d) Conducting a lottery, or with intent to conduct a lottery possessing facilities to do so; or
- (e) Setting up for use or collecting the proceeds of any gambling device.

Commercial gambling is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

### **9.13.080 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 offender's control.

Permitting premises to be used for commercial gambling is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

### **9.13.090 Dealing in Gambling Devices; Defense.** Repealed 2/16/99. (Ord. 99-24 § 35, 1999; Ord. 89-151 § 5, 1990; Ord. 83-75 § 2, 1983.)

### **9.13.100 Possession of a Gambling Device; Defense.**

(1) 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.

(2) 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.

(3) It shall be a defense to a prosecution under this section that the gambling device is possessed or under custody or control of a manufacturer registered under the Federal Gambling Devices Act of 1962 (15 U.S.C. 1171, et seq.) or a transporter under contract with such manufacturer with intent to transfer for use:

- (a) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas Lottery Commission;
- (b) by a licensee of the Kansas Racing Commission as authorized by law and rules and regulations adopted by the Commission; or
- (c) in a state other than the State of Kansas; or
- (d) in tribal gaming.

(4) Possession of a gambling device is a Class B Public Offense. (Ord 06-20 § 6, 2006; Ord 89-151 § 6, 1990; Ord. 83-75 § 2, 1983.)

### **9.13.110 Public Indecency.**

(1) It shall be unlawful for any person to knowingly or intentionally appear in a state of nudity in a public place.

(2) "Nudity" means the showing of the human male or female: genitals, pubic hair, buttocks, anus, anal regions, natal cleft, perineum, or pubic hair region with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering below a point immediately above the top of the areola; the showing of the covered male genitals in a discernibly turgid state; the exposure of any device, costume, or covering which gives the appearance of or simulates the genitals, pubic hair, natal cleft, perineum, anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast which device simulates and give the realistic appearance of nipples and/or areola.

(3) "Public Place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious, social, fraternal or similar organizations. Premises used solely as a private residence whether permanent or temporary in nature shall not be deemed a public place. Public place shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor shall it include a person appearing in a state of nudity in a modeling class operated by: (1) a proprietary school, licensed by the State; a college, junior college or university supported entirely or partly by taxation; or (2) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation or an accredited private college.

(4) The prohibition set forth in subsection (1) shall not apply to:

- (a) Any child under ten (10) years of age; or
- (b) Any individual exposing a breast in the process of breastfeeding an infant under three (3) years of age.
- (c) Any theatrical production performed in a theater by a professional or amateur theatrical or musical company which has serious artistic merit.

(5) Public Indecency is a Class B Public Offense. (Ord 00-102 § 4, 2000.)

### **9.13.120 Mixed Sex Nudity.**

(1) It is unlawfully for any person to engage in the business of providing saunas, bathing, soaking or hot tubs, showers, whirlpools or exercise equipment where persons of both sexes may use the same facility or separate facilities in view of each other, at the same time while in the nude.

(2) This section shall not apply to licensed hotels or motels which provide tubs or showers in private hotel or motel rooms for incidental use by persons who rent such rooms. (Ord 07-135 § 12, 2007.)

**9.13.130 Cockfighting.**

A. Unlawful possession of cockfighting paraphernalia is possession of spurs, gaffs, swords, leather training spur covers, or anything worn by a gamecock during a fight to further the killing power of such gamecock.

B. Unlawful attendance of cockfighting is entering or remaining on the premises where the unlawful conduct of cockfighting is occurring. (K.S.A. 21-431 9, as amended)

Unlawful possession of cockfighting paraphernalia is a Class A violation.

Unlawful attendance of cockfighting is a Class B violation. (Ord. 09-59 § 14, 2009)

## CHAPTER 9.14

### MISCELLANEOUS PROVISIONS

#### Sections:

9.14.010	False Membership Claim.
9.14.020	Unlawful Dog Fighting.
9.14.030	Open Burning Prohibited.
9.14.040	Burning on Streets Prohibited.
9.14.050	Obstructing Fire Hydrant.
9.14.060	Unattended Children in Vehicles.
9.14.070	Obstructing Streets or Sidewalks.
9.14.080	Encroachments Upon Public Lands.
9.14.090	Train Blocking Crossings. (Repealed 2/16/93)
9.14.100	Urination or Defecation in Public Prohibited.
9.14.110	Urban Deer Management
9.14.120	Traffic Control Sign Preemption Devices. (Repealed 12/4/07)
9.14.130	Alcohol without Liquid Prohibited

**9.14.010 False Membership Claim.** A false membership claim is falsely representing oneself to be a member of a fraternal, veteran's organization or a private club, licensed to serve alcoholic liquors for consumption upon the premises, pursuant to the laws of the State of Kansas. False membership claim is a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

#### **9.14.020 Unlawful Dog Fighting.**

A. Unlawful dog fighting is:

1. Causing, for amusement or gain, any dog to fight with or injure another dog;
2. Knowingly permitting such fighting or injuring on premises under one's ownership, charge or control; or
3. Training, owning, keeping, transporting or selling any dog for the purpose or with the intent of having it fight with or injure another dog.

B. Unlawful possession of dog fighting paraphernalia is possession of any braking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is intended for use in the unlawful conduct of dog fighting.

C. Unlawful attendance of dog fighting is entering or remaining on the premises where the unlawful conduct of dog fighting is occurring.

D. Unlawful conduct of dog fighting is a Class A Public Offense.

E. Unlawful possession of dog fighting paraphernalia is a Class A Public Offense.

F. Unlawful attendance of dog fighting is a Class B Public Offense. (Ord. 09-59 § 10, 2009; Ord. 93-09 § 35, 1993; Ord. 83-75 § 2, 1983.)

#### **9.14.030 Open Burning Prohibited.**

(a) It shall be unlawful for any person to dispose of refuse by open burning or to cause, allow or permit open burning within the city.

(b) This section shall apply to the disposal of trade wastes or any refuse by open burning by commercial facilities as well as residential or private entities. Open burning is an Unclassified Public Offense. (Ord. 83-75 § 2, 1983.)

**9.14.040 Burning on Streets Prohibited.** No person shall burn any combustible matter of any kind on any paved street within the city. No person shall throw or place any gasoline, kerosene or any substance likely to damage any paved street upon any street within the city. Burning on streets is an Unclassified Public Offense. (Ord. 83-75 § 2, 1983.)

**9.14.050 Obstructing Fire Hydrant.** No person shall place or cause to be placed upon or about any fire hydrant any rubbish, building material, fence or other obstruction in any manner to obstruct, hinder or delay the Fire Department in the performance of its duties. Nor shall any person hitch or cause to be hitched to any fire hydrant any animal, nor fasten to the hydrant any guy rope or brace, nor back or stand any wagon, truck, automobile or other vehicle within fifteen (15) feet of any such hydrant. Obstructing a fire hydrant is an Unclassified Public Offense. (Ord. 83-75 § 2, 1983.)

**9.14.060 Unattended Children in Vehicles.** No child under the age of eighteen (18) years of age shall be locked in an unattended vehicle by any adult unless such child has the present ability to release himself from such vehicle. Violation of this section shall be an Unclassified Public Offense. (Ord. 83-75 § 2, 1983.)

**9.14.070 Obstructing Streets or Sidewalks.** It shall be unlawful for any person to obstruct in any manner any street, alley or sidewalk within the city. This section applies to the placing of benches or other obstructions upon sidewalks. Obstructing streets or sidewalks is an Unclassified Public Offense. (Ord. 83-75 § 2, 1983.)

**9.14.080 Encroachments Upon Public Lands.**

(a) **Violation.** It is unlawful for any person to install, erect, construct, maintain or permit an encroachment structure (as defined herein) or to place manmade or natural materials (as defined in Section 12.21.010 of the Olathe Municipal Code) in, upon, under or over public lands, including, but not limited to, a public street, public highway, public right-of-way, public building, public park(s) and recreational area(s), or other public property. It shall be the duty and responsibility of any person responsible for the installation, erection, construction, or maintenance of an encroachment structure to remove such structures from public lands and restore the public lands to its original condition. In addition, any encroachment that is not removed as provided by this section is hereby declared a nuisance.

(b) **Definition.** “Encroachment structures” shall include but not be limited to any tower, pole, poleline, pipe, pipeline, fence, billboard stand or building, retaining wall, play court, play field, playground equipment, irrigation structure or sprinkler system, trench, storage structure, garden, landscaping, trampoline, gazebo, swimming pool, curbing, paving, or other object, structure, or personal property.

(c) **Application.** This section shall not apply to any encroachment structure installed, erected, constructed or maintained with approval of the Governing Body.

(d) **Right of Entry.** Any authorized officer or agent of the City, pursuant to this chapter, shall be allowed to enter onto any land within the City limits to investigate violations of this chapter or for the abatement of violations pursuant to this chapter.

(e) **Responsible Party.** The owner, representative, tenant or occupant of real property to which the encroachment structure is appurtenant, or the person responsible for installing, erecting, constructing or maintaining encroachment structures on public lands shall be responsible for the abatement of any unlawful acts defined by Section 9.14.080 (a).

(f) **Public Officer; Notice to Abate.** The City Manager shall designate a public officer to be charged with the administration and enforcement of this section. The public officer shall authorize the investigation of violations of this section. If it is determined that a violation of this section exists, then the officer or authorized designee shall send a notice to remove the encroachment structure to the responsible party by certified mail, return receipt requested, to the last known address of such responsible party.

(g) **Notice Requirements.** The notice to remove the encroachment structure shall state:

(1) A common and/or legal description of the property adjacent to the encroachment structure and aerial photo of such property and the encroachment structure;

(2) The encroachment is in violation of the provisions of this section;

(3) A description of the nature of the violation that would reasonably allow the responsible party to determine the nature of the violation to allow for self-abatement;

(4) The responsible party [in accordance with Section 9.14.080 (e)] shall have ten (10) days from the date of the mailing of the notice to either remove and abate the violation of this section or request a hearing before the City's designated representative on the matter;

(5) Upon written request received prior to the expiration of the notice period, the responsible party may request a hearing before a designated hearing officer of the City;

(6) If the responsible party fails to correct the violation or request a hearing within ten (10) days of the mailing of notice, the City or its authorized agent will remove and abate the violation of this section by reasonable means and assess the costs of removal, including reasonable administrative costs, against such person. Notice of the total cost of such abatement shall be provided to the responsible party by certified mail, return receipt requested, or personal service. Total costs include, but are not limited to boundary surveys, construction permit fees, engineering or architectural fees, contracts, City staff time, demolition, removal, restoration, two-year maintenance costs, legal fees and accrued interest if payment is not received within thirty (30) days of invoice;

(7) If the total costs of removal are not paid within thirty (30) days, the costs will be added to the property tax of the responsible party as a special assessment in accordance with Charter Ordinance No. 71 ; and

(8) If any special assessments levied by the City in accordance with this chapter and Charter Ordinance No. 71 remain unpaid for a period of one (1) year or more after their initial levy, the City may collect the amount due in the same manner as a personal debt of the property owner to the City by bringing an action in the Johnson County District Court. Such actions may be maintained, prosecuted and all proceedings taken, including any award of post-judgment interest, in accordance with K.S.A. 16-204, and amendments thereto, to the same effect and extent as for the enforcement of an action for debt. All provisional remedies available in such actions shall be available to the City in the enforcement of the payment of such obligations. In such actions the City also shall be entitled to recover interest at the rate provided in K.S.A. 79-2968, and amendments thereto, from and after the date a delinquency occurs in the payment of special assessments levied under this chapter. The City may pursue collection both by levying a special assessment and in the manner provided by this section, but only until the full cost and any applicable interest has been paid in full. The City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interest, court costs, attorneys' fees and administrative costs have been paid in full.

(h) **Abatement of Immediate Threat to the Public Health, Safety, and/or Welfare.**

When in the opinion of the public officer an immediate threat to the public health, safety, and/or welfare exists as a result of the existence and condition of an encroachment structure such officer may erect barricades or cause the encroachment structure to be taken down or otherwise made safe without delay and such action may, under such circumstances, be taken without prior notice to or hearing of the owners, agents or lienholders. The costs of any such action shall be assessed and paid in the manner set out in this section.

(i) **Abatement Hearing.** If the responsible party makes a written request for hearing within the notice period, then the City shall immediately schedule a hearing during a regular business day within ten (10) calendar days from the receipt of the written request. The hearing shall be conducted by a designated hearing officer appointed by the City Manager who shall not be a subordinate of the officer who issued the notice of removal or conducted the investigation. The hearing officer shall receive evidence, review the investigation and prepare a written order. The order shall be sent by certified mail to all relevant parties within ten (10) days of the hearing (unless otherwise stated at the hearing) and prior to the City taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement or orders as deemed necessary by the hearing officer.

In the event that the property boundary is disputed, the property owner may, at the owner's expense, commission a boundary survey by a licensed and qualified surveyor. If there is a bona fide dispute as to the boundary, the City shall wait a reasonable time for the survey to be completed.

(j) **Abatement by City.** If the responsible party fails to request a hearing and fails to remove the violations within the notice period, then the City shall go onto the property to remove the violation in a reasonable manner. The City shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to remove the violations. The City may use its own employees or contract for services to abate violations of this section.

(k) **Action in Municipal Court.** If an authorized public officer determines that a violation of this section exists, the officer may file a complaint with the Olathe Municipal Court for such violation. No other procedures are required as a prerequisite to the filing of a complaint.

(l) **Penalty.**

(1) Violation of this section shall be a Class B Public Offense.

(2) Prosecution of any offender under this section does not limit the City's right to pursue assessment or collection of costs as stated in this section, or by other laws.

(3) Each day that any violation of this section continues shall constitute a separate offense.

(4) The City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing any provision of this section and to seek civil penalties, and to abate nuisances maintained in violation thereof, and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceedings to prevent such unlawful nuisance or condition. (Ord. 13-23 § 1, 2013; Ord. 88-123 § 7, 1988; Ord. 83-75 § 2, 1983.)

**9.14.090 Trains Blocking Crossings.** Repealed 2/16/93. (Ord. 93-09 § 38, 1993; Ord. 83-75 § 2, 1983.)

**9.14.100 Urination or Defecation in Public Prohibited.** It is unlawful for any person to urinate or defecate upon any street, highway, alley, or upon the premises of any public place or building, or upon any private property in open view of any person, except if such public place, building or private property has been designated and designed as a restroom, lavatory or water closet. Urination in public is a Class C Public Offense. (Ord. 14-63 § 19, 2014; Ord. 83-75 § 2, 1983.)

**9.14.110 Urban Deer Management.** It shall be lawful to hunt deer in Olathe with a bow and arrow under the following circumstances:

(1) The use of a bow and arrow to hunt deer will only be allowed on property approved by the Governing Body. All requests for the hunting of deer with a bow and arrow shall be submitted to the Governing Body by August 1st of each calendar year and, upon meeting the requirements established in subsection (2) and (3) of this Ordinance, the Governing Body may approve by resolution the property for the hunting of deer by bow and arrow.

(2) Prior to the issuance of a City Permit, the property owner must provide to the Olathe Police Department a written report from the Kansas Department of Wildlife and Parks that makes a determination that the property owner has a deer overpopulation, that the deer have caused property damage and that they would recommend bow hunting to reduce the deer population and property damage.

(3) The City of Olathe Police Department is authorized to issue City deer hunting permits. A permit will not be issued and no hunting will be allowed without possessing the following and meeting the conditions listed below:

(a) A Deer Hunting License and a Kansas Deer Tag issued by the State of Kansas (the "State Permit").

(b) Only the owner of the designated property or persons with the owner's written permission shall be eligible to receive a City Permit to bow hunt.

(c) The application for a City Permit shall be accompanied by a copy of the State License, Deer Tag and an application fee. The application fee shall be adopted by the Governing Body of the City by resolution.

(d) A Permit shall not be approved unless the Chief of Police or his or her designee finds that the hunting will be in compliance with the ordinance.

(e) Hunting shall only be by those persons listed on the City Permit.

(f) No person shall make any payment to any person for the right to hunt or be listed on the State License and City Permit.

(g) Persons shall at all times when hunting, pursuant to the City Permit, carry valid photo identification and a copy of the City Permit and the State License.

(h) No arrow or other object used to hunt deer pursuant to the City Permit may be discharged or projected at such an angle or distance as to land on public or private property not described in the Permit.

(i) Issuance of the City Permit may be limited to a time and area more restrictive than the State License allows.

(j) Any activity performed in conjunction with the issuance of the Permit, including but not limited to field dressing or other handling of carcass, must occur on the property specified in the City Permit.

(k) The transportation of a carcass along any public right-of-way, is prohibited, unless it is covered and transported in a motor vehicle.

(l) All hunting shall be conducted from an elevated tree stand that is fifteen (15) feet or more in height and faces the interior of the property identified by resolution for deer hunting and is approved by the Police Department. The tree stands and shooting lanes will be located in such a way as to direct arrows to the interior of the property and to prevent any arrow from landing closer than fifty (50) yards to any property line identified by resolution for deer hunting.

(m) No bow hunting will be allowed unless the Police Department establishes a marked zone that clearly defines where the bow hunting can occur including marking the tree stands and shooting lanes.

(n) No bow hunting will be allowed if any person that has been granted a State License and City Permit has consumed cereal malt beverages, alcoholic liquor or any controlled substances defined in Chapter 9.17 of the Olathe Municipal Code two hours prior to hunting or during hunting activities.

- (o) All adjacent property owners must be notified in writing that hunting will occur.
- (p) Bow hunting will be allowed one half hour before sunrise to one half hour after sunset.
- (q) No City Permit will be issued to any person under the age of eighteen (18).
- (r) No person shall leave the property identified by resolution for deer hunting to pursue any wounded deer.
- (s) It shall be the responsibility of a bow hunter to inform the Police Department by telephone that a wounded deer has left the property identified by resolution for deer hunting and to inform the Police Department of the deer's location.
- (t) All wounded deer that exit the property identified by resolution for deer hunting shall be retrieved by the Olathe Police Department. Upon retrieval, the Police Department will allow the bow hunter to take possession of the deer as long as the deer was hunted in compliance with this Ordinance.
- (u) The Olathe Police Department, the Olathe Park Ranger and the State Wildlife official shall have access to the property during all hunting hours.
- (v) All property owners shall submit to the Olathe Police Department a written report within thirty (30) days of the completion of the permit period indicating the number of deer harvested, specifying the number of antlered and antlerless deer, the date the deer were harvested and the person that harvested the deer.
- (w) At no time can a hunter remove more antlered deer than antlerless deer on the property identified by resolution for deer hunting in compliance with this ordinance.
- (x) Whenever deer hunting will take place adjacent to public property, open space, trails or easements, or adjoining private property, the permittee shall post signs warning the public that deer hunting is taking place. Such signs shall be posted prior to hunting and shall be approved by the Police Chief.
- (y) Permits to bow hunt in the City shall correspond to the archery and firearm season as determined by the Kansas Department of Wildlife and Parks.
- (z) City permits are not transferable.
- (aa) Failing to comply with the ordinance requirements may result in the denial of future permits.

(4) The Police Department may revoke the City Hunting Permit if a hunter violates any part of this ordinance. Upon revocation of the Permit, the permittee may appeal the decision to the City Manager.

(5) This ordinance shall supercede all other ordinances with which it may conflict.

(6) Violation of this Section is a Class C Public Offense. (Ord. 09-43 § 1, 2009; Ord. 05-52 § 1, 2005; Ord. 04-120 § 1, 2004; Ord. 04-57 § 1, 2004; Ord. 03-82 § 1, 2003; Ord. 02-103 § 1, 2002.)

**9.14.120 Traffic Control Signal Preemption Devices.** Repealed 12/4/07 (Ord. 07-135 § 13, 2007; Ord. 04-85 § 4, 2004)

**9.14.130 Alcohol without Liquid Prohibited.**

- (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) Violation of this section is a Class A Public Offense.

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. (Ord. 05-58 § 2, 2005)

## CHAPTER 9.15

### OFFENSES AFFECTING BUSINESS AND COMMERCE

#### Sections:

- 9.15.010 Debt Adjusting.
- 9.15.020 Deceptive Commercial Practices.
- 9.15.030 Knowingly Employing an Illegal Alien.
- 9.15.040 Wasting Utilities.
- 9.15.050 Unlawful Tampering with Sewers.

#### **9.15.010 Debt Adjusting.**

(1) Debt adjusting is engaging in the business of making contracts, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaging in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors.

(2) The provisions of this act shall not apply to those situations involving debt adjusting, as defined here, which is incidental to the lawful practice of law in this state.

(3) Debt adjusting is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

#### **9.15.020 Deceptive Commercial Practices.**

(1) A deceptive commercial practice is the act, use or employment by any person of any deception, fraud, false pretense, false promise, or knowing misrepresentation of a material fact, with the intent that others shall rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.

(2) The following definitions shall be applicable to this section:

(a) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services.

(b) "Person" means any natural person or his legal representative, partnership, corporation (domestic or foreign), company, trust business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

(c) "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

(3) This section shall not apply to the owner or publisher of any newsletter, magazine, or other printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement, when such owner, publisher or operator had no knowledge of the intent, design or purpose of the advertisement.

(4) A deceptive commercial practice is a Class A Public Offense. (Ord. 83-75 § 2, 1983.)

#### **9.15.030 Knowingly Employing an Illegal Alien.**

(a) Knowingly employing an alien illegally within the territory of the United States is the employment of such alien within the City of Olathe by an employer who knows such person to be illegally within the territory of the United States. The provisions of this section shall not apply to aliens who have entered the United States illegally and thereafter are permitted to remain within the United States, temporarily or permanently, pursuant to federal law.

(b) Knowingly employing an alien illegally within the territory of the United States is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.15.040 Wasting Utilities.** Wasting water, gas, etc., is willfully causing the waste of any water, gas, steam or hot air conveyed by or through any pipe without the consent of the person owning or having control of such pipe.

Wasting utilities is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

**9.15.050 Unlawful Tampering with Sewers.** It shall be unlawful for any person willfully to injure or destroy, or attempt to injure or destroy any public sewer, or to molest any sewer or any part thereof by removing the cover of any flush tank, manhole or any part of the public sewer system of the city without authority.

Unlawful tampering with sewers is a Class B Public Offense. (Ord. 83-75 § 2, 1983.)

## CHAPTER 9.16

### LAW ENFORCEMENT COMMUNICATIONS SECURITY

#### Sections:

- 9.16.010 Police Monitors.
- 9.16.020 Police Monitors Permits Required.
- 9.16.030 Permits not Transferrable.
- 9.16.040 Police Communication.

**9.16.010 Police Monitors.** It is unlawful for any person to install, equip or operate any motor vehicle within this city with a police monitor, unless such motor vehicle is being used by the federal, state, county or city government in the conduct of official business, a law enforcement officer, or unless a permit for such police monitor has been issued as hereinafter prescribed. "Police monitor" means any high frequency radio receiving set, either permanently installed or portable, capable of receiving or intercepting any signal, message or communication sent out by any law enforcement radio station. "Person" means any person, firm, partnership, corporation, association or any other organization.

Violation of this section shall be a Class C Public Offense. (Ord. 83-75 § 2, 1983.)

#### **9.16.020 Police Monitors--Permits Required.**

(a) Any person desiring a permit to operate a police monitor in a motor vehicle in this city shall file an application with the Police Department in writing, stating the name, address, telephone number, date of birth, occupation, criminal history and other identification data of the applicant; the license number, engine number and make and model of the motor vehicle in which it is desired to install such police monitor; a recent photograph of the applicant and his fingerprints. The application shall also state the reason(s) why it is desired to install such police monitor. The applicant shall pay an annual fee for administrative costs of processing said application which shall be submitted at the time an application is filed. Such fee shall be adopted by the Governing Body of the City by resolution.

(b) If the Police Department finds that the police monitor will be used for a lawful purpose, the department shall issue a permit authorizing installation and use of the police monitor. A new application must be filed and a new permit obtained for each year a police monitor is used. The permit must be carried by the permittee at all times such person is operating the motor vehicle which is equipped with or which contains an authorized police monitor.

(c) The Police Department shall not issue a permit to any person having been convicted, within the immediately preceding five (5) year period or subject to probation or parole at time of application, for commission of any of the following offenses:

- (1) A felony;
- (2) Burglary;
- (3) Theft or Larceny;
- (4) Breaking and Entering; or
- (5) Prowling.

(d) The Police Department shall not issue a permit to any person submitting false statements or representations in an application required pursuant to this section. (Ord. 02-137 § 1, 2002; Ord. 00-120 § 1, 2000; Ord. 83-75 § 2, 1983.)

**9.16.030 Permits Not Transferrable.** Any permit issued under the provisions of Section 9.16.020 shall not be transferable to any other person and any police monitor authorized to be installed and used by any such permit shall not be placed in any other motor vehicle than the one described in the application for such permit without first filing a new application and securing a new permit. In case of a change in the license number of any motor vehicle for which a permit has been issued, the owner of such vehicle shall inform the Police Department of such change within five (5) days after the change is made. Provided, that no fee shall be charged when a permittee requests a new permit to have a previously authorized monitor placed in a different motor vehicle. (Ord. 00-120 § 2, 2000; Ord. 83-75 § 2, 1983.)

**9.16.040 Police Communication.** It is unlawful for any person, other than city employees and Police Department officers in the line of duty, to respond or answer police radio calls, or to in any way interfere with police radio calls, or to in any way interfere with police officers answering such radio police calls. (Ord. 00-120 § 3, 2000; Ord. 83-75 § 2, 1983.)

## CHAPTER 9.17

### CONTROLLED SUBSTANCES

#### Sections:

- 9.17.010 Possession of Marijuana; Controlled Substance; Penalties.  
9.17.020 Control of Instruments Used for Inhaling or Ingestion of Controlled Substances or Drugs and Control of Simulated Drugs and Simulated Controlled Substances (Repealed).  
9.17.030 Use or Possession of Controlled Substances, Simulated Controlled Substances and Drug Paraphernalia; Penalties.  
9.17.040 Inhalation of Certain Elements.  
9.17.050 Unlawfully Obtaining a Prescription-Only Drug.

#### **9.17.010 Possession of Marijuana; Controlled Substance; Penalties.**

(a) It shall be unlawful for any person to manufacture, possess, have under such person's control, administer, deliver, distribute, dispense or compound marijuana.

(b) As used in this section, '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, 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.

(c) Upon a conviction, plea of no contest or guilty for violation of this section, the municipal judge shall order such person 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 not to exceed the fee established by that statute for such evaluation. A diversion agreement based upon a violation of this section shall also require a person 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 not to exceed the fee established. If the judge finds that person is indigent, the fee may be waived.

(d) Any person who violates this section shall be guilty of a Class A Public Offense. (Ord. 99-24 § 33, 1999; Ord 89-151 § 7, 1990; Ord. 83-75 § 2, 1983.)

**9.17.020 Control of Instruments Used for Inhaling or Ingestion of Controlled Substances or Drugs and Control of Simulated Drugs and Simulated Controlled Substances.** Repealed. (Ord. 89-151 § 15, 1990; Ord. 83-75 § 2, 1983.)

#### **9.17.030 Use or Possession of Controlled Substances, Simulated Controlled Substances and Drug Paraphernalia; Penalties.**

A. Definitions. As used in this section:

1. "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

2. "Deliver" or "delivery" means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.

3. "Drug paraphernalia" means all equipment, and materials of any kind which are used or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substance Act. "Drug paraphernalia" shall include, but is not limited to:

- a. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which controlled substance can be derived.
- b. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
- c. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.
- d. Testing equipment used or intended for use in identifying or analyzing the strength, effectiveness or purity of controlled substances.
- e. Scales and balances used or intended for use in weighing or measuring controlled substances.
- f. Diluents and adulterants such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.
- g. Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana.
- h. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.
- i. Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances.
- j. Containers and other objects used or intended for use in storing or concealing controlled substances.
- k. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.
- l. Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

- (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
- (2) Water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;
- (3) Carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;
- (4) Smoking and carburetion masks;
- (5) Roach clips, objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;
- (6) Miniature cocaine spoons and cocaine vials;
- (7) Chamber smoking pipes;
- (8) Carburetor smoking pipes;
- (9) Electric smoking pipes;
- (10) Air-driven smoking pipes;
- (11) Chillums;

- (12) Bongs;
- (13) Ice pipes or chillers;
- (14) Any smoking pipe manufactured to disguise its intended purpose;
- (15) Wired cigarette papers; or
- (16) Cocaine freebase kits.

4. "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership, association or other legal entity.

5. "Simulated Controlled Substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

B. Except as authorized by the Uniform Controlled Substances Act, K.S.A. 65-4101, et. seq., or any amendments thereto, and as defined therein, it is unlawful for any person to manufacture, possess, have under such person's control, ingest, inhale, inject or otherwise introduce into the body, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell, any controlled substance.

C. In determining whether an object is drug paraphernalia, a court or other authority shall consider in addition to all other logically relevant factors, the following:

- 1. Statements by an owner or person in control of the object concerning its use.
- 2. Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.
- 3. The proximity of the object in time and space, to a direct violation of the uniform controlled substances act.
- 4. The proximity of the object to controlled substances.
- 5. The existence of any residue of controlled substances on the object.
- 6. Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person, the owner or person in control of the object knows or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act. The innocence of an owner or person in control of the object as to a direct violation of the Uniform Controlled Substances Act shall not prevent a finding that the object is intended for use as drug paraphernalia.
- 7. Oral or written instructions provided with the object concerning its use.
- 8. Descriptive materials accompanying the object which explain or depict its use.
- 9. National and local advertising concerning the object's use.
- 10. The manner in which the object is displayed for sale.
- 11. Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of tobacco products.
- 12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- 13. The existence and scope of legitimate uses for the object in the community.
- 14. Expert testimony concerning the object's use.
- 15. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia.
- 16. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

The fact that the 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.

D. Sale and Display Prohibited.

1. It shall be unlawful for any person, firm or corporation to sell, offer to sell, dispense, give away or display any instrument or simulated controlled substance or simulated drug in or upon any premises which:

- a. Are premises open to minors;
- b. Are places of display; or
- c. Are in close proximity to a school.

Provided, however, that display of any such items at a place of display for educational or scientific purposes shall not be unlawful.

2. A violation of Section 9.17.030 D. is declared to be a public nuisance and shall be subject to abatement as provided by law.

E. No person shall use or possess with intent to use:

1. Any simulated controlled substances; or
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 Substance Act.
3. Any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance is a violation of the Uniform Controlled Substance Act.
4. Upon a conviction, plea of no contest or guilty for violation of this section by a person 18 or more years of age, but less than 21 years of age, the municipal judge shall order such person 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 not to exceed the fee established by that statute for such evaluation. If the judge finds that person is indigent, the fee may be waived. Violation of E. 1. and E. 2. is a Class A Public Offense. Violation of E. 3. is a Class A Public Offense if it involves the possession of drug paraphernalia for the planting, propagation, growing or harvesting of less than five (5) marijuana plants.

F. No person shall deliver, possess with intent to deliver, manufacture with intent to deliver or cause to be delivered within this City:

1. 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 K.S.A. 65- 416, and amendments thereto. Violation of this section is a Class A Public Offense.

G. No person shall place or cause to be placed in any newspaper, magazine, handbill or other publication distributed in this state, or received by mail in this state, any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of:

1. A simulated controlled substance; or
2. objects designed or intended for use as drug paraphernalia.

H. No person shall knowingly deliver or cause to be delivered in this City any substance which is not a controlled substance:

1. Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance;

2. Under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance; or

3. If any one of the following factors is established, there shall be a presumption that delivery of a substance was under circumstances which would give a reasonable person to believe that a substance is a controlled substance:

a. The substance was packaged in a manner normally used for the illegal delivery of controlled substances.

b. The delivery of the substance included an exchange of or demand for money or other consideration for delivery of the substance, and the amount of the consideration was substantially in excess of the reasonable value of the substance.

c. The physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

4. This section shall not control if any person 18 or more years of age who violates this section by delivering or causing to be delivered in this state a substance to a person under 18 years of age and who is at least three years older than the person under 18 years of age to whom the delivery is made.

5. Violation of this section is a Class A Public Offense. (Ord. 12-38 § 12, 2012; Ord. 09-59 § 11, 2009; Ord. 06-71 § 12, 2006; Ord. 89-151 § 8, 1990; Ord. 87-149 § 12, 1987.)

#### **9.17.040 Inhalation of Certain Elements.**

A. It shall be unlawful for any person within the City limits to:

1. Smell or inhale the Toxic Vapors from any elements, compounds or combinations of both elements and compounds as defined in subsection B of this section, for the purpose of causing a condition of euphoria, exhilaration, intoxication, hallucination, inebriation, excitement, stupefaction or the dulling of the brain or nervous systems;

2. Use or possess for the purpose of using any of the elements, compounds or combination of both elements and compounds as defined in subsection B of this section;

3. Sell, give or offer to sell or give to any other person any of the elements, compounds or combinations of both elements and compounds as defined in subsection B of this section if the person has knowledge that the product sold, given or offered to be sold or given will be used for the purpose set forth in 9.17.040 A 1;

4. Nothing in this section shall be interpreted as applying to the inhalation of any anesthesia or other substances for medical or dental purposes as prescribed or administered by duly authorized personnel.

B. For purposes of this section, elements, compounds or combinations of both elements and compounds shall be defined as any material in a liquid, solid or gaseous state, which contains one or more of the following chemical materials: Hydrocarbons, to include but not limited to: propane, benzene, or toluene; alcohols, to include but not limited to: methyl, ethyl, isopropyl, proyl, or butyl; volatile esters, to include but not limited to: ethyl, acetate, butyl acetate, amyl acetate, ketones, to include but not limited to: acetone, methyl ethyl ketone, methyl isobutyl keotone; halogenated hydrocarbons, to include but not limited to: chloroform, ethylene dichloride, Freon, including Freon 11 and Freon 12; halogenated derivatives of hydrocarbons, to include but not limited to pentachlorophenol; aliphatic acetates, including but not limited to ethyl, methyl, propyl or methyl cellosolve acetate; ethers, to include but not limited to ethyl ethers; carbon tetrachloride; cyclohexane; hexane; naptha; perchlorethylene; trichlorethylene; xylene and any elements, compounds or combination of both elements and compounds that produce a condition of intoxication, hallucination, inebriation, excitement, stupefaction or the dulling of his brain or nervous system.

C. In a prosecution for a violation of this section, evidence that a container lists one or more of the substances described in subsection B as one of the ingredients shall be prima facie evidence that the substance in such container contains toxic vapors.

D. Penalty: Upon a conviction, plea of no contest or guilty for violation of this section, the municipal judge shall order such person 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 not to exceed the fee established by that statute for such evaluation. A diversion agreement based upon a violation of this section shall also require a person 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 not to exceed the fee established by that statute for such evaluation.

E. Any person who violates this section shall be guilty of a Class B Public Offense. (Ord. 09-59 § 12, 2009; Ord. 99-24 § 34, 1999)

#### **9.17.050 Unlawfully Obtaining a Prescription-Only Drug.**

A. Unlawfully obtaining a prescription-only drug is:

1. Making, altering or signing of a prescription order by a person other than a practitioner or mid-level practitioner;
2. Distribution of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;
3. Possession of a prescription order with intent to distribute it and knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;
4. Possession of a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner or a mid-level practitioner; or
5. Providing false information to a practitioner or mid-level practitioner for the purpose of obtaining a prescription-only drug.

B. As used in this Section:

1. Pharmacist, practitioner, mid-level practitioner and prescription-only drug shall have the meanings ascribed thereto by K.S.A. 65-1626 and amendments thereto.
2. Prescription order means a written, oral or telephone order for a prescription-only drug to be filled by a pharmacist. Prescription order does not mean a drug dispensed pursuant to such an order.

3. "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

4. "Drug" means:

- a. 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;
- b. substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;
- c. substances, other than food, intended to affect the structure or any function of the body of man or animals; and
- d. substances intended for use as a component of any article specified in subparagraph a., b. or c. It does not include devices or their components, parts or accessories.

C. The provisions of this Section shall not be applicable to prosecutions involving prescription-only drugs which could be brought under the Uniform Controlled Substances Act and to which the provisions of K.S.A. 65-4127a or 65-4127b, or K.S.A. Supp. 65-4160 through 65-4164 and amendments thereto, would be applicable. (K.S.A. Supp. 21-5708)

D. Unlawfully obtaining a prescription-only drug is a Class A Public Offense for the first offense. (Ord. 15-66 § 28, 2015; Ord. 12-38 § 16, 2012.)

## CHAPTER 9.18

### CLASSIFICATION OF PUBLIC OFFENSES AND PENALTIES

**Sections:**

9.18.010 Classification of Public Offenses; Terms of Confinement and Fines.

**9.18.010 Classification of Public Offenses; Terms of Confinement and Fines.**

A. For the purpose of sentencing, the following classes of public offenses and penalties authorized for each class are established:

1. Class A, the sentence for which shall be a definite term of confinement in jail which shall be fixed by the court and shall not exceed one year (365 days), or a fine not to exceed Two Thousand, Five Hundred Dollars (\$2,500.00), or both;

2. Class B, the sentence for which shall be a definite term of confinement in jail which shall be fixed by the court and shall not exceed One Hundred Eighty (180) days, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both;

3. Class C, the sentence for which shall be a definite term of confinement in jail which shall be fixed by the court and shall not exceed thirty (30) days, or a fine not to exceed Five Hundred Dollars (\$500.00), or both.

4. Unclassified Public Offenses, which shall include all offenses declared to be public offenses without specification as to class, the sentence for which shall be in accordance with the sentence specified in the ordinance section that defines the public offense; if no penalty is provided in such section, the sentence shall be a definite term of confinement in jail which shall not exceed One Hundred Eighty (180) days, or a fine not to exceed Five Hundred Dollars (\$500.00), or both. (Ord. 15-24 § 9, 2015; Ord. 97-11 § 1, 1997; Ord. 83-75 § 2, 1983.)

## CHAPTER 9.19

### PUBLIC SAFETY PROCEDURE

**Sections:**

9.19.010 Criminal Identification.

**9.19.010 Criminal Identification.**

(1) The Police Department shall cause, make, maintain, file and report fingerprint impressions as authorized and required by K.S.A. 21-2501 and amendments thereto, and for violations of city ordinances which prohibit the same or similar acts as authorized and required by K.S.A. 21-2501, K.S.A. 12-4106 and amendments thereto.

(2) The Police Department may upon arrest of any person or persons wanted for the commission of a Class A Public Offense cause fingerprint impressions and photographs to be made of such person or persons which shall be filed with a comprehensive description and such other data and information as may be necessary to properly identify such person or persons, maintained in the Police Department of this city. The aforementioned criminal identification fingerprint impressions, photographs, description or other data may be used only for the purpose of criminal identification and investigation by members of the Olathe Police Department, in accordance with federal and state enactments controlling dissemination of criminal history and identification data. (Ord. 95-48 § 1, 1995; Ord. 93-09 § 36, 1993; Ord. 83-75 § 2, 1983.)

## CHAPTER 9.20

### AUTHORIZED DISPOSITIONS

**Sections:**

9.20.010 Diversion; Definitions.

9.20.020 Diversion Agreements Authorized; Policies and Guidelines by Prosecuting Attorney.

9.20.025 Municipal Court Diversion; Factors to Consider; When Prohibited.

9.20.030 Provision of Diversion Agreement; Waiver of Certain Rights; Effect of Failure to Fulfill or Accept Agreement; Duties of City Attorney and Division of Vehicles.

9.20.040 Failure to Fulfill Diversion Agreement; Satisfactory Fulfillment; Records.

**9.20.010 Diversion; Definitions.**

(1) "Prosecuting Attorney" means any attorney representing the City of Olathe in criminal proceedings in the municipal court or upon appeal taken therefrom.

(2) "Complaint" means complaint, citation or notice to appear.

(3) "Diversion" means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.

(4) "Diversion Agreement" means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against him or her dismissed. (Ord. 89-151 § 9, 1990; Ord. 83-75 § 2, 1983.)

#### **9.20.020 Diversion Agreements Authorized; Policies and Guidelines by Prosecuting Attorney.**

(1) After a complaint has been filed in the municipal court charging a defendant with commission of a public or traffic offense and prior to conviction thereof, after the city prosecutor has considered the factors listed in Municipal Code Section 9.20.025, if it appears that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the prosecuting attorney may offer, in his discretion, a Diversion Agreement to the defendant.

(2) The eligibility criterion and terms of each Diversion Agreement shall be established by the Olathe prosecuting attorney.

(3) The prosecuting attorney may require any defendant requesting diversion to provide information regarding prior criminal charges, education, work experience and training, family, residence in the community, medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion program. In all cases, the defendant shall be present and shall have the right to be represented by counsel during any diversion conference with the prosecuting attorney.

(4) As used in this section, "complaint" includes a citation or notice to appear. (Ord 89-151 § 10, 1990; Ord. 83-75 § 2, 1983.)

#### **9.20.025 Municipal Court Diversion; Factors to Consider; When Prohibited.**

A. In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the City Attorney shall consider at least the following factors among all factors considered:

1. The nature of the crime charged and the circumstances surrounding it;
2. any special characteristics or circumstances of the defendant;
3. whether the defendant is a first-time offender of an alcohol related offense and if the defendant has previously participated in diversion, according to the certification of the division of vehicles of the State Department of Revenue;
4. whether there is a probability that the defendant will cooperate with and benefit from diversion;
5. whether there is a probability that the defendant committed such crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder or traumatic brain injury, connected to service in a combat zone, as defined in section 112 of the federal internal revenue code of 1986, in the armed forces of the United States of America;
6. if subsection A.5. applies to the defendant, whether there is a probability that the defendant will cooperate with and benefit from inpatient or outpatient treatment from any treatment facility or program operated by the United States department of defense, the United States department of veterans affairs or the Kansas national guard with the consent of the defendant, as a condition of diversion;
7. whether the available diversion program is appropriate to the needs of the defendant;

8. the impact of the diversion of the defendant upon the community;
9. recommendations, if any, of the involved law enforcement agency;
10. recommendations, if any, of the victim;
11. provisions for restitution; and
12. any mitigating circumstances.

B. A City Attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint alleging an alcohol related offense if the defendant:

1. Has previously participated in diversion of an alcohol related offense;
2. has previously been convicted of or pleaded nolo contendere to an alcohol related offense in this state or has previously been convicted of or pleaded nolo contendere to a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2015 Supp. 8-1025, and amendments thereto or of a law of another state, or of a political subdivision thereof, which prohibits the acts prohibited by those statutes; or
3. during the time of the alleged alcohol related offense was involved in a motor vehicle accident or collision resulting in personal injury or death. (Ord. 16-26 § 1, 2016; Ord. 13-33 § 6, 2013; Ord. 89-151 § 11, 1990.)

**9.20.030 Provision of Diversion Agreement; Waiver of Certain Rights; Effect of Failure to Fulfill or Accept Agreement; Duties of City Attorney and Division of Vehicles.**

(1) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the City Attorney, the City Attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the Constitution of Kansas or of the United States to counsel, a speedy arraignment, a speedy trial, and the right to trial by jury. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance or gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. The diversion agreement shall state:

- (a) The defendant's full name;
- (b) The defendant's full name at the time the complaint was filed, if different from the defendant's current name;
- (c) The defendant's sex, race and date of birth;
- (d) The crime with which the defendant is charged;
- (e) The date the complaint was filed; and
- (f) The municipal court with which the agreement is filed.

(2) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging an alcohol related offense, the diversion agreement shall include a stipulation, agreed to by the defendant and the City Attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeals, shall be conducted on the record or the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

- (a) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, consistent with K.S.A. 8-1567, and amendments thereto; and
- (b) enroll in and successfully complete an alcohol and drug safety action program or a treatment program, or both, as provided in K.S.A. 8-1008, and amendments thereto, and specified by the agreement, and pay the assessment required by K.S.A. 8-1008, and amendments thereto.

(3) If the person entering into a diversion agreement is a nonresident, the City Attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(4) If the City Attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the Municipal Court and the Municipal Court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the Municipal Court shall resume the criminal proceedings on the complaint.

(5) The City Attorney shall forward to the Division of Vehicles of the State Department of Revenue a copy of the diversion agreement at the time such agreement is filed with the Municipal Court. The copy of the agreement shall be made available upon request to any county, district or city attorney or court. (Ord. 93-09, § 37, 1993; Ord. 89-151 § 12, 1990; Ord. 83-75 § 2, 1983.)

#### **9.20.040 Failure to Fulfill Diversion Agreement; Satisfactory Fulfillment; Records.**

(1) If the city prosecutor finds at the termination of the diversion period or any time prior thereto or within ninety (90) days after the end of the termination of the diversion period that the defendant has failed to fulfill the terms of the specific diversion agreement, the prosecuting attorney shall inform the municipal court of such finding and the municipal court, after finding probable cause that the defendant has failed to fulfill the terms of the specific diversion agreement at a hearing thereon, shall resume the criminal proceedings on the complaint.

(2) If the defendant has fulfilled the terms of the diversion agreement, the municipal court shall dismiss with prejudice the criminal charges filed against the defendant.

(3) The city attorney shall forward to the division of vehicles of the State Department of Revenue a record of the fact that a defendant did or did not fulfill the terms of a diversion agreement required to be filed under subsection (d) of K.S.A. 12-4416 and amendments thereto. Such record shall be made available to any county, district or city attorney or court.

(4) A record of the fact that an individual is and has participated in diversion shall be forwarded to the Olathe Police Department. (Ord 89-151 § 13, 1990; Ord. 83-75 § 2, 1983.)

### **CHAPTER 9.21**

#### **SEVERABILITY AND REPEAL**

##### **Sections:**

- 9.21.010 Severability.  
9.21.020 Previous Violations; Affect of Repeal.

**9.21.010 Severability.** If any provision of this title or public offense code is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the code and the applicability thereof to other persons and circumstances shall not be affected thereby. (Ord. 83-75 § 2, 1983.)

**9.21.020 Previous Violations; Affect of Repeal.** Repeal of prior public offense ordinance, codes or code sections does not affect or bar prosecution for offenses under the repealed sections, committed while the said sections were in force. A public offense committed while an ordinance section creating it was in force is not affected by the repeal of such ordinance section; the violation may be dealt with and punished in all respects as if the ordinance section had remained in full force. (Ord. 83-75 § 2, 1983.)

## CHAPTER 9.25

### AUTOMATIC ALARM SYSTEMS

#### Sections:

9.25.010	Definitions
9.25.020	Registration Required; Application Fee; Transferability; False Statements
9.25.030	Alarm Registration Duration and Renewal
9.25.040	Duties of the Alarm User
9.25.050	Duties of Alarm Installation Company and Monitoring Company
9.25.060	Duties and Authority of the Alarm Administrator
9.25.070	False Alarms, Fees Required
9.25.080	Notification
9.25.090	Suspension of Response
9.25.100	Appeals
9.25.110	Reinstatement
9.25.120	Penalty
9.25.130	Government Immunity
9.25.140	Severability

**9.25.010 Definitions.** In this ordinance, the following terms and phrases shall have the following meanings:

(A) Alarm Administrator means a Person or Persons designated by the governing authority to administer, control and review False Alarm reduction efforts and administer the provisions of this ordinance.

(B) Alarm Installation Company means a Person in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing an Alarm System in an Alarm Site.

(C) Alarm Dispatch Request means a notification to a law enforcement agency that an alarm, either manual or automatic, has been activated at a particular Alarm Site.

(D) Alarm Registration (or Permits) means an authorization granted by the Alarm Administrator to an Alarm User to operate an Alarm System.

(E) Alarm Site means a single fixed premise or location served by an Alarm System or Systems. Each unit, if served by a separate Alarm System in a multi-unit building or complex, shall be considered a separate Alarm Site.

(F) Alarm System means a device or series of devices, including, but not limited to, hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals, which emit or transmit a remote or local audible, visual or electronic signal indicating an alarm condition and intended to summon law enforcement response, including Local Alarm Systems. Alarm System does not include an alarm installed in a vehicle or on someone's Person unless the vehicle or the personal alarm is permanently located at a site.

(G) Alarm User means any Person who (which) has contracted for Monitoring, repair, installation or maintenance service from an Alarm Installation Company or Monitoring Company for an alarm system, or who (which) owns or operates an Alarm System which is not monitored, maintained or repaired under contract.

(H) Alarm User Awareness Class means a class conducted for the purpose of educating Alarm Users about the responsible use, operation, and maintenance of Alarm Systems and the problems created by False Alarms.

(I) Arming Station means a device that allows control of an Alarm System.

(J) Automatic Voice Dialer means any electrical, electronic, mechanical, or other device capable of being programmed to send a prerecorded voice message, when activated, over a telephone line, radio or other communication system, to a law enforcement, public safety or emergency services agency requesting dispatch.

(K) Cancellation means the process where response is terminated when a Monitoring Company (designated by the Alarm User) for the Alarm Site notifies the responding law enforcement agency that there is not an existing situation at the Alarm Site requiring law enforcement agency response after an alarm dispatch request.

(L) Conversion means the transaction or process by which one Alarm Installation Company or Monitoring Company begins the servicing and/or Monitoring of a previously unmonitored Alarm System or an Alarm System previously serviced and/or monitored by another alarm company.

(M) Duress Alarm means a silent Alarm System signal generated by the entry of a designated code into an Arming Station in order to signal that the Alarm User is being forced to turn off the system and requires law enforcement response.

(N) False Alarm means an Alarm Dispatch Request to a law enforcement agency, when the responding law enforcement officer finds no evidence of a criminal offense or attempted criminal offense after having completed a timely investigation of the Alarm Site.

(O) Holdup Alarm means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

(P) Law Enforcement Authority means the Chief of Police or other authorized representative of the Olathe Police Department.

(Q) Local Alarm System means any Alarm System, which is not monitored, that annunciates an alarm only at the Alarm Site.

(R) Monitoring means the process by which a Monitoring Company receives signals from an Alarm System and relays an Alarm Dispatch Request to the municipality for the purpose of summoning law enforcement to the Alarm Site.

(S) Monitoring Company means a Person in the business of providing Monitoring services.

(T) One Plus Duress Alarm means the manual activation of a silent alarm signal by entering at an Arming Station a code that adds one (1) to the last digit of the normal arm/disarm code (e.g., normal code = 1234, One Plus Duress Code = 1235).

(U) Panic Alarm means an audible Alarm System signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring law enforcement response.

(V) Person means an individual, corporation, partnership, association, organization or similar entity.

(W) Responder means an individual capable of reaching the Alarm Site within twenty (20) minutes and having access to the Alarm Site, the code to the Alarm System and the authority to approve repairs to the Alarm System.

(X) SIA Control Panel Standard CP-01 means the ANSI – American National Standard Institute approved Security Industry Association – SIA CP-01 Control Panel Standard, as may be updated from time to time, that details recommended design features for security system control panels and their associated arming and disarming devices to reduce the incidence of False Alarms. Control panels built and tested to this standard by Underwriters Laboratory (UL), or other nationally recognized testing organizations, will be marked to state: “Design evaluated in accordance with SIA CP-01 Control Panel Standard Features for False Alarm Reduction”.

(Y) Takeover means the transaction or process by which an Alarm User takes over control of an existing Alarm System, which was previously controlled by another Alarm User.

(Z) Verify means an attempt by the Monitoring Company, or its representative, to contact the Alarm Site and/or Alarm User by telephone and/or other electronic means, whether or not actual contact with a Person is made, to determine whether an alarm signal is valid before requesting law enforcement dispatch, in an attempt to avoid an unnecessary Alarm Dispatch Request. For the purpose of this ordinance, telephone verification shall require, as a minimum that a second call be made to a different number if the first attempt fails to reach an Alarm User who can properly identify themselves to determine whether an alarm signal is valid before requesting law enforcement dispatch.

(AA) Zones mean division or devices into which an Alarm System is divided to indicate the general location from which an Alarm System signal is transmitted. (Ord. 05-154 § 2, 2005; Ord. 94-04 § 2, 1994; Ord. 84-46 § 1, 1984.)

#### **9.25.020 Registration Required; Application; Fee; Transferability; False Statements.**

A. It shall be unlawful for an Alarm User to operate, or cause to be operated, an Alarm System at its Alarm Site without a valid Alarm Registration. A separate Alarm Registration is required for each Alarm Site.

B. There is no fee to process an Alarm Registration application or renewal.

C. Upon receipt of a completed Alarm Registration application form the Alarm Administrator shall register the applicant unless the applicant has:

1. Failed to pay a fine or fee assessed pursuant to Section 9.25.070; or
2. Had an alarm registration for the Alarm Site suspended or revoked, and the violation causing the suspension or revocation has not been corrected.

D. Each Alarm Registration application must include the following information:

1. The name, complete address (including apartment/suite number), and telephone numbers of the Person who will be the registration holder and be responsible for the proper maintenance and operation of the Alarm System and payment of fees assessed under this chapter;
2. The classification of the Alarm Site as either residential (includes apartment, condominium, mobile home, etc.) or commercial;
3. For each Alarm System located at the Alarm Site, the classification of the Alarm System (i.e. burglary, Holdup, Duress, Panic Alarms or other) and for each classification whether such alarm is audible or silent;
4. Mailing address, if different from the address of the Alarm Site;
5. Any dangerous or special conditions present at the Alarm Site;
6. Names and telephone numbers of at least two individuals who are able and have agreed to:

- a. Receive notification of an Alarm System activation at any time;
- b. Respond to the Alarm Site within twenty (20) minutes at any time; and
- c. Upon request, can grant access to the Alarm Site and deactivate the Alarm System, if necessary;

7. Type of business conducted at a commercial Alarm Site;

8. Signed certification from the Alarm User stating the following:

- a. The date of Installation, Conversion or Takeover of the Alarm System, whichever is applicable;

- b. The name, address, and telephone number of the Alarm Installation Company or companies performing the Alarm System Installation, Conversion or Takeover and of the Alarm Installation Company responsible for providing repair service to the Alarm System;

- c. The name, address, and telephone number of the Monitoring Company, if different from the Alarm Installation Company;

- d. That a set of written operating instructions for the Alarm System, including written guidelines on how to avoid False Alarms, have been left with the applicant by the Alarm Installation Company; and

- e. That the Alarm Installation Company has trained the applicant in proper use of the Alarm System, including instructions on how to avoid False Alarms.

9. That law enforcement response may be influenced by factors including, but not limited to the availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, etc.

E. Any false statement of a material fact made by an applicant for the purpose of obtaining an alarm registration shall be sufficient cause for refusal to issue a registration.

F. An Alarm Registration cannot be transferred to another Person or Alarm Site. An Alarm User shall inform the Alarm Administrator of any change that alters any of the information listed on the Alarm Registration application within five (5) business days of such change.

G. All fines and fees owed by an applicant must be paid before an Alarm Registration may be issued or renewed. (Ord. 10-38 § 1, 2010; Ord. 05-154 § 2, 2005.)

**9.25.030 Alarm Registration Duration and Renewal.** An Alarm Registration shall be granted for the calendar year for which issued and will expire on December 31st of each calendar year. It must be renewed each calendar year by submitting an updated application. The Alarm Registration shall only be valid for the remainder of the calendar year issued. The Alarm Administrator shall notify each Alarm User of the need to renew thirty (30) days prior to the expiration of the registration. It is the responsibility of the Alarm User to submit an application prior to the registration expiration date. Failure to renew will be classified as use of a non-registered Alarm System and citations and penalties shall be assessed without waiver. (Ord. 10-38 § 2, 2010; Ord. 05-154 § 2, 2005.)

**9.25.040 Duties of the Alarm User.**

(A) An Alarm User shall:

- (1) Maintain the Alarm Site and the Alarm System in a manner that will minimize or eliminate False Alarms;

- (2) Make every reasonable effort to have a Responder to the Alarm System's location within twenty (20) minutes when requested by the law enforcement agency in order to:

- (a) Deactivate an Alarm System;
- (b) Provide access to the Alarm Site; and/or
- (c) Provide alternative security for the Alarm Site.

(3) Not activate an Alarm System for any reason other than an occurrence of an event that the Alarm System was intended to report.

(B) An Alarm User shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of an Alarm Site will sound for no longer than ten (10) minutes after being activated.

(C) An Alarm User shall have an Alarm Installation Company inspect the Alarm System after three (3) False Alarms in a one (1) year period. The Alarm Administrator may waive a required inspection if it determines that a False Alarm(s) could not have been related to a defect or malfunction in the Alarm System. After five (5) False Alarms within a one (1) year period, the Alarm User must have a Alarm Installation Company modify the Alarm System to be more False Alarm resistant or provide additional user training as appropriate.

(D) An Alarm User shall not use Automatic Voice Dialers.

(E) An Alarm User shall maintain at each Alarm Site, a set of written operating instructions for each Alarm System.

(F) It is unlawful to violate the duties of an Alarm User. (Ord. 05-154 § 2, 2005.)

#### **9.25.050 Duties of Alarm Installation Company and Monitoring Company.**

(A) The Alarm Installation Company shall provide written and oral instructions to each of its Alarm Users in the proper use and operation of their Alarm Systems. Such instructions will specifically include all instructions necessary to turn the Alarm System on and off and to avoid False Alarms.

(B) Upon the effective date of this ordinance, Alarm Installation Companies shall not program Alarm Systems so that they are capable of sending One Plus Duress Alarms. Monitoring Companies may continue to report One Plus Duress Alarms received from Alarm Systems programmed with One Plus Duress Alarms prior to enactment of this ordinance. However, upon the effective date of this ordinance, when a Takeover or Conversion occurs or if an Alarm User requests an Alarm System inspection or modification pursuant to Section 9.25.040 (C) of this ordinance, an Alarm Installation Company must remove the One Plus Duress Alarm capability from such Alarm Systems.

(C) Upon the effective date of this ordinance, Alarm Installation Companies shall not install a device to activate a Holdup Alarm, which is a single action, non-recessed button.

(D) Ninety (90) days after enactment of this ordinance, the Alarm Installation Companies shall, on new installations, use only alarm control panel(s) which meet SIA Control Panel Standard CP-01.

(E) An alarm company shall not use Automatic Voice Dialers.

(F) After completion of the installation of an Alarm System, an Alarm Installation Company employee shall review with the Alarm User the Customer False Alarm Prevention Checklist.

(G) The Monitoring Company shall not make an Alarm Dispatch Request of a law enforcement agency in response to a burglar alarm signal, excluding Panic, Duress and Holdup signals, during the first seven (7) days following an Alarm System installation. The Alarm Administrator may grant an Alarm User's request for an exemption from this waiting period based upon a determination that special circumstances substantiate the need for the exemption.

(H) A Monitoring Company shall:

- (1) Report alarm signals by using telephone numbers designated by the Alarm Administrator;
- (2) Verify every alarm signal, except Duress or Holdup Alarm activation, before requesting a law enforcement response to an Alarm System signal;
- (3) Communicate Alarm Dispatch Requests to the municipality;
- (4) Communicate Cancellations to the municipality;
- (5) Ensure that all Alarm Users of the Alarm Systems equipped with a Duress, Holdup or Panic Alarm are given adequate training as to the proper use of the Duress, Holdup or Panic Alarm;
- (6) Communicate any available information (north, south, front, back, etc.) about the location on all alarm signals related to the Alarm Dispatch Request;
- (7) Communicate type of alarm activation (silent or audible, interior or perimeter);
- (8) Provide an Alarm User registration number when requesting law enforcement dispatch;
- (9) After an Alarm Dispatch Request, promptly advise the law enforcement agency if the Monitoring Company knows that the Alarm User or the Responder is on the way to the Alarm Site;
- (10) Attempt to contact the Alarm User or Responder within twenty four (24) hours via fax, telephone or other electronic means when an Alarm Dispatch Request is made; and
- (11) Upon the effective date of this ordinance, Monitoring Companies must maintain for a period of at least one (1) year from the date of the Alarm Dispatch Request, records relating to Alarm Dispatch Requests. Records must include the name, address and telephone number of the Alarm User, the Alarm System Zone(s) activated, the time of Alarm Dispatch Request and evidence of an attempt to Verify. The Alarm Administrator may request copies of such records for individually named Alarm Users. If the request is made within sixty (60) days of an Alarm Dispatch Request, the Monitoring Company shall furnish requested records within three (3) business days of receiving the request. If the records are requested between sixty (60) days to one (1) year after an Alarm Dispatch Request, the Monitoring Company shall furnish the requested records within thirty (30) days of receiving the request.

(I) An Alarm Installation Company and/or Monitoring Company that purchases Alarm System accounts from another Person shall notify the Alarm Administrator of such purchase and provide details as may be reasonably requested by the Alarm Administrator. (Ord. 05-154 § 2, 2005.)

#### **9.25.060 Duties and Authority of the Alarm Administrator.**

(A) The Alarm Administrator shall:

- (1) Designate a manner, form and telephone numbers for the communication of Alarm Dispatch Requests; and
- (2) Establish a procedure to accept Cancellation of Alarm Dispatch Requests.

(B) The Alarm Administrator shall establish a procedure to record such information on Alarm Dispatch Requests necessary to permit the Alarm Administrator to maintain records, including, but not limited to, the information listed below.

- (1) Identification of the registration number for the Alarm Site;
- (2) Identification of the Alarm Site;
- (3) Date and time Alarm Dispatch Request was received, including the name of the Monitoring Company and the Monitoring operator name or number;
- (4) Date and time of law enforcement officer arrival at the Alarm Site;
- (5) Zone and Zone description, if available;
- (6) Weather conditions;
- (7) Name of Alarm User's representative at Alarm Site, if any;
- (8) Identification of the responsible Alarm Installation Company or Monitoring Company;
- (9) Whether law enforcement officer was unable to locate the address of the Alarm Site;
- (10) Cause of alarm signal, if known.

(C) The Alarm Administrator shall establish a procedure for the notification to the Alarm User of a False Alarm. The notice shall include the following information:

- (1) The date and time of law enforcement response to the False Alarm;
- (2) The identification number of the responding law enforcement officer;
- (3) A statement urging the Alarm User to ensure that the Alarm System is properly operated, inspected, and serviced in order to avoid False Alarms and resulting fines.

(D) The Alarm Administrator may require a conference with an Alarm User and the Alarm Installation Company and/or Monitoring Company responsible for the repair or monitoring of the Alarm System to review the circumstances of each False Alarm.

(E) The Alarm Administrator may create and implement an Alarm User Awareness Class. The Alarm Administrator may request the assistance of Association, alarm companies and law enforcement agencies in developing and implementing the class. The class shall inform Alarm Users of the problems created by False Alarms and teach Alarm Users how to avoid generating False Alarms.

(F) The Alarm Administrator may require an Alarm User to remove a Holdup Alarm that is a single action, non-recessed button, if a False Holdup Alarm has occurred.

(G) The Alarm Administrator will make a copy of this ordinance and/or an ordinance summary sheet available to the Alarm User. (Ord. 05-154 § 2, 2005.)

#### **9.25.070 False Alarms, Fines Required.**

(A) Any Alarm User which has recorded more than one (1) False Alarm within a calendar year will be subject to False Alarm fees. The fees of this section shall be adopted by resolution of the Governing Body.

(B) In addition, any Person operating a non-registered Alarm System will be subject to a fee for each False Alarm in addition to any other fines or fees. The Alarm Administrator may waive this additional fee for a non-registered system if the Alarm User submits an application for Alarm Registration within ten (10) days after notification of such violation.

(C) An Alarm User may have the option of attending an Alarm User Awareness Class in lieu of paying one prescribed fee per calendar year.

(D) If Cancellation occurs prior to law enforcement arriving at the scene, this is not a False Alarm for the purpose of fee, and no fee will be assessed.

(E) The Alarm Installation Company shall be assessed a fee if the officer responding to the False Alarm determines that an on-site employee of the Alarm Installation Company directly caused the False Alarm. In this situation, the False Alarm will not be counted against the Alarm User.

(F) The Monitoring Company shall be issued a fee for each failure to Verify Alarm System signals as specified in Section 9.25.050.

(G) The Alarm Installation Company shall be issued a fee if the Alarm Administrator determines that an Alarm Installation Company employee knowingly made a false statement concerning the inspection of an Alarm Site or the performance of an Alarm System.

(H) Notice of the right of appeal under this ordinance will be included with any fines or fees.

(I) Failure of an Alarm User to appeal a fee assessment as provided in Section 9.25.070 or to otherwise satisfy the fee assessment as required in Section 9.25.070 of this chapter shall create a prima facie case that the alarm signal at issue is a False Alarm and that such Alarm User is in violation of this chapter.

(J) Failure to pay False Alarm fees is a violation of this chapter. Nothing contained in this section shall prohibit prosecution in Municipal Court for violation of any sections of this chapter and assessment of any and all other penalties as provided by law. (Ord. 05-154 § 2, 2005.)

#### **9.25.080 Notification.**

(A) The Alarm Administrator shall notify the Alarm User in writing after each False Alarm.

- (1) The notification shall include the amount of the fee for the False Alarm;
- (2) Notice that the Alarm User can attend Alarm User Awareness Class to waive a fee;
- (3) The fact that response will be suspended after the tenth (10<sup>th</sup>) False Alarm, excluding Duress, Holdup and Panic Alarms; and
- (4) A description of the appeals procedure available to the Alarm User.

(B) The Alarm Administrator will notify the Alarm User and the Alarm Installation Company or Monitoring Company in writing after alarm response has been suspended, except to Duress, Holdup and Panic Alarms. This notice of suspension will also include the amount of the fine for each False Alarm and a description of the appeals procedure available to the Alarm User and the Alarm Installation Company or Monitoring Company. (Ord. 05-154 § 2, 2005.)

#### **9.25.090 Suspension of Response.**

A. The Alarm Administrator may suspend law enforcement response to an Alarm Site by revoking the Alarm Registration if it is determined that:

1. The Alarm User has ten (10) or more False Alarms in a calendar year;
2. There is a statement of a material fact known to be false in the application for a registration;
3. The Alarm User has failed to make timely payment within thirty (30) days of a fee assessed under Section 9.25.070; or
4. The Alarm User has failed to submit a written certification from an Alarm Installation Company that complies with the requirements of this chapter, stating that the Alarm System has been inspected and repaired (if necessary) and/or additional training has been conducted by the Alarm Installation Company.

B. A Person commits an offense if he/she operates an Alarm System during the period in which the alarm registration is revoked and is subject to enforcement and penalties set forth in Section 9.25.070. A Monitoring Company commits an offense if it continues Alarm Dispatch Requests to an Alarm Site after notification by the Alarm Administrator that the registration has been revoked and is subject to enforcement and penalties set forth in Section 9.25.070.

C. Unless there is separate indication that there is a crime in progress, the Law Enforcement Authority will refuse law enforcement response to an Alarm Dispatch Request at an Alarm Site for which the Alarm Registration is revoked. (Ord. 10-38 § 3, 2010; Ord. 05-154 § 2, 2005.)

### **9.25.100 Appeals.**

(A) If the Alarm Administrator assesses a fine or denies the issuance, renewal or reinstatement of an Alarm Registration, the Alarm Administrator shall send written notice of the action and a statement of the right to an appeal to either the affected applicant or Alarm User and the Alarm Installation Company and/or Monitoring Company.

(B) The Alarm User, Alarm Installation Company or Monitoring Company may appeal an assessment of a fine for the revocation of an Alarm Registration to the Alarm Administrator by setting forth in writing the reasons for the appeal within fifteen (15) business days after receipt of the fine or notice of revocation.

(C) The Alarm User or the Alarm Installation Company or Monitoring Company may appeal the decision of the Alarm Administrator to the Law Enforcement Authority as follows:

(1) The applicant, Alarm User, Alarm Installation Company or the Monitoring Company may file a written request for a review setting forth the reasons for the appeal within twenty (20) business days after the date of notification of the decision from the Alarm Administrator.

(2) The Law Enforcement Authority shall conduct a formal hearing within thirty (30) days of the receipt of the request and consider the evidence by any interested Person(s). The Law Enforcement Authority shall make its decision on the basis of the preponderance of evidence presented at the hearing. The Law Enforcement Authority must render a decision within fifteen (15) days after the date of the hearing. The Law Enforcement Authority shall affirm or reverse the decision of the Alarm Administrator.

(D) Filing of a request for appeal shall stay the action by the Alarm Administrator revoking an Alarm Registration or requiring payment of a fine, until the Law Enforcement Authority has completed its review. If a request for appeal is not made within the twenty (20) business day period, the action of the Alarm Administrator is final.

(E) Alarm Administrator or Law Enforcement Authority may adjust the count of False Alarms based on:

- (1) Evidence that a False Alarm was caused by an act of God;
- (2) Evidence that a False Alarm was caused by action of the telephone company;
- (3) Evidence that a False Alarm was caused by a power outage lasting longer than four (4) hours;
- (4) Evidence that the Alarm Dispatch Request was not a False Alarm; and/or
- (5) In determining the number of False Alarms, multiple alarms occurring in any twenty four (24) hour period shall be counted as one False Alarm; to allow the Alarm User time to take corrective action unless the False Alarms are directly caused by the Alarm User.

(F) With respect to the fees of an Alarm Installation Company or Monitoring Company, the Alarm Administrator or Law Enforcement Authority may take into consideration whether the alarm company had engaged in a consistent pattern of violations. (Ord. 05-154 § 2, 2005.)

### **9.25.110 Reinstatement.**

A. A Person whose Alarm Registration has been revoked may, at the discretion of the Alarm Administrator or the Law Enforcement Authority, have the Alarm Registration reinstated by the Alarm Administrator or the Law Enforcement Authority if the Person:

1. Submits a new application;
2. Pays, or otherwise resolves, all outstanding citations and fines; and
3. Submits a certification from an Alarm Installation Company stating that the Alarm System has been inspected and repaired (if necessary) by the Alarm Installation Company;

B. In addition, the Alarm Administrator may require one or more of the following as a condition to reinstatement;

1. Proof that an employee of the Alarm Installation Company or Monitoring Company caused the False Alarm;
2. A certificate showing that the Alarm User has successfully completed the Alarm User Awareness Class as provided pursuant to Section 9.25.060.
3. Upgrade the alarm control panel to meet SIA Control Panel Standard CP-01;
4. A written statement from an Alarm Installation Company that the Alarm System has been inspected and is in good working order.

In the interest of public safety, all information contained in and gathered through the Alarm Registration applications and applications for appeals shall be held in confidence by all employees or representatives of the municipality and by any third-party administrator or employees of a third-party administrator with access to such information. (Ord. 10-38 § 4, 2010; Ord. 05-154 § 2, 2005.)

**9.25.120 Penalty.** Any person or entity violating any provision of this chapter shall, upon conviction, be punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00). Each day that any violation occurs or continues constitutes a separate offense. (Ord. 05-154 § 2, 2005; Ord. 94-04 § 2, 1994; Ord. 84-46 § 1, 1984.)

**9.25.130 Government Immunity.** Alarm Registration is not intended to, nor will it, create a contract, duty or obligation, either expressed or implied, of response. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By applying for an Alarm Registration, the Alarm User acknowledges that law enforcement response may be influenced by factors such as: the availability of police units, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels and prior response history. (Ord. 05-154 § 2, 2005.)

**9.25.140 Severability.** The provisions of this ordinance are severable. If a Court determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid or that the application of any part of the provision to any Person or circumstance is invalid, the remaining provisions and the application of those provisions to other Persons or circumstances are not affected by that decision. (Ord. 05-154 § 2, 2005.)

## CHAPTER 9.40

### MOB ACTION

#### Sections:

- 9.40.010 Emergency--Proclamation of Regulations.
- 9.40.020 Emergency Proclamation--Effective Date.
- 9.40.030 Emergency Proclamation--Termination.
- 9.40.040 Emergency--Trespassing on Property Unlawful.

**9.40.010 Emergency--Proclamation of Regulations.** Whenever, in the judgment of the mayor or, in the event of his or her inability to act, the vice-chairman of the Governing Body, it is determined that an emergency exists, as a result of mob action, civil disobedience, or disaster within the corporate limits of the City of Olathe, Kansas, causing danger of injury to or damage to persons or property, he or she shall have the power to impose by proclamation any or all of the following regulations necessary to preserve the peace and order of the City:

A. To impose a curfew upon all or any portion of the City thereby requiring all persons in such designated curfew areas to forthwith remove themselves, and/or their motor vehicles, from the public streets, alleys, public parking lots, parks or other public places; provided however, that physicians, nurses and ambulance operators performing medical services, utility personnel maintaining essential public services, firemen and City authorized or requested law enforcement officers and personnel may be exempted from such curfew;

B. To order the closing of any business establishment anywhere within the City for the period of the emergency, such businesses to include, but not be limited to, those selling intoxicating liquors, cereal malt beverages, or gasoline;

C. To designate any public street, thoroughfare or vehicle parking area closed to motor vehicles and pedestrian traffic;

D. To call upon regular, reserve and auxiliary law enforcement agencies and organizations within the City, including the sheriff's department under provisions of mutual emergency police protection compact to assist in preserving and keeping the peace within the City. To request assistance from all law enforcement and related agencies outside the City;

E. That any and all of the regular, reserve and auxiliary law enforcement agencies, organizations and their individual officers shall have the full power and authority to make arrests and to act on behalf of the City in order to enforce the provisions provided for herein and any and all other City ordinances that might be violated as a result of any mob action or other civil disobedience;

F. The mayor is hereby authorized to enter into a mutual emergency police protection compact with any and all governing bodies of Johnson County, Kansas, and any other duly authorized governing body within the Kansas City standard metropolitan area. (Ord. 14-42 § 12, 2014; Ord. 67-C § 1, 1967.)

**9.40.020 Emergency Proclamation--Effective Date.** The proclamation of emergency provided herein shall become effective upon its issuance and dissemination to the public by appropriate news media, or by posting the proclamation of emergency at three public places within the city limits, or by other means reasonably calculated to inform persons affected. (Ord. 67-C § 2, 1967.)

**9.40.030 Emergency Proclamation--Termination.** Any emergency proclaimed in accordance with the provisions of this chapter shall terminate after forty-eight hours from the issuance thereof, or upon the issuance of a proclamation determining an emergency no longer exists, whichever occurs first; provided, however, that such emergency may be extended for such additional periods of time as determined necessary by resolution of the Governing Body. (Ord. 67-C § 3, 1967.)

**9.40.040 Emergency--Trespassing on Property Unlawful.** During the time of an emergency proclaimed by the mayor as provided by this chapter, it shall be unlawful for any person to voluntarily enter into, upon or over any property without the consent of the owner or persons in charge thereof. (Ord. 121-C § 1, 1968.)

**CHAPTER 9.42. PUBLIC SAFETY SERVICES.** Repealed 2/16/93. (Ord. 93-09 § 38, 1993; Ord. 84-06 § 1, 1984.)

**CHAPTER 9.48. CRIMINAL TRESPASS.** Repealed 2/16/93. (Ord. 93-09 § 38, 1993; Ord. 114 § 1 & 2, 1972.)

## **CHAPTER 9.50**

### **ETHNIC INTIMIDATION OR BIAS CRIMES**

**Sections:**

- 9.50.010 Ethnic Intimidation or Bias Crimes
- 9.50.020 Penalty
- 9.50.030 Police Department Record Keeping

**9.50.010 Ethnic Intimidation or Bias Crimes.**

A. Any person who violates or attempts to violate any of the following ordinances of the City of Olathe Public Offense Code, and any amendments thereto, by reason of any motive or intent relating to, or any antipathy, animosity or hostility based upon, the race, color, sex, religion, national origin, age, ancestry, disability, or handicap of another individual or group of individuals shall be guilty of a public offense:

1. Chapter 9.04, Offenses Against Persons;
2. Chapter 9.11, Offenses Against the Public Peace;
3. Section 9.07.080, Criminal Damage to Property;
4. Section 9.07.090, Criminal Trespass;
5. Section 9.12.020, Criminal Use of Weapons.

B. Any person who, by reason of any motive or intent relating to, or any antipathy, animosity or hostility based upon, the race, color, sex, religion, national origin, age, ancestry, disability, or handicap of another individual or group of individuals knowingly assemble with four or more persons and agree with such persons to violate any of the criminal laws of the state of Kansas or of the United States with force or violence shall be guilty of a public offense. No person may be convicted of subsection B of this section unless an overt act in furtherance of the violation of this section is alleged and proved to have been committed by one of the individuals assembled.

**9.50.020 Penalty.**

A. Upon a first conviction of a violation of the provisions of this chapter, a person shall be deemed guilty of a Class A Public Offense and shall be punished by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00) or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

B. On a second or subsequent conviction of a violation of the provisions of this chapter, a person shall be deemed guilty of a Class A Public Offense and shall be sentenced to imprisonment of not less than five (5) days nor more than one (1) year and a fine of not less than Five Hundred Dollars (\$500.00) nor more than Two Thousand Five Hundred Dollars (\$2,500.00).

**9.50.030 Police Department Record Keeping.** The Police Department shall, on a quarterly basis, prepare a statistical summary concerning all criminal acts and ordinance violations committed within the City of Olathe during the previous month which there is reason to believe have been committed as a result of any motive or intent relating to any antipathy, animosity or hostility based upon the race, color, sex, religion, national origin, age, ancestry, disability or handicap of an individual or group of individuals. A copy of the summary shall be forwarded to the City Manager. The summary shall not contain the names of persons who are suspected or accused of having committed crimes or ordinance violations.