

ORDINANCE NO. 22-35

AN ORDINANCE PERTAINING TO THE OLATHE PUBLIC OFFENSE CODE; ADDING NEW SECTIONS 9.12.197, 9.12.197.1 AND 9.12.197.2; AND AMENDING SECTIONS 9.01.110, 9.05.060, 9.05.100, 9.07.010, 9.13.040, 9.17.010, 9.20.010 AND 9.20.025 AND REPEALING THE EXISTING SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS:

NEW SECTION ONE: Section 9.12.197 is hereby added to the Olathe Municipal Code to read as follows:

“9.12.197 Operating an Aircraft Under the Influence.

(a) Operating an aircraft under the influence is operating or attempting to operate any aircraft within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, is 0.04 or more;

(2) the alcohol concentration in the person's blood or breath, as measured within four hours of the time of operating or attempting to operate an aircraft, is 0.04 or more;

(3) under the influence of alcohol to a degree that renders the person incapable of safely operating an aircraft;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating an aircraft; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating an aircraft.

(b) (1) Operating an aircraft under the influence is a class A public offense, except as provided in subsection (b)(2).

(A) On a first conviction, the person convicted shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's

discretion 100 hours of public service, and fined not less than \$750.

(B) On second or subsequent conviction, the person convicted shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,250. The following conditions shall apply to such sentence:

- (i) As a condition of any probation granted under this subsection, the person shall serve at least 120 hours of confinement. The hours of confinement shall include at least 48 hours of imprisonment and otherwise may be served by a combination of: Imprisonment; a work release program, if such work release program requires such person to return to the confinement at the end of each day in the work release program; or a house arrest program pursuant to K.S.A. 2021 Supp. 21- 6609, and amendments thereto; and

- (ii) (a) if the person is placed into a work release program or placed under a house arrest program for any portion of the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum sentence is met. If the person is placed into a work release program or placed under a house arrest program for more than the minimum of 120 hours of confinement mandated by this subsection, the person shall receive hour-for-hour credit for time served in such program until the minimum of 120 hours of confinement is completed, and thereafter, the person shall receive day-for-day credit for time served in such program unless otherwise ordered by the court; and (b) when in a work release program, the person shall only be given credit for the time served in confinement at the end of and continuing to the beginning of the person's work day. When under a house arrest program, the person shall be monitored by an electronic monitoring device that verifies the

person's location and shall only be given credit for the time served within the boundaries of the person's residence.

(2) Operating an aircraft under the influence is a felony under state law and will be referred to the appropriate prosecuting authority if the offense occurred while the person convicted is prohibited from operating an aircraft:

(A) By a court order pursuant to this section; or

(B) because such person's pilot license is revoked or suspended by an order of the federal aviation administration for a prior alcohol or drug-related conviction.

(3) As part of the judgment of conviction, the court shall order the person convicted not to operate an aircraft for any purpose for a period of six months from the date of final discharge from the county jail, or the date of payment or satisfaction of such fine, whichever is later or one year from such date on a second conviction. If the court suspends the sentence and places the person on probation as provided by law, the court shall order as one of the conditions of probation that such person not operate an aircraft for any purpose for a period of 30 days from the date of the order on a first conviction or 60 days from the date of the order on a second conviction.

(4) For the purpose of determining whether an occurrence is a first, second or subsequent occurrence:

(A) "Conviction" includes entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of a crime described in subsection (a); and

(B) it is irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.

(c) If a person is charged with a violation of subsection (a)(4) or (a)(5), the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.”

NEW SECTION TWO: Section 9.12.197.1 is hereby added to the Olathe Municipal Code to read as follows:

“9.12.197.1 Preliminary Screening Test.

(a) A law enforcement officer may request a person who is operating or attempting to operate an aircraft within this state to submit to a preliminary screening test of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate an aircraft while under the influence of alcohol or drugs, or a combination of alcohol and any drug or drugs.

(b) If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made and whether to request the tests authorized by Section 2 of 2022 HB 2377, and amendments thereto. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results shall not be admissible in any civil or criminal action concerning the operation of or attempted operation of an aircraft except to aid the court in determining a challenge to the validity of the arrest or the validity of the request to submit to a test pursuant to Section 2 of 2022 HB 2377, and amendments thereto. Following the preliminary screening test, additional tests may be requested pursuant to Section 2 of 2022 HB 2377, and amendments thereto.

(c) Any preliminary screening of a person's breath shall be conducted with a device approved pursuant to K.S.A. 65-1,107, and amendments thereto. Any preliminary screening of a person's oral fluid shall be conducted in accordance with rules and regulations, if any, approved pursuant to K.S.A. 75-712h, and amendments thereto.”

NEW SECTION THREE: Section 9.12.197.2 is hereby added to the Olathe Municipal Code to read as follows:

“9.12.197.2 Definitions

As used in Section 9.12.197, Section 9.12.197.1, and this Section:

(a) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

(b) "Drug" includes toxic vapors as such term is defined in K.S.A. 2021 Supp. 21-5712, and amendments thereto.

(c) "Imprisonment" includes any restrained environment in which the court and law enforcement agency intend to retain custody and control of a defendant and such environment has been approved by the board of county commissioners or the governing body of a city.

(d) "Law enforcement officer" means the same as in K.S.A. 2021 Supp. 21-5111, and amendments thereto, and includes any person authorized by law to make an arrest on a military reservation for an act which would constitute a violation of section 1, and amendments thereto, if committed off a military reservation in this state.

(e) "Other competent evidence" includes:

(1) Alcohol concentration tests obtained from samples taken four hours or more after the operation or attempted operation of an aircraft; and

(2) readings obtained from a partial alcohol concentration test on a breath testing machine.

(f) "Test refusal" refers to a person's failure to submit to or complete any test of the person's blood, breath, urine or other bodily substance, other than a preliminary screening test, in accordance with section 2, and amendments thereto, and includes refusal of any such test on a military reservation.”

SECTION FOUR: Section 9.01.110 of the Olathe Municipal Code is hereby amended to read as follows:

“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” means 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, or other projectile reasonably expected to cause bodily harm or property damage, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.

“Alcohol concentration” means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

“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.

“Alcoholic liquor or alcoholic beverage” means 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” means any live, vertebrate creature, domestic or wild, other than humans.

“Another” means a person or persons as defined in this Title other than the person whose act is claimed to be an offense.

“Audiovisual recording function” means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

“Beer” means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

“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.

“Cardholder” means the person or entity to whom or for whose benefit a financial card is issued.

“Caterer” means 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” means 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” means 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” means any correctional officer or employee of the City or county or any independent contractor, or any employee of such contractor, working at a City holding facility or county jail facility.

“Conduct” means an act or series of acts, and the accompanying mental state.

“Conviction” means a judgment of guilt entered upon a plea or finding of guilty.

“Court appointed guardian” means 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” means 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” means:

- (1) To take from the owner the possession, use or benefit of his or her property without an intent to restore the same; or
- (2) 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
- (3) 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” means 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” means 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” means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

“Dwelling unit” means a single-family residence, multiple-family residence and each living unit in a mixed-use building.

“Electronic cigarette” means 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” means a horse, pony, mule, jenny, donkey or hinny.

“Farm animal” means an animal raised on a farm or ranch and used or intended for use as food or fiber.

“Fighting words” means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.

“Financial card” means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property or services or to conduct other financial transactions.

“Fire department” means 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” means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

“Funeral” means the ceremonies, processions, and memorial services held in connection with the burial or cremation of a person.

“Gamecock” means a domesticated fowl that is reared or trained for the purpose of fighting with other fowl.

“Health care facility” means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

“Health care provider” means any person:

- (1) Licensed to practice a branch of the healing arts;
- (2) Licensed to practice psychology;

- (3) Licensed to practice professional or practical nursing;
- (4) Licensed to practice dentistry;
- (5) Licensed to practice optometry;
- (6) Licensed to practice pharmacy;
- (7) Registered to practice podiatry;
- (8) Licensed as a social worker; or
- (9) Registered to practice physical therapy.

“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 driver’s licenses, non-driver’s identification cards, birth certificates, social security cards and employee identification cards.

“Intent to defraud” means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

“Juvenile detention facility officer or employee” means any officer or employee of a juvenile detention facility as defined in K.S.A. 38-2302, and 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.

“Law Enforcement Officer” means:

- (1) 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; or
- (2) Any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

“Maliciously” means 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” means a movie theater, screening room or other venue when used primarily for the exhibition of a motion picture.

“Motor vehicle” means every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

“Motorboat” means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion.

“Obtain” means 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” means 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” means 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” means a person who has an interest in property.

“Paint ball gun” means 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” means an individual, public or private corporation, government, partnership, or unincorporated association.

“Personal property” means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

“Police dog” means 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” means knowingly 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” means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

“Property” means anything of value, tangible or intangible, real or personal.

“Prosecution” means all legal proceedings by which a person’s liability for an offense is determined.

“Public employee” means 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” means an act or omission defined by this Title which, upon conviction, is punishable by fine, confinement or both fine and confinement.

“Public officer” means includes the following, whether elected or appointed:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(5) A law enforcement officer.

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

“Railroad property” means 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” means every estate, interest and right in lands, tenements and hereditaments.

“Retail dealer” means a person, other than a vending machine operator, in possession of cigarettes or electronic cigarettes for the purpose of sale to a consumer.

“Runaway” means a child under eighteen (18) years of age who is voluntarily absent from:

(1) The child’s home without the consent of the child’s parent or other custodian; or

(2) 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” means 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” means 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” means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

“School employee” means 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” means any person that operates a business out of a fixed location, and that is also either:

- (1) Engaged in the business of buying and dealing in regulated scrap metal;
- (2) Purchasing, gathering, collecting, soliciting or procuring regulated scrap metal; or
- (3) 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” means 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:

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

“Smoke detector” means 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” means 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:

- (1) Generally recognized health care practices; or

(2) A body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

“Solicit or solicitation” means to command, authorize, urge, incite, request or advise another to commit an offense.

“Spouse” means 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” means the State of Kansas and all land and water in respect to which the State of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water.

“State correctional officer or employee” means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

“Stolen property” means property over which control has been obtained by theft.

“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.

“Telecommunications device” means 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” means the use of electronic equipment to send or transmit a copy of a document via telephone line.

“Temporary permit” means a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto.

“Threat” means a communicated intent to inflict physical or other harm on any person or on property.

“Throwing star” means 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” means 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” means vapors from the following substances or products containing such substances:

- (1) Alcohols, including, but not limited to, methyl, isopropyl, propyl, or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;
- (6) Cyclohexane;
- (7) Freons, including, but not limited to, Freon 11, Freon 12, and other halogenated hydrocarbons;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naphtha;
- (12) Perchlorethylene;
- (13) Toluene;
- (14) Trichloroethane; or
- (15) Xylene.

“Unlawful sexual act” means any lewd and lascivious behavior or sexual battery as defined in this Title.

“Vessel” means any water craft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water.

“Wildlife” means 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” means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

SECTION FIVE: Section 9.06.060 of the Olathe Municipal Code is hereby amended to read as follows:

“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~~ Selling Sexual Relations is a Class A Public Offense.”

SECTION SIX: Section 9.05.100 of the Olathe Municipal Code is hereby amended to read as follows:

“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.”

SECTION SEVEN: Section 9.07.010 of the Olathe Municipal Code is hereby amended to read as follows:

“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 the theft is of property which is a firearm; or

4. When the theft is of property that is mail of the value of less than \$1,500 from three separate locations within a period of 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.

In such cases theft is a felony under state ~~statues~~ statutes and will be referred to the appropriate prosecuting authority.

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. "Mail" means a letter, postal card, package or bag sent through the United States postal service or other delivery service, or any other article or thing contained therein;

~~3.~~ "Regulated scrap metal" means the same as defined 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.~~ 4. "Remote service unit" means the same as defined in K.S.A. 9-1111, and amendments thereto, and includes, but is not limited to, automated cash dispensing machines and automated teller machines;

5. "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.~~ 6. "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; and

7. "Value" means the value of the property or, if the property is regulated scrap metal or a remote service unit, the cost to restore the site of the theft of such regulated scrap metal or remote service unit to its condition at the time immediately prior to the theft of such regulated scrap metal or remote service unit, whichever is greater."

SECTION EIGHT: Section 9.13.040 of the Olathe Municipal Code is hereby amended to read as follows:

"9.13.040 Gambling, Definitions.

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~~ that 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~~ [K.S.A. 75-5173](#), and amendments thereto; ~~or~~

(9) A fantasy sports league as defined in this Section; ~~or~~

[\(10\) Sports wagering, as defined in K.S.A. 74-8702, and amendments thereto.](#)

“Consideration” as used in this Section means anything ~~which~~ [that](#) 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 [\(c\) or \(d\)](#) 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.

“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.

“Gambling device” means:

(1) 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~~that 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.

(2) Any other machine, mechanical device, electronic device or other contrivance (including, but not limited to, roulette wheels and similar devices) ~~which~~that 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~~that 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;

(3) Any subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but ~~which~~that is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or

(4) Any token, chip, paper, receipt or other document ~~which~~that 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.

“Gambling device” does not include:

(1) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing and gaming 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;

(2) 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~~ that is not designed and manufactured primarily for use in connection with gambling, and (i) ~~which~~that 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;

(3) 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

(4) Any machine, mechanical device, electronic device or other contrivance used in tribal gaming.

A “gambling place” is any place, room, building, vehicle, tent or location ~~which~~that 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 ~~devises~~ 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.

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.

“Tribal gaming” has the meaning provided by K.S.A. 74-9802 and amendments thereto.

“Tribal gaming commission” has the meaning provided by K.S.A. 74-9802 and amendments thereto.”

SECTION NINE: Section 9.17.010 of the Olathe Municipal Code is hereby amended to read as follows:

“9.17.010 Possession of Marijuana; Controlled Substance; Penalties.

A. Except as authorized by the Uniform Controlled Substance Act, K.S.A. 65-4101 et seq., and amendments thereto, 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 and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include:

1. 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;

2. any substance listed in schedules II through V of the uniform controlled substances act;

3. drug products approved by the United States food and drug administration as of June 9, 2022; ~~or~~

4. cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)); ~~or~~

5. industrial hemp as defined in K.S.A. 2021 Supp. 2-3901, and amendments thereto, when cultivated, produced, possessed or used for activities authorized by the commercial industrial hemp act.

C. It shall be an affirmative defense to prosecution under this Section arising out of a person's possession of any cannabidiol treatment preparation if the person:

1. Has a debilitating medical condition, as defined in subsection (F) of this Section, and amendments thereto, or is the parent or guardian of a minor child who has such debilitating medical condition;
2. Is possessing a cannabidiol treatment preparation, as defined in subsection (F) of this Section, and amendments thereto, that is being used to treat such debilitating medical condition; and
3. Has possession of a letter, at all times while the person has possession of the cannabidiol treatment preparation, that:
 - a. Shall be shown to a law enforcement officer on such officer's request;
 - b. Is dated within the preceding fifteen (15) months and signed by the physician licensed to practice medicine and surgery in Kansas who diagnosed the debilitating medical condition;
 - c. Is on such physician's letterhead; and

d. Identifies the person or the person's minor child as such physician's patient and identifies the patient's debilitating medical condition.

D. 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.

E. Any person who violates this Section shall be guilty of a class A public offense.

F. As used in this Section:

1. "Cannabidiol treatment preparation" means an oil containing cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)) and tetrahydrocannabinol, as described in K.S.A. 65-4105, and amendments thereto, and having a tetrahydrocannabinol concentration of no more than five percent (5%) relative to the cannabidiol concentration in the preparation, verified through testing by a third-party, independent laboratory.

2. "Debilitating medical condition" means a medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery in Kansas."

SECTION TEN: Section 9.20.010 of the Olathe Municipal Code is hereby amended to read as follows:

"9.20.010 Diversion; Definitions.

[As used in this Section:](#)

“City Attorney” includes any attorney to whom the City Attorney delegates the duties or authority provided under this Section, including but not limited to the city prosecutor or other prosecuting attorney.

“Complaint” means complaint, citation or notice to appear.

“Diversion” means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.

“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.

“Prosecuting Attorney” means any attorney representing the City of Olathe in criminal proceedings in the municipal court or upon appeal taken therefrom.”

SECTION ELEVEN: Section 9.20.025 of the Olathe Municipal Code is hereby amended to read as follows:

“9.20.025 Municipal Court Diversion; Factors to Consider; When Prohibited.

~~A.~~ (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.~~ (1) The nature of the crime charged and the circumstances surrounding it;

~~2.~~ (2) any special characteristics or circumstances of the defendant;

~~3.~~ (3) whether the defendant is a first-time offender of an alcohol related offense as defined in K.S.A. 12-4413, and amendments thereto, 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.~~ (4) whether there is a probability that the defendant will cooperate with and benefit from diversion;

~~5.~~ (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.~~ (6) if subsection ~~A.5.~~ (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.~~ (7) whether the available diversion program is appropriate to the needs of the defendant;

~~8.~~ (8) the impact of the diversion of the defendant upon the community;

~~9.~~ (9) recommendations, if any, of the involved law enforcement agency;

~~10.~~ (10) recommendations, if any, of the victim;

~~11.~~ (11) provisions for restitution; and

~~12.~~ (12) any mitigating circumstances.

~~B.~~ (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 as defined in K.S.A. 12-4413, and amendments thereto, if the defendant:

~~1.~~ (1) Has previously participated in diversion of an alcohol related offense;

~~2.~~ (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~~ that prohibits the acts prohibited by those statutes; or

~~3.~~ (3) during the time of the alleged alcohol related offense was involved in a motor vehicle accident or collision resulting in personal injury to another person or death.

(c) A City Attorney shall not enter into a diversion agreement in lieu of further criminal proceedings on a complaint or traffic citation alleging a violation of an ordinance of any city or resolution of any county that prohibits the acts prohibited under chapter 8 of the Kansas Statutes Annotated, and amendments thereto, if the defendant was a commercial driver's license holder at the time the violation was committed or at any subsequent time prior to being considered for diversion.

(d) As used in this section, "major depressive disorder," "polytrauma," "post-traumatic stress disorder" and "traumatic brain injury" mean the same as in K.S.A. 2021 Supp. 21-6630, and amendments thereto.

SECTION TWELVE: Existing Sections 9.01.110, 9.05.060, 9.05.100, 9.07.010, 9.13.040, 9.17.010, 9.20.010 and 9.20.025 of the Olathe Municipal Code are hereby repealed.

SECTION THIRTEEN: This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.

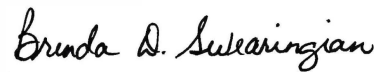
PASSED by the Governing Body this 19th day of July, 2022.

SIGNED by the Mayor this 20th day of July, 2022.


John W Bacon (Jul 20, 2022 08:13 CDT)

Mayor

ATTEST:




City Clerk



(SEAL)

APPROVED AS TO FORM:


Ron Shaver (Jul 20, 2022 08:48 CDT)
City Attorney

Publish one time and return one Proof of Publication to the City Clerk and one to the City Attorney.

STATE OF KANSAS
JOHNSON COUNTY, SS

Brandon Humble, being first duly sworn, deposes and says: That he is the editor of **THE GARDNER NEWS** A weekly newspaper printed in the State of Kansas, and published in and of general circulation in Johnson County, Kansas and that said newspaper is a bi-weekly published at least weekly, 52 times a year; has been published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office in Gardner, Kansas in said county as second class matter.

That the attached notice is a true copy there of and was published in the regular and entire issue of said newspaper for 1 consecutive weeks(s),

The first publication there of being made as aforesaid on :July 27, 2022
Publications being made on the following .

EDITOR *Brandon Humble*

SUBSCRIBED AND SWORN TO ME THIS: July 27, 2022

NOTARY PUBLIC *Heather Hollingshead*



MY COMMISSION EXPIRES 12/07/2024

COST-----

ADDITIONAL COPIES-----

IN THE DISTRICT COURT OF JOHNSON, COUNTY KANSAS-----

The within Proof Of Publication approved

-----JUDGE

Public Notice

First published in *The Gardner News*
Wednesday, July 27, 2022

PUBLICATION SUMMARY OF ORDINANCE NO. 22-35, PASSED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS ON THE 19th DAY OF JULY 2022.

SUMMARY

On July 19, 2022, the Governing Body of the City of Olathe, Kansas passed Ordinance No. 22-35 making amendments to the Title 9 of the Olathe Municipal Code pertaining to the Public Offense Code.

The complete text of this ordinance may be obtained or viewed free of charge at the office of the Olathe City Clerk, Olathe City Hall, 100 East Santa Fe Street, Olathe, Kansas, or on the City's official website address <http://www.olatheks.org/government/city-clerk/public-notices>, where a reproduction of the original ordinance will be available for a minimum of one week following this summary publication.

This summary is certified this 20th day of July 2022.

/s/ Robert G. Gallimore
Robert G. Gallimore
Assistant City Attorney