

ORDINANCE NO. 23-17

AN ORDINANCE PERTAINING TO THE OLATHE PUBLIC OFFENSE CODE; ADDING NEW SECTION 9.12.045 AND AMENDING SECTIONS 9.06.060, 9.08.030, 9.11.160, AND 9.17.030 AND REPEALING THE EXISTING SECTIONS.

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

NEW SECTION ONE: Section 9.12.045 is hereby added to the Olathe Municipal Code to read as follows:

“9.12.045 Possession of a Firearm Under the Influence.

- (a) Possession of a firearm under the influence is knowingly possessing or carrying a loaded firearm on or about such person, or within such person’s immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm.
- (b) This section shall not apply to:
 - (1) A person who possesses or carries a firearm while in such person’s own dwelling or place of business or on land owned or possessed by such person; or
 - (2) The transitory possession or use of a firearm during an act committed in self-defense or in defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.
- (c) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the person’s blood, breath, urine, or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.
- (d) (1) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:
 - (A) A person licensed to practice medicine and surgery, licensed as a physician’s assistant, or a person acting under the direction of any such licensed person;
 - (B) A registered nurse or a licensed practical nurse;
 - (C) Any qualified medical technician, including but not limited to, an emergency medical technician-intermediate, mobile intensive care

technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician, or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or

(D) A phlebotomist.

(2) A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection (c).

(3) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care, or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

(4) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(5) If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(6) A law enforcement officer may request a urine sample upon meeting the requirements of subsection (c).

(7) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:

(A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(B) A registered nurse or a licensed practical nurse; or

(C) A law enforcement officer of the same sex as the person being tested.

The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in paragraphs (2) and (3) shall apply to the collection of a urine sample.

(8) The person performing or assisting in the performance of any such test and the law enforcement officer requesting any such test who is acting in accordance with this section shall not be liable in any civil or criminal proceeding involving the action.

(e) (1) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of possession of a firearm under the influence of alcohol or drugs, or both.

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(3) In any criminal prosecution for a violation of this section, if the court finds that a person refused to submit to testing when requested pursuant to this section, the city, upon petition to the court, may recover on behalf of the city, in addition to the criminal penalties provided in this section, a civil penalty not exceeding \$1,000 for each violation.

(f) If a person who holds a valid license to carry a concealed handgun issued pursuant to K.S.A. 75-7c01 *et seq.*, and amendments thereto, is convicted of a violation of this section, such person's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or subsequent offense.

(g) In any criminal prosecution for possession of a firearm under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in

the defendant's blood, urine, breath, or other bodily substance may be admitted and shall give rise to the following:

(1) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol or drugs, or both.

(2) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol.

(3) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapacitated, that fact may be considered to determine if the defendant was under the influence of alcohol or drugs, or both.

(h) The provisions of subsection (g) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or drugs, or both.

(i) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

(j) Possession of a firearm under the influence is a Class A public offense."

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

"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)~~ twenty-one (21) 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.”

SECTION THREE: Section 9.08.030 of the Olathe Municipal Code is hereby amended to read as follows:

“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. That a law enforcement officer has committed a crime or committed misconduct in the performance of such officer’s duties, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or

~~23.~~ any information, knowing that such information is false and intending to influence, impede or obstruct such officer’s or agency’s duty; or

~~34.~~ any information for the purpose of hindering the apprehension, prosecution, conviction or punishment of any person for a crime; or

~~45.~~ 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, and such act substantially hindered or increased the burden of the person in the performance of the person’s 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, and such act substantially hindered or increased the burden of the officer in the performance of the officer's official duty; 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. Knowingly and willfully fleeing from a law enforcement officer, other than fleeing by operation of a motor vehicle, when the law enforcement officer has:

1. Reason to stop the person under K.S.A. 22-2402, and amendments thereto; and

2. Given the person visual or audible signal to stop.

F.G. Interference with Law Enforcement is a Class A Public Offense."

SECTION FOUR: Section 9.11.160 of the Olathe Municipal Code is hereby amended to read as follows:

"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; or

h. Utilizing any electronic tracking system or acquiring tracking information to determine the targeted person's location, movement, or travel patterns.

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.”

SECTION FIVE: Section 9.17.030 of the Olathe Municipal Code is hereby amended to read as follows:

“9.17.030 Definitions.

A. *Definitions.* As used in this chapter:

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. “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.
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 Substances Act. “Drug paraphernalia” ~~shall~~ includes, 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 a 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.

“Drug paraphernalia” does not include:

a. Any products, chemicals, or materials described in K.S.A. 2022 Supp. 21-5709(a), and amendments thereto; or

b. Any materials used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine, or gamma hydroxybutyric acid (GHB).

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. 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 distribute 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.”

SECTION SIX: Existing Sections 9.12.045, 9.06.060, 9.08.030, 9.11.160, and 9.17.030 of the Olathe Municipal Code are hereby repealed.

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

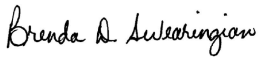
PASSED by the Governing Body this 19th day of July, 2023.

SIGNED by the Mayor this 19th day of July, 2023.


John W Bacon (Jul 19, 2023 16:05 CDT)

Mayor

ATTEST:



City Clerk



APPROVED AS TO FORM:


Ron Shaver (Jul 19, 2023 16:30 CDT)

City Attorney

The Legal Record

1701 E. Cedar St., Ste. 111
Olathe, KS 66062-1775
(913) 780-5790

ATTN: CITY CLERK
CITY OF OLATHE
100 E SANTA FE ST
OLATHE KS 66061-3409

First published in The Legal Record, Tuesday, July 25, 2023.

PUBLICATION SUMMARY OF ORDINANCE NO. 23-17, PASSED BY THE GOVERNING BODY OF THE CITY OF OLATHE, KANSAS ON THE 18th DAY OF JULY 2023.

SUMMARY

On July 18, 2023, the Governing Body of the City of Olathe, Kansas passed Ordinance No. 23-17 making amendments to the Title 9 of the Olathe Municipal Code pertaining to the Olathe 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 19th day of July 2023.

/s/ Robert G. Gallimore
Robert G. Gallimore
Assistant City Attorney
7/25

Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;
Maureen Gillespie, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Clerk for The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

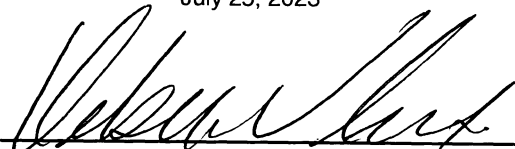
SUMMARY OF ORDINANCE NO. 23-17
7/25/23



Maureen Gillespie, Legal Notices Billing Clerk

Subscribed and sworn to before me on this date:

July 25, 2023



Notary Public

DEBRA VALENTI
Notary Public-State of Kansas
My Appt. Expires Aug. 21, 2023

L13901
Publication Fees: \$20.76