City of Hays
Office of the City Manager

Memo

To: City Commission

From: Toby Dougherty, City Manager

Date: 9-12-14

Re: September 18, 2014 Work Session

Please find the attached agenda and supporting documentation for the September 18, 2014 Work Session.

Item 2 – Review of Petition and Application for the Hays Mall Community Improvement District (CID)

Please refer to the attached memorandum from Kim Rupp, Finance Director, regarding the Petition and Application for the Community Improvement District at the Hays Mall. To summarize the request, Hays Mall LLC has submitted a petition to create a Community Improvement District (CID) which would encompass the entire Mall property. The CID would impose a one cent (1¢) sales tax to reimburse Hays Mall LLC for up to $3.14 million for costs related to improving the property. The proposed improvements are listed on the first page of Kim's memo.

Item 3 – Resolution Calling for a Public Hearing on the Creation of the Hays Mall Community Improvement District (CID)

This item is related to the previous item. To consider the approval of a Community Improvement District, it is necessary that the City Commission hold a public hearing on the proposed CID. City staff is suggesting that a public hearing be held at the October 23, 2014 City Commission meeting.

Item 4 – Easement for Midwest Energy

Please refer to the attached memorandum from I.D. Creech, Director of Public Works. Midwest Energy has a blanket easement on a piece of property to the south and immediately east of the Wastewater Treatment Plant. We received a request from Midwest Energy's Real Estate Manager that they would like to change the easement from a blanket easement on the entire property to a defined easement as this would facilitate the rebuilding of the transmission line across the property. City staff feels this is a straightforward request and recommends approval.

Item 5 – 2014 Uniform Public Offense Code/2014 Standard Traffic Ordinance

Please refer to the attached memorandum from Police Chief Don Scheibler regarding the Uniform Public Offense Code (UPOC) and The Standard Traffic Ordinance (STO). This is a

housekeeping item that the City Commission addresses each year. One item of note is that there are many more revisions to the UPOC and STO than on a typical year.

Item 6 – Ordinance Repealing Certain Provisions of the Code regarding Taxicabs

Please refer to the attached memorandum from Finance Director Kim Rupp. Currently, the City of Hays licenses taxicab companies and their drivers. The fees charged do not come close to covering the cost of this licensing, so City staff held discussion on the overall need for a licensing of this specific business. While the City does license a couple of other areas, for example, building and plumbing contractors, it does not license, review or regulate the employees these contractors hire. Therefore, it is not as onerous on City staff. In short, City staff feels like this is an unnecessary regulation, and the City Attorney is also somewhat fearful that we could be assuming some liability. Therefore, City staff recommends repealing the provisions of the City Code regarding regulation of taxicabs and employees.

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CITY OF HAYS
CITY COMMISSION WORK SESSION
THURSDAY, SEPTEMBER 18, 2014 – 6:30 P.M.
AGENDA

1. **ITEM FOR REVIEW: September 4, 2014 Work Session Notes** (PAGE 1)
   DEPARTMENT HEAD RESPONSIBLE: Kim Rupp, Director of Finance

2. **ITEM FOR REVIEW: Review of Petition and Application for Hays Mall Community Improvement District (CID)** (PAGE 5)
   RESPONSIBLE PARTY: Dial Properties

3. **ITEM FOR REVIEW: Resolution Calling for a Public Hearing on the Creation of the Hays Mall Community Improvement District (CID)** (PAGE 73)
   RESPONSIBLE PARTY: Dial Properties

4. **ITEM FOR REVIEW: Easement Request – Midwest Energy** (PAGE 79)
   DEPARTMENT HEAD RESPONSIBLE: I.D. Creech, Director of Public Works

5. **ITEM FOR REVIEW: 2014 Uniform Public Offense Code/2014 Standard Traffic Ordinance** (PAGE 97)
   STAFF MEMBER RESPONSIBLE: Brian Dawson, Assistant Chief of Police

6. **ITEM FOR REVIEW: Ordinance Repealing Certain Provisions of the Code regarding Taxicabs** (PAGE 325)
   STAFF MEMBERS RESPONSIBLE: Kim Rupp, Director of Finance
   Brian Dawson, Assistant Chief of Police

7. **OTHER ITEMS FOR DISCUSSION**

8. **EXECUTIVE SESSION (IF REQUIRED)**

9. **ADJOURNMENT**

ANY PERSON WITH A DISABILITY NEEDING SPECIAL ACCOMMODATIONS TO ATTEND THIS MEETING SHOULD CONTACT THE CITY MANAGER'S OFFICE 48 HOURS PRIOR TO THE SCHEDULED MEETING TIME. EVERY ATTEMPT WILL BE MADE TO ACCOMMODATE ANY REQUESTS FOR ASSISTANCE.

City of Hays

City Commission

Work Session Notes

September 4, 2014 – 6:30 p.m.

Present: Henry Schwaller IV, Eber Phelps, Shaun Musil, Ron Mellick, Kent Steward, John Bird, Toby Dougherty

August 21, 2014 Work Session Notes

There were no corrections or additions to the minutes of the work session held on August 21, 2014; the minutes stand approved as presented.

Discussion of DHDC Funding for 2015

City Commissioners requested that Downtown Hays Development Corp. (DHDC) explain their mission and present their case for continued funding from the City of Hays. The City of Hays has allocated $53,655 in funding for downtown purposes in the 2015 Budget.

Stacey Smith, President of DHDC's Board of Directors, discussed their mission, role, community contributions and goals which were defined in a packet distributed to the Commissioners. She stated there is an effort underway to improve communication among the merchants.

Traci Stanford, DHDC Executive Director, stated the group's supporters and members of the downtown community are committed to the organization. She looks forward to building relationships with the downtown businesses to continue to make an impact in this community.

Karen Dreiling, owner of the Furniture Look and a DHDC board member, cited the "romance" of being in the downtown area as the reason she has not pursued opportunities to relocate.

Commissioner Steward voiced his concerns stating there are real communication problems not only with the Commission, but with the people downtown and the people in the community.

At the September 11, 2014 Commission meeting, the Commissioners will be requested to authorize expenditures of $53,655 to the Downtown Hays Development Corporation for 2015.

Solid Waste Polycart Purchase

Current polycarts have been in use since 2008. Physical demands on the polycarts cause some to come into disrepair and require replacement. Replacement must come from an in-house inventory because of the special logo on the polycarts. Additional customers must also be provided polycarts.

At the September 11, 2014 Commission meeting, the Commissioners will be requested to authorize the expenditure of $21,450 from Solid Waste Reserves to purchase 400 95-gallon polycarts, 50 wheels, and 50 hinge pins from Rehrig Pacific Company.

Fireworks Discussion

Following the last-minute decision to allow the sale and use of fireworks for the 2014 holiday season, the City Commission asked that discussion of the subject be placed on a future work session agenda. Current policy states the Commission decides at its final meeting in May if the sale and use of fireworks will be allowed during the Fourth of July holiday. The City Commission has the right to suspend the sale and use of common fireworks within the city limits at any time, if weather conditions so require.

Commissioner Musil stated May is too early to make the decision to ban or allow fireworks and also suggested reducing the number of days for using fireworks.

Commissioner Mellick stated the vendors asked that decision should be made in May to order stock and prepare for the season.

There were significant rains in June so the decision in May to not allow fireworks drew many complaints.

Chairperson Schwaller stated the ordinance has been altered many times and we can alter the ordinance as much as we want and it is not going to eliminate the complaints or problems.

The Commissioners agreed to not change the current ordinance.

Other Items for Discussion

Commissioner Phelps commented that he identified about 17 businesses downtown that cater to Fort Hays State University students and suggested the college students be made aware of what is available to them downtown.

The work session was adjourned at 7:44 p.m.

Submitted by: _____

Brenda Kitchen – City Clerk

Commission Work Session Agenda Memo

From: Kim Rupp, Director of Finance

Work Session: September 18, 2014

Subject: Review of Petition and Application for the Hays Mall Community Improvement District

Person(s) Responsible: Kim Rupp, Director of Finance

Summary

On August 11, 2014, Hays Mall LLC submitted a petition to create a Community Improvement District (CID), an application for economic development incentives, a cost benefit analysis and the required application fee. All materials have been reviewed by bond counsel, Gina Riekhof, Gilmore & Bell, P.C. and are found to meet all the requirements of Kansas law and the City of Hays Economic Development Policy. Staff recommends the commission set a public hearing to create the Hays Mall CID.

Background

The petition seeks to create a CID encompassing the area bounded on the north by E 33rd, on the west by Vine, on the south by E 29th, and on the east by the access road on the east side of the mall. The proposed CID would impose a new 1% sales tax used to reimburse the developer, Hays Mall, LLC on a pay-as-you-go basis for up to $3,144,936 of costs incurred to make improvements to the Mall which includes:

*interior mall improvements/renovation
*parking lot 1.5" mill 2" overlay
*exterior LED lighting
*demolition of the bank drive thru and Montana Mikes
*exterior insulation finishing system
*mall entrances upgrades
*landscaping

This would make the total sales tax 9.4% at all the Hays Mall stores.

Discussion

Bond counsel, Gina Riekhof, Gilmore & Bell P.C. has reviewed all the documentation submitted. Her detailed memo is attached. The owners have signed the petition and all other aspects of it comply with the requirements of K.S.A. 12-6a26 and is a valid petition for a CID under Kansas law.

All general aspects of Section 9 regarding CIDs in the Eco Devo Policy have been met. However, detail and clarification will need to be made concerning the interior furnishings

given they are not eligible for reimbursement as per policy. That can be addressed in the Development Agreement.

Once the hearing is held and if approved an ordinance published the next step would be to consider a Development Agreement to specify all of the terms and conditions of the project including the eligible and ineligible costs.

Legal Consideration

The City Attorney has reviewed the Memorandum, and based upon the fact that bond counsel has approved the procedure and reviewed all documents, there are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

The application fee of $1000 and the deposit of $5000 have been paid by Hays Mall LLC. The $5000 is retained to pay for the City's out of pocket costs associated with the City's review of the application including costs of legal counsel. The Eco Devo Policy provides that if these costs incurred exceed the fee collected, the applicant shall reimburse the City for the additional.

Options

The City Commission has the following options:

- Move the petition forward by setting a hearing date on the creation of the Hays Mall CID
- Decline the petition for the Hays Mall CID
- Provide other direction to city staff

Recommendation

Move the petition forward by setting a hearing date on the creation of the Hays Mall CID.

Action Requested

Move the petition forward by setting a hearing date on the creation of the Hays Mall CID.

Supporting Documentation

Memo from Gina Riekhof, Gilmore & Bell, P.C.
Petition and application package from Hays Mall LLC
City of Hays Economic Development Policy

GILMORE BELL

816-221-1000 MAIN
816-221-1018 FAX
GILMOREBELL.COM

GILMORE & BELL PC
2405 GRAND BOULEVARD, SUITE 1100
KANSAS CITY, MISSOURI 64108-2521

ST. LOUIS
WICHITA
OMAHA | LINCOLN

TO: TOBY DOUGHERTY, CITY MANAGER

FROM: GINA RIEKHOF, GILMORE & BELL, P.C.

DATE: SEPTEMBER 8, 2014

RE: HAYS MALL COMMUNITY IMPROVEMENT DISTRICT APPLICATION

On August 11, 2014, Hays Mall LLC submitted a Petition to create a Community Improvement District ("CID"), an Application for Economic Development Incentives, a Cost Benefit Analysis and the required application fee. At the City's request, we have reviewed these materials to determine whether the Petition complies with Kansas law and whether the Application meets requirements contained in the City's Economic Development Policy.

Summary of the Petition. The Petition seeks to create a CID encompassing the area generally bounded on the north by E 33rd Street, on the west by Vine Street, on the south by E 29th Street, and on the east by the access road that runs north-south on the east side of the mall. The proposed CID would impose a new 1% sales tax on sales within the CID boundaries (the "CID Sales Tax"). The CID Sales Tax would be used to reimburse the Developer, Hays Mall, LLC, on a pay-as-you-go basis, for up to $3,144,936.00 of costs incurred to make certain improvements to the Mall and the surrounding property, as further described in the Petition.

Compliance with State Law. City staff has confirmed that Hays Mall LLC and Stanley E. Dreiling are the current owners of record of all of the real estate to be included in the CID. These owners have signed the Petition. All other aspects of the Petition comply with the requirements set forth in K.S.A. 12-6a26 *et seq.* Thus, the Petition is a valid petition to create a CID under Kansas law.

Compliance with the City's Economic Development Policy. The Governing Body will need to determine whether the project meets the general incentive standards set forth in Section 1 of the City's Economic Development Policy. An argument may be made that the project would expand existing industry, and/or retain businesses which are good corporate citizens and which add to the quality of life in Hays.

Based on representations made in the Application, the project appears to meet the criteria established in Section 4 of the Policy for retail development incentives (> 50,000 square feet, at least $10,000,000 in annual retail sales and at least 25 employees).

The project may meet the specific criteria for creating a CID established in Section 9 of the Policy. The Application suggests that the project will develop new businesses, strengthen economic development and employment opportunities, enhance tourism amenities, and upgrade older retail real estate. The total reimbursable expenditures for the project exceed $250,000. It is unclear whether the project uses higher standards for design than what is currently required by City guidelines. While the project is not

contemplated to extend public infrastructure to areas not currently served, Phase II of the project does contemplate landscape improvements within the Vine Street right-of-way.

The proposed pay-as-you-go method of financing meets the City's Policy requirements.

The scope of the project may meet the City's Policy requirements. While the general description of the project broadly references "interior improvements" and "exterior improvements", Item (8) on Exhibit C more specifically references "Interior Renovation/Finish." The Policy provides that interior furnishings are not eligible for reimbursement. It is unclear whether the Petition contemplates any interior furnishings or other ineligible costs to be reimbursed from CID Sales Tax proceeds.

Is should be noted that the City and the Developer may more clearly specify eligible and ineligible costs and specific design standards in a Development Agreement related to the Project.

Next Steps. If the Commission determines to move forward with further consideration of the Petition, the Commission will need to adopt a Resolution calling a public hearing on the creation of the CID. A draft Resolution is attached.

Once a Resolution calling the public hearing has been adopted, the resolution must be published once a week for two consecutive weeks and sent via certified mail to all owners of property within the proposed CID. The hearing may be held more than seven days after the final publication and ten days after delivery of the certified mail notice to property owners.

Following the public hearing, the Commission may consider an ordinance to create the CID and a resolution approving the Development Agreement.

If the Commission wishes to proceed with further consideration of the Petition, it is also advisable to direct staff to begin negotiations with the Developer on a Development Agreement to specify all of the terms and conditions of the project, eligible and ineligible costs, and the process for pay-as-you-go reimbursement to the Developer. The Developer has submitted a draft Development Agreement for consideration. Neither staff nor Gilmore & Bell have reviewed the draft Development Agreement to date, but will do so upon direction from the Commission about how to proceed.

If the Commission wishes to proceed, the proposed schedule for further consideration of the CID could look like this:

September 18	Work session
September 25	Commission approve resolution calling public hearing
September 26	Mail notice provided to property owners
September 29	First publication of notice
October 6	Second publication of notice
October 16	Work session to consider Development Agreement and Ordinance establishing CID
October 23	Public Hearing; Commission consider approval of Ordinance establishing CID and resolution approving Development Agreement

LAW OFFICES
BARBER EMERSON, L.C.
1211 MASSACHUSETTS STREET
POST OFFICE BOX 667
LAWRENCE, KANSAS 66044
(785) 843-6600
FACSIMILE (785) 843-8405

JOHN A. EMERSON
BYRON E. SPRINGER
RICHARD L. ZINN
CALVIN J. KARLIN
JANE M. ELDREDGE
MARK A. ANDERSEN*
TERRENCE J. CAMPBELL*
MATTHEW S. GOUGH*

*ADMITTED IN KANSAS AND MISSOURI

Matthew S. Gough
Email: mgough@barberemerson.com

LINDA K. GUTIERREZ
CATHERINE C. THEISEN

RICHARD A. BARBER
(1911-1998)

GLEE S. SMITH, JR.
OF COUNSEL

August 11, 2014

RECEIVED
AUG 12 2014
CITY MANAGER

VIA FEDERAL EXPRESS
Mr. Toby Dougherty
City Manager
1507 Main Street
Hays, Kansas 67601

Re: Hays Mall Community Improvement District ("CID")

Dear Mr. Dougherty:

On behalf of the Hays Mall LLC, I am pleased to enclose a fully executed Petition and related documents to create a CID at the Hays Mall, together with an application fee in the amount of $6,000.00.

We look forward to hearing from you and appreciate the opportunity to work with the City of Hays on this project.

Very truly yours,

BARBER EMERSON, L.C.

Matthew S. Gough

Matthew S. Gough

MSG:plh
Enclosures
cc: Hays Mall LLC
DP Management, LLC
Gina Riekhof, Gilmore & Bell, P.C.

-PETITION

FOR THE CREATION OF THE HAYS MALL COMMUNITY IMPROVEMENT DISTRICT

TO: The Governing Body of the City of Hays, Kansas (the "Governing Body")

The undersigned, being the owners of record, whether resident or not, of more than 55% of the land area contained within the hereinafter described proposed Community Improvement District (the "District") to be located within the city of Hays, Kansas (the "City"), do hereby request that the Governing Body create such District and authorize the construction of the District project improvements herein after set forth, all in the manner provided by K.S.A. 12-6a26 *et seq*. (the "Act"). In furtherance of such request, the petitioners state as follows:

General Nature of the Proposed District Project

The real estate being improved by this Project includes the commercial property generally known as the Mall at Hays, and a portion of public right-of-way located along the Mall's western property line, along Vine Street. The general nature of the proposed District project (the "Project") to be constructed within the District includes but is not limited to: (a) interior improvements; (b) exterior improvements; (c) parking lot repair, milling, overlay and sidewalk improvements; (d) demolition; (e) marquee and signage upgrades; (f) remodeled entrances and doors; and (g) exterior landscaping, monuments, islands, irrigation, lighting, and beautification, all to those certain premises more particularly described in this Petition.

Estimated Costs of the Proposed District Projects

The total estimated cost of the proposed Projects is $3,144,936.00 plus reimbursable interest, as more particularly set forth in **Exhibit C**, attached to and, by reference, incorporated in this Petition, all of which plus the City's administrative costs is proposed to be funded by the District ("Reimbursable Project Costs").

Proposed Method of Financing the Proposed Projects

The Project will be privately financed. The Reimbursable Project Costs will be financed on a pay as you go basis, i.e., the Reimbursable Project Costs will be paid for by the Developer without the issuance of notes or bonds by the City, and the Developer will be reimbursed for the Reimbursable Project Costs as moneys are deposited in the District fund through the imposition of a Community Improvement District sales tax (the "CID Sales Tax").

Proposed Amount and Method of Assessment

There will be no special assessments on property within the boundaries of the proposed District to pay the costs of the Projects described by this Petition.

Proposed Amount of Community Improvement District Sales Tax

A CID Sales Tax will be imposed in the amount of 1.0% on the selling of tangible personal property at retail or rendering or furnishing of taxable services within the proposed District.

Boundaries of Proposed Community Improvement District

The proposed District is bounded by the center right-at-way line of U.S. Highway 183 (Vine Street), to the West, the South line of 33rd Street, to the North, the West line of Broadway Avenue, to the East, and the North line of 29th Street, to the South. The legal description of the proposed District is set forth on **Exhibit A** attached hereto and incorporated by reference herein. A map generally outlining the boundaries of the proposed District is attached as **Exhibit B** hereto, and incorporated by reference herein.

Notice to Petition Signers

The names of the signers of this Petition may not be withdrawn from this Petition by the signers hereof after the Governing Body commences consideration of this Petition, or, later than seven (7) days after the filing hereof, whichever occurs first. The signers of this Petition consent to any assessments to the extent described herein without regard to benefits conferred by the Projects.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, I the undersigned petitioner have executed the above foregoing Petition to create the Hays Mall Community Improvement District on the date recorded below:

OWNER: **HAYS MALL LLC,**
a Kansas limited liability company

By: _____
Gabriel Jeidel, Manager

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On this 24th day of JULY, 2014, before me personally appeared Gabriel Jeidel, who being by me duly sworn did say that he is the Manager of Hays Mall LLC, a Kansas limited liability company, and that said instrument was signed and delivered on behalf of said limited liability company and acknowledged to me that he executed the same as the free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
Notary Public

My Commission expires: 8/29/~~2019~~ 2017.

Jeffrey Reichman
Notary Public State of New York
No. 01RE6132393
Qualified in Kings County
Commission Expires 08/29/2017

IN WITNESS WHEREOF, I the undersigned petitioner have executed the above foregoing Petition to create the Hays Mall Community Improvement District on the date recorded below:

OWNER:

Stanley E. Dreiling

Stanley E. Dreiling

STATE OF Kansas)
) **ss.**
COUNTY OF Ellis)

On this 8 day of August, 2014, before me personally appeared Stanley E. Dreiling, to me personally known, who was being by me duly sworn did say that he is acting in his individual capacity, and that said instrument was signed and delivered on behalf of Stanley E. Dreiling, in his individual capacity, and acknowledged to me that he executed the same as the free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC - State of Kansas
GREG HERRMAN
My Appt. Exp. _____

Greg Herrman
Notary Public

My Commission expires: 12-08-2015.

EXHIBIT A

LEGAL DESCRIPTION

TRACT A:

A tract of land in HAYS PLAZA FIRST ADDITION to the City of Hays, Ellis County, Kansas, described as follows: Beginning at the intersection of the East line of U.S. Highway 183 and the South line of 33rd Street; thence East along the South line of 33rd Street a distance of 918.2 feet to intersect the West line of Broadway Avenue; thence South along the West line of Broadway Avenue, a distance of 1,220.56 feet to intersect the North line of 29th Street; thence West along the North line of 29th Street a distance of 925.25 feet to intersect the East right-at-way line of U.S. Highway 183; thence North along the East line of U.S. Highway 183 a distance of 1,216.28 feet to the point of beginning;

AND

TRACT B:

That portion of the eastern one-half (1/2) of U.S. Highway 183 right-at-way located between the South line of 33rd Street and the North line of 29th Street, all in the City of Hays, Ellis County, Kansas.

EXHIBIT B

MAP OF HAYS MALL CID BOUNDARY

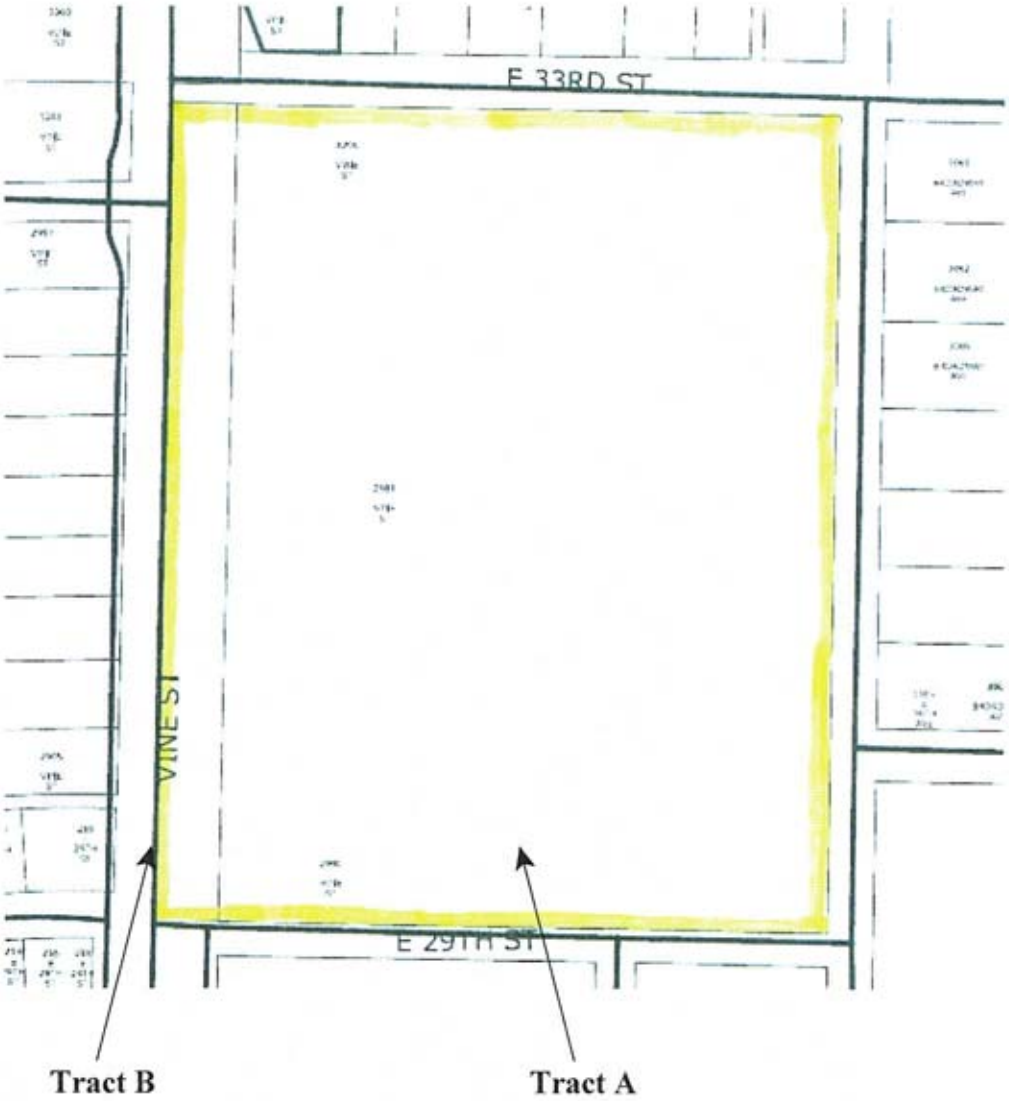


EXHIBIT C

REIMBURSABLE PROJECT COSTS

[Attach Reimbursable Project Costs]

Estimated Hays Redevelopment Costs As of June 25, 2014

		Hard Costs	Phase 1	Phase 2
1) Interior Mall Improvements				
	Lighting (LED)		$102,400	
	Flooring (Tile)		$378,456	
	Misc.		$29,000	
2) Parking Lot 1.5" mill 2" overlay			$400,000	
3) Exterior Lighting (LED)			$136,900	
4) Demolition				
	Bank Drive Thru		$15,000	
	Montana Mikes		$25,000	
5) Exterior Insulation Finishing System (EIFS)				$400,000
6) Mall Entrance				
	Main Entry			$25,000
	4 Sets of Side Entries			$50,000
7) Landscapes/New Islands				
	Irrigation			$170,000
	Curb and Gutter			
	Plantings			
	Seating			
	Trash Receptacle			
8) Interior Renovation/Finish				$ 1,000,000
9) Contingency			$56,340	$32,250
10) General Conditions/Supervisions/Constr. Mgmt.			$56,340	$32,250
		Total Hard	**$1,199,436**	**$1,709,500**
		Soft Costs		
11) City of Hays CID Application Fee				
	CID Application Fee		$1,000	
	Deposit for City's Attorney's Fees		$5,000	
12) Fees and Expenses of Consultants				
	Planners, Attorneys, and Financial Consultants		$80,000	$12,000
	Architectural and Engineering Fees		$45,000	
13) Financial Costs				
	Lender Finance Charges and Fees 1%		$13,000	$8,000
	Construction Period Interest		$50,000	$22,000
		Total Soft	**$194,000**	**$42,000**
		Total	**$1,393,436**	**$1,751,500**
		Total Project Cost		**$3,144,936**

Note: The above costs are estimates only and exclude reimbursable post-construction financing costs, which are also requested for reimbursement. Cost estimates are based on prices for goods and services in 2014, and thus the actual cost incurred over multiple years may be higher. CID Costs shall not be limited to the cost estimates above, but shall include all actual costs incurred directly related to the Hays Mall CID Project described above, including construction and associated design and other soft costs, plus interest as set forth in the Development Agreement to be executed between the Developer and the City. The amounts set forth for any particular line item in such column shall not proceeds. Rather, amounts may be moved among the line items shown above.

CITY OF HAYS
APPLICATION FOR ECONOMIC INCENTIVES

I. GENERAL INFORMATION

1. Hays Mall LLC
Name of Applicant Firm

2014
Date of Request

2. Local Address
2938 Vine Street

Hays, Kansas 67601

785-843-6600
Telephone Number of Primary Contact

785-843-8405
Fax Number
mgough@barberemerson.com
e-mail address

Headquarters Address
Attn: GJ Realty, 49 W. 37th St., 9th Floor

New York, NY 10018

212-889-4417
Telephone Number

Same as above
Fax Number
gjeidel@aol.com
e-mail address

3. Names and titles of the corporate principal officers and directors including local principal officers and/or management personnel, if known, of the applicant:

Name	Title
Gabriel Jeidel	Manager of Hays Mall LLC
Terry Clauff	CEO, DP Management, LLC, Property Mgr
Josh Vickery	Specialist, DP Management, LLC
Matthew Gough	Attorney, Barber Emerson, L.C.

4. How long has the firm been in business? Hays Mall LLC acquired the Mall in November 2006. DP Management, LLC has professionally managed the Mall since that time.

5. Has the applicant or any principal thereof:
Been convicted or any crime other than a traffic violation in the past ten (10) years?

_____ Yes __X__ No

Had Federal or State tax liens filed against them? _____ Yes __X__ No

Had a court judgment rendered against them that remains unpaid? _____ Yes __X__ No

Been declared insolvent, bankrupt or been in receivership? _____ Yes __X__ No

Filed an application for tax abatements or incentives in another community?

_____ Yes __X___ No

The name, address and telephone numbers of two banking or credit references:

1. Maureen J. Zegler, First Vice President Regional Manager, Valley National Bank, 275 Madison Avenue, New York, NY 10016, (646) 329-0503.

2. Terry Clauff, CEO, DP Management, LLC, 11506 Nicholas St., #100, Omaha, NE 68154, (402) 493-2800.

6. Names and addresses of all persons or firms that will be listed as owner(s) of the property to receive incentives:

Hays Mall LLC, its assigns	Same as above
Name	Address
Name	Address
Name	Address
Name	Address

7. Provide a brief history of your company, including the types of developments completed (for commercial developments, please list names of retailers and service firms):

Hays Mall LLC is managed by Mr. Gabriel Jeidel. His companies, including GJ Realty, own or control several dozen shopping centers in the United States, as summarized on the enclosed summary of Jeidel Shopping Center Holdings.

8. Describe in general terms the legal structure of your business. Specifically indicate how your business is organized (i.e., corporation, partnership, etc.), where the entity is domiciled, ownership, subsidiaries or affiliates and any other information necessary to understand how you are legally organized.

Hays Mall LLC is a Kansas limited liability company in good standing in the State of Kansas. See attached Certificate of Good Standing.

9. Not applicable.

10. Attach to this application the names, locations and contacts of other governments from which you have received or applied for economic incentives, including but not limited to Tax Increment Financing (TIF), Transportation Development District (TDD) bonds, STAR bonds, tax abatements and/or industrial revenue bonds if applicable.

__X__ check here if **NOT** applicable.

II. NATURE OF THE IMPROVEMENTS

1. Location of improvements: See attached CID Petition.

2. Land to be purchased: See attached CID Petition.

   sq. feet or acres _____
   value/purchase price: _____

3. New construction or modification: See attached CID Petition.

   sq. feet: _____ Cost: $_____
   Identify Construction:

4. New Machinery and Equipment subject to personal property taxes (include approximate purchase dates and estimated useful life): See attached CID Petition.

   Description: _____

   Cost: $ _____

5. Please state the reason for the establishment of the new facility or the expansion or replacement of the existing facility:

   The Mall at Hays was originally constructed in the mid-1970's, and is part of the "North Vine District," as defined in the City of Hays, Kansas 2012 Comprehensive Plan. The Plan recognizes that the Mall remains an important anchor for Hays, and that the Mall is in need of contemporary commercial development and site enhancements to help protect the Mall's value. Although the Mall continues to be a major retail center in Hays, the aging condition of the Mall is negatively impacting the Mall's ability to attract new retailers and out-of-town visitors. The Project includes landscaping improvements within the Vine Street right-of-way as part of Phase II. As a major component of the North Vine District, which stands as a gateway to Hays and represents visitors' first contact with the city, improving the appearance and vibrancy of the Mall is a primary goal of the Comprehensive Plan.

   The proposed CID Project, as described in more detail in the CID Petition, helps reinforce the North Vine District's role as the gateway to Hays by implementing a number of the Comprehensive Plan's recommendations. For example, the Project includes a new landscaping element, including improvements in the Vine Street right-of-way, parking lot, and sidewalk reconfiguration, similar to the conceptual renderings enclosed with this Application. The redesigned parking lot advances the Plan's goal of creating a walkable, aesthetically pleasing gateway. The CID Project enables the Applicant to upgrade and modernize the exterior and interior of the Mall, in an effort to re-energize the Mall as a regional attraction and promote further infill development of the site.

This application satisfies the City's development policy for retail development. The Mall exceeds 50,000 square feet, generates greater than $10,000,000 in annual retail sales, and employs more than 25 employees.

6. What are the approximate starting and completion dates for the project? The completion date is defined as the date you will be ready to utilize the new or expanded facility.

1st Quarter 2015 or earlier — Start Date

Year end 2017 or earlier — Completion Date

III. PROPOSED USE AND ECONOMIC BENEFIT

1. What type of new or expanded business activity does the applicant propose?

The CID Project enables the revitalization of the Mall by remodeling and rehabilitating the physical facility, which activities promote the attraction of new tenants to the Mall and the potential for increased retail revenue. The improvements will increase the tax base and will promote increases in retail sales at the Mall.

2. List the type of retail or service firm to be located in the proposed development (include details of the nature and scope of the operation of the business):

In addition to existing retailers and tenants of the Mall, the Project increases the likelihood that the vacant and underdeveloped portions of the Mall will be utilized.

3. What percentage of the facility will the applicant occupy? 0 %

4. Do any of the proposed retailers or service firms have a product or process that may pose or create an environmental hazard when it is sold, destroyed or discarded?

No.

5. Please list all new employees and proposed wages, excluding fringe benefits, by the job titles included in the Annual Wage Survey prepared by the Kansas Department of Human Resources, if possible. Not applicable.

Category Full-time Employees	Job Title	Salary Range	# New Employees	# of Transfers	Avg. Annual Salary	Date Hired
Management						
Professional						
Technical						
Clerical						
Production/ Assembly						

Category Part-time employees	Job Title	Salary Range	# New Employees	# of Transfers	Avg. Annual Salary	Date Hired

6. What are the employer's share of fringe benefits including health insurance but excluding vacation, holidays, and sick leave, as a percentage of annual salary by employee category. Also indicate the percentage of health insurance cost paid by the employer.

Category	Fringe Benefit %	Health Insurance (% Paid by Employer)
Management		
Professional		
Technical		
Clerical		
Production/Assembly		

Note: Percentage varies with salary level if all employees receive the same benefit package.

7. Briefly describe your medical, vacation, sick leave and retirement benefits. (Attach any appropriate benefit summary publications if applicable)
Not applicable.

8. Provide a breakdown of your annual operating expenses. Indicate the percentage of total annual operation expenses that will be spent locally within Ellis County for each item. For firms expanding their facilities and operations in Ellis County, indicate the current annual operating expenses and provide a projection for the incremental expenses after the expansion. For firms planning to newly locate in Ellis County an accurate projection of future annual operational expenses need to be provided.

Type of Expense	Actual[1]	Projected Total[2]	% Spent in Ellis County	
	$ Amount	$ Amount	Actual %	Projected Total %
Professional services (legal, accounting, advertising, etc.)				
Business service (training, maintenance)				
cleaning services				
transportation				
office supplies				
material and goods				
other (specify)				

Annual Operational Expenses[3]

Actual Expenses
Subtotal $_____

IV. TAX ABATEMENT INFORMATION (not applicable to Retail Development; complete only if requesting property tax abatement).

A. Amount or percentage of tax abatement requested and duration: _____

_____

B. In-lieu-of-tax payments offered and duration (see Section 7.B. of the City's Economic Development Policy):

_____

_____

C. Why tax abatement is a critical factor in determining whether the proposed project is to be completed?

_____

_____

[1] For existing facility, if applicable.
[2] After construction or expansion of new facility.
[3] Do not report labor costs, debt service, purchase of equipment subject to personal property tax.

V. OTHER INCENTIVE INFORMATION

Annual Operational Expenses[4]

Type of Expense	Actual ($ amount)	Projected Total ($ amount)
Telephone		
Electricity		
Gas		
Water		
Waste Water		
Garbage		
Cable		
Other		

Actual Expenses
Subtotal $_____

1. State all incentives being requested within this application:
   None.

2. Provide reasons why economic incentives are necessary for the project:

   The improvements will assist in the Applicant's ability to attract new tenants for vacant and underutilized areas of the Mall, which is currently a challenge. The Project's improvements advance the goals of the Comprehensive Plan. Without CID assistance, and in the absence of guaranteed rental increases or new tenants, the Applicant is unable to justify the capital expenditures needed to revitalize the Mall. The Mall is presently in a "catch 22," and the purpose of the CID is to enable the project improvements to occur without renegotiating existing leases. The City of Hays will not be required to expend any funds to support the project. As a "pay as you go" project, the Applicant will pay all project costs up front, and seek reimbursement from the CID over a period of time.

3. What improvements or services will need to be provided by the City or County to accommodate this improvement?
   None.

[4] Do not report labor costs, debt service, purchase of equipment subject to personal property tax.

VI. GENERAL CONDITIONS

The following general conditions are understood and agreed to by the firm receiving economic incentives from the City of Hays:

1. The applicant must agree to and reimburse the City for the costs of any legal, financial, or administrative research and work done in reviewing the proposal, preparing other necessary legal documents, and researching the qualifications of the applicant.

2. The applicant will be expected to sign a performance agreement as referenced in Section 13 of the City's Economic Development Policy, as a condition to the granting of any incentive.

3. Prior to the City's approval of any economic incentives, the applicant's proposal and information may require approval from the Kansas Department of Commerce and/or other state agencies.

4. The applicant agrees to provide additional information considered necessary by the City Manager to make a recommendation to the City Commission on granting the economic incentives.

5. Each business receiving economic incentives must complete an annual report by March 1 of each year covering the previous calendar year. Any business that has received an economic incentive shall pay an annual renewal fee of $100.00.

6. Enclosed is the application fee of $1,000.00 and a deposit of $5,000.00, payable to the City of Hays, Kansas. The $5,000.00 deposit will be retained by the City to pay for the City's out of pocket costs associated with review of this application, as further described in Section 6 (Fee Schedule) of the Economic Development Policy.

I (we) verify that the above information and assurances made are complete and correct to the best of my (our) knowledge.

HAYS MALL LLC,
a Kansas limited liability company

Gabriel Jeidel, Manager

7/24/2014
Date

City of Hays
Supplemental Questionnaire

1. Name of Applicant Firm: Hays Mall LLC, a Kansas limited liability company
2. Firm's SIC Code: 531120
3. Description and purpose of the new business or expansion:

See Application for Economic Incentives and CID Petition.

Capital Investment

Market or retail value of the new or additional investment:

	First Expansion	Second	Third	Fourth
4. Land	0			
5. Building & Improvements (Est.)	$1,393,436	$1,751,500		
6. Furniture, Fixtures, & Equipment				

Sales and Purchases

Expected sales and purchases due to the expansion:

	Sales	Purchases
7. Year 1	See attached.	
8. Year 2		
9. Year 3		
10. Year 4		
11. Year 5		
12. Year 6		
13. Year 7		
14. Year 8		
15. Year 9		
16. Year 10		

What percentage will be subject to sales tax:

	Sales	Purchases
17. Year 1	100%	100%
18. Year 2	100%	100%
19. Year 3	100%	100%

n/a % 20. What is the expected percentage of annual net taxable income on which state corporate income tax will be computed?

Additional Annual Utility Expenditures due to the Expansion

	Construction Period	Year One of Expansion
21. Telephone	Not applicable	
22. Electricity		
23. Gas		
24. Water		
25. Waste Water		
26. Garbage		
27. Cable		
28. Other		

_____ % 29. By what percentage are utility bills expected to increase during the remaining years of the expansion?

New Employees due to Expansion

	New Hires	Average Annual Salaries	Moving to the County	Moving from Out-of-state
30. Year 1	Unknown			
31. Year 2				
32. Year 3				
33. Year 4				
34. Year 5				
35. Year 6.				
36. Year 7				
37. Year 8				
38. Year 9				
39. Year 10				

New Construction

	Initial Construction or Expansion	2nd Expansion	3rd Expansion	4th Expansion
40. Total Construction Cost	$1,393,436	$1,751,500		
41. Construction Profit Percentage	Unknown	%	%	%

Construction Materials Purchased

	Initial Construction or Expansion	2nd Expansion	3rd Expansion	4th Expansion
42. In the State	Unknown			
43. In the County				
44. In the City				

Costs of Furniture, Fixtures, & Equipment Purchased

	Initial Construction or Expansion	2nd Expansion	3rd Expansion	4th Expansion
45. In the State	Unknown			
46. In the County				
47. In the City				

Construction Workers and Salaries

	Initial Construction or Expansion	2nd Expansion	3rd Expansion	4th Expansion
48. Number of construction workers	Unknown			
49. Total salary paid average worker				
50. Total construction salaries				
51. Household size of average worker				

Visitors due to the Expansion

	Out-of-town visitors expected
52. Year 1	Unknown
53. Year 2	
54. Year 3	
55. Year 4	
56. Year 5	
57. Year 6	
58. Year 7	
59. Year 8	
60. Year 9	
61. Year 10	

Unknown 62. How many days will an average visitor to your firm be expected to stay in the area?

Unknown 63. How many nights will a visitor to your firm be expected to stay overnight in city hotels or motels?

Unknown 64. How many nights will a visitor to your firm be expected to stay overnight anywhere in the county?

Economic Development Worksheet

Benefits/Cost Analysis

Firm's Name: Hays Mall LLC

Extraordinary Payments the Firm will Make

	To the City	To the County	To the State
65. Construction Period	No extraordinary	payments	anticipated
66. Year 1	$	$	$
67. Year 2	$	$	$
68. Year 3	$	$	$
69. Year 4	$	$	$
70. Year 5	$	$	$
71. Year 6	$	$	$
72. Year 7	$	$	$
73. Year 8	$	$	$
74. Year 9	$	$	$
75. Year 10	$	$	$

Extra Costs to Provide Infrastructure and/or Services for this Expansion

	City Costs	County Costs	State Costs
76. Construction Period	No additional	costs anticipated	from government
77. Year 1	$	$	$
78. Year 2	$	$	$
79. Year 3	$	$	$
80. Year 4	$	$	$
81. Year 5	$	$	$
82. Year 6	$	$	$
83. Year 7	$	$	$
84. Year 8	$	$	$
85. Year 9	$	$	$
86. Year 10	$	$	$

Where New Employees Live

As a Percentage of the Total Number of New Employees	
Unknown	87. In the city
%	88. In the school district where the firm is located
%	89. In the county
%	90. In the region

Where New Employees Shop

Percent of shopping

Unknown	91. In Kansas
Unknown	92. In the County
Unknown	93. In the City

New Employee Housing and Schools

Unknown	94. Household size of a typical new employee
	95. School age children in household of a typical new employee
%	96. Percentage of new employees moving to the community for whom new housing will be required.

Indirect New Employees

As a Percentage of the Total Number of New Employees

Unknown	97. Moving to the county
%	98. Of those, moving from out-of-state

Construction Workers

Where are construction workers expected to spend their salaries?

Unknown	99. In the State of Kansas
%	100. In the County
%	101. In the City

Visitors Spending

	In the County	Of that, in the City
102. Daily retail spending by a visitor, excluding lodging	Unknown	$
103. Average daily hotel/motel room rates	$	$

Please refer to the Hays Mall Community Improvement District Analysis of Costs, Benefits and Project Feasibility for additional information.

HAYS MALL LLC,
a Kansas limited liability company

Gabriel Jeidel, Manager

7/24/2014
Date

Hays Mall Community Improvement District
Description of Costs, Benefits and Project Feasibility

City of Hays, Kansas

July 24, 2014

Prepared by Hays Mall LLC

I. Overview.

This Analysis is intended to be a supplement to the *Supplemental Questionnaire* (the "Questionnaire") provided by Hays Mall LLC, a Kansas limited liability company (the "Applicant"). The Questionnaire is based upon the Kansas Department of Commerce CBA Worksheet (found online at http://www.kansascommerce.com/DocumentCenter/View/3107). That worksheet, like the Questionnaire, is intended for and is most applicable to new or expanding businesses seeking property tax abatements. The proposed Hays Mall Community Improvement District (the "Project") does not request the abatement of any tax, and does not seek any tax increment-based incentive. Consequently, large portions of the Questionnaire and the *Application for Economic Incentives* (the "Application") are inapplicable to the Project.

In response to information requested by the City of Hays, Kansas (the "City") in Section 15 of the City's Economic Development Policy (the "Policy"), this is an summary of public benefits derived from using the Community Improvement District ("CID") Act, K.S.A. 12-6a26 *et seq.* (the "Act") to revitalize The Mall at Hays (the "Mall"). This Analysis does not repeat the information contained in the Application, the Supplement, or the CID Petition (the "Petition"), but is intended to be read in conjunction with those documents.

II. Sales History.

The proposed Project contains approximately 216,406 square feet of retail space. Presently, approximately 63,500 square feet of the Mall is vacant, much of which has been vacant for several years. The following table illustrates the Project's annual sales revenue in each of the last six full calendar years, based in part upon information provided by the Kansas Department of Revenue (i.e., year 2008 through 2012):

Year	Est. Annual Sales
2013	$18,474,164.00
2012	$25,656,689.94
2011	$25,387,109.36
2010	$24,816,133.36
2009	$23,007,349.62
2008	$23,646,039.86

The above figures illustrate that until year 2013, revenues at the Mall were relatively flat, with average annual growth at approximately 2%, which is far less than the City-wide 5.9% sales tax increase in year 2012 (as stated in the City's 2012 Annual Report). Beginning in year 2013, sales tax revenues have decreased, but by a greater percentage than reported in the City's 2013 Annual Report. This trend is due in part to decreased occupancy rates (from approximately 74% in 2012 to approx. 70.6 % occupancy rate in 2014). As of January 1, 2014, the Hibbett Sporting Goods and Montana Mikes leases expired, and the spaces formerly occupied by those tenants (approx. 9,500 square feet) is presently vacant.

The Mall already represents a major sales tax generator for the City of Hays. At the City's 1.75% rate of local sales tax, $20,000,000 of annual sales at the mall creates $350,000.00 of local sales tax. Assuming new tenant(s) occupying the vacant portions of the Mall generate an average of $100/sq. ft. of retail sales per year (which appears to be a reasonable estimate based on past sales history), the current vacancies represent a potential opportunity cost of approximately $6,350,000 in annual sales, which roughly translates into $111,000 of potential local sales tax paid to the City of Hays. If the Project succeeds in reenergizing the Mall as a local and regional retail draw and causes the Mall's the occupancy rate to stabilize at 90%, there is a substantial potential gain to the City in the form of increased sales tax receipts generated by the Mall, in addition to the current sales tax revenues generated by the Mall. The Project's improvements may also increase the Mall's appraised value for ad valorem property tax purposes and may create opportunity for potential new construction of retail outbuildings on the Mall property.

The anticipated cost of the Project is $3,144,936.00 plus eligible interest. Based on the above projections, CID revenues will probably be more than adequate to reimburse the Applicant's eligible expenses prior to the 22-year maximum life of the CID. Once all project expenses are repaid, the CID tax will expire. If the CID tax fails to fully reimburse the Applicant over the full term of the Project, the Applicant has no recourse to recover the deficiency from the City.

III. Direct Costs to the City.

The proposed Project is a "pay as you go" CID project that requires the Applicant to directly pay all of the costs of the Project. The Project requires no street reconfigurations, utility relocations, infrastructure, or other public costs. All of the City's expenses incurred, whether in the form of outside legal counsel or other costs, will be paid by the Applicant or reimbursed to the City as part of the City's administrative fee. The Project requires no new city emergency services or police protection.

IV. Benefit to the City.

In addition to the potential increases in sales tax revenue created by the Project, as discussed in Part II, above, the Project implements several major recommendations on the 2012 Comprehensive Plan, including landscaping improvements within the Vine Street right-of-way as part of Phase II of the Project. Please refer to the Application and Petition for a more detailed discussion of those improvements.

V. Cost versus Benefit.

From the City's perspective, there is no financial cost to the use of CID financing. The Mall pays the City's direct costs related to the formation of the CID. The CID imposes an additional one percent (1%) on taxable sales within the Project itself, not the City at large. The potential benefit of the Project, as summarized above and elsewhere, is both tangible and intangible. Because the City's direct costs are zero, the benefit to cost ratio easily exceeds the 1.25:1 ratio required by the City's Economic Development Policy.

FUNDING AGREEMENT
(Proposed Community Improvement District)

This Funding Agreement ("Agreement") is entered into this _____ day of _____, 2014, between the **CITY OF HAYS, KANSAS** ("City"), and **HAYS MALL LLC,** a Kansas limited liability company ("Developer").

RECITALS

WHEREAS, the City is a city of the second class organized and existing under the laws of the State of Kansas, with its principal office located at 1507 Main Street, Hays Kansas 67601; and

WHEREAS, the Developer is a Kansas limited liability company engaged in the business of development with its principal office located at 49 W. 37th Street, 9th Floor, New York, NY 10018. The City has been requested by the Developer to consider approval of a community improvement district (the "District"), in accordance with the Community Improvement District Act, K.S.A. 12-6a26 *et seq.* (the "Act") (the "Request") and, if such Request is approved by the City, the City may be requested to provide such other services and assistance as may be required to implement and administer the Request through its completion; and

WHEREAS, the City does not have a source of funds to finance costs incurred for additional legal, financial and planning consultants or for direct out-of-pocket expenses and other reasonable costs resulting from services rendered to the Developer to review, evaluate, process and consider the Request for creation of the District and implementation of a community improvement district sales tax (collectively, the "Charges");

WHEREAS, the City acknowledges that the risks and costs of preliminary planning activities and other requirements associated with the preparation of the Request are greater than those associated with ordinary development and desire to provide an inducement to Developer to assume the costs of the Request; and

WHEREAS, the parties desire to enter into this Agreement to provide for the funding of consultants used by the City to evaluate the Request and to provide an inducement to Developer to assume the costs of the Request.

AGREEMENT

1. Services to be Performed by the City. The City shall:

A. Prepare or consult with the Developer on the preparation of and consider the Request in accordance with the provisions of the Act, give all notices in a timely manner, make all legal publications and hold hearings as required by the Act;

B. Provide necessary staff, legal, financial, and planning assistance to prepare and present the Request to the City and to prepare and present required resolutions and ordinances to the City Commission, including the use of outside counsel and consultants;

C. If the City Commission approves the Request, provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for implementation of the Request; and

D. If a definitive agreement is entered into, provide the necessary staff, legal, financial and planning assistance to administer such agreement.

2. Initial Deposit. In order to insure the prompt and timely payment of the Charges, the Developer shall establish a fund in the amount of Five Thousand Dollars ($5,000.00) (the "Deposit") by paying such amount to the City contemporaneously with the execution of this Agreement, receipt of which is hereby acknowledged. The City shall pay in accordance with this agreement initial Charges from the Deposit and shall promptly submit an itemized statement therefore to the Developer to re-establish the Deposit so that there is always a Five Thousand Dollars ($5,000.00) cash balance available against which additional charges and payments may be applied on a current basis. The City shall submit monthly statements itemizing the Charges paid from the Deposit during the preceding month.

3. Additional Funding.

A. The City shall submit to Developer an itemized statement for actual out-of-pocket expenses necessary to perform its obligations hereunder. Such statements shall be submitted on a monthly basis. The Developer shall pay the City the amounts set forth on such statements (the "Additional Funds") within thirty (30) days of receipt thereof. If such funds are not so received, the unpaid balance shall be subject to a penalty of one and one half percent (1.5%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to Section 5.a. Developer shall supply the Additional Funds in a timely manner so that City activities may continue without interruption.

B. The City and the Developer agree that the Developer shall reimburse the City for actual out-of-pocket expenses necessary to perform the City's obligations hereunder using George K. Baum & Company, as financial advisor to the City, Gilmore & Bell, P.C. for bond counsel, and such other special consultants and advisors as the City deems necessary to perform its obligations under this Agreement.

4. Disbursement of Funds. The City shall disburse the Deposit and Additional Funds for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Agreement as payment for such expenses become due. Upon reasonable notice, the City shall make its records available for inspection by Developer with respect to such disbursements.

5. Termination.

A. In the event the Developer fails to perform any of its obligations herein, the City may terminate this Agreement, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within thirty (30) days after written notice to the Developer of the default. Termination by the City shall also terminate any duties and obligations of the City with respect to this Agreement, including, but not limited to, the City's processing of Developer's Request. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all reasonable expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

B. The parties hereto acknowledge that the Developer may determine to abandon the Request. Upon notice of abandonment by the Developer, this Agreement shall terminate and the City may terminate any other agreement between the parties and shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this

Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

C. In the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable hereunder, the Developer shall reimburse the City as set forth in Section 3. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

6. Reimbursement By the City. All amounts paid by the Developer to the City pursuant to this Agreement are expected to be eligible "costs" in accordance with the Act, which would be eligible to be reimbursed to the Developer from bonds or on a pay-as-you basis from CID sales tax revenues or special assessments.

7. Notice. Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City of Hays, Kansas
City Manager
1507 Main Street
Hays, Kansas 67601

With a copy to:

Gina M. Riekhof
Gilmore & Bell P.C.
2405 Grand Blvd., Suite 1100
Kansas City, Missouri 64108

To the Developer:

Hays Mall LLC
Attn: GJ Realty
49 West 37th Street, 9th Floor
New York, NY 10018

With a copy to:

Barber Emerson, L.C.
Matthew S. Gough
P.O. Box 667
Lawrence, KS 66044

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

8. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which will be an original and when all of the parties to this Agreement have signed at least one (1) copy, such copies will constitute a fully executed and binding Agreement.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF HAYS, KANSAS

By: _____
City Manager

HAYS MALL LLC
a Kansas limited liability company

By: _____
Gabriel Jeidel, Manager

DRAFT

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF HAYS, KANSAS

AND

HAYS MALL LLC

FOR IMPLEMENTATION OF THE HAYS MALL COMMUNITY IMPROVEMENT DISTRICT

DATED _____, 2014

DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE HAYS MALL COMMUNITY IMPROVEMENT DISTRICT

This Development Agreement for Implementation of the Hays Mall Community Improvement District (the "Agreement") is entered into by and between the CITY OF HAYS, KANSAS, a municipal corporation (the "City") and HAYS MALL LLC, a Kansas limited liability company (the "Developer") (collectively referred to as the "Parties") and is dated and effective as of the date executed by both parties. In consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

Section 1. Purpose.

The Hays Mall Community Improvement District (the "District") was formed on _____, 2014, by virtue of Ordinance No. _____ enacted by the governing body (the "Governing Body") of the City pursuant to the Petition for the Creation of a Community Improvement District, as amended, (the "Petition") initially filed with the City on _____, 2014 in accordance with the Kansas Community Improvement District Act, K.S.A. 12-6a26 *et seq.*, as amended (the "Act").

The purpose of the District is to undertake and finance District projects to provide economic development related improvements including, but not limited to: (a) interior improvements; (b) exterior improvements; (c) parking lot repair, milling, overlay and sidewalk improvements; (d) demolition; (e) marquee and signage upgrades; (f) remodeled entrances and doors; and (g) exterior landscaping, monuments, islands, irrigation, lighting, and beautification, all to those certain premises known as The Mall at Hays, Kansas and as more particularly described in this Agreement (collectively the "Community Improvement District Projects").

The purpose of this Agreement is to outline the rights and obligations of the Developer and City as they relate to the District and to provide for the reimbursement to the Developer of certain eligible costs (the "Eligible Project Costs") of the development of the Community Improvement District Projects from a one percent (1%) sales tax imposed on the selling of tangible personal property at retail or rendering or furnishing of taxable services within the District in accordance with the Act (the "CID Sales Tax").

The legal description of the real property included within the District boundaries (the "Project Site") is set forth on **Exhibit A**.

Section 2. The Parties.

(A) The City is a municipal corporation and a city of the second class under the laws of the state of Kansas (the "State"), exercising governmental powers and organized and existing pursuant to K.S.A. 14-101 *et seq*. The principal office of the City is: P.O. Box 490, Hays, Kansas, 67601, Attention: City Manager.

(B) The Developer is a Kansas limited liability company duly organized and existing under the laws of the state of Kansas. Throughout the term of this Agreement, Developer agrees to maintain its status as a Kansas limited liability company, in good standing and authorized to do business in the State. The principal office and mailing office of the Developer is: Hays Mall LLC, 16 East 34th Street, 16th Floor, New York, NY 10016, Attention: Gabriel Jeidel.

Section 3. Project Costs.

The estimated Costs of the Community Improvement District Projects are $3,144,936.00 plus financing costs, such as interest at the Actual Interest Rate for Borrowed Funds but no more than the WSJ Prime Rate plus 5% as published at the time of this Agreement (collectively the "Project Costs"). For purposes of this Agreement, the term "Actual Rate for Borrowed Funds" shall mean and refer to the interest rate being paid by the Developer on its loan obligation for the Project Costs. The Actual Rate of Borrowed Funds shall be submitted by the Developer to the City in the form of an affidavit from the Developer. The term "WSJ Prime Rate" shall mean and refer to the interest rate published in The Wall Street Journal as the prime interest rate for U.S. commercial banks, as adjusted semi-annually on each January 1 and July 1 as such prime interest rate is adjusted.

All Project Costs, plus the City Administrative Fee (defined herein), are proposed to be funded by the District (collectively, the "Eligible Project Costs"). In no event shall any of the following costs be considered Eligible Project Costs: (1) costs incurred by the Developer prior to the City's adoption of the Ordinance creating the District, other than architectural, engineering, legal, financial, and consulting fees; or (2) costs related to the acquisition of personal property, including furnishings and removable equipment. A description of Project Costs and Eligible Project Costs is set forth on **Exhibit B**, attached hereto and incorporated herein. The parties agree that the amounts of the Eligible Project Costs may be adjusted among any of the stated categories, except as provided herein, or to pay additional Eligible Project Costs not specifically listed on **Exhibit B**, provided the total Eligible Project Costs to be reimbursed are related to and within the reasonably anticipated scope of the Project.

The Project Costs will be privately financed. The Eligible Project Costs will be financed on a pay as you go basis, i.e., the Eligible Project Costs will be paid for by the Developer without the issuance of notes or bonds, and the Developer will be reimbursed for the Eligible Project Costs as moneys are deposited in the District fund through the imposition of the CID Sales Tax, after payment of the City Administrative Fee, all in accordance with Section 4 of this Agreement.

For purposes of reimbursement of interest under this Agreement, interest shall be calculated on the basis of a 360-day year of twelve 30-day months and shall accrue from the date of the advance by Developer's lender. All requests for reimbursement of interest shall be on the applicable form attached hereto as **Exhibit C** and accompanied by both the documentation showing the calculation of the interest and such other supporting documentation as the City may reasonably request.

Section 4. Administration of CID Sales Tax.

(A) Subject to and as specified by the terms and conditions of this Agreement, the City agrees to perform or provide for the performance of the administration of the financing of the Eligible Project Costs pursuant to the Act and this Agreement. The City shall provide notification to the Secretary of Revenue of the State of Kansas to commence the collection and reporting of the CID Sales Tax within the District, at the same time and in the same manner provided for the collection of Kansas State Retailers' Sales Tax.

(B) Pursuant to K.S.A. 12-6a26 *et seq.*, the City shall establish a segregated trust fund to be designated the "Hays Mall Community Improvement District Sales Tax Fund" (the "Fund"), which shall be held and administered by the City in trust for the benefit of the District in accordance with this Agreement. The CID Sales Tax Revenue shall not be deemed to be City funds and shall not be commingled with any funds of the City, except, provided that the City shall be entitled to withdraw 0.5% of each distribution of CID Sales Tax Revenue (the "City Administrative Fee") as such revenues are received by the City from the State Department of Revenue, as payment for the City's cost of administering the District.

(C) The Developer agrees to provide the City written notice of all current owners and occupants of the District in the Annual Report required by the City's Economic Development Policy, and at all other times upon the written request of the City. Such Annual Report shall be submitted by each March 1 for the prior calendar year.

(D) Excluding any tenant or subtenant currently operating within the District, the Developer agrees to, and shall cause all assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the District to be obligated by written contract (lease agreement or other enforceable document) to:

(i) provide to the City simultaneously with submission to the Kansas Department of Revenue the monthly sales tax returns for their facilities in the District;

(ii) be obligated by written contract (lease agreement or other enforceable document) to provide to the City, annually by each December 31, a tax clearance letter; and

(iii) provide to the City a consent to release information regarding aggregate CID Sales Tax Revenues generated within the District to the Developer, any trustee or escrow agent appointed by the City with respect to the CID Sales Tax Revenues, and the City's accountants, financial advisors and legal counsel.

Developer agrees to request the above and foregoing information and documentation from current tenants and subtenants operating within the District, and will use reasonable commercial efforts to incorporate the terms of this Section 4(D) into the terms of any lease, sublease, or other document granting property or occupancy rights within the District. The obligations of this subparagraph shall be a covenant running with the land and shall be enforceable against all businesses operating in the District and shall only terminate upon the passage by the City of an ordinance terminating the

District. Excluding any tenant or subtenant currently operating within the District, the Developer hereby agrees that each such lease agreement shall provide that the City is an intended third party beneficiary of such provisions and has a separate and independent right to enforce such provisions directly against such tenant or purchaser.

(E) Except as provided in this Section 4(D)(iii), and to the extent it may legally do so, information obtained pursuant to this Section shall be kept confidential by the City in accordance with K.S.A. 79-3234 and 79-3657. In furtherance of maintaining the confidentiality of the information provided in this section, the City shall take all reasonable steps necessary to ensure that such information is kept confidential.

Section 5. Reimbursement Procedures.

The City's agreement to fund Eligible Project Costs is conditioned upon the following:

(A) All costs submitted for reimbursement shall be identified as Eligible Project Costs by this Agreement.

(B) The Developer shall submit to the City Manager an invoice (in substantially the form attached to this Agreement as **Exhibit C**), signed by the Developer, with supporting documentation identifying the Eligible Project Costs for which the Developer seeks reimbursement.

The supporting documentation shall include copies of invoices reflecting amounts billed, copies of checks, evidence of wire transfer or other payment of cash by the Developer for the Eligible Project Costs, lien waivers or other evidence that no mechanic's liens exist with respect to the construction of the Community Improvement District Projects for which reimbursement is sought, and such other documentation as the City shall reasonably request.

The invoice shall contain a certification by the Developer that the costs submitted for reimbursement are for Eligible Project Costs under this Agreement, that such expense has been incurred by or on behalf of the Developer, and that such expense has not been previously submitted for reimbursement hereunder.

(C) The City Manager shall determine whether the cost submitted is for an Eligible Project Cost within ten (10) business days of the date the invoice is submitted by the Developer. If the City Manager does not provide a response within ten (10) business days of the date the invoice is submitted, the cost submitted on the invoice shall be deemed approved. If the City Manager determines that such cost is not for a Eligible Project Cost under this Agreement, the City Manager shall notify the Developer of such determination in writing, setting forth in detail the basis for such denial. The Developer may appeal such denial to the Governing Body by filing a written request to be heard by the Governing Body with the City Clerk within seven (7) business days of the receipt of the written denial. The Governing Body shall conduct a hearing within thirty (30) days of receipt of such request and render a decision immediately upon the conclusion of such hearing.

(D) If money is available in the Fund, after payment of the City Administrative Fee, the requested reimbursement shall be paid to the Developer within ten (10) days of the approval by the City Manager or the Governing Body, if required.

(E) If the invoices for Eligible Project Costs submitted and approved exceed the amounts then available in the Fund after payment of the City Administrative Fee, such invoices shall be paid as CID Sales Tax Revenue becomes available. The City will make monthly payments on any outstanding Eligible Project Costs approved by the City for reimbursement as CID Sales Tax Revenue becomes available, such payments being due on the first day of each month as long as the CID Sales Tax remains in effect, except, provided that the City shall have no obligation to make any payments to the Developer under this Agreement so long as (i) the Developer is in default of any provision of this Agreement or (ii) any assignees, purchasers, tenants, subtenants or any other entity acquiring property or occupancy rights in the District (except for existing tenants or subtenants) are not in compliance with the provisions of **Section 4(D)** of this Agreement.

Section 6. City and Other Governmental Permits.

Before beginning construction of any aspect of the Community Improvement District Projects, the Developer shall, at its expense, obtain or cause to be obtained any necessary permits or licenses which may be required by the City, Ellis County or any other governmental agency having jurisdiction over the Community Improvement District Projects. The City agrees to provide all customary assistance to the Developer in obtaining construction permits issued by the City.

Section 7. Rights of Access.

For purposes of insuring compliance with this Agreement, representatives of the City shall have rights of access to the Community Improvement District Projects, without charges or fees, during normal construction hours during the period of construction. Representatives of the City shall have such access to inspect work performed or being performed in the construction of the Community Improvement District Projects. City representatives shall carry proper identification, insure their own safety and shall not interfere with construction activity unless such activity is apparently in violation of this Agreement, City codes, state or federal regulations, statutes or other law. The right of access granted by this Section shall be in addition to the City's rights to access the Community Improvement District Projects in the exercise of its proper authority to regulate for and provide for public safety.

Section 8. No Obligation to Build.

Nothing contained in this Agreement shall require Developer to construct any of the Community Improvement District Projects. Notwithstanding the foregoing, as set out in Section 5 above, Developer shall only be entitled to seek funding of those Eligible Project Costs actually incurred.

Section 9. Default and Remedies.

(A) The failure or delay by either of the Parties to this Agreement to perform any term or provision of this Agreement required of such party, shall be a default under this Agreement, subject to rights of cure, as specified below.

(B) Any party to this Agreement claiming a default (the "Claimant") shall give written notice of such claimed default to the other party, describing such default. Such notices shall be given at the addresses of the Parties stated in Section 2 of this Agreement.

(C) A Claimant shall not institute legal proceedings against the other party nor be entitled to damages if, within fourteen (14) days from the receipt of a notice of claimed default, the other party undertakes acts to cure, correct or remedy such claimed default, proceeds with due diligence to complete such cure, correction or remedy and such cure correction or remedy is completed within thirty (30) days of the date such party received a notice of default, provided, however, if such default requires more than thirty (30) days to correct, the nonperforming party shall not be deemed in default hereunder if such party commences curing the default within fourteen (14) days after receipt of written notice thereof and diligently prosecutes the cure to completion.

Section 10. Governing Law, Jurisdiction.

(A) This Agreement shall be governed by, interpreted and enforced pursuant to the laws of the state of Kansas.

(B) The Parties agree that any legal actions arising out of this Agreement will be instituted in the District Court of Ellis County, Kansas or, in the case of federal jurisdiction, in the Federal District Court of the District of Kansas.

Section 11. Rights and Remedies Cumulative, Waivers.

Except as otherwise expressly provided in this Agreement, the rights and remedies of the Parties shall be cumulative, and the exercise by one party of one or more such rights shall not preclude the exercise by it, at the same or different times, of any other rights or remedies specified herein. Any failure or delay by either party in asserting any of its rights and remedies as to any default hereunder shall not operate as a waiver of such default or of any rights or remedies specified hereunder, or deprive either party of its right to assert and enforce any such right or remedy.

Section 12. Amendments.

The Developer and the City agree to cooperate and consider reasonable requests for amendments to this Agreement, provided that, any such amendments must be approved by the Governing Body and the Developer, shall be in writing, and shall not substantially alter the basic business terms of this Agreement.

Section 13. Term.

Unless earlier terminated as provided herein, this Agreement shall remain in full force and effect for the earlier of twenty-two (22) years from the date of approval of the Project or until all Eligible Project Costs have been reimbursed to the Developer.

Section 14. Transfer and Assignment.

The Developer may assign this Agreement and the rights, duties and obligations hereunder, in whole or in part, to any entity that is owned or controlled by the Developer or Mr. Gabriel Jeidel, without notice or consent of the City upon written notice to the City, including a copy of any agreement evidencing such assignment or pledge to such related entity. The Developer may assign this Agreement and the rights, duties and obligations hereunder, in whole or in part, to any other party with the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. The Developer may assign or pledge its rights to payments due to the Developer pursuant to **Section 5** of this Agreement upon written notice to the City, including a copy of any agreement evidencing such assignment or pledge to such third party. The foregoing restrictions on assignment, transfer and conveyance shall not apply (a) to any security interest granted to secure indebtedness to any construction or permanent lender, (b) to the sale, rental and leasing of portions of the District for the uses permitted under the terms of this Agreement or in the ordinary course of the Developer's business, and (c) to any assignment of obligations or transfer of some or all of the Project Site to an entity owned or controlled by the Developer or Mr. Gabriel Jeidel. No sale, rental or lease of the Project Site, in whole or in part, shall be deemed to be an assignment of the Developer's rights to payments pursuant to this Agreement, unless such assignment is expressly made by Developer in a writing recorded in the Office of the Register of Deeds of Ellis County, Kansas.

The Parties agree to execute and deliver an original of this Agreement and any amendments or supplements hereto, in proper form for recording and/or indexing in the appropriate land or governmental records, including, but not limited to, recording in the real estate records of Ellis County, Kansas. This Agreement shall be recorded by the Developer, and proof of recording shall be provided to the City.

Section 15. Notices, Demands, Communications Among Parties.

Written notices, demands and other communications between the City and Developer shall be deemed delivered under this Agreement if given by personal service, registered or certified mail, postage prepaid and return receipt requested, or by overnight courier, to the principal offices of the City and the Developer set forth in Section 2 of this Agreement.

Section 16. Entire Agreement.

This Agreement is executed in duplicate originals, each of which shall be considered an original. This Agreement includes pages 1 through 9, and Exhibits A, B, and C which constitutes the entire agreement and understanding of the Parties.

This Agreement supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all of any part of the subject matter of this Agreement.

Section 17. Severability.

The invalidity or inability to enforce any one or more phrases, sentences, clauses or sections of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement.

Section 18. No Liability of City Officials or Employees.

All liabilities under this Agreement on the part of the City are solely corporate liabilities of the City, and, no officer, employee, or agent of the City shall have any personal or individual liability under this Agreement for anything done or omitted to be done by the City hereunder.

Section 19. Mutual Assistance.

The City and the Developer agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to reasonably aid and assist each other in carrying out said terms, provisions and intent.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on _____, 2014 and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

CITY OF HAYS, KANSAS

DRAFT

_____

Kent Steward, Mayor

Attest:

_____

Brenda Kitchen, City Clerk

STATE OF KANSAS)
) SS.
COUNTY OF ELLIS)

On _____, 2014, before me, the undersigned, a Notary Public in and for said state, personally appeared Kent Steward and Brenda Kitchen, proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument as Mayor and City Clerk, respectively, of the CITY OF HAYS, KANSAS, the city of the second class therein named, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

_____

Notary Public

My commission expires:

_____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on _____, 2014 and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

HAYS MALL LLC,
a Kansas limited liability company

_____
Gabriel Jeidel, Manager

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

On _____, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Gabriel Jeidel, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument as the manager of HAYS MALL LLC, a Kansas limited liability company, and acknowledged to me that he executed the same in his authorized capacities, and that by such person's signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires:

_____

EXHIBIT A
Legal Description

TRACT A:

A tract of land in HAYS PLAZA FIRST ADDITION to the City of Hays, Ellis County, Kansas, described as follows: Beginning at the intersection of the East line of U.S. Highway 183 and the South line of 33rd Street; thence East along the South line of 33rd Street a distance of 918.2 feet to intersect the West line of Broadway Avenue; thence South along the West line of Broadway Avenue, a distance of 1,220.56 feet to intersect the North line of 29th Street; thence West along the North line of 29th Street a distance of 925.25 feet to intersect the East right-at-way line of U.S. Highway 183; thence North along the East line of U.S. Highway 183 a distance of 1,216.28 feet to the point of beginning;

AND

TRACT B:

That portion of the eastern one-half (1/2) of U.S. Highway 183 right-at-way located between the South line of 33rd Street and the North line of 29th Street, all in the City of Hays, Ellis County, Kansas.

EXHIBIT B
Project Costs

EXHIBIT C

[Form of Developer's Invoice for Reimbursement]

INVOICE FOR REIMBURSEMENT FOR ELIGIBLE PROJECT COSTS

City of Hays, Kansas
Attention: City Manager

You are hereby requested by the undersigned, the Authorized Developer Representative, acting on behalf of Hays Mall LLC, a Kansas limited liability company (the "Developer") to disburse funds held by you in Hays Mall Community Improvement District Sales Tax Fund created pursuant the authority in K.S.A. 12-6a26 *et seq.* and set forth in the Development Agreement Between the City of Hays, Kansas and Hays Mall LLC, for Implementation of the Hays Mall Community Improvement District, dated _____, 2014 (the "Agreement") to reimburse expenditures made by the Developer for Eligible Project Costs (as defined in the Agreement) as described on and in the amounts set forth in the Reimbursement Schedules attached to this invoice and incorporated herein by this reference (the "Reimbursement Schedules").

I hereby certify that the amounts requested in the attached Reimbursement Schedules have been paid by the Developer in payment of Eligible Project Costs, as defined in the Agreement.

I further certify that no part of the amounts set forth in the Payment Schedules have been the basis for any previous withdrawal of any moneys from the Hays Mall Community Improvement District Sales Tax Fund.

I have attached to the Reimbursement Schedules copies of the contract, invoice or other billing for the Eligible Project Costs for which Developer seeks reimbursement, along with copies of the Developer's check, evidence of wire transfers or other evidence of payment by or on behalf of the Developer of the costs of such Eligible Project Costs and hereby certify that such copies are true and accurate copies of the original documents.

DATED _____. 20____.

_____
Developer

Pursuant Section 5 of the Agreement, I hereby request reimbursement of the amounts specified below and I certify that the description of the purchase or nature of each payment is reasonable, accurate and complete and that Developer has previously paid such Eligible Project Costs:

REIMBURSEMENT SCHEDULE

Payee Name	Date of Payment by Developer	Purpose or Nature of Payment	Amount

_____

Initials: Developer

Note: Copies of bills, contracts, checks and other evidence reflecting the amounts shown above (as described in Section 5 of the Agreement) should be attached to this Reimbursement Schedule.

SUBJECT	ISSUED BY	LAST REVISION DATE	**CURRENT EFFECTIVE DATE**
ECONOMIC DEVELOPMENT POLICY	City Commission	4-26-12	**7-11-13**

SECTION 1. INTRODUCTION

The City of Hays is interested in encouraging economic activity and the creation of jobs, thereby broadening its tax base and improving the quality of life for its citizens. Further, the use of public funds to stimulate business growth may be necessary or desirable in certain cases. The decision to provide incentives to a business is guided by the expectation that the financial benefits to the City will produce a sufficient return on the City's investment and that the business will be a good fit for the community. All proposed incentives are subject to a public hearing. Governmental agencies are not eligible for financial incentives under this policy. No elected or appointed officer, employee or committee of the City, Hays Area Chamber of Commerce or Ellis County Coalition for Economic Development employee, board, or other public or private body or individual, shall be authorized to speak for and/or commit the City Commission to the granting of an incentive. This policy is meant to encourage the following:

A. Research and development-based businesses
B. High-tech businesses
C. Environmentally friendly businesses
D. Expansion of existing industry
E. Business start-ups
F. Recruitment of new companies from out-of-state
G. The retention of businesses which are good corporate citizens that will add to the quality of life in Hays through their leadership and support of local civic and philanthropic organizations.
H. Training and development of Hays area employees
I. The establishment of businesses that will be good stewards of the City of Hays' water sources.

The City Commission reserves the right to deviate from this policy when, in the opinion of the Commission, it is in the best interests of the City to do so.

SECTION 2. DEFINITIONS

"City" means the City of Hays, Kansas.

"Economic development purposes" shall mean the establishment of a new business or the expansion of an existing business, which:

A. is or will be primarily engaged in any one or more of the Kansas basic industries; or
B. is or will be primarily engaged in the development or production of goods or the provision of services for out-of-state sale; or
C. is or will be primarily engaged in the production of raw materials, ingredients or components for other enterprises which export the majority of their products; or

D. is a national or regional enterprise which is primarily engaged in interstate commerce; or
E. is or will be primarily engaged in the production of goods or the provision of services which will supplant goods or services which would be imported into the city; or
F. is the corporate or regional headquarters of an enterprise, which is primarily engaged in out-of-state business activities.

"Environmentally friendly businesses" shall mean:

- Firms with programs or activities that reduce the impact of activities on the environment.
- Businesses that are not damaging to the environment, or directed at preventing environmental damage.

"High-Tech Businesses" shall mean both manufacturing and non-manufacturing businesses that have a great dependence on science and technology innovation that leads to new or improved products or services. High-Tech Business involves intensive use of new scientific and technical knowledge. It is often characterized by reliance on significant inputs of knowledge, depending more on having access to the knowledge produced in universities and other educational institutions. It tends to hire and keep personnel who have advanced skills. High-Tech Businesses are more sensitive to the quality of local universities and other educational institutions as providers of knowledge and education of high-skilled workers and may be more sensitive to local quality of life, encouraging high-skilled workers from elsewhere to be hired. High-Tech Business often has special infrastructure needs, such as broadband communications. Goods and services produced by High-Tech Businesses frequently require a longer development time than ordinary goods and services, requiring some ability to generate equity capital or other "maturing" capital.

"Kansas basic industry" shall mean:

- Agriculture;
- Mining;
- Manufacturing;
- Interstate transportation;
- Wholesale trade which is primarily engaged in multi-state activity or which has a major import supplanting effect within the state;
- Financial services which are primarily engaged in providing such services for interstate or international transactions;
- Business services which are primarily engaged in providing such services to out-of-town markets;
- Research and development of new products, processes or technologies;
- Tourism activities, which are primarily engaged in for the purpose of attracting out-of-state tourists.

As used in these subsections, "primarily engaged" means engagement in an activity by an enterprise to the extent that not less than 51% of the gross income of the enterprise is derived from such engagement.

SECTION 3. INDUSTRIAL ECONOMIC DEVELOPMENT

The City will be selective as to the kinds of industrial businesses (i.e., businesses that are not retail businesses) that are recruited and assisted. In general, the primary objective of the City's industrial Economic Development Policy is to target new and expanding businesses that are environmentally sound, strengthen our local economy, and demonstrate a need for public financial support in order to locate or expand in Hays. Additionally, the City favors industry that creates high-caliber

employment, such as high-skill, high-wage jobs with increased employee benefits and superior working conditions.

When considering proposals brought before the City, City staff and the City commission shall be cognizant of the investment being made by the business, the risk involved in doing business, and the reputation of the City which is created by decisions that are made.

Examples of available incentives that may be available to industrial businesses may include; Property Tax Abatement, Industrial Revenue Bonds, Job Bounty Program, Tax Increment Financing (TIF), Transportation Development Districts (TDD), Community Improvement District (CID), or other available programs as approved by the Kansas Legislature.

SECTION 4. RETAIL DEVELOPMENT

The purpose of this section is to establish the official policy and procedures of the City for the granting of incentives for new and expanding retail businesses not otherwise addressed within this policy.

The primary objectives of the City in granting incentives to retail businesses for development include the expansion of the sales tax base, general enhancement of quality of life, development as the regional hub for goods and services in northwestern Kansas, and the expansion of the property tax base.

Examples of available incentives that may be available to retail businesses may include; Job Bounty Program, Tax Increment Financing (TIF), Transportation Development Districts (TDD), Community Improvement District (CID), Sales Tax and Revenue Bonds (STAR Bonds), or other available programs as approved by the Kansas Legislature.

A single development requesting additional assistance must also meet all of the following criteria:

A. The development must be at least 50,000 square feet
B. Generate $10,000,000/yr. in retail sales
C. Employ twenty five (25) or more employees

SECTION 5. ECONOMIC DEVELOPMENT APPLICATION

New or existing businesses that seek financial incentives from the City must file an *Application for Economic Incentives* before their request can be considered. The application shall contain the following information:

A. Specific information on incentives being requested
B. Company profile including longevity of company, principal officers, stockholders and clients
C. Audited financial statements – last five (5) years or since date of incorporation if company has not been in existence for five (5) years
D. Completed (attached) *Application for Economic Incentives* and *Supplemental Questionnaire*
E. Business Plan as it relates to the proposed business to be located in Hays
F. Cost Benefit Analysis (See Section 14)

The City will not consider the granting of any incentive unless the business submits a full and complete application, and provides additional information as may be requested by the City

Commission. The accuracy of the information provided in the application shall be verifiable by the applicant. Any misstatement of or error in fact may render the application null and void and may be cause for the repeal of any resolution adopted in reliance on said information. Applications will not be considered after the issuance of building permits. Refer to Section 6 for application and renewal fee information.

SECTION 6. FEE SCHEDULE

Any individual business requesting any incentive shall pay to the City a nonrefundable application fee of $1000 plus a deposit of $5,000.00 to be retained by the City to pay for the City's out of pocket costs associated with the City's review of the application and other actions and agreements associated with the proposed incentive, including but not limited to the City's cost of legal counsel, financial advisors and consultants necessary to evaluate the application and administer the incentive. In the event that costs for third-party services incurred by the City exceed the fee collected, the applicant shall reimburse the City for such additional cost, immediately upon request, but no later than prior to final consideration of the incentive by the Governing Body. The application fee and deposit shall be submitted at the same time the *Application for Economic Incentives* is submitted. At its discretion, the City Commission may consider waiving a portion of the fee or deposit upon request, based upon need. In addition, any business which has been granted an incentive shall pay an annual nonrefundable renewal fee in the amount of $100.00.

The City requires the use of its designated Bond Counsel and its designated Financial Advisor. The City reserves the right to approve the selection of other necessary participants in the administration of an incentive, including but not limited to, the underwriter and trustee/fiscal agent. The City, at its discretion, may retain additional independent advisors to assist the City in analyzing the merits of the application and in making a determination of its approval at the applicant's expense. Examples of additional advisors include economic or environmental specialists, or a certified public accountant.

SECTION 7. PROPERTY TAX ABATEMENT POLICY

A. Policy.

The grant of property tax abatement will be considered for real and personal property being added to the tax rolls by "Kansas basic industry," in accordance with the provisions set by Article 11, Section 13 of the Constitution of the State of Kansas and the provisions of K.S.A. 12-1740 *et seq.* and K.S.A. 79-201a.

The City may approve for economic development purposes a property tax abatement on real and personal property used exclusively in the following business activities:

- Conducting research and development;
- Manufacturing articles of commerce;
- Storing goods that are sold or traded in interstate commerce;
- Corporate or regional headquarters of a multi-state enterprise which is primarily engaged in activities that take place outside of Kansas;
- High-tech businesses.

B. Abatement Amount and Term.

While Kansas law permits an exemption up to 100 percent of the qualified investment for up to 10 years, it shall be the policy of the City to normally provide property tax abatement and require payments in lieu of taxes (PILOTs) as set forth in the following schedule for portions of a project that meet the economic development goals of the City set forth in Sections 1 and 3 and that qualify for abatement under Kansas law. The abatement level is based on the **higher of the capital investment AND job creation**.

Abatement Level	**Capital Investment[1]**	**Job Creation[2]**
Matrix for High-Tech Businesses and Research and Development-Based Businesses		
50% abatement for 10 years	Minimum: $500,000 Maximum: $3,750,000	Minimum: 25 Eligible Net New Jobs Maximum: 50 Eligible Net New Jobs
100% abatement for 10 years	>$3,750,000	>50 Eligible Net New Jobs
Matrix for All Other Business Types		
25% abatement for 10 years	Minimum: $500,000 Maximum: $2,500,000	Minimum: 25 Eligible Net New Jobs Maximum: 50 Eligible Net New Jobs
50% abatement for 10 years	Minimum: $2,500,001 Maximum: $10,000,000	Minimum: 51 Eligible Net New Jobs Maximum: 125 Eligible Net New Jobs
75% abatement for 10 years	Minimum: $10,000,001 Maximum: $30,000,000	Minimum: 126 Eligible Net New Jobs Maximum: 250 Eligible Net New Jobs
100% abatement for 10 years	>$30,000,000	>250 Eligible Net New Jobs

[1] Capital Investment will be determined by increase in appraised value from the appraised value of the property on the date of the application compared to the appraised value on the January 1 after completion of improvements, all as determined by tax appraisal from the Ellis County Appraiser's office.

[2] "Eligible Net New Jobs" means each full-time equivalent job created above the monthly average full-time equivalent employee count for the 12-month period preceding the date of application. In order for a job to qualify as a "Eligible Net New Job," each job must pay wages greater than 100% of the Region 1 wage average based on the applicant's 4-digit NAICS code. The number of Eligible Net New Jobs must be reported annually pursuant to Section 15, and if the actual number of Eligible Net New Jobs in any year during the abatement term is less than the Eligible Net New Jobs set forth in the application, the abatement level for the remaining abatement term will be reduced in accordance with the table above.

The abatement term for projects considered under the authority of Article 11, Section 13 of the Constitution of the State of Kansas shall begin in the calendar year after the calendar year in which the business commences its operations locally. The abatement term for projects considered under the authority of K.S.A. 12-1740 *et seq.* and K.S.A. 79-201a shall begin in the calendar year after the calendar year in which industrial revenue bonds are issued.

C. Procedure.

1. Action by the City. The City shall consider granting a tax exemption pursuant to this Policy after receipt of a complete application from the applicant in a form prescribed by the City together with the application fee and deposit. The application shall be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the

project's preliminary site plans and building elevations, to prepare a cost benefit analysis, and to contact the county and the unified school district within which the property proposed for exemption is located. The project's site plans and building elevations are subject to final approval to ensure that they are similar to the preliminary plans and elevations submitted.

Based on each application and such additional information as may be requested by the City, the City shall prepare or cause to be prepared a cost benefit analysis of the proposed exemption on the city and state of Kansas, which analysis shall be used by the Governing Body in considering the request for abatement, and shall be sufficient to meet statutory requirements for obtaining property tax abatement. In making its decision, the Governing Body may also consider any fiscal and/or economic impact analyses performed by the county and the unified school district within which the property proposed for exemption is located.

Prior to formal action on each resolution of intent, the Governing Body shall conduct a public hearing thereon, to be scheduled at least seven days after publication of notice. Notice of the hearing shall also be sent to the Ellis County Clerk's Office and the unified school district within which the property proposed for exemption is located.

Any grant of property tax abatement shall be accompanied by Performance Agreement as set forth in Section 13 of this Policy, and continuing abatement shall be subject to annual review as set forth in Section 15 of this Policy.

All documents necessary to consider granting a tax exemption, including the cost benefit analysis, notice of hearing, and any resolutions or ordinances, shall be prepared or reviewed by the City's Bond Counsel.

2. Action by the State Court of Tax Appeals. If the abatement request is granted, the applicant shall prepare and submit to the City by each February 1, a copy of the abatement application required by K.S.A. 79-213 and 79-210, and the statement required by K.S.A. 79-214 for the cessation of an exempt use of property. The City Clerk shall submit such application and statement to the County Appraiser, who will forward to the Court of Tax Appeals. The City Clerk shall provide a copy of the ordinance, as published in the official city newspaper, granting an abatement from taxation to the applicant for use in filing an initial request for tax abatement as required by K.S.A. 79-213, and by K.S.A. 79-210 for subsequent years. The City expressly notes to applicants that no abatement can be provided without the approval of the State Court of Tax Appeals.

D. Payment of PILOTs.

Any payment in lieu of taxes, which shall be required of a business granted a property tax abatement of less than 100% for 10 years, shall be paid to the County Treasurer, with notice of the amount and date paid provided to the City. The County Treasurer is directed to apportion the payment, under the provisions of subsection (3) of K.S.A. 12-148, to the general fund of all taxing subdivisions, excluding the state, which levy taxes on property where the business is situated. The apportionment shall be based on the relative amount of taxes levied, for any and all purposes by each of the applicable taxing subdivisions. The specific provisions for payment of PILOTs shall be set forth in the Performance Agreement between the City and the applicant.

SECTION 8. INDUSTRIAL REVENUE BOND POLICY

A. Policy.

It shall be the policy of the City to consider the issuance of industrial revenue bonds pursuant to K.S.A. 12-1740 *et seq.* (the "IRB Act") for the purposes set out in Section 1 of this Policy, and the IRB Act. Industrial revenue bonds may also be issued for the purpose of property tax abatement, as set forth in Section 7 of this Policy.

B. Sales Tax Exemption for Construction Materials.

Labor and materials, as well as equipment purchased with IRB proceeds may be exempt from State and local sales tax. The City reserves the right to grant or deny such sales tax exemption in connection with the issuance of IRBs, to be determined on a case-by-case basis.

C. Cost Reimbursement/Issuance Fee.

The applicant shall reimburse the City for all costs associated with the issuance of bonds, including but not limited to, the cost-benefit analysis, all legal publication notices, application fees to the Court of Tax Appeals, the City's bond counsel fees and all other miscellaneous costs.

For projects requesting tax abatement in connection with the issuance of industrial revenue bonds, the City shall receive an issuance fee of (i) 25 basis points (.0025) of the first $10 million par amount of bonds being issued or the amount of constitutional tax abatement being requested, plus (ii) 20 basis points (.002) of the par amount of the second $10 million of bonds being issued or the amount of constitutional tax abatement being requested, plus (iii) 10 basis points (.001) of the par amount in excess of $20 million of bonds being issued or the amount of constitutional tax abatement being requested. In no event shall the issuance fee be less than $1,500 or more than $100,000. The fee shall be due and payable at the time the bonds are issued.

SECTION 9. COMMUNITY IMPROVEMENT DISTRICT POLICY

A: POLICY STATEMENT

It is the policy of the City to consider the establishment of CIDs for reimbursable expenses in the amount of $250,000 or greater in order to promote economic development and tourism within the City. An applicant may petition the City to utilize special assessments or a special sales tax to fund projects eligible under the CID statutes. In considering the establishment of a CID, the Governing Body shall consider whether the proposed CID will achieve the economic development purposes outlined in Section 1 of this Policy.

It is the further policy of the City that a CID shall only be established for projects where the applicant/developer pays for the cost of eligible CID improvements (at no cost to the City) and agrees to be reimbursed on a pay-as-you-go basis for such costs from the City's receipt of CID sales tax revenues or CID special assessment revenues.

The use of CIDs should not alter the requirements of the City's Economic Development Policy in regard to the development paying for public infrastructure or meeting building codes. When

establishing a CID, special consideration will be given to public benefits. These benefits may include, but are not limited to, strengthening economic development and employment opportunities, reducing blight, enhancing tourism and cultural amenities, upgrading older retail real estate and commercial neighborhoods, and promoting sustainability and energy efficiency.

B: CRITERIA

It shall be the policy of the City to create a CID, if, in the opinion of the Governing Body, it is in the best interest of the City to do so. The Governing Body shall consider the following factors when creating a CID:

1. The project meets the City's economic development goals by expanding existing businesses or develops new businesses described in Section 1 of this Policy, and/or strengthens economic development and employment opportunities, reduces blight, enhances tourism and cultural amenities, upgrades older retail real estate and commercial neighborhoods, and promotes sustainability and energy efficiency.

2. The project uses higher standards for the design of improvements and materials used in making improvements within the CID, compared to the minimum requirements set forth in the City's current design guidelines.

3. The project extends public infrastructure to parts of the City that are not currently served by such infrastructure.

C: PROJECT ELIGIBILITY

1. It is the intent of the City to allow only projects involving capital investment and improvements to qualify for reimbursement. Purchase of consumables, and items or property considered to be operating expenses shall not qualify for reimbursement.

The following projects within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, equip or extend shall be eligible for reimbursement out of the proceeds of the community improvement district sales tax:

a. Public buildings, structures and facilities, and private not-for-profit museums;
b. Sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements;
c. Parking garages;
d. Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
e. Parks, lawns, trees and other landscape;
f. Communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks;
g. Outdoor cultural amenities, including but not limited to, sculptures and fountains;
h. Private buildings, structures and facilities;

i. To produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, decoration of any public place in the district, promotion of such activity and special events;
j. To support business activity and economic development, including, but not limited to, development, retention, and the recruitment of developers and businesses;
k. To provide or support training programs for employees of businesses.

2. Generally, projects not listed in the foregoing eligibility section shall not be eligible for reimbursement out of the proceeds of a Community Improvement District sales tax. Additionally, the following projects within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend shall be ineligible for reimbursement out of the proceeds of a community improvement district sales tax:

a. Airports, railroads, light rail and other mass transit facilities;
b. Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.
c. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons for public property, buildings and outdoor spaces.
d. To provide or contract for cleaning, maintenance and other services to public property, buildings and outdoor spaces;
e. To contract for or conduct economic impact, planning, marketing or other studies related to the district.
f. Indoor cultural amenities, including but not limited to, paintings, murals and display cases, which are not located in a private not-for-profit museum;
g. To operate or to contract for the provision of music, news, child-care, or parking lots or garages, and buses, minibuses or other modes of transportation;
h. To provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons inside private buildings;
i. To provide or contract for cleaning, maintenance and other services to private property;
j. The purchase of inventory and/or supplies for use or resale.
k. To purchase interior furnishings.
l. To purchase advertising or participation and any promotional expenses.
m. Any other projects not permitted by state statute, as amended from time to time.

D: METHOD OF FINANCING

The governing body will consider creation of a CID where (1) the costs of CID improvements will be financed on a pay-as-you-go basis from CID sales tax revenues or (2) the costs of CID improvements consisting only of public infrastructure improvements will be financed from CID special assessments. In the instance where public infrastructure CID improvements will be financed from CID special assessments, the City will consider the issuance of special obligation CID special assessment bonds. The City will not issue special obligation or general obligation bonds for CID improvements, other than the limited circumstances set forth in this section. The proposed method of financing will be clearly shown in the petition.

E: PROCESS

The process for creation of a CID shall be as follows:

1. *Petition and Supplemental Information.* An applicant requesting that the City create a CID shall first submit a petition to the City. Such petition shall contain all of the information

required by K.S.A. 12-6a26 *et seq.* and shall contain all of the required signatures of property owners as set forth in the Community Improvement District Act. Such petition shall also contain an agreement by the applicant to pay all out of pocket costs incurred by the City related to the City's review of the petition, including but not limited to the City's cost of legal counsel and financial advisors necessary to evaluate the petition. In addition to the information required by K.S.A. 12-6a26 *et seq.*, applicants must file (a) an Application for Economic Incentives and Supplemental Questionnaire, as provided by the City's Economic Development Policy, (b) a site plan for all public and private improvements to be located within the proposed CID, and (c) a business plan evidencing that the applicant has the financial ability to complete the proposed project in a timely manner and operate the project for the term of the proposed CID. The applicant shall furnish such additional information as requested by the City in order to clarify the petition or to assist staff or the Governing Body with the evaluation of the petition.

2. *Application Fee and Deposit.* The application fee and deposit, as well as any costs and expenses required to be paid by the applicant pursuant to Section 6 may be deemed costs of the improvements, and may be reimbursable to the extent permitted by the Community Improvement District Act and as authorized by the Governing Body.

3. *Timing of Submissions.* The petition and all additional information required by this Policy must be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the project's site plans, and to analyze the merits of the proposed CID in the context of existing economic development and infrastructure projects.

4. *Public Hearing.* Upon receipt of the petition and all additional information required by this Policy, the Governing Body may order a public hearing on the creation of a CID and the imposition of a CID sales tax. The Governing Body shall give public notice and hold such hearing in the manner required by the Community Improvement District Act.

5. *Governing Body Findings; Development Agreement Required.* After the public hearing is conducted, the Governing Body shall determine the advisability of creating a CID pursuant to the Community Improvement District Act. If advisable, the Governing Body may create a CID by adopting an ordinance. Contemporaneously with the adoption of an ordinance creating a CID, the Governing Body shall consider a Development Agreement between the City and the applicant setting forth the specific terms and conditions under which the City will reimburse the applicant on a pay-as-you-go basis for the costs of certain CID Improvements.

F: APPLICANT REQUIREMENTS

1. The applicant shall provide a tax clearance letter from the State of Kansas Department of Revenue to determine and ensure the applicant is compliant with all primary Kansas Tax Laws. An annual submission of the tax clearance from the State of Kansas Department of Revenue is required.

2. If a CID is created, the applicant must complete an annual report by March 1 of each year covering the previous calendar year.

3. If a CID is created, the applicant must agree in the Development Agreement to pay to the City an annual administrative fee equal to 0.5% of the annual CID revenue generated within the CID, to cover the administration and other City costs related to the CID. This fee is in

lieu of the annual renewal fee of $100.00 set forth in the City's Economic Development Policy for other economic development incentives.

G: PAYMENT OF CERTAIN COSTS

The City shall require the applicant to enter into a funding agreement or other evidence of the applicant's agreement to pay costs incurred by the City for additional legal, financial and/or planning consultants, or for direct out-of pocket expenses and other costs relating from services rendered to the City to review, evaluate, process and consider the petition for a CID, as well as the continued maintenance of the escrow account for CID revenues and for the processing of payments of CID eligible costs. Such costs and expenses may be deemed costs of the project, to the extent permitted by the Community Improvement District Act.

H: AUTHORITY OF GOVERNING BODY

The Governing Body reserves the right to deviate from any policy when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that is in the best interests of the City. Additionally, the Governing Body, by its inherent authority, reserves the right to reject any proposal or petition for creation of a CID at any time in the review process when it considers such action to be in the best interests of the City.

SECTION 10. RURAL HOUSING IMPROVEMENT DISTRICT POLICY

A: POLICY STATEMENT

It is the policy of the City to consider the establishment of a RHID for a development containing a minimum of ten renter occupied low-income or income-qualified units. It is the further policy of the City that a RHID shall only be established for projects where the applicant/developer pays for the cost of eligible RHID improvements (at no cost to the City) and agrees to be reimbursed on a pay-as-you-go basis for such costs from the City's receipt of RHID revenues.

B. CRITERIA

It shall be the policy of the City to create a RHID, if, in the opinion of the Governing Body, it is in the best interest of the City to do so. The Governing Body shall consider the following factors when creating a RHID:

1. Assure taxpayers that the City is not financing an already viable project.
2. Assure taxpayers that the City is not financing an unreasonably high profit margin for developers. Each developer will be required to submit a detail of development costs and net operating income including an Internal Rate of Return to be compared to the market for reasonableness.
3. Assure taxpayers that the development provides the City safeguards committing the developer to complete the project.

The Development Plan required by statute for each project must determine that the incremental ad valorem property tax revenues generated by the RHID, together with other funds committed by the Developer, will cover the estimated eligible costs of the project. All Development Plans must assume that the initial estimated incremental property tax revenues will remain flat over

the term of the RHID (i.e., no plan may assume increasing incremental property tax revenues will be available to cover project costs).

All development requests must utilize drought tolerant landscaping and water efficient fixtures in order to minimize impact on water resources. City staff will provide the necessary guidance.

C: ELIGIBLE COSTS

It is the intent of the City to allow only the following development expenditures within a RHID to qualify for reimbursement out of RHID revenues:

1. Acquisition of property within the RHID
2. Payment of relocation assistance
3. Site Preparation
4. Sanitary and storm sewers and lift stations
5. Drainage conduits, channels and levees
6. Street grading, paving, curbs and gutters
7. Street lighting
8. Underground public and limited private utilities, all located within the public right-of-way
9. Sidewalks
10. Water mains and extensions

D: METHOD OF FINANCING

The governing body will consider creation of a RHID where eligible costs will be financed on a pay-as-you-go basis from incremental ad valorem tax revenues generated within the RHID. The City will not issue special obligation bonds for RHID improvements.

E: PROCESS

The process for the creation of an RHID District shall be as follows:

1. *Application and Supplemental Information.* An applicant requesting that the City create a RHID must file:
    a. an Application for Economic Incentives and Supplemental Questionnaire, as provided by the City's Economic Development Policy,
    b. a Housing Needs Analysis meeting the requirements of K.S.A. 12-5244(a) and the guidelines of the Kansas Department of Commerce, and incorporating the findings contained in the Current Hays Housing Assessment.
    c. a Development Plan meeting the requirements of K.S.A. 12-5245, and
    d. a business plan evidencing that the applicant has the financial ability to complete the proposed project in a timely manner and that the project meets the criteria for establishment of a RHID, as set forth in this Policy.

The applicant shall furnish such additional information as requested by the City in order to clarify the application or to assist staff or the Governing Body with the evaluation of the application.

2. *Application Fee and Deposit*. The application fee and deposit as well as any costs and expenses required to be paid by the applicant pursuant to Section 6 of the Economic Development Policy are not reimbursable pursuant to the Rural Housing Incentive District Act. The applicant will pay all out of pocket costs incurred by the City related to the City's review of the application, all documents related to consideration of a RHID and the development agreement, including but not limited to the City's cost of legal counsel and financial advisors necessary to evaluate and create the proposed RHID.
3. *Timing of Submissions*. The application and other information required by this Policy must be submitted in sufficient time for staff to follow established procedures for publication of notice, to review the submitted documents and analyze the merits of the proposed RHID in the context of existing economic development policy.
4. *Secretary of Commerce Approval.* If the Governing Body determines that it is in the best interest of the City to approve the the Housing Needs Analysis and move forward with the proposed Development Plan, the Governing Body shall adopt a resolution approving the Housing Needs Analysis and submit such analysis to the Kansas Secretary of Commerce for approval. If the Secretary of Commerce agrees within the findings of the Governing Body set forth in such resolution, the Governing Body may proceed with the establishment of an RHID.
5. *Development Agreement*. Upon receipt of approval from the Secretary of Commerce, but before the Governing Body takes further action with respect to the creation of the RHID, the City and the Developer shall negotiate a development/performance agreement to implement the proposed Development Plan and including the requirements of this Policy, including particularly the requirements of Section 14 of this Policy related to Performance Agreements.
6. *Public Hearing*. When the Development Plan, a draft Development Agreement, and all additional information required by the RHID Act and this Policy are ready to be presented to the Governing Body the Governing Body will consider adopting a resolution ordering a public hearing on creation of the RHID and adoption of the plan. The Governing Body shall give such notice and hold such hearing in the manner required by the RHID Act.
7. *Governing Body Findings*. After the public hearing is conducted, if advisable, the Governing body may create an RHID district by adopting an ordinance creating the district, adopting the Development Plan, and approving the Development Agreement.

F: PAYMENT OF CERTAIN COSTS

The City shall require the applicant to enter into a funding agreement or other evidence of the applicant's agreement to pay costs incurred by the City for additional legal, financial and/or planning consultants, or for direct out-of pocket expenses and other costs relating from services rendered to the City to review, evaluate, process and consider the request for RHID. Such costs and expenses are the applicant's sole responsibility, and are not generally reimbursable pursuant to the RHID Act.

G: AUTHORITY OF THE GOVERNING BODY

The Governing Body reserves the right to deviate from any policy when it considers such action to be of exceptional benefit to the City or extraordinary circumstances prevail that is in the best interests of the City. Additionally, the Governing Body, by its inherent authority, reserves the right to reject any proposal or request for the creation of an RHID at any time in the review process when it considers such action to be in the best interest of the City or whenever, in the opinion of the City Commission sufficient properties are already available for the type of development being considered.

I: REVIEW

The RHID policy will be in place as long as there is a need for low-income and income-qualified housing. The City expects the Housing Needs Assessment will be updated every three to five years.

SECTION 11. JOB BOUNTY PROGRAM

The Job Bounty Program of the City is to encourage new and/or existing businesses to hire employees. To participate in the Job Bounty Program, a prospective employer must agree to hire at least ten (10) full-time employees at an hourly wage of no less than $10.00/hr. For the purpose of this program, a full-time employee is one that works forty (40) hours per week or two thousand eighty (2080) hours per year. Anything below these levels will be considered part-time and will not be eligible for benefits under this program.

For those employers creating ten (10) or more full-time jobs paying no less than $10.00/hr., the Job Bounty Program, subject to the City's budgetary limitations, shall receive the following:

1. For each full-time position created paying no less than $10.00/hr. base salary, not including employee benefits, tips, commissions, bonuses, or other incentives, the City will pay to the employer $1,000 per job provided that funds shall be paid in 20% increments over a five (5) year period. The employer will be required to provide, at the end of each year, in order to receive Job Bounty funds for that year, an audited payroll showing those ten (10) or more jobs were filled throughout the one year period.

2. For full-time jobs exceeding $15.00/hr base salary, not including employee benefits, tips, commissions, or other incentives, the City will pay $1500 per job on the same basis as noted previously including creation of a minimum of ten (10) jobs per company per agreement.

No Job Bounty proceeds will be paid for the creation of jobs that do not meet established hour and wage requirements as outlined above. It is specifically noted that an employer will apply for a specified number of jobs with the initial application. If the employer creates less than the number of jobs included in the application, no Job Bounty funds will be distributed. Job Bounty funding is allocated on a one-time occurrence per company. Retroactive funding activities, as stated in Section 17 of this policy, are not allowed under this policy.

No jobs may be created, or employees hired, under Job Bounty application until formal review by the City Manager's Office and formal approval has been given by the City Commission subject to all of the activities contained in this policy.

SECTION 12. MEMORANDUM OF UNDERSTANDING

Authority to issue memorandums of understanding to consider requests for economic development incentives shall lie only with the City Commission. Such memorandums of understanding shall only be issued by the City Commission, and as an expression of good faith intent, but shall not in any way bind the City to the granting of an incentive. Such memorandums of understanding shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of memorandums of understanding.

SECTION 13. NOTICE AND HEARING

No incentive shall be granted by the City prior to a public hearing thereon. Notice of the public hearing shall be published at least seven days prior to the hearing in the official city newspaper, giving the time and place, and the hearing may be held at a regular or special meeting of the City Commission. The City Manager shall thereupon notify the Ellis County Commissioners, the superintendent of the appropriate school district, and the clerk of any taxing jurisdiction, excluding the state, which derives or could derive property taxes from the affected business advising them of the scheduled public hearing and inviting their review and comment. Upon request, the City Manager shall provide any such public agency with a copy of the application, which shall remain confidential unless released by the City Commission. The applicant business shall be invited, but not required, to attend the public hearings.

SECTION 14. PERFORMANCE AGREEMENT

Any incentive granted pursuant to this policy shall be accompanied by a Performance Agreement between the applicant and the City, which shall include provisions governing the situation if an applicant fails to meet the wage, number of jobs, and/or capital investment projections set forth in the original application. Each incentive shall be reviewed annually. The City Commission shall receive the annual review report, and if the City Commission determines that a business or project is not in compliance with the provisions of the Performance Agreement, then the incentive may be modified pursuant to the Performance Agreement as the City Commission deems appropriate. Modifications to the incentive may include, but are not limited to, termination of the incentive, reduction of any incentive (including but not limited to reductions in tax abatement due to failure to meet requirements as set forth in Section 7) and claw-back of any existing incentive. To the extent necessary, the County Appraiser and the State Court of Tax Appeals shall be notified of appropriate actions to modify any incentive.

SECTION 15. COST BENEFIT ANALYSIS

The Cost Benefit Analysis will offer a wide spectrum of information as it pertains to development, the adequacy, or inadequacy of, financial incentives, and finally, the net gain, current and future, of entering into these types of endeavors on behalf of the citizens of the City. The Cost Benefit Analysis should address the following items:

1. DIRECT COSTS TO THE CITY. Any identified direct cost should be included in the analysis. Examples of these types of costs include municipal infrastructure to the business site, and costs of providing city emergency services such as fire and police protection.

2. BENEFIT TO THE CITY. Direct benefits include wages/salaries/benefits paid to employees, any taxes collected (property, sales, franchise fees), purchases of products/services from local vendors.

3. COST VERSUS BENEFIT. From a community perspective, incentives are used because a net benefit is expected. A desired benefit to cost ratio must be at least in the 1.25:1 ratio. Proposed economic development projects that achieve this benchmark traditionally employ a higher proportion of local labor, including managers, at an above-average hourly wage.

This analysis should identify the particulars involving the developer's proposal. This should include confirmation of the size of the store, financial information, number of employees, pay scale, tax collections, and other areas involving development. The developer is responsible for the development of this analysis including any cost incurred.

SECTION 16. ANNUAL REVIEW FOR COMPLIANCE

All incentives granted shall be subject to an annual review to ensure that the ownership, use of property, and the economic performance of the business, including the capital investment, employment, and wages, are pursuant to requirements and criteria of this policy, the application, and the conditions of the granting of incentives. The review shall also include a comprehensive review of the entire incentive period for the business (if applicable), including milestones and project phases for the business. The annual review shall provide an opportunity for the company receiving the incentive to describe their achievements, especially in the areas of environmentally sound practice, community engagement and services, and job training. If the business:

A. no longer qualifies for the incentive pursuant to law or this policy;
B. substantially fails to meet the expectations set forth in the application for an incentive, including failure to meet employment, wage, or capital investment plans in the application; or
C. substantially fails to meet the criteria or objectives of this policy;

the City Commission, after notice and a public hearing, may modify any incentive by ordinance or resolution.

The City reserves the right to issue any level of penalties that it deems necessary. These may include; 1) rescissions, which is a complete cancellation of the incentive, 2) penalties, which are fines charged when the business does not meet a certain level of performance or relocates, and finally, 3) recalibrations, which are the provisions for changing the incentive in some manner in order to accommodate an evolving economic climate. The use of these tools will provide a safety net to the community, ensuring that its investment in the business will result in the positive benefits it expects.

Each business receiving an incentive shall be required to complete an annual report by March 1. The information in the report will cover the time period of January 1 through December 31 of the previous year. The annual report will be reviewed by May 1.

By May 1 of each year, an annual report listing all financial incentives that remain in effect will be presented to the City Commission. The annual report shall include information regarding when the incentive was granted, when the incentive expires, current property taxes paid for the property, in lieu of tax payments, amount of any industrial revenue bonds issued, the assessed value of the property, number of employees, salary and payroll of employees, and any additional information concerning the operation of the business receiving the incentive, and other information as requested by the City Commission.

The failure of a business (a) to provide accurate and timely information to the City in the preparation of the annual report or (b) to comply with the performance standards set forth in the Performance Agreement, shall be grounds for the modification or revocation of the incentive granted.

The City may require an annual renewal application to be filed or other information necessary to assure the continued qualification of the exempt business. Any material omission or misstatement of fact in information provided to the City in any such statement or renewal application may be cause for repeal of any incentive ordinance adopted, renewed or extended in reliance thereon.

SECTION 17. TRANSFER OF OWNERSHIP OR USE

Incentives granted by the City may be transferred as a result of a change in the majority ownership of the business. Any new owner shall file a new application, along with the renewal fee, for an incentive. The City shall be notified by the business of any change in ownership and any substantive change in the use of a tax exempt property.

SECTION 18. RETROACTIVE GRANTING OF INCENTIVES; "BUT FOR" PRINCIPLE

No incentives, including the granting of Job Bounty funding, will be distributed on a retroactive funding basis. Incentives will be granted pursuant to the guidelines of this policy and effective on the date indicated and approved by the City Commission.

Each application for incentive shall demonstrate that the incentive will make such a difference in determining the decision of the business to locate, expand or remain in the City that the business would not otherwise be established, expanded or retained without the availability of the abatement.

SECTION 19. WAIVER OF STATEMENT REQUIREMENTS

The City Commission reserves the right to grant or not to grant an incentive under circumstances beyond the scope of this Statement, or to waive any procedural requirement. However, no such action or waiver shall be taken or made except upon a finding by the City Commission that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest.

SECTION 20. AMENDMENTS

The City Commission of the City retains the right to amend any portion of this policy as needed.

SECTION 21. TAX CLEARANCE CERTIFICATION

Any person, company, or entity receiving economic incentives under this policy must provide a Tax Clearance Certificate from the State of Kansas Department of Revenue on an annual basis prior to December 31. The Tax Clearance Certificate requirement will be in effect until such time that incentives are no longer being utilized.

SECTION 22. MANDATORY REVIEW

This policy will be subject to a mandatory review by the City Commission every three years.

Commission Work Session Agenda Memo

From: Kim Rupp, Director of Finance

Work Session: September 18, 2014

Subject: Resolution Calling for the Public Hearing on Creation of the Hays Mall CID

Person(s) Responsible: Kim Rupp, Director of Finance

Summary

On August 11, 2014, Hays Mall LLC submitted a petition to create a Community Improvement District (CID). All materials have been reviewed by bond counsel, Gina Riekhof, Gilmore & Bell, P.C. and are found to meet all the requirements of Kansas law and the City of Hays Economic Development Policy. Staff recommends the commission approve resolution #XXX setting a public hearing on October 23, 2014 to create the Hays Mall CID.

Background

A resolution calling and providing for the giving of notice of a public hearing on the creation of the Hays Mall CID is the next step in moving the valid CID petition forward in the process.

Discussion

Bond counsel, Gina Riekhof, Gilmore & Bell P.C. has reviewed all the documentation submitted. The owners have signed the petition and all other aspects of it comply with the requirements of K.S.A. 12-6a26 and is a valid petition for a CID under Kansas law and the City of Hays Economic Development Policy.

Resolution #XXXX provides for a public hearing on the advisability of creating the Hays Mall CID, approving the projects in the petition and whether to impose a 1% CID Sales Tax in the district defined in the petition.

Legal Consideration

The City Attorney has reviewed the Memorandum, and based upon the fact that bond counsel has approved the procedure and reviewed all documents, there are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

The application fee of $1000 and the deposit of $5000 have been paid by Hays Mall LLC. The $5000 is retained to pay for the City's out of pocket costs associated with the City's review of the application including costs of legal counsel. The Eco Devo Policy provides that if these costs incurred exceed the fee collected, the applicant shall reimburse the City for the additional.

Options

The City Commission has the following options:

- Approve Resolution #XXXX calling for a public hearing on the creation of the Hays Mall CID
- Decline to approve Resolution #XXXX
- Provide other direction to city staff

Recommendation

Staff recommends the commission approve resolution #XXX setting a public hearing on October 23, 2014 to create the Hays Mall CID.

Action Requested

Move to approve Resolution #XXXX calling and providing for the giving of notice of a public hearing on October 23, 2014 on the advisability of creating the Hays Mall Community Improvement District.

Supporting Documentation

Resolution

(Published in ***The Hays Daily News on September 29 and October 6, 2014***)

RESOLUTION NO. R-_____-14

A RESOLUTION CALLING AND PROVIDING FOR THE GIVING OF NOTICE OF A PUBLIC HEARING ON THE ADVISABILITY OF CREATING A COMMUNITY IMPROVEMENT DISTRICT IN THE CITY OF HAYS, KANSAS TO BE KNOWN AS THE MALL AT HAYS COMMUNITY IMPROVEMENT DISTRICT AND REGARDING THE CITY'S INTENT TO LEVY A COMMUNITY IMPROVEMENT DISTRICT SALES TAX WITHIN SUCH DISTRICT.

WHEREAS, K.S.A. 12-6a26 *et. seq*. (the "Act") authorizes the governing body of any city or county to create community improvement districts to finance projects within such defined area of the city or county and to levy a community improvement district sales tax and/or levy special assessments upon property within the district to finance projects; and

WHEREAS, a petition (the "Petition") was filed with the City Manager on August 11, 2014, proposing the creation of the Mall at Hays Community Improvement District ("CID") under the Act and the imposition of a community improvement district sales tax in order to pay the costs of projects as described in the Petition (the "Projects"); and

WHEREAS, the Petition was signed by the required number of owners of record, whether resident or not, as required by the Act; and

WHEREAS, the City of Hays, Kansas (the "City") desires to further consider creation of the CID and levy of a community improvement district sales tax in an amount equal to 1.0% as requested in the Petition (the "CID Sales Tax"); and

WHEREAS, the Governing Body hereby finds and determines it to be necessary to direct and order a public hearing on the advisability of creating the CID, approving the Projects set forth in the Petition and levying the CID Sales Tax, pursuant to the authority of the Act; and further to provide for the giving of notice of said hearing in the manner required by the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS, AS FOLLOWS:

SECTION 1. **Petition**. The Governing Body hereby finds and determines that the Petition meets the requirements of the Act.

SECTION 2. **Public Hearing**. It is hereby authorized, ordered and directed that the Governing Body shall hold a public hearing, in accordance with the provisions of the Act, on the advisability of creating the CID, approving the Projects set forth in the Petition, and whether to impose a CID Sales Tax in an amount equal to **1.0%**, such public hearing to be held on **October 23, 2014 at 6:30 p.m.**, or as soon therafter as the matter can be heard, at City Hall, 1507 Main Street, Hays, Kansas.

SECTION 3. Proposed CID Projects. The general nature of the proposed CID project to be constructed within the District includes improvements to the commercial property generally known as the Mall at Hays, and a portion of public right-of-way located along the mall's western property line, along Vine Street, and specifically includes but is not limited to: (a) interior improvements; (b) exterior

improvements; (c) parking lot repair, milling, overlay and sidewalk improvements; (d) demolition; (e) marquee and signage upgrades; (f) remodeled entrances and doors; and (g) exterior landscaping, monuments, islands, irrigation, lighting, and beautifications, all to those certain premises more particularly described in the Petition.

SECTION 4. Estimated Cost. The estimated cost of the proposed Projects is $3,144,936, plus reimbursable post-construction financing costs.

SECTION 5. Method of Financing and Community Improvement District Sales Tax. The estimated cost of the proposed Projects, plus financing costs, will be financed by through pay-as-you-go financing and no bonds will be issued. It is proposed that a CID Sales Tax in an amount equal to **1.0%** will be levied. There will be **no** special assessments on property within the boundaries of the CID to pay the costs of the Projects

SECTION 6. Map and Legal Description of Proposed CID. The legal description of the property to be contained in the proposed CID is set forth on **Exhibit A** attached hereto and incorporated by reference herein. A map generally outlining the boundaries of the proposed CID is attached as **Exhibit B** hereto, and incorporated by reference herein.

SECTION 7. **Notice of Hearing**. The City Clerk is hereby authorized, ordered and directed to give notice of said public hearing by publication of this Resolution in the official newspaper. Such publication shall be at least once each week for two consecutive weeks. The second publication shall be at least 7 days prior to the date of the hearing. The City Clerk is hereby further ordered and directed to mail a copy of this Resolution, via certified mail, to all property owners within such proposed CID at least 10 days prior to the date of the hearing.

SECTION 8. Effective Date. This Resolution shall be effective upon adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS THIS 25TH DAY OF SEPTEMBER, 2014.

_____
Mayor

_____
City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF PROPOSED HAYS MALL COMMUNITY IMPROVEMENT DISTRICT

The following property located in Ellis County, Hays, Kansas:

TRACT A:

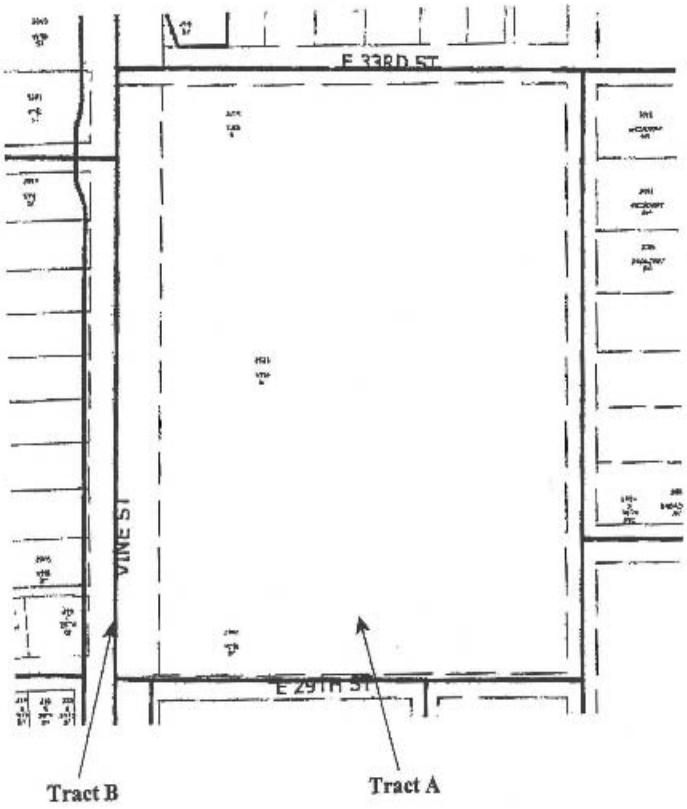
A tract of land in HAYS PLAZA FIRST ADDITION to the City of Hays, Ellis County, Kansas, described as follows: Beginning at the intersection of the East line of U.S. Highway 183 and the South line of 33rd Street; thence East along the South line of 33rd Street a distance of 918.2 feet to intersect the West line of Broadway Avenue; thence South along the West line of Broadway Avenue, a distance of 1,220.56 feet to intersect the North line of 29th Street; thence West along the North line of 29th Street a distance of 925.25 feet to intersect the East right-at-way line of U.S. Highway 183; thence North along the East line of U.S. Highway 183 a distance of 1,216.28 feet to the point of beginning.

AND

TRACT B:

That portion of the eastern one-half (1/2) of U.S. Highway 183 right-at-way located between the South line of 33rd Street and the North line of 29th Street, all in the City of Hays, Ellis County, Kansas.

EXHIBIT B
MAP OF PROPOSED HAYS MALL COMMUNITY IMPROVEMENT DISTRICT



Commission Work Session Agenda Memo

From: ID Creech, Director of Public Works

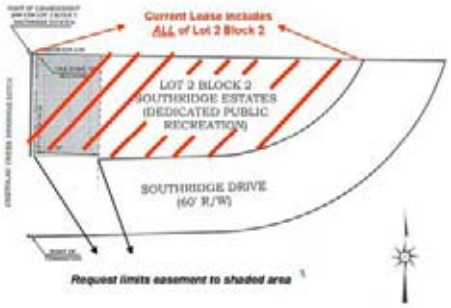
Work Session: September 18, 2014

Subject: Easement Request – Midwest Energy

Person(s) Responsible: Toby Dougherty, City Manager
ID Creech, Director Public Works

Summary

Midwest Energy is requesting an adjustment to an existing easement for City owned property in the Southridge addition to the City. Midwest currently holds a blanket easement over the property from a 1956 easement that contains restrictions on the number of structures that can be erected. Currently, two (2) "H" structures (2 poles with a horizontal cross arm) are allowed. Midwest desires to restrict the easement to a fifty (50) foot easement and to rebuild this transmission line with single poled structures which will require more than the two (2) structures allowed by current easement. Staff will recommend approval of the request.



Background

The easement for this transmission line was obtained by The Central Kansas Power Company in December 1956 and is a blanket type easement having no defined width. The existing line was constructed in the late 1950s. Midwest is the successor in interest to The Central Kansas Power Company.

Midwest Energy has requested an amendment to a lease the City inherited when the Southridge Plat was annexed. The City owns the property from that plat of Southridge Estates dated 1973 and does not use the property for any continuing purpose. The only City activity for the property is the mowing maintenance provided by the Parks Department. There are no pending uses or future plans for use of this property by the Parks Department.

Discussion

The proposed Partial Release would define the width of the easement at 100 feet, with 50 feet on each side of the centerline, excluding the area in Chetolah Creek. The Partial Release also updates the terms and conditions of the easement. The request is made to help Midwest satisfy requirements of the Federal Energy Regulatory Commission (FERC) and North American Electric Reliability Corporation (NERC). Defining the easement width and ensuring the right to maintain an easement without obstacles or encroachments which may interfere with or endanger the power lines are important elements in meeting the FERC/NERC requirements.

The request is part of Midwest Energy's desire to upgrade the electric transmission, substation and distribution system in and around Hays. The project will involve the reconstruction of some existing 115 kV transmission lines, acquisition of easements for construction of new 115 kV power lines and acquisition of land for new and/or expanded substation sites. The route for the new line will follow the existing line via easement from December, 1956 and as part of the proposal for transmission and distribution system upgrades in the Hays area.

The existing transmission line was constructed with H-frame structures. Midwest plans to rebuild the line with single wood poles. The use of single wood poles will decrease the hanging strength of the structures and, thus, the distance between poles and increase the overall number of poles. The design work to rebuild the transmission line has not been completed so the distance between poles is not certain. For the purpose of example only, the distance between H-frame structures may be around 600 feet and the distance between single wood poles may be around 400 feet.

The existing easement includes a limit of 2 structures. Rebuilding the line with single wood poles will result in more than 2 poles being located in the area covered by the 1956 easement. The Partial Release has been revised to state that no poles, towers, or anchors will be located in the area dedicated for use as a public street.

Staff has reviewed the request with the petitioner, Zoning Administrator, Stormwater Superintendent, City Attorney, Parks Director, and airport consulting engineer finding no issues with the request.

Legal Consideration

There are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

There are no known financial considerations for this issue.

Options

1. Approve the easement request as presented;
2. Do not approve the easement request;
3. Direct Staff to another direction;
4. Do nothing.

Recommendation

Staff will recommend approval of the request. This is part of a larger project that will improve electric service delivery for the citizens of Hays.

Action Requested

Approve the easement request.

Supporting Documentation

Letter of Request from MidWest Representative
1956 Easement
Southridge Estates Plat
Proposed Easement
Visual of Future Power Transmission Lines

UTILIMAP CORPORATION

September 4, 2014

Mr. I.D. Creech, II
Director of Public Works
City of Hays
1002 Vine Street
P.O. Box 490
Hays, KS 67601

Re: Midwest Energy, Inc. Transmission Line
Partial Release and Modification of Easement for
Lot Two (2), Block Two (2), Southridge Estates – Recreation Area

Dear Mr. Creech:

This letter will provide an explanation regarding our request for the City of Hays (City) to approve/execute a Partial Release and Modification of Right of Way (the "Partial Release") concerning the above captioned real property (the "Property"). Utilimap Corporation is assisting Midwest Energy, Inc. (Midwest) with a project to rebuild a portion of the existing 115 kV transmission line which runs from the South Hays Substation (Mount Pleasant Road and 260th) to the Vine Substation (11th and Vine Street).

Enclosed you will find the following documents:

1. Partial Release and Modification of Right of Way;
2. Exhibit "A" Easement Survey – showing the easement area on the Property;
3. Plat of the Southridge Estates subdivision;
4. Easement Agreement and Conveyance dated December 29, 1956, for two structures numbered 375 and 376; and
5. Exhibit showing route of the transmission line and structures numbered 375 and 376.

The easement for this transmission line was obtained by The Central Kansas Power Company in December 1956 and is a blanket type easement with no defined width. The existing transmission line was constructed in the late 1950's. Midwest is the successor in interest to The Central Kansas Power Company.

4770 N Belleview Avenue, Suite 100, Kansas City, Missouri 64116
(816) 414-1100 · Fax (816) 414-1114
A QUANTA SERVICES COMPANY

The plat for Southridge Estates dedicated the Property for use as a Public Recreation area. The plat was recorded on September 13, 1973. Pursuant to K.S.A. 12-406, recording of the plat with the Ellis County Register of Deeds vested title to the land in Ellis County. Ownership was transferred to the City when the Property was included within the corporate limits of Hays.

The Partial Release defines the width of the easement and modifies the terms and conditions of the easement. The terms and conditions of the easement are being updated so Midwest can satisfy requirements of the Federal Energy Regulatory Commission (FERC) and North American Electric Reliability Corporation (NERC). Defining the easement width and ensuring the right to maintain an easement without obstacles or encroachments which may interfere with or endanger the power lines are important factors in meeting the FERC/NERC requirements.

The existing transmission line was constructed with H-frame structures (2 poles with a horizontal cross arm). The December 1956 easement includes a limit of 2 structures. Midwest plans to rebuild the line with single wood poles Rebuilding the line with single wood poles will result in more than 2 structures/poles being located in the area covered by the 1956 easement. The Partial Release addresses this issue. The Partial Release also provides that no poles, towers, or anchors will be located in the area dedicated for use as a public street.

The design work for rebuilding the transmission line is in the process of being completed. One pole with down guys will be located near the north side of the Property. Midwest hopes to start work rebuilding the transmission line this fall. The transmission line will be rebuilt between the South Hays Substation and a three pole structure located between Highway 40 and 8th Street. Plans for rebuilding the transmission line north of 8th Street are being developed and reviewed.

Please contact the undersigned if you have any questions.

Sincerely,

UTILIMAP CORPORATION

Michael Rump
Real Estate Manager
Office (816) 414-1183
Cell (913) 217-5558
Email mrump@utilimap.com

c: Midwest Energy, Inc.

159-389

EASEMENT AGREEMENT AND CONVEYANCE

THIS AGREEMENT, and indenture, made this 29th day of December 19 6, by and between

Ellen Behan Miller, a widow, Eileen Johnson and Graham T. Johnson, her husband, Mary Kathryn Cramer and A.W. Cramer, her husband

parties of the first part, hereinafter called grantor (whether one or more), and The Contal Kansas Power Company, a Kansas corporation, party of the second part, hereinafter called grantee.

WITNESSETH:

That, in consideration of the sum of Two Hundred Thirty-five ($235.00) dollars, receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter expressed, grantor does hereby grant, bargain, sell and convey to grantee, its successors and assigns, the right and easement to enter upon and to erect, construct, re-construct, operate and maintain poles, crossarms, wires, anchors, and appurtenances thereto, for the transmission and conveyance of electric energy and for communication purposes upon, over, along, through, and across the following lands situated in the County of Ellis and State of Kansas, to-wit:

A tract of real estate situated in the Southeast Quarter (SE¼) of Section Three (3), Township Fourteen (14) South, Range Eighteen (18) West of the Sixth Principal Meridian.

2 - Structures - Numbered 375 and 376

The parties covenant and agree as follows:

The right-of-way for said transmission line shall run through and across said above described lands and shall be located and selected by the grantee so as to be a part of its continuous right-of-way for a transmission line in said county, and said right-of-way shall be finally established by the location of the transmission line on said premises. No part of said transmission line or any wire, poles, anchors or other appurtenances thereto shall be installed, erected or constructed within 300 feet of any existing dwelling house or within 100 feet of any barn, shed, garage, outbuilding or other permanent farm structure, or within 40 feet of any oil well or oil tank located upon the above described premises.

The grantee shall have and is hereby given the right to erect, construct, maintain and operate additional supporting structures for said transmission line on said premises as it may, from time to time, deem necessary or advisable; provided, however, that before erecting any additional structure or structures grantee shall pay grantor an additional consideration for such right and privilege of a sum of money to be computed on the same basis as the initial consideration paid hereunder.

The grantee shall have the right of ingress and egress to and from said transmission line right-of-way to survey, erect, construct, operate, maintain, inspect, patrol, rebuild and repair said line, together with the right to replace, renew, reconstruct, upon, across, over or along said right-of-way, poles, wires, anchors, and appurtenances thereto, and the right to remove at any time any or all of said installations or appurtenances; and the grantee may erect, maintain and use gates in all fences which now or may hereafter cross the route of said transmission line, and may trim and/or cut and clear away any tree limbs and brush whenever in its judgment the same will interfere with or endanger the construction, operation or maintenance of said transmission line. In exercising its rights of ingress and egress the grantee shall, whenever practicable, use existing roads or lanes, and shall repair any damage caused by its use thereof. If the grantee shall cut or remove trees under the rights hereby granted, it is agreed that if such trees shall be valuable for either timber or wood, they shall continue to be the property of the grantor, but all tops, limbs and brush shall be burned or removed by the grantee.

The grantor, their heirs or assigns, may cultivate and fully use and enjoy the land under said transmission line, provided the same shall not be used in any way that will interfere with or endanger the construction, reconstruction, operation or maintenance of said transmission line.

The grantee, its successors or assigns, agrees to pay for any reasonable damage caused to growing crops or fences from the construction, reconstruction, operation or maintenance of said transmission line, said damages if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one to be appointed by the grantor, their heirs or assigns, one by the said grantee, its successors or assigns, and the third by the two so appointed as aforesaid, and the award of the three such persons shall be final and conclusive and no action shall be brought or maintained for damages until the amount thereof shall have been determined as above provided.

This easement conveyance shall run with the land and shall be binding upon the grantor, their heirs, devisees, executors, administrators and assigns.

TO HAVE AND TO HOLD THE SAME, together with all the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, unto the said Central Kansas Power Company, a corporation, and unto its successors and assigns, for so long as said grantee shall use, operate and maintain its transmission line upon, over, through and across said above described real estate. And in the event grantee, its successors or assigns, shall completely abandon and cease to use, operate and maintain said transmission line upon, over, through and across said premises, the right-of-way and easement therefor, together with all rights and interests of grantee hereunder, shall cease and terminate and the right-of-way shall revert to grantor, their heirs, devisees and assigns, forever, Provided, however, that all structures, installations, equipment and other appurtenances placed and erected on said premises by grantee shall remain the property of grantee, its successors or assigns, and grantee, its successor or assigns shall have the right to remove same from said premises upon the abandonment of said transmission line.

Signed this 29 day of December 1956

x Ellen Behan Miller
Mary Kathryn Cramer
A.W. Cramer

x Eileen Johnson
Graham T. Johnson

389

STATE OF Kansas
COUNTY OF Ellis } ss. ACKNOWLEDGMENT FOR INDIVIDUAL

Before me, the undersigned, a Notary Public, within and for said county and State, on this 5th day of January, 1957, personally appeared Ellen Behan Miller, a widow and

to me personally known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My commission expires H. D. La Rue - Notary Public for State of Kansas, County of Ellis. My Commission Expires Nov. 22, 1958 — H. D. La Rue, Notary Public

STATE OF Texas
COUNTY OF Dallas } ss. ACKNOWLEDGMENT FOR INDIVIDUAL

Before me, the undersigned, a Notary Public, within and for said county and State, on this 31st day of December, 1956, personally appeared Eileen Johnson and Graham T. Johnson, her husband

to me personally known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My commission expires 6-1-57 — L. M. Cleler, Notary Public

STATE OF California
COUNTY OF Santa Clara } ss. ACKNOWLEDGMENT FOR INDIVIDUAL

Before me, the undersigned, a Notary Public, within and for said county and State, on this 29 day of December, 1956, personally appeared Mary Kathryn Cramer and W. A. Cramer, her husband

to me personally known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above written.

My commission expires My commission expires Jan. 8, 1957 — Mary T. Jones, Notary Public

STATE OF
COUNTY OF } ss. ACKNOWLEDGMENT FOR CORPORATION

Be it remembered that on this day of, 19, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came , president of a corporation of the State of, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year last above written.

My commission expires — Notary Public

NOTE: When signature by mark in Kansas, said mark to be witnessed by at least one person and also acknowledged. For acknowledgement by mark, use regular Kansas acknowledgment.

No.

Easement Agreement And Conveyance

FROM

TO

The Central Kansas Power Company, a corporation

Date, 19
Sec. Twp. Rge.
No. of Acres
County

STATE OF Texas
County of Ellis } ss:

This instrument was filed for record on the 5 day of January 1957 at 11:00 o'clock A.M., and duly recorded in Book 159 Page 389 of the records of this office.

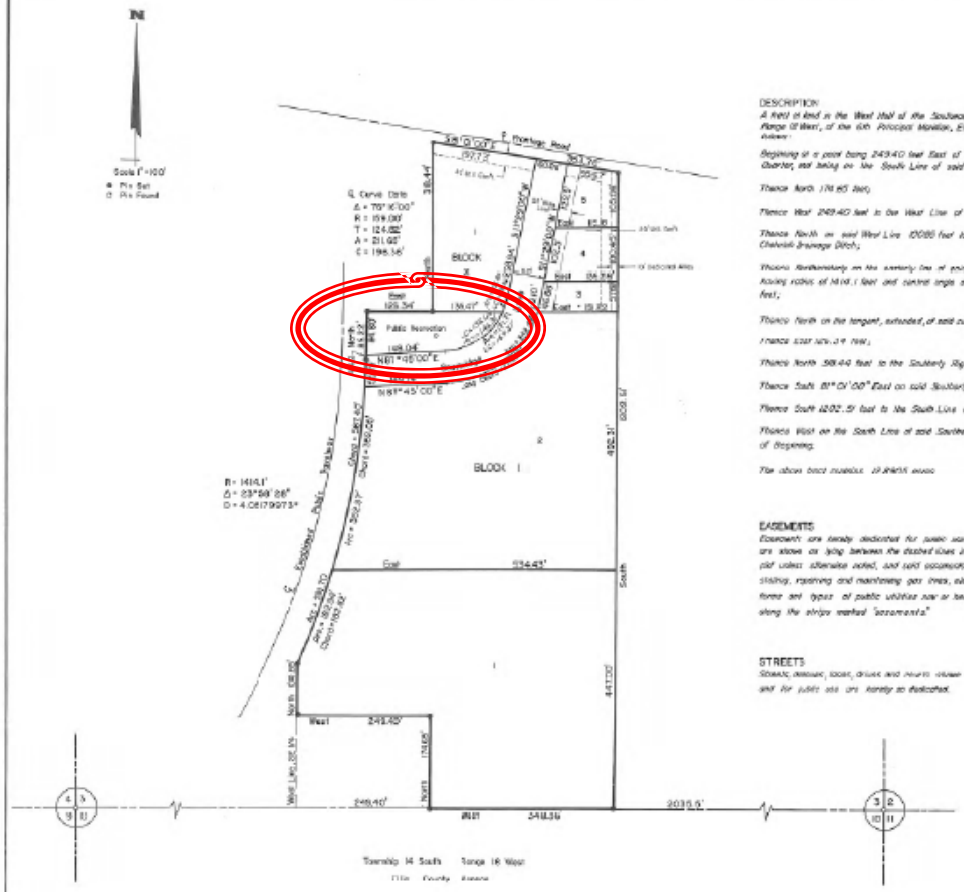
W. R. Schneider, Register of Deeds

2.65

By

When recorded, return to

SOUTHRIDGE ESTATES



DESCRIPTION

A field in kind in the West Half of the Southeast Quarter of Section 9, Township 14 South, Range 18 West, of the 6th Principal Meridian, Ellis County, Kansas, and described as follows:

Beginning at a point being 2493.40 feet East of the Southeast Corner of said Southwest Quarter, and being on the South Line of said Southeast Quarter;

Thence North 176.65 feet;

Thence West 249.40 feet to the West Line of said Southeast Quarter;

Thence North on said West Line 1008.6 feet to the westerly line of the City of Hays Chetolah Drainage Ditch;

Thence Northeasterly on the westerly line of said Drainage Ditch on a curve to the left, having radius of 1414.1 feet and central angle of 23°59'28", an arc distance of 592.20 feet;

Thence North on the tangent, extended, of said curve 99.32 feet;

Thence East 30.34 feet;

Thence North 58.44 feet to the Southerly Right of Way Line of U.S. Highway 40 Bypass;

Thence South 81°01'00" East on said Southerly Right of Way Line 353.78 feet;

Thence South 4202.51 feet to the South Line of said Southeast Quarter;

Thence West on the South Line of said Southeast Quarter 2493.36 feet, to the Point of Beginning.

The above tract includes 19.8615 acres

EASEMENTS

Easements are hereby dedicated for public use as utility easements right-of-way, where are shown on plat between the dashed lines in widths indicated and as set forth on the plat unless otherwise noted, and said easements may be employed for the purpose of installing, repairing and maintaining gas lines, electric lines, telephone lines, and all other forms and types of public utilities now or hereafter used by the public now, under and along the strips marked "easements".

STREETS

Streets, avenues, roads, drives and courts shown on this plat and not heretofore dedicated to unit for public use are hereby so dedicated.

SURVEYOR'S CERTIFICATE

STATE OF KANSAS } SS
COUNTY OF ELLIS }

I the undersigned do hereby certify that I am a Registered Land Surveyor in the State of Kansas with experience and proficiency in land surveying; that the premises described property was surveyed and subdivided by me, or under my supervision, that all Subdivision Regulations of Ellis County, Kansas, have been complied with in the preparation of this plat, and that all the monuments shown have actually been and their positions are correctly shown to the best of my knowledge and belief.

Given under my hand and seal at Junction City, Kansas this ___ day of _____ A.D. 1976

_____
Bruce V. Collins PE
Land Surveyor

OWNER'S CERTIFICATE

STATE OF KANSAS } SS
COUNTY OF ELLIS }

Now as owners in fee simple, that we, the undersigned, sole owners of the land as shown on this plat, in the Surveyor's Certificate, have caused the same to be surveyed and platted into Lots, Blocks, Easements, Lanes, Drives, Courts, Street and Avenue, the same to be known as Southridge Estates, an addition to the City of Hays, Ellis County, Kansas; the Lanes, Drives, Courts, Street and Avenue are hereby dedicated to and for the use of public, and easements as indicated on the accompanying plat are hereby granted to the public for the purpose of constructing, operating, maintaining, and repairing of public utilities.

_____
Oasis Properties Inc.
Dave B. Tabor, Sec - Treas

_____
Schoeller Lumber Co. Inc.
Verle Pfannenstiel, Vice Pres.

NOTARY CERTIFICATE

STATE OF KANSAS } SS
COUNTY OF ELLIS }

Be it remembered that on this ___ day of _____ A.D. 1976 before me a notary public in and for said County and State, came _____ to me personally known to be the same persons who executed the foregoing instrument of writing and duly acknowledged the execution of same in testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

_____
Ashley Public Harry Schoeller III
My Commission Expires _____

CERTIFICATE OF THE PLANNING COMMISSION

STATE OF KANSAS } SS
CITY OF HAYS }

This plat of Southridge Estates has been submitted to and approved by the Hays Planning Commission this ___ day of _____ A.D. 1976

Chairman Robert J. Bieber — Secretary Margaret E. Smith

CERTIFICATE OF THE COUNTY COMMISSION

STATE OF KANSAS } SS
COUNTY OF ELLIS }

This dedication shown on this plat accepted by the County Commission of the County of Ellis, Kansas, this 20 day of August A.D. 1976

County Clerk — Chairman

CERTIFICATE OF THE REGISTER OF DEEDS

STATE OF KANSAS } SS
COUNTY OF ELLIS }

This is to certify that this instrument was filed for record in the Register of Deeds office on the 13 day of August A.D. 1976 in Book 218, Page 32

Register of Deeds — Deputy

$20.00
Plat & Dedication 278 # 754
Dedication 278 # 757

Entered on transfer record this ___ day of _____ A.D. 1976

_____
County Clerk

ORIGINAL PLAT

SOUTHRIDGE ESTATES

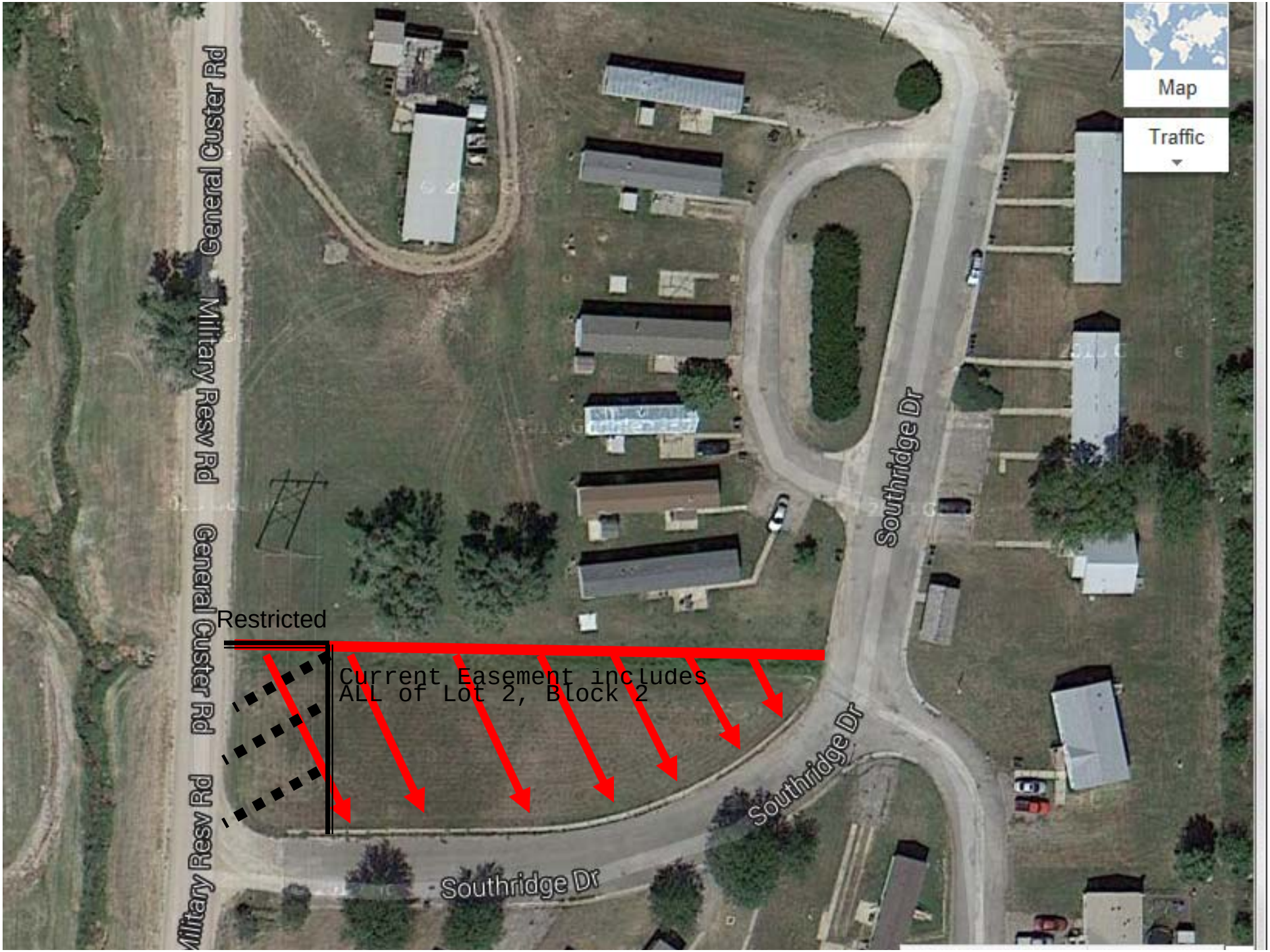
HAYS CITY, KANSAS

HUBERT CASPAR JR.
Engineers Architects
Junction City, Kansas

JUNE, 1976

PROJ. NO. 2452

Current easement includes all of 1590 which is Lot 2, Block 2 of the Southridge Addition.


Map
Traffic
Southridge Dr
Southridge Dr
Southridge Dr
General Custer Rd
Military Resv Rd
General Custer Rd
Military Resv Rd
Restricted
Current Easement includes
ALL of Lot 2, Block 2

PARTIAL RELEASE AND MODIFICATION OF RIGHT OF WAY

THIS PARTIAL RELEASE AND MODIFICATION OF RIGHT OF WAY ("Partial Release and Modification") is made effective as of _____, 2014, by and between the City of Hays, Kansas, a municipal corporation ("Grantor") and Midwest Energy, Inc., 1330 Canterbury Road, P.O. Box 898, Hays, KS 67601-0898 ("Grantee").

WITNESSETH:

In consideration of the mutual covenants and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

Grantor, owns or controls (subject to easements and encumbrances of record) the property described in this Partial Release and Modification by virtue of a plat for the Southridge Estates Addition, filed in the office of the Register of Dees for Ellis County, Kansas on September 13, 1976, and recorded in Book 2A, Page 33, and Grantee, as successor in interest of The Central Kansas Power Company, as the owner of an easement by virtue of an Easement Agreement and Conveyance, dated December 29, 1956 and recorded in the office of the Register of Deeds for Ellis County, Kansas, in Book 159, Page 389 (hereinafter the "Originally Granted Easement"), covering the following described real estate in Ellis County, Kansas:

> **A tract of land in the Southeast Quarter (SE/4) of Section Three (3), Township 14 South, Range 18 West of the 6th P.m., more particularly described as Lot Two (2), Block Two (2), SOUTHRIDGE ESTATES ADDITION to Ellis County, Kansas and that portion of said plat dedicating Southridge Drive for use as a public street.**

Subject to the conditions herein contained, Grantee does hereby disclaim, release and surrender all its right, title and interest in and to the Originally Granted Easement insofar and only with respect to the real estate described above:

Proposed

Except and reserving unto Grantee, a strip of land 100 feet in width across a tract of land in Section 3, Township 14 South, Range 18 West of the 6th P.M., Ellis County, Kansas, more particularly described as follows:

See Exhibit "A" Easement Survey attached hereto and made part of this Release and Modification by reference, which sets forth the legal description for the easement area being reserved and retained by Grantee.

That part of the real estate encumbered by the Originally Granted Easement, and upon or across which the easement has not been released hereby, is referred to as the "Retained Easement" and as to the Retained Easement all rights and interest of Grantee shall remain in full force and effect as amended below.

In consideration of the above described partial release, Grantor hereby acknowledges and agrees that the rights, as stated in the Originally Granted Easement shall be modified as follows:

1. Grantee, its employees, lessees, successors and assigns, shall have the irrevocable right and perpetual easement to enter upon and to survey, erect, construct, reconstruct, alter, maintain, inspect, patrol, repair, and remove poles, towers, wires, anchors, underground conduit and appurtenances thereto, for the transmission and conveyance of electric energy and for Grantee's communication purposes over, across and under the Retained Easement; provided, however, that no poles, towers, or anchors shall be erected or located upon that portion of the above described land dedicated for use as a public street and any wires and appurtenances thereto shall only overhang said right of way.

2. Grantee shall have the right of ingress and egress to and from said land to survey, erect, construct, reconstruct, alter, maintain, inspect, patrol, repair and remove its lines, together with the right to replace, renew, and relocate upon, over, under and across the Retained Easement all poles, towers, wires, anchors, underground conduit, and appurtenances thereto, and the right to remove any or all of said installations or appurtenances. Grantee may erect, maintain and use gates in all fences which cross or shall hereinafter cross the route of said lines. Grantee may trim, cut, clear away and remove any trees, limbs and brush on the Retained Easement now or at any future time. Grantee shall have the further right to trim, cut, clear away and remove any trees, limbs, and brush on lands adjacent to the Retained Easement whenever in its judgment such will interfere with or endanger the construction, operation or maintenance of said lines. All logs, limbs and brush cut or trimmed by Grantee shall be removed by Grantee. In exercising its rights of ingress and egress Grantee shall, whenever practicable, use existing roads or lanes, and shall repair any damage caused by its use thereof.

Proposed

3. Grantor, or its successors or assigns, may cultivate, use and enjoy the above described land, provided such use shall not in the judgment of Grantee, interfere with or endanger the construction, operation or maintenance of said wires. Notwithstanding the foregoing, without the written consent of Grantee, no transmission line, pipe line, or other structure or obstruction will be permitted on the Retained Easement which interferes or might interfere with Grantee's services or endanger its facilities; nor shall any excavation or re-grading of the surface be made by Grantor, their tenants, grantees, heirs, successors and assigns, on the Retained Easement used by Grantee. No buildings or structures will be erected or permitted on said right of way and easement.

4. Grantee, its successors or assigns, agrees to restore the Retained Easement to substantially the same condition as it was prior to this Partial Release and Modification and/or to pay for any reasonable permanent damage caused to land, fences, machinery or other personal property of Grantor, caused from the construction, reconstruction, operation or maintenance of said lines.

This Partial Release and Modification shall run with the land and shall be binding upon the successors and assigns of Grantor.

TO HAVE AND TO HOLD THE SAME, together with all appurtenances, necessary incidents and immunities thereunto belonging or in any manner appertaining unto Grantee and unto its successors and assigns, forever.

Proposed

IN WITNESS WHEREOF, the parties hereto have caused this Partial Release and Modification of Right of Way to be duly executed as of the day and year acknowledged below.

Grantor
City of Hays, Kansas

By_____

Name_____

Title_____

Grantee
Midwest Energy, Inc.

By_____

Name_____

Title_____

Proposed

ACKNOWLEDGMENT

State of _____)
) Ss.
County of _____)

On this _____ day of _____, 2014, before me, a Notary Public, appeared _____
_____
_____
_____
_____, to me personally known to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me in person and acknowledged that _____ signed and delivered said instrument as _____ free and voluntary act, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal the day and year aforesaid.

_____
Notary Public

My Commission Expires:

Proposed

ACKNOWLEDGMENT

State of _____)
) Ss.
County of _____)

On this _____ day of _____, 2014, before me, a Notary Public, appeared _____
_____
_____
_____
_____, to me personally known to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me in person and acknowledged that _____ signed and delivered said instrument as _____ free and voluntary act, for the uses and purposes therein set forth.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal the day and year aforesaid.

_____
Notary Public

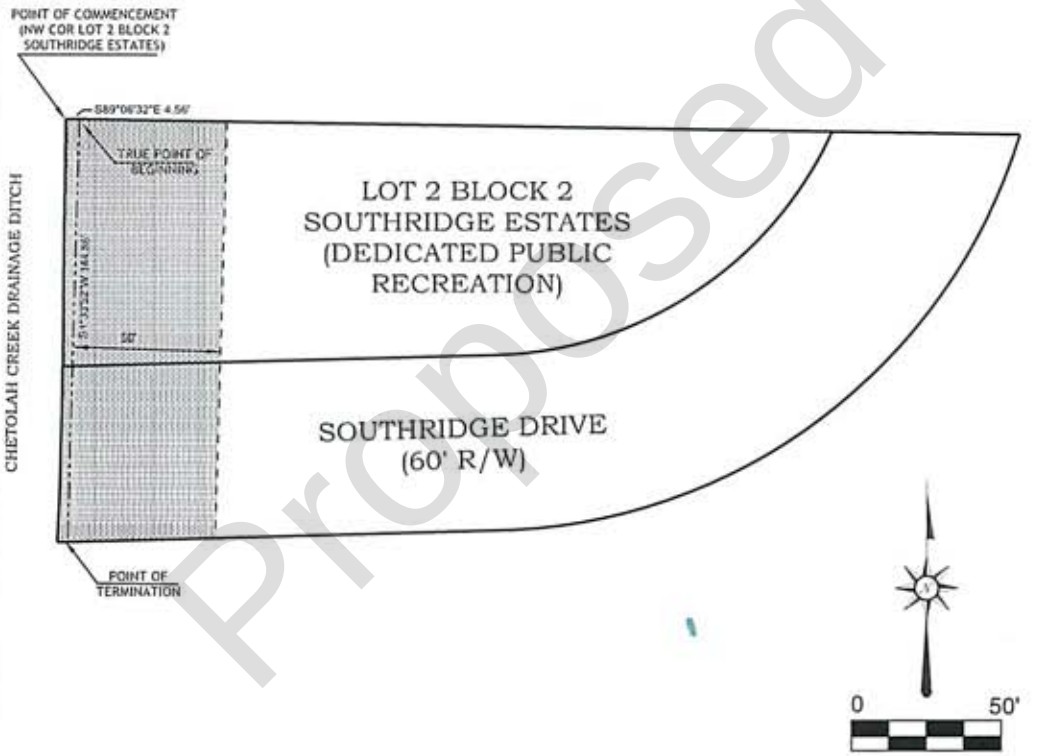
My Commission Expires:

Proposed

Exhibit "A"
Easement Survey

DESCRIPTION:
A 100.0' wide easement being a part of Lot 2, Block 2, SOUTHRIDGE ESTATES, a subdivision in Ellis County, Kansas and Southridge Drive, a street dedicated to public use on plat of SOUTHRIDGE ESTATES, a subdivision in Ellis County, Kansas, the centerline of which is more particularly described as follows: Commencing at the NW Corner of said Lot 2, Block 2, SOUTHRIDGE ESTATES; Thence S89°06'32"E along the North line of said Lot 2 Block 2 a distance of 4.56' to the TRUE POINT OF BEGINNING; Thence S01°33'52"W a distance of 144.86' to the POINT OF TERMINATION, EXCEPT that part in Chetolah Creek Drainage Ditch.

Said area contains 7716.34 square feet or 0.177 Acres more or less.



Proposed

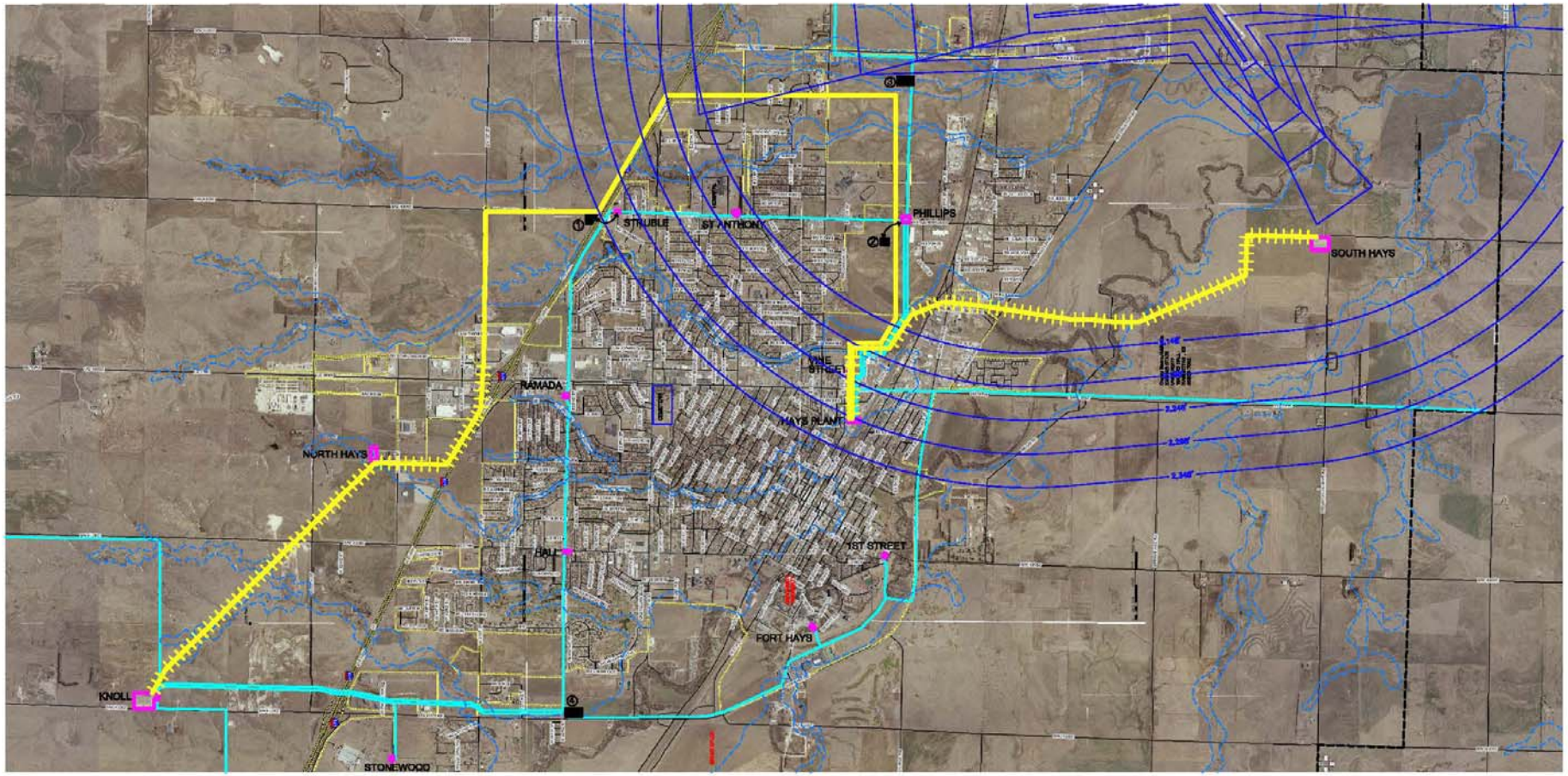
SE 1/4 of Sec. 3 Twp. 14 Rng. 18

I hereby certify that this Certificate of Survey is based on an actual survey. This survey was done by me or under my direct supervision and meets or exceeds the current Kansas Minimum Standards for Property Boundary Surveys, to the best of my professional knowledge, information and belief.

Client: Midwest Energy

Project No: $JOB	DATE: 9-17-2013 SCALE: 50 Ft/In Title Company: N/A Commitment No.: N/A	Region Land Survey Inc. 202 NW 12th Street Blue Springs, MO. 64015 816.966.1191 office 816.966.1441 fax service@regionsurvey.com

Traverse PC



Executive Report Routing Map

LEGEND

- ROUTE
- ROUTE
- EX 34KV
- ①② NEW SUB SITES
- ③④ FUTURE SUB SITES
- WIND TURBINE
- EXISTING SUBSTATION
- RAILROAD
- PROPOSED SUBSTATION
- AIRPORT ZONE

Commission Work Session Agenda Memo

From: Don Scheibler, Police Chief
Brian Dawson, Assistant Chief of Police

Work Session: September 18, 2014

Subject: 2014 Uniform Public Offense Code
2014 Standard Traffic Ordinance

Person(s) Responsible: Don Scheibler, Police Chief
Brian Dawson, Assistant Chief of Police

Summary

The Hays City Commission is being asked to adopt by ordinance, the updated 2014 Uniform Public Offense Code for Kansas Cities (UPOC) and the updated 2014 Standard Traffic Ordinance for Kansas Cities (STO) for use within the City of Hays. The ordinances and any changes to the UPOC and the STO are presented to the Commission annually. It is the recommendation of city staff that the Commission approve the ordinances adopting the 2014 revised UPOC and STO.

Background

The League of Kansas Municipalities (LKM) publishes a revised version of the Uniform Public Offense Code for Kansas Cities (UPOC) and the Standard Traffic Ordinance for Kansas Cities (STO) on a yearly basis. These publications are made available for purchase by municipalities. The municipalities may adopt these two sets of ordinances for their use. These ordinances contain the most current legislative changes and updates put into place annually by the Kansas Legislature.

Discussion

Normally, the majority of the Uniform Public Offense Code (UPOC) and Standard Traffic Ordinances (STO) remain the same from year to year, with only a few changes being made. This year there was an increase in the number of sections that were changed or amended. The majority of the changes to the UPOC were created by the recodification of the state criminal code that occurred in 2011. This was the first major recodification of Kansas criminal law since 1969. The goal was to reorganize the statutes, to place them in a more user-friendly order, revise the statutory language to add clarity, and combine statutes to reduce their number. The League of Kansas Municipalities (LKM) chose to gradually incorporate theses changes in the state criminal code to the UPOC, and the

2014 edition reflects all of the changes made by the Legislature in the 2011 recodification.

The passing of House Bill 2578, the firearms bill, did cause several sections of the UPOC to be amended. Those changes are listed below:

Section 10.1.1 – Criminal Carrying of a Weapon

Subsections (a)(4) and (a)(5) were deleted from this section, because cities can no longer charge individuals for open carrying a firearm or transporting a loaded firearm in a vehicle.

Section 10.3 – Criminal Distribution of Firearms to a Felon

The name of this section was changed from Criminal Disposal of Firearm to Criminal Distribution of Firearms to a Felon. The section was reformatted but primarily remained the same.

Section 10.3.1 – Criminal Possession of a Firearm

This section was deleted. The offenses charged in this section 1) possession of a firearm by a person addicted to a controlled substance, 2) possession of a firearm on school property, and 3) refusing to surrender or remove a firearm from school property, were combined with Section 10.1 – Criminal Use of a Weapon.

Section 10.4 – Confiscation, Disposition of Weapons

While HB 2578 did not change the wording of Section 10.4, the bill did significantly change this section because confiscated weapons can no longer be destroyed unless they are in poor condition. The weapons must be forfeited to 1) the law enforcement agency, 2) the Kansas Bureau of Investigations, 3) a regional forensic center, or 4) the Kansas Department of Wildlife, Parks, and Tourism. The law enforcement agencies that seize the weapon may keep it for department use or sell it to a properly licensed federal firearms dealer. The Hays Police Department may be able to use these funds to purchase new equipment at no cost to the City.

There were few amendments to the state traffic statues in 2014, and most of the changes to the STO are small in nature.

A handout has been prepared by staff noting the additions and/or changes to the UPOC and STO. A handout prepared by Ed Klumpp, Legislative Director for the Kansas Association of Chiefs of Police, listing a brief summary of the changes is also included with the Commission packet.

Legal Consideration

Ordinances adopting the UPOC and the STO have been drafted by the City Attorney for Commission Approval. There are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

There are no financial considerations other than staff hours incurred drafting these ordinances.

Options

The Commission has the following options for consideration.

1. Approve the ordinances adopting the 2014 revised UPOC and STO.
2. Not approve the ordinances adopting the 2014 revisions, with the continuation of the 2013/current UPOC and STO.

Recommendation

It is the recommendation of city staff that the Commission approve the ordinances adopting the 2014 revised versions of the Uniformed Public Offense Code and Standard Traffic Ordinances.

Action Requested

Approve the ordinances adopting the 2014 revised UPOC and STO

Supporting Documentation

Draft ordinances adopting the 2014 UPOC and STO for use in the City of Hays
List of additions or changes made in the 2014 UPOC and STO
HB 2578 Summary

ORDINANCE NO._____

Field Code Changed

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF HAYS, KANSAS, INCORPORATING BY REFERENCE THE UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, EDITION OF 2014, AND REPEALING ORDINANCE NO. 3870 OF THE CODE OF ORDINANCES OF THE CITY OF HAYS, KANSAS, AS PASSED ON SEPTEMBER 12, 2013, AND AS PUBLISHED ON SEPTEMBER 16, 2013.

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

Section 1. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Hays, Kansas, that certain code known as the Uniform Public Offense Code, Edition of 2014, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts of portions as are hereafter omitted, deleted, modified or changed (words added appear in italics, words deleted appear as strikethrough):

1. **Section 1.1: Section 1.1 of said Uniform Public Offense Code is hereby changed to read as follows:**

   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 *removable* jewelry ~~or other objects in or~~ through the human body, except puncturing the external part of the human ~~ear~~ *earlobe* shall not be included in this definition.

   Cereal Malt Beverage. Any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute *or any flavored malt beverage, as defined in K.S.A. 41-2729, and amendments thereto,* but does not include any such liquor which is more than 3.2% alcohol by weight.

   Cosmetic 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, by use of a needle, so as to form indelible marks for cosmetic or figurative purposes.*

   Deception. Knowingly ~~and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact~~ *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.*

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

Identification Document. Any card, certificate or document *or banking instrument including, but not limited to, credit or debit card,* 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, ~~birth certificates~~ *certified copies of birth, death, marriage and divorce certificates,* social security cards and employee identification cards.

Obtains or Exerts Control Over Property. Includes but is not limited to, the taking, carrying away, ~~or the~~ sale, conveyance, ~~or~~ transfer of title to, interest in, or possession of property.

Regulated Scrap Metal. Means wires, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts, junk vehicles, vehicle parts, pipes, or connectors made from aluminum; catalytic converters containing platinum, palladium, or rhodium; and copper, titanium, tungsten, *stainless steel* and nickel in any form; for which the purchase price was primarily based on the content therein of aluminum, copper, titanium, tungsten, nickel, platinum, palladium, stainless steel, or rhodium; any item composed in whole or in part of any nonferrous metal other than an item composed of tin, that is purchased or otherwise acquired for the purpose of recycling or storage for later recycling. Aluminum shall not include food or beverage containers.

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

2. Section 1.2: Section 1.2 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) A person is criminally responsible for an offense committed by another if such person ~~intentionally aids, abets, advices, hires, counsels or procures the other to commit the offense~~*, acting with the mental culpability required for the commission thereof, advises, hires, counsels or procures the other to commit the offense or intentionally aids the other in committing the conduct constituting the offense.*

(b) A person liable under subsection (a) ~~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~~ *crime* intended.

(c) 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 or legal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the offense or of some other offense based on the same act. (K.S.A. Supp. 21-5210)~~

(1) Lacked criminal or legal capacity;

(2) has not been convicted;
(3) has been acquitted; or
(4) has been convicted of some other degree of the offense or of some other offense based on the same act. (K.S.A. Supp. 21-5210)

3. Section 1.3: Section 1.3 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) **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 on behalf of the corporation.

(b) **Individual Liability for Corporate Offenses.**

(1) An individual who ~~commits~~ *performs* public offenses, or causes ~~public offesnes~~ *such acts* to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in ~~his or her~~ *the person's* own name or on ~~his or her~~ *the person's* own behalf.
(2) An individual who has been convicted of an offense based on conduct performed by ~~the~~ *such* individual for and on behalf of a corporation is subject to punishment as an individual upon conviction of such offense, although a lesser or different punishment is authorized for the corporation. (K.S.A. Supp. 21-5211:5212)

4. Section 3.1: Section 3.1 of said Uniform Public Offense Code is hereby changed to read as follows:

Battery is:

(a) ~~Intentionally~~ *Knowingly* or recklessly causing bodily harm to another person; or

(b) ~~Intentionally~~ *Knowingly* causing physical contact with another person when done in a rude, insulting or angry manner. (K.S.A. Supp. 21-5413)

Battery is a Class B violation.

5. Section 3.2.1: Section 3.2.1 of said Uniform Public Offense Code is hereby changed to read as follows:

Sexual battery is the ~~intentional~~ touching of ~~the person of another~~ *a victim who is not the spouse of the offender,* who is 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. (K.S.A. Supp. 21-5505)

Sexual battery is a Class A violation.

6. **Section 3.5: Section 3.5 of said Uniform Public Offense Code is hereby changed to read as follows:**

Unlawful interference with a firefighter is knowingly: ~~and intentionally interfering with, molesting or assaulting, any firefighter while engaged in the performance of such firefight's duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire. (K.S.A. Supp. 21-6325)~~

(a) Interfering with any firefighter while engaged in the performance of such firefighter's duties; or

(b) obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency. (K.S.A. Supp. 21-6325)

Unlawful interference with a fire fighter is a Class B person violation.

A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.

7. **Section 3.7: Section 3.7 of said Uniform Public Offense Code is hereby changed to read as follows:**

Mistreatment of a confined person is ~~the intentional abuse, neglect or ill-treatment of~~ *knowingly abusing, neglecting or ill-treating* any person, who is detained or confined ~~and who is physically disabled, mentally ill or mentally 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. (K.S.A. Supp. 21-5416)~~

Mistreatment of a confined person is a Class A violation. *(K.S.A. Supp. 21-5416)*

8. **Section 3.8: Section 3.8 of said Uniform Public Offense Code is hereby changed to read as follows:**

(a) If a person enters or remains on the 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 *and violation of a protective order*.

(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)

9. **Section 3.9: Section 3.9 of said Uniform Public Offense Code is hereby changed to read as follows:**

(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.~~

(a) Criminal false communication is:

(1) Communicating to any person, by any means, information that the person communicating such information knows to be false that will tend to:
(A) Expose another living person to public hatred, contempt or ridicule;
(B) Deprive such person of the benefits of public confidence and social acceptance; or
(C) Degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends; or
(2) Recklessly making, circulating or causing to be circulated any false report, statement or rumor with intent to injure the financial standing or reputation of any bank, financial or business institution or the financial standing of any individual in this state.

(b) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal ~~defamation~~ *false communication* if it is found that such matter was true. (K.S.A. Supp. 21-6103)

Criminal ~~defamation~~ *false communication* is a Class A violation.

10. Section 3.10: Section 3.10 of said Uniform Public Offense Code relating to eavesdropping is hereby declared to be and is omitted and deleted.

11. Section 3.12: Section 3.12 of said Uniform Public Offense Code is hereby changed to read as follows:

(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 with intent to listen surreptitiously to private conversation in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;
(4) Installing or using outside or inside 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. (K.S.A. Supp. 21-6101)

(b) Subsection (a)(1) 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 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.

(d) As used in this section, "private place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

Breach of privacy, as defined in this section, is a Class A violation.

12. Section 3.13: Section 3.13 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Stalking is:

(1) ~~intentionally or~~ 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) ~~Intentionally~~ Engaging in a course of conduct targeted at a specific person ~~the individual knows~~ *with knowledge that the course of conduct* will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; *or*

(b) For the purposes of this section, a person served with a protective order as defined by *K.S.A. 21-3843, prior to its repeal or* K.S.A. 21-5924, 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~~ *knowingly* as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

(c) 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.

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

(e) 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.
   (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. (K.S.A. Supp. 21-5427)

Upon a first conviction, stalking as described in subsection (a) is a Class A violation.

13. Section 5.1: Section 5.1 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Contributing to a child's misconduct or deprivation is:

(1) *Knowingly* causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the revised Kansas code for care of children;
(2) *Knowingly* causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a ~~public offense; or~~ *misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto;*
(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;
(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. Supp. 21-5603)~~

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

(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 *pursuant to the revised Kansas code for care of children, revised Kansas juvenile justice code or Kansas criminal code.*

(c) *As used in this section,* ***runaway*** *means a child under 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. (K.S.A. Supp. 21-5603)

14. Section 5.2: Section 5.2 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Furnishing alcoholic liquor or cereal malt beverage to a minor is *recklessly*, directly or indirectly, ~~selling to~~ buying for *or distributing*, ~~giving or furnishing~~ any alcoholic liquor or cereal malt beverage to any ~~person under 21 years of age~~ *minor.*

(b) This section shall not apply to wine intended for use and used by any church or religious organization for sacramental purposes.

~~(b)~~*(c)* It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; 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 non driver's identification card or other official or apparently official document, ~~containing~~ *that reasonably appears to contain* 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.

~~(c)~~*(d)* This section shall not apply to the furnishing of ceral malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the ~~child~~ *child's* or ward's parent or legal guardian. (K.S.A. Supp. ~~21-5608~~ *21-5607*)

Furnishing alcoholic liquor or cereal malt ~~liquor~~ *beverage* to a minor is a Class B violation for which the minimum fine is $200.

15. Section 5.3: Section 5.3 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is ~~intentionally or~~ recklessly permitting a person's residence or any land, building, structure or room owned, occupied, or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the *unlawful* possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor.

(b) As used in this section, **minor** means a person under 21 years of age.

(c) 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. Supp. 21-5608)

Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a Class A violation, for which the minimum fine is $1,000.

16. Section 5.4: Section 5.4 of said Uniform Public Offense Code is hereby changed to read as follows:

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

(b) 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. (K.S.A. Supp. 21-5601)

Endangering a child is a Class A violation.

17. Section 5.7: Section 5.7 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) It shall be unlawful for any person to:

(1) Sell, ~~give or~~ furnish *or distribute* ~~any~~ cigarettes, electronic cigarettes, or tobacco products to any person under 18 years of age; or
(2) Buy any cigarettes, electronic cigarettes, or tobacco products for any person under 18 years of age.

(b) It shall be a defense to a prosecution under this ~~subsection~~ *section* 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, or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, *electronic cigarettes* or tobacco products; and
(3) To purchase or receive the cigarettes, electronic cigarettes, or tobacco products, the person under 18 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,* or tobacco products.
(4) For purposes of this ~~subsection~~ *section* the person who violates this ~~subsection~~ *section* shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 18years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(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, or tobacco products by mail; and
(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 18 or more years of age. (K.S.A. Supp. 79-3302, 79-3321:79-3322)

Violation of this section shall constitute a Class B violation punishable by a minimum fine of $200.

18. Section 6.1: Section 6.1 of said Uniform Public Offense Code is hereby changed to read as follows:

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

(1) Obtaining or exerting unauthorized control over property or services;
(2) Obtaining control over property or services by deception;
(3) Obtaining control over property or services by threat~~; or~~
(4) Obtaining control over stolen property or services knowing the property or services to have been stolen by another; *or*
(5) 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. (K.S.A. Supp. 21-5801)

(b) Theft of property or services of the value of less than $1,000 is a Class A violation, except as provided below.

(1) Property of the value of less than $1,000 from three separate mercantile establishments 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;
(2) Property of the value of less than $1,000 if committed by a person who has been convicted of theft two or more times; and
(3) Property which is a firearm of the value of less than $25,000.

(c) As used in this section:

(1) Conviction or 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. ~~2011~~ *2013* Supp. 50-6, 109, and amendments thereto; and
(3) Value means the value of the property or, if the property is regulated scrap metal, 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.

19. Section 6.2: Section 6.2 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;

(2) The failure of a person who leases or rents personal property and fails to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;

(5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:

(A) The time and place to return the vehicle; and

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into 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; or

(8) Under the provisions of subsection (e) of section 6.1 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.

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.

(b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

~~(c) The word **notice** as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library materials at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address. (K.S.S. Supp. 21-5804)~~

(c) In prosecution for theft as defined in Section 6.1, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

(d) As used in this section:

(1) "Notice" means notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address; and

(2) "Tampering" includes, but is not limited to:

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

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

(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, water 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. (K.S.A. Supp. 21-5804)

20. Section 6.6: Section 6.6 of said Uniform Public Offense Code is hereby changed to read as follows:

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

(1) ~~Intentionally injuring, damaging, mutilating, defacing, destroying,~~ *Knowingly damaging, destroying, defacing* or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) ~~Injuring, damaging, mutilating, defacing, destroying~~ *Damaging, destroying, defacing* or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder. (K.S.A. Supp. 21-5813)

Criminal damage to property is a Class B violation if the property damaged is of the value of less than $1,000 or is of the value of $1,000 or more and is damaged to the extent of less than $1,000.

21. **Section 6.7: Section 6.7 of said Uniform Public Offense Code is hereby changed to read as follows**:

(a) Criminal trespass is *entering or remaining upon or in any:*

(1) ~~Entering or remaining upon or in any~~ Land, non navigable body of water, structure, vehicle, aircraft or watercraft ~~other than railroad property~~ by a person ~~with knowledge that~~ *who knows* 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;

(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 by a court of competent jurisdiction and the restraining order has been personally served upon the person so restrained.

(2) ~~Entering or remaining upon or in any~~ public or private land or structure in a manner than 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) As used in this section:

(1) **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.

(2) **Health Care Provider** means 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. (K.S.A. Supp. 21-5808)

(c) *(1)* This section shall not apply to a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters, and other premises in the making of a survey.

(2) This section shall not apply to Railroad Property as defined in K.S.A. 21-5809, and amendments thereto, or nuclear generating facility as defined in K.S.A. 66-2302, and amendments thereto.

Criminal trespass is a Class B violation.

Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which shall be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

22. Section 6.7.1: Section 6.7.1 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) ~~It shall be unlawful for any person, without the consent of the owner or the owner's agent, to enter or remain on railroad property, knowing that it is railroad property~~ *Trespassing on a railroad property is:*

(1) Entering or remaining on railroad property, without consent of the owner or the owner's agent, knowing that it is railroad property; or
(2) Recklessly causing 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. ~~(K.S.A. Supp. 21-5809)~~

(d) As used in this section ***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.*

Trespassing on railroad property *that results in a demonstrable monetary loss, damage, or destruction less than $1,500* is a Class A violation.

23. Section 6.8: Section 6.8 of said Uniform Public Offense Code relating to littering is hereby declared to be and is omitted and deleted.

24. Section 6.9: Section 6.9 of said Uniform Public Offense Code is hereby changed to read as follows:

Tampering with a landmark is ~~willfully and maliciously~~ *doing any of the following acts with intent to fraudulently alter a boundary:*

(a) Removing any monument of stone or other durable material, established or created for the purpose of designated the corner of or any other point upon the boundary of any lot or tract of land, or of the state, or any legal subdivision thereof; ~~or~~

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

(c) Cutting down or removing any tree, post or other monument upon which any such marks have been made for such purpose, with intent to destroy such marks; ~~or~~

~~(d) Breaking, destroying, removing or defacing any milepost, milestone or guideboard erected by authority of law on any public highway or road; or~~

(d)~~(e)~~ Defacing or altering any inscription on any such marker or monument; or

(e)~~(f)~~ Altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of K.S.A. 58-2011. (K.S.A. Supp. 21-5816)

Tampering with a landmark is a Class C violation.

25. Section 6.10: Section 6.10 of said Uniform Public Offense Code is hereby changed to read as follows:

Tampering with a traffic signal is ~~intentionally~~ *knowingly* 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. (K.S.A. Supp. 21-5817)

A person who violates the provisions of the section may also be prosecuted for, convicted of, and punished for violating sections 6.1 (Theft) and 6.3 (Theft of Property Lost, Mislaid, or Delivered by Mistake).

Tampering with a traffic signal is a Class C violation.

26. Section 6.11: Section 6.11 of said Uniform Public Offense Code is hereby changed to read as follows:

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

(b) The manufacture *for sale*, advertising, offering for sale or distribution of any such false token, slug, substance, false or spurious coin or other device shall be prima facie evidence of an intent to cheat or defraud within the meaning of this section. (K.S.A. Supp. 21-5829)

Unlawful manufacture or disposal of false tokens is a Class B violation.

27. Section 6.16: Section 6.16 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check~~, order or draft on any bank, credit union, savings and loan association or depository~~ *on any financial institution* for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check~~, order or draft~~ that the maker or drawer has no deposit in or credits with the ~~drawee~~ *financial institution* or has not sufficient funds in, or credits with, the ~~drawee~~ *financial institution* for the payment of such check~~, order or draft~~ in full upon its presentation.

(b) As used in this section:

*(1) **Check** is any check, order or draft on a financial institution;*
*(2) **Financial institution** means any bank, credit union, savings and loan association or depository; and*
*(3) **Notice** includes oral or written notice to the person entitled thereto.*

~~(b)~~*(c)* In any prosecution against the maker or drawer of a check, ~~order or draft~~ payment of which has been refused by the ~~drawee~~ *financial institution* on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie

evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the ~~drawee~~ *financial institution:*

(1) Unless the maker or drawer pays the holder thereof the amount due thereon and service charge not exceeding $30 for each check, within seven days after notice has been given to the maker or drawer that such check ~~draft or order~~ has not been paid by the ~~drawee~~ *financial institution*. ~~As used in this section, notice includes oral or written notice to the person entitled thereto.~~ Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check~~, draft or order~~; or

(2) If a postdated date is placed on the check~~, order or draft~~ without the knowledge or consent of the payee.

~~(c) In addition to all other costs and fees allowed by law, each prosecuting attorney who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed $10 for each check.~~

~~(d) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:~~

~~(1) Was postdated, unless such check, draft or order was presented for payment prior to the postdated date; or~~

~~(2) Was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds. (K.S.A. Supp. 21-5821)~~

(d) It shall not be a defense to a prosecution under this section that the check upon which such prosecution is based was:

(1) Postdated, unless such check was presented for payment prior to the postdated date; or

(2) Given to a payee who had knowledge or had been informed, when the payee accepted such check that the maker did not have sufficient funds in the hands of the financial institution to pay such check upon presentation, unless such check was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(e) In addition to all other costs and fees allowed by law, each prosecutor who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed $10 for each check. (K.S.A. Supp. 21-5821)

Giving a worthless check is a Class A violation if the check, draft or order is drawn for less than $1,000 except when the person has, within five years immediately preceding

commission of the offense, been convicted of giving a worthless check two or more times, in which case it is a felony under state statute.

28. Section 6.17: Section 6.17 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Criminal use of a financial card is any of the following acts done with intent to defraud and ~~for the purpose of obtaining~~ *to obtain* money, goods, property~~, services or communication~~ or services:

(1) Using a financial card without the consent of the cardholder; ~~or~~
(2) ~~Knowingly~~ Using a financial card, or the number of 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~~ *As used in* this section:

(1) **Financial card** means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property~~, services or communication~~ services or to conduct other financial transactions; *and*
(2) **Cardholder** means the person or entity to whom or for whose benefit a financial card is issued.

(c) For the purposes of subsection (a)(2), 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. (K.S.A. Supp. 21-5828)

Criminal use of a financial card is a Class A violation if the money, goods, property~~, services or communication~~ or services obtained within a seven-day period are of the value of less than $1,000.

29. Section 6.18: Section 6.18 of said Uniform Public Offense Code is hereby changed to read as follows:

It shall be unlawful for any person to do business as a motor vehicle dealer, salvage vehicle dealer, motor vehicle manufacturer, motor vehicle converter, auction motor vehicle dealer, *vehicle crusher, vehicle recycler, rebuilder, scrap metal recycler, salvage vehicle pool* or salesperson without a license issued by the director of vehicles. The isolated or occasional sale of a vehicle by a person who owned such vehicle shall not constitute the doing of a business as a vehicle dealer. (K.S.A. Supp. 8-2434)

Violation of this section shall be punishable by a fine not to exceed $2,500.

30. Section 6.19: Section 6.19 of said Uniform Public Offense Code is hereby changed to read as follows:

~~It shall be unlawful for any person who, with intent to defraud, willfully engages in a pattern or practice of:~~ *Equity skimming is, with the intent to defraud, intentionally engaging in a pattern or practice of:*

(a) Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including, but not limited to, an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage;

(b) Failing to deliver ~~all rent proceeds received from rental of the property~~ to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption *all rent proceeds received from rental of the property,* not to exceed the monthly payment of principal and interest required by the note and mortgage; and

(c) Applying or authorizing the application of rents from such dwellings for such person's own use. (K.S.A. Supp. 21-6504)

Violating of this section is a Class A violation. Each purchase of a dwelling pursuant to this section shall be deemed a separate offense.

31. Section 6.20: Section 6.20 of said Uniform Public Offense Code is hereby changed to read as follows:

6.20 ~~**COMPUTER TRESPASS COMPUTER PASSWORD DISCLOSURE**~~ ***UNLAWFUL ACTS CONCERNING COMPUTERS.***

(a) ~~As used in this section:~~ *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.

~~(a)~~*(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, emails and other data files.*

~~(8)~~*(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.

~~(9)~~*(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.*

~~(10)~~*(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. *(K.S.A. Supp. 21-5839)*

~~(b) **Computer Password Disclosure** is the unauthorized and intentional disclosure of a number, code, password or other means of access to a computer or computer network.~~

~~(c) **Computer Trespass** is intentionally, and without authorization accessing or attempting to access any computer, computer system, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network. (K.S.A. Supp. 21-5839)~~

~~Computer password disclosure is a Class A violation. Computer trespass is a Class A violation.~~ *Unlawful acts concerning computers is a Class A violation.*

32. Section 6.21: Section 6.21 of said Uniform Public Offense Code is hereby changed to read as follows:

6.21 ~~POSTING LAND~~ ***TAKING WILDLIFE WITHOUT PERMISSION ON LAND POSTED "BY WRITTEN PERMISSION ONLY."***

(a) Any landowner or person in lawful possession of any land may post such land with signs stating that hunting, trapping, or fishing on such land shall be by written permission only. It is unlawful for any person to take wildlife on land which is posted as provided in this subsection, without having in the person's possession the written permission of the owner or person in lawful possession thereof.

(b) Instead of posting land as provided in subsection (a), any landowner or person in lawful possession of any land may post such land by placing identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be not less than three feet nor more than five feet high. Such paint marks shall be readily visible to any person approaching the land. Land posted as provided in this subsection shall be considered to be posted by written permission only as provided in subsection (a).

(c) A person licensed to hunt or fur harvest who is following or pursuing a wounded animal on land as provided in this section posted without written permission of the landowner or person in lawful possession thereof shall not be in violation of this section while in such pursuit, except that the provisions of this subsection shall not authorize a person to remain on such land if instructed to leave by the owner or person in lawful possession of the land. Any person who fails to leave such land when instructed is subject to the provisions of subsection (b) of Section 6.22. (K.S.A. Supp. 32-1013)

Violation of this section is a Class C violation. A second conviction of this section is a Class C violation in which the minimum fine is $250. A third conviction of this section is a Class C violation in which the minimum fine is $300. A fourth or subsequent conviction of this section is a Class C violation in which a minimum fine of $400 shall be imposed and a minimum of 7 days' imprisonment shall be served. Any conviction of this section that occurred before July 1, 2005, shall not be considered for purposes of this section.

33. Section 6.22: Section 6.22 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Criminal hunting is *knowingly* hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing:

(1) Upon any land or nonnavigable body of water of another, without having first obtained permission of the owner or person in possession of such premises; or
(2) Upon or from any public road, public road right-of-way or railroad right-of-way that adjoins occupied or improved premises, without having first obtained permission of the owner or person in possession of such premises.
(3) Upon any land or nonnavigable body of water of another person who knows such person is not authorized or privileged to do so, and:
(A) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to

leave such premises or property personally communicated to such person by the owner thereof or other authorized person: or

(B) Such premises or property are posted in a manner consistent with K.S.A. 32-1013, and amendments thereto.

~~**Criminal hunting** is a Class C violation. Upon the first conviction thereof and in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting, fishing, or fur harvesting, or all, for up to one year from the date of such conviction. Upon any subsequent conviction thereof, and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in any case where such person has a combination license, the court shall require the forfeiture of part or all of such license and the court shall order such person to refrain from hunting, fishing, or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner hereof or other authorized person.~~

~~The court shall notify the department of wildlife and parks of any conviction or diversion for criminal hunting.~~

~~(b) **Intentional criminal hunting** is hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing upon any land or nonnavigable body of water of another by a person who knows such person is not authorized or privileged to do so, and:~~

~~(1) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to leave such premise or property personally communicated to such person by the owner thereof or other authorized person; or~~

~~(2) Such premises or property are posted in a manner consistent with Section 6.21, and amendments thereto.~~

~~Intentional criminal hunting is a Class B violation. Upon the first conviction or a diversion agreement for intentional criminal hunting, and in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require forfeiture of the convicted person's hunting, fishing, or fur harvesting~~

~~license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years.~~

~~The court shall notify the department of wildlife and parks of any conviction or diversion for intentional criminal hunting. (K.S.A. Supp. 21-5810)~~

(b) Criminal hunting as defined in:

(1) Subsection (a)(1) or (a)(2), is a Class C violation. Upon the first conviction thereof and in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting, fishing, or fur harvesting, or all, for up to one year from the date of such conviction. Upon any second or subsequent conviction of subsection (a)(1) or (a)(2), in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in any case where such person has a combination license, the court shall require the forfeiture of a part or all of such license and the court shall order such person to refrain from hunting, fishing, or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner thereof or other authorized person.

*For the purpose of determining whether a conviction is a first, second or subsequent conviction of subsection (a)(1) or (a)(2), **conviction** or **convicted** includes being convicted of a violation of subsection (a) of K.S.A. 21-3728, prior to its repeal, or subsection (a)(1) or (a)(2); and*

(2) Subsection (a)(3) is a Class B violation. Upon the first conviction or a diversion agreement of subsection (a)(3), in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of subsection (a)(3), in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of subsection (a)(3), in addition to any authorized sentence imposed by the court, such court shall require forfeiture of convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for

five years. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction of subsection (a)(3), conviction or convicted includes being convicted of a violation of subsection (b) or K.S.A. 21-3728, prior to its repeal, or subsection (a)(3).

(c) The court shall notify the department of wildlife and parks of any conviction or diversion for criminal hunting. (K.S.A. Supp. 21-5810)

34. Section 6.25: Section 6.25 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) It shall be unlawful for any such scrap metal dealer*, or employee or agent of the dealer,* to purchase any item or items of regulated scrap metal in transaction for which Section 6.24 requires information to be presented by the seller, without demanding and receiving from the seller that information. Every scrap metal dealer shall file and maintain a record of information obtained in compliance with the requirements in Section 6.24. All records kept in accordance with the provisions of this section shall be open at all times to peace or law enforcement officers and shall be kept for two years. If the required information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to peace or law enforcement officers upon request.

(b) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which Section 6.24 requires information to be presented by the seller, without obtaining from the seller a signed statement that:

(1) Each item is the seller's own personal property, is free of encumbrances and is not stolen; or
(2) That the seller is acting for the owner and has permission to sell each time.

(c) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any junk vehicle in a transaction for which Section 6.24 requires information to be presented by the seller, without:

(1) Inspecting the vehicle offered for sale and recording the vehicle identification number; and
(2) Obtaining an appropriate vehicle title or bill of sale issued by a governmentally operated vehicle impound facility if the vehicle purchased has been impounded by such facility or agency.

(d) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase or receive any regulated scrap metal from a minor unless such minor is accompanied by a parent or guardian or such minor is a licensed scrap metal dealer.

(e) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any of the following items of regulated scrap metal property without obtaining proof that the seller is an employee, agent or person who is authorized to sell

the item of regulated scrap metal property on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization or scrap metal dealer:

(1) Utility access cover;
(2) Street light poles or fixtures;
(3) Road or bridge guard rails;
(4) Highway or street sign;
(5) Water meter cover;
(6) Traffic directional or traffic control signals;
(7) Traffic light signs;
(8) Any metal marked with any form of the name or initials of a governmental entity;
(9) Property owned and marked by a telephone cable, electric, water or other utility provider;
(10) Property owned and marked by a railroad;
(11) Funeral markers or vases;
(12) Historic markers;
(13) Bales of regulated metal;
(14) Beer kegs;
(15) Manhole covers;
(16) Fire hydrants or fire hydrant caps;
(17) Junk vehicles with missing or altered vehicle identification numbers;
(18) Real estate signs;
(19) Bleachers or risers, in whole or in part; and
(20) Twisted pair copper telecommunications wiring of 25 pair or greater existing in 19, 22, 24, or 26 gauge.

(f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the law enforcement agency for 30 days, exclusive of weekends and holidays. (K.S.A. Supp. 50-6, 111: 50-6, 112)

Any person intentionally violating the provisions of this section shall be guilty of a Class C violation for which the minimum fine is $200. Any person convicted of violating the provisions of this section for the second time within a two-year period shall be guilty of a Class B violation for which the minimum fine is $500. Any person convicted of violating the provisions of this section for the third and subsequent times within a two-year period shall be guilty of a Class A violation for which the minimum fine is $1,000.

35. Section 7.1: Section 7.1 of said Uniform Public Offense Code relating to compounding an offense is hereby declared to be and is omitted and deleted.

36. Section 7.2: Section 7.2 of said Uniform Public Offense Code is hereby changed to read as follows:

7.2 **INTERFERENCE WITH ~~A~~ LAW ENFOREMENT ~~OFFICER~~.**

Interference with ~~a~~ law enforcement ~~officer~~ 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;
(2) ~~any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty; or~~ *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*
(3) ~~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; or~~ *Any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty; or*

(b) ~~Knowingly 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. (K.S.A. Supp. 21-5904)~~ *Concealing, destroying or materially altering evidence with the intent to prevent or hinder the apprehension or prosecution of any person; or*

(c) Knowingly 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.

Interference with a law enforcement officer is a Class A violation ~~if the underling offence is a code violation or a civil case.~~

37. Section 7.3: Section 7.3 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Escape from custody is escaping while held in custody on a:

(1) Charge, conviction of or arrest for a misdemeanor or a code violation;
(2) Charge, adjudication or arrest as a juvenile offender where the act, if committed by an adult, would constitute a misdemeanor or a code violation; or
(3) 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 misdemeanor or by a person 18 years of age or over who is

being held in custody on an adjudication of a misdemeanor or a code violation.

(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; 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 supervisions of a person or probation on 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. (K.S.A. Supp. 21-5911)

*(3) **Juvenile Offender** means the same as in K.S.A. 38-2302, and amendments thereto; and*

*(4) **State Correctional Institution** means the same as in K.S.A. 75-5202, and amendments thereto.*

(c) 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.

Escape from custody is a Class A violation.

38. Section 7.4: Section 7.4 of said Uniform Public Offense Code is hereby changed to read as follows:

7.4 **INTERFERENCE~~; ADMINISTRATION OF JUSTICE~~** ***WITH THE JUDICIAL PROCESS.***

~~(a) Interference with the administration of justice is communicating in any manner of 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 finding, decision, ruling, order, judgment or decree of such judicial officer or prosecuting attorney on any matter then pending before the officer or prosecuting attorney.~~

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

~~(c) As sued in this section, **prosecuting attorney** has the meaning ascribed thereto in K.S.A. 22-2202, and amendments thereto. (K.S.A. Supp. 21-5905)~~

(a) Interference with the judicial process is:

(1) Committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:

(A) Communicating in any manner a threat of violence to any judicial officer or any prosecutor; or

(B) Harassing a judicial officer or a prosecutor by repeated vituperative communication; or

(C) Picketing, parading or demonstrating near such officer's or prosecutor's residence or place of abode;

(2) Picketing parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;

(3) Knowingly 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 conceal or destroy evidence of a crime;

(4) Knowingly or intentionally in any criminal proceeding or investigation:

(A) Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document or thing;

(B) Withholding or unreasonably delaying in producing any testimony, information, document or thing after a court orders the production of such testimony, information, document or thing;

(C) Altering, damaging, removing or destroying any record, document or thing, with the intent to prevent it from being produced or used as evidence; or

(D) Making, presenting or using a false record, document or thing with the intent that the record, document or thing, material to such criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master or law enforcement officer; or

(5) Knowingly making available by any means personal information about a judge or the judge's immediate family member, if the dissemination of the personal information poses an imminent and serious threat to the judge's safety or the safety of such judge's immediate family member, and the person making the information available knows or reasonably should know of the imminent and serious threat.

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

(c) As used in this section:

(1) ***Immediate family member*** *means a judge's spouse, child, parent or any other blood relative who lives in the same residence as such judge.*

(2) ***Judge*** *means any 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.*

(3) ***Personal information*** *means a judge's home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, personal photograph, immediate family member photograph, photograph of the judge's home, and information about the judge's motor vehicle, any immediate family member's motor vehicle, any immediate family member's place of employment, any immediate family member's child care or day care facility and any immediate family member's public or private school that offers instruction in any or all of the grades kindergarten through 12. (K.S.A. Supp. 21-5905)*

Interference with the ~~administration of justice~~ *judicial process* is a Class A violation, *except that a second or subsequent conviction of section (a)(5) is a severity level 9, person felony, to be prosecuted pursuant to State Statute.*~~.~~

39. Section 7.10: Section 7.10 of said Uniform Public Offense Code is hereby changed to read as follows:

False signing of a petition is ~~the~~ *knowingly* affixing ~~of~~ any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the legislature, or either house thereof, or to any agency or officer of the State of Kansas or any of its political subdivisions. (K.S.A. Supp. 21-5916)

False signing of ~~an official~~ *a* petition is a Class C violation.

40. Section 7.12: Section 7.12 of said Uniform Public Offense Code is hereby changed to read as follows:

Interference with the conduct of public business in public buildings is:

(a) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to ~~willfully~~ *knowingly* deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities or to leave any such public building;

(b) ~~Intentionally~~ *Knowingly* 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;

(c) ~~Intentionally~~ *Knowingly* refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or such officer's designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if

completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures or functions being carried on in such public building;

(d) ~~Intentionally~~ *Knowingly* 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 by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body or any official engaged in the performance of duties at such meeting or session; or

(e) ~~Intentionally~~ *Knowingly* 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. (K.S.A. Supp. 21-5922)

Interference with the conduct of public business in public buildings is a Class A violation.

41. Section 7.14: Section 7.14 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Electioneering is knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicates support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof. Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting.

(b) As used in this section, **advance voting site** means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122, and amendments thereto*, and adult care homes and hospital based care units at the time of an election participating in the voting procedures prescribed in K.S.A. 25-2812* (K.S.A. Supp. 25-2430)

Electioneering is a Class C violation.

42. Section 9.1: Section 9.1 of said Uniform Public Offense Code is hereby changed to read as follows:

~~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:~~

~~(a) Engaging in brawling or fighting; or~~

~~(b) Disturbing an assembly, meeting or procession, not unlawful in its character; or~~

~~(c) Using offensive, obscene or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others. (K.S.A. Supp. 21-6203)~~

(a) Disorderly conduct is one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

(1) Brawling or fighting;
(2) Disturbing an assembly, meeting or procession, not unlawful in its character; or
(3) Using fighting words or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

(b) As used in this section, ***fighting words*** *means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.*

Disorderly conduct is a Class C violation.

43. Section 9.2: Section 9.2 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Unlawful assembly is:

(1) The meeting or coming together of not less than five persons ~~for the purpose of engaging in conduct constituting;~~ *with the intent to engage in conduct constituting;*
(A) Disorderly conduct, as defined by Section 9.1 of this article; or
(B) A riot, as defined by Section 9.4 of this article; or
(2) When a lawful assembly of not less than five persons, agreeing to engage in conduct constituting disorderly conduct or riot.

(b) Remaining at an unlawful assembly is ~~willfully~~ *intentionally* failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer. (K.S.A. Supp. 21-6202)

Unlawful assembly is a Class B violation.

Remaining at an unlawful assembly is a Class A violation.

44. Section 9.4: Section 9.4 of said Uniform Public Offense Code is hereby changed to read as follows:

~~Riot is any use of force or violence which produces a breach of the public peace or any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, by five or more persons acting together and without authority of law. (K.S.A. Supp. 21-6201)~~

Riot is five or more persons acting together and without lawful authority engaging in any:

(a) Use of force or violence which produces a breach of the public peace; or

(b) Threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution. (K.S.A. Supp. 21-6201)

Riot is a Class A violation.

45. Section 9.7: Section 9.7 of said Uniform Public Offense Code is hereby changed to read as follows:

Giving a false alarm is:

(a) 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

(b) 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 that there is no reasonable ground for believing such assistance is needed. (K.S.A. 21-6207)

(c) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for interference with law enforcement. (Section 7.2.)

Giving a false alarm is a Class A violation.

46. Section 9.8: Section 9.8 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Criminal desecration is:

(1) *Knowingly* obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being;
(2) *Recklessly* by means other than by fire or explosive:
  (A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;
  (B) Damaging, defacing or destroying any public monument or structure;
  (C) Damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or
  (D) Damaging, defacing or destroying any place of worship. (K.S.A. 21-6205)

(b) Criminal desecration as described in subsections (a)(2)(B), (a)(2)(C) and (a)(2)(D) is a Class A violation if the property is damaged to the extent of less than $1,000.

(c) Criminal desecration as described in subsections (a)(1) and (a)(2)(A) is a Class A violation.

47. Section 9.10: Section 9.10 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Harassment by telecommunication device is the use of:

(1) A telecommunication device to:
- (A) Knowingly make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious, or indecent;
- (B) Make or transmit a call, whether or not conversation ensues, with intent to abuse, threaten or harass a person at the receiving end;
- (C) Make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;
- (D) Make or cause a telecommunications device to repeatedly ring or activate with intent to harass any person at the receiving end;
- (E) Knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or
- (F) Knowingly permit any telecommunications device under one's control to be used in violation of this paragraph.

(2) Telefacsimile communication to send or transmit such communication to a court in the State of Kansas for a use other than court business, with no requirement of culpable mental state.

(b) As used in this section, **telecommunications device** includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto. (K.S.A. Supp. 21-6206)

(c) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in sections 11.1 and 11.2.

Harassment by a telecommunication device is a Class A violation.

48. Section 9.11: Section 9.11 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) ~~It is unlawful for any person:~~ *Unlawful public demonstration at a funeral is:*

(1) ~~Engage~~ *Engaging* 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*~~ *obstructing, hindering, impeding or blocking* another person's entry to or exit from a funeral; or

(3) Knowingly ~~impede~~ *impeding* vehicles which are part of a funeral procession.

(b) 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. (K.S.A. Supp. 21-6106)

Violation of this section is a Class B violation. Each day on which a violation occurs shall constitute a separate offense.

49. Section 9.13: Section 9.13 of said Uniform Public Offense Code is hereby changed to read as follows:

Unlawful posting of political pictures and political advertisements is *knowingly* putting up, affixing or fastening of either or both, a political picture or a political advertisement to a telegraph, telephone, electric lights or power pole. (K.S.A. Supp. 21-5820)

Unlawful posting of political pictures and political advertisements is a Class C violation.

50. Section 10.1: Section 10.1 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club, metal knuckles or throwing star;

(2) Possessing with intent to use the same unlawfully against another, *a dagger, dirk,* billy, blackjack, slungshot, or any other dangerous or deadly weapon or instrument of like character;

(3) Setting a spring gun;

(4) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;

(5) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(6) Selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary

commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

(7) ~~Possession of~~ *Possessing* any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(8) ~~Possession of~~ *Possessing* any firearm by any person, other than a law enforcement officer, 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 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;

(9) ~~Refusal~~ *Refusing* to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;

(10) Possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age ~~whether the person knows or has reason to know the length of the barrel.~~

(b) Criminal use of weapons as defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) or (a)(9) is a Class A violation;

(2) Subsection (a)(7) or (a)(8) is a Class B violation;

(3) Subsection (a)(10) is a Class A violation on a first offense.

(c) Subsections (a)(1), (a)(2) 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 (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(8) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) ~~Any~~ Possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;
(3) Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student;
(4) Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or
(5) Possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. Supp. 75-7c01 *et seq.*, and amendments thereto.

(e) Subsection (a)(6) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. Supp. 75-7c26, and amendments thereto.

(f) Subsection (a)(10) shall not apply if such person, less than 18 years of age, was:
(1) In attendance at a hunter's safety course or a firearms safety course;
(2) Engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located, *or at another private range with permission of such person's parent or legal guardian;*
(3) Engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;
(4) Hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;
(5) Traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections ~~(k)~~*(f)*(1) through ~~(k)~~*(f)*(4), only if such firearm is secured, unloaded and outside the immediate access of such person;
(6) On real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or
(7) At such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. Supp. 21-5222, 21-5223 or 21-5225, and amendments thereto. (K.S.A. Supp. 21-6301)

51. Section 10.1.1: Section 10.1.1 of said Uniform Public Offense Code is hereby changed to read as follows:

(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;
~~(4) Any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business; or~~
~~(5) Transporting any firearm in an occupied motor vehicle, unless such firearm is unloaded and encased in a container which completely encloses the firearm.~~

(b) Criminal carrying of a weapon as defined in subsections (a)(1), (a)(2) *or* (a)(3)~~, (a)(4) or (a)(5)~~ is a Class A violation.

(c) 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 (c)(1), (c)(2) and (c)(3) to possess such weapons.

~~(d) Subsections (a)(4) and (a)(5) shall not apply to:~~

~~(1) Watchmen, while actually engaged in the performance of the duties of their employment;~~
~~(2) licensed hunters or fishermen, while engaged in hunting or fishing;~~
~~(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;~~
~~(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;~~
~~(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto;~~
~~(6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a, and amendments thereto;~~
~~(7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if~~

~~authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c19, and amendments thereto;~~

~~(8) law enforcement officers from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. 926B and 926C; or~~

~~(9) any person carrying a concealed handgun as authorized by K.S.A. Supp. 75-7c01 through 75-7c17, and amendments thereto.~~

~~(c)~~*(d)* It shall not be a violation of this section if a person violates the provisions of K.S.A. Supp. 75-7c03, and amendments thereto, but has an otherwise valid license to carry a concealed handgun which is issued or recognized by this state. (K.S.A. Supp. 21-6302)

52. Section 10.3: Section 10.3 of said Uniform Public Offense Code is hereby changed to read as follows:

10.3 **CRIMINAL ~~DISPOSAL~~** ***DISTRIBUTION*** **OF FIREARMS** ***TO A FELON***

~~Criminal disposal of firearms is knowingly:~~

~~(a) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;~~

~~(b) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;~~

~~(c) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (f), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was found not to have been in possession of a firearm at the time of the commission of the offense;~~

~~(d) Selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, that was not found to have been in the possession of a firearm at the time of the commission of the offense, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or~~

~~(e) Selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the offense.~~

~~(f) Subsection (d) shall apply to a felony under K.S.A. Supp. 21-5402, K.S.A. Supp. 21-5403, K.S.A. Supp. 21-5404, K.S.A. Supp. 21-5405, K.S.A. Supp. 21-5408, K.S.A.~~

~~Supp. 21-5412, K.S.A. Supp. 21-5413, K.S.A. Supp. 21-5414, K.S.A. Supp. 21-5420, K.S.A. Supp. 21-5503, K.S.A. Supp. 21-5504, K.S.A. Supp. 21-5505, K.S.A. Supp. 21-5705, K.S.A. Supp. 21-5706, K.S.A. Supp. 21-5807, or K.S.A. 65-4127a, 65-4127b, or 65-4160 through 65-4165, prior to such sections repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony. (K.S.A. Supp. 21-6301, K.S.A. Supp. 21-6303)~~

(a) Criminal distribution of firearms to a felon is knowingly:

(1) 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 the subsection (b), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was not found to have been in possession of a firearm at the time of the commission of the felony;

(2) Selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of felony to which this subsection applies, but was not found to have been in possession of a firearm at the time of the commission of the felony, or has been released from imprisonment for such a felony, and has not had the conviction of such felony expunged or been pardoned for such felony; or

(3) 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 felony.

(b) Subsection (a)(2) shall apply to a felony under K.S.A. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, subsection (b) or (d) of 21-5412, subsection (b) or (d) of 21-5413, subsection (a) or (b) of 21-5415, subsection (b) of 21-5420, 21-5503, subsection (b) of 21-5504, subsection (b) of 21-5505, and subsection (b) of 21-5807, and amendments thereto, K.S.A. 21-5705 or 21-5706, and amendments thereto, or 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, 65-4127a, 65-4127b or 65-4160 through 65-4165, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(c) It is not a defense that the distributor did not know or have reason to know:

(1) The precise felony the recipient committed;

(2) That the recipient was in possession of a firearm at the time of the commission of the recipient's prior felony; or

(3) That the convictions for such felony have not been expunged or pardoned. (K.S.A. Supp. 21-6303)

Criminal ~~disposal~~ *distribution* of firearms *to a felon* is a Class A violation.

53. Section 10.3.1: Section 10.3.1 of said Uniform Public Offense Code relating to criminal possession of a firearm is hereby declared to be and is omitted and deleted.

54. Section 10.11: Section 10.11 of said Uniform Public Offense Code is hereby changed to read as follows:

Creating a hazard is *recklessly:*

(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 lib which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container;

(b) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located and knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or

(c) Exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children. (K.S.A. Supp. 21-6318)

Creating a hazard is a Class B violation.

55. Section 10.12: Section 10.12 of said Uniform Public Offense Code is hereby changed to read as follows:

Unlawful failure to report a wound is*, with no requirement of a culpable mental state,* the failure by an attending physician or other person to report ~~to the chief of police his or her treatment of~~ *such person's treatment of any of the following wounds, to the office of the chief of police of the city or the office of the sheriff of the county in which such treatment took place:*

(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. (K.S.A. Supp. 21-6319)

Unlawful failure to report a wound is a Class C violation.

56. Section 10.14: Section 10.14 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) (1) No person born on or after January 1, 1989, shall operate on public waters of this city any motorboat or sailboat unless the person possesses a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person as provided by K.S.A. 32-1101 *et seq.*

(2) No owner or person in possession of any motorboat or sailboat shall permit another person, who is subject to the requirements in subsection (a)(1), to operate such motorboat or sailboat unless such other person either:

(A) Has been lawfully issued a certificate of completion of an approved boater safety education course of instruction as provided by K.S.A. 32-1101 *et seq.*; or
(B) Is legally exempt from the requirement of subsection (a)(1).

The requirement in subsection (a)(1), shall not apply to a person 21 years of age or older.

(b) The requirement in subsection (a)(1) shall not apply to a person operating a motorboat or sailboat accompanied by and under the direct and audible supervision of a person over 17 years of age who either:

(1) Possesses a certificate of completion of an approved boater safety education course; or
(2) Is legally exempt from the requirements of subsection (a)(1).

(c) No person who is charged with a violation of subsection (a)(1) shall be convicted of the violation if such person produces in court or in the office of the arresting officer a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person and valid at the time of such person's arrest. (K.S.A. 32-1139)

57. Section 10.15: Section 10.15 of said Uniform Public Offense Code is hereby changed to read as follows:

10.15 **OPERATING A VESSEL UNDER THE INFLUENCE OF ~~INTOXICATING LIQUOR~~ *ALCOHOL* OR DRUGS; PENALTIES.**

(a) No person shall operate or attempt to operate any vessel within this city while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (b) of K.S.A. 32-1130, and amendments thereto, is .08 or more;
(2) The alcohol concentration in the person's blood or breath, at the time or within three hours after the person operated or attempted to operate the vessel is .08 or more;
(3) The alcohol concentration in the person's blood or breath, at the time or within three hours after the person operated or attempted to operate the vessel is .02 or more and the person is less than 21 years of age;
(4) Under the influence of alcohol to a degree that renders the person incapable of safely operating a vessel;
(5) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating a vessel; or
(6) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating a vessel.

(b) If a person is charged with a violation of this section involving drugs, 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.

(c) No person shall operate or attempt to operate any vessel within this state for three months after the date of refusal of submitting to a test if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and amendments thereto.

(d) Except as provided by subsection (e), violation of this section is a violation punishable:

(1) On the first conviction, by imprisonment of not more than one year or a fine of not less than $100 nor more than $500, or both; and
(2) On the second or a subsequent conviction, by imprisonment for not less than 90 days nor more than one year and, in the court's discretion, a fine of not less than $100 nor more than $500.

(e) Subsection (d) shall not apply to or affect a person less than 21 years of age who submits to a breath or blood alcohol test requested pursuant to K.S.A. 32-1132 and amendments thereto, and produces a test result of an alcohol concentration of .02 or greater but less than .08. Such person's boating privileges upon the first occurrence shall be suspended for 30 days and upon a second or subsequent occurrence shall be suspended for 90 days.

(f) In addition to any other penalties prescribed by law or rule and regulation, any person convicted of a violation of this section shall be required to satisfactorily complete a boater safety education course of instruction before such person subsequently operates or attempts to operate any vessel. (K.S.A. Supp. 32-1131)

58. Section 10.16: Section 10.16 of said Uniform Public Offense Code is hereby changed to read as follows:

~~(a) Any person who intentionally throws, pushes, pitches or otherwise casts 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 thereon, is guilty of a Class B violations.~~

~~(b) Any person violating subsection (a) who damages any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, road, highway or railroad right-of-way by the thrown or cast rock, stone or other object is guilty of a Class A violation. (K.S.A. Supp. 21-5819)~~

(a) It is unlawful for any person to:

(1) Recklessly throw, push, pitch or otherwise cast 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 thereon;

(2) Violate subsection (a) and damage any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object;

(b) (1) Violation of subsection (a)(1) is a Class B violation.

(2) Violation of subsection (a)(2) is a Class A nonperson violation.

59. Section 10.17: Section 10.17 of said Uniform Public Offense Code is hereby changed to read as follows:

No person shall perform body piercing*, cosmetic tattooing* or tattooing on or to any person under 18 years of age without the 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*, cosmetic tattooing* or tattooing procedure. The written permission and a copy of the letters of guardianship when such permission is given ~~is granted~~ by a guardian, shall be retained by the person administering such body piercing*, cosmetic tattooing* or tattooing for a period of five years. (K.S.A. 65-1953)

Violation of this section is a Class A violation.

60. Section 10.20: Section 10.20 of said Uniform Public Offense Code is hereby changed to read as follows:

(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 a 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*, with the intent to deceive*, 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~~ *an order transmitted in writing, orally, telephonically or by other means of communication* for a prescription-only drug to be filled by a pharmacist.

Prescription order does not mean a drug dispensed pursuant to such an order.

(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)~~ *K.S.A. 21-5705 or 21-5706, and amendments thereto. (K.S.A. Supp. 21-5708)*

Unlawfully obtaining a prescription-only drug is a Class A violation for the first offense.

61. Section 10.22: Section 10.22 of said Uniform Public Offense Code is hereby changed to read as follows:

It shall be unlawful for any person to *knowingly:*

(a) Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or

(b) Purchase, sell, or offer for sale an alcohol without liquid machine. (K.S.A. Supp. 21-6321)

Violation of this section is a Class A violation.

62. Section 10.24: Section 10.24 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

(1) Public places;
(2) *T*axicabs and limousines;
(3) *R*estrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
(4) *R*estrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;
(5) *A*ccess points of all buildings and facilities not exempted pursuant to subsection (d); and
(6) *A*ny place of employment.

(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

(c) Notwithstanding any other provision of this section, 10.25 or 10.26, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

(d) The provisions of this section shall not apply to:

(1) The outdoor areas of any building or facility beyond the access points of such building or facility;
(2) Private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;
(3) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
(4) The gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;
(5) That portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;
(6) That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;
(7) Tobacco shops;
(8) A Class A or Class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 *et seq*., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and
(9) A private club in designated areas where minors are prohibited. (K.S.A. Supp. 21-6110)

63. Section 11.1: Section 11.1 of said Uniform Public Offense Code is hereby changed to read as follows:

(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 device;
(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;

(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 rebuttable 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 and 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 (i) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or (ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the 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**. Any tangible thing which is capable of being used or ~~adopted~~ *adapted* to arouse interest, whether throughout the medium of reading, observation, sound or other manner.
(3) **Obscene Device.** 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.** Any play, motion picture, dance or other exhibition performed before an audience.
(5) **Sexual Intercourse** and **Sodomy** have the meaning provided by K.S.A. Supp. 21-5501, and amendments thereto.
(6) **Wholesaler.** A person who ~~sells~~ distributes or offers for 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 *shall be* a defense to a prosecution for *promoting* obscenity *and promoting obscenity to minors* that *the:*

(1) ~~The~~ Persons to whom the allegedly obscene material *or obscene device* 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 or device was either sold, leased, distributed, or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved coarse 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 (K.S.A. Supp. 21-6401)

Promoting obscenity is a Class A violation on conviction of a first offense.

Upon any conviction of promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed $50,000, conditioned that, in the event the defendant is convicted, of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance.

64. Section 11.2: Section 11.2 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Promoting obscenity to minors is promoting obscenity*, as defined in section 11.1*, where ~~the~~ *a* 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.

~~(b) It shall be an affirmative defense to any prosecution under this section that:~~

~~(1) 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.~~

~~(2) 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.~~

~~(3) 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.~~

~~(4) An exhibition in a state of nudity is for a bona fide scientific or medical purposes, or for an educational or cultural purpose for a bona fide school, museum, or library. (K.S.A. Supp. 21-6101)~~

~~Promoting obscenity to minors is a Class A violation on conviction of the first offense.~~

(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 rebuttable 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 and promotes the materials or devices in the course of the person's business.

(c) It shall be a defense to a prosecution for promoting obscenity to minors that the:

(1) Persons to whom the allegedly obscene material or obscene device 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) 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) 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 or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(d) Notwithstanding the provisions of K.S.A. 21-5204, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:

(1) 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; or

(2) 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.

(e) The provisions of this section and the provisions of ordinances of any city 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.

Promoting obscenity to minors is a Class A violation.

Upon any conviction of promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed $50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such convictions, the defendant shall forfeit the recognizance.

65. Section 11.7: Section 11.7 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material or device 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 material or device;

(2) ~~Sell, furnish, present, distribute or disseminate to a minor, or otherwise allowing a minor to view, with or without consideration, any material or device which is harmful to minors; or~~ *Present or distribute to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or*

(3) Present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(b) Violation of subsection (a) is a Class B violation.

(c) Notwithstanding the provisions of K.S.A. Supp. 21-5204, 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 or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.
(2) The defendant is an officer, 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)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 19 years old or more.
(6) With respect to a prosecution for an act described by subsection (a)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) As used in this section:

(1) **Blinder rack** means a device in which material is displayed in such a manner that the lower 2/3 of the material is not exposed to view.
(2) **Harmful to minors** means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (a)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:
   (A) The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;
   (B) The average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
   (C) A reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors.
(3) **Material** means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape.

(4) **Minor** means any unmarried person under 18 years of age.
(5) **Nudity** means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement.
(6) **Performance** means an motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
(7) **Sadomasochistic abuse** means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
(8) **Sexual conduct** means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.
(9) **Sexual excitement** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) The provisions of this section 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~~ *presenting or distributing* 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. ~~(K.S.A. Supp. 21-6402)~~

66. Section 11.8: Section 11.8 of said Uniform Public Offense Code is hereby changed to read as follows:

Definitions of gambling terms used in ~~this section~~ *sections 11.8, 11.9, and 11.10* shall be as follows:

(a) A **bet** is a bargain in which the parties agree that, dependent upon change, 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 laws 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;
(6) Any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
(7) Tribal gaming.

(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. A lottery does not include:

(1) A lottery operated by the state pursuant to the Kansas lottery act; or
(2) Tribal gaming.

(c) **Consideration** means anything which is a commercial or financial advantage 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:~~ ***Consideration*** *shall not include sums of money paid by or for:*

~~(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;~~
~~(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; or~~
~~(4) Sums of money paid by or for a person to participate in tribal gaming.~~

(1) 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) Participants in any lottery operated by the state pursuant to the Kansas lottery act;

(3) Participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(4) A person to participate in tribal gaming;

(d) (1) **Gambling device** means *any*:

(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 the result of change, 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~~ *shall* 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 change, 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.

(e) A **gambling place** is any place, room, building, vehicle, tent or location which is used for any of the following:

(1) Making and settling bets;
(2) Receiving, holding, recording or forwarding bets or offers to bet;
(3) Conducting lotteries; or
(4) 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.

(f) **Tribal gaming** has the meaning provided by K.S.A. 74-9802, ~~as amended~~ *and amendments thereto.*

(g) **Gambling** is:

(1) Making a bet; or
(2) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device. (K.S.A. Supp. 21-6403; K.S.A. Supp. 21-6404)

Gambling is a Class B violation

67. Section 11.9: Section 11.9 of said Uniform Public Offense Code is hereby changed to read as follows:

11.9 ~~**PERMITTING PREMISES TO BE USED FOR COMMERICAL GAMBLING**~~ ***COMMERCIAL GAMBLING.***

~~Permitting premises to be used for~~ Commercial gambling is ~~intentionally~~ *knowingly:*

(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. (K.S.A. Supp. 21-6406)

~~Permitting premises to be used for~~ Commercial gambling is a class B violation.

68. Section 11.10: Section 11.10 of said Uniform Public Offense Code is hereby changed to read as follows:

~~(a) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise, of any gambling device.~~

~~(b) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine as 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.~~

~~(c) 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:~~

~~(1) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;~~
~~(2) By a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;~~
~~(3) In a state other than the State of Kansas; or~~
~~(4) In tribal gaming (K.S.A. Supp. 21-6408)~~

~~Possession of a gambling device is a Class B violation.~~

(a) It shall be unlawful for any person to possess a gambling device.

(b) It shall be a defense to a prosecution under this section that:

(1) 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; or
(2) The gambling device is possessed or under custody or control of a manufacturer registered under the federal gambling devices action of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to distribute 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 lawn and rules and regulations adopted by the commission;
(C) In a state other than the state of Kansas; or
(D) In tribal gaming
(K.S.A. Supp. 21-6408)

69. Section 11.11: Section 11.11 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Cruelty to animals is:

(1) ~~Intentionally and maliciously killing, injuring, maiming, torturing, burning, or mutilating any animals;~~

~~(2)~~*(1)* ~~Intentionally~~ *Knowingly* abandoning ~~or leaving~~ any animal ~~in~~ any place without making provisions for its proper care;

~~(3)~~*(2)* Having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is need for the health or well-being of such kind of animal;

~~(4)~~*(3)* Intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; or

~~(5)~~*(4)* Intentionally causing any physical injury other than the acts described in subsection (a)(1).

(b) The provisions of this section shall not apply to:

(1) Normal or accepted veterinary practices;

(2) *Bona fide* experiments carried on by commonly recognized research facilities;

(3) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated*, and amendments thereto;*

(4) Rodeo practices accepted by the rodeo cowboys' association;

(5) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for populations control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;

(6) With respect to farm animals, normal or accepted practices of animal husbandry including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;

(7) The killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(8) An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

(9) Laying an equine down for medical or identification purposes;
(10) Normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or
(11) Accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.

(c) As used in this section, (1) **Equine** means a horse, pony, mule, jenny, donkey or hinny; (2) **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. (K.S.A. Supp. 21-6412)

(d) ~~Cruelty to animals as described in subsection (a)(1) is a felony and cannot be prosecuted in municipal court.~~ *If a person is adjudicated guilty of the crime of cruelty to animals, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.*

On a first conviction, cruelty to animals is a Class A violation~~, as defined is subsections (a)(2), (a)(3), (a)(4), and (a)(5).~~

70. Section 11.12: Section 11.12 of said Uniform Public Offense Code is hereby changed to read as follows:

(a) Unlawful possession of cockfighting paraphernalia is possession of*, with the intent to use in the unlawful conduct of cockfighting,* 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*, whether or not the person knows or has reason to know that cockfighting is occurring on the premises.* ~~(K.S.A. Supp. 21-6417)~~

Unlawful possession of cockfighting paraphernalia is a Class A violation.

Unlawful attendance of cockfighting is a Class B violation.

No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. _____," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such Uniform Public

Offense Code similarly marked, as may be deemed expedient.

Section 2. Ordinance No. 3870, adopted September 12, 2013, and as published September 16, 2013, is hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after its publication in The Hays Daily News, the official city newspaper.

PASSED by the Commission the _____ day of September, 2014.

APPROVED AND SIGNED by the Mayor this _____ day of September, 2014.

_____
HENRY SCHWALLER, IV
Mayor

ATTEST:

_____
BRENDA KITCHEN
City Clerk

(SEAL)

2014 Uniform Public Offense Code Revisions

Prepared by Ed Klumpp.
Please report any errors or corrections to ed.klumpp@KsLawEnforcementInfo.com.

The following is a list providing the specifics of amendments made to the 2014 version of the Uniform Public Offense Code published by the Kansas League of Municipalities. The list was compiled after several inquiries from cities for the information and confirming the League did not have such a list available.

It appears the League has completed a thorough review of the UPOCs and their related state statutes resulting in a large number of minor and clean-up amendments to the UPOCs, in addition to the 2014 state law amendments. It also appears, many of the criminal code recodification amendments passed in 2010 and effective in 2011 were not incorporated into the UPOC until this 2014 edition. Most of the amendments are incorporating those changes.

This list has not been reviewed by nor sanctioned by the Kansas League of Municipalities.

Section 1.1 – Definitions

Body Piercing – Changes "by aid of needles or other instruments" to "by aid of needles" and changes "inserting jewelry or other objects in or through" to "inserting removable jewelry through" and changes "ear" in the exceptions to "earlobe" reflecting contents of KSA 65-1940 (g) amended in 2008.

Cereal Malt Beverage – Adds "or any flavored malt beverage, as defined in KSA 41-2729, and amendments thereto" reflecting contents of KSA 41-2701 (a) amended in 2006.

Cosmetic Tattooing – New definition reflecting contents of KSA 65-1940 (l) amended in 2008.

To Deprive Permanently – Completely rewritten to mirror KSA 21-5111 (f), except the ", it" on the first line of subsection (b) appears to be a typo as it is not in the KSA. Reflects contents of KSA 21-5111, amended in 2011.

Obtains or Exerts Control Over Property – Changes "or the sale" to "sale" making it the same as in KSA 21-5111 (r) reflecting contents of KSA 21-5111 amended in 2011.

Toxic Vapors – Changed subsections to (a) through (o) from (1) through (15). (From KSA 21-5712 which still uses (1) through (15).)

Section 1.2 – Liability for Offenses of Another
Revised reflecting contents of KSA 21-5210 amended in 2011.

Section 1.3 – Corporations: Criminal Responsibility; Individual Liability

Minor wording changes reflecting contents of KSA 21-5211 and KSA 21-5212, amended in 2011.

Section 3.1 – Battery

Changes the culpability from "intentionally" to "knowingly and recklessly" in subsection (a) and to "knowingly" in subsection (b) as provided in the current KSA 21-5413.

Section 3.2.1 – Sexual Battery

Amended reflecting contents of KSA 21-5505, amended in 2011.

Section 3.5 – Unlawful Interference with a Firefighter

Revised reflecting contents of KSA 21-6325 amended in 2011.

Section 3.7 – Mistreatment of Confined Person

Revised reflecting contents of KSA 21-5416 amended in 2011.

Section 3.8 – Violation of Protection from Abuse Order

Adds "and a violation of a protective order" at the end of subsection (a) reflecting contents of KSA 60-3107.

Section 3.9 – Criminal False Communication

Renamed from "Criminal Defamation" and revised reflecting contents of KSA 21-6103 amended in 2011.

Section 3.10 – Eavesdropping

Deleted (These provisions were combined with KSA 21-6101, Breach of Privacy, in 2011 which is still active and was not amended in 2014.) See Section 3.12.

Section 3.12 – Breach of Privacy

Added subsections (b), (c), and (d) reflecting contents of KSA 21-6101 amended in 2011.

Section 3.13 – Stalking

Deleted the reference to "KSA 21-3843, as amended, prior to its repeal or" from subsection (b) reflecting contents of KSA 21-5427 amended in 2011.

Section 5.1 – Contributing to a Child's Misconduct or Deprivation

Added the culpability of "knowingly" to subsections (a)(1), (a)(2) and (a)(4); added the last four lines of subsection (a)(2); added the last three lines of subsection (b); added all of subsection (c) defining runaway reflecting contents of KSA 21-5603 amended in 2011.

Section 5.2 – Furnishing Alcoholic Liquor or Cereal Malt Beverage to a Minor

Adds culpability of “recklessly” in line two of subsection (a); changed “giving or furnishing” to “or distributing” in line three of subsection (a); replaces “contains” with “that reasonably appears to contain” on line six of subsection (c)(3); reorders the subsections reflecting contents of KSA 21-5607 amended in 2011.

Section 5.3 – Unlawfully Hosting Minors Consuming Alcoholic Liquor or CMB

Changes culpability from “intentionally or recklessly” to “recklessly” in line two of subsection (a) reflecting contents of KSA 21-5608 amended in 2011.

Section 5.4 – Endangering a Child

Changed culpability from “intentionally and unreasonably” to “knowingly and unreasonably” in lines one and two of subsection (a) reflecting contents of KSA 21-5601 amended in 2011.

Section 5.7 – Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor

Added “electronic cigarettes” to line seven of subsection (b)(2) and to line eleven of subsection (b)(3). NOTE: “electronic cigarettes” is not included in the defense provisions of KSA 79-3322, but it probably should be. NOTE 2: It is a smoking infraction for a person under the age of 18 to purchase or attempt to purchase or to possess or attempt to possess cigarettes, electronic cigarettes, or tobacco products which is not included in the UPOC and must be charged under KSA 79-3321 subsections (m) or (n).

Section 6.1 – Theft

Subsection (a) reworded reflecting contents of KSA 21-5801, amended in 2011 and 2013. Subsections renumbered.

Section 6.2 – Intent; Permanently Deprive

Subsections (a)(7) and (a)(8) and (d) added reflecting contents of KSA 21-5804, amended in 2011.

Section 6.6 – Criminal Damage to Property

Subsections (a)(1) and (a)(2) reworded reflecting contents of KSA 21-5813, amended in 2011.

Section 6.7 – Criminal Trespass

Subsection (a) reworded reflecting contents of KSA 21-5808, amended in 2011.

Section 6.7.1 – Trespassing on Railroad Property

Subsection (a) reworded and subsection (d) added reflecting contents of KSA 21-5809, amended in 2011.

Section 6.8 – Littering

Deleted in 2013 with comments about conflicts in KSA. Those comments are removed in the 2014 edition.

Section 6.9 – Tampering with a landmark

Reworded reflecting contents of KSA 21-5816, amended in 2011

Section 6.10 – Tampering with a Traffic Signal

Changes culpability term in first paragraph from "intentionally" to "knowingly" and adds second paragraph reflecting contents of KSA 21-5817, amended in 2011.

Section 6.11 – Unlawful Manufacture or Disposal of False Tokens

Nonsubstantive wording changes in the first two lines of subsection (a) reflecting contents of KSA 21-5829.

Section 6.16 – Giving a Worthless Check

Minor wording changes throughout and added subsections (c) and (e) reflecting contents of KSA 21-5821, amended in 2011.

Section 6.17 – Criminal Use of a Financial Card

Wording modified in subsection (a) and "communications services" struck in subsection (b)(1) reflecting contents of KSA 21-5828, amended in 2011. NOTE: "Services remains in the ordinance and state statute covering all types of services, including communication services.

Section 6.18 Motor Vehicle Dealers: Selling Motor Vehicles Without a License

Adds "vehicle crusher, vehicle recycler, rebuilder, scrap metal recycler, salvage vehicle pool" to the list of those requiring a DMV license reflecting contents of KSA 8-2434 amended in 2009.

Section 6.19 Equity Skimming

Wording changes reflecting changes to KSA 21-6504 made in 2011.

Section 6.20 Unlawful Acts Concerning Computers

Contents were rearranged with significant wording change in subsection (a)(1) and (a)(2) reflecting contents of KSA 21-5839 in 2011 and 2013.

Section 6.21 Taking Wildlife Without Permission on Land Posted "By Written Permission Only"

Title changed and the penalties paragraph at the end of the section is added reflecting contents of KSA 32-1013, amended in 2011.

Section 6.22 Criminal Hunting

Added culpability "knowingly" to subsection (a); made what was subsection (b) subsection (a)(3); combined two penalty subsections into subsection (b) reflecting contents of KSA 21-5810 amended in 2012.

Section 6.25 Unlawfully Buying Scrap Metal

Changed "scrap metal dealer" to "scrap metal dealer, or employee or agent of the dealer" in two places in subsection (a) reflecting contents of KSA 60-6,110.

Section 7.1 Compounding an Offense

Deleted. The UPOC section only had the provisions of subsection (a)(4) of KSA 21-5905, which are now found in subsection (a)(3) of section 7.4.

Section 7.2 – Interference with Law Enforcement

Added subsections (a)(2) and (b) reflecting contents of KSA 21-5904 amended in 2014 HB2655.

Section 7.3 – Escape from Custody

Added definitions for "juvenile offender" and "state correctional institution" from KSA 21-5911 as amended in 2011.

Section 7.4 – Interference with Judicial Process

Reworded to reflect amendments to KSA 21-5905 made in 2014 HB2448.

Section 7.10 – Falsely Signing a Petition

Added culpability of "knowingly" to subsection (a) reflecting contents of KSA 21-5916, amended in 2011.

Section 7.12 – Interference; Conduct, Public Business in Public Building

Culpability is changed from "intentionally" to "knowingly" in subsection (b), (c), (d), and (e) reflecting contents of KSA 21-5922, amended in 2011.

Section 7-14 – Electioneering

Added culpability of "knowingly" in subsection (a) reflecting contents of KSA 25-2430 amended in 2011.

Section 9.1 – Disorderly Conduct

Subsection (a) reworded and added subsection (c) reflecting contents of KSA 21-6203, amended in 2011.

Section 9.2 – Unlawful Assembly; Remaining at an Unlawful Assembly

Changed subsection (a) and changed culpability term in subsection (b) from "willingly" to "intentionally" reflecting contents of KSA 21-6202, amended in 2011.

Section 9.4 – Riot

Reworded reflecting contents of KSA 21-6201, amended in 2011.

Section 9.7 – Giving False Alarm

Adds an editor's note about related changes made to KSA 21-6207 in 2014 HB2655 making some acts of giving a false alarm a felony.

Section 9.8 – Criminal Desecration

Adds culpability term “knowingly” to subsection (a) and “recklessly” to subsection (b) reflecting contents of KSA 21-6205, amended in 2011.

Section 9.10 – Harassment by Telecommunications Device

Added subsection (c) allowing offenders to be charged with and convicted of this crime and also with violating section 11.1 and 11.2 if appropriate, reflecting contents of KSA 21-6206 amended in 2011.

Section 9.11 – Unlawful Public Demonstration at a Funeral

Minor wording changes to title and subsection (a) reflecting contents of KSA 21-6106, amended in 2011. No substantive change.

Section 9.13 – Unlawful Posting of Political Pictures and Political Advertisements

Added culpability term of “knowingly” reflecting contents of KSA 21-5820, amended in 2011.

Section 10.1 – Criminal Use of Weapons

Struck “whether the person knows or has reason to know the length of the barrel” from subsection (a)(10) and added “or at another private range with permission of such person’s parent or legal guardian” to subsection (f)(2) reflecting contents of KSA 21-6301 amended in 2014 HB2578.

Section 10.1.1 – Criminal Carrying of a Weapon

Struck subsections (a)(4) and (a)(5) regarding firearms restrictions in compliance with 2014 HB2578 prohibiting local ordinance or regulation of the manner firearms are carried.

Section 10.3 – Criminal Disposal of Firearms

Changed to reflect contents of KSA 21-6303, amended in 2011. Note subsections (a) and (b) from the 2013 version are deleted, but they are found in section 10.1 subsection (a)(4) and (a)(5).

Section 10.3.1 – Criminal Possession of a Firearm

Deleted in compliance with 2014 HB2578 prohibiting local ordinance or regulation of the manner firearms are carried.

Section 10.4 – Confiscation, Disposition of Weapons

NOTE: This section was not amended, however it probably should have been. It is based on KSA 21-6307 which was repealed by 2014 HB2578. It was replaced by new provisions in 2014 HB2578§13 amending KSA 22-2512, see subsections (c), (d), (e) and (f).

Section 10.11 – Creating a Hazard
Adds culpability term “recklessly” to subsection (a) reflecting contents of KSA 21-6318, amended in 2011.

Section 10.12 – Unlawful Failure to Report a Wound
Adds “with no requirement of a culpable mental state” to subsection (a) reflecting contents of KSA 21-6319, amended in 2011.

Section 10.14 – Operation of a Motorboat or Sailboat
Adds exemption at end of subsection (a) for any person age 21 or older, reflecting contents of KSA 32-1139, amended in 2000.

Section 10.15 – Operating a Vessel Under the Influence of Alcohol or Drugs; Penalties
Change to title (“Intoxicating Liquor” to “Alcohol”) is only change I could find.

Section 10.16 – Throwing Objects
Reworded to reflect contents of KSA 21-5819, amended in 2011.

Section 10.17 – Tattooing or Body Piercing; Persons Under Age 18
Added term “cosmetic tattooing” in several places reflecting contents of KSA 65-1953, amended in 2008.

Section 10.20 – Unlawfully Obtaining a Prescription Only Drug
Adds “with intent to deceive” to subsection (a)(5) and amends the definition of “prescription order” in subsection (c) to reflect contents of KSA 21-5708, amended in 2012.

Section 10.22 – Alcohol Without Liquid Machine
Adds culpability term “knowingly” to subsection (a) reflecting contents of KSA 21-6321, amended in 2011.

Section 10.24 – Smoking Prohibited
Listed as amended but no changes were made.

Section 11.1 – Obscenity
Wording changes in subsections (a)(1), (a)(2), and (a)(3); adds “or obscene device” to the second line of subsection (d)(1); adds a recognizance provision at the end of the section reflecting contents of KSA 21-6401, amended in 2011.

Section 11.2 – Promoting Obscenity to Minors
Wording changes reflecting contents of KSA 21-6401, amended in 2011.

Section 11.7 – Material Harmful to Minors
Rewording of subsection (e) reflecting contents of KSA 21-6402, amended in 2011.

Section 11.8 – Gambling

Rewording of subsections (c) and (d)(1) reflecting contents of KSA 21-6403 and KSA 21-6404, amended in 2011.

Section 11.9 – Commercial Gambling

Changes culpability from “intentionally” to “knowingly” reflecting contents of KSA 21-6406, amended in 2011.

Section 11.10 – Possession of a Gambling Device

Reworded reflecting contents of KSA 21-6408, amended in 2011.

Section 11.11 – Cruelty to Animals (Listed as 11.1 on page 133 of UPOC book)

Reworded reflecting contents of KSA 21-6412 amended in 2011 and 2012.

Section 11.12 – Cockfighting

Adds “with intent to use in the unlawful conduct of cockfighting” to subsection (a); adds “whether or not the person knows or has reason to know that cockfighting is occurring on the premises” to subsection (b); adds subsection (c) reflecting contents of KSA 21-6417, amended in 2011.

OVERVIEW OF CHANGES TO THE 2014 UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES

Brief outline of changes made to ordinance

Words Added ~~**Words Deleted**~~

1.1 DEFINITIONS

(pages 6, 7, 8, 9, 11 & 16) Removed and added language to the definition of Body Piercing. Added language to the definition of Cereal Malt Beverage. Added the definition Cosmetic Tattooing. Added and removed language to the definition of Deception. Added language to the definition of Gamecock. Added and removed language from the definition of Identification Document. Removed language from the definition of Obtains or Exerts Control Over Property. Added language to the definition of Regulated Scrap Metal. Added language to the definition of Tattooing.

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 removable jewelry ~~or other objects in or~~ through the human body, except puncturing the external part of the human ~~ear~~ earlobe shall not be included in this definition.

Cereal Malt Beverage. Any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729, and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

Cosmetic 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, by use of a needle, so as to form indelible marks for cosmetic or figurative purposes.

Deception. Knowingly ~~and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact~~ 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.

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

Identification Document. Any card, certificate or document or banking instrument including, but not limited to, credit of debit card, 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, ~~birth certificates~~ certified copies of birth, death, marriage and divorce certificates, social security cards and employee identification cards.

Obtains or Exerts Control Over Property. Includes but is not limited to, the taking, carrying away, ~~or the~~ sale, conveyance, ~~or~~ transfer of title to, interest in, or possession of property.

Regulated Scrap Metal. Means wires, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts, junk vehicles, vehicle parts, pipes, or connectors made from aluminum; catalytic converters containing platinum, palladium, or rhodium; and copper, titanium, tungsten, stainless steel and nickel in any form; for which the purchase price was primarily based on the content therein of aluminum, copper, titanium, tungsten, nickel, platinum, palladium, stainless steel, or rhodium; any item composed in whole or in part of any nonferrous metal other than an item composed of tin, that is purchased or otherwise acquired for the purpose of recycling or storage for later recycling. Aluminum shall not include food or beverage containers.

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

1.2 LIABILITY FOR OFFENSES OF ANOTHER.

(pages 17 & 18) Added and removed language from subsection (a). Removed and added language from subsection (b). Added subsections (c)(1), (c)(2), (c)(3) and (c)(4).

(a) A person is criminally responsible for an offense committed by another if such person ~~intentionally aids, abets, advices, hires, counsels or procures the other to commit the offense~~, acting with the mental culpability required for the commission thereof, advises, hires, counsels or procures the other to commit the offense or intentionally aids the other in committing the conduct constituting the offense.

(b) A person liable under subsection (a) ~~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~~ crime intended.

(c) 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 or legal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the offense or of some other offense based on the same act. (K.S.A. Supp. 21-5210)~~
   (1) Lacked criminal or legal capacity;
   (2) has not been convicted;
   (3) has been acquitted; or
   (4) has been convicted of some other degree of the offense or of some other offense based on the same act. (K.S.A. Supp. 21-5210)

1.3 CORPORATIONS: CRIMINAL RESPONSIBILITY; INDIVIDUAL LIABILTY.

(page 18) Added and removed language from subsection (b)(1). Added and removed language from subsection (b)(2).

(a) **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 on behalf of the corporation.

(b) **Individual Liability for Corporate Offenses.**

   (1) An individual who ~~commits~~ performs public offenses, or causes ~~public offesnes~~ such acts to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in ~~his or her~~ the person's own name or on ~~his or her~~ the person's own behalf.
   (2) An individual who has been convicted of an offense based on conduct performed by ~~the~~ such individual for and on behalf of a corporation is subject to punishment as an individual upon conviction of such offense, although a lesser or different punishment is authorized for the corporation. (K.S.A. Supp. 21-5211:5212)

3.1 **BATTERY.**

(page 20) Added and removed language from subsection (a). Added and removed language from subsection (b).

Battery is:

(a) ~~Intentionally~~ Knowingly or recklessly causing bodily harm to another person; or

(b) ~~Intentionally~~ Knowingly causing physical contact with another person when done in a rude, insulting or angry manner. (K.S.A. Supp. 21-5413)

Battery is a Class B violation.

3.2.1 **SEXUAL BATTERY.**

(page 23) Added and removed language from section.

Sexual battery is the ~~intentional~~ touching of ~~the person of another~~ a victim who is not the spouse of the offender, who is 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. (K.S.A. Supp. 21-5505)

Sexual battery is a Class A violation.

3.5 **UNLAWFUL INTERFERENCE WITH FIREFIGHTER.**

(pages 23 & 24) Added subsection (a). Added subsection (b). Added language at the end of the section.

Unlawful interference with a firefights is knowingly: ~~and intentionally interfering with, molesting or assaulting, any firefighter while engaged in the performance of such firefight's duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire. (K.S.A. Supp. 21-6325)~~

(a) Interfering with any firefighter while engaged in the performance of such firefighter's duties; or

(b) obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency. (K.S.A. Supp. 21-6325)

Unlawful interference with a fire fighter is a Class B person violation.

A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.

3.7 **MISTREATMENT OF CONFINED PERSON.**

(page 24) Added and removed language from section.

Mistreatment of a confined person is ~~the intentional abuse, neglect or ill-treatment of~~ knowingly abusing, neglecting or ill-treating any person, who is detained or confined ~~and who is physically disabled, mentally ill or mentally 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. (K.S.A. Supp. 21-5416)~~

Mistreatment of a confined person is a Class A violation. (K.S.A. Supp. 21-5416)

3.8 **VIOLATION OF PROTECTION FROM ABUSE ORDER.**

(page 25) Added language to subsection (a).

(a) If a person enters or remains on the 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 and violation of a protective order.

(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)

3.9 **CRIMINAL FALSE COMMUNICATION.**

(pages 26 & 27) Changed the title of the section. Added and removed language from subsection (a). Added subsections (a)(1), (a)(1)(A),

(a)(1)(B), (a)(1)(C), and (a)(2). Added and removed language from subsection (b). Added and removed language from the last paragraph in the section.

(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.~~

(a) Criminal false communication is:

(1) Communicating to any person, by any means, information that the person communicating such information knows to be false will tend to:
(A) Expose another living person to public hatred, contempt or ridicule;
(B) Deprive such person of the benefits of public confidence and social acceptance; or
(C) Degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends; or
(2) Recklessly making, circulating or causing to be circulated any false report, statement or rumor with intent to injure the financial standing or reputation of any bank, financial or business institution or the financial standing of any individual in this state.

(b) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal ~~defamation~~ false communication if it is found that such matter was true. (K.S.A. Supp. 21-6103)

Criminal ~~defamation~~ false communication is a Class A violation.

3.10 **EAVESDROPPING.**

(page 27) Deleted the entire section.

~~3.10 **EAVESDROPPING**~~

~~(a) Eavesdropping is knowingly and without lawful authority:~~

~~(1) Entering into a private place with intent to listen surreptitiously to private conversations or to observe the personal conduct of any other person or persons therein;~~

~~(2) Installing or using outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;~~

~~(3) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire communication without the consent of the person in possession or control of the facilities for such wire communication;~~

~~(4) Installing or using a concealed camcorder, motion picture camera or photographic camera of any type, to secretly videotape, film, photograph or record by electronic means, another, identifiable person under or through the clothing being worn by that other person or another, identifiable person who is nude or in the state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.~~

~~(b) A private place within the meaning of this section is a place where one may reasonably expect to be safe from uninvited intrusion or surveillance, but does not include a place to which the public has lawful access.~~

~~(c) It shall not be unlawful for an operator of a switchboard, or any officer, employee, or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility. (K.S.A. Supp. 21-6101)~~

~~Eavesdropping is a Class A violation.~~

3.10 **RESERVED FOR FUTURE USE.**

3.12 **BREACH OF PRIVACY.**

(pages 27-29) Added subsection (b). Added subsection (c). Added subsection (d).

(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 with intent to listen surreptitiously to private conversation in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;
(4) Installing or using outside or inside 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. (K.S.A. Supp. 21-6101)

(b) Subsection (a)(1) 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 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.

(d) As used in this section, “private place” means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

Breach of privacy, as defined in this section, is a Class A violation.

3.13 **STALKING.**

(pages 29-31) Removed language from subsection (a)(1). Added and removed language from subsection (a)(2). Added and removed language from subsection (b).

(a) Stalking is:

(1) ~~intentionally or~~ 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) ~~Intentionally~~ Engaging in a course of conduct targeted at a specific person ~~the individual knows~~ with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or

(b) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, prior to its repeal or K.S.A. 21-5924, 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~~ knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

(c) 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.

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

(e) 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.

(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. (K.S.A. Supp. 21-5427)

Upon a first conviction, stalking as described in subsection (a) is a Class A violation.

5.1 **CONTRIBUTING TO A CHILD'S MISCONDUCT OR DEPRIVATION.**

(pages 33 & 34) Added language to subsection (a)(1). Added and removed language from subsection (a)(1). Added and removed language from subsection (a)(4). Added language to subsection (b). Added subsections (c), (c)(1) and (c)(2).

(a) Contributing to a child's misconduct or deprivation is:

(1) Knowingly causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the revised Kansas code for care of children;
(2) Knowingly causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a ~~public offense; or~~ misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto;
(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;
(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. Supp. 21-5603)~~

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

(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 pursuant to the revised Kansas code for care of children, revised Kansas juvenile justice code or Kansas criminal code.

(c) As used in this section, **runaway** means a child under 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. (K.S.A. Supp. 21-5603)

5.2 **FURNISHING ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE TO A MINOR.**

(pages 34 & 35) Added and removed language from subsection (a). Added new subsection (b), followed by the old subsections. Added language to subsection (c)(3). Added and removed language in subsection (d).

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

(b) This section shall not apply to wine intended for use and used by any church or religious organization for sacramental purposes.

~~(b)~~(c) It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof;
(2) the defendant sold the 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 non driver's identification card or other official or apparently official document, ~~containing~~ that reasonably appears to contain 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.

~~(c)~~(d) This section shall not apply to the furnishing of ceral malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the ~~child~~ child's or ward's parent or legal guardian. (K.S.A. Supp. ~~21-5608~~ 21-5607)

Furnishing alcoholic liquor or cereal malt ~~liquor~~ beverage to a minor is a Class B violation for which the minimum fine is $200.

5.3 **UNLAWFULLY HOSTING MINORS CONSUMING ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE.**

(pages 35 & 36) Added and removed language from subsection (a).

(a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is ~~intentionally or~~ recklessly permitting a person's residence or any land, building, structure or room owned, occupied, or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the unlawful possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor.

(b) As used in this section, **minor** means a person under 21 years of age.

(c) 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. Supp. 21-5608)

Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a Class A violation, for which the minimum fine is $1,000.

5.4 **ENDANGERING A CHILD.**

(page 36) Added and removed language from subsection (a).

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

(b) 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. (K.S.A. Supp. 21-5601)

Endangering a child is a Class A violation.

5.7 **SELLING, GIVING OR FURNISHING CIGARETTES OR TOBACCO PRODUCTS TO A MINOR.**

(pages 37 & 38) Added and removed language from subsection (a)(1). Added and removed language from subsection (b). Added language to

subsection (b)(2). Added language to subsection (b)(3). Added and removed language from subsection (b)(4).

(a) It shall be unlawful for any person to:

(1) Sell, ~~give or~~ furnish or distribute ~~any~~ cigarettes, electronic cigarettes, or tobacco products to any person under 18 years of age; or
(2) Buy any cigarettes, electronic cigarettes, or tobacco products for any person under 18 years of age.

(b) It shall be a defense to a prosecution under this ~~subsection~~ section if:

(1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes or tobacco products; and
(3) To purchase or receive the cigarettes, electronic cigarettes, or tobacco products, the person under 18 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, or tobacco products.
(4) For purposes of this ~~subsection~~ section the person who violates this ~~subsection~~ section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 18years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(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, or tobacco products by mail; and
(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsword declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 18 or more years of age. (K.S.A. Supp. 79-3302, 79-3321:79-3322)

Violation of this section shall constitute a Class B violation punishable by a minimum fine of $200.

6.1 **THEFT.**

(pages 40 & 41) Reformatted the section to have subsections (a), (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b), (b)(1), (b)(2), (b)(3), (c), (c)(1), (c)(2) and (c)(3). Added and removed language in subsection (a). Removed language from subsection (a)(3). Added language to subsection (a)(4). Added and removed language from subsection (c)(2).

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

(1) Obtaining or exerting unauthorized control over property or services;
(2) Obtaining control over property or services by deception;
(3) Obtaining control over property or services by threat~~; or~~
(4) Obtaining control over stolen property or services knowing the property or services to have been stolen by another; or
(5) 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. (K.S.A. Supp. 21-5801)

(b) Theft of property or services of the value of less than $1,000 is a Class A violation, except as provided below.

(1) Property of the value of less than $1,000 from three separate mercantile establishments 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;
(2) Property of the value of less than $1,000 if committed by a person who has been convicted of theft two or more times; and
(3) Property which is a firearm of the value of less than $25,000.

(c) As used in this section:

(1) Conviction or 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. ~~2011~~ 2013 Supp. 50-6, 109, and amendments thereto; and
(3) Value means the value of the property or, if the property is regulated scrap metal, 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.

6.2 **INTENT; PERMANENTLY DEPRIVE.**

(pages 41-44) Added subsections (a)(7), (a)(8), (a)(8)(B). Added new subsection (c). Added subsections (d), (d)(1), (d)(2), (d)(2)(A), (d)(2)(B), (d)(2)(C), (d)(2)(D), and (d)(2)(E).

(a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;
(2) The failure of a person who leases or rents personal property and fails to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;
(3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;
(4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;
(5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to

be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:

(A) The time and place to return the vehicle; and

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into 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; or

(8) Under the provisions of subsection (e) of section 6.1 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.

(B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.

(b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

~~(c) The word **notice** as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or~~

~~certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library materials at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address. (K.S.S. Supp. 21-5804)~~

(c) In prosecution for theft as defined in Section 6.1, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

(d) As used in this section:

(1) "Notice" means notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address; and

(2) "Tampering" includes, but is not limited to:

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

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

(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, water 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. (K.S.A. Supp. 21-5804)

6.6 **CRIMINAL DAMAGE TO PROPERTY.**

(page 46) Reformatted the section. Added and removed language from subsection (a)(1). Added and removed language from subsection (a)(2).

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

(1) ~~Intentionally injuring, damaging, mutilating, defacing, destroying,~~ Knowingly damaging, destroying, defacing or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(2) ~~Injuring, damaging, mutilating, defacing, destroying~~ Damaging, destroying, defacing or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder. (K.S.A. Supp. 21-5813)

Criminal damage to property is a Class B violation if the property damaged is of the value of less than $1,000 or is of the value of $1,000 or more and is damaged to the extent of less than $1,000.

6.7 **CRIMINAL TRESPASS.**

(pages 46-48) Added language to subsection (a). Added and removed language from subsection (a)(1). Removed language from subsection (a)(2). Added subsection (c)(1), which is the same language as the previous subsection (c). Added subsection (c)(2).

(a) Criminal trespass is entering or remaining upon or in any:

(1) ~~Entering or remaining upon or in any~~ Land, non navigable body of water, structure, vehicle, aircraft or watercraft ~~other than railroad property~~ by a person ~~with knowledge that~~ who knows 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;

(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 by a court of competent jurisdiction

and the restraining order has been personally served upon the person so restrained.

(2) ~~Entering or remaining upon or in any~~ public or private land or structure in a manner than 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) As used in this section:

(1) **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.

(2) **Health Care Provider** means 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. (K.S.A. Supp. 21-5808)

(c) (1) This section shall not apply to a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, 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. 21-5809, and amendments thereto, or nuclear generating facility as defined in K.S.A. 66-2302, and amendments thereto.

Criminal trespass is a Class B violation.

Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which shall be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

6.7.1 **TRESPASSING ON RAILROAD PROPERTY.**

(pages 48 & 49) Added and removed language from subsection (a). Added subsections (a)(1) and (a)(2). Removed language from subsection (c). Added subsection (d). Added language to the last paragraph of the section.

(a) ~~It shall be unlawful for any person, without the consent of the owner or the owner's agent, to enter or remain on railroad property, knowing that it is railroad property~~ Trespassing on a railroad property is:

(1) Entering or remaining on railroad property, without consent of the owner or the owner's agent, knowing that it is railroad property; or
(2) Recklessly causing 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. ~~(K.S.A. Supp. 21-5809)~~

(d) As used in this section **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.

Trespassing on railroad property that results in a demonstrable monetary loss, damage, or destruction less than $1,500 is a Class A violation.

6.8 **LITTERING.**

(page 49) Deleted the entire section.

~~6.8 **LITTERING.** (Editor's Note: As a result of the passage of HB 2695 by the 2004 Kansas Legislature, as codified in K.S.A. Supp. 21-5815, the~~

~~League believes there now exist one or more conflicts in the state statutes concerning Littering. (See also: K.S.A. Supp. 8-2118 and K.S.A. Supp. 8-15, 102.) Therefore, this section has been removed from the UPOC. City Attorneys and City Prosecutors are urged to proceed with caution when charging Littering under state statute.)~~

6.8 **RESERVED FOR FUTURE USE.**

6.9 **TAMPERING WITH A LANDMARK.**

(page 49) Added and deleted language from the section definition. Removed language from subsection (a). Removed language from subsection (b). Removed language from subsection (c). Removed subsection (d).

Tampering with a landmark is ~~willfully and maliciously~~ doing any of the following acts with intent to fraudulently alter a boundary:

(a) Removing any monument of stone or other durable material, established or created for the purpose of designated the corner of or any other point upon the boundary of any lot or tract of land, or of the state, or any legal subdivision thereof; ~~or~~

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

(c) Cutting down or removing any tree, post or other monument upon which any such marks have been made for such purpose, with intent to destroy such marks; ~~or~~

~~(d) Breaking, destroying, removing or defacing any milepost, milestone or guideboard erected by authority of law on any public highway or road; or~~

(d)~~(e)~~ Defacing or altering any inscription on any such marker or monument; or

(e)~~(f)~~ Altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of K.S.A. 58-2011. (K.S.A. Supp. 21-5816)

Tampering with a landmark is a Class C violation.

6.10 **TAMPERING WITH A TRAFFIC SIGNAL.**

(pages 49 & 50) Added and removed language from the section definition. Added paragraph 2 to the section.

Tampering with a traffic signal is ~~intentionally~~ knowingly 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. (K.S.A. Supp. 21-5817)

A person who violates the provisions of the section may also be prosecuted for, convicted of, and punished for violating sections 6.1 (Theft) and 6.3 (Theft of Property Lost, Mislaid, or Delivered by Mistake).

Tampering with a traffic signal is a Class C violation.

6.11 **UNLAWFUL MANUFACTURE OR DISPOSAL OF FALSE TOKENS.**

(page 50) Added and removed language from subsection (a). Added language to subsection (b).

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

(b) The manufacture for sale, advertising, offering for sale or distribution of any such false token, slug, substance, false or spurious coin or other device shall be prima facie evidence of an intent to cheat or defraud within the meaning of this section. (K.S.A. Supp. 21-5829)

Unlawful manufacture or disposal of false tokens is a Class B violation.

6.16 **GIVING A WORTHLESS CHECK.**

(pages 53 & 54) Added and removed language from subsection (a). Added new subsection (b), and added subsections (b)(1), (b)(2) and (b)(3). Added and removed language from subsection (c). Added and removed language from subsection (c)(1). Removed language from subsection (c)(2). Removed old subsections (c), (d)(1) and (d)(2) and replaced with new subsections (d), (d)(1), (d)(2) and (e).

(a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check~~, order or draft on any bank, credit union, savings and loan association or depository~~ on any financial institution for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check~~, order or draft~~ that the maker or drawer has no deposit in or credits with the ~~drawee~~ financial institution or has not sufficient funds in, or credits with, the ~~drawee~~ financial institution for the payment of such check~~, order or draft~~ in full upon its presentation.

(b) As used in this section:

(1) **Check** is any check, order or draft on a financial institution;
(2) **Financial institution** means any bank, credit union, savings and loan association or depository; and
(3) **Notice** includes oral or written notice to the person entitled thereto.

~~(b)~~(c) In any prosecution against the maker or drawer of a check, ~~order or draft~~ payment of which has been refused by the ~~drawee~~ financial institution on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the ~~drawee~~ financial institution:

(1) Unless the maker or drawer pays the holder thereof the amount due thereon and service charge not exceeding $30 for each check, within seven days after notice has been given to the maker or drawer that such check ~~draft or order~~ has not been paid by the ~~drawee~~ financial institution. ~~As used in this section, notice includes oral or written notice to the person entitled thereto.~~ Written notice shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be given notice at such person's address as it appears on such check~~, draft or order~~; or
(2) If a postdated date is placed on the check~~, order or draft~~ without the knowledge or consent of the payee.

~~(c) In addition to all other costs and fees allowed by law, each prosecuting attorney who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed $10 for each check.~~

~~(d) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:~~

~~(1) Was postdated, unless such check, draft or order was presented for payment prior to the postdated date; or~~
~~(2) Was given to a payee who had knowledge or had been informed, when the payee accepted such check, draft or order that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds. (K.S.A. Supp. 21-5821)~~

(d) It shall not be a defense to a prosecution under this section that the check upon which such prosecution is based was:

(1) Postdated, unless such check was presented for payment prior to the postdated date; or
(2) Given to a payee who had knowledge or had been informed, when the payee accepted such check that the maker did not have sufficient funds in the hands of the financial institution to pay such check upon presentation, unless such check was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(e) In addition to all other costs and fees allowed by law, each prosecutor who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed $10 for each check. (K.S.A. Supp. 21-5821)

Giving a worthless check is a Class A violation if the check, draft or order is drawn for less than $1,000 except when the person has, within five years immediately preceding commission of the offense, been convicted of giving a worthless check two or more times, in which case it is a felony under state statute.

6.17 **CRIMINAL USE OF A FINANCIAL CARD.**

(pages 54 & 55) Added and removed language from subsection (a). Removed language from subsection (a)(1). Removed language from subsection (a)(2). Added and removed language from subsection (b). Added and removed language from subsection (b)(1). Removed language from the section's last paragraph.

(a) Criminal use of a financial card is any of the following acts done with intent to defraud and ~~for the purpose of obtaining~~ to obtain money, goods, property~~, services or communication~~ or services:

(1) Using a financial card without the consent of the cardholder; ~~or~~
(2) ~~Knowingly~~ Using a financial card, or the number of 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~~ As used in this section:

(1) **Financial card** means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property~~, services or communication~~ services or to conduct other financial transactions; and
(2) **Cardholder** means the person or entity to whom or for whose benefit a financial card is issued.

(c) For the purposes of subsection (a)(2), 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. (K.S.A. Supp. 21-5828)

Criminal use of a financial card is a Class A violation if the money, goods, property~~, services or communication~~ or services obtained within a seven-day period are of the value of less than $1,000.

6.18 **MOTOR VEHICLE DEALERS; SELLING MOTOR VEHICLES WITHOUT A LICENSE.**

(page 55) Added language to the first paragraph of the section.

It shall be unlawful for any person to do business as a motor vehicle dealer, salvage vehicle dealer, motor vehicle manufacturer, motor vehicle converter, auction motor vehicle dealer, vehicle crusher, vehicle recycler, rebuilder, scrap metal recycler, salvage vehicle pool or salesperson

without a license issued by the director of vehicles. The isolated or occasional sale of a vehicle by a person who owned such vehicle shall not constitute the doing of a business as a vehicle dealer. (K.S.A. Supp. 8-2434)

Violation of this section shall be punishable by a fine not to exceed $2,500.

6.19 **EQUITY SKIMMING.**

(page 56) Added and removed language from the first paragraph of the section. Added and removed language from subsection (b).

~~It shall be unlawful for any person who, with intent to defraud, willfully engages in a pattern or practice of:~~ Equity skimming is, with the intent to defraud, intentionally engaging in a pattern or practice of:

(a) Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including, but not limited to, an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage;

(b) Failing to deliver ~~all rent proceeds received from rental of the property~~ to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption all rent proceeds received from rental of the property, not to exceed the monthly payment of principal and interest required by the note and mortgage; and

(c) Applying or authorizing the application of rents from such dwellings for such person's own use. (K.S.A. Supp. 21-6504)

Violating of this section is a Class A violation. Each purchase of a dwelling pursuant to this section shall be deemed a separate offense.

6.20 **UNLAWFUL ACTS CONCERNING COMPUTERS.**

(pages 56-58) Changed the title of the section. Added new subsections (a), (a)(1), and (a)(2). Added new subsection (b), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11) and (b)(12). Removed previous subsections (b) and (c). Added and removed language from the last paragraph in the section.

6.20 ~~**COMPUTER TRESPASS COMPUTER PASSWORD DISCLOSURE**~~ **UNLAWFUL ACTS CONCERNING COMPUTERS.**

(a) ~~As used in this section:~~ 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.

~~(a)~~(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, emails and other data files.

~~(8)~~(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.

~~(9)~~(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.

~~(10)~~(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. (K.S.A. Supp. 21-5839)

~~(b) **Computer Password Disclosure** is the unauthorized and intentional disclosure of a number, code, password or other means of access to a computer or computer network.~~

~~(c) **Computer Trespass** is intentionally, and without authorization accessing or attempting to access any computer, computer system, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network. (K.S.A. Supp. 21-5839)~~

~~Computer password disclosure is a Class A violation. Computer trespass is a Class A violation.~~ Unlawful acts concerning computers is a Class A violation.

6.21 **TAKING WILDLIFE WITHOUT PERMISSION ON LAND POSTED "BY WRITTEN PERMISSION ONLY."**

(pages 58 & 59) Changed the title of the section. Added last paragraph to the section, as well as the editor's note.

6.21 ~~**POSTING LAND**~~ **TAKING WILDLIFE WITHOUT PERMISSION ON LAND POSTED "BY WRITTEN PERMISSION ONLY."**

(a) Any landowner or person in lawful possession of any land may post such land with signs stating that hunting, trapping, or fishing on such land shall be by written permission only. It is unlawful for any person to take wildlife on land which is posted as provided in this subsection, without having in the person's possession the written permission of the owner or person in lawful possession thereof.

(b) Instead of posting land as provided in subsection (a), any landowner or person in lawful possession of any land may post such land by placing identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be not less than three feet nor more than five feet high. Such paint marks shall be readily visible to any person approaching the land. Land posted as provided in this subsection shall be considered to be posted by written permission only as provided in subsection (a).

(c) A person licensed to hunt or fur harvest who is following or pursuing a wounded animal on land as provided in this section posted without written permission of the landowner or person in lawful possession thereof shall not be in violation of this section while in such pursuit, except that the provisions of this subsection shall not authorize a person to remain on such land if instructed to leave by the owner or person in lawful possession of the land. Any person who fails to leave such land when instructed is subject to the provisions of subsection (b) of Section 6.22. (K.S.A. Supp. 32-1013)

Violation of this section is a Class C violation. A second conviction of this section is a Class C violation in which the minimum fine is $250. A third conviction of this section is a Class C violation in which the minimum fine is $300. A fourth or subsequent conviction of this section is a Class C violation in which a minimum fine of $400 shall be imposed and a minimum of 7 days' imprisonment shall be served. Any conviction of this section that occurred before July 1, 2005, shall not be considered for purposes of this section.

[Editor's note: The editor has chosen to not include penalties for violating the Kansas wildlife parks and tourism laws of this state or rules and regulations regarding big game and wild turkey.]

6.22 **CRIMINAL HUNTING.**

(pages 59-62) Added language to subsection (a). Added subsection (a)(3). Added subsection (a)(3)(A). Added subsection (a)(3)(B). Added new subsections (b), (b)(1) and (b)(2). Added subsection (c).

(a) Criminal hunting is knowingly hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing:

(1) Upon any land or nonnavigable body of water of another, without having first obtained permission of the owner or person in possession of such premises; or
(2) Upon or from any public road, public road right-of-way or railroad right-of-way that adjoins occupied or improved premises, without having first obtained permission of the owner or person in possession of such premises.
(3) Upon any land or nonnavigable body of water of another person who knows such person is not authorized or privileged to do so, and:
(A) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person: or
(B) Such premises or property are posted in a manner consistent with K.S.A. 32-1013, and amendments thereto.

~~**Criminal hunting** is a Class C violation. Upon the first conviction thereof and in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting, fishing, or fur harvesting, or all, for up to one year from the date of such conviction. Upon any subsequent conviction thereof, and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in any case where such person has a combination license, the court shall require the forfeiture of part or all of such license and the court shall order such person to refrain from hunting, fishing, or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner hereof or other authorized person.~~

~~The court shall notify the department of wildlife and parks of any conviction or diversion for criminal hunting.~~

~~(b) **Intentional criminal hunting** is hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing upon any land or nonnavigable body of water of another by a person who knows such person is not authorized or privileged to do so, and:~~

~~(1) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to leave such premise or property personally communicated to such person by the owner thereof or other authorized person; or~~

~~(2) Such premises or property are posted in a manner consistent with Section 6.21, and amendments thereto.~~

~~Intentional criminal hunting is a Class B violation. Upon the first conviction or a diversion agreement for intentional criminal hunting, and in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years. The court shall notify the department of wildlife and parks of any conviction or diversion for intentional criminal hunting. (K.S.A. Supp. 21-5810)~~

(c) Criminal hunting as defined in:

(1) Subsection (a)(1) or (a)(2), is a Class C violation. Upon the first conviction thereof and in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting,

fishing, or fur harvesting, or all, for up to one year from the date of such conviction. Upon any second or subsequent conviction of subsection (a)(1) or (a)(2), in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in any case where such person has a combination license, the court shall require the forfeiture of a part or all of such license and the court shall order such person to refrain from hunting, fishing, or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner thereof or other authorized person.

For the purpose of determining whether a conviction is a first, second or subsequent conviction of subsection (a)(1) or (a)(2), **conviction** or **convicted** includes being convicted of a violation of subsection (a) of K.S.A. 21-3728, prior to its repeal, or subsection (a)(1) or (a)(2); and

(2) Subsection (a)(3) is a Class B violation. Upon the first conviction or a diversion agreement of subsection (a)(3), in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of subsection (a)(3), in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of subsection (a)(3), in addition to any authorized sentence imposed by the court, such court shall require forfeiture of convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction of subsection (a)(3), conviction or convicted includes being convicted of a violation of subsection (b) or K.S.A. 21-3728, prior to its repeal, or subsection (a)(3).

(c) The court shall notify the department of wildlife and parks of any conviction or diversion for criminal hunting. (K.S.A. Supp. 21-5810)

6.25 **UNLAWFULLY BUYING SCRAP METAL.**

(pages 66-68) Added language to subsection (a).

(a) It shall be unlawful for any such scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in transaction for which Section 6.24 requires information to be presented by the seller, without demanding and receiving from the seller that information. Every scrap metal dealer shall file and maintain a record of information obtained in compliance with the requirements in Section 6.24. All records kept in accordance with the provisions of this section shall be open at all times to peace or law enforcement officers and shall be kept for two years. If the required information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to peace or law enforcement officers upon request.

(b) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which Section 6.24 requires information to be presented by the seller, without obtaining from the seller a signed statement that:

(1) Each item is the seller's own personal property, is free of encumbrances and is not stolen; or
(2) That the seller is acting for the owner and has permission to sell each time.

(c) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any junk vehicle in a transaction for which Section 6.24 requires information to be presented by the seller, without:

(1) Inspecting the vehicle offered for sale and recording the vehicle identification number; and
(2) Obtaining an appropriate vehicle title or bill of sale issued by a governmentally operated vehicle impound facility if the vehicle purchased has been impounded by such facility or agency.

(d) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase or receive any regulated scrap metal from a minor unless such minor is accompanied by a parent or guardian or such minor is a licensed scrap metal dealer.

(e) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any of the following items of regulated scrap metal property without obtaining proof that the seller is an employee, agent or person who is authorized to sell the item of regulated scrap metal property on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization or scrap metal dealer:

(1) Utility access cover;
(2) Street light poles or fixtures;
(3) Road or bridge guard rails;
(4) Highway or street sign;
(5) Water meter cover;
(6) Traffic directional or traffic control signals;
(7) Traffic light signs;
(8) Any metal marked with any form of the name or initials of a governmental entity;
(9) Property owned and marked by a telephone cable, electric, water or other utility provider;
(10) Property owned and marked by a railroad;
(11) Funeral markers or vases;
(12) Historic markers;
(13) Bales of regulated metal;
(14) Beer kegs;
(15) Manhole covers;
(16) Fire hydrants or fire hydrant caps;
(17) Junk vehicles with missing or altered vehicle identification numbers;
(18) Real estate signs;
(19) Bleachers or risers, in whole or in part; and
(20) Twisted pair copper telecommunications wiring of 25 pair or greater existing in 19, 22, 24, or 26 gauge.

(f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the law enforcement

agency for 30 days, exclusive of weekends and holidays. (K.S.A. Supp. 50-6, 111: 50-6, 112)

Any person intentionally violating the provisions of this section shall be guilty of a Class C violation for which the minimum fine is $200. Any person convicted of violating the provisions of this section for the second time within a two-year period shall be guilty of a Class B violation for which the minimum fine is $500. Any person convicted of violating the provisions of this section for the third and subsequent times within a two-year period shall be guilty of a Class A violation for which the minimum fine is $1,000.

7.1 **COMPOUNDING AN OFFENSE.**

(page 68) Removed the entire section.

~~7.1 **COMPOUNDING AN OFFENSE.** Compounding an offense is accepting or agreeing to accept anything of value as consideration for a promise: (1) Not to initiate or aid in the prosecution of a person who has committed an offense; or (2) intentionally conceal or destroy evidence of a crime. (K.S.A. Supp. 21-5905)~~

7.1 **RESERVED FOR FUTURE USE.**

7.2 **INTERFERENCE WITH LAW ENFORCEMENT.**

(pages 68 & 69) Changed the title of the section. Removed language from the first paragraph of the section. Added and removed language from subsection (a)(2). Added and removed language from subsection (a)(3). Added and removed language from subsection (b). Added subsection (c). Removed language from last paragraph in the section.

7.2 **INTERFERENCE WITH ~~A~~ LAW ENFOREMENT ~~OFFICER~~.**

Interference with ~~a~~ law enforcement ~~officer~~ 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;

(2) ~~any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or~~

~~agency's duty; or~~ 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

(3) ~~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; or~~ Any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty; or

(b) ~~Knowingly 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. (K.S.A. Supp. 21-5904)~~ Concealing, destroying or materially altering evidence with the intent to prevent or hinder the apprehension or prosecution of any person; or

(c) Knowingly 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.

Interference with a law enforcement officer is a Class A violation ~~if the underling offence is a code violation or a civil case.~~

7.3 **ESCAPE FROM CUSTODY.**

(pages 69 & 70) Added subsection (b)(3). Added subsection (b)(4).

(a) Escape from custody is escaping while held in custody on a:

(1) Charge, conviction of or arrest for a misdemeanor or a code violation;
(2) Charge, adjudication or arrest as a juvenile offender where the act, if committed by an adult, would constitute a misdemeanor or a code violation; or
(3) 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 misdemeanor or by a person 18 years of age or over who is being held in custody on an adjudication of a misdemeanor or a code violation.

(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; 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 supervisions of a person or probation on 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. (K.S.A. Supp. 21-5911)

(3) **Juvenile Offender** means the same as in K.S.A. 38-2302, and amendments thereto; and

(4) **State Correctional Institution** means the same as in K.S.A. 75-5202, and amendments thereto.

(c) 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.

Escape from custody is a Class A violation.

7.4 **INTERFERENCE WITH THE JUDICIAL PROCESS.**

(pages 70-73) Changed the title of the section. Reformatted the entire section. Added subsections (a)(1), (a)(1)(A), (a)(1)(B). (a)(1)(C), (a)(2), (a)(3), (a)(3)(A), (a)(3)(B), (a)(4), (a)(4)(A), (a)(4)(B), (a)(4)(C), (a)(4)(D), (a)(5), (c), (c)(1), (c)(2) and (c)(3). Added and removed language from last paragraph of the section.

7.4 **INTERFERENCE~~; ADMINISTRATION OF JUSTICE~~ WITH THE JUDICIAL PROCESS.**

~~(a) Interference with the administration of justice is communicating in any manner of 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 finding, decision, ruling, order, judgment or decree of such judicial officer or prosecuting attorney on any matter then pending before the officer or prosecuting attorney.~~

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

~~(c) As sued in this section, **prosecuting attorney** has the meaning ascribed thereto in K.S.A. 22-2202, and amendments thereto. (K.S.A. Supp. 21-5905)~~

(a) Interference with the judicial process is:

(1) Committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:
(A) Communicating in any manner a threat of violence to any judicial officer or any prosecutor;
(B) Harassing a judicial officer or a prosecutor by repeated vituperative communication; or
(C) Picketing, parading or demonstrating near such officer's or prosecutor's residence or place of abode;
(2) Picketing parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;
(3) Knowingly 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 conceal or destroy evidence of a crime;
(4) Knowingly or intentionally in any criminal proceeding or investigation:
(A) Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document or thing;
(B) Withholding or unreasonably delaying in producing any testimony, information, document or thing after a court orders the production of such testimony, information, document or thing;

(C) Altering, damaging, removing or destroying any record, document or thing, with the intent to prevent it from being produced or used as evidence; or

(D) Making, presenting or using a false record, document or thing with the intent that the record, document or thing, material to such criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master or law enforcement officer; or

(5) Knowingly making available by any means personal information about a judge or the judge's immediate family member, if the dissemination of the personal information poses an imminent and serious threat to the judge's safety or the safety of such judge's immediate family member, and the person making the information available knows or reasonably should know of the imminent and serious threat.

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

(c) As used in this section:

(1) **Immediate family member** means a judge's spouse, child, parent or any other blood relative who lives in the same residence as such judge.

(2) **Judge** means any 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.

(3) **Personal information** means a judge's home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, personal photograph, immediate family member photograph, photograph of the judge's home, and information about the judge's motor vehicle, any immediate family member's motor vehicle, any immediate family member's place of employment, any immediate family member's child care or day care facility and any immediate family member's public or private school that offers instruction in any or all of the grades kindergarten through 12. (K.S.A. Supp. 21-5905)

Interference with the ~~administration of justice~~ judicial process is a Class A violation, except that a second or subsequent conviction of section (a)(5) is a severity level 9, person felony.

7.10 **FALSE SIGNING OF PETITION.**

(page 74) Added and removed language from the paragraphs in the section.

False signing of a petition is ~~the~~ knowingly affixing ~~of~~ any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the legislature, or either house thereof, or to any agency or officer of the State of Kansas or any of its political subdivisions. (K.S.A. Supp. 21-5916)

False signing of ~~an official~~ a petition is a Class C violation.

7.12 **INTERFERENCE; CONDUCT, PUBLIC BUSINESS IN PUBLIC BUILDING.**

(pages 74 & 75) Added and removed language from subsection (a). Added and removed language from subsection (b). Added and removed language from subsection (c). Added and removed language from subsection (d). Added and removed language from subsection (e).

Interference with the conduct of public business in public buildings is:

(a) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to ~~willfully~~ knowingly deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities or to leave any such public building;

(b) ~~Intentionally~~ Knowingly 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;

(c) ~~Intentionally~~ Knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or such officer's designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures or functions being carried on in such public building;

(d) ~~Intentionally~~ Knowingly 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 by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body or any official engaged in the performance of duties at such meeting or session; or

(e) ~~Intentionally~~ Knowingly 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. (K.S.A. Supp. 21-5922)

Interference with the conduct of public business in public buildings is a Class A violation.

7.14 **ELECTIONEERING.**

(page 76) Added language to subsection (b).

(a) Electioneering is knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicates support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof. Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting.

(b) As used in this section, **advance voting site** means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122, and amendments thereto, and adult care homes and hospital based care units at the time of an election participating in the voting procedures prescribed in K.S.A. 25-2812 (K.S.A. Supp. 25-2430)

Electioneering is a Class C violation.

9.1 **DISORDERLY CONDUCT.**

(page 77) Reformatted the section and added subsections (a)(1). (a)(2), (a)(3) and (b).

~~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:~~

~~(a) Engaging in brawling or fighting; or~~

~~(b) Disturbing an assembly, meeting or procession, not unlawful in its character; or~~

~~(c) Using offensive, obscene or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others. (K.S.A. Supp. 21-6203)~~

(a) Disorderly conduct is one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

(1) Brawling or fighting;
(2) Disturbing an assembly, meeting or procession, not unlawful in its character; or
(3) Using fighting words or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

(b) As used in this section, **fighting words** means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.

Disorderly conduct is a Class C violation.

9.2 **UNLAWFUL ASSEMBLY; REMAINING AT AN UNLAWFUL ASSEMBLY.**

(page 78) Added and removed language from subsection (a)(1). Added and removed language from subsection (b).

(a) Unlawful assembly is:

(1) The meeting or coming together of not less than five persons ~~for the purpose of engaging in conduct constituting;~~ with the intent to engage in conduct constituting;

(A) Disorderly conduct, as defined by Section 9.1 of this article; or

(B) A riot, as defined by Section 9.4 of this article; or

(2) When a lawful assembly of not less than five persons, agreeing to engage in conduct constituting disorderly conduct or riot.

(b) Remaining at an unlawful assembly is ~~willfully~~ intentionally failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer. (K.S.A. Supp. 21-6202)

Unlawful assembly is a Class B violation.

Remaining at an unlawful assembly is a Class A violation.

9.4 **RIOT.**

(page 78) Reformatted the entire section and added subsections (a) and (b).

~~Riot is any use of force or violence which produces a breach of the public peace or any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, by five or more persons acting together and without authority of law. (K.S.A. Supp. 21-6201)~~

Riot is five or more persons acting together and without lawful authority engaging in any:

(a) Use of force or violence which produces a breach of the public peace; or

(b) Threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution. (K.S.A. Supp. 21-6201)

Riot is a Class A violation.

9.7 **GIVING A FALSE ALARM.**

(page 79) Added subsection (c). Added Editor's Note.

Giving a false alarm is:

(a) 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

(b) 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 that there is no reasonable ground for believing such assistance is needed. (K.S.A. 21-6207)

(c) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for interference with law enforcement. (Section 7.2.)

[**Editor's Note**: The 2014 Kansas Legislature amended K.S.A. 21-6207 in HB 2655. The amendment makes it a felony when a person uses an electronic device or software to alter, conceal or disguise the identity of the person making such transmission or such call. It is also a felony under subsection (b) if the request for emergency service assistance made by the person includes false information that violent criminal activity or immediate threat to a person's life or safety is taking place.]

Giving a false alarm is a Class A violation.

9.8 **CRIMINAL DESECRATION.**

(page 80) Added language to subsection (a)(1). Added language to subsection (a)(2).

(a) Criminal desecration is:

(1) Knowingly obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being;
(2) Recklessly by means other than by fire or explosive:
(A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;
(B) Damaging, defacing or destroying any public monument or structure;
(C) Damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or

(D) Damaging, defacing or destroying any place of worship. (K.S.A. 21-6205)

(b) Criminal desecration as described in subsections (a)(2)(B), (a)(2)(C) and (a)(2)(D) is a Class A violation if the property is damaged to the extent of less than $1,000.

(c) Criminal desecration as described in subsections (a)(1) and (a)(2)(A) is a Class A violation.

9.10 **HARASSMENT BY TELECOMMUNICATIONS DEVICE.**

(pages 81 & 82) Added subsection (c).

(a) Harassment by telecommunication device is the use of:

(1) A telecommunication device to:
(A) Knowingly make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious, or indecent;
(B) Make or transmit a call, whether or not conversation ensues, with intent to abuse, threaten or harass a person at the receiving end;
(C) Make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;
(D) Make or cause a telecommunications device to repeatedly ring or activate with intent to harass any person at the receiving end;
(E) Knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or
(F) Knowingly permit any telecommunications device under one's control to be used in violation of this paragraph.
(2) Telefacsimile communication to send or transmit such communication to a court in the State of Kansas for a use other than court business, with no requirement of culpable mental state.

(b) As used in this section, **telecommunications device** includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication

service, as defined in K.S.A. 22-2514, and amendments thereto. (K.S.A. Supp. 21-6206)

(c) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in sections 11.1 and 11.2.

Harassment by a telecommunication device is a Class A violation.

9.11 **UNLAWFUL PUBLIC DEMONSTRATION AT A FUNERAL.**

(pages 82 & 83) Changed the title of the section. Added and removed language from subsection (a). Added and removed language from subsection (a)(1). Added and removed language from subsection (a)(2). Added and removed language from subsection (a)(3).

(a) ~~It is unlawful for any person:~~ Unlawful public demonstration at a funeral is:

(1) ~~Engage~~ Engaging 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~~ obstructing, hindering, impeding or blocking another person's entry to or exit from a funeral; or
(3) Knowingly ~~impede~~ impeding vehicles which are part of a funeral procession.

(b) 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. (K.S.A. Supp. 21-6106)

Violation of this section is a Class B violation. Each day on which a violation occurs shall constitute a separate offense.

9.13 **UNLAWFUL POSTING OF POLITICAL PICTURES AND POLITICAL ADVERTISEMENTS.**

(page 83) Added language to the first paragraph in the section.

Unlawful posting of political pictures and political advertisements is knowingly putting up, affixing or fastening of either or both, a political picture or a political advertisement to a telegraph, telephone, electric lights or power pole. (K.S.A. Supp. 21-5820)

Unlawful posting of political pictures and political advertisements is a Class C violation.

10.1 **CRIMINAL USE OF WEAPONS.**

(pages 83-87) Added language to subsection (a)(2). Added and removed language from subsection (b)(7). Added and removed language from subsection (b)(8). Added and removed language from subsection (b)(9). Removed language from subsection (a)(10). Removed language from subsection (d)(2). Added language to subsection (f)(2). Added and removed language from subsection (f)(5).

(a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club, metal knuckles or throwing star;
(2) Possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, or any other dangerous or deadly weapon or instrument of like character;
(3) Setting a spring gun;
(4) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;
(5) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;
(6) Selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary

commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

(7) ~~Possession of~~ Possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(8) ~~Possession of~~ Possessing any firearm by any person, other than a law enforcement officer, 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 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;

(9) ~~Refusal~~ Refusing to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;

(10) Possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age ~~whether the person knows or has reason to know the length of the barrel.~~

(b) Criminal use of weapons as defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) or (a)(9) is a Class A violation;

(2) Subsection (a)(7) or (a)(8) is a Class B violation;

(3) Subsection (a)(10) is a Class A violation on a first offense.

(c) Subsections (a)(1), (a)(2) 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 (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(8) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;
(2) ~~Any~~ Possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;
(3) Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student;
(4) Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or
(5) Possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. Supp. 75-7c01 *et seq.*, and amendments thereto.

(e) Subsection (a)(6) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. Supp. 75-7c26, and amendments thereto.

(f) Subsection (a)(10) shall not apply if such person, less than 18 years of age, was:
(1) In attendance at a hunter's safety course or a firearms safety course;
(2) Engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located, or at another private range with permission of such person's parent or legal guardian;
(3) Engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;
(4) Hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;
(5) Traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections ~~(k)~~(f)(1) through ~~(k)~~(f)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;
(6) On real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

(7) At such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. Supp. 21-5222, 21-5223 or 21-5225, and amendments thereto. (K.S.A. Supp. 21-6301)

10.1.1 **CRIMINAL CARRYING OF A WEAPON.**

(pages 87 & 88) Removed subsections (a)(4) and (a)(5). Removed language from subsection (b). Removed subsections (d), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) and (d)(9). Changed subsection (e) to subsection (d).

(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;
~~(4) Any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business; or~~
~~(5) Transporting any firearm in an occupied motor vehicle, unless such firearm is unloaded and encased in a container which completely encloses the firearm.~~

(b) Criminal carrying of a weapon as defined in subsections (a)(1), (a)(2) or (a)(3)~~, (a)(4) or (a)(5)~~ is a Class A violation.

(c) 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 (c)(1), (c)(2) and (c)(3) to possess such weapons.

~~(d) Subsections (a)(4) and (a)(5) shall not apply to:~~

~~(1) Watchmen, while actually engaged in the performance of the duties of their employment;~~
~~(2) licensed hunters or fishermen, while engaged in hunting or fishing;~~
~~(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;~~
~~(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;~~
~~(5) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto;~~
~~(6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a, and amendments thereto;~~
~~(7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c19, and amendments thereto;~~
~~(8) law enforcement officers from another state or a retired law enforcement officer meeting the requirements of the federal law enforcement officers safety act, 18 U.S.C. 926B and 926C; or~~
~~(9) any person carrying a concealed handgun as authorized by K.S.A. Supp. 75-7c01 through 75-7c17, and amendments thereto.~~

~~(e)~~(d) It shall not be a violation of this section if a person violates the provisions of K.S.A. Supp. 75-7c03, and amendments thereto, but has an otherwise valid license to carry a concealed handgun which is issued or recognized by this state. (K.S.A. Supp. 21-6302)

10.3 **CRIMINAL DISTRIBUTION OF FIREARMS TO A FELON.**

(pages 88-90) Changed the title of the section. Changed formatting of the section and added subsections (a)(1), (a)(2), (a)(3), (c)(1), (c)(2) and (c)(3). Removed wording from subsections (a), (b), (c), (d), (e), and (f). Added new wording to subsections (a), (b) and (c). Added and removed language from the last paragraph of the section.

10.3 **CRIMINAL ~~DISPOSAL~~ DISTRIBUTION OF FIREARMS TO A FELON**

~~Criminal disposal of firearms is knowingly:~~

~~(a) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;~~

~~(b) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;~~

~~(c) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (f), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was found not to have been in possession of a firearm at the time of the commission of the offense;~~

~~(d) Selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, that was not found to have been in the possession of a firearm at the time of the commission of the offense, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or~~

~~(e) Selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the offense.~~

~~(f) Subsection (d) shall apply to a felony under K.S.A. Supp. 21-5402, K.S.A. Supp. 21-5403, K.S.A. Supp. 21-5404, K.S.A. Supp. 21-5405, K.S.A. Supp. 21-5408, K.S.A. Supp. 21-5412, K.S.A. Supp. 21-5413, K.S.A. Supp. 21-5414, K.S.A. Supp. 21-5420, K.S.A. Supp. 21-5503, K.S.A. Supp. 21-5504, K.S.A. Supp. 21-5505, K.S.A. Supp. 21-5705, K.S.A. Supp. 21-5706, K.S.A. Supp. 21-5807, or K.S.A. 65-4127a, 65-4127b, or 65-4160 through 65-4165, prior to such sections repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony. (K.S.A. Supp. 21-6301, K.S.A. Supp. 21-6303)~~

(a) Criminal distribution of firearms to a felon is knowingly:

(1) 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 the subsection (b), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was not found to have been in possession of a firearm at the time of the commission of the felony;
(2) Selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of felony to which this subsection applies, but was not found to have been in possession of a firearm at the time of the commission of the felony, or has been released from imprisonment for such a felony, and has not had the conviction of such felony expunged or been pardoned for such felony; or
(3) 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 felony.

(b) Subsection (a)(2) shall apply to a felony under K.S.A. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, subsection (b) or (d) of 21-5412, subsection (b) or (d) of 21-5413, subsection (a) or (b) of 21-5415, subsection (b) of 21-5420, 21-5503, subsection (b) of 21-5504, subsection (b) of 21-5505, and subsection (b) of 21-5807, and amendments thereto, K.S.A. 21-5705 or 21-5706, and amendments thereto, or 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, 65-4127a, 65-4127b or 65-4160 through 65-4165, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(c) It is not a defense that the distributor did not know or have reason to know:
   (1) The precise felony the recipient committed;
   (2) That the recipient was in possession of a firearm at the time of the commission of the recipient's prior felony; or
   (3) That the convictions for such felony have not been expunged or pardoned. (K.S.A. Supp. 21-6303)

Criminal ~~disposal~~ distribution of firearms to a felon is a Class A violation.

10.3.1 **CRIMINAL POSSESSION OF A FIREARM.**

(page 90) Deleted the entire section.

~~10.3.1 **CRIMINAL POSSESSION OF A FIREARM.**~~

~~(a) Criminal possession of a firearm is:~~

~~(1) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;~~
~~(2) Possession of any firearm by any person, other than a law enforcement officer, 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 1 through 12 or at any regularly scheduled school sponsored activity or event; or~~
~~(3) Refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer.~~

~~(b) Subsection (a)(2) shall not apply to:~~

~~(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;~~
~~(2) Any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;~~
~~(3) Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student;~~

~~(4) Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or~~

~~(5) Possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. Supp. 75-7c01 *et seq.*, and amendments thereto. (K.S.A. Sup. 21-6301)~~

~~Violation of subsection (a)(1) or (a)(2) is a Class B violation. Violation of subsection (a)(3) is a Class A violation.~~

10.3.1 **RESERVED FOR FUTURE USE.**

10.11 **CREATING A HAZARD.**

(pages 92 & 93) Added language to the first paragraph on the section.

Creating a hazard is recklessly:

(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 lib which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container;

(b) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located and knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or

(c) Exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children. (K.S.A. Supp. 21-6318)

Creating a hazard is a Class B violation.

10.12 **UNLAWFUL FAILURE TO REPORT A WOUND.**

(page 93) Added language to the first paragraph of the section.

Unlawful failure to report a wound is, with no requirement of a culpable mental state, the failure by an attending physician or other person to report

~~to the chief of police his or her treatment of~~ such person's treatment of any of the following wounds, to the office of the chief of police of the city or the office of the sheriff of the county in which such treatment took place:

(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. (K.S.A. Supp. 21-6319)

Unlawful failure to report a wound is a Class C violation.

10.14 OPERATION OF A MOTORBOAT OR SAILBOAT.

(pages 93 & 94) Added a paragraph after subsection (a)(2)(B).

(a) (1) No person born on or after January 1, 1989, shall operate on public waters of this city any motorboat or sailboat unless the person possesses a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person as provided by K.S.A. 32-1101 *et seq.*

(2) No owner or person in possession of any motorboat or sailboat shall permit another person, who is subject to the requirements in subsection (a)(1), to operate such motorboat or sailboat unless such other person either:

(A) Has been lawfully issued a certificate of completion of an approved boater safety education course of instruction as provided by K.S.A. 32-1101 *et seq.*; or

(B) Is legally exempt from the requirement of subsection (a)(1).

The requirement in subsection (a)(1), shall not apply to a person 21 years of age or older.

(b) The requirement in subsection (a)(1) shall not apply to a person operating a motorboat or sailboat accompanied by and under the direct and audible supervision of a person over 17 years of age who either:

(1) Possesses a certificate of completion of an approved boater safety education course; or

(2) Is legally exempt from the requirements of subsection (a)(1).

(c) No person who is charged with a violation of subsection (a)(1) shall be convicted of the violation if such person produces in court or in

the office of the arresting officer a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person and valid at the time of such person's arrest. (K.S.A. 32-1139)

10.15 **OPERATING A VESSEL UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; PENALTIES.**

(pages 94-96) Changed the title of the section.

10.15 **OPERATING A VESSEL UNDER THE INFLUENCE OF ~~INTOXICATING LIQUOR~~ ALCOHOL OR DRUGS; PENALTIES.**

(a) No person shall operate or attempt to operate any vessel within this city while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (b) of K.S.A. 32-1130, and amendments thereto, is .08 or more;
(2) The alcohol concentration in the person's blood or breath, at the time or within three hours after the person operated or attempted to operate the vessel is .08 or more;
(3) The alcohol concentration in the person's blood or breath, at the time or within three hours after the person operated or attempted to operate the vessel is .02 or more and the person is less than 21 years of age;
(4) Under the influence of alcohol to a degree that renders the person incapable of safely operating a vessel;
(5) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating a vessel; or
(6) Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating a vessel.

(b) If a person is charged with a violation of this section involving drugs, 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.

(c) No person shall operate or attempt to operate any vessel within this state for three months after the date of refusal of submitting to a test if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and amendments thereto.

(d) Except as provided by subsection (e), violation of this section is a violation punishable:

(1) On the first conviction, by imprisonment of not more than one year or a fine of not less than $100 nor more than $500, or both; and
(2) On the second or a subsequent conviction, by imprisonment for not less than 90 days nor more than one year and, in the court's discretion, a fine of not less than $100 nor more than $500.

(e) Subsection (d) shall not apply to or affect a person less than 21 years of age who submits to a breath or blood alcohol test requested pursuant to K.S.A. 32-1132 and amendments thereto, and produces a test result of an alcohol concentration of .02 or greater but less than .08. Such person's boating privileges upon the first occurrence shall be suspended for 30 days and upon a second or subsequent occurrence shall be suspended for 90 days.

(f) In addition to any other penalties prescribed by law or rule and regulation, any person convicted of a violation of this section shall be required to satisfactorily complete a boater safety education course of instruction before such person subsequently operates or attempts to operate any vessel. (K.S.A. Supp. 32-1131)

10.16 **THROWING OBJECTS.**

(page 96) Changed the formatting of the section and added subsections (a)(1), (a)(2), (b)(1) and (b)(2).

~~(a) Any person who intentionally throws, pushes, pitches or otherwise casts 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 thereon, is guilty of a Class B violations.~~

~~(b) Any person violating subsection (a) who damages any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, road, highway or railroad right-of-way by the thrown or cast rock, stone or other object is guilty of a Class A violation. (K.S.A. Supp. 21-5819)~~

(a) It is unlawful for any person to:

(1) Recklessly throw, push, pitch or otherwise cast 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 thereon;
(2) Violate subsection (a) and damage any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object;

(b) (1) Violation of subsection (a)(1) is a Class B violation.

(2) Violation of subsection (a)(2) is a Class A nonperson violation.

10.17 **TATTOOING OR BODY PIERCING; PERSONS UNDER AGE 18.**

(page 97) Added language to the section.

No person shall perform body piercing, cosmetic tattooing or tattooing on or to any person under 18 years of age without the 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, cosmetic tattooing or tattooing procedure. The written permission and a copy of the letters of guardianship when such permission is given ~~is granted~~ by a guardian, shall be retained by the person administering such body piercing, cosmetic tattooing or tattooing for a period of five years. (K.S.A. 65-1953)

Violation of this section is a Class A violation.

10.20 **UNLAWFULLY OBTAINING A PRESCRIPTION-ONLY DRUG.**

(pages 99 & 100) Added language to subsection (a)(5). Added and removed language from subsection (b)(2). Added and removed language from subsection (c).

(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 a 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, with the intent to deceive, 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~~ an order transmitted in writing, orally, telephonically or by other means of communication for a prescription-only drug to be filled by a pharmacist. **Prescription order** does not mean a drug dispensed pursuant to such an order.

(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)~~ K.S.A. 21-5705 or 21-5706, and amendments thereto. (K.S.A. Supp. 21-5708)

Unlawfully obtaining a prescription-only drug is a Class A violation for the first offense.

10.22 ALCOHOL WITHOUT LIQUID MACHINE.

(pages 100 & 101) Added language to the first paragraph of the section.

It shall be unlawful for any person to knowingly:

(a) Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or

(b) Purchase, sell, or offer for sale an alcohol without liquid machine. (K.S.A. Supp. 21-6321)

Violation of this section is a Class A violation.

10.24 **SMOKING PROHIBITED.**

(pages 101-103) Capitalized wording in subsections (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6).

(a) It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

(1) Public places;
(2) Taxicabs and limousines;
(3) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
(4) Restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;
(5) Access points of all buildings and facilities not exempted pursuant to subsection (d); and
(6) Any place of employment.

(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

(c) Notwithstanding any other provision of this section, 10.25 or 10.26, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

(d) The provisions of this section shall not apply to:

(1) The outdoor areas of any building or facility beyond the access points of such building or facility;
(2) Private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;
(3) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
(4) The gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;
(5) That portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;
(6) That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;
(7) Tobacco shops;
(8) A Class A or Class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 *et seq*., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and
(9) A private club in designated areas where minors are prohibited. (K.S.A. Supp. 21-6110)

11.1 **PROMOTING OBSCENITY.**

(pages 104-107) Removed language from subsection (a). Removed language from subsection (a)(1). Removed language from subsection (a)(2). Removed language from subsection (a)(3). Removed language from subsection (c)(6). Added and removed language from subsection (d). Added and removed language from subsection (d)(1). Removed language from subsection (d)(2). Added the last paragraph to the section.

(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 device;
(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;
(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 rebuttable 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 and 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 (i) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or (ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the 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**. Any tangible thing which is capable of being used or ~~adopted~~ adapted to arouse interest, whether throughout the medium of reading, observation, sound or other manner.

(3) **Obscene Device.** 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.** Any play, motion picture, dance or other exhibition performed before an audience.
(5) **Sexual Intercourse** and **Sodomy** have the meaning provided by K.S.A. Supp. 21-5501, and amendments thereto.
(6) **Wholesaler.** A person who ~~sells~~ distributes or offers for 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~~ shall be a defense to a prosecution for promoting obscenity and promoting obscenity to minors that the:

(1) ~~The~~ Persons to whom the allegedly obscene material or obscene device 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 or device was either sold, leased, distributed, or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved coarse 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 (K.S.A. Supp. 21-6401)

Promoting obscenity is a Class A violation on conviction of a first offense.

Upon any conviction of promoting obscenity, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed $50,000, conditioned that, in the event the defendant is convicted, of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance.

11.2 **PROMOTING OBSCENITY TO MINORS.**

(pages 107-109) Added and removed language from subsection (a). Removed old subsections (b), (b)(1), (b)(2), (b)(3) and (b)(4). Added new subsections (b), (b)(1), (b)(2), (c), (c)(1), (c)(2), (c)(3), (d), (d)(1), (d)(2), (e) and paragraphs following.

(a) Promoting obscenity to minors is promoting obscenity, as defined in section 11.1, where ~~the~~ a 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.

~~(b) It shall be an affirmative defense to any prosecution under this section that:~~

~~(1) 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.~~

~~(2) 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.~~

~~(3) 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.~~

~~(4) An exhibition in a state of nudity is for a bona fide scientific or medical purposes, or for an educational or cultural purpose for a bona fide school, museum, or library. (K.S.A. Supp. 21-6101)~~

~~Promoting obscenity to minors is a Class A violation on conviction of the first offense.~~

(c) 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 rebuttable 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 and promotes the materials or devices in the course of the person's business.

(c) It shall be a defense to a prosecution for promoting obscenity to minors that the:

   (1) Persons to whom the allegedly obscene material or obscene device 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) 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) 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 or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(d) Notwithstanding the provisions of K.S.A. 21-5204, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:

   (1) 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; or
   (2) 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.

(e) The provisions of this section and the provisions of ordinances of any city 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.

Promoting obscenity to minors is a Class A violation.

Upon any conviction of promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed $50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such convictions, the defendant shall forfeit the recognizance.

11.7 **MATERIAL HARMFUL TO MINORS.**

(pages 112-115) Added and removed language from subsection (a)(b). Added and removed language from subsection (e).

(a) No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material or device 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 material or device;
(2) ~~Sell, furnish, present, distribute or disseminate to a minor, or otherwise allowing a minor to view, with or without consideration, any material or device which is harmful to minors; or~~ Present or distribute to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or
(3) Present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(b) Violation of subsection (a) is a Class B violation.

(c) Notwithstanding the provisions of K.S.A. Supp. 21-5204, 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 or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.
(2) The defendant is an officer, 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)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 19 years old or more.
(6) With respect to a prosecution for an act described by subsection (a)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) As used in this section:

(1) **Blinder rack** means a device in which material is displayed in such a manner that the lower 2/3 of the material is not exposed to view.
(2) **Harmful to minors** means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (a)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:
(A) The average adult person applying contemporary community standards would find that the material or performance has a

predominant tendency to appeal to a prurient interest in sex to minors;

(B) The average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) A reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors.

(3) **Material** means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape.

(4) **Minor** means any unmarried person under 18 years of age.

(5) **Nudity** means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement.

(6) **Performance** means an motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(7) **Sadomasochistic abuse** means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(8) **Sexual conduct** means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.

(9) **Sexual excitement** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) The provisions of this section 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~~ presenting or distributing 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. ~~(K.S.A. Supp. 21-6402)~~

11.8 **GAMBLING.**

(pages 115-119) Added and removed language from the first paragraph in the section. Added and removed language from subsection (c). Added and removed language from subsections (c)(1), (c)(2), (c)(3) and (c)(4). Added language to subsection (d). Removed language from subsection (d)(1)(A). Removed language from subsection (d)(1)(B). Removed language from subsection (d)(1)(C). Removed language from subsection (d)(1)(D). Added and removed language from subsection (d)(2). Added and removed language from subsection (f).

Definitions of gambling terms used in ~~this section~~ sections 11.8, 11.9, and 11.10 shall be as follows:

(a) A **bet** is a bargain in which the parties agree that, dependent upon change, 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 laws 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;
(6) Any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
(7) Tribal gaming.

(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. A lottery does not include:

(1) A lottery operated by the state pursuant to the Kansas lottery act; or
(2) Tribal gaming.

(c) **Consideration** means anything which is a commercial or financial advantage 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:~~
Consideration shall not include sums of money paid by or for:

~~(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;~~
~~(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; or~~
~~(4) Sums of money paid by or for a person to participate in tribal gaming.~~

(1) 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) Participants in any lottery operated by the state pursuant to the Kansas lottery act;
(3) Participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
(4) A person to participate in tribal gaming;

(d) (1) **Gambling device** means any:

(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 the result of change, 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~~ shall 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 change, 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.

(e) A **gambling place** is any place, room, building, vehicle, tent or location which is used for any of the following:

(1) Making and settling bets;
(2) Receiving, holding, recording or forwarding bets or offers to bet;
(3) Conducting lotteries; or
(4) 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.

(f) **Tribal gaming** has the meaning provided by K.S.A. 74-9802, ~~as amended~~ and amendments thereto.

(g) **Gambling** is:

(1) Making a bet; or
(2) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device. (K.S.A. Supp. 21-6403; K.S.A. Supp. 21-6404)

Gambling is a Class B violation.

11.9 **COMMERCIAL GAMBLING.**

(pages 119-120) Changed the title of the section. Added and removed language from the first paragraph of the section. Added and removed language from the last paragraph of the section.

11.9 ~~**PERMITTING PREMISES TO BE USED FOR COMMERICAL GAMBLING**~~ **COMMERCIAL GAMBLING.**

~~Permitting premises to be used for~~ Commercial gambling is ~~intentionally~~ knowingly:

(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. (K.S.A. Supp. 21-6406)

~~Permitting premises to be used for~~ Commercial gambling is a class B violation.

11.10 **POSSESSION OF A GAMBLING DEVICE.**

(page 120) Added and removed language from subsections (a) and (b). Added subsections (b)(1), (b)(1)(A), (b)(1)(B), (b)(1)(C) and (b)(1)(D). Removed subsections (c), (c)(1), (c)(2), (c)(3), (c)(4) and the last paragraph of the section.

~~(a) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise, of any gambling device.~~

~~(b) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine as 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.~~

~~(c) 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:~~

~~(1) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;~~
~~(2) By a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;~~
~~(3) In a state other than the State of Kansas; or~~
~~(4) In tribal gaming (K.S.A. Supp. 21-6408)~~

~~Possession of a gambling device is a Class B violation.~~

(a) It shall be unlawful for any person to possess a gambling device.

(b) It shall be a defense to a prosecution under this section that:

(1) 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; or
(2) The gambling device is possessed or under custody or control of a manufacturer registered under the federal gambling devices action of 1962 (15 U.S.C. 1171 *et seq*.) or a transporter under contract with such manufacturer with intent to distribute 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 lawn and rules and regulations adopted by the commission;
(C) In a state other than the state of Kansas; or
(D) In tribal gaming
(K.S.A. Supp. 21-6408)

11.11 **CRUELTY TO ANIMALS.**

(pages 121-123) Removed the previous subsection (a)(1), followed by the previous subsections. Removed and added language from subsection (a)(1). Added language to subsection (b)(1). Added and removed language from subsection (d). Removed language from the last paragraph in the section.

(a) Cruelty to animals is:

(1) ~~Intentionally and maliciously killing, injuring, maiming, torturing, burning, or mutilating any animals;~~

~~(2)~~(1) ~~Intentionally~~ Knowingly abandoning ~~or leaving~~ any animal ~~in~~ any place without making provisions for its proper care;

~~(3)~~(2) Having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is need for the health or well-being of such kind of animal;

~~(4)~~(3) Intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; or

~~(5)~~(4) Intentionally causing any physical injury other than the acts described in subsection (a)(1).

(b) The provisions of this section shall not apply to:

(1) Normal or accepted veterinary practices;

(2) *Bona fide* experiments carried on by commonly recognized research facilities;

(3) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated, and amendments thereto;

(4) Rodeo practices accepted by the rodeo cowboys' association;

(5) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for populations control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;

(6) With respect to farm animals, normal or accepted practices of animal husbandry including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;

(7) The killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(8) An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;
(9) Laying an equine down for medical or identification purposes;
(10) Normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or
(11) Accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.

(c) As used in this section, (1) **Equine** means a horse, pony, mule, jenny, donkey or hinny; (2) **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. (K.S.A. Supp. 21-6412)

(d) ~~Cruelty to animals as described in subsection (a)(1) is a felony and cannot be prosecuted in municipal court.~~ If a person is adjudicated guilty of the crime of cruelty to animals, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.

On a first conviction, cruelty to animals is a Class A violation~~, as defined is subsections (a)(2), (a)(3), (a)(4), and (a)(5).~~

11.12 **COCKFIGHTING.**

(page 123) Added language to subsection (a). Added and removed language from subsection (b).

(a) Unlawful possession of cockfighting paraphernalia is possession of, with the intent to use in the unlawful conduct of cockfighting, 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,

whether or not the person knows or has reason to know that cockfighting is occurring on the premises. ~~(K.S.A. Supp. 21-6417)~~

Unlawful possession of cockfighting paraphernalia is a Class A violation.

Unlawful attendance of cockfighting is a Class B violation.

ORDINANCE NO._____

AN ORDINANCE REGULATING TRAFFIC WITHIN THE CORPORATE LIMITS OF THE CITY OF HAYS, KANSAS, INCORPORATING BY REFERENCE "THE STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES," EDITION OF 2014, WITH CERTAIN OMISSIONS, CHANGES, AND ADDITIONS; PRESCRIBING ADDITIONAL REGULATIONS; PROVIDING CERTAIN PENALTIES AND REPEALING ORDINANCE NO. 3871, OF THE CODE OF ORDINANCES OF THE CITY OF HAYS, KANSAS, AS PASSED ON SEPTEMBER 12, 2013, AND AS PUBLISHED ON SEPTEMBER 16, 2013.

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

Section 1. INCORPORATING STANDARD TRAFFIC ORDINANCE. There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Hays, Kansas, that certain standard traffic ordinance known as the *Standard Traffic Ordinance* for Kansas Cities, Edition of 2014, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts of portions as are hereafter omitted, deleted, modified or changed (words added appear in italics, words deleted appear as strikethrough):

1. **Section 1: Section 1 of said Standard Traffic Ordinance is hereby changed to read as follows:**

   Church Bus. Every ~~motor vehicle~~ *bus* owned by a religious organization and operated for the transportation of persons to or from services or activities of such religious organization.

   Day Care Programs. Those which provide day service for development in self-help, social, recreational and work skills for ~~mentally retarded and other handicapped persons,~~ *people with intellectual and other disabilities,* giving priority to providing services for ~~the severely and young retarded or handicapped~~ *young people with severe intellectual and other disabilities.*

   Day Care Program Bus. Every ~~motor vehicle~~ *bus* used primarily to carry out functions of a day care program *or used by a child care facility licensed by the Kansas department of health and environment who provides transportation for children six and 18 years of age.*

2. **Section 11: Section 11 of said Standard Traffic Ordinance is hereby changed to**

read as follows:

All traffic control devices shall conform to the ~~manual and specifications as adopted by the state highway commission (K.S.A. 8-2005a)~~ *state manual and specifications (K.S.A. 8-2005).*

3. **Section 13.1: Section 13.1 of said Standard Traffic Ordinance is hereby changed to read as follows:**

(a) Except as provided in subsection (c), it shall be unlawful for any person to *knowingly* possess a traffic control signal preemption device.

(b) A person convicted of violating subsection (a) shall be guilty of a code violation and subject to a fine of not more than $1,000 or by imprisonment for not more than six months or by both such fine and imprisonment. (K.S.A. Supp. ~~21-4223~~ *21-6324*)

(c) The provisions of this section shall not apply to the operator, passenger, or owner of any of the following authorized emergency vehicles, in the course of such person's emergency duties:

(1) Publicly owned fire department vehicles;
(2) Publicly owned police vehicles; or
(3) Motor vehicles operated by ambulance services permitted by the emergency medical services board.

4. **Section 23: Section 23 of said Standard Traffic Ordinance is hereby changed to read as follows:**

(a) The driver of any vehicle involved in an accident resulting in injury to, great bodily harm to or death of any person or damage to any attended vehicle or property shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible, but shall then immediately return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of Section 25.

(b) A person who violates subsection (a) when an accident results in:

(c) The driver shall comply with the provisions of section 26.1.

(1) Total property damages of less than $1,000 shall be punished as provided in Section 201.
(2) Any person who violates this section which results in injury to any person or property damages in excess of $1,000 shall be punished by

imprisonment for not more than one year or by a fine of not more than $2,500, or by both such fine and imprisonment. (K.S.A. Supp. 8-1602)

5. **Section 24: Section 24 of said Standard Traffic Ordinance relating to accidents involving damage to vehicles or other property is hereby declared to be and is omitted and deleted.**

6. **Section 25: Section 25 of said Standard Traffic Ordinance is hereby changed to read as follows:**

(a) (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any attended vehicle or other property shall give such driver's name, address, and the registration number of the vehicle such driver is driving, and upon request shall exhibit such driver's license or permit to drive, the name of the company with which there is in effect a policy of motor vehicle liability insurance covering the vehicle involved in the accident and the policy number of such policy to any person injured in such accident or to the driver or occupant of or person attending any vehicle or other property damaged in such accident, and shall give such information and upon request exhibit such license or permit and the name of the insurer and policy number to any police officer at the scene of the accident *or who is investigating the accident*.

(2) Such driver, insofar as possible, shall immediately make efforts to determine whether any person involved in such accident was injured or killed, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

(b) If no police officer is present, the driver of any vehicle involved in such accident, or any occupant of such vehicle 18 years of age or older, shall immediately report such accident, by the quickest available means of communication, to the nearest office of a duly authorized police authority if:

(1) There is apparently property damage of $1,000 or more;
(2) Any person involved in the accident is injured or killed; or
(3) The persons specified in subsection (a) are not present or in condition to receive such information.

(c) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with failing to provide the name of such person's insurance company and policy number as required

in subsection (a), shall be convicted if such person produces in court, within ~~20~~ *10* days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number, *make and year of the vehicle* and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Such evidence also may be produced by displaying on a cellular phone or other type of portable electronic device evidence of financial security required by this subsection. Any person to whom such evidence of financial security is displayed shall view only such evidence of financial security. Such person shall be prohibited from viewing any other content or information stored on such cellular phone or other portable electronic devices. (K.S.A. Supp. 8-1604)

7. **Section 27: Section 27 of said Standard Traffic Ordinance relating to the duty to report accidents is hereby declared to be and is omitted and deleted.**

8. **Section 30: Section 30 of said Standard Traffic Ordinance is hereby changed to read as follows**:

(a) Driving under the influence is operating or attempting to operate any vehicle within this city while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, is .08 or more;
(2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is .08 or more;
(3) Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
(4) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; 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 driving a vehicle.

(b) (1) Driving under the influence is:
(A) An ordinance violation. On a first conviction of a violation of this section, the person convicted shall be sentence 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 nor more than $1,000. The person convicted shall serve at least 48

consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;

(B) On a second conviction of a violation of this section 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 nor more than $1,750. 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. 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, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of 120 hours;

(2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of violating this section who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the

maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(d) If a person is charged with a violation of this section involving drugs, 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.

(e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(f) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(g) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(h) For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

(1) Convictions for a violation of this section, K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:
   (A) Refusing to submit to a test to determine the presence of alcohol or drugs, as provided in K.S.A. Supp. 8-1025 or Section 30.2.1;
   (B) driving a commercial motor vehicle under the influence, K.S.A. 8-2, 144, and amendments thereto; *or section 30.1*
   (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
   (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto;
   (E) aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and
   (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) **conviction** includes:
   (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (h)(2);
   (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (h)(1) or (h)(2); and
   (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (h)(1) or (h)(2) if committed off a military reservation in this state;

(4) multiple convictions of any crime described in subsection (h)(1) or (h)(2) arising from the same arrest shall only be counted as one conviction;

(5) It is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(6) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person's lifetime.

(i) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(j) Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(k) Upon the filing of a complaint, citation, or notice to appear alleging a person has violated the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and
(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(l) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.*, or K.S.A. 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

(m)The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

(n) As used in this section:

(1) **Alcohol Concentration** means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
(2) **Imprisonment** shall include 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.
(3) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. ~~21-36a12.~~ *21-5712, and amendments thereto*. (K.S.A. Supp. 8-1567)

Ref.: For persons under 21 years of age, see also K.S.A. 8-1567a.

9. Section 30.1: Section 30.1 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle within this city while:

(1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, is .04 or more;
(2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or
(3) Committing a violation of subsection (a) of Section 30 of this ordinance.

(b) (1) Driving a commercial motor vehicle under the influence is:
(A) An ordinance violation. 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 nor more than $1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release;
(B) On a second 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 nor more than $1,750. 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. 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, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this section only after such person has served 48 consecutive hours' imprisonment. The person convicted, if place under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of the 120 hours; and
(2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A.

8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of a violation of this section who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(d) If a person is charged with a violation of this section involving drugs, 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.

(e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(f) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid b the person, the remaining balance of the fine shall become due on that date.

(g) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and
(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(h) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall: (1) Disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2, 142, and amendments thereto; and (2) suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

~~(h)~~*(i)* The court is authorized to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

~~(i)~~*(j)* Upon the filing of a complaint, citation or notice to appear alleging a violation of this section, and prior to conviction thereof, a city attorney shall request and shall receive from the: (A) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

~~(j)~~*(k)* No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section.

~~(k)~~*(l)* The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

~~(l)~~*(m)* For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:
(A) This section or K.S.A. 8-2, 144, and amendments thereto;

(B) refusing to submit to a test to determine the presence of alcohol or drugs, as provided in K.S.A. Supp. 8-1025, or Section 30.2.1;
(C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
(D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto;
(E) aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and
(F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) **conviction** includes:
(A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection ~~(l)~~*(m)*(2);
(B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection ~~(l)~~*(m)*(1) or ~~(l)~~*(m)*(2); and
(C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection ~~(l)~~*(m)*(1) or ~~(l)~~*(m)*(2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) multiple convictions of any crime described in subsection ~~(l)~~*(m)*(1) or ~~(l)~~*(m)*(2) arising from the same arrest shall only be counted as one conviction.

~~(m)~~*(n)* For the purpose of this section:

(1) **Alcohol concentration** means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;

(2) **Imprisonment** shall include 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; and

(3) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. ~~21-36a12~~ *21-5712*, and amendments thereto. (K.S.A. Supp. 8-2, 144)

10. Section 30.3: Section 30.3 of said Standard Traffic Ordinance is hereby changed

to read as follows:

(a) No person shall:

(1) Tamper with an ignition interlock device, circumvent it or render it inaccurate or inoperative;
(2) Request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;
(3) Blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or
(4) Operate a vehicle not equipped with an ignition interlock device while such person's driving privileges have been restricted to driving a motor vehicle equipped with such device.

(b) Violation of this section shall be punished by a fine of not more than $2,500 or by imprisonment for not more than one year or by both such fine and imprisonment. (K.S.A. Supp. 8-1017)

(c) In addition to any other penalties provided by law:

(1) (A) On a first conviction of a violation of subsection (a)(1) or (a)(2), the division shall extend the ignition interlock restriction period on the person's driving privileges for an additional 90 days; and
(B) On a second or subsequent conviction of a violation of subsection (a)(1) or (a)(2), the division shall restart the original ignition interlock restriction period on the person's driving privileges; and

(2) on a conviction of a violation of subsection (a)(4), the division shall restart the original ignition interlock restriction period on the person's driving privileges.

11. Section 31: Section 31 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) (1) Any driver of a motor vehicle who willfully fails or refuses to bring such driver's vehicle to a stop for a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop shall be guilty as provided by subsection (c).

(2) Any driver of a motor vehicle who willfully otherwise flees or attempts to elude a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c).

(3) It shall be an affirmative defense to any prosecution under ~~paragraph (1) of this subsection~~ subsection (a)(1) that the driver's conduct in violation of such paragraph was caused by such driver's reasonable belief that the vehicle or bicycle pursuing such driver's vehicle is not a police vehicle or police bicycle.

(b) The signal given by the police officer may be by hand, voice, emergency light, or siren:

(1) If the officer giving such signal is within or upon an official police vehicle or police bicycle at the time the signal is given, the vehicle or bicycle shall be appropriately marked showing it to be an official police vehicle or police bicycle; or

(2) If the officer giving such signal is not utilizing an official police vehicle or police bicycle at the time the signal is given, the officer shall be in uniform, prominently displaying such officer's badge of office at the time the signal is given.

(c) Every person convicted of violating subsection (a), shall upon first conviction be imprisoned for not more than six months or fined not to exceed $1,000, or both. Every person convicted of violating this section shall upon a second conviction be punished by imprisonment not to exceed one year or fined not to exceed $2,500 or both. ~~For the purpose of this section **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. **Appropriately marked** official police vehicle or police bicycle shall include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren or both and which the emergency lights or siren or both have been activated for the purpose of signaling a driver to stop a motor vehicle. (K.S.A. Supp. 8-1568)~~

(d) *(1) For the purpose of this section **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. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section it is irrelevant whether an offense occurred before or after conviction for a previous offense.*

(2) ***Appropriately marked*** *official police vehicle or police bicycle shall include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren or both and which the emergency lights or siren both have been activated for the purpose of signaling a driver to stop a motor vehicle. (K.S.A. Supp. 8-1568)*

12. Section 41: Section 41 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn; or
(2) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.
(3) a transit bus authorized under and being operated in accordance with the provisions of K.S.A. 75-5091, and amendments thereto.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway*, except as authorized under K.S.A. 75-5091, and amendments thereto*. (K.S.A. 8-1517)

13. Section 43: Section 43 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) No vehicle shall be driven to the left side of the roadway under the following conditions:

(1) When approaching or upon the crest of a grade of a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
(2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing, except that this section shall not apply to any intersection on a state or county maintained highway located outside city limits unless such intersection is marked by an official department of transportation or county road department traffic control device or pavement marking or both indicating that passing is prohibited and such marking is placed at least 100 feet before the intersection; or

(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway nor under the conditions described in subsection (a)(2) of Section 38, nor to the driver of a vehicle turning *left* into or from an alley, private road or driveway. (K.S.A. 8-1519)

14. Section 54: Section 54 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) No person shall turn a vehicle or move right or left upon a ~~highway~~ *roadway* unless and until such movement can be made with reasonable safety, nor without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last 100 feet traveled by vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal, in the manner provided herein, to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) The signals required on vehicles by subsection (b) of Section 149 shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section. (K.S.A. 8-1548)

15. Section 62: Section 62 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) The driver of a vehicle shall yield the right-of-way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any road construction zone, indicated by official traffic-control devices.

(b) The driver of a vehicle shall yield the right-of-way to any authorized vehicle which is obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of Section 172.

(c) The driver of a motor vehicle upon approaching a stationary authorized vehicle which is obviously and actually engaged in work upon a highway, when such authorized vehicle is displaying flashing lights meeting the requirements of ~~K.S.A. 8-1731, and amendments thereto,~~ *Section 172*, shall do either of the following:

(1) If the driver of the motor vehicle is traveling on a highway that consists of at least two lanes that carry traffic in the same direction of travel as that of the driver's motor vehicle, the driver shall proceed with due caution and, if possible and with due regard to the road, weather, and traffic conditions, shall change lanes into a lane that is not adjacent to that of the stationary authorized vehicle; or
(2) If the driver is not traveling on a highway of a type described in paragraph (1), or if the driver is traveling on a highway of that type but it is not possible to change lanes or if to do so would be unsafe, the driver shall proceed with due caution, reduce the speed of the motor vehicle and maintain a safe speed for the road, weather, and traffic conditions.

~~(d) Prior to July 1, 2007, a law enforcement officer shall issue a warning citation to anyone violating the provisions of subsection (c).~~

~~(e)~~*(d)* This section shall not operate to relieve the driver of an authorized vehicle from the duty to drive with due regard for the safety of all persons using the highway. (K.S.A. Supp. 8-1531)

16. Section 85: Section 85 of said Standard Traffic Ordinance is hereby changed to read as follows:

Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(a) Stop, stand or park a vehicle:

(1) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
(2) On a sidewalk;
(3) Within an intersection;
(4) On a crosswalk;
(5) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;
(6) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
(7) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
(8) On any railroad tracks;
(9) On any controlled-access highway;

(10) In the area between roadways of a divided highway, including crossovers; or
(11) At any place where official signs prohibit stopping.

(b) Stand or park a vehicle, whether occupied or not except momentarily to pick up or discharge a passenger or passengers:

(1) In front of a public or private driveway;
(2) Within 15 feet of a fire hydrant;
(3) Within 20 feet of a crosswalk at an intersection;
(4) Within 30 feet upon the approach to any flashing signal, stop sign*, yield sign* or traffic-control signal located at the side of a roadway;
(5) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance, when properly sign-posted; or
(6) At any place when official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading property or passengers:

(1) Within 50 feet of the nearest rail of a railroad crossing;
(2) At any place where official signs prohibit parking.

(d) ~~No person shall~~ Move a vehicle not lawfully under his *or her* control into any such prohibited area or away from a curb such a distance as is unlawful.

(e) ~~No person shall~~ Stand or park a vehicle in areas designated as fire lanes upon public or private property. (K.S.A. 8-1571)

17. Section 106: Section 106 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) No person shall transport in any vehicle upon a highway or street any alcoholic beverage unless such beverage is:

(1) In the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed;
(2) (A) In the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or

(B) if a motor vehicle is not equipped with a trunk, behind the last upright seat or in an area not normally occupied by the driver or a passenger; or

(3) In exclusive possession of a passenger in a vehicle which is a recreational vehicle or a bus, who is not in the driving compartment of such vehicle or who is in a portion of such vehicle from which the driver is not directly accessible.

(b) Violation of this section is punishable by a fine of not more than $200 or by imprisonment for not more than six months, or both.

(c) Except as provided in subsection (e) upon conviction or adjudication of a second or subsequent violation of this section, the judge, in addition to any other penalty or disposition ordered pursuant to law, shall suspend the person's driver's license or privilege to operate a motor vehicle on the streets and highways of this state for one year.

(d) Upon suspension of a license pursuant to this section, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

(e) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of an person convicted of violating this section, as provided in subsection (c), the judge of the court in which such person was convicted may enter an order which places conditions on such person's privilege of operating a motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of more than one year for a second violation.

Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order

imposing such conditions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator, of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this section.

Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this subsection, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

(f) It shall be an affirmative defense to any prosecution under this section that an occupant of the vehicle other than the defendant was in exclusive possession of the alcoholic beverage.

(g) The court shall report to the division every conviction of a violation of this section. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(h) For the purpose of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section:

(1) **Conviction** includes being convicted of a violation of an ordinance of any city, or resolution of any county, which prohibits the acts that K.S.A. 8-1599, as amended, prohibits;
(2) 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, second or subsequent offender, whichever is applicable; and

(3) It is irrelevant whether an offense occurred before or after conviction for a previous offense. (K.S.A. Supp. 8-1599)

18. Section 111: Section 111 of said Standard Traffic Ordinance is hereby changed to read as follows:

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private ~~driveway~~ road*, or driveway*, to be used at any fire or alarm of fire, without the consent of the fire department official in command. (K.S.A. 8-1582)

19. **Section 124: Section 124 of said *Standard Traffic Ordinance* is hereby changed to read as follows**:

Sec. 124. Riding in House Trailer *or Mobile or Manufactured Home* Prohibited. No person or persons shall occupy a house trailer*, manufactured home, as defined in subsection (a) of K.S.A. 58-4202, or mobile home, as defined in subsection (b) of K.S.A. 58-4202* while its being moved upon a public street or highway. (K.S.A. 8-1578)

20. Section 133: Section 133 of said *Standard Traffic Ordinance* is hereby changed to read as follows:

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the ~~division~~ *secretary of transportation* which shall be visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(c) No person shall sell a ~~new bicycle or~~ pedal for use on a bicycle ~~that is not equipped~~ *unless such pedal is equipped* with a reflector of a type approved by the ~~commission, on each pedal of such bicycle which is visible from the front and rear of the bicycle during darkness from a distance of 200 feet. (K.S.A. 8-1592)~~ *secretary of transportation which is visible from the front and rear of the bicycle to which it is attached during darkness from a distance of 200 feet, and no person shall sell a new bicycle, unless it is equipped with pedals meeting the requirements of this subsection. (K.S.A. 8-1592)*

21. Section 154: Section 154 of said *Standard Traffic Ordinance* is hereby changed to read as follows:

(a) Every reflector upon any vehicle referred to in Section 151 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful lower beams of head lamps, except that the visibility of reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be measured in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps *and identification lamps* shall be capable of being seen and distinguished under normal atmospheric conditions at the time lights are required at all distances between 500 feet and 50 feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between 500 feet and 50 feet from the side of the vehicle on which mounted. (K.S.A. 8-1713)

22. Section 170: Section 170 of said *Standard Traffic Ordinance* is hereby changed to read as follows:

(a) ~~Every school bus, in addition to any other equipment and distinctive markings required by this ordinance shall be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall display to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall be visible at 500 feet in normal sunlight.~~
(a) Every school bus, in addition to any other equipment and distinctive markings required by this act:

(1) Shall be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall display to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall be visible at 500 feet in normal sunlight; and
(2) every new school bus put into initial service after July 1, 2007, shall be equipped with a white flashing strobe light mounted on the roof of such bus to afford optimum visibility.

(b) Any school bus, in addition to the lights required by subsection (a), may be equipped with:

(1) Yellow signal lamps mounted near each of the four red lamps and at the same level but closer to the vertical centerline of the bus, which shall display two alternately flashing yellow lights to the front and two alternately flashing yellow lights to the rear, and these lights shall be visible at 500 feet in normal sunlight. These lights shall be displayed by the school bus driver at least 200 feet, but not more than 1,000 feet, before every stop at which the alternately flashing red lights required by subsection (a) will be actuated; or

(2) Head lamps which alternately flash on low beam or simultaneously flash on low beam, except such head lamps shall only be activated during daylight hours.

(c) The provisions of this section shall be subject to the provisions contained in K.S.A. 8-2009a*, and amendments thereto* (K.S.A. Supp. 8-1730)

23. Section 171: Section 171 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) As used in this section, **religious organization** means any organization, church, body of communicants or group, gathered in common membership for mutual edification in piety, worship and religious observances, or a society of individuals united for religious purposes at a definite place.

(b) Any church bus, or day care program bus, in addition to any other equipment and distinctive marking required by law, may be equipped with:

(1) Signal lamps which conform to the requirements of Section 170, and rules and regulations adopted pursuant thereto; and

(2) A stop signal arm which conforms to requirements therefor applicable to school buses which have been adopted by rules and regulations of the ~~Secretary of Transportation~~ *state board of education*. (K.S.A. 8-1730a)

24. Section 174: Section 174 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall

emit an unreasonably loud of harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation shall give audible warning with his horn, but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren*, whistle* or bell, except as otherwise permitted in this section.

(c) Any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Such a theft alarm signal may use a whistle, bell, horn or other audible signal but shall not use a siren.

(d) Every authorized emergency vehicle shall be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the ~~commission~~ *secretary of transportation,* but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

(e) Every truck specifically designed and equipped and used exclusively for garbage, refuse, or solid waste disposal operations shall be equipped with a whistle, bell, or other audible signal. Such whistle, bell, or other audible signal shall be used only when the driver of the truck is backing such truck. Notwithstanding the provisions of this section, a city may adopt an ordinance prohibiting the activation of such whistle, bell, or other audible signal during specific periods of time during the day. (K.S.A. Supp. 8-1738)

25. Section 182: Section 182 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) Every driver who transports a child under the age of 14 years in a passenger car on a highway shall provide for the protection of such child by properly using:

(1) For a child under the age of four years an appropriate child passenger safety restraining system that meets or exceeds the standards and specifications contained in federal motor vehicle safety standard no. 213;
(2) For a child four years of age, but under the age of eight years and who weighs less than 80 pounds or is less than 4 feet 9 inches in height, an appropriate child passenger safety restraining system that meets or

exceeds the standards and specifications contained in federal motor vehicle safety standard no. 213; or

(3) For a child 8 years of age but under the age of 14 years or who weighs more than 80 pounds or is more than 4 feet 9 inches in height, a safety belt manufactured in compliance with federal motor vehicle safety standard no. 208.

(b) If the number of children subject to the requirements of subsection (a) exceeds the number of passenger securing locations available for use by children affected by such requirements, and all of these securing locations are in use by children, then there is not a violation of this section.

(c) If a securing location only has a lap safety belt available, the provisions of subsection (a)(2) shall not apply and the child shall be secured in accordance with the provisions of subsection (a)(3).

(d) It shall be unlawful for any driver to violate the provisions of subsection (a) and upon conviction such driver shall be punished by a fine of $60. The failure to provide a child safety restraining system or safety belt for more than one child in the same passenger car at the same time shall be treated as a single violation. Any conviction under the provisions of this subsection shall not be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.

(e) The $60 fine provided for in subsection (d) shall be waived if the driver convicted of violating subsection (a)(1) or (a)(2) provides proof to the court that such driver has purchased or acquired the appropriate and approved child passenger safety restraining system. At the time of issuing the citation for a violation of subsection (a)(1) or (a)(2), the law enforcement officer shall notify the driver of the waiver provisions of this subsection.

(f) No driver charged with violating the provisions of this section shall be convicted if such driver produces in the office of the arresting officer or in court proof that the child was 14 years of age or older at the time the violation was alleged to have occurred.

(g) Evidence of failure to secure a child in a child passenger safety restraining system or a safety belt under the provisions of this section shall not be admissible in any action for the purpose of determining any aspect of comparative negligence or mitigation of damages.

(h) As used in this section **passenger car** means a motor vehicle, manufactured or assembled after January 1, 1968, or a motor vehicle manufactured or assembled prior

to 1968 which was manufactured or assembled with safety belts, with motive power designed for carrying 10 passengers or fewer, including vans, but does not include a motorcycle, ~~or a motor-driven cycle~~ *a trailer or a vehicle constructed either on a truck chassis registered for a gross weight of more than 12,000 pounds or a farm truck registered for a gross weight of more than 16,000 pounds* (K.S.A. Supp. 8-1343a:8-1345)

26. Section 192: Section 192 of said Standard Traffic Ordinance is hereby changed to read as follows:

No person, except those expressly exempted, shall drive ~~or operate~~ any motor vehicle or motorized bicycle upon any highway in this city unless such person has a valid driver's license. Violation of this section is punishable by a fine of not more than $1,000 or by imprisonment for not more than six months or by both such fine and imprisonment. (K.S.A. 8-235)

27. Section 194: Section 194 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) (1) Any person who drives a motor vehicle on any street or highway at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or *revoked pursuant to K.S.A. 8-252a and amendments thereto*, shall upon a first conviction be punished by imprisonment for not more than six months or fined not to exceed $1,000, or both such fine and imprisonment. On a second or subsequent conviction of a violation of this section such person shall be punished by imprisonment for not more than one year or fined not to exceed $2,500, or both such fine and imprisonment.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257 and amendments thereto, to the return of such person's driver's license.

(3) Except as otherwise provided by subsection (a)(4) or (b), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least $100 and upon a second conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) Except as otherwise provided by subsection (b), if a person:

(A) Is convicted of a violation of this section, committed while the person's privilege to drive or privilege to obtain a driver's license was suspended or revoked for a violation of K.S.A. 8-2, 144, K.S.A. 8-1567 or K.S.A. 8-1025, and amendments thereto, or any ordinance of any city or resolution of any county or law of another state, which ordinance *or resolution* or law prohibits the acts prohibited by those statutes; and

(B) Is or has been also convicted of a violation of K.S.A. 8-2, 144, K.S.A. 8-1567 or K.S.A. 8-1025, and amendments thereto, or any ordinance of any city or resolution of any county or law of another state, which ordinance or resolution or law prohibits the acts prohibited by those statutes, committed while the person's privilege to drive or privilege to obtained a driver's license was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(b) A person on a third or subsequent conviction of this section shall be sentenced to not less than 90 days' imprisonment and fined not less than $1,500 if such person's privilege to drive a motor vehicle is canceled, suspended, or revoked because such person:

(1) Refused to submit and complete any test of blood, breath, or urine requested by law enforcement excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto;
(2) Was convicted of violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage;
(3) Was convicted of vehicular homicide, K.S.A. 21-3405*, prior to its repeal* or K.S.A. 21-5406, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442*, prior to its repeal* or K.S.A. 21-5405~~(a)(3)~~, and amendments thereto, or any other murder or manslaughter crime resulting from the operation of a motor vehicle; or
(4) Was convicted of being a habitual violator, K.S.A. 8-287, and amendments thereto.

(c) The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 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 court may place the person convicted under a house arrest program or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(d) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, **conviction** includes a

conviction of a violation of any ordinance of any city or resolution of any county or a law of any state which is in substantial conformity with this section. (K.S.A. Supp. 8-262)

28. Section 200: Section 200 of said *Standard Traffic Ordinance* is hereby changed to read as follows:

(a) Every owner ~~of a motor vehicle~~ shall provide motor vehicle liability insurance coverage in accordance with the ~~Kansas Automobile Injury Reparations Act, K.S.A. 40-3101 *et seq.*,~~ *provisions of this act* for every motor vehicle owned by such person, unless such motor vehicle: *(1)* Is included under an approved self-insurance plan as provided in K.S.A. 40-3104 (f); ~~or is otherwise expressly exempted under the laws of this state~~ *(2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or accredited nonpublic school; (3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered and the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto, has been filed; or (4) is expressly exempted from the provisions of this act.*

(b) An owner of an uninsured motor vehicle shall not permit the operation thereof upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from ~~said requirements pursuant to the laws of this state~~ *the provisions of the Kansas Automobile Injury Reparations Act.*

(c) No person shall knowingly drive an uninsured motor vehicle upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from ~~said requirements pursuant to the laws of this state~~ *the provisions of the Kansas Automobile Injury Reparations Act.*

(d) (1) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer. Such evidence of financial security which meets the requirements of subsection (e) may be displayed on a cellular phone or any other type of portable electronic device. The law enforcement officer to whom such evidence of financial security is displayed shall view only such evidence of financial responsibility. Such law enforcement officer shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device. The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security

upon such demand. The law enforcement officer shall ~~attach~~ *transmit* a copy of the insurance verification form prescribed by the secretary of revenue ~~to~~ *with* the copy of the citation ~~forwarded~~ *transmitted* to the court.

(2) No citation shall be issued to any person for failure to provide proof of financial security when evidence of financial security meeting the standards of subsection (e) is displayed upon demand of a law enforcement officer. Whenever the authenticity of such evidence is questionable, the law enforcement officer may initiate the preparation of the insurance verification form prescribed by the secretary of revenue by recording information from the evidence of financial security displayed. The officer shall immediately forward the form to the department of revenue, and the department shall proceed with verification in the manner prescribed in the following paragraph. Upon return of a form indicating that insurance was not in force on the date indicated on the form, the department shall immediately forward a copy of the form to the law enforcement officer initiating preparation of the form.

(e) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with violating subsections (b), (c) or (d) shall be convicted if such person produces in court, within 10 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. Such evidence of financial security may be produced by displaying such information on a cellular phone or any other type of portable electronic device. Any person to whom such evidence of financial security is displayed on a cellular phone or any other type of portable electronic device shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number*, make and year of the vehicle,* and the effective expiration dates of the policy, or a certificate of self-insurance signed by the commission of insurance.

(f) Any person violating any provision of this section shall be guilty of a violation of this ordinance and subject to a fine of not less than $300 nor more than $1,000 or by imprisonment for a term of not more than six months, or both such fine and imprisonment, except that any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a violation of this ordinance and subject to a fine of not less than $800 nor more than $2,500 or by imprisonment for a term not to exceed one year, or both such fine and imprisonment.

(K.S.A. Supp. 40-3104)

29. Section 201.1: Section 201.1 of said Standard Traffic Ordinance is hereby changed to read as follows:

(a) It shall be unlawful to fail to comply with a traffic citation. Failure to comply with a traffic citation means failure either to:

(1) Appear before the municipal court in response to a traffic citation and pay in full any fine and court costs imposed; or
(2) Otherwise comply with a traffic citation issued for an ordinance traffic infraction. Failure to comply with a traffic citation shall be unlawful regardless of the disposition of the charge for which such citation was originally issued.

(b) (1) In addition to penalties of law applicable under subsection (a), when a person fails to comply with a traffic citation, except for illegal parking, standing, or stopping, the municipal court in which the person should have complied with the citation shall mail notice to the person that if the person does not appear in municipal court or pay all fines, court costs and any penalties within 30 days from the date of mailing notice, the division of vehicles will be notified to suspend the person's driving privileges. The municipal court may charge an additional fee of $5 for mailing such notice. Upon the person's failure to comply within such 30 days of mailing notice, the municipal court shall electronically notify the division of vehicles. Upon receipt of a report of a failure to comply with a traffic citation under this subsection, pursuant to K.S.A. 8-255, and amendments thereto, the division of vehicles shall notify the violator and suspend the license of the violator until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the informing court. When the court determines the person has complied with the terms of the traffic citation, the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension or suspension action.

(2) (A) In lieu of suspension under paragraph (1), the driver may submit to the division of vehicles a written request for restricted driving privileges, with a non-refundable $25 applicable fee, to be applied by the division of vehicles for additional administrative costs to implement restricted driving privileges.

(B) A person whose driver's license has expired during the period when such person's driver's license has been suspended for failure to pay

fines for traffic citations, may submit to the division of vehicles a written request for restricted driving privileges, with a non-refundable $25 application fee, to be applied by the division of vehicles for additional administrative costs to implement restricted driving privileges. The division shall remit all restricted driving privilege application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund. An individual shall not qualify for restricted driving privileges pursuant to this section unless the following conditions are met: (i) The suspended license that expired was issued by the division of vehicles; (ii) the suspended license resulted from the individual's failure to comply with a traffic citation pursuant to subsection (b)(1); (iii) the traffic citation that resulted in the failure to comply pursuant to subsection (b)(1) was issued in this state; and (iv) the individual has not previously received a stayed suspension as a result of driving while suspended conviction.

~~(B)~~*(C)* Upon review and approval of the driver's eligibility, the driving privileges will be restricted by the division of vehicles for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended by the division of vehicles until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. When restricted driving privileges are approved pursuant to this section, the person's driving privileges shall be restricted to driving only under the following circumstances:

(i) In going to or returning from the person's place of employment or schooling;

(ii) In the course of the person's employment;

(ii) *in going to or returning from an appointment with a health care provider or* during a medical emergency;

(iv) In going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go by a court. ~~The provisions of this paragraph shall expire on January 1, 2012.~~

(c) Except as provided in subsection (d), when the municipal court notifies the division of vehicles of a failure to comply with a traffic citation pursuant to

subsection (b), the court shall assess a reinstatement fee of $59 for each charge on which the person failed to make satisfaction regardless of the disposition of the charge for which such citation was originally issued and regardless of any application for restricted driving privileges. Such reinstatement fee shall be in addition to any fine, restricted driving privilege application fee, municipal court costs and other penalties. The court shall remit all reinstatement fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto.

(d) The municipal court shall waive the reinstatement fee provided for in subsection (c), if the failure to comply with a traffic citation was the result of such person enlisting in or being drafted into the armed services of the United States, being called into service as a member of a reserve component of the military service of the United States, or volunteering for such active duty, or being called into service as a member of the State of Kansas national guard, or volunteering for such active duty, and being absent from Kansas because of such military service. In any case of a failure to comply with a traffic citation which occurred on or after August 1, 1990, and prior to the effective date of this act, in which a person was assessed and paid a reinstatement fee and the person failed to comply with a traffic citation because the person was absent from Kansas because of any such military service, the reinstatement fee shall be reimbursed to such person upon application therefor. (K.S.A. Supp. 8-2110, as amended)

No fewer than three copies of said *Standard Traffic Ordinance* shall be marked or stamped "Official Copy as Adopted By Ordinance No._____", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The police department, municipal judge and all administrative departments of the city charged with enforcement of the ordinance shall be supplied, at the cost of the city, such number of official copies of such *Standard Traffic Ordinance* similarly marked, as may be deemed expedient.

Section 2. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.

(a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.

(b) All traffic violations which are included within this ordinance and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

Section 3. PENALTY FOR SCHEDULED FINES. The fine for violation of an ordinance traffic

infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than -0- nor more than $2,500.00. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the Court not to exceed $2,500.00.

Section 4. Ordinance No. 3871, as passed on September 12, 2013, and as published on September 16, 2013, is hereby repealed.

Section 5. This ordinance shall take effect and be in force from and after its publication in The Hays Daily News, the official city newspaper.

PASSED by the Commission the _____ day of September, 2014.

APPROVED AND SIGNED by the Mayor this _____ day of September, 2014.

_____
HENRY SCHWALLER, IV
Mayor

ATTEST:

_____
BRENDA KITCHEN
City Clerk

2014 Standard Traffic Ordinance Revisions

Prepared by Ed Klumpp.
Please report any errors or corrections to ed.klumpp@KsLawEnforcementInfo.com.

The following is a list providing the specifics of amendments made to the 2014 version of the Standard Traffic Ordinances published by the Kansas League of Municipalities. The list was compiled after several inquiries from cities for the information and confirming the League did not have such a list available.

There were few amendments to state traffic statutes in 2014, and it appears the League has completed a thorough review of the STOs and their related state statutes resulting in a large number of minor and clean-up amendments to the STOs, in addition to the 2014 state law amendments.

This list has not been reviewed by nor sanctioned by the Kansas League of Municipalities.

Section 1 – Definitions

Church Bus – Changed "motor vehicle" to "bus." (From KSA 8-1730a which was not amended in 2014) NOTE: This brings this definition in line with KSA 8-1730a.

Day Care Program – Changed "mentally retarded and other handicapped persons" to "people with intellectual or other disabilities." Changed "the severely and young retarded or handicapped" to "young people with severe intellectual and other disabilities." (Reflects changes to KSA 39-1006, defining "Day Care Programs," which was last amended in 2012.)

Day Care Program Bus – Added "or used by a child care facility licensed by the Kansas department of health and environment who provides transportation for children six <u>and</u> 18 years of age." (From KSA 8-1730a which was not amended in 2014. KSA 8-1730 uses "six <u>through</u> 18 years of age.)

Electric Vehicle – Changed subsection numbers to (a) and (b) from (1) and (2). (From KSA 8-126 (g). NOTE: KSA 8-126 (g) still uses (1) and (2).)

Toxic Vapors – Changed subsection numbers to (a) through (o) from (1) through (15). (From KSA 21-5712. NOTE: KSA 21-5712 still uses (1) through (15).)

Section 11 – Manual and Specifications for Traffic Control Devices
Changes the referenced manual from "the manual and specifications adopted by the state highway commission" to "the state manual and specifications." Changes the KSA reference from KSA 8-2005a to KSA 8-2005.

Section 13.1 – Traffic Control Signal and Preemption Devices
Subsection (a) changed from "any person to possess" to "any person to knowingly possess" consistent with KSA 21-6324. Adds "Except as provided in subsection (c)," to subsection (a). (Technical clean up.)

Section 23 – Accident Involving Death or Personal Injury

Added subsection (c) requiring compliance with section 26.1. This makes it consistent with KSA 8-1602 subsection (d). It appears to me this amendment in the STO has moved subsections (b) (1) and (2) under subsection (c) but they should still be under subsection (b).

Section 24 – Accident Involving Damage to Vehicle or Other Property

Deleted. KSA 8-1603 was repealed in 2011. Although the title of section 23 doesn't reflect it, that section also covers what was in section 24.

Section 25 – Duty to Give Information and Render Aid

Added "or who is investigating the accident" to the end of subsection (a)(1); changed "20 days" to "10 days" in line six of subsection (c); and added "make and year of the vehicle" after "policy number" in line 14 of subsection (c). This is consistent with the amendment to KSA 8-1604 in 2011.

Section 27 – Duty to Report Accidents

Deleted. 8-1606 was repealed in 2011. Section 25 has the provisions that were in this section.

Section 30 – Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties

Added "or section 30.1" at the end of subsection (h)(2)(B). Changed referenced statute in subsection (n)(3) from "KSA 21-36a12" to "KSA 21-5712." (Technical clean up.)

Section 30.1 – Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs

Added subsection (h) which is directive to the division of vehicles regarding administrative driver's license actions upon conviction. This results in renumbering the remaining subsections and changing any references to those amended subsection numbers. Changed referenced statute in subsection (n)(3) from "KSA 21-36a12" to "KSA 21-5712." (Technical clean up based on KSA 8-2,144.)

Section 30.3 – Ignition Interlock Devices; Tampering

Adds subsection (c) relating to the administrative action by the division of vehicles upon conviction to extend the required period for ignition interlock devices. This is consistent with KSA 8-1017 as amended in 2011.

Section 31 – Fleeing or Attempting to Elude a Police Officer

In subsection (a)(3), changed "under paragraph (1) of this subsection" to "under subsection (a)(1)." Split what was subsection (c) into subsections (c), (d)(1), and (d)(2) and adds the new KSA provision on how the first, second, third, or subsequent conviction is determined to subsection (d)(1). (Reflects 2014 amendments to KSA 8-1568.)

Section 41 – When Passing on the Right is Permitted

Added section (a)(3) relating to transit buses, bringing the STO into alignment with KSA 8-1517 as amended in 2010.

Section 43 – Further Limitations on Driving on Left of Center of Roadway

At the end of subsection (b), changed "vehicle turning into or from" to "vehicle turning left into or from." This makes the STO the same as KSA 8-1519 which was last amended in 1987.

Section 54 – Turning Movements and Required Signals

Added commas before and after "in the manner provided herein" on lines 3 and 4 of subsection (c). (Technical correction.)

Section 62 – Highway Construction and Maintenance

Changed the reference from "KSA 8-1731" to "Section 172." (Technical correction.)

Section 85 – Stopping, Standing, or Parking Prohibited in Specified Places

Adds "yield sign" to the list of signs in subsection (b)(4) with parking prohibited within 30 feet. (This is consistent with KSA 8-1571 which has always included "yield signs.") Removed the duplicative "No person shall" from the beginning of subsections (d) and (e). (Technical correction.)

Section 106 – Transportation of Alcoholic Beverages

Added subsection (a)(2)(B) describing where open containers are allowed in a vehicle not equipped with a trunk. (This brings the STO in alignment with the amendment made to KSA 8-1599 in 2006.)

Section 111 – Crossing a Fire Hose

Changes "on any street or private driveway" to "on any street or private road, or driveway" making it consistent with the wording of KSA 8-1582 since 1974.

Section 124 – Riding in House Trailer or Mobile or Manufactured Home Prohibited

Added the references to the definitions in KSA 58-4202 for manufactured and mobile homes. Those references also exist in KSA 8-1578.

Section 133 – Lamps and Other Equipment on Bicycles

Changed "approved by the division" to "approved by the secretary of transportation" in subsection (a) relating to the rear reflector requirement. This is consistent with the provision existing in KSA 8-1592. Strikes "new bicycle or" from subsection (c) relating to the prohibiting sales without rear reflectors on the pedals. Makes this provision in the STO the same as in KSA 8-1592.

Section 154 – Visibility of Reflectors, Clearance Lamps, and Marker Lamps

Added "and identification lamps" to subsection (b) making it the same as KSA 8-1713 which was last amended in 1974.

Section 170 – School Buses

Amended subsection (a) by reformatting it, changing "required by this ordinance" to "required by this act", and adding subsection (a)(2) requiring the white strobe light on buses manufactured after July 1, 2007. This makes the STO the same as KSA 8-1730.

Section 174 – Horns and Warning Devices

Added "whistle" to the list of prohibited devices in subsection (b) making this subsection the same as KSA 8-1738 last amended in 2004.

Section 182 – Child Passenger Safety Restraining Systems

In line 7 of subsection (h) listing exempted vehicles, deleted "or a motor-driven cycle" and added "a trailer or a vehicle constructed either on a truck chassis registered for a gross weight of more than 12,000 pounds or a farm truck registered for a gross weight of more than 16,000 pounds." This makes the STO provision the same as in KSA 8-1343a which was last amended in 2005.

Section 192 – Driver's License

Deleted "or operate" from the second line making it consistent with KSA 8-235.

Section 193 – Driver's License in Possession

This STO is listed as being amended, however there were no changes. NOTE: This STO has some differences from KSA 8-244. Instead of "law enforcement officer" the KSA uses "officer of a court of competent jurisdiction or any peace officer, examiner or officer of the division of vehicles." The STO does not include the option for the arrested person to produce the license at the "office of the arresting officer" which is an option in KSA.

Section 194 – Driving While License Canceled, Suspended, or Revoked

Added "or resolution" to the 9th line of subsection (a)(4)(A) making it the same as KSA 8-262, which was last amended in 2012. Also added "prior to its repeal" in two places in subsection (b)(3). (Technical corrections matching KSA 8-262.)

Section 200 – Motor Vehicle Liability Insurance

This STO, especially subsection (a), was rewritten to substantially be the same as KSA 40-3104, although not all provision of the KSA are included. At the end of the third line from the end of subsection (e), added "make and year of the vehicle" to the required data on the proof of insurance form, this has been in KSA 40-3104 in the past.

Section 201 – There were no changes.

Section 201.1 – Failure to Comply with a Traffic Citation

Subsection (b)(2)(B) was totally amended and subsection (b)(2)(C) was added to match the 2014 amendments to KSA 8-2110.

OVERVIEW OF CHANGES TO THE 2014 STANDARD TRAFFIC ORDINANCE FOR KANSAS CITIES

Brief outline of changes made to ordinance

Words Added ~~**Words Deleted**~~

Sec. 1. Definitions.

(pages 7 and 8) Language changed to the definition of Church Bus. Language changed to the definition of Day Care Programs. Language deleted from the definition of Day Care Program Bus.

> **Church Bus.** Every ~~motor vehicle~~ bus owned by a religious organization and operated for the transportation of persons to or from services or activities of such religious organization.
>
> **Day Care Programs.** Those which provide day service for development in self-help, social, recreational and work skills for ~~mentally retarded and other handicapped persons,~~ people with intellectual and other disabilities, giving priority to providing services for ~~the severely and young retarded or handicapped~~ young people with severe intellectual and other disabilities.
>
> **Day Care Program Bus.** Every ~~motor vehicle~~ bus used primarily to carry out functions of a day care program or used by a child care facility licensed by the Kansas department of health and environment who provides transportation for children six and 18 years of age.

Sec. 11. Manual and Specifications for Traffic Control Devices.

(pages 25 and 26) Removed and added language to Section 11.

> All traffic control devices shall conform to the ~~manual and specifications as adopted by the state highway commission (K.S.A. 8-2005a)~~ state manual and specifications. (K.S.A. 8-2005)

Sec. 13.1. Traffic Control Signal Preemption Devices.

(page 29) Added language to subsection (a). Changed K.S.A. Supp. number in subsection (b).

(a) Except as provided in subsection (c), it shall be unlawful for any person to knowingly possess a traffic control signal preemption device.

(b) A person convicted of violating subsection (a) shall be guilty of a code violation and subject to a fine of not more than $1,000 or by imprisonment for not more than six months or by both such fine and imprisonment. (K.S.A. Supp. ~~21-4223~~ 21-6324)

(c) The provisions of this section shall not apply to the operator, passenger, or owner of any of the following authorized emergency vehicles, in the course of such person's emergency duties:

(1) Publicly owned fire department vehicles;
(2) Publicly owned police vehicles; or
(3) Motor vehicles operated by ambulance services permitted by the emergency medical services board.

Sec. 23. Accident Involving Death or Personal Injuries; Penalties.

(pages 32 and 33) Added subsection (c) and moved subsections (b)(1) and (b)(2) under subsection (c).

(a) The driver of any vehicle involved in an accident resulting in injury to, great bodily harm to or death of any person or damage to any attended vehicle or property shall immediately stop such vehicle at the scene of such accident, or as close thereto as possible, but shall then immediately return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of Section 25.

(b) A person who violates subsection (a) when an accident results in:

(c) The driver shall comply with the provisions of section 26.1.

(1) Total property damages of less than $1,000 shall be punished as provided in Section 201.
(2) Any person who violates this section which results in injury to any person or property damages in excess of $1,000 shall be punished by imprisonment for not more than one year or by a fine of not more than $2,500, or by both such fine and imprisonment. (K.S.A. Supp. 8-1602)

Sec. 24. Accident Involving Damage to Vehicle or Other Property

(page 33) Deleted the entire section.

~~(a) The driver of any vehicle involved in any accident resulting only in damage to a vehicle or other property which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of Section 25 of this ordinance. Every such stop shall be made without obstructing traffic more than is necessary.~~

~~(b) The driver under subsection (a), if possible shall comply with the provisions of section 26.1. (K.S.A. Supp. 8-1603)~~

Reserved for Future Use.

Sec. 25. Duty to Give Information and Render Aid.

(pages 33 and 34) Added language to subsection (a)(1) and subsection (c).

(a) (1) The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any attended vehicle or other property shall give such driver's name, address, and the registration number of the vehicle such driver is driving, and upon request shall exhibit such driver's license or permit to drive, the name of the company with which there is in effect a policy of motor vehicle liability insurance covering the vehicle involved in the accident and the policy number of such policy to any person injured in such accident or to the driver or occupant of or person attending any vehicle or other property damaged in such accident, and shall give such information and upon request exhibit such license or permit and the name of the insurer and policy number to any police officer at the scene of the accident or who is investigating the accident.

(2) Such driver, insofar as possible, shall immediately make efforts to determine whether any person involved in such accident was injured or killed, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is

necessary or if such carrying is requested by the injured person.

(b) If no police officer is present, the driver of any vehicle involved in such accident, or any occupant of such vehicle 18 years of age or older, shall immediately report such accident, by the quickest available means of communication, to the nearest office of a duly authorized police authority if:

(1) There is apparently property damage of $1,000 or more;
(2) Any person involved in the accident is injured or killed; or
(3) The persons specified in subsection (a) are not present or in condition to receive such information.

(c) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with failing to provide the name of such person's insurance company and policy number as required in subsection (a), shall be convicted if such person produces in court, within ~~20~~ 10 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number, make and year of the vehicle and the effective and expiration dates of the policy, or a certificate of self-insurance signed by the commissioner of insurance. Such evidence also may be produced by displaying on a cellular phone or other type of portable electronic device evidence of financial security required by this subsection. Any person to whom such evidence of financial security is displayed shall view only such evidence of financial security. Such person shall be prohibited from viewing any other content or information stored on such cellular phone or other portable electronic devices. (K.S.A. Supp. 8-1604)

Sec. 27. Duty to Report Accidents.

(page 36) Deleted the entire section.

~~(a) The driver of a vehicle involved in an accident resulting in injury to, great bodily harm to, or death of any person or total damage to all property to an apparent extent of $1,000 or more shall give~~

~~notice immediately of such accident by the quickest means of communication to the police department.~~

~~(b) Whenever the driver of a vehicle is physically incapable of giving an immediate notice of an accident as required in subsection (a), and there was an occupant 18 years of age or older in the vehicle at the time of the accident capable of doing so, such occupant shall make or cause to be given the notice not given by the driver.~~

~~(c) Whenever the driver of a vehicle is involved in an accident resulting in property damage in the amount of $1,000 or more and such driver believes the conduct of other individuals causing or involved in such accident would place such driver in imminent danger of bodily injury by such individuals, such driver shall be required to provide the notice required by subsection (a), as soon as the imminent danger has passed. (K.S.A. Supp. 8-1606)~~

Reserved for Future Use.

Sec. 30. Driving Under the Influence of Intoxicating Liquor or Drugs; Penalties.

(pages 36-42) Added language to subsection (h)(2)(B). Changed language in subsection (n)(3).

(a) Driving under the influence is operating or attempting to operate any vehicle within this city while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, is .08 or more;
(2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is .08 or more;
(3) Under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;
(4) Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; 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 driving a vehicle.

(b) (1) Driving under the influence is:

(A) An ordinance violation. On a first conviction of a violation of this section, the person convicted shall be sentence 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 nor more than $1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. The court may place the person convicted under a house arrest program to serve the remainder of the sentence only after such person has served 48 consecutive hours' imprisonment;

(B) On a second conviction of a violation of this section 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 nor more than $1,750. 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. 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, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this subsection only after such person has served 48 consecutive hours' imprisonment. The person convicted, if placed under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in the house arrest agreement shall not be counted as part of 120 hours;

(2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the

person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of violating this section who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment must be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(d) If a person is charged with a violation of this section involving drugs, 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.

(e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(f) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

(g) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against

such person for any violations of any of the motor vehicle laws of this state.

(h) For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

(1) Convictions for a violation of this section, K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:

(A) Refusing to submit to a test to determine the presence of alcohol or drugs, as provided in K.S.A. Supp. 8-1025 or Section 30.2.1;

(B) driving a commercial motor vehicle under the influence, K.S.A. 8-2, 144, and amendments thereto; or section 30.1

(C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;

(D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto;

(E) aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and

(F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) **conviction** includes:

(A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection (h)(2);

(B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection (h)(1) or (h)(2); and

(C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection (h)(1) or (h)(2) if committed off a military reservation in this state;

(4) multiple convictions of any crime described in subsection (h)(1) or (h)(2) arising from the same arrest shall only be counted as one conviction;

(5) It is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(6) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section, and amendments thereto, only once during the person's lifetime.

(i) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

(j) Upon conviction of a person of a violation of this section, the court may order the convicted person to pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

(k) Upon the filing of a complaint, citation, or notice to appear alleging a person has violated the acts prohibited by this section, and prior to conviction thereof, a city attorney shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and

(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(l) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section to avoid the mandatory penalties established by this section. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq*., or K.S.A. 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

(m) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the city may, but shall not be

required to, elect one or two of the three prior to submission of the case to the fact finder.

(n) As used in this section:

(1) **Alcohol Concentration** means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
(2) **Imprisonment** shall include 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.
(3) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. ~~21-36a12.~~ 21-5712, and amendments thereto. (K.S.A. Supp. 8-1567)

Ref.: For persons under 21 years of age, see also K.S.A. 8-1567a.

{Editor's Note: Since 2007 the Kansas Legislature has acted to give municipal courts jurisdiction over the felony level offences of Third, Fourth, and Subsequent Driving Under the Influence (DUI), K.S.A. Supp. 8-1567 (k)(1) and (k)(3). However, K.S.A. Supp. 8-1567 (l)(2) appears to remove this authority from municipal courts. Because of this apparent conflict, and concerns about sentencing issues and cost, the Editor has determined that Third, Fourth, and Subsequent Driving Under the Influence (DUI) would not be included in this Code. Should a city wish to implement these provisions concerning prosecuting felony level DUI in municipal court, a separate ordinance will need to be adopted.}

Sec. 30.1. Driving Commercial Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs; Penalties.

(pages 42-47) Added new subsection (h) followed with the old subsection (h), now listed as subsection (i). Changed language in subsection (m)(3)(A). Changed language in subsection (m)(3)(B). Changed language in subsection (m)(3)(C). Changed language subsection (m)(4). Changed language in subsection (m)(5). Changed language in subsection (n)(3).

(a) Driving a commercial motor vehicle under the influence is operating or attempting to operate any commercial motor vehicle within this city while:
(1) The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, is .04 or more;

(2) The alcohol concentration in the person's blood or breath, as measured within three hours of the time of driving a commercial motor vehicle, is .04 or more; or
(3) Committing a violation of subsection (a) of Section 30 of this ordinance.

(b) (1) Driving a commercial motor vehicle under the influence is:
(A) An ordinance violation. 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 nor more than $1,000. The person convicted shall serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation, suspension or reduction of sentence or parole or other release;
(B) On a second 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 nor more than $1,750. 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. 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, if placed into a work release program, shall serve a minimum of 120 hours of confinement. Such 120 hours of confinement shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day. The court may place the person convicted under a house arrest program to serve the five days' imprisonment mandated by this section only after such person has served 48 consecutive hours' imprisonment. The person convicted, if place under house arrest, shall be monitored by an electronic monitoring device, which verifies the offender's location. The offender shall serve a minimum of 120 hours of confinement within the boundaries of the offender's residence. Any exceptions to remaining within the boundaries of the offender's residence provided for in

the house arrest agreement shall not be counted as part of the 120 hours; and

(2) In addition, prior to sentencing for any conviction pursuant to subsection (b)(1)(A) or (b)(1)(B), the court shall order the person to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008, and amendments thereto. The person shall be required to follow any recommendation made by the provider after such evaluation, unless otherwise ordered by the court.

(c) Any person convicted of a violation of this section who had one or more children under the age of 14 years in the vehicle at the time of the offense shall have such person's punishment enhanced by one month of imprisonment. This imprisonment shall be served consecutively to any other minimum mandatory penalty imposed for a violation of this section. Any enhanced penalty imposed shall not exceed the maximum sentence allowable by law. During the service of the enhanced penalty, the judge may order the person on house arrest, work release or other conditional release.

(d) If a person is charged with a violation of this section involving drugs, 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.

(e) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

(f) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to $5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid b the person, the remaining balance of the fine shall become due on that date.

(g) The court shall electronically report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation

of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the:

(1) Division a record of all prior convictions obtained against such person for any violation of any of the motor vehicle laws of this state; and
(2) Kansas bureau of investigation central repository all criminal history record information concerning such person.

(h) Upon conviction of a person of a violation of this section, the division, upon receiving a report of conviction, shall: (1) Disqualify the person from driving a commercial motor vehicle under K.S.A. 8-2, 142, and amendments thereto; and (2) suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. 8-1014, and amendments thereto.

~~(h)~~(i) The court is authorized to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

~~(i)~~(j) Upon the filing of a complaint, citation or notice to appear alleging a violation of this section, and prior to conviction thereof, a city attorney shall request and shall receive from the: (A) Division of vehicles a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state; and (B) Kansas bureau of investigation central repository all criminal history record information concerning such person.

~~(j)~~(k) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section.

~~(k)~~(l) The alternatives set out in subsections (a)(1), (a)(2) and (a)(3) may be pleaded in the alternative, and the city may, but shall not be required to, elect one or two of the three prior to submission of the case to the fact finder.

~~(l)~~(m) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(1) Convictions for a violation of K.S.A. 8-1567, and amendments thereto, or a violation of an ordinance of any city or resolution

of any county which prohibits the acts that such section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account, but only convictions or diversions occurring on or after July 1, 2001. Nothing in this provision shall be construed as preventing any court from considering any convictions or diversions occurring during the person's lifetime in determining the sentence to be imposed within the limits provided for a first, second, third, fourth or subsequent offense;

(2) any convictions for a violation of the following sections occurring during a person's lifetime shall be taken into account:
   (A) This section or K.S.A. 8-2, 144, and amendments thereto;
   (B) refusing to submit to a test to determine the presence of alcohol or drugs, as provided in K.S.A. Supp. 8-1025, or Section 30.2.1;
   (C) operating a vessel under the influence of alcohol or drugs, K.S.A. 32-1131, and amendments thereto;
   (D) involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or subsection (a)(3) of K.S.A. Supp. 21-5405, and amendments thereto;
   (E) aggravated battery as described in subsection (b)(3) of K.S.A. Supp. 21-5413, and amendments thereto; and
   (F) aggravated vehicular homicide, K.S.A. 21-3405a, prior to its repeal, or vehicular battery, K.S.A. 21-3405b, prior to its repeal, if the crime was committed while committing a violation of K.S.A. 8-1567, and amendments thereto;

(3) **conviction** includes:
   (A) Entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of a crime described in subsection ~~(l)~~(m)(2);
   (B) conviction of a violation of an ordinance of a city in this state, a resolution of a county in this state or any law of another state which would constitute a crime described in subsection ~~(l)~~(m)(1) or ~~(l)~~(m)(2); and
   (C) receiving punishment under the uniform code of military justice or Kansas code of military justice for an act which was committed on a military reservation and which would constitute a crime described in subsection ~~(l)~~(m)(1) or ~~(l)~~(m)(2) if committed off a military reservation in this state;

(4) it is irrelevant whether an offense occurred before or after conviction for a previous offense; and

(5) multiple convictions of any crime described in subsection ~~(l)~~(m)(1) or ~~(l)~~(m)(2) arising from the same arrest shall only be counted as one conviction.

~~(m)~~(n) For the purpose of this section:

(1) **Alcohol concentration** means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath;
(2) **Imprisonment** shall include 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; and
(3) **Drug** includes toxic vapors as such term is defined in K.S.A. Supp. ~~21-36a12~~ 21-5712, and amendments thereto. (K.S.A. Supp. 8-2, 144)

Sec. 30.3. Ignition Interlock Devices; Tampering.

(pages 53 & 54) Added subsection (c), subsection (c)(1)(A), subsection (c)(1)(B) and subsection (c)(2).

(a) No person shall:

(1) Tamper with an ignition interlock device, circumvent it or render it inaccurate or inoperative;
(2) Request or solicit another to blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device;
(3) Blow into an ignition interlock device, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with such device; or
(4) Operate a vehicle not equipped with an ignition interlock device while such person's driving privileges have been restricted to driving a motor vehicle equipped with such device.

(b) Violation of this section shall be punished by a fine of not more than $2,500 or by imprisonment for not more than one year or by both such fine and imprisonment. (K.S.A. Supp. 8-1017)

(c) In addition to any other penalties provided by law:

(1) (A) On a first conviction of a violation of subsection (a)(1) or (a)(2), the division shall extend the ignition interlock restriction period on the person's driving privileges for an additional 90 days; and

(B) On a second or subsequent conviction of a violation of subsection (a)(1) or (a)(2), the division shall restart the original ignition interlock restriction period on the person's driving privileges; and

(2) on a conviction of a violation of subsection (a)(4), the division shall restart the original ignition interlock restriction period on the person's driving privileges.

{Editor's Note: K.S.A. 8-1015(e) seems to provide an exception to K.S.A. 8-1017(a)(4) as replicated in STO section 30.3 (a)(4) with regard to driving an employer's vehicle. However, there are also exceptions to this exception. Please see K.S.A. 8-1015 for further guidance.**}**

Sec. 31. Fleeing or Attempting to Elude a Police Officer.

(pages 55 & 56) Removed and added language to subsection (a)(3). Removed language from subsection (c). Added subsection (d)(1) and subsection (d)(2).

(a) (1) Any driver of a motor vehicle who willfully fails or refuses to bring such driver's vehicle to a stop for a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop shall be guilty as provided by subsection (c).

(2) Any driver of a motor vehicle who willfully otherwise flees or attempts to elude a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c).

(3) It shall be an affirmative defense to any prosecution under ~~paragraph (1) of this subsection~~ subsection (a)(1) that the driver's conduct in violation of such paragraph was caused by such driver's reasonable belief that the vehicle or bicycle pursuing such driver's vehicle is not a police vehicle or police bicycle.

(b) The signal given by the police officer may be by hand, voice, emergency light, or siren:

(1) If the officer giving such signal is within or upon an official police vehicle or police bicycle at the time the signal is given, the vehicle or bicycle shall be appropriately marked showing it to be an official police vehicle or police bicycle; or
(2) If the officer giving such signal is not utilizing an official police vehicle or police bicycle at the time the signal is given, the officer shall be in uniform, prominently displaying such officer's badge of office at the time the signal is given.

(c) Every person convicted of violating subsection (a), shall upon first conviction be imprisoned for not more than six months or fined not to exceed $1,000, or both. Every person convicted of violating this section shall upon a second conviction be punished by imprisonment not to exceed one year or fined not to exceed $2,500 or both. ~~For the purpose of this section **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. **Appropriately marked** official police vehicle or police bicycle shall include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren or both and which the emergency lights or siren or both have been activated for the purpose of signaling a driver to stop a motor vehicle. (K.S.A. Supp. 8-1568)~~

(d) (1) For the purpose of this section **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. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section it is irrelevant whether an offense occurred before or after conviction for a previous offense.
(2) **Appropriately marked** official police vehicle or police bicycle shall include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren or both and which the emergency lights or siren both have been activated for the purpose of signaling a driver to stop a motor vehicle. (K.S.A. Supp. 8-1568)

Sec. 41. When Passing on the Right is Permitted.

(page 60) Added subsection (a)(3). Added language to subsection (b).

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn; or
(2) Upon a roadway with unobstructed pavement of sufficient width for two or more lines of vehicles moving lawfully in the direction being traveled by the overtaking vehicle.
(3) a transit bus authorized under and being operated in accordance with the provisions of K.S.A. 75-5091, and amendments thereto.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. Such movement shall not be made by driving off the roadway, except as authorized under K.S.A. 75-5091, and amendments thereto. (K.S.A. 8-1517)

Sec. 43. Further Limitations on Driving on Left of Center of Roadway.

(page 61) Added language to subsection (b).

(a) No vehicle shall be driven to the left side of the roadway under the following conditions:

(1) When approaching or upon the crest of a grade of a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
(2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing, except that this section shall not apply to any intersection on a state or county maintained highway located outside city limits unless such intersection is marked by an official department of transportation or county road department traffic control device or pavement marking or both indicating that passing is prohibited and such marking is placed at least 100 feet before the intersection; or
(3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway nor under the conditions described in subsection (a)(2) of Section

38, nor to the driver of a vehicle turning left into or from an alley, private road or driveway. (K.S.A. 8-1519)

Sec. 54. Turning Movements and Required Signals.

(page 66) Changed language in subsection (a).

(a) No person shall turn a vehicle or move right or left upon a ~~highway~~ roadway unless and until such movement can be made with reasonable safety, nor without giving an appropriate signal in the manner hereinafter provided.

(b) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last 100 feet traveled by vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal, in the manner provided herein, to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

(d) The signals required on vehicles by subsection (b) of Section 149 shall not be flashed on one side only on a disabled vehicle, flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear, nor be flashed on one side only of a parked vehicle except as may be necessary for compliance with this section. (K.S.A. 8-1548)

Sec. 62. Highway Construction and Maintenance.

(page 70) Changed language in subsection (c). Removed subsection (d) and replaced it with old subsection (e).

(a) The driver of a vehicle shall yield the right-of-way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any road construction zone, indicated by official traffic-control devices.

(b) The driver of a vehicle shall yield the right-of-way to any authorized vehicle which is obviously and actually engaged in work upon a highway whenever such vehicle displays flashing lights meeting the requirements of Section 172.

(c) The driver of a motor vehicle upon approaching a stationary authorized vehicle which is obviously and actually engaged in work upon a highway, when such authorized vehicle is displaying flashing lights meeting the requirements of ~~K.S.A. 8-1731, and amendments thereto,~~ Section 172, shall do either of the following:

(1) If the driver of the motor vehicle is traveling on a highway that consists of at least two lanes that carry traffic in the same direction of travel as that of the driver's motor vehicle, the driver shall proceed with due caution and, if possible and with due regard to the road, weather, and traffic conditions, shall change lanes into a lane that is not adjacent to that of the stationary authorized vehicle; or

(2) If the driver is not traveling on a highway of a type described in paragraph (1), or if the driver is traveling on a highway of that type but it is not possible to change lanes or if to do so would be unsafe, the driver shall proceed with due caution, reduce the speed of the motor vehicle and maintain a safe speed for the road, weather, and traffic conditions.

~~(d) Prior to July 1, 2007, a law enforcement officer shall issue a warning citation to anyone violating the provisions of subsection (c).~~

~~(e)~~(d) This section shall not operate to relieve the driver of an authorized vehicle from the duty to drive with due regard for the safety of all persons using the highway. (K.S.A. Supp. 8-1531)

Sec. 85. Stopping, Standing or Parking Prohibited in Specified Places.

(pages 79-81) Added language to subsection (b)(4). Removed and added language in subsection (d). Removed language in subsection (e).

Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

(a) Stop, stand or park a vehicle:

(1) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
(2) On a sidewalk;
(3) Within an intersection;
(4) On a crosswalk;

(5) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;
(6) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;
(7) Upon any bridge or other elevated structure upon a highway or within a highway tunnel;
(8) On any railroad tracks;
(9) On any controlled-access highway;
(10) In the area between roadways of a divided highway, including crossovers; or
(11) At any place where official signs prohibit stopping.

(b) Stand or park a vehicle, whether occupied or not except momentarily to pick up or discharge a passenger or passengers:

(1) In front of a public or private driveway;
(2) Within 15 feet of a fire hydrant;
(3) Within 20 feet of a crosswalk at an intersection;
(4) Within 30 feet upon the approach to any flashing signal, stop sign, yield sign or traffic-control signal located at the side of a roadway;
(5) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance, when properly sign-posted; or
(6) At any place when official signs prohibit standing.

(c) Park a vehicle, whether occupied or not, except temporarily for the purpose of, and while actually engaged in, loading or unloading property or passengers:

(1) Within 50 feet of the nearest rail of a railroad crossing;
(2) At any place where official signs prohibit parking.

(d) ~~No person shall~~ Move a vehicle not lawfully under his or her control into any such prohibited area or away from a curb such a distance as is unlawful.

(e) ~~No person shall~~ Stand or park a vehicle in areas designated as fire lanes upon public or private property. (K.S.A. 8-1571)

Sec. 106. Transportation of Alcoholic Beverage.

(pages 88-91) Added subsection (2)(A). Added subsection (2)(B).

(a) No person shall transport in any vehicle upon a highway or street any alcoholic beverage unless such beverage is:

(1) In the original unopened package or container, the seal of which has not been broken and from which the original cap, cork or other means of closure has not been removed;

(2) (A) In the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to any person in the vehicle while it is in motion; or

(B) if a motor vehicle is not equipped with a trunk, behind the last upright seat or in an area not normally occupied by the driver or a passenger; or

(3) In exclusive possession of a passenger in a vehicle which is a recreational vehicle or a bus, who is not in the driving compartment of such vehicle or who is in a portion of such vehicle from which the driver is not directly accessible.

(b) Violation of this section is punishable by a fine of not more than $200 or by imprisonment for not more than six months, or both.

(c) Except as provided in subsection (e) upon conviction or adjudication of a second or subsequent violation of this section, the judge, in addition to any other penalty or disposition ordered pursuant to law, shall suspend the person's driver's license or privilege to operate a motor vehicle on the streets and highways of this state for one year.

(d) Upon suspension of a license pursuant to this section, the court shall require the person to surrender the license to the court, which shall transmit the license to the division of motor vehicles of the department of revenue, to be retained until the period of suspension expires. At that time, the licensee may apply to the division for return of the license. If the license has expired, the person may apply for a new license, which shall be issued promptly upon payment of the proper fee and satisfaction of other conditions established by law for obtaining a license unless another suspension or revocation of the person's privilege to operate a motor vehicle is in effect.

(e) In lieu of suspending the driver's license or privilege to operate a motor vehicle on the highways of this state of an person convicted of violating this section, as provided in subsection (c), the judge of the court in which such person was convicted may enter an order which places conditions on such person's privilege of operating a

motor vehicle on the highways of this state, a certified copy of which such person shall be required to carry any time such person is operating a motor vehicle on the highways of this state. Any such order shall prescribe the duration of the conditions imposed, which in no event shall be for a period of more than one year for a second violation.

Upon entering an order restricting a person's license hereunder, the judge shall require such person to surrender such person's driver's license to the judge who shall cause it to be transmitted to the division of vehicles, together with a copy of the order. Upon receipt thereof, the division of vehicles shall issue without charge a driver's license which shall indicate on its face that conditions have been imposed on such person's privilege of operating a motor vehicle and that a certified copy of the order imposing such conditions is required to be carried by the person for whom the license was issued any time such person is operating a motor vehicle on the highways of this state. If the person convicted is a nonresident, the judge shall cause a copy of the order to be transmitted to the division and the division shall forward a copy of it to the motor vehicle administrator, of such person's state of residence. Such judge shall furnish to any person whose driver's license has had conditions imposed on it under this section a copy of the order, which shall be recognized as a valid Kansas driver's license until such time as the division shall issue the restricted license provided for in this section.

Upon expiration of the period of time for which conditions are imposed pursuant to this subsection, the licensee may apply to the division for the return of the license previously surrendered by such licensee. In the event such license has expired, such person may apply to the division for a new license, which shall be issued immediately by the division upon payment of the proper fee and satisfaction of the other conditions established by law, unless such person's privilege to operate a motor vehicle on the highways of this state has been suspended or revoked prior thereto. If any person shall violate any of the conditions imposed under this subsection, such person's driver's license or privilege to operate a motor vehicle on the highways of this state shall be revoked for a period of not less than 60 days nor more than one year by the judge of the court in which such person is convicted of violating such conditions.

(f) It shall be an affirmative defense to any prosecution under this section that an occupant of the vehicle other than the defendant was in exclusive possession of the alcoholic beverage.

(g) The court shall report to the division every conviction of a violation of this section. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

(h) For the purpose of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section:

(1) **Conviction** includes being convicted of a violation of an ordinance of any city, or resolution of any county, which prohibits the acts that K.S.A. 8-1599, as amended, prohibits;
(2) 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, second or subsequent offender, whichever is applicable; and
(3) It is irrelevant whether an offense occurred before or after conviction for a previous offense. (K.S.A. Supp. 8-1599)

Sec. 111. Crossing Fire Hose.

(page 92) Added language to the section.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private ~~driveway~~ road, or driveway, to be used at any fire or alarm of fire, without the consent of the fire department official in command. (K.S.A. 8-1582)

Sec. 124. Riding in House Trailer or Mobile or Manufactured Home Prohibited.

(page 97) Added language to the section title. Added language to the section.

Sec. 124. Riding in House Trailer or Mobile or Manufactured Home Prohibited. No person or persons shall occupy a house trailer, manufactured home, as defined in subsection (a) of K.S.A. 58-4202, or mobile home, as defined in subsection (b) of K.S.A. 58-4202 while its being moved upon a public street or highway. (K.S.A. 8-1578)

Sec. 133. Lamps and Other Equipment on Bicycles.

(pages 100 & 101) Changed language in subsection (a). Changed language in subsection (c).

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the ~~division~~ secretary of transportation which shall be visible from all distances from 100 feet to 600 feet to the rear when directly in front of lawful lower beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement.

(c) No person shall sell a ~~new bicycle or~~ pedal for use on a bicycle ~~that is not equipped~~ unless such pedal is equipped with a reflector of a type approved by the ~~commission, on each pedal of such bicycle which is visible from the front and rear of the bicycle during darkness from a distance of 200 feet. (K.S.A. 8-1592)~~ secretary of transportation which is visible from the front and rear of the bicycle to which it is attached during darkness from a distance of 200 feet, and no person shall sell a new bicycle, unless it is equipped with pedals meeting the requirements of this subsection. (K.S.A. 8-1592)

Sec. 154. Visibility of Reflectors, Clearance Lamps, and Marker Lamps.

(page 110) Added language to subsection (b).

(a) Every reflector upon any vehicle referred to in Section 151 shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within 600 feet to 100 feet from the vehicle when directly in front of lawful lower beams of head lamps, except that the visibility of reflectors on vehicles manufactured or assembled prior to January 1, 1970, shall be measured in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps and identification lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the time lights are required at all distances between 500 feet and 50 feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at all distances between 500 feet and 50 feet from the side of the vehicle on which mounted. (K.S.A. 8-1713)

Sec. 170. School Busses.

(page 120) Added subsection (a)(1). Added subsection (a)(2). Added language to subsection (c).

(a) ~~Every school bus, in addition to any other equipment and distinctive markings required by this ordinance shall be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall display to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall be visible at 500 feet in normal sunlight.~~

(a) Every school bus, in addition to any other equipment and distinctive markings required by this act:

(1) Shall be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall display to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights shall be visible at 500 feet in normal sunlight; and

(2) every new school bus put into initial service after July 1, 2007, shall be equipped with a white flashing strobe light mounted on the roof of such bus to afford optimum visibility.

(b) Any school bus, in addition to the lights required by subsection (a), may be equipped with:

(1) Yellow signal lamps mounted near each of the four red lamps and at the same level but closer to the vertical centerline of the bus, which shall display two alternately flashing yellow lights to the front and two alternately flashing yellow lights to the rear, and these lights shall be visible at 500 feet in normal sunlight. These lights shall be displayed by the school bus

driver at least 200 feet, but not more than 1,000 feet, before every stop at which the alternately flashing red lights required by subsection (a) will be actuated; or

(2) Head lamps which alternately flash on low beam or simultaneously flash on low beam, except such head lamps shall only be activated during daylight hours.

(c) The provisions of this section shall be subject to the provisions contained in K.S.A. 8-2009a, and amendments thereto (K.S.A. Supp. 8-1730)

Sec. 171. Lighting Equipment and Warning Devices on Church Buses and Day Care Program Buses.

(page 121) Changed language in subsection (b)(2).

(a) As used in this section, **religious organization** means any organization, church, body of communicants or group, gathered in common membership for mutual edification in piety, worship and religious observances, or a society of individuals united for religious purposes at a definite place.

(b) Any church bus, or day care program bus, in addition to any other equipment and distinctive marking required by law, may be equipped with:

(1) Signal lamps which conform to the requirements of Section 170, and rules and regulations adopted pursuant thereto; and

(2) A stop signal arm which conforms to requirements therefor applicable to school buses which have been adopted by rules and regulations of the ~~Secretary of Transportation~~ state board of education. (K.S.A. 8-1730a)

Sec. 174. Horns and Warning Devices.

(page 122) Added language to subsection (b). Removed and added language in subsection (d).

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 200 feet, but no horn or other warning device shall emit an unreasonably loud of harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe

operation shall give audible warning with his horn, but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle or bell, except as otherwise permitted in this section.

(c) Any vehicle may be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal. Such a theft alarm signal may use a whistle, bell, horn or other audible signal but shall not use a siren.

(d) Every authorized emergency vehicle shall be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than 500 feet and of a type approved by the ~~commission~~ secretary of transportation, but such siren shall not be used except when such vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

(e) Every truck specifically designed and equipped and used exclusively for garbage, refuse, or solid waste disposal operations shall be equipped with a whistle, bell, or other audible signal. Such whistle, bell, or other audible signal shall be used only when the driver of the truck is backing such truck. Notwithstanding the provisions of this section, a city may adopt an ordinance prohibiting the activation of such whistle, bell, or other audible signal during specific periods of time during the day. (K.S.A. Supp. 8-1738)

Sec. 182. Child Passenger Safety Restraining System.

(pages 129 & 130) Added language to subsection (h).

(a) Every driver who transports a child under the age of 14 years in a passenger car on a highway shall provide for the protection of such child by properly using:

(1) For a child under the age of four years an appropriate child passenger safety restraining system that meets or exceeds the standards and specifications contained in federal motor vehicle safety standard no. 213;

(2) For a child four years of age, but under the age of eight years and who weighs less than 80 pounds or is less than 4 feet 9 inches in height, an appropriate child passenger safety restraining system that meets or exceeds the standards and specifications contained in federal motor vehicle safety standard no. 213; or

(3) For a child 8 years of age but under the age of 14 years or who weighs more than 80 pounds or is more than 4 feet 9 inches in height, a safety belt manufactured in compliance with federal motor vehicle safety standard no. 208.

(b) If the number of children subject to the requirements of subsection (a) exceeds the number of passenger securing locations available for use by children affected by such requirements, and all of these securing locations are in use by children, then there is not a violation of this section.

(c) If a securing location only has a lap safety belt available, the provisions of subsection (a)(2) shall not apply and the child shall be secured in accordance with the provisions of subsection (a)(3).

(d) It shall be unlawful for any driver to violate the provisions of subsection (a) and upon conviction such driver shall be punished by a fine of $60. The failure to provide a child safety restraining system or safety belt for more than one child in the same passenger car at the same time shall be treated as a single violation. Any conviction under the provisions of this subsection shall not be construed as a moving traffic violation for the purpose of K.S.A. 8-255, and amendments thereto.

(e) The $60 fine provided for in subsection (d) shall be waived if the driver convicted of violating subsection (a)(1) or (a)(2) provides proof to the court that such driver has purchased or acquired the appropriate and approved child passenger safety restraining system. At the time of issuing the citation for a violation of subsection (a)(1) or (a)(2), the law enforcement officer shall notify the driver of the waiver provisions of this subsection.

(f) No driver charged with violating the provisions of this section shall be convicted if such driver produces in the office of the arresting officer or in court proof that the child was 14 years of age or older at the time the violation was alleged to have occurred.

(g) Evidence of failure to secure a child in a child passenger safety restraining system or a safety belt under the provisions of this section shall not be admissible in any action for the purpose of

determining any aspect of comparative negligence or mitigation of damages.

(h) As used in this section **passenger car** means a motor vehicle, manufactured or assembled after January 1, 1968, or a motor vehicle manufactured or assembled prior to 1968 which was manufactured or assembled with safety belts, with motive power designed for carrying 10 passengers or fewer, including vans, but does not include a motorcycle, ~~or a motor-driven cycle~~ a trailer or a vehicle constructed either on a truck chassis registered for a gross weight of more than 12,000 pounds or a farm truck registered for a gross weight of more than 16,000 pounds (K.S.A. Supp. 8-1343a:8-1345)

Sec. 192. Driver's License.

(page 135) Removed language from section.

No person, except those expressly exempted, shall drive ~~or operate~~ any motor vehicle or motorized bicycle upon any highway in this city unless such person has a valid driver's license. Violation of this section is punishable by a fine of not more than $1,000 or by imprisonment for not more than six months or by both such fine and imprisonment. (K.S.A. 8-235)

Sec. 194. Driving While License Canceled, Suspended or Revoked; Penalty.

(pages 136-138) Added language to subsection (a)(1). Added language to subsection (4)(A). Added and removed language from subsection (b)(3).

(a) (1) Any person who drives a motor vehicle on any street or highway at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a and amendments thereto, shall upon a first conviction be punished by imprisonment for not more than six months or fined not to exceed $1,000, or both such fine and imprisonment. On a second or subsequent conviction of a violation of this section such person shall be punished by imprisonment for not more than one year or fined not to exceed $2,500, or both such fine and imprisonment.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257 and amendments thereto, to the return of such person's driver's license.

(3) Except as otherwise provided by subsection (a)(4) or (b), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least $100 and upon a second conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) Except as otherwise provided by subsection (b), if a person:

(A) Is convicted of a violation of this section, committed while the person's privilege to drive or privilege to obtain a driver's license was suspended or revoked for a violation of K.S.A. 8-2, 144, K.S.A. 8-1567 or K.S.A. 8-1025, and amendments thereto, or any ordinance of any city or resolution of any county or law of another state, which ordinance or resolution or law prohibits the acts prohibited by those statutes; and

(B) Is or has been also convicted of a violation of K.S.A. 8-2, 144, K.S.A. 8-1567 or K.S.A. 8-1025, and amendments thereto, or any ordinance of any city or resolution of any county or law of another state, which ordinance or resolution or law prohibits the acts prohibited by those statutes, committed while the person's privilege to drive or privilege to obtained a driver's license was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment.

(b) A person on a third or subsequent conviction of this section shall be sentenced to not less than 90 days' imprisonment and fined not less than $1,500 if such person's privilege to drive a motor vehicle is canceled, suspended, or revoked because such person:

(1) Refused to submit and complete any test of blood, breath, or urine requested by law enforcement excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto;

(2) Was convicted of violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage;

(3) Was convicted of vehicular homicide, K.S.A. 21-3405, prior to its repeal or K.S.A. 21-5406, and amendments thereto, involuntary manslaughter while driving under the influence of

alcohol or drugs, K.S.A. 21-3442, prior to its repeal or K.S.A. 21-5405~~(a)(3)~~, and amendments thereto, or any other murder or manslaughter crime resulting from the operation of a motor vehicle; or

(4) Was convicted of being a habitual violator, K.S.A. 8-287, and amendments thereto.

(c) The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 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 court may place the person convicted under a house arrest program or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

(d) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, **conviction** includes a conviction of a violation of any ordinance of any city or resolution of any county or a law of any state which is in substantial conformity with this section. (K.S.A. Supp. 8-262)

Sec. 200. Motor Vehicle Liability Insurance.

(pages 142-144) Removed and added language to subsection (a). Removed and added language to subsection (b). Removed and added language to subsection (c). Language changed in subsection (d)(1). Added language to subsection (e).

(a) Every owner ~~of a motor vehicle~~ shall provide motor vehicle liability insurance coverage in accordance with the ~~Kansas Automobile Injury Reparations Act, K.S.A. 40-3101 *et seq.*,~~ provisions of this act for every motor vehicle owned by such person, unless such motor vehicle: (1) Is included under an approved self-insurance plan as provided in K.S.A. 40-3104 (f); ~~or is otherwise expressly exempted under the laws of this state~~ (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-5015, and amendments thereto, in an approved driver training course by a school district or an accredited nonpublic school under an agreement with a motor vehicle dealer, and such motor vehicle liability insurance coverage is provided by the school district or

accredited nonpublic school; (3) is included under a qualified plan of self-insurance approved by an agency of the state in which such motor vehicle is registered and the form prescribed in subsection (b) of K.S.A. 40-3106, and amendments thereto, has been filed; or (4) is expressly exempted from the provisions of this act.

(b) An owner of an uninsured motor vehicle shall not permit the operation thereof upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from ~~said requirements pursuant to the laws of this state~~ the provisions of the Kansas Automobile Injury Reparations Act.

(c) No person shall knowingly drive an uninsured motor vehicle upon a highway or upon property open to use by the public, unless such motor vehicle is expressly exempted from ~~said requirements pursuant to the laws of this state~~ the provisions of the Kansas Automobile Injury Reparations Act.

(d) (1) Any person operating a motor vehicle upon a highway or upon property open to use by the public shall display, upon demand, evidence of financial security to a law enforcement officer. Such evidence of financial security which meets the requirements of subsection (e) may be displayed on a cellular phone or any other type of portable electronic device. The law enforcement officer to whom such evidence of financial security is displayed shall view only such evidence of financial responsibility. Such law enforcement officer shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device. The law enforcement officer shall issue a citation to any person who fails to display evidence of financial security upon such demand. The law enforcement officer shall ~~attach~~ transmit a copy of the insurance verification form prescribed by the secretary of revenue ~~to~~ with the copy of the citation ~~forwarded~~ transmitted to the court.

(2) No citation shall be issued to any person for failure to provide proof of financial security when evidence of financial security meeting the standards of subsection (e) is displayed upon demand of a law enforcement officer. Whenever the authenticity of such evidence is questionable, the law enforcement officer may initiate the preparation of the insurance verification form prescribed by the secretary of revenue by recording information from the evidence of financial security displayed. The officer shall immediately forward the form to the department of revenue, and the

department shall proceed with verification in the manner prescribed in the following paragraph. Upon return of a form indicating that insurance was not in force on the date indicated on the form, the department shall immediately forward a copy of the form to the law enforcement officer initiating preparation of the form.

(e) Unless the insurance company subsequently submits an insurance verification form indicating that insurance was not in force, no person charged with violating subsections (b), (c) or (d) shall be convicted if such person produces in court, within 10 days of the date of arrest or of issuance of the citation, evidence of financial security for the motor vehicle operated, which was valid at the time of arrest or of issuance of the citation. Such evidence of financial security may be produced by displaying such information on a cellular phone or any other type of portable electronic device. Any person to whom such evidence of financial security is displayed on a cellular phone or any other type of portable electronic device shall be prohibited from viewing any other content or information stored on such cellular phone or other type of portable electronic device. For the purpose of this subsection, evidence of financial security shall be provided by a policy of motor vehicle liability insurance, an identification card or certificate of insurance issued to the policyholder by the insurer which provides the name of the insurer, the policy number, make and year of the vehicle, and the effective expiration dates of the policy, or a certificate of self-insurance signed by the commission of insurance.

(f) Any person violating any provision of this section shall be guilty of a violation of this ordinance and subject to a fine of not less than $300 nor more than $1,000 or by imprisonment for a term of not more than six months, or both such fine and imprisonment, except that any person convicted of violating any provision of this section within three years of any such prior conviction shall be guilty of a violation of this ordinance and subject to a fine of not less than $800 nor more than $2,500 or by imprisonment for a term not to exceed one year, or both such fine and imprisonment. (K.S.A. Supp. 40-3104)

Sec. 201.1. Failure to Comply with a Traffic Citation.

(pages 145-148) Added new subsection (b)(2)(B). Added subsection (b)(2)(C) with the language from the old subsection (b)(2)(B). Added language to subsection (b)(2)(C)(iii). Removed language from subsection (b)(2)(C)(iv).

(a) It shall be unlawful to fail to comply with a traffic citation. Failure to comply with a traffic citation means failure either to:

(1) Appear before the municipal court in response to a traffic citation and pay in full any fine and court costs imposed; or
(2) Otherwise comply with a traffic citation issued for an ordinance traffic infraction. Failure to comply with a traffic citation shall be unlawful regardless of the disposition of the charge for which such citation was originally issued.

(b) (1) In addition to penalties of law applicable under subsection (a), when a person fails to comply with a traffic citation, except for illegal parking, standing, or stopping, the municipal court in which the person should have complied with the citation shall mail notice to the person that if the person does not appear in municipal court or pay all fines, court costs and any penalties within 30 days from the date of mailing notice, the division of vehicles will be notified to suspend the person's driving privileges. The municipal court may charge an additional fee of $5 for mailing such notice. Upon the person's failure to comply within such 30 days of mailing notice, the municipal court shall electronically notify the division of vehicles. Upon receipt of a report of a failure to comply with a traffic citation under this subsection, pursuant to K.S.A. 8-255, and amendments thereto, the division of vehicles shall notify the violator and suspend the license of the violator until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the informing court. When the court determines the person has complied with the terms of the traffic citation, the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension or suspension action.

(2) (A) In lieu of suspension under paragraph (1), the driver may submit to the division of vehicles a written request for restricted driving privileges, with a non-refundable $25 applicable fee, to be applied by the division of vehicles for additional administrative costs to implement restricted driving privileges.

(B) A person whose driver's license has expired during the period when such person's driver's license has been suspended for failure to pay fines for traffic citations, the driver may submit to the division of vehicles a written request for restricted driving privileges, with a non-refundable $25 application fee, to be applied by

the division of vehicles for additional administrative costs to implement restricted driving privileges. The division shall remit all restricted driving privilege application fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the division of vehicles operating fund. An individual shall not qualify for restricted driving privileges pursuant to this section unless the following conditions are met: (i) The suspended license that expired was issued by the division of vehicles; (ii) the suspended license resulted from the individual's failure to comply with a traffic citation pursuant to subsection (b)(1); (iii) the traffic citation that resulted in the failure to comply pursuant to subsection (b)(1) was issued in this state; and (iv) the individual has not previously received a stayed suspension as a result of driving while suspended conviction.

~~(B)~~(C) Upon review and approval of the driver's eligibility, the driving privileges will be restricted by the division of vehicles for a period up to one year or until the terms of the traffic citation have been complied with and the court shall immediately electronically notify the division of vehicles of such compliance. If the driver fails to comply with the traffic citation within the one year restricted period, the driving privileges will be suspended by the division of vehicles until the court determines the person has complied with the terms of the traffic citation and the court shall immediately electronically notify the division of vehicles of such compliance. Upon receipt of notification of such compliance from the informing court, the division of vehicles shall terminate the suspension action. When restricted driving privileges are approved pursuant to this section, the person's driving privileges shall be restricted to driving only under the following circumstances:

(i) In going to or returning from the person's place of employment or schooling;

(ii) In the course of the person's employment;

(iii) in going to or returning from an appointment with a health care provider or during a medical emergency;

(iv)In going to and returning from probation or parole meetings, drug or alcohol counseling or any place the

person is required to go by a court. ~~The provisions of this paragraph shall expire on January 1, 2012.~~

(c) Except as provided in subsection (d), when the municipal court notifies the division of vehicles of a failure to comply with a traffic citation pursuant to subsection (b), the court shall assess a reinstatement fee of $59 for each charge on which the person failed to make satisfaction regardless of the disposition of the charge for which such citation was originally issued and regardless of any application for restricted driving privileges. Such reinstatement fee shall be in addition to any fine, restricted driving privilege application fee, municipal court costs and other penalties. The court shall remit all reinstatement fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto.

(d) The municipal court shall waive the reinstatement fee provided for in subsection (c), if the failure to comply with a traffic citation was the result of such person enlisting in or being drafted into the armed services of the United States, being called into service as a member of a reserve component of the military service of the United States, or volunteering for such active duty, or being called into service as a member of the State of Kansas national guard, or volunteering for such active duty, and being absent from Kansas because of such military service. In any case of a failure to comply with a traffic citation which occurred on or after August 1, 1990, and prior to the effective date of this act, in which a person was assessed and paid a reinstatement fee and the person failed to comply with a traffic citation because the person was absent from Kansas because of any such military service, the reinstatement fee shall be reimbursed to such person upon application therefor. (K.S.A. Supp. 8-2110, as amended)

Weapons—Firearms Transfer; Concealed Carry; Open Carry; Regulation by Local Government; Forfeiture, Return, and Buyback of Firearms; Criminal Use; Criminal Possession; HB 2578

HB 2578 creates new law concerning the transfer of certain federally regulated firearms. The bill also amends current statutes and creates new provisions of law concerning the regulation and possession of weapons, including firearms, handguns, and knives.

Specifically, the bill addresses:

- Transfers of certain federally regulated firearms;
- Concealed carrying of handguns;
- Open carrying of firearms;
- Regulation of firearms and knives by local units of government;
- Forfeiture, return, and buyback of firearms;
- Criminal use of weapons; and
- Criminal possession of weapons.

Transfer of Federally Regulated Firearms

Under the provisions of the bill, applications for certification of firearms' transfers by the local jurisdiction's chief law enforcement officer, as required by federal law, must be granted within 15 days, unless a condition exists that prevents the chief law enforcement officer from certifying the transfer, as specified in 27 CFR § 479.85. The bill provides that a generalized belief by the chief law enforcement officer that certain firearms have no lawful purpose and that certain persons should not possess such firearms shall not be sufficient reason to deny certification requests.

If the request for certification is not granted, the chief law enforcement officer, or someone designated by the officer, is required to provide the applicant with written notification of the denial of certification and the reason for the denial.

The bill also allows applicants to appeal denials of requests for certification of firearms' transfers in the district court of the county where the applicant resides. After reviewing the denial of certification, if the district court finds the applicant is not prohibited by state or federal law from receiving the firearm and there is no pending legal or administrative proceeding against the applicant that could result in such prohibition, the court is required to order the chief law enforcement officer to issue the certification.

Chief law enforcement officers certifying and approving transfers under the provisions of the bill are not liable for any act committed by another person with the firearm after the transfer.

The bill adopts definitions for the terms "certification" and "chief law enforcement officer" from 27 CFR § 479.85, and adopts the definition of "firearm" from 26 USC § 5845.

Concealed Carrying of Firearms

The bill creates new prohibitions for municipalities related to their employees and specifically to employees who are concealed carry of handgun license holders. Municipal employers of concealed carry license holders cannot require disclosure by municipal employees who possess concealed carry of handgun licenses. Municipalities cannot terminate, demote, discipline, or otherwise discriminate against an employee based on the employee's refusal to disclose the employee's status as a concealed carry license holder. Municipal employers are prohibited from creating a record of any employee's possession or disclosure of a concealed carry license. The bill requires any such records created by a municipality before the effective date of the bill be destroyed by July 31, 2014.

The bill adds a conviction for any of the offenses in KSA 2013 Supp. 21-6304(a)(1) (criminal possession of a weapon), as amended elsewhere in this bill, to include all weapons, and not only firearms, as a reason the Attorney General will deny an application for a concealed carry handgun license. This provision also requires the Attorney General to deny the concealed carry application of an applicant whose juvenile offenses, had the offenses been committed by an adult, would have constituted the commission of any of the offenses in KSA 2013 Supp. 21-6304(a)(1).

Open Carrying of Firearms

The bill adds new posting requirements for buildings where the open carrying of firearms can be prohibited as authorized in this legislation. The new provision makes it a violation of this statute to carry an unconcealed firearm into a building that was conspicuously posted according to the new requirements and posted in accordance with rules and regulations the bill requires the Attorney General to adopt.

The bill replaces the law concerning the operation, possession, or carrying of a concealed handgun under the influence of alcohol or illegally used controlled substances with a new provision applying the penalties for possessing or carrying any firearm under the influence, not just concealed handguns addressed in prior law.

The bill defines "possession of a firearm under the influence" as 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. The bill amends the standards of evidence to be used in prosecutions related to possession of firearms under the influence to make them more consistent with existing law related to driving under the influence of drugs or alcohol. The bill also establishes civil penalties for refusal to submit to testing required under the bill ($1,000 for each violation) and license revocations for concealed carry license holders after conviction of possession of a firearm while under the influence (revocation of concealed carry license for a minimum of one year for a first offense and three years for a second or subsequent offense).

Regulation of Firearms and Knives by Local Units of Government

Statutes passed during the 2013 Session are expanded to prohibit cities and counties from adopting or enforcing ordinances, resolutions, regulations, or administrative actions governing the purchase, transfer, ownership, storage, carrying, or transporting of firearms, ammunition, or any related component. Cities and counties also are prohibited from adopting or enforcing any ordinances, resolutions, or regulations relating to the sale of firearms by individuals having federal firearms licenses, if the local controls are more restrictive than any other ordinance, resolution, or regulation governing the sale of any other commercial good. Ordinances, resolutions, or regulations adopted before the effective date of the bill are deemed null and void.

Cities and counties are permitted to adopt ordinances, resolutions, or regulations pursuant to the law pertaining to concealed handguns in public buildings (KSA 2013 Supp. 75-7c20) relative to the personnel policies governing concealed carry of handguns by city or county employees, so long as in compliance with this law.

A new provision shields local units of government from being liable for the wrongful acts or omissions related to carrying a firearm, including acts or omissions by municipal employees.

The bill repeals statutory provisions delegating to local units of government the authority to regulate open carry and transportation of a firearm.

Legislation from the 2013 Session is expanded with regard to municipal regulation of knives. Municipalities cannot enact or enforce any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components. Any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components that is more restrictive than regulation on any other commercial product is prohibited. Such ordinances, resolutions, regulations, or taxes adopted prior to the effective date of the bill are void.

Additionally, individuals cannot be prosecuted for violating municipal regulations on knives or knife-making components between July 1, 2013, and the effective date of the bill (July 1, 2014). Violations occurring before the effective date are added to the list of reasons for which a court will be required to order expungement of an individual's record. Any person convicted of any municipal violation before the effective date will be given the ability to petition the court for expungement.

Forfeiture and Return of Firearms

The bill repeals certain provisions concerning the forfeiture of firearms, adding new language that weapons or ammunition not covered elsewhere by statutes must be, at the discretion of the court:

- Forfeited to the law enforcement agency that seized the weapon for sale or trade to a licensed federal firearms dealer;

- Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, or comparison by the forensic laboratory;
- Forfeited to a county forensic laboratory for law enforcement, testing, or comparison; or
- Forfeited to the Kansas Department of Wildlife, Parks and Tourism for use pursuant to KSA 2013 Supp. 32-1047 (seizure of wildlife, devices, equipment, and firearms).

The bill also addresses the return of seized weapons. Individuals not convicted of a violation and not prosecuted as juveniles must be notified that the weapon can be retrieved by the individuals after the law enforcement agency verifies the weapon is not stolen. Such notification must include the location where the weapon can be retrieved and occur within 30 days of the conclusion of prosecution. Weapons that cannot be returned, are not forfeited because of the condition of the weapon, or were used in the case of a murder or manslaughter will be destroyed.

The existing statute concerning forfeiture (KSA 2013 Supp. 21-6307) is repealed, and the new forfeiture provisions are moved to the general criminal procedures statute found in KSA 2013 Supp. 22-2512.

Firearms Buyback Programs

The bill prohibits local government taxes from being used to implement, administer, or operate a firearms buyback program. A firearms buyback program is defined in the bill as "any program wherein individuals are offered the opportunity to gift, sell, or otherwise transfer ownership of such individual's firearm to a city or county."

Criminal Use of Weapons

Daggers, dirks, dangerous knives, straight-edged razors, and stilettos are added to the list of prohibited weapons, and the possession of any such dangerous weapon with the intent to use it against another person now constitutes the crime of criminal use of a weapon.

The bill adds language to existing law, exempting use of a firearm with a barrel less than 12 inches by a person less than 18 years of age, at a private range with permission of that person's parent or legal guardian, from the crime of criminal use of a weapon. The bill also deletes language requiring a person who is less than 18 years of age to know or have reason to know that the barrel of the firearm that a person possesses is less than 12 inches long in order to be guilty of criminal use of a weapon.

Criminal Possession of Weapons

The bill broadens language in KSA 2013 Supp. 21-6304 (criminal possession of a firearm by a convicted felon) to refer to criminal possession of a weapon instead of criminal possession of only a firearm. Additionally, the bill adds references to a previous version of the

drug code to ensure that conviction of drug crimes gives rise to the crime of criminal possession of a weapon.

Commission Work Session Agenda Memo

From: Kim Rupp, Director of Finance

Meeting: September 18, 2014

Subject: Ordinance Repealing Taxi Cab Licensing

Person(s) Responsible: Kim Rupp, Director of Finance
Brenda Kitchen, City Clerk
Don Scheibler, Chief of Police

Summary

March 1996 was the last time taxi cab licensing in Chapter 14, Article IV of the City of Hays Code of Ordinances was reviewed. Given the recent activity of two taxi cab businesses, staff feels that licensing taxi cabs are no longer a good use of City resources. Staff recommends the City Commission approve the Ordinance repealing certain provisions regarding taxi cabs.

Background

Chapter 14, Article IV, Section 14-206 through 14-215 regulates and sets fees for taxi cab licensing. Section 14-213 provides for an annual license fee of $10 plus a $10 fee for each vehicle or taxicab to be used by the applicant to cover the cost of the vehicle inspections required. Section 14-215 provides for the clerk to collect a $5 individual taxi driver's license fee per driver. This code has not been reviewed and/or re-visited since March 1996.

Given the City now has two taxi cab businesses several individual license applications have been processed and only a few have resulted in actual licenses being issued. The taxi cab companies are going through an inordinate amount of applications and drivers. They have expressed that many of their applicants are job hopping and often times don't even start with them by the time the entire process discussed below is completed. There have been a total of 23 background checks completed so far in 2014 directly related to taxi cab licenses.

A check of the City Clerk listserv revealed most cities or towns in the area do not have taxi cabs due to their small size and lack of demand. Staff researched and found the following examples of taxi cab licensing fees in the state.

* Abilene-$35 fee per vehicle plus a $10 fee per taxi cab identification card issued
* Salina-$39 fee plus a $16.50 fee per cab per year
* Russell-$25 per vehicle annually (has not changed since 1973)
* Dodge City-$100 for the first cab per year, $50 each additional per year

Discussion

The first step in processing a taxi cab license application is requesting the Police Department (PD) to conduct a background check on each driver.

Once the PD receives the application, they obtain the applicant's driver's license record. They do a search of the PD and Ellis County Sheriff's Office record systems and research the applicant's involvement in any cases they find on record. PD contacts the Hays Municipal Court, Ellis County District Court, and Ellis County Attorney's office and requests any information they can release on the applicant. These usually only take a phone call and possibly a walk through the building to complete. If they learn the applicant is a recent transplant to our area, they request any available information from the municipal court and district court where they moved from. That usually takes a formal letter of request that must be mailed, and it can be a lengthy process. It usually results in at least a follow up phone call or two and up to a couple of weeks to complete. The actual time it takes to complete the background process can vary greatly between applicants. A local person with minimal record could be completed in an hour or so of actual work if done start to finish in one sitting. With applicants that have extensive local police contacts, or when they have to contact other jurisdictions, the background can easily take two work hours or more to complete. The Police Lieutenants are charged with completing the taxi cab background checks. The $5 fee is designed to cover the costs of all of the above described processing.

If the background checks are good then the City Manager reviews the application, approves if he deems appropriate and the necessary steps are taken to put on a commission agenda. If the commission approves the applicant then the Public Works department is sent paperwork to complete a taxi inspection report on each vehicle to be used for the taxi service. The $10 per vehicle fee is designed to cover the costs of the inspections.

In the meantime IT is completing the printing and laminating of the picture taxi license to be given to the driver.

Once this entire process is complete the City Clerk contacts the Taxi company to let them know if they have been completely approved and when their driver is able to pick up the license. The City Clerk then sets the company up on an annual renewal calendar for review and re-inspection.

Therefore several factors weighed into whether this process was a good use of City resources.

1. The city does not regulate/license most other local business to this degree.

2. It takes the involvement of four different departments to license one taxi driver and five different departments when establishing the business
3. There is a concern that the City may be assuming some liability in the background checks and vehicle inspections
4. The City Attorney confirmed there are no state statutes that require the city to monitor and license the taxi industry
5. The fees collected do not cover the costs incurred during the process

Legal Consideration

There are no known legal obstacles to proceeding as recommended by City Staff.

Financial Consideration

The $25 total fees collected are not recouping the cost of processing taxi cab licensing or their taxi cab driver applicants. The time involved in a normal background check by the PD Lieutenants is valued at $45.83. Creating a picture ID by the IT department and vehicle inspection at the Public Works department costs a total of $36.29. Total time for the City Clerk's and City Manager's processing and evaluation totals $64.35. Therefore the total cost to the city in setting up one taxi cab business, vehicle, and driver is $146.47.

Options

1) Approve the Ordinance repealing certain provisions of the code of ordinances regarding taxi cab licensing.
2) Provide staff with other direction
3) Do nothing

Recommendation

City staff recommends the City Commission approve the ordinance repealing certain provisions of the code of ordinances regarding taxi cab licensing.

Action Requested

Move to approve the ordinance repealing certain provisions of the code of ordinances of the City of Hays, Kansas regarding taxi cabs.

Supporting Documentation

Ordinance

ORDINANCE NO. _____

AN ORDINANCE REPEALING CERTAIN PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF HAYS, KANSAS REGARDING TAXICABS.

WHEREAS, the Governing Body of the City of Hays, Kansas recommends repealing certain provisions of the Code of Ordinances of the City of Hays, Kansas regarding taxicabs;

WHEREAS, upon due consideration it appears that the best interests of the City of Hays, Kansas, will be subserved by repealing certain provisions of the Code of Ordinances of the City of Hays, Kansas regarding taxicabs;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HAYS, KANSAS:

Section 1. That the following provisions of the Code of Ordinances of the City of Hays, Kansas, are hereby repealed in their entirety:

1. Chapter 14 Businesses, Article IV Taxicabs, Section 14-206, Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Street means and includes any street, avenue, alley, lane, court or public place in the city.

Taxicab means and includes any and all motor vehicles carrying passengers for hire for which public patronage is solicited, but shall not include a vehicle:

(1) Used exclusively for carrying passengers over fixed routes;

(2) Owned by a licensed mortician while used in conjunction with a funeral service; or

(3) The operation of which is financed in whole or in part by federal grant funding and an inspection of which is required by the granting agency on at least an annual basis.

2. Chapter 14 Businesses, Article IV Taxicabs, Section 14-207, Inspection of vehicle.

It is unlawful to operate a taxicab unless it is in good mechanical and physical condition. In the interest of public safety, any taxicab operated in the city shall be submitted to the city for inspection every six months. Such inspection shall be made to determine whether a taxicab is equipped with safely operating seat belts, brakes, lights, tires, horn, muffler, rearview mirror,

windshield wipers, taximeter, and knobs or handles upon the inside of all doors by which each door can be easily opened. If the inspection shows that any taxicab is unsafe or unsuitable for taxicab service, a written notice shall be served upon the licensee, operator, agent or employee in charge of such taxicab to remedy such defect within any period fixed by the city not exceeding 24 hours or to discontinue the use of such taxicab or vehicle, and should the licensee fail or refuse to comply with such order, then the license for such vehicle may be revoked and such license shall be subject to the penalty provided in Section 1-13.

3. Chapter 14 Businesses, Article IV Taxicabs, Section 14-208, Rates to be posted.

Each licensee shall file and maintain a copy of the current fares or rates for the carriage of persons or property with the city clerk and exhibit a copy of such schedule in each taxicab.

4. Chapter 14 Businesses, Article IV Taxicabs, Section 14-209, Taxicab license required.

It is unlawful for any person, whether acting as owner, principal, agent, employee, lessee or licensee, to operate or permit to be operated upon the streets of the city, any taxicab without first having procured a license therefor as provided in this article.

5. Chapter 14 Businesses, Article IV Taxicabs, Section 14-210, Application; contents; approval.

(a) Any person whether acting as owner, principal, agent, employee, lessee, or licensee, in order to secure a license as provided in this section for the operation of a taxicab for the carrying of passengers for hire within the city, shall file an application with the city clerk for such license, which application shall be made by the owner of such taxicab on a blank form provided by the city clerk and shall contain the following information for each taxicab to be operated:

(1) Full name and address of the owner;

(2) Length of time vehicle has been in use;

(3) Number of persons vehicle is designed to carry;

(4) Complete description of such vehicle, including motive power, model, and vehicle identification number;

(5) State license number;

(6) Principal place of business;

(7) Telephone number;

(8) Office address of owner; and if the owner is a corporation, the name and address of the resident agent of such corporation; and if the owner is a partnership, then the names of all partners; together with such other information as the city manager may require;

(9) The trade name under which the taxicab shall be operated; and

(10) The color or distinctive design of the body, if any.

(b)The application shall also be signed by the owner, if he is an individual, one partner if it is a partnership, and the managing officer of the corporation if it is a corporation.

6. Chapter 14 Businesses, Article IV Taxicabs, Section 14-211, Insurance policies, approval.

Before any license for a taxicab or vehicle carrying passengers for hire within the corporate limits of the city shall be issued under the provisions of this article, the owner and operator shall file with the city clerk an insurance policy approved by the commission, providing insurance coverage for each and every taxicab or vehicle carrying passengers for hire, owned, operated, or leased by such person, with public liability coverage of not less than $500,000.00 combined single limit for bodily injury or property damage; and such insurance coverage driven by the owner, his agent, employee, lessee or licensee. Such insurance policy shall be written with a company rated A or better and which has been admitted to write business in the state. Such insurance policy shall also contain all of the conditions required by laws of the state and by the Insurance Commissioner of the state and shall carry a uniform endorsement for the actual notice to the city of any changes thereon; such policy and endorsement of such policy shall be in a form approved by the city attorney, and such insurance policy shall further provide that it cannot be cancelled until ten days' written notice shall have been filed with the city clerk.

7. Chapter 14 Businesses, Article IV Taxicabs, Section 14-212, Approval or denial of taxicab license.

The city manager shall review the taxicab license application to determine compliance with this article and report the findings and his recommendation for approval or denial to the commission. The commission shall approve or deny the application taking into consideration the city manager's recommendation, whether it is in the best interest and convenience of the general public to have additional taxicabs beyond those already operating in the city, and whether approving the application would for any other reason be detrimental to the public interest and welfare.

8. Chapter 14 Businesses, Article IV Taxicabs, Section 14-213, Issuance of license; fee; durational transfer; suspension.

(a) Upon the approval of the application, as provided in Section 14-210, and furnishing of an insurance policy, as stated in Section 14-211, and upon paying an annual license fee of $10.00, and upon paying a fee of $10.00 for each vehicle or taxicab to be used by the applicant to cover the cost of the vehicle inspections required in this article, a license shall be issued to such applicant which shall be for a term expiring on December 31 each year, and such license may be transferred from one vehicle to another owned by the same person; provided that, in all cases, the number of taxicabs or vehicles owned or operated by the same person at any one time does not exceed the number of licenses applied and paid for; and further provided that the vehicle to which the license is transferred has passed the inspection required in Section 14-207 and the required inspection fee has been paid. All transfers must be reported in writing to the office of the city clerk within 48 hours.

(b) If a taxicab company operates or permits the operation of a taxicab in violation of this article, the city manager may suspend its taxicab company license for a period of up to ten days. The suspension may be appealed to the city commissioners by filing a notice of appeal with the city clerk, which appeal shall be heard by the city commissioners at its next regularly scheduled meeting.

(c) In the event of a second violation within a licensing year, in addition to the suspension provided for in subsection (a) of this section, the city manager may recommend to the city commissioners that the taxicab company license be revoked. The city manager's recommendation will be heard by the city commissioners at the earliest regularly scheduled meeting which will allow for five days' written notice of the hearing to the taxicab company.

9. Chapter 14 Businesses, Article IV Taxicabs, Section 14-214, Driver to be licensed; application requirements.

(a) *Application requirements and procedures.*

(1) Before any person shall drive or operate a licensed taxicab or vehicle for hire either as owner or operator, he shall have in his possession a valid driver's license issued by the state and he shall apply for and obtain a driver's license as such from the city clerk as provided in this article.

(2) Every applicant for a driver's license must be a person of the age of 18 years or older.

(3) Such applicant shall fill out the form to be provided by the city clerk, giving his full name, his address, date of birth, state driver's license number, the name of the taxicab company by which the applicant is employed, and shall be further required to

answer to questions upon such application in order to determine his qualifications as a taxicab operator.

(4) Upon receipt of such application, the chief of police shall cause an investigation to be made of the facts set forth in the application and of the record of such applicant in the municipal court, the county district court and any other courts in which the chief of police may have reason to believe the applicant has a record. The information secured from such investigation shall be forwarded to the city manager. The city manager shall consider the application and police chief's report in determining if the applicant is fit to transport the public and if he so determines then the city clerk will be directed to issue a license. Any denial of an application may be appealed to the commission at the next regular meeting of the body after such denial.

(b) *License requirements.* An operator's license shall contain a photograph of the applicant posted on it, and shall be exhibited in any taxicab driven by the licensee, the photograph to be taken by the chief of police at the time the license is granted.

(c) *Revocation of license.* The license of any driver may be revoked at any time after reasonable notice and an opportunity for a hearing before the commission for any of the following reasons:

(1) Violation of any provision of this article;

(2) Conviction of violation of any federal or state law;

(3) Operating a vehicle while under the influence of drugs or alcohol;

(4) Reckless driving;

(5) Transporting an open container;

(6) Leaving the scene of an accident;

(7) Failure to make full report of an accident to the police department;

(8) Permitting another person to use his license;

(9) Upon conviction of a second major traffic violation during any one license year. The term "major traffic violation" is defined to include speeding, nonobservance of traffic lights or signs, improper brakes, making a left or U-turn where not permitted, or driving on the wrong side of the street.

10. Chapter 14 Businesses, Article IV Taxicabs, Section 14-215, Driver license fee; expiration.

Before any such driver's license shall be issued, the applicant shall pay therefor to the city clerk a license fee of $5.00 for such license, which shall expire on December 31 of each year, and such license fee shall cover and include the cost of the photograph to be taken of such applicant by the chief of police. The driver's license application process set forth in this article shall be required annually prior to the issuance of a driver's license by the city.

Section 2. This ordinance shall take effect and be in force from and after its passage and publication in the Hays Daily News, the official city newspaper.

PASSED by the Commission on _____ ___, 2014.

_____
HENRY SCHWALLER, IV
Mayor

ATTEST:

_____
BRENDA KITCHEN
City Clerk

(SEAL)