

ORDINANCE NO. 24-28

AN ORDINANCE PERTAINING TO THE OLATHE PUBLIC OFFENSE CODE; ADDING NEW SECTION 9.17.140 AND AMENDING SECTIONS 9.01.110 AND 9.11.010 AND REPEALING THE EXISTING SECTIONS; ALSO REPEALING 9.12.045.

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

NEW SECTION ONE: Section 9.17.140 is hereby added to the Olathe Municipal Code to read as follows:

“9.17.140 Immunity from Prosecution for Certain Drug Offenses When Medical Assistance Is Sought Related to Use of a Controlled Substance

(a) A law enforcement officer shall not take a person into custody based solely on the commission of an offense described in subsection (b) if the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances, reasonably believes that the person:

(1) (A) Initiated contact with a law enforcement officer, law enforcement agency, or emergency medical services and requested medical assistance on the person's own behalf because the person reasonably believed they needed medical assistance as a result of the use of a controlled substance; and

(B) cooperated with law enforcement officers and emergency medical services personnel in providing such medical assistance;

(2) (A) was a person who rendered aid to another person who reasonably appeared to need medical assistance as a result of the use of a controlled substance or initiated contact with a law enforcement officer, law enforcement agency, or emergency medical services and requested medical assistance for another person who reasonably appeared to need medical assistance as a result of the use of a controlled substance;

(B) provided such person's full name and any other relevant information that is necessary to provide the medical assistance described in paragraph (2)(A) as

requested by law enforcement or emergency medical services;

(C) remained at the scene with the person who reasonably appeared to need medical assistance until emergency medical services personnel and law enforcement officers arrived; and

(D) cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance; or

(3) (A) was the person who reasonably appeared to need medical assistance as a result of the use of a controlled substance as described in subsection (a)(2)(A); and

(B) cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.

(b) (1) Except as provided in paragraph (2), each person who meets the criteria in subsection (a) is immune from prosecution for a violation of OMC 9.17.010, 9.17.060, or 9.17.090(A)(1).

(2) No person is immune from prosecution as provided in paragraph (1) if the quantity of controlled substances found at the scene of the encounter with law enforcement would be sufficient to create a rebuttable presumption of an intent to distribute as described in K.S.A. 21-5705(e), and amendments thereto.

(c) The provisions of this section shall not apply to a person seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.

(d) Nothing in this section shall be construed to preclude a person who is immune from prosecution pursuant to this section from being prosecuted based on evidence obtained from an independent source.

(e) A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or the officer's employer, based on the officer's compliance or failure to comply with this section. Except in cases of reckless or intentional misconduct, a law enforcement officer shall be immune from liability for arresting a

person who is later determined to be immune from prosecution pursuant to this section.

(f) As used in this section:

(1) "Controlled substance" means the same as defined in OMC 9.17.030; and

(2) "Law enforcement officer" means the same as defined in OMC 9.01.110."

SECTION TWO: Section 9.02.110 of the Olathe Municipal Code is hereby amended to read as follows:

"9.01.110 General Definitions.

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

"Act" shall also include a failure or omission to take action.

"Air gun or rifle " means any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any pellet, BB shot, or other projectile reasonably expected to cause bodily harm or property damage, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.

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

"Alcohol without liquid machine" means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

"Alcoholic liquor" or "alcoholic beverage" means includes the four (4) varieties of liquor, namely alcohol, spirits, wine and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer capable of being consumed as a beverage by a human being, but shall not include cereal malt beverages.

"Animal" means any live, vertebrate creature, domestic or wild, other than humans.

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

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

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

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

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

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

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

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

“City” or “this City” means the City of Olathe, Kansas, and all land and water within the corporate limits of the City of Olathe and the air space above such land and water.

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

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

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

“Court appointed guardian” means one who is appointed by a court and has legal authority and duty to care for another person, especially because of the other’s infancy, incapacity or disability.

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

“Deprive permanently” means:

- (1) To take from the owner the possession, use or benefit of his or her property without an intent to restore the same; or
- (2) To retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
- (3) To sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

“Distribute” means the actual or constructive transfer from one (1) person to another of some item whether or not there is an agency relationship.

“Distribute” includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one (1) person to another.

“Distribute” does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the State of Kansas, the Uniform Controlled Substances Act, or otherwise authorized by law.

“Drinking establishment” means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

“Drinking establishment” includes a railway car.

“Dwelling” means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

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

“Electronic cigarette” means a battery-powered device, whether or not such device is shaped like a cigarette, that can provide inhaled doses of nicotine [or tetrahydrocannabinols \(THC\)](#) by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

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

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

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

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

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

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

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

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

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

“Health care provider” means any person:

- (1) Licensed to practice a branch of the healing arts;
- (2) Licensed to practice psychology;
- (3) Licensed to practice professional or practical nursing;

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

“Identification document” means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be driver’s licenses, nondriver’s identification cards, birth certificates, social security cards and employee identification cards.

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

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

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

“Law Enforcement Officer” means:

- (1) Any person who by virtue of such person’s office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; ~~or~~
- (2) [Any officer of the Kansas Department of Corrections or, for the purposes of OMC 9.04.020, any employee of the Kansas Department of Corrections; or](#)
- (3) Any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

“Maliciously” means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

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

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

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

“Obtain” means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

“Obtains or 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.

“Ordinance cigarette or tobacco infraction ” means a violation of an ordinance that proscribes the same behavior as proscribed by K.S.A. 79-3321(m) or (n) and amendments thereto.

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

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

“Person” means an individual, public or private corporation, government, partnership, or unincorporated association.

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

“Police dog” means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders.

“Possession ” means knowingly having joint or exclusive control over an item or knowingly keeping some item in a place where the person has some measure of access and right of control.

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

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

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

“Public employee” means a person employed by or acting for the state or the City or by or for a county, another municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a public officer.

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

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

- (1) An executive or administrative officer of the City or of the state, or a county, another municipality or other subdivision or governmental instrumentality of or within the state.
- (2) A member of the legislature or the governing body or of a governing board of a county, municipality, or other subdivision of or within the City or state.
- (3) A judicial officer, which shall include a judge of the district or municipal court, juror, master or any other person appointed by a judge or court, to hear or determine a cause or controversy.
- (4) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.
- (5) A law enforcement officer.
- (6) Any other person exercising the functions of a public officer under color of right or law.

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

“Real property” or “real estate” means every estate, interest and right in lands, tenements and hereditaments.

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

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

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

“Sail board” means a surfboard using for propulsion with a free sail system comprising one (1) or more swivel-mounted rigs (mast, sail and booms), supported in an upright position by the crew and the wind.

“Sailboat” means any vessel, other than a sail board, that is designed to be propelled by wind action upon a sail for navigation on the water.

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

“School employee” means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12.

“Scrap metal dealer” means any person that operates a business out of a fixed location, and that is also either:

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

“Sexual intercourse” means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight,

is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

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

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

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

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

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

"Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the Protection from Abuse Act.

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

"State correctional officer or employee " means any officer or employee of the Kansas Department of Corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

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

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

“Telecommunications device” includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto.

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

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

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

“Throwing star” means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape, manufactured for use as a weapon for throwing.

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

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

- (1) Alcohols, including, but not limited to, methyl, isopropyl, propyl, or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;
- (6) Cyclohexane;

- (7) Freons, including, but not limited to, Freon 11, Freon 12, and other halogenated hydrocarbons;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naphtha;
- (12) Perchlorethylene;
- (13) Toluene;
- (14) Trichloroethane; or
- (15) Xylene.

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

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

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

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

SECTION THREE: Section 9.11.010 of the Olathe Municipal Code is hereby amended to read as follows:

“9.11.010 Disorderly Conduct.

- A. Disorderly conduct is, ~~with knowledge or probable cause to believe that such acts~~ 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; ~~or~~
2. Disturbing an assembly, meeting, or procession, not unlawful in its character; or
3. ~~The use of offensive, obscene, abusive, combative or~~ Using fighting ~~language or engaging in noisy conduct tending reasonably to arouse alarm, anger, resentment or combat in others~~ words.

B. Disorderly conduct is a Class B Public Offense.

C. 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.”

SECTION FOUR: Existing Sections 9.01.110, 9.11.010, and 9.12.045 of the Olathe Municipal Code are hereby repealed.

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

PASSED by the Governing Body this _____ day of _____, 2024.

SIGNED by the Mayor this _____ day of _____, 2024.

Mayor

ATTEST:

City Clerk

(SEAL)

APPROVED AS TO FORM:

City Attorney

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