

CHAPTER XI: PUBLIC OFFENSES

Article

- 1. UNIFORM OFFENSE CODE**
- 2. LOCAL REGULATIONS**

ARTICLE 1: UNIFORM OFFENSE CODE

Section

11-101 Incorporating Uniform Public Offense Code

§ 11-101 INCORPORATING UNIFORM PUBLIC OFFENSE CODE.

(a) There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the city, that certain code known as the Uniform Public Offense Code, Edition of 2015, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as adopted by Ord. 1497" and to which shall be attached a copy of this article, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(b) All local offenses, specifically including without limitation, Ord. 1349 concerning marijuana and drug paraphernalia (as codified in § 11-204), shall remain in full force and effect and shall not be affected by the implementation of this Uniform Public Offense Code, but shall be supplemental thereto. (Ord. 1497, passed 9-28-2015)

ARTICLE 2: LOCAL REGULATIONS

Section

- 11-201 Fraudulently obtaining execution of a document
- 11-202 Public intoxication
- 11-203 Vagrancy
- 11-204 Marijuana
- 11-205 Curfew
- 11-206 Loud, disturbing noises; prohibited
- 11-207 Same; unnecessary noise standard
- 11-208 Same; factors to be considered
- 11-209 Same; exemptions
- 11-210 Same; application for special permit
- 11-211 Same; penalties for violations

§ 11-201 FRAUDULENTLY OBTAINING EXECUTION OF A DOCUMENT.

Fraudulently obtaining execution of a document is causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred. (1996 Code, § 11-203) (Ord. 895, passed - -)

§ 11-202 PUBLIC INTOXICATION.

Public intoxication is being on a highway or street while under the influence of intoxicating liquor, narcotics or other drug to the degree that one may endanger himself, herself or other persons or property. (1996 Code, § 11-205) (Ord. 895, passed - -)

§ 11-203 VAGRANCY.

Vagrancy is:

- (a) Engaging in an unlawful occupation;
- (b) Being of the age of 18 years or over and able to work and without lawful means of support and failing or refusing to seek employment;
- (c) Loitering in any community without visible means of support;

Sabetha - Public Offenses

(d) Loitering on the streets or in a place open to the public with intent to solicit for immoral purposes; or

(e) Deriving support in whole or in part from begging.
(1996 Code, § 11-206) (Ord. 895, passed - -)

§ 11-204 MARIJUANA.

(a) *Possession of marijuana.* Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person to possess or have under such persons control any marijuana, as defined by K.S.A. 65-4101(o), as amended.

(b) *Possession of drug paraphernalia or simulated controlled substances.* No person shall use or possess with the intent to use:

(1) Any simulated controlled substances. Simulated controlled substances shall include, but not be limited to, those items as set forth in K.S.A. 65-4150(a), as amended; and

(2) Any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance, in violation of the Uniform Controlled Substances Act. Drug paraphernalia shall include, but not be limited to, those items set forth in K.S.A. 65-4150(b), as amended.

(c) *Violation.* Violation of this section is a Class A violation, as defined in the Uniform Public Offense Code, as adopted and amended by the city.

(d) *Terms and words.* All terms and words herein shall be interpreted and defined by the definitions set out in K.S.A. Chapter 65, as the same now exists or is hereafter amended.
(Ord. 1349, passed 2-12-2001)

§ 11-205 CURFEW.

(a) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) ***CURFEW HOURS.***

(A) 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday, or Thursday until 6:00 a.m. of the following day; and

(b) 12:01 a.m. until 6:00 a.m. on any Saturday or Sunday.

(2) ***EMERGENCY.*** An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes but is not limited to a fire, a natural disaster, an

automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

(3) **ESTABLISHMENT.** Any privately-owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

(4) **GUARDIAN.**

(A) A person who, under court order, is the guardian of the person of a minor; or

(B) A public or private agency with whom a minor has been placed by a court.

(5) **MINOR.** Any person under 17 years of age.

(6) **OPERATOR.** Any individual, firm, association, partnership, or corporation operating, managing, or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

(7) **PARENT.** A person who is:

(A) A natural parent, adoptive parent, or step-parent of another person; or

(B) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

(8) **PUBLIC PLACE.** Any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(9) **REMAIN.**

(A) Linger or stay; or

(B) Fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

(10) **SERIOUS BODILY INJURY.** Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(b) *Offenses.*

(1) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.

Sabetha - Public Offenses

(2) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows, the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.

(3) The owner, operator, or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(c) *Exemptions.*

(1) It is a exemption to division (b) that the minor was:

(A) Accompanied by the minor's parent or guardian;

(B) On an errand at the direction of the minor's parent or guardian, without any detour or stop;

(C) In a motor vehicle involved in interstate travel;

(D) Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;

(E) Involved in an emergency;

(F) On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;

(G) Attending an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious, or other recreational activity supervised by adults and sponsored by the city, a civic organization, or another similar entity that takes responsibility for the minor;

(H) Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech, and the right of assembly; or

(I) Married or had been married or had disabilities of minority removed in accordance with state law.

(2) It is a defense to prosecution under division (b)(3) that the owner, operator, or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(d) *Enforcement.* Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has

occurred and that, based on any response and other circumstances, including any investigation additional to the actions required by this division (d) as a reasonable person would deem necessary, no exemption in division (c) is present.

§ 11-206 LOUD, DISTURBING NOISES; PROHIBITED.

It shall be unlawful for any person to make, continue or cause to be made or continued any excessive, unnecessary or unusually loud noise or any noise which unreasonably either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city. (Ord. 1415, passed 10-10-2016)

§ 11-207 SAME; UNNECESSARY NOISE STANDARD.

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of § 11-206, but said enumeration shall not be deemed to be exclusive, to-wit:

(a) *Radios, phonographs and the like.* The playing, using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at anytime with louder volume than is necessary for convenient hearing by the person or persons who are in the room, vehicle, or on the property upon which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, vehicle or property upon which it is located shall be prima facie evidence of a violation of § 11-206.

(b) *Loudspeakers, amplifiers for advertising.* The playing, using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.

(c) *Animals, birds and the like.* The keeping of any animal or bird which, by causing frequent or long-continued noise, shall disturb the comfort or repose of any persons in the vicinity. (Ord. 1415, passed 10-10-2016)

§ 11-208 SAME; FACTORS TO BE CONSIDERED.

The factors which shall be considered in determining whether a violation of § 11-206 exists shall include, but shall not be limited to, the following:

- (a) The volume of the noise;
- (b) The intensity of the noise;

Sabetha - Public Offenses

- (c) Whether the nature of the noise is usual or unusual;
 - (d) Whether the origin of the noise is natural or unnatural;
 - (e) The volume and intensity of the background noise, if any;
 - (f) The proximity of the noise to residential sleeping facilities;
 - (g) The nature and zoning of the area within which the noise emanates, as well as where the noise can be heard;
 - (h) The density of inhabitation of the area within which the noise emanates;
 - (i) The time of the day or night the noise occurs;
 - (j) The duration of the noise;
 - (k) Whether the noise is recurrent, intermittent or consistent; and
 - (l) Whether the noise is produced by a commercial or noncommercial activity.
- (Ord. 1415, passed 10-10-2016)

§ 11-209 SAME; EXEMPTIONS.

The following uses and activities shall be exempt from the provisions of § 11-206:

- (a) Noises emanating from a park or similar open space owned and maintained by a governmental entity; and
 - (b) Noise resulting from activities permitted by law and for which a license or permit or other authorization has been granted by a governmental entity.
- (Ord. 1415, passed 10-10-2016)

§ 11-210 SAME; APPLICATION FOR SPECIAL PERMIT.

(a) A person may apply for a permit for an exemption from the provisions of § 11-206 for a specific date and time by completing an application on the form provided by the city. The application shall be accompanied by a nonrefundable \$25 application fee and shall be submitted at least seven days in advance of the date of the exemption requested on the application.

(b) A permit shall only allow an exemption from the provisions of § 11-206 on Fridays and Saturdays, between the hours of 8:00 a.m. and 10:45 p.m., and on Sundays, between the hours of 8:00 a.m. and 8:00 p.m. Provided that, a permit may be issued for the hours of 8:00 a.m. and 10:45 p.m. on the day immediately preceding Memorial Day; July 3; the day immediately preceding Labor Day; and December 31, regardless of the day of the week. Further, a permit may be issued for July 4, Memorial

Day, Labor Day and January 1, between the hours of 8:00 a.m. and 10:45 p.m., unless such holiday falls on a weekday, and then the permit shall only be issued between 8:00 a.m. and 8:00 p.m.

(c) Any permit issued by the City Administrator, or his or her designee, may include conditions that the City Administrator, or his or her designee, deems necessary to minimize the adverse effects of the noise upon the community or the surrounding neighborhood. Such conditions may include an occupancy limit for the event or location. All conditions shall be listed on the permit, and the permit holder shall conspicuously display the permit during the permitted activity, so it is readily visible from the exterior of the premises. Further, the permit holder shall conspicuously display a sign, provided by the city, outside the premises, stating that a noise permit has been issued and indicating the date and hours for which it was issued. The sign shall be posted 24 hours prior to the permit start time, and shall be promptly removed following the expiration of the permit.

(d) (1) The City Administrator, or his or her designee, or an officer of the Police Department, may revoke a permit, during the permitted activity, in the following circumstances:

(A) If the conditions of the permit are violated; or

(B) If criminal activity occurs during the permitted activity, for which a citation is issued or an arrest made, that is reasonably likely to cause injury or threat to persons or property or to create an unreasonable disturbance.

(2) Such revocation renders the permit null and void, and the permit holder shall comply with the requirements of § 11-206.

(e) If a permit holder has a permit revoked, as provided in subsection (d), the permit holder, or the organization upon whose behalf the permit was issued, may not be issued another permit for a period of two years following the date of revocation.

(Ord. 1415, passed 10-10-2016)

§ 11-211 SAME; PENALTIES FOR VIOLATIONS.

(a) Any law enforcement officer may issue a citation for a violation of this act; and, upon a first offense, impose a fine of \$25. If the violator pays the fine prior to the next court date, no court costs shall be assessed.

(b) As an alternative, any law enforcement officer may issue a notice to appear for a violation of this act; even if a first-time offense. If the violator fails to appear for court, then a warrant for that person's arrest may be issued.

(c) A second offense of this act shall carry a minimum fine of \$50, plus court costs, and a third or subsequent offense of this act shall carry a maximum fine of \$500 and, in addition to or instead of such fine, confinement in the county jail for a definite term not to exceed 30 days.

(Ord. 1415, passed 10-10-2016)

