

## CHAPTER XI. PUBLIC OFFENSES

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### ARTICLE 1. UNIFORM OFFENSE CODE

- 11-101. 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 De Soto, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of 1998, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of De Soto, Kansas," 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 section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. (Ord. 1020, Sec. 1; Code 1998)
- 11-102. SAME; MODIFICATION OF SECTIONS ADOPTED. The following additions are made to the 1997 Uniform Public Offense Code for Kansas Cities:
- (a) The following shall replace Section 10.13 in the Code:  
SECTION 10.13 — Barbed Wire. It shall be unlawful for any person to construct, set up or maintain any barbed wire or barbed wire fence or enclosure within the City except a fence that forms a complete enclosure for the purpose of retaining livestock of a type normally kept in a barbed wire enclosure.  
Violation of this Section is a Class C violation.
  - (b) The following shall be added as Section 10.18:  
SECTION 10.18 — Regulation of Possession, Transportation and Consumption of Liquor and Cereal Malt Beverages in Open Containers.
    - (a) Transportation of liquor or cereal malt beverages in open containers is the transporting in any vehicle upon a public highway, street or alley, any alcoholic liquor or cereal malt beverage except in the original container which shall not have been opened, and the seal, if any, upon which shall not have been broken or removed, and from which the original cap, cork, or top shall not have been removed, unless the open container be in the locked rear trunk or rear compartment, or any locked outside compartment which is not accessible to the driver or any other person in said vehicle while it is in motion.
    - (b) Consumption and/or possession of liquor or cereal malt beverages is the possession of any open bottle, can or container of any cereal malt beverage or alcoholic liquor on any street, alley, park or public property owned by said city and/or under lease by said city or in any place, building or other premises to which the general public has access. This section shall not apply to the consumption or possession of cereal malt beverages or alcoholic liquor within structures operated by persons

possessing a license which allows consumption or possession of cereal malt beverages or alcoholic liquor within the structure for which the license was issued.

SECTION 3: Additional Section to Provide for Regulations of Drugs. The following additional provision designated as Section 19 to Article 10 is hereby added:

SECTION 10.19 — Drugs.

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

(a) Controlled Substances means any drug or substance included in Schedules I through V of the Uniform Controlled Substances Act found in Chapter 65, Article 41 of the Kansas Statutes Annotated.

(b) Drug means:

(1) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

(3) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(4) Substances intended for use as a component of any article specified in subdivisions (1), (2), or (3) of this subsection. It does not include devices or their components, parts or accessories.

(c) Deliver or Delivery means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(d) Dangerous Drug means one that is unsafe for use except under the supervision of a practitioner because of its toxicity or other potentiality for human effect, method of use, or collateral measures necessary to use; dangerous drugs include all other drugs or compounds, preparations or mixtures thereof which the State Board of Health shall find and declare by rule or regulation duly promulgated after reasonable public notice and opportunity for hearing to have a dangerous, hallucinogenic, hypnotic, somnifacient or stimulating effect on the body of a human or animal.

(e) Marijuana means all parts of all varieties of the plant Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, sale, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

(f) Manufacture means the production, preparation, propagation, compounding conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for this own use or the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner or his agent pursuant to a lawful order of a practitioner as an incident to his or her administering or dispensing of a controlled substance in the course of his professional practice; or

(2) By a practitioner or by his authorized agent under his or her supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or hospital as an incident to his or its dispensing of a controlled substance.

(g) Patient means, as the case may be:

(1) The individual for whom a drug is prescribed or to whom a drug is administered; or

(2) The owner or the agent of the owner of the animal for which a drug is prescribed or to which a drug is administered; provided, that the prescribing or administering referred to in subdivisions (1) and (2) of this subsection is in good faith and in the course of professional practice only.

(h) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(i) Pharmacist means an individual currently licensed by the board to practice the profession of pharmacy in this state.

(j) Practitioner means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.

(k) Production includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(l) Prescription means a written order, and in cases of emergency, a telephone order; issued by a practitioner; in good faith, in the course of his or her professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

(m) Somnifacient and Stimulating have the meaning attributable in standard medical lexicons.

(n) Warehouseman means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.

(o) Wholesaler means a person engaged in the business of distributing drugs to persons included in any of the classes named in this article.

(p) Instrument means a device designed for use, or intended for use in ingesting, smoking, administering or preparing marijuana, cocaine, phencyclidine, opium or any derivative thereof, or any other controlled substance.

For purposes of this subsection, the phrase intended for use refers to the intent of the person selling, offering to sell, dispensing, giving away or displaying the instrument herein defined.

In determining whether an item constitutes an instrument, a court may consider the following:

(1) Whether a person or business establishment charged with violating this section is a licensed distributor or dealer of tobacco products under Chapter 79, Article 33 of the Kansas Statutes Annotated.

(2) Expert testimony as to the principal use of the devices, articles, or contrivances claimed to be instruments.

(3) Evidence concerning the total business of a person or business establishment and the type of devices, articles, contrivances, or items involved in the business.

(4) National and local advertising concerning the use of the devices, articles, or contrivances claimed to be instruments.

(5) Evidence of advertising concerning the nature of the business establishment.

(q) Minor means any person who has not attained 18 years of age.

(r) Premises Open to Minors means any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.

(s) Simulated Drugs and Simulated Controlled Substances products which identify themselves by using a common name term associated with a controlled substance or indicate by using a common name or slang label or accompanying promotional material that the product simulates the effect of a controlled substance or drug.

(t) Place of Display means any museum, library, school or other similar public place upon which business is not transacted for a profit.

(u) School means any public or private elementary, junior high or high school.

(v) Close Proximity means within 500 feet on a straight line commencing at the property lines nearest to each other.

(w) Premises means a business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.

#### **10.08.020 Regulations.**

(a) It is unlawful for any person to deliver, possess, manufacture, have under his or her control, sell, or offer for sale any drugs unless:

(1) Such drug is delivered by a pharmacist, or his or her authorized agent, in good faith, upon prescription and there is affixed to the immediate container in which such drug is delivered a label bearing:

(A) The name and address of the owner of the establishment from which such drug was delivered;

(B) The date on which the prescription for such drug was filled;

(C) The number of such prescription as filed in the prescription files of the pharmacist who filled such prescription;

(D) The name of the practitioner who prescribed such drug;

(E) The name and address of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and,

(F) The direction for use of the drug and cautionary statements, if any, as contained in the prescription.

(2) In the event that such delivery is pursuant to telephonic order, such prescription shall be promptly reduced to writing and filed by the pharmacist; or

(3) Such drug is delivered by a practitioner in good faith and in the course of his or her professional practice only.

(b) It is unlawful for any person to refill any prescription for a drug unless such refilling is specifically authorized by the prescriber.

(c) It is unlawful for any person to possess a drug unless such person obtained such drug on the prescription of a practitioner or in accordance with subdivision (3) of subsection (a) of this section or from a person licensed by the laws of any other state or the District of Columbia to prescribe or dispense drugs.

(d) It is unlawful for any person to obtain or attempt to obtain a drug by fraud, deceit, misrepresent or subterfuge; or by the forgery or alteration of a prescription; or by the use of a false name or the giving of a false address.

(e) It is unlawful for any person to sell, offer for sale or have in his or her possession with the intent to sell any hallucinogenic or stimulating drug described in Section 10.08.010.

(f) It shall be unlawful for any person, firm or corporation to sell, offer to sell, dispense, give away or display any instrument or simulated controlled substance or simulated drug in or upon any premises which: (a) are premises open to minors, unless the instruments, simulated controlled substances or simulated drugs are kept in such part of the premises that is not open to view by minors or to which minors do not have access; or (b) are in close proximity to a school. Provided, however, that display of any such items at a place of display for education or scientific purposes shall not be unlawful.

### **10.08.03 Exemptions.**

(a) The provisions of subsection (a) of Section 10.08.02 shall not be applicable:

(1) To the delivery of drugs for medical or scientific purposes only to persons included many of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or

(2) To the possession of drugs by such persons or their agents or employees for such use:

(A) Pharmacists,

(B) Practitioners,

(C) Persons who procure drugs:

(i) For disposition by or under the supervision of pharmacists or practitioners employed by them, or

(ii) For the purpose of lawful research, teaching, or testing and not for resale,

(D) Hospitals and other institutions which procure drugs for lawful administration by or under the supervision of practitioners,

(E) Manufacturers and wholesalers,

(F) Carriers and warehousemen.

(b) Nothing contained in Section 10.08.020 shall make it unlawful for a public officer; agent or employee, or person aiding such public officer in performing his official duties to possess, obtain, or attempt to obtain a drug for the purpose of enforcing the provisions of any law of this state or of the United States relating to the regulation of the handling, sale or distribution of drugs;

(c) Nothing in this article shall apply to a compound, mixture, or preparation containing a drug which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this article if such compound, mixture, or preparation contains a sufficient quantity of another therapeutic agent or agents, in addition to such a drug, to cause it to prevent the ingestion of a sufficient amount of drug to cause a dangerous hypnotic somnifacient or stimulating action.

**10.08.04 Violation/Penalty.** Any person violating any provision of this article shall be punishable in accordance with the Uniform Controlled Substances Act, K.S.A. 654101 et seq.

## **ARTICLE 2. LOCAL REGULATIONS**

11-201. LOITERING AND OTHER ACTS IN OR ABOUT SCHOOLS. It shall be unlawful for any person to loiter, idle, wander, stroll or play in, about or on any public school grounds or buildings either on foot or in or on any vehicle, without having some lawful business therein or thereabout. (Ord. 394, Sec. 1)

11-202. DISTURBANCE OF STUDENTS, EMPLOYEES AND SCHOOL ACTIVITIES. It shall be unlawful to annoy or disturb any students or employees of any public school or in any manner prevent the ordinary conduct of classes and other activities of any such school including sports events, plays, field trips or any other school related activity not herein mentioned. (Ord. 394, Sec. 2)

## **ARTICLE 3. ROLLER SKATES, STREET SKATES AND SKATEBOARDS**

11-301. ROLLER SKATES, STREET SKATES AND SKATEBOARDS. No person shall roller skate or ride a skateboard anywhere in the city without complying with the terms of this article. As used herein to roller skate shall mean to skate on any type of roller skates, street skates, in-line roller blades or similar skates. (Ord. 720, Sec. 1; Code 1998)

11-302. ACTIVITIES PROHIBITED. No person shall roller skate or ride a skateboard on any roadway or in the bike lane of any roadway:

- (a) Having a grade of six percent or more;
- (b) Where the volume or speed of the vehicular traffic or the width of the roadway renders the roadway unsafe or unsuitable for skateboarding;
- (c) Bordering a bike path or sidewalk where skateboarding is not prohibited; or

(d) In any portion of this city specifically designated as a business district.  
(Ord. 720, Sec. 2)

11-303. STREETS. No person shall roller skate or ride a skateboard on any street except for the purpose of crossing the street. The rules relating to pedestrians crossing streets shall apply to persons crossing a street on roller skates or a skateboard. No person crossing a street on roller skates or a skateboard shall travel too fast for safety under the conditions existing. (Ord. 720, Sec. 3)

11-304. SIDEWALKS. No person shall roller skate or rider a skateboard in a reckless manner on any public sidewalk. No person shall ride a skateboard or roller skate on a sidewalk without exercising due care for the safety of other persons using the sidewalk. The use of roller skates or skateboards shall be prohibited upon any sidewalk in any portion of this city specifically designated as a business district. Skateboarding shall be permitted on bike paths and all other sidewalks within this city. (Ord. 720, Sec. 4)

11-305. TRAFFIC CONTROL DEVICES. The city clerk is authorized to cause official traffic-control devices to be erected on those roadways where skateboarding is prohibited. (Ord. 720, Sec. 5)

11-306. RIGHT-OF-WAY. Notwithstanding their status as pedestrian, skateboard operators on sidewalks and bike paths shall yield the right-of-way to all vehicular and to all other pedestrian (non-skateboard) traffic upon the sidewalk or bike path. Skateboard operators on roadways or bike lanes shall be granted all of the rights and shall be subject to all of the duties applicable to non-skateboard pedestrians. (Ord. 720, Sec. 6)

11-307. PROTECTIVE CLOTHING. Skateboard operators shall wear protective coverings for their hands, knees, elbows and heads when operating a skateboard and shall not operate a skateboard while barefoot. (Ord. 720, Sec. 7)

11-308. LIMITATION ON RIDERS. No more than one person shall operate or ride on a skateboard at one time. (Ord. 720, Sec. 8)

#### **ARTICLE 4. CURFEW FOR MINORS**

11-401. DEFINITIONS. (a) Minor is a person under the age of 18 years of age.  
(b) Parent is any person having legal custody of a minor:  
(i) as a natural or adoptive parent,  
(ii) as a legal guardian,  
(iii) as a person who stands in *loco parentis*, or  
(iv) as a person to whom legal custody has been given by court order.  
(Ord. 1050, Sec. 1)

11-402. CURFEWS FOR CERTAIN MINOR CHILDREN. It is unlawful for any minor to loiter, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places, public buildings, places of amusement, eating places, vacant lots or any place unsupervised by an adult having the lawful authority to be at such places, between the hours of 11:00 p.m. on any day

and 5:00 a.m. of the following day; provided, however, that on Fridays and Saturdays the effective hours are between 12:00 midnight and 5:00 a.m. of the following day. (Ord. 1050, Sec. 2)

- 11-403. SAME; EXCEPTIONS. (a) When a minor is accompanied by his or her parent;  
(b) When the minor is upon an emergency errand directed by his or her parent;  
(c) When the minor is returning directly home from a school activity, entertainment, recreational activity or dance;  
(d) When the minor is returning directly home from employment that makes it necessary to be in the referenced places during the prescribed period of time;  
(e) When the minor is attending or traveling directly to or from an activity involving the exercise of first amendment rights of free speech, freedom of assembly or free exercise of religion; and  
(f) In interstate travel through the City of De Soto, Kansas.  
(Ord. 1050, Sec. 3)

- 11-404. SAME; PARENTAL RESPONSIBILITY. It shall be unlawful for the parent to permit, or by insufficient control, to allow such minor to be in, about, or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places, public buildings, places of amusement, eating places, vacant lots or any place during the restricted hours, unsupervised by an adult having the lawful authority to be at such places, under circumstances not constituting an exception to, or otherwise beyond the scope of this article (Ord. 1050, Sec. 4)

- 11-405. SAME; ENFORCEMENT PROCEDURES. (a) If a police officer has reasonable grounds to believe that the minor is in a public place in violation of this article, for the first time, the procedure shall be to take the minor to the police station where a parent having custody or control of the minor shall immediately be notified to take custody of the minor. When the parent arrives at the police station to take custody of the minor, the minor shall be released to the custody of such person.  
(b) In the case of a first violation of the article, the chief of police shall, by certified mail or personal delivery, send or give to the parent, written notice of the violation with a warning that any subsequent violation will result in full enforcement of the article, including enforcement of parental responsibility and of applicable penalties.  
(Ord. 1050, Sec. 5)

- 11-406. PENALTIES. (a) If, after the first violation of this article by a minor, there is a subsequent violation of this article by the minor, the minor shall be charged in municipal court. Upon conviction, the minor shall be sentenced to complete a community service program; however, in the alternative, the municipal court shall have the discretion to impose a fine not to exceed \$150 and costs, or to impose a sentence of both a community service program and a fine not to exceed \$150 and costs.  
(b) If, after the warning notice of the first violation by a minor has been given pursuant to section 11-405(b), a parent, having custody or control of a minor, violates section 11-404, the parent, upon conviction, shall be subject to a fine not to exceed \$200 and costs. In lieu of a fine, the municipal court may impose probation, provided however, that as a condition of probation, attendance is required at family counseling sessions by the parent having custody or control of the minor.  
(Ord. 1050, Sec. 6)