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## ORDINANCE NO. 2913-2021

### SUMMARY

On September 21, 2021, the City of Garden City, Kansas adopted Ordinance No. 2913-2020, regulating public offenses within the corporate limits of the City of Garden City, Kansas; incorporating by reference the Uniform Public Offense Code for Kansas Cities, 37<sup>th</sup> Edition, with certain omissions, changes, and additions; prescribing additional regulations; amending Code Section 62-2; repealing existing Code Section 62-2; all to the Code of Ordinances of the City of Garden City, Kansas.

A complete copy of the ordinance may be viewed free of charge at [www.garden-city.org](http://www.garden-city.org) or may be obtained from the City Clerk, at the City Administrative Center, 301 North Eighth Street, Garden City, Kansas 67846. This Ordinance Summary is certified that it is legally accurate and sufficient, by Randall D. Grisell, City Attorney.



ORDINANCE NO. 2913-2021

AN ORDINANCE REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF GARDEN CITY, KANSAS; INCORPORATING BY REFERENCE THE UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES, 37<sup>th</sup> EDITION, WITH CERTAIN OMISSIONS, CHANGES, AND ADDITIONS; PRESCRIBING ADDITIONAL REGULATIONS; AMENDING CODE SECTION 62-2; REPEALING EXISTING CODE SECTION 62-2; ALL TO THE CODE OF ORDINANCES OF THE CITY OF GARDEN CITY, KANSAS.

BE IT ORDAINED by the Governing Body of the City of Garden City, Kansas:

SECTION 1. That Section 62-2 of the Code of Ordinances of the City of Garden City, Kansas, is hereby amended and shall read as follows:

Section 62-2. Uniform Public Offense Code.

(a) 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 Garden City, Kansas, that certain code known as the *Uniform Public Offense Code for Kansas Cities*, 37<sup>th</sup> Edition, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, hereinafter referred to as Uniform Public Offense Code, save and except such articles, sections, parts, or portions as are hereafter omitted, deleted, modified, added or amended. One official copy of said *Uniform Public Offense Code* shall be marked or stamped "Official Copy as Adopted by Ordinance No. \_\_\_\_\_ - 2021", 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, city attorney, city prosecutor, 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. All references to the Uniform Public Offense Code as adopted and incorporated into this Code shall be in a form designating Section 62-2 followed in parenthesis by the section number of the Uniform Public Offense Code, as incorporated. [For example, Section 10.5 of the Uniform Public Offense Code as incorporated shall be referenced as Section 62-2(10.5).]

(b) Omissions. The following sections contained in Articles 3 through 11 of the Uniform Public Offense Code are hereby omitted and deleted:

|               |                                                                                |
|---------------|--------------------------------------------------------------------------------|
| Section 3.7   | Mistreatment of a Confined Person                                              |
| Section 3.10  | Hazing                                                                         |
| Section 3.11  | Unlawful Administration of a Substance                                         |
| Section 3.12  | Breach of Privacy                                                              |
| Section 3.13  | Stalking                                                                       |
| Section 5.1.2 | Unlawful Possession of a Visual Depiction of a Child                           |
| Section 5.1.3 | Unlawful Transmission of a Visual Depiction of a Child                         |
| Section 5.5   | Watercraft; Lifesaving Devices Required                                        |
| Section 6.8   | Criminal Littering                                                             |
| Section 6.11  | Unlawful Manufacture or Disposal of False Tokens                               |
| Section 6.12  | Serial Numbers                                                                 |
| Section 6.14  | Unlawful Deposits in Sewers                                                    |
| Section 6.15  | Damaging Sewers                                                                |
| Section 6.16  | Giving a Worthless Check                                                       |
| Section 6.17  | Criminal Use of a Financial Card                                               |
| Section 6.18  | Motor Vehicle Dealers; Selling Motor Vehicles Without a License                |
| Section 6.19  | Equity Skimming                                                                |
| Section 6.20  | Unlawful Acts Concerning Computers                                             |
| Section 6.21  | Taking Wildlife Without Permission on Land Posted "By Written Permission Only" |

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|----------------|-------------------------------------------------------------------------------------------------|
| Section 6.22   | Criminal Hunting                                                                                |
| Section 6.23   | Unlawful Use of a Recording Device                                                              |
| Section 6.23.1 | Unlawful Use of Recordings                                                                      |
| Section 6.2    | Commercial Fossil Hunting                                                                       |
| Section 6.25   | Counterfeiting                                                                                  |
| Section 6.26   | Automobile Master Key Violation                                                                 |
| Section 7.1    | Unlawfully Tampering with Electronic Monitoring Equipment                                       |
| Section 7.3    | Escape from Custody                                                                             |
| Section 7.5    | Distribution of Unattributed Applications for Advance Voting Ballots                            |
| Section 7.6    | Performance of Unauthorized Official Act                                                        |
| Section 7.7    | Simulating Legal Process                                                                        |
| Section 7.8    | Tampering with Public Record                                                                    |
| Section 7.9    | Tampering with Public Notice                                                                    |
| Section 7.10   | False Signing of Petition                                                                       |
| Section 7.11   | False Impersonation                                                                             |
| Section 7.14   | Electioneering                                                                                  |
| Section 7A.1   | Official Misconduct                                                                             |
| Section 7A.2   | Compensation for Past Official Acts                                                             |
| Section 7A.3   | Presenting a False Claim; Permitting a False Claim                                              |
| Section 7A.4   | Misuse of Public Funds                                                                          |
| Section 8.1    | Denial of Civil Rights                                                                          |
| Section 8.2    | Unlawful Disclosure of Tax Information                                                          |
| Section 8.3    | Unjustifiably Exposing a Convicted or Charged Person                                            |
| Section 9.3    | Violation of Executive Order under K.S.A. 48-925 Mandating a Curfew or Prohibiting Public Entry |
| Section 9.9    | Unlawful Abuse of Toxic Vapors                                                                  |
| Section 9.9.1  | Unlawful Possession of Marijuana and Tetrahydrocannabinols                                      |
| Section 9.9.2  | Possession of Drug Paraphernalia and Certain Drug Precursors                                    |
| Section 9.13   | Unlawful Posting of Political Pictures and Political Advertisements                             |
| Section 10.4   | Failure to Register Explosives                                                                  |
| Section 10.9   | Carrying Concealed Explosives                                                                   |
| Section 10.12  | Unlawful Failure to Report a Wound                                                              |
| Section 10.14  | Operation of a Motorboat or Sailboat                                                            |
| Section 10.15  | Operating a Vessel Under the Influence of Alcohol or Drugs; Penalties                           |
| Section 10.19  | Sale of Medicines and Drugs Through Vending Machines                                            |
| Section 10.20  | Unlawfully Obtaining a Prescription-Only Drug                                                   |
| Section 10.21  | Selling Beverage Containers with Detachable Tabs                                                |
| Section 10.23  | Trafficking in Counterfeit Drugs                                                                |
| Section 11.1   | Promoting Obscenity                                                                             |
| Section 11.2   | Promoting Obscenity to Minors                                                                   |
| Section 11.3   | Commercialization of Wildlife                                                                   |
| Section 11.9.1 | Illegal Bingo Operation                                                                         |
| Section 11.10  | Possession of a Gambling Device                                                                 |
| Section 11.16  | False Membership Claim                                                                          |

(c) Amendment. Section 1.1 of the Uniform Public Offense Code, also referred to as 62-2(1.1) of the Code is hereby amended to read as follows:

Section 1.1 Definitions.

- (a) As used in the Uniform Public Offense Code, as incorporated, and as used in other public offense ordinances of the City, the words and phrases defined in Section 1.1 of Article 1 of the Uniform Public Offense Code shall have the meanings respectively ascribed to them therein and any such definitions are hereby incorporated by reference as if fully set forth herein, except as expressly provided in subsection (b) or except when the context otherwise requires.

(b) Notwithstanding the definitions of Section 1.1 of Article 1 of the Uniform Public Offense Code as incorporated by subsection (a), the following words and phrases shall have the meanings ascribed to them as set forth below:

(1) **Controlled Substance.** Any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(2) **Controlled Substance Analog.**

(A) A substance that is intended for human consumption, and at least one of the following:

(1) The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(2) the substance has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(3) with respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(B) "Controlled substance analog" does not include:

(1) A controlled substance;

(2) a substance for which there is an approved new drug application; or

(3) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 355, to the extent conduct with respect to the substance is permitted by the exemption.

(3) **Distribute.** The actual or constructive transfer from one person to another of some item whether or not there is an agency relationship. Distribute includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one person to another. Distribute does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the Kansas Pharmacy Act, the Uniform Controlled Substances Act, or otherwise authorized by law or ordinance.

(4) **Simulated Controlled Substance.** Any product that identifies itself by a common name or slang term associated with a controlled substance and that indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

(5) **Smoking; Definitions.**

(A) Access Point means the area within a fifty-foot (50') radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of Section 10.24.

- (B) Bar means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on premises consumption.
- (C) Employee means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.
- (D) Employer means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.
- (E) Enclosed Area means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an enclosed area:
  - (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and
  - (2) Rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather, and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.
- (F) Food Service Establishment means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.
- (G) Gaming Floor means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.
- (H) Hookah means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor which passes through a liquid, including but not limited to water, prior to being inhaled by a person.
- (I) Medical Care Facility means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto.
- (J) Outdoor Recreational Facility means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

- (K) Place of Employment means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a place of employment unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.
- (L) Private Club means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.
- (M) Public Building means any building owned or operated by:
  - (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof;
  - (2) Any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or
  - (3) Any other separate corporate instrumentality or unit of the state or any municipality.
- (N) Public Meeting means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.
- (O) Public Place means any enclosed areas open to the public or used by the general public including, but not limited to: banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a public place unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.
- (P) Smoking or smoke means the use of a vaping product or the possession of a lighted cigarette, cigar, pipe or hookah, partially or wholly consisting of or containing burning vegetation or other substance, or possession of any other device or equipment containing heated or burning vegetation or other substance, that is used for the introduction of smoke into the human body. For the purposes of this definition, the term vegetation or other substance includes, but is not limited to, plants, herbs, tobacco or any other organic or synthetic material.
- (Q) Substantial Dues or Membership Fee Requirements means initiation costs, dues or fees proportional to the cost of membership in similarly situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a statewide ban on smoking.
- (R) Tobacco Shop means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of tobacco.
- (S) Vaping Product means any non-combustion product that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce any vapor or any aerosol for human consumption from a solution or other form that may or may not contain nicotine.

Vaping product includes, but is not limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, personal vaporizer, e-pen, vapor pen or similar product or device and any vapor cartridge, container of nicotine or any other solution or substance that is intended to be used to produce any vapor or any aerosol for human consumption. Vaping product does not include any medical inhaler or other device that has been specifically approved for medical use by the United States Food and Drug Administration, if any such medical inhaler or other device is being used or possessed for that medical use.

- (6) **Tobacco Products.** 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 do not include cigarettes or vaping products.

(d) Amendment. Section 3.1 of the Uniform Public Offense Code, also referred to as 62-2(3.1) of the Code is hereby amended to read as follows:

Section 3.1. Battery.

(a) Battery is:

- (1) Knowingly or recklessly causing bodily harm to another person; or
  - (2) Knowingly causing physical contact with another person when done in a rude, insulting, or angry manner.
- (b) If a person is convicted of a violation of battery a second time, such person shall be guilty of a Class B violation and sentenced to not less than ninety (90) days' nor more than one hundred eighty (180) days' imprisonment and fined not less than \$400 nor more than \$1,000. The person convicted must serve at least ten (10) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the ten (10) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (c) If a person is convicted of a violation of battery a third time, such person shall be guilty of a Class B violation and sentenced to not less than ninety (90) days' nor more than one hundred eighty (180) days' imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted must serve at least fifteen (15) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the fifteen (15) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (d) If a person is convicted of a violation of battery a fourth time, such person shall be guilty of a Class B violation and sentenced to not less than ninety (90) days' nor more than one hundred eighty (180) days' imprisonment and fined not less than \$600 nor more than \$1,000. The person convicted must serve at least twenty (20) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the twenty (20) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (e) If a person is convicted of a violation of battery a fifth or subsequent time, such person shall be guilty of a Class B violation and sentenced to not less than ninety (90) days' nor more than one hundred eighty (180) days' imprisonment and fined not less than \$750 nor more than \$1,000. The person convicted must serve at least thirty (30) consecutive days' imprisonment before the person is granted

probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the thirty (30) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.

- (f) For the purpose of determining whether a conviction is a second, third, fourth, fifth, or subsequent conviction in sentencing under this section, conviction includes being convicted of a violation of this section, Section 3.1.1 Domestic Battery, or Section 3.2 Battery Against a Law Enforcement Officer, or of a violation of any ordinance of any city, resolution of any county, or a law of any state that prohibits the acts prohibited by this section, of Section 3.1.1 Domestic Battery, or of Section 3.2 Battery Against a Law Enforcement Officer. Conviction includes entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of any such section, ordinance, resolution, or law. It is irrelevant whether an offense occurred before or after conviction for a previous offense.

- (e) Amendment. Section 3.1.1 of the Uniform Public Offense Code, also referred to as 62-2(3.1.1) of the Code is hereby amended to read as follows:

Section 3.1.1. Domestic Battery.

- (a) Domestic Battery is:

- (1) Knowingly or recklessly causing bodily harm to a person with whom the offender is involved or has been involved in a dating relationship or a family or household member; or
- (2) Knowingly causing physical contact with a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner.

- (b) (1) Upon a first conviction of a violation of domestic battery or upon a second conviction not occurring within five (5) years immediately preceding commission of the crime, a person shall be guilty of a Class B violation and sentenced to not less than forty-eight (48) consecutive hours' nor more than six (6) months' imprisonment and fined \$500. The person convicted must serve at least forty-eight (48) consecutive hours' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the forty-eight (48) consecutive hours by or as house arrest, work furlough, work release, or similar custody alternative program. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to complete a Kansas Domestic Violence Offender Assessment and shall complete or otherwise comply with any recommendations thereof.
- (2) If a person is convicted of a violation of domestic battery a second time within five (5) years immediately preceding commission of the crime, such person shall be guilty of a Class A violation and sentenced to not less than ninety (90) days' nor more than one (1) year imprisonment and fined \$750. The person convicted must serve at least ten (10) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the ten (10) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program. Notwithstanding the foregoing, the ten (10) consecutive days' imprisonment mandated by this subsection may be served in a work release program only after such person has served forty-eight (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. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to complete a Kansas Domestic Violence Offender Assessment and shall complete or otherwise comply with any recommendations thereof.

- (c) In determining the sentence to be imposed within the limits provided under this section, a court shall consider information presented to the court relating to any current or prior protective order issued against such person.
- (d) As used in this section:
  - (1) **Dating relationship** means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since the termination of the relationship, if applicable;
  - (2) **Family or household member** means persons eighteen (18) years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. **Family or household member** also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time;
  - (3) **Protective Order** means:
    - (A) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 or 60-3107, and amendments thereto;
    - (B) A protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265;
    - (C) A restraining order issued pursuant to K.S.A. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to its transfer;
    - (D) An order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case or upon appeal that orders the person to refrain from having any direct or indirect contact with a family or household member;
    - (E) An order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or
    - (F) A protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.
  - (4) For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:
    - (A) Conviction includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.
    - (B) Conviction includes being convicted of a violation of any ordinance of any city, resolution of any county, or a law of any state that prohibits the acts prohibited by this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of any such ordinance, resolution, or law.
    - (C) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

- (e) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section only twice during any five (5) year period.

(f) Amendment. Section 3.2 of the Uniform Public Offense Code, also referred to as 62-2(3.2) of the Code, is hereby amended to read as follows:

Section 3.2. Battery Against a Law Enforcement Officer.

- (a) Battery against a law enforcement officer is a battery as defined in section 62-2(3.1)(a)(2) of the Code, committed against a:
  - (1) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;
  - (2) Uniformed or properly identified state, county, or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, or a juvenile correctional facility officer, or employee, while such officer is engaged in the performance of such officer's duty;
  - (3) Uniformed or properly identified federal law enforcement officer while such officer is engaged in the performance of such officer's duty;
  - (4) Judge, while such judge is engaged in the performance of such judge's duty;
  - (5) Attorney, while such attorney is engaged in the performance of such attorney's duty; or
  - (6) Community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty.
- (b) As used in this section:
  - (1) Judge means a 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;
  - (2) Attorney means a: (A) county attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district attorney, special assistant district attorney, attorney general, assistant attorney general, special assistant attorney general, city attorney, assistant city attorney, city prosecutor, or assistant city prosecutor; and (B) public defender, assistant public defender, contract counsel for the state board of indigents' defense services or any attorney who is appointed by the court to perform services for an indigent person as provided by Article 45 of Chapter 22 of the Kansas Statutes Annotated and amendments thereto;
  - (3) Community Corrections Officer means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs;
  - (4) Court Services Officer means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court; and
  - (5) Federal Law Enforcement Officer means a law enforcement officer employed by the United States federal government who, as part of such officer's duties, is permitted to make arrests and to be armed.

- (c) A violation of this section is a Class A violation.
- (d) Upon a first conviction of a violation of battery against a law enforcement officer, a person shall be sentenced to not less than ten (10) days' nor more than one (1) year imprisonment and be fined not less than \$500 nor more than \$2,500. The person must serve at least ten (10) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the ten (10) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (e) Upon a second or subsequent conviction of battery against a law enforcement officer, a person shall be sentenced to not less than ninety (90) days' nor more than one (1) year imprisonment and be fined not less than \$750 nor more than \$2,500. The person convicted must serve at least thirty (30) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the thirty (30) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (f) For the purpose of determining whether a conviction is first, second, or subsequent conviction in sentencing under this section:
  - (1) Conviction includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.
  - (2) Conviction includes being convicted of a violation of any ordinance of any city, resolution of any county, or a law of any state that prohibits the acts prohibited by this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of any such ordinance, resolution, or law.
  - (3) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(g) Amendment. Section 3.3 of the Uniform Public Offense Code, also referred to as 62-2(3.3) of the Code, is hereby amended to read as follows:

Section 3.3. Assault and Assault of a Law Enforcement Officer.

- (a) Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm.
- (b) Assault of a law enforcement officer is assault, as defined in subsection (a), committed against:
  - (1) a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty;
  - (2) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or
  - (3) a uniformed or properly identified federal law enforcement officer as defined in K.S.A. Supp. 21-5413, and amendments thereto, while such officer is engaged in the performance of such officer's duty.
- (c) Assault pursuant to subsection (a) is a Class C violation.
- (d) Assault of a law enforcement officer pursuant to subsection (b) is a Class A violation. Upon a conviction of a violation of assault of a law enforcement officer, a person shall be fined at least \$300.

(h) Amendment. Section 5.6 of the Uniform Public Offense Code, also referred to as 62-2(5.6) of the Code, is hereby amended to read as follows:

Section 5.6. Purchase or Possession of Cigarettes, Vaping Products, or Tobacco Products by a Person Under 21 Years of Age.

It shall be unlawful for any person:

- (a) Who is under twenty-one (21) years of age to purchase or attempt to purchase cigarettes, vaping products, or tobacco products; or
- (b) Who is under twenty-one (21) years of age to possess or attempt to possess cigarettes, vaping products, or tobacco products.

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be \$25. In addition, the judge may require a person under eighteen (18) years of age to appear in court with a parent or legal guardian.

(i) Amendment. Section 5.7 of the Uniform Public Offense Code, also referred to as 62-2(5.7) of the Code, is hereby amended to read as follows:

Section 5.7. Selling, Giving or Furnishing Cigarettes, Vaping Products, or Tobacco Products to a Person Under 21 Years of Age.

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

- (1) Sell, furnish or distribute cigarettes, vaping products, or tobacco products to any person under twenty-one (21) years of age; or
- (2) Buy any cigarettes, vaping products, or tobacco products for any person under twenty-one (21) years of age.

(b) It shall be a defense to a prosecution under this 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, vaping products, or tobacco products to the person under twenty-one (21) years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, vaping products, or tobacco products;
- (3) To purchase or receive the cigarettes, vaping products, or tobacco products, the person under twenty-one (21) 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, vaping products, or tobacco products; and
- (4) For purposes of this section, the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, vaping products, or tobacco products to any person under twenty-one (21) years 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 section if:

- (1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, vaping products, or tobacco products by mail; and

- (2) The defendant sold, furnished or distributed cigarettes, vaping products, 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 twenty-one (21) or more years of age.

- (d) As used in this section, sale means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, vaping products, or tobacco products, with or without consideration.

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

- (j) Amendment. Section 5.8 of the Uniform Public Offense Code, also referred to as 62-2(5.8) of the Code, is hereby amended to read as follows:

Section 5.8. Purchase, Consumption or Possession of Alcoholic Liquor or Cereal Malt Beverage by a Minor:  
18-21.

- (a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704, and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under twenty-one (21) years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.
- (b) In addition to any other penalty provided for a violation of this section:
  - (1) The court may order the offender to do either or both of the following:
    - (A) Perform forty (40) hours of public service; or
    - (B) Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans.
  - (2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for thirty (30) days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for thirty (30) days whether or not that person has a driver's license.
  - (3) Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for ninety (90) days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for ninety (90) days, whether or not that person has a driver's license.
  - (4) Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for one (1) year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one (1) year whether or not that person has a driver's license.
- (c) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.
- (d) (1) A person and, if applicable, one or two other persons acting in concert with such person are immune from criminal prosecution for a violation of this section, if such person:
  - (A) (i) Initiated contact with law enforcement or emergency medical services and requested medical assistance on such person's behalf because such person reasonably believed such person was in need of medical assistance; and

- (ii) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance; or
- (B) (i) Initiated contact with law enforcement or emergency medical services, or was one of one or two other persons who acted in concert with such person, and requested medical assistance for another person who reasonably appeared to be in need of medical assistance;
- (ii) Provided their full name, the name of one or two other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services;
  - (iii) Remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrived; and
  - (iv) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance; or
- (C) (i) Was the person who reasonably appeared to be in need of medical assistance as described in subsection (d)(1)(B), but did not initiate contact with law enforcement or emergency medical services; and
- (ii) Cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.
- (2) A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer's employer, based on the officer's compliance or failure to comply with this subsection.
- (e) Violation of this section by a person eighteen (18) or more years of age but less than twenty-one (21) years of age is a Class C violation. On a first conviction of a violation of this section, a person shall be fined not less than \$200. For a second conviction of a violation of this section, a person shall be fined not less than \$400. For a third and subsequent conviction of a violation of this section, a person shall be fined not less than \$600.

(k) Amendment. Section 6.1 of the Uniform Public Offense Code, also referred to as 62-2(6.1) of the Code, is hereby amended to read as follows:

Section 6.1. Theft.

- (a) Theft is any of the following acts done with the intent to deprive the owner permanently 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;
  - (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.

- (b) A violation of this section is a Class A violation, except as provided in subsection (c).
- (c) The following are not considered to be a violation under this section:
  - (1) Theft of property or services of the value of \$1,500 or more;
  - (2) Theft of property of the value of less than \$1,500 from three (3) separate mercantile establishments within a period of seventy-two (72) hours as part of the same act or transaction or in two (2) or more acts or transactions connected together or constituting parts of a common scheme or course of conduct;
  - (3) Theft of property of the value of at least \$50 but less than \$1,500 committed by a person who has, within five (5) years immediately preceding commission of the crime, excluding any period of imprisonment, been convicted of theft two (2) or more times; or
  - (4) Theft of property which is a firearm of the value of less than \$25,000.
- (d) Upon a first conviction of a violation of this section, the person convicted must serve at least two (2) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released, and be fined at least \$300. The person convicted shall neither be ordered to nor be permitted to serve the two (2) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (e) On a second or subsequent conviction of a violation of this section, the person convicted must serve at least ten (10) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released, and be fined at least \$500. The person convicted shall neither be ordered to nor be permitted to serve the ten (10) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (f) 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 this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.
  - (2) Conviction includes being convicted of a violation of any ordinance of any city, resolution of any county, or a law of any state that prohibits the acts prohibited by this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of any such ordinance, resolution, or law.
  - (3) It is irrelevant whether an offense occurred before or after conviction for a previous offense.
- (g) As used in this section:
  - (1) **Regulated scrap metal** means the same as in K.S.A. 50-6,109, and amendments thereto; and
  - (2) **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.

(l) Amendment. Section 7.2 of the Uniform Public Offense Code, also referred to as 62-2(7.2) of the Code, is hereby amended to read as follows:

Section 7.2. Interference With a Law Enforcement Officer.

- (a) Interference with a law enforcement officer is:
  - (1) Falsely reporting to a law enforcement officer, law enforcement agency, or state investigative agency:
    - (A) 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;
    - (B) 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
    - (C) Any information, knowing that such information is false and intending to influence, impede or obstruct such officer's or agency's duty; or
  - (2) Concealing, destroying or materially altering evidence with the intent to prevent or hinder the apprehension or prosecution of any person; or
  - (3) 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.
- (b) A violation of this section is a Class A violation.
- (c) Upon a first conviction of a violation of this section, the person convicted must be fined at least \$500.
- (d) On a second or subsequent conviction of a violation of this section, the person convicted shall be sentenced to imprisonment of at least ninety (90) days and be fined at least \$750. Such person must serve at least ten (10) consecutive days' imprisonment before the person is granted probation, suspension of sentence, or parole or is otherwise released. The person convicted shall neither be ordered to nor be permitted to serve the ten (10) consecutive days by or as house arrest, work furlough, work release, or similar custody alternative program.
- (e) 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 this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section.
  - (2) Conviction includes being convicted of a violation of any ordinance of any city, resolution of any county, or a law of any state that prohibits the acts prohibited by this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of any such ordinance, resolution, or law.
  - (3) It is irrelevant whether an offense occurred before or after conviction for a previous offense.

(m) Amendment. Section 7.15 of the Uniform Public Offense Code, also referred to as 62-2(7.15) of the Code, is hereby amended to read as follows:

Section 7.15. Intimidation of a Witness or Victim.

- (a) Intimidation of a witness or victim is preventing or dissuading, or attempting to prevent or dissuade, with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

- (1) Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or
- (2) Any witness, victim or person acting on behalf of a victim from:
  - (A) Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer, judicial officer, the secretary for children and families, the secretary for aging and disability services, or any agent or representative of either secretary, or any person required to make a report pursuant to K.S.A. 38-2223, and amendments thereto;
  - (B) Causing a complaint, indictment or information to be sought and prosecuted or causing a violation of probation, parole or assignment to a community correctional services program to be reported and prosecuted, and assisting in its prosecution;
  - (C) Causing a civil action to be filed and prosecuted and assisting in its prosecution; or
  - (D) Arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) Intimidation of a witness or victim is a Class B person violation.

(c) As used in this section:

(1) **Victim** means any individual:

- (A) Against whom any crime under the laws of this state, any other state or the United States or any ordinance violation under the code of any city is being, has been or is attempted to be committed; or
- (B) Who suffers a civil injury or loss; and

(2) **Witness** means any individual:

- (A) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;
- (B) Whose declaration under oath is received or has been received as evidence for any purpose;
- (C) Who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;
- (D) Who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or
- (E) Who is believed by the offender to be an individual described in this subsection.

(n) Amendment. Section 9.9.3 of the Uniform Public Offense Code, also referred to as 62-2(9.9.3) of the Code, is hereby amended to read as follows:

Section 9.9.3. Unlawful Distribution of Controlled Substances.

- (a) No person shall distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto, to any person who is eighteen (18) years of age or older.

(b) Violation of subsection (a) is a Class A violation.

(o) Amendment. Section 9.9.4 of the Uniform Public Offense Code, also referred to as 62-2(9.9.4) of the Code, is hereby amended to read as follows:

Section 9.9.4. Unlawful Possession of Controlled Substances.

- (a) No person shall possess any of the controlled substances or controlled substance analogs thereof found in K.S.A. 21-5706(b), and amendments thereto, except as provided in subsection (b).
- (b) This section shall not apply if the substance involved is marijuana, as designated in K.S.A. 65-4105(d), and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h), and amendments thereto.
- (c) Violation of subsection (a) is a Class A violation.

(p) Amendment. Section 9.9.6 of the Uniform Public Offense Code, also referred to as 62-2(9.9.6) of the Code, is hereby amended to read as follows:

Section 9.9.6. Distribution of Non-Controlled Substance.

- (a) No person shall distribute or possess with the intent to distribute any substance, which is not a controlled substance, to any person who is eighteen (18) years of age or older:
  - (1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or
  - (2) Under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.
- (b) Violation of subsection (a) is a Class A nonperson violation.
- (c) If any one of the following factors is established, there shall be a presumption that distribution of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:
  - (1) The substance was packaged in a manner normally used for the illegal distribution of controlled substances;
  - (2) The distribution of the substance included an exchange of or demand for money or other consideration for distribution of the substance and the amount of the consideration was substantially in excess of the reasonable value of the substance; or
  - (3) The physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

(q) Amendment. Section 10.1 of the Uniform Public Offense Code, also referred to as 62-2(10.1) of the Code, is hereby amended to read as follows:

Section 10.1. Criminal Use of Weapons.

- (a) Criminal use of weapons is knowingly:
  - (1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club, or metal knuckles;

(2) Possessing with intent to use the same unlawfully against another, a slungshot, throwing star, or any other dangerous or deadly weapon or instrument of like character; *provided, however, that* nothing herein shall be construed as to prohibit the possession, carrying, or use of a cutting instrument pursuant to K.S.A. 12-16,143;

(3) Setting a spring gun;

(b) Criminal use of weapons is a Class A violation.

(c) Subsections (a)(1) and (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.

(r) Amendment. Section 10.5 of the Uniform Public Offense Code, also referred to as 62-2(10.5) of the Code, is hereby amended to read as follows:

Section 10.5. Unlawful Discharge of a Firearm.

(a) Unlawful discharge of a firearm is the discharge of a firearm within or into the corporate limits of any city.

(b) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:

(1) The firearm is discharged in the lawful defense of one's person, another person or one's property;

(2) The firearm is discharged at a private or public shooting range;

(3) The firearm is discharged by authorized law enforcement or animal control officers;

(4) The firearm is discharged by special permit of the chief of police or by the sheriff when the city has no police department;

(5) The firearm is discharged using blanks; or

(6) The firearm is discharged in lawful self-defense or defense of another person against an animal attack.

Unlawful discharge of firearms is a Class B violation.

(s) Amendment. Section 10.24 of the Uniform Public Offense Code, also referred to as 62-2(10.24) of the Code, is hereby amended to read as follows:

Section 10.24. Smoking Prohibited.

- (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, and all sleeping rooms in hotels and motels;
  - (5) access points of all buildings and facilities not exempted pursuant to subsection (d), with the exception of access points leading into or out of outdoor patio areas where smoking is lawful;
  - (6) any place of employment;
  - (7) private clubs and fraternal organization facilities; and
  - (8) any building or structure owned, leased or occupied by the City or any city, school district or community college.
- (b) It shall be unlawful, with no requirement of culpable mental state, to smoke or to use any tobacco product, in any form, in or on the following outdoor locations:
  - (1) All City-owned parks and playgrounds, including, but not limited to, the Lee Richardson Zoo and any City-owned public outdoor court, amphitheater, swimming facility or skate park;
  - (2) Any public assembly seating, bleacher section, grandstand, or other seating, affixed and permanent in nature located in the City, which is placed on any property owned or leased by any city, county, state, school district or community college and within fifty (50) feet of any such seating; and
  - (3) Any athletic field and seating area owned, leased, or occupied by the City or any school district or community college.
- (c) 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.
- (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, except as noted in subsection (b) above; and
  - (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.
- (e) Any person who violates any provision of this section shall be guilty of an ordinance cigarette or tobacco infraction and punished as provided in Section 62-2(10.26) of this Code.

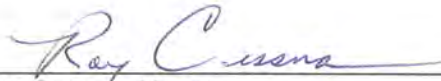
- (f) The placement of this section within Chapter 62 of this Code, and the penalties related thereto, shall in no way be interpreted to detract from or otherwise diminish the public health, safety and welfare interests that are sought to be accomplished by this section. This section shall be interpreted in accordance with Chapter 1, Section 1-2 of this Code.

SECTION 2. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of the ordinance.

SECTION 3. That Section 62-2 of the Code of Ordinances of the City of Garden City, Kansas, as previously existing and amended, be and the same is hereby repealed, to be replaced as specified in this ordinance.

SECTION 4. That this ordinance shall be in full force and effect from and after October 1, 2021, and following its publication, in the Garden City Telegram, the official city newspaper.

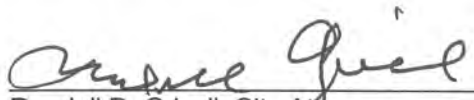
APPROVED AND PASSED by the Governing Body of the City of Garden City, Kansas, this 21<sup>st</sup> day of September, 2021.

  
\_\_\_\_\_  
Roy Cessna, Mayor

ATTEST:

  
\_\_\_\_\_  
Celyn N. Hurtado, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Randall D. Grisell, City Attorney