

Published 11-12-09

ORDINANCE NO. 0-87-09

An ordinance

relating to Miscellaneous Provisions and Offenses; amending Chapter 22 of the 2008 Code of Ordinances and Resolutions of the Unified Government; amending Chapter 22 by adding a new section on criminal use of a financial card; amending Chapter 22 by adding a new section on unlawful use of a recording device; amending Chapter 22 by adding a new section on unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage; amending Chapter 22 by adding a new section on cockfighting; amending Section 22-74 by adding a new section on intent to permanently deprive; amending Section 22-79 by increasing value of property damaged to \$1,000.00; amending Section 22-177 by adding an exemption for those authorized to carry a concealed weapon and also an exemption for certain government attorneys; amending Section 22-180 to reflect amendments in state drug crimes; amending Section 22-352 by adding a violation of protection from stalking order as an offense and adding language permitting an attorney to contact a protected party for a legitimate purpose; and repealing the original Sections 22-74, 22-79, 22-177, 22-180 and 22-352.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS:

Section 1. That Chapter 22 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended by adding a new section to read as follows:

Criminal Use of a Financial Card.

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

- (1) Using a financial card without the consent of the cardholder; or
- (2) Knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or
- (3) Using a falsified, mutilated, altered or nonexistent financial card or number or description thereof.

(b) For the purposes of this section:

- (1) *Financial card* means identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to

purchase, lease or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.

(2) *Cardholder* means the person or entity to whom or for whose benefit a financial card is issued.

(c) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

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

Section 2. That Chapter 22 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended by adding a new section to read as follows:

Unlawful Use of a Recording Device.

(a) Unlawful use of a recording device is knowingly operating, in a motion picture theater, while a motion picture is being exhibited, an audiovisual recording function of a device without the consent of the owner or lessee of such theater.

(b) Unlawful use of a recording device is a Class A violation.

(c) This section shall not apply to a person operating an audiovisual recording device as part of such person's lawfully authorized investigative, law enforcement, protective or intelligence gathering duties as a lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent of the state or federal government.

Section 3. That Chapter 22 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended by adding a new section to read as follows:

Unlawfully Hosting Minors Consuming Alcoholic Liquor or Cereal Malt Beverage.

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

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

(c) The provisions of this section shall not be deemed to create any civil liability for any lodging establishment, as defined by K.S.A. 36-501, and amendments thereto.

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

Section 4. That Chapter 22 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended by adding a new section to read as follows:

Cockfighting.

- (a) Unlawful possession of cockfighting paraphernalia is possession of spurs, gaffs, swords, leather training spur covers, or anything worn by a gamecock during a fight to further the killing power of such gamecock.
- (b) Unlawful attendance of cockfighting is entering or remaining on the premises where the unlawful conduct of cockfighting is occurring.
- (c) Unlawful possession of cockfighting paraphernalia is a Class A violation.
- (d) Unlawful attendance of cockfighting is a Class B violation.

Section 5. That Section 22-74 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended to read as follows:

Evidentiary Rules.

- (a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:
 - (1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;
 - (2) The failure of a person who leases or rents personal property and fails to return the same within 10 days after the date set forth in the lease or rental agreement for the return of property, if notice is given to the person renting or leasing the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;
 - (3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;
 - (4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;

- (5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles; or
- (6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:
 - (A) The time and place to return the vehicle: and
 - (B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.
- (b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from the library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.
- (c) The word *notice* as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library materials at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address.

Section 6. That Section 22-79 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended to read as follows:

Criminal Damage to Property.

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

- (1) Intentionally injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or
- (2) Injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

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

Section 7. That Section 22-177 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended to read as follows:

Unlawful use of weapons.

(a) Unlawful use of weapons is knowingly:

- (1) Selling, manufacturing, purchasing, carrying or possessing any bludgeon, sword, cane, loaded cane, sandclub, metal knuckles, any knife, commonly referred to as a switchblade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement, a mailed fist, spiked knuckles, metal fist covers or any leather apparatus or device worn on the arms, legs, hands, feet and that contain metal spikes, studs or other metal attachments, sap gloves containing granulated metal or other ingredients designed to add weight to the gloves, or other dangerous or deadly weapon or instrument of like character.
- (2) Carrying or possessing on one's person or in any land, water or air vehicle a sword, dagger, dirk, billy, blackjack, slingshot, dangerous knife, straight-edge razor, a lockblade knife, belt or pocket pistol, fountain pistol or pen-like tear gas or powder charge projection weapon, stiletto or any other dangerous or deadly weapon or instrument of like character; provided, an ordinary pocket knife with a blade less than 3½ inches in length shall not be construed to be a dangerous knife or a deadly weapon or instrument.
- (3) Carrying or possessing on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke

bomb or projector or any object containing a noxious liquid, gas or substance.

- (4) Carrying or possessing any pistol, revolver, shotgun, rifle or other firearm on the person except when on the person's land or in the person's own abode or fixed place of business or office.
 - (5) Transporting any pistol, revolver, or other firearm which is not unloaded and encased in a container which completely enclosed the firearm.
 - (6) Setting a spring gun.
 - (7) Possessing or transporting any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device, commonly known as a Molotov cocktail or a pipe bomb.
 - (8) Carrying on one's person or in any land, air or water vehicle any martial arts weapon, including, but not limited to, a shuriken or throwing star, as defined in K.S.A. 21-4202 and amendments thereto, karate sticks, nunchaku, Chinese fighting sticks, throwing spikes, metal coverings for fist or foot, or any other dangerous weapon or instrument of like character, except a student currently enrolled in a formal martial arts class or formal instructor of martial arts employed in a licensed martial arts studio or business while carrying with them their training uniform while going to or from their place of formal training.
 - (9) Drawing, using, demonstrating, or threatening to draw, use or demonstrate any object in a hostile manner.
 - (10) Carrying any object in any manner with the intent to go armed, except when on the person's own land or in the person's own abode, fixed place of business or office.
 - (11) Discharging or firing any air rifle, pellet gun or BB gun within the city limits while on the streets, alleys or public places.
 - (12) Discharging any gun, revolver, pistol, or firearm of any description within the city.
 - (13) Possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance.
 - (14) Possessing any firearm by any person, other than a law enforcement officer or clearly authorized security officer, in or on any school property or grounds.
- (b) Subsections (a)(1)—(a)(4), (a)(8), (a)(9), and (a)(12) of this section shall not apply to or affect any of the following:

- (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 officers.
- (2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crimes.
- (3) Members of the armed services or reserve forces of the United States or the state national guard while in the performance of their official duty.
- (4) Manufacture of, transportation to, or sale of weapons to persons authorized under subsections (b)(1)—(b)(3) of this section to possess such weapons.
- (5) Special deputy sheriffs, as described in K.S.A. 19-805a et seq., who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.
- (6) Unified government animal control officers while in the performance of their duties using tranquilizer dart guns on animals.
- (7) The United States attorney for the District of Kansas, the attorney general, any district attorney, county attorney, Chief Counsel of the Unified Government, any assistant United States attorney if authorized by the United States attorney for the District of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney, assistant county attorney, or assistant Unified Government counsel if authorized by the district attorney, county attorney, or Chief Counsel of the Unified Government by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c01: 7c17.

(c) Subsections (a)(4) and (a)(9) of this section shall not apply to or affect the following:

- (1) Licensed hunters or fishermen while engaged in hunting or fishing and traveling to and from places to hunt and fish, those engaged in camping, scouting, trap, skeet or target shooting and instruction and training in safety and skillful use of weapons, including traveling to and from places to engage in such activities.
- (2) Persons licensed as private detectives by the state and detectives or special agents regularly employed by railroad companies or

other corporations to perform fulltime security or investigative service.

- (3) The state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157.
- (d) Subsection (a)(1) of this section shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 USC 5841 et seq., in the name of such person, and, if such person transfers such firearm, device or attachment to another person, it has been so registered in the transferee's name by the transferor.
- (e) Subsection (a)(4) shall not apply to any person carrying a concealed weapon as authorized by K.S.A. Supp. 75-7c01 through 75-7c17.
- (f) Subsection (a)(11) of this section shall not apply to the discharge of firearms in any licensed shooting gallery, by a gunsmith in carrying on his trade, or by any officer of the law in the discharge of his official duties.
- (g) Subsection (a)(12) of this section shall not apply to:
 - (1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school; or
 - (2) Any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school.
- (h) The holder of a private security officer firearm permit shall carry a firearm while actually engaged in the performance of transporting an employer or their agent directly to and from a financial institute or as allowed by section 19-118. The holder of a private security officer permit shall be allowed to carry only those intermediate weapons approved for use by law enforcement officers with the city police department.
- (i) It shall be a defense that the defendant is within an exemption.
- (j) No person shall unlawfully use weapons as defined herein. Any person unlawfully using weapons, as defined herein, shall, upon conviction thereof, be deemed guilty of a class A violation. In addition to the penalty for the violation of this section, it shall be the duty of the municipal judge to order such weapon to be forfeited to the city unified government. The same shall be destroyed, retained for use by the police department or sold by the chief of police whenever the weapon is no longer needed for evidence.

Section 8. That Section 22-180 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended to read as follows:

Sec. 22-180. Criminal disposal of firearms.

(a) Criminal disposal of firearms is knowingly:

- (1) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;
- (2) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;
- (3) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (b) of this section, under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was found not to have been in possession of a firearm at the time of the commission of the offense;
- (4) Selling, giving or otherwise transferring any firearm to any person who, within the preceding ten years, has been convicted of a felony to which this subsection applies but was not found to have been in the possession of a firearm at the time of the commission of the offense or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime; or
- (5) Selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the offense.

(b) Subsection (a)(3) of this section shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, or Chapter 32 of the 2009 Sessions Laws of Kansas, Sections 5 or 6, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(c) Unlawful disposal of firearms is a Class A violation.

Section 9. That Section 22-352 of the 2008 Code of Ordinances and Resolutions of the Unified Government be and the same is hereby amended to read as follows:

Violation of a Protective Order.

(a) Violation of a protective order is knowingly, or intentionally violating:

- (1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106, and 60-3107, and amendments thereto.
- (2) 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, and amendments thereto;
- (3) A restraining order issued pursuant to K.S.A. 38-1542, 38-1543, 38-1563, and 60-1607, and amendments thereto;
- (4) 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 that orders the person to refrain from having direct or indirect contact with another person;
- (5) An order issued in this or any other state 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;
- (6) A protection from stalking order.

(b) As used in this section, "order" includes any order issued by a municipal or district court.

(c) No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing a defendant in any civil or criminal proceeding from contacting the protected party for a legitimate purpose within the scope of the civil or criminal proceeding. The attorney, or person acting on the attorney's behalf, shall be identified in any such contact.

(d) Violation of a protective order is a Class A violation.

Section 10. That said original Sections 22-74, 22-79, 22-177, 22-180 and 22-352 of the 2008 Code of Ordinances and Resolutions of the Unified Government, be and the same is hereby repealed.

Section 11. This ordinance shall take effect and be in full force from and after its passage, approval, and publication in the official Unified Government newspaper.

**PASSED BY THE BOARD OF COMMISSIONERS OF THE UNIFIED GOVERNMENT
OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS,
THIS 5 DAY OF November 2009.**



Joe Reardon, Mayor/CEO

Attest:

Tom G. Roberts
Unified Government Clerk

Approved As To Form:

Kristen Chowning Martin, Assistant Counselor



Staff Request for Commission Action

Tracking No. 090336

☒ Revised

☐ On Going

Type: Standard

Committee: Public Works and Safety Committee

Date of Standing Committee Action: 10/13/2009

(If none, please
explain):

Proposed for the following Full Commission Meeting Date:

Confirmed Date: 11/5/2009

11/5/2009

☐ Changes Recommended By Standing Committee (New Action Form required with signatures)

Date:	Contact Name:	Contact Phone:	Contact Email:	Ref:	Department / Division:
10/1/2009	Kristen Chowning-Martin	913-573-5075	kchowning-martin@wyc...		Legal

Item Description:

An ordinance relating to public offenses amending the 2008 Code of Ordinances and Resolutions of the Unified Government. This ordinance reflects changes in state statutes from the 2008 and 2009 Session Laws.

Action Requested:

Forward to the Commission for consideration.

☒ Publication Required

Budget Impact: (if applicable)

Amount: \$

Source:

☐ Included In Budget

☒ Other (explain) No budget impact.

File Attachment

File Attachment

File Attachment



Public Offense ordinance
amendments revised.doc
Microsoft Office Word
97 - 2003 Document
70.5 KB

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