

**CITY OF FAIRWAY, KANSAS
ORDINANCE NO. 1703**

AN ORDINANCE RELATING TO PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRWAY, KANSAS, INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES," EDITION OF 2019, AMENDING AND REPEALING CERTAIN PROVISIONS OF EXISTING ARTICLE II OF CHAPTER 8, ENTITLED "UNIFORM PUBLIC OFFENSE CODE" AND ARTICLE III ENTITLED "DRUGS" OF THE CODE OF THE CITY OF FAIRWAY, KANSAS.

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

SECTION 1. That existing Section 8-25 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, be amended to read as follows:

Sec. 8-25. Incorporated by reference.

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City that certain code known as the "Uniform Public Offense Code for Kansas Cities," Edition of 2019 ("2019 UPOC"), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except those articles, parts or portions as are hereafter omitted, deleted, modified or changed, and with those additions thereto as are made by this or any other ordinance of the City hereafter adopted; this incorporation being authorized by K.S.A. 12-3009 to 12-3012 and 12-3301 to 12-3302, inclusive, as amended. At least one copy of this Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. _____," with all sections or portions thereof intended to be changed clearly marked to show any change, and to which shall be attached a copy of this Ordinance, and shall be filed with the City Clerk to be open to inspection and to be available to the public at all reasonable hours. The Police Department, Municipal Judge and all administrative departments of the City, charged with enforcement of the Ordinance, shall be supplied, at the cost of the City, the number of Official copies of this Uniform Public Offense Code, similarly marked, as it may be deemed expedient.

SECTION 2. That existing Section 8-25 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 3. That existing Section 8-26 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is hereby amended to read as follows:

Sec. 8-26. Abusing toxic vapors.

Section 9.9 of the 2019 UPOC is hereby amended by deleting existing Section 9.9 and inserting in place thereof the following:

Section 9.9. Abusing Toxic Vapors.

- (1) It shall be unlawful for any person to knowingly possess, buy, use, smell, or inhale the fumes of toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system.
- (2) Definitions: For the purposes of this Section, the term "toxic vapors" means the following substances or products containing these substances:
 - a. Alcohols, including methyl, isopropyl, propyl or butyl;
 - b. Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;
 - c. Acetone;
 - d. Benzene;
 - e. Carbon tetracholoride;
 - f. Cyclohexane;
 - g. Freons, including freon 11 and freon 12;
 - h. Hexane;
 - i. Methyl ethyl ketone;
 - j. Methyl isobutyl ketone;
 - k. Naptha;
 - l. Perchlorethylene;
 - m. Toluene;
 - n. Trichloroethane; or
 - o. Xylene.
- (3) This section shall not be construed to apply to the inhalation of anesthesia or other substances for medical or dental purposes.
- (4) In a prosecution for a violation of this Section, evidence that a container lists one (1) or more of the substances described in Subsection (2) of this section as one of its ingredients shall be prima facie evidence that the substance in that container contains toxic vapors and emits the fumes thereof.
- (5) Penalty. Any person violating any provisions of this article shall upon conviction thereof, be punished by a fine of not more than five hundred dollars (\$500.00). In addition to any sentence or fine imposed, the court shall enter an order requiring that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program, as provided in K.S.A. 8-1008, and amendments thereto, or both the education and

treatment programs.

SECTION 4. That existing Section 8-26 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 5. That existing Section 8-27 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is amended to read as follows:

Sec. 8-27. Criminal use of weapons.

Section 10.1 of the 2019 UPOC is hereby amended by deleting existing Section 10.1 and inserting in place thereof the following:

Section 10.1 Criminal Use of Weapons.

- (1) Criminal use of weapons is knowingly:
 - a. Possessing with the intent to use the same unlawfully against another, any bludgeon, sand club, metal knuckles, throwing star, billy, blackjack, slingshot or any other dangerous or deadly weapon or instrument of like character;
 - b. Setting a spring gun;
 - c. Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;
 - d. Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of an controlled substance;
 - e. Selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;
 - f. Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;
 - g. Possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity event whether the person knows or has reason to know that the person was in or on that property or

grounds.

- h. Refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer; or
- i. Possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age whether the person knows or has reason to know the length of the barrel.

(2) Criminal use of weapons as defined in:

- a. Subsections (1)a, (1)b, (1)c, (1)d, and (1)h of this section is a Class A violation;
- b. Subsections (1)f and (1)g of this section is a Class B violation;
- c. Subsection (1)i of this section is a Class A violation on a first offense.

(3) Subsection (1)a shall not apply to:

- a. Law enforcement officers, or any person summoned by any officers to assist in making arrests or preserving the peace while actually engaged in assisting that officer;
- b. Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
- c. 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
- d. The manufacture of, transportation to, or sale of weapons to a person authorized under Subsections (3)a, (3)b, and (3)c to possess the weapons.

(4) Subsection (1)g shall not apply to:

- a. Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;
- b. 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;
- c. Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in that person's behalf who is delivering or collecting a student;
- d. Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contained a polling place

- for the purpose of voting during polling hours on an election day; or
- e. Possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. Supp. 75-7c01 *et seq.*, and amendments thereto.
- (5) Subsection (1)e shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 75-7c26, and amendments thereto.
 - (6) Subsection (1)i shall not apply if that person, less than 18 years of age, was:
 - a. In attendance at a hunter's safety course or a firearm safety course;
 - b. Engaging in practice in the use of the firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which the range is located;
 - c. Engaging in an organized competition involving the use of the firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of the organization's performance;
 - d. Hunting or trapping pursuant to a valid license issued to that person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;
 - e. Traveling with the firearm in that person's possession being unloaded to or from any activity described in subsections(6)a through (6)d, only if the firearm is secured, unloaded and outside the immediate access of that person;
 - f. On real property under the control of that person's parent, legal guardian or grandparent and who has the permission of that parent, legal guardian or grandparent to possess the firearm; or
 - g. At that person's residence and who, with the permission of that person's parent or legal guardian, possesses the firearm for the purposes of exercising the rights contained in K.S.A. Supp. 21-5222, 21-5223 or 21-5225, and amendments thereto.

SECTION 6. That existing Section 8-27 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 7. That existing Section 8-28 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 8. That existing Section 8-29 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is hereby readopted to read as follows:

Sec. 8-29. Littering.

- (a) Littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:
 - (1) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit these acts; or
 - (2) Any private property without the consent of the owner or occupant of that property.

SECTION 9. That existing Section 8-29 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 10. That Section 8-30 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is hereby amended to read as follows:

Sec. 8-30. UNLAWFUL DISCHARGE OF A FIREARM.

Section 10.5 of the 2019 UPOC is hereby amended by deleting existing Section 10.5 and inserting in place thereof the following:

Section 10.5. Unlawful Discharge of a Firearm.

- (1) Unlawful discharge of a firearm is the reckless discharge of a firearm within or into the corporate limits of any city.
- (2) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:
 - a. The firearm is discharged in the lawful defense of one's person, another person or one's property;
 - b. The firearm is discharged at a private or public shooting range;
 - c. The firearm is discharged by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;
 - d. The firearm is discharged by special permit of the chief of police;
 - e. The firearm is discharged using blanks; or
 - f. 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.

SECTION 11. That existing Section 8-30 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 12. Interpretation: This ordinance shall be construed as follows:

- a. Liberal Construction: The provisions of this ordinance shall be liberally construed to effectively carry out its purposes, which are hereby found and declared to be in furtherance of the public health, safety, welfare and convenience.
- b. Savings Clause: The repeal of any ordinance or code section, as provided herein, shall not revive an ordinance previously repealed, nor shall the repeal affect any right that accrued, any duty imposed, any penalty incurred or any proceedings commenced, under or by virtue of the ordinance repealed. Any ordinance or code repealed continues in force and effect after the passage, approval, and publication of this ordinance for the purpose of pursuing these rights, duties, penalties or proceedings.

Invalidity: If for any reason any chapter, article, section, subsection, sentence, portion or part of this ordinance, or the application thereof to any person or circumstance, is declared to be unconstitutional or invalid, that decision shall not affect the validity of the remaining sections of this ordinance, City Code or other ordinances

SECTION 13. That Ordinance No. 1676 is hereby repealed.

SECTION 14. That this ordinance shall take effect upon adoption and publication in the official City newspaper.

PASSED by the City Council this 14th day of October, 2019. **APPROVED** by the Mayor.

Melanie Hepperly,
Mayor

ATTEST:

Kim Young, City Clerk

APPROVED AS TO FORM

Stephen P. Chinn, City Attorney