

Passed: _____
Published: _____

ORDINANCE NO. _____

AN ORDINANCE RELATING TO THE DERBY PUBLIC OFFENSE CODE FOR THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING SECTIONS 9.04.060, 9.12.040, 9.12.070, 9.12.210, 9.16.200, 9.16.201, 9.16.205, 9.16.240, AND 9.20.160 OF THE DERBY MUNICIPAL CODE AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR.

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

Section 1. Section 9.04.060 of the Derby Municipal Code is hereby amended to read as follows:

“9.04.060 - General definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Act" includes a failure or omission to take action.

"Air gun" or "air rifle" means any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any pellet of BB shot, and whether operating from and upon compressed air or mechanical or elastic spring work or otherwise.

"Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

"Alcohol without liquid machine" means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

"Alcoholic liquor" means alcohol, spirits, wine, beer, alcoholic candy, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

"Animal" means every living vertebrate except a human being.

"Animal shelter" means the same as such term is defined in K.S.A. 47-1701, and amendments thereto.

"Another" means a person or persons as defined in this code other than the person whose act is claimed to be an offense.

"Auction motor vehicle dealer" means any person who for commission, money or other thing of value is engaged in an auction of motor vehicles except that the sales of such motor vehicles shall involve only motor vehicles owned by licensed motor vehicle dealers and sold to licensed motor vehicle dealers, except that any auction motor vehicle dealer, registered as such and lawfully operating prior to June 30, 1980, shall be deemed to be and have been properly licensed under K.S.A. 8-2401 *et seq.* from and after July 1, 1980. For the purposes of this subsection, an auction is a private sale of motor vehicles where any and all licensed motor vehicle dealers who choose to do so are permitted to attend and offer bids and the private sale of such motor vehicles is to the highest bidder.

"Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

"Beer" means a beverage, containing more than 3.2 percent alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.

"Body piercing" means puncturing the skin of a person by aid of needles designed or used to puncture the skin for the purpose of inserting removable jewelry through the human body, except puncturing the external part of the human earlobe shall not be included in this definition.

"Cannabidiol treatment preparation" means an oil containing cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol)) and tetrahydrocannabinol, as described in K.S.A. 65-4105, and amendments thereto, and having a tetrahydrocannabinol concentration of no more than 5% relative to the cannabidiol concentration in the preparation, verified through testing by a third-party, independent laboratory.

"Cardholder" means the person or entity to whom or for whose benefit a financial card is issued.

"Caterer" means an individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

"Cereal malt beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute or any flavored malt beverage, as defined in K.S.A. 41-2729, and amendments thereto, but does not include any such liquor which is more than 3.2% alcohol by weight.

"Cigarette" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material except tobacco.

"City" means all land and water either within or outside the boundary of Derby, Kansas over which the City of Derby, Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water.

"City or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility.

"Club" means a Class A or Class B club.

"Class A club" means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members) and their families and guests accompanying them.

"Class B club" means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

"Conduct" means an act or a series of acts, and the accompanying mental state.

"Controlled Substance" means 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.

"Conviction" means a judgment of guilt entered upon a plea or finding of guilt.

"Cosmetic tattooing" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin, by use of a needle, so as to form indelible marks for cosmetic or figurative purposes.

"Court appointed guardian" means one who is appointed by a court and has legal authority and duty to care for another person, especially because of the other's infancy, incapacity or disability.

"Debilitating medical condition" means a medically diagnosed chronic disease or medical condition causing a serious impairment of strength or ability to function, including one that produces seizures, for which the patient is under current and active treatment by a physician licensed to practice medicine and surgery in Kansas.

"Deception" means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

"Deprive Permanently" means to:

- 1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;
- 2) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
- 3) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

"Distribute" means 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 pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

"Domestic pet" means any domesticated animal which is kept for pleasure rather than utility.

"Drinking establishment" means a premises which may be open to the general public, where alcoholic liquor or cereal malt beverage by the individual drink is sold. Drinking establishment includes a railway car.

"Dwelling" means a building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.

"Dwelling unit" means a single-family residence, multiple-family residence and each living unit in a mixed-use building.

"Electronic cigarette" means a battery-powered device, whether or not such device is shaped like a cigarette, that can provide inhaled doses of nicotine by delivering a vaporized solution by means of cartridges or other chemical delivery systems.

"Equine" means a horse, pony, mule, jenny, donkey or hinny.

"Explosives" means any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

"Farm animal" means an animal raised on a farm or ranch and used or intended for use as food or fiber.

"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.

"Fighting words" means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.

"Financial card" means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property or services or to conduct other financial transactions.

"Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

"Fire department" means a public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district.

"Fish," as a verb, means take, in any manner, any fish.

"Funeral" means the ceremonies, processions, and memorial services held in connection with the burial or cremation of a person.

"Furbearing animal" means any badger, beaver, bobcat, grey fox, lynx, marten, mink, muskrat, opossum, otter, raccoon, red fox, spotted skunk, striped skunk, swift fox or weasel.

"Furharvest" means to:

- 1) Take, in any manner, any furbearing animal; or
- 2) Trap or attempt to trap any coyote.

"Game animal" means any big game animal, wild turkey or small game animal.

"Gamecock" means a domesticated fowl that is bred, reared or trained for the purpose of fighting with other fowl.

"He" means "he" or "she."

"Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.

"Health care provider" means any person:

- 1) Licensed to practice a branch of the healing arts;
- 2) Licensed to practice psychology;
- 3) Licensed to practice professional or practical nursing;
- 4) Licensed to practice dentistry;
- 5) Licensed to practice optometry;

- 6) Licensed to practice pharmacy;
- 7) Registered to practice podiatry;
- 8) Licensed as a social worker; or
- 9) Registered to practice physical therapy.

"His" means "his" or "her."

"Hunt" means to:

- 1) Take, in any manner, any wildlife other than a fish, bullfrog, furbearing animal or coyote;
or
- 2) Take, in any manner other than by trapping, any coyote.

"Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

"Juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 38-2302, and amendments thereto.

"Law enforcement officer" means:

- 1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses;
- 2) Any officer of the Kansas department of corrections or, for the purposes of Section 9.08.040 and amendments thereto, any employee of the Kansas department of corrections;
or
- 3) Any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

"Maliciously" means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

"Motion picture theater" means a movie theater, screening room or other venue when used primarily for the exhibition of a motion picture.

"Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion.

"Motor vehicle" means every vehicle, other than a motorized bicycle, electric-assisted bicycle or a motorized wheelchair, that is self-propelled.

"Needle" means a sharp, pointed implement used for the purpose of tattooing, cosmetic tattooing or body piercing. The term needle does not include any implements or object altered to be used as needles.

"Nonferrous metal" means a metal that does not contain iron or steel.

"Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

"Obtains or exerts control over property" includes but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

"Ordinance cigarette or tobacco infraction" means a violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto.

"Owner" means a person who has any interest in property.

"Paint ball gun" means any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any paint ball, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.

"Person" means an individual, public or private corporation, government, partnership or unincorporated association.

"Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged or dismissed.

"Police dog" means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders.

"Possession" means knowingly having joint or exclusive control over an item or knowingly keeping some item in a place where the person has some measure of access and right of control.

"Private place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.

"Property" means anything of value, tangible or intangible, real or personal.

"Prosecution" means all legal proceedings by which a person's liability for an offense is determined.

"Public demonstration" means:

- 1) Any picketing or similar conduct; or

- 2) Any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral.

"Public employee" means a person employed by or acting for the city for the purpose of exercising the city's respective power and performing their respective duties and who is not a "public officer."

"Public offense" or "offense" means an act or omission defined by this code which, upon conviction, is punishable by fine, confinement or both fine and confinement.

"Public officer" includes the following, whether elected or appointed:

- 1) An executive or administrative officer of the city;
- 2) A member of the governing body of the city;
- 3) A judicial officer, which shall include a judge, municipal judge, magistrate, juror, master or any other person appointed by a judge or court to hear or determine a cause of controversy;
- 4) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;
- 5) A law enforcement officer; and
- 6) Any other person exercising the functions of a public officer under color of right.

"Railroad property" includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad company.

"Real property" or "real estate" means every estate, interest and right in lands, tenements and hereditaments.

"Rebuilder" means a person who is engaged in the business of rebuilding salvage vehicles, as defined in K.S.A. 8-196, and amendments thereto, and selling such rebuilt salvage vehicles.

"Retail dealer" means a person, other than a vending machine operator, in possession of cigarettes or electronic cigarettes for the purpose of sale to a consumer.

"Runaway" means a child under 18 years of age who is voluntarily absent from:

- 1) The child's home without the consent of the child's parent or other custodian; or
- 2) A court ordered or designated placement, or a placement pursuant to court order, if the absence is without the consent of the person with whom the child is placed, or, if the child is placed in a facility, without the consent of the person in charge of such facility or such person's designee.

"Sail board" means a surfboard using for propulsion a free sail system comprising one or more swivel-mounted rigs (mast, sail, and booms) supported in an upright position by the crew and the wind.

"Sailboat" means any vessel, other than a sail board, that is designed to be propelled by wind action upon a sail for navigation on the water.

"Salvage vehicle dealer" means any person engaged in the business of buying, selling or exchanging used vehicles and primarily engaged in the business of the distribution at wholesale or retail of used motor vehicle parts and includes establishments primarily engaged in dismantling motor vehicles for the purpose of selling parts.

"Salvage vehicle pool" means any person who as an agent for a third party is primarily engaged in the business of storing, displaying and offering for sale salvage vehicles.

"Sample" means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.

"School employee" means any employee of 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 one through 12.

"Scrap metal recycler" means a person who engages in the business of shredding or otherwise processing nonrepairable vehicles or other scrap metal into prepared grades and whose principal product is scrap iron, scrap steel or nonferrous metallic scrap for sale for remelting purposes.

"Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse.

"Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

- 1) Generally recognized health care practices; or
- 2) A body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

"Smoke detector" means a device or combination of devices which operate from a power supply in the dwelling unit or at the point of installation for the purpose of detecting visible or invisible particles of combustion. Such term shall include smoke detectors approved or listed for the purpose for which they are intended by an approved independent testing laboratory.

"Sodomy" means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

- 1) Generally recognized health care practices; or
- 2) A body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

"Solicit or solicitation" means to command, authorize, urge, incite, request or advise another to commit an offense.

"Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.

"Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the Protection from Abuse Act.

"State" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction or the air space above such land and water.

"State correctional officer or employee" means any officer or employee of the Kansas Department of Corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

"Stolen property" means property over which control has been obtained by theft.

"Tattooing" means the process by which the skin is marked or colored by insertion of nontoxic dyes or pigments by use of a needle into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

"Telecommunications device" includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto.

"Telefacsimile communication" means the use of electronic equipment to send or transmit a copy of a document via a telephone line.

"Temporary permit" means a temporary permit issued pursuant to K.S.A. 41-2645, and amendments thereto.

"Threat" means a communicated intent to inflict physical or other harm on any person or on property.

"Throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape, manufactured for use as a weapon for throwing.

"Tobacco products" means 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.

"Toxic vapors" includes the following substances or products containing such substances:

- 1) Alcohols, including methyl, isopropyl, propyl, or butyl;
- 2) Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
- 3) Acetone;
- 4) Benzene;
- 5) Carbon tetrachloride;
- 6) Cyclohexane;
- 7) Freons, including freon 11, freon 12, and other halogenated hydrocarbons;
- 8) Hexane;
- 9) Methyl ethyl ketone;
- 10) Methyl isobutyl ketone;
- 11) Naptha;
- 12) Perchlorethylene;
- 13) Toluene;
- 14) Trichloroethane; or
- 15) Xylene.

"Transmission" means any form of communication, including but not limited to, physical transmission of paper and electronic transmission that creates a record that may be retained and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. Transmission also includes a request to receive a transmission of a visual depiction.

"Unlawful sexual act" means any lewd and lascivious behavior or sexual battery as defined in this code.

"Vehicle crusher" includes any person, other than a vehicle recycler or a scrap metal recycler, who engages in the business of flattening, crushing or otherwise processing nonrepairable vehicles for recycling. Vehicle crushers include, but are not limited to, persons who use fixed or mobile equipment to flatten or crush nonrepairable vehicles for a vehicle recycler or a scrap metal recycler.

"Vehicle dealer" includes any person who:

- 1) For commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in vehicles; or
- 2) For commission, money or other thing of value is engaged in the business of buying, selling or offering or attempting to negotiate a sale of an interest in motor vehicles as an auction motor vehicle dealer as defined below; but does not include:
 - a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, or any bank, trustee or lending company or institution which is subject to state or federal regulations as such, with regard to its disposition of repossessed vehicles;
 - b. Public officers while performing their official duties;

- c. Employees of persons enumerated in subparagraphs a. and b., when engaged in the specific performance of their duties as such employees;
- d. Auctioneers conducting auctions for persons enumerated in subparagraphs a., b., or c.; or
- e. Auctioneers who, while engaged in conducting an auction of tangible personal property for others, offer for sale:
 - i. Vehicles which have been used primarily in a farm or business operation by the owner offering the vehicle for sale, including all vehicles which qualified for a farm vehicle tag at the time of sale except vehicles owned by a business engaged primarily in the business of leasing or renting passenger cars;
 - ii. Vehicles which meet the statutory definition of antique vehicles; or
 - iii. Vehicles for no more than four principals or households per auction. All sales of vehicles exempted pursuant to provision e., except trucks, truck tractors, pole trailers, trailers and semitrailers as defined by K.S.A. 8-126, and amendments thereto, shall be registered in Kansas prior to the sale.

"Vehicle recycler" means a person who engages in the business of acquiring, dismantling, removing parts from or destroying nonrepairable vehicles for the primary purpose of reselling the vehicle parts.

"Vessel" means any watercraft designed to be propelled by machinery, oars, paddles, or wind action upon a sail for navigation on the water.

"Visual Depiction" means any photograph, film, video picture, digital or computer-generated image or picture made or produced by electronic, mechanical or other means.

"Wildlife" means any member of the animal kingdom, including, without limitation, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg or offspring thereof, or the dead body or parts thereof. Wildlife does not include agricultural livestock, including cattle, swine, sheep, goats, horses, mules and other equines and poultry, including, but not limited to, domestic chickens, turkeys and guinea fowl.

"Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

"Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, tokens, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, that is capable of being used to the advantage or disadvantage of some person.

Section 2. Section 9.12.040 of the Derby Municipal Code is hereby amended to read as follows:

“9.12.040 - Theft.

- A. Theft is any of the following acts done with the intent to permanently deprive the owner 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. Theft of property or services of the value of less than \$1,500 dollars is a Class A violation, except as provided below:
 - 1. Property of the value of less than \$1,500 from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct;
 - 2. Property of the value of at least \$50 but less than \$1,500 if committed by a person who has, within five years immediately preceding commission of the crime, excluding any period of imprisonment, been convicted of theft two or more times; and
 - 3. Property that is a firearm of the value of less than \$25,000; and
 - 4. Property that is mail of the value of less than \$1,500 from three separate locations within a period of 72 hours as part of the same act or transaction or in two or more acts of transactions connected together or constituting parts of a common scheme or course of conduct.
- C. As used in this section:
 - 1. "Regulated scrap metal" means the same as defined in K.S.A. 50-6,109, and amendments thereto;
 - 2. "Remote service unit" means the same as defined in K.S.A. 9-1111, and amendments thereto, and includes, but is not limited to, automated cash dispensing machines and automated teller machines; and
 - 3. "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 or remote service unit to its condition at the time immediately prior to the theft of such regulated scrap metal or remote service unit, whichever is greater.

Section 3. Section 9.12.070 of the Derby Municipal Code is hereby amended to read as follows:

“9.12.070 - Criminal deprivation of property.

- A. Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to temporarily deprive the owner of the use thereof, without the owner's consent but not with the intent of permanently depriving the owner of the possession, use or benefit of such owner's property.
- B. Criminal deprivation of property that is a motor vehicle upon a first or second conviction is a Class A violation. Upon a first conviction of this section, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than \$100. Upon a second conviction of this section, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than \$200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.
- C. Criminal deprivation of property other than a motor vehicle or a firearm is a Class A violation. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.
- D. As used in this section, motor vehicle means the same as in K.S.A. 8-1437, and amendments thereto.

Section 4. Section 9.12.210 of the Derby Municipal Code is hereby amended to read as follows:

“9.12.210 - Motor vehicle dealers; selling motor vehicles without a license.

- A. It shall be unlawful for any person to do business as a motor vehicle dealer, salvage vehicle dealer, motor vehicle manufacturer, motor vehicle converter, auction motor vehicle dealer, vehicle crusher, vehicle recycler, rebuilder, scrap metal recycler, salvage vehicle pool or salesperson without a license issued by the director of vehicles. The isolated or occasional sale of a vehicle by a person who owned such vehicle shall not constitute the doing of business as a vehicle dealer.
- B. As used in this section:
 - 1. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, except that such term shall include micro utility trucks, as defined

in K.S.A. 8-126, and amendments thereto, but shall not include motorized bicycles or electric-assisted bicycles, and does not include manufactured homes or mobile homes. As used herein, the terms "manufactured home" and "mobile home" shall have the meanings ascribed to them by K.S.A. 58-4202, and amendments thereto.

2. "Motor vehicle" means any vehicle other than a motorized bicycle or electric-assisted bicycle, that is self-propelled and is required to be registered under the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, except that such term shall include micro utility trucks, as defined in K.S.A. 8-126, and amendments thereto.

C. Violation of this section shall be punishable by a fine not to exceed \$2,500.

Section 5. Section 9.16.200 of the Derby Municipal Code is hereby amended to read as follows:

“9.16.200 - Electioneering.

A. (1) Electioneering is:

- a) Knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. including wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicates support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof; or
- b) If committed by a candidate:
 - i. Touching or handling any voter's ballot during the voting process;
 - ii. Distributing ballots or counting ballots;
 - iii. Hindering or obstructing any voter from voting or from entering and leaving the polling place; or
 - iv. Hindering or obstructing any election board worker from performing election duties.

- (2) Electioneering shall not include bumper stickers affixed to a motor vehicle that is used to transport voters to a polling place or to an advance voting site for the purpose of voting.

B. (1) The provisions of subsection A(1)(b) shall not apply to:

- a) The secretary of state, any election official or any county election officer;
- b) A candidate for precinct committeeman or committeewoman who is employed by a county election office and is engaged in the performance of such employee's duties;
- c) A candidate for any office not specified in paragraphs (1) or (2) who is employed by a county election office and is engaged in the performance of such employee's duties, if such employee does not appear as a candidate for office on any ballot such employee touches, handles, distributes, or counts; or

d) A candidate transmitting or delivering an advance voting ballot in accordance with K.S.A. 25-2437(b), and amendments thereto.

C. (1) As used in this section, “advance voting site” means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122, and amendments thereto, and adult care homes and hospital based care units at the time of an election participating in the voting procedures prescribed in K.S.A. 2020 Supp. 25-2812, and amendments thereto.

(2) “Candidate” means an individual who has declared such individual’s candidacy pursuant to K.S.A. 25-205 *et seq.*, and amendments thereto, or has been nominated for elected office pursuant to K.S.A. 25-301 *et seq.*, and amendments thereto, in the election for which the individual is charged with having violated the provisions of this section.

D. Electioneering is a class C violation.

Section 6. Section 9.16.201 of the Derby Municipal Code is hereby amended to read as follows:

“9.16.201 - Obstructing public ways—Prohibited.

A. It is unlawful for any person to obstruct any street, alley, public park, public area, public right-of-way or sidewalk in the city by:

1. Placing, piling, or maintaining thereon any good, ware, merchandise, litter, filth, or other item; or by
2. Placing or erecting any building or fence thereon.

B. It is unlawful for persons to gather in a crowd or to collect in such a manner as to prevent, interrupt or obstruct the travel, free passage or access over the same by the public upon any public park, sidewalk, street, alley or building or upon any private property to which the public has access.

C. Any violation of this section shall be punishable as a Class C violation.

Section 7. Section 9.16.205 of the Derby Municipal Code is hereby amended to read as follows:

“9.16.205 - 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:
 - i. 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;

- ii. 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;
- iii. Causing a civil action to be filed and prosecuted and assisting in its prosecution; or
- iv. 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. "Victim" means any individual:

1. Against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or
2. Who suffers a civil injury or loss; and

D. "Witness" means any individual:

1. Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;
2. Whose declaration under oath is received or has been received as evidence for any purpose;
3. 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;
4. 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
5. Who is believed by the offender to be an individual described in this subsection.

E. "Civil injury or loss" means any injury or loss for which a civil remedy is provided under the laws of this state, any other state, or the United States.

Section 8. Section 9.16.240 of the Derby Municipal Code is hereby amended to read as follows:

“9.16.240 - Camping or remaining on park property prohibited.

- (A) It is unlawful for a person or group to remain on or camp on park property beyond the posted hours of operation for said park.
- (B) If no hours of operation are posted, it is unlawful to remain on or camp on park property between the hours of 11:00 p.m. and 6:00 a.m.
- (C) The provisions of this section shall not apply to the following:

1. Employees of governmental entities in the performance of authorized duties on behalf of the governmental entity, and
 2. Individuals who, pursuant to a temporary permit or rental agreement, have written permission to be on park property during the hours stated in said permit or rental agreement.
- (D) The director, or his or her designee, may issue a temporary permit to allow camping on park property, or storage of personal property on park property in connection with a special event. A special event includes, but is not limited to: programs operated by the departments of the city, youth or school events, marathons or other sporting events, scouting activities, and historical reenactments.
- (E) If the director or his or her designee determines that the operation or maintenance of any temporary camp or campsite or storage of personal property will in no way jeopardize the public health, safety or welfare, a temporary permit may be issued. The director may make rules and regulations pertaining to the establishment, operation or conduct of such camping activities.
- (F) The director or his or her designee may revoke any temporary permit issued pursuant to this section, if the director or his or her designee determines that the maintenance or continued operation of the camp or campsite or the storage of personal property is adverse to the public health, safety and welfare.
- (G) The overnight parking of trailers, campers, or motor homes is prohibited on park property without a temporary permit or written permission of the City.”

Section 9. Section 9.20.160 of the Derby Municipal Code is hereby amended to read as follows:

“9.20.160—Gambling; definitions.

A. Definitions of gambling terms used in this Sections 9.20.160 through 9.20.180 shall be as follows:

"Bet" means a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

1. Bona fide business transactions that are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
2. Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the bona fide owners of animals or vehicles entered in such a contest;
3. A lottery as defined in this section;

4. Any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;
5. A lottery operated by the state pursuant to the Kansas Lottery Act;
6. Any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas Pari-mutuel Racing Act; or
7. Tribal gaming;
8. Charitable raffles as defined by K.S.A. 75-5173, and amendments thereto; or
9. A fantasy sports league as defined in this section; or
10. Sports wagering as defined in K.S.A. 74-8701, and amendments thereto.

"Consideration" means anything that is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. "Consideration" shall not include sums of money paid by or for:

1. Participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of section 501(c) or (d) of the Internal Revenue Code of 1986 and as set forth in K.S.A. 79-4701, and amendments thereto;
2. Participants in any lottery operated by the state pursuant to the Kansas Lottery Act;
3. Participants in any system of pari-mutuel wagering managed, operated and conducted in accordance with the Kansas Pari-mutuel Racing Act; or
4. A person to participate in tribal gaming.

"Fantasy sports league" means any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

1. All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;

2. All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real-world sporting events; and
3. No winning outcome is based:
 - i. On the score, point spread or any performance or performances of any single real-world team or any combination of such teams; or
 - ii. Solely on any single performance of an individual athlete in any single real-world sporting event.

"Gambling device" means any:

1. So-called "slot machine" or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and:
 - i. That when operated may deliver, as the result of chance, any money or property; or
 - ii. By the operation of which a person may become entitled to receive, as the result of chance, any money or property;
2. Other machine, mechanical device, electronic device or other contrivance including, but not limited to, roulette wheels and similar devices, that are equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and:
 - i. That when operated may deliver, as the result of chance, any money or property; or
 - ii. By the operation of which a person may become entitled to receive, as the result of chance, any money or property;
3. Subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but that is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or
4. Token, chip, paper, receipt or other document that evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.
5. "Gambling device" shall not include:
 - i. Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing & gaming commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;
 - ii. Any machine, mechanical device, electronic device or other contrivance, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, that is not designed and manufactured primarily for use in connection with gambling, and

1. That when operated does not deliver, as a result of chance, any money; or
 2. By the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;
- ii. Any so-called claw, crane or digger machine and similar devices that are designed and manufactured primarily for use at carnivals or county or state fairs; or
 - iii. Any machine, mechanical device, electronic device or other contrivance used in tribal gaming;

"Gambling place" means any place, room, building, vehicle, tent or location that is used for any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place;

"Lottery" means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include:

1. A lottery operated by the state pursuant to the Kansas Lottery Act; or
2. Tribal gaming.

"Tribal gaming" means the same as provided by K.S.A. 74-9802, and amendments thereto; and

"Tribal gaming commission" means the same as provided by K.S.A. 74-9802, and amendments thereto.

B. "Gambling" is:

1. Making a bet; or
2. Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery or to play a gambling device.

Gambling is a Class B violation.

Section 10. Repeal

Original sections 9.04.060, 9.12.040, 9.12.070, 9.12.210, 9.16.200, 9.16.201, 9.16.205, 9.16.240, and 9.20.160 of the Derby Municipal Code are hereby repealed. All other provisions of the Municipal Code of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein. All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

