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ORDINANCE NO. 2251

AN ORDINANCE AMENDING SECTIONS 9.04.060, 9.04.120, 9.08.040, 9.12.050, 9.12.090, 9.12.100, 9.12.200, 9.12.210, 9.16.200, 9.20.040, 9.20.050, 9.20.080, 9.20.100, 9.20.160 9.20.190, 9.28.010, AND 9.28.020 OF THE DERBY PUBLIC OFFENSE CODE OF THE DERBY MUNICIPAL CODE; FURTHER AMENDING CHAPTER 9.08 by addition of new Section 9.08.045; DELETING AND RESERVING SECTIONS 9.12.270 and 9.12.280 OF THE SAME FOR FUTURE USE; AND REPEALING ALL CONFLICTING ORDINANCES OR PARTS THEREOF.

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

Section 1. Section 9.04.060 – General Definitions is hereby amended to read as follows:

“9.04.060—General Definitions

The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

- A. “Act” includes a failure or omission to take action.
- B. “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. 25-2812.
- C. “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.
- D. “Alcohol Concentration” means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
- E. “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.
- F. “Alcoholic Liquor” means alcohol, spirits, wine, beer, 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.

- G. "Animal" means every living vertebrate except a human being.
- H. "Another" means a person or persons as defined in this code other than the person whose act is claimed to be an offense.
- I. "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.
- J. "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.
- K. "Beer" means a beverage, containing more than 3.2% 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.
- L. "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.
- M. "Cardholder" means the person or entity to whom or for whose benefit a financial card is issued.
- N. "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.
- O. "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.
- P. "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.

- Q. "City" means all land and water either within or outside the boundary of Derby, Kansas over which the City of Derby, KS has either exclusive or concurrent jurisdiction, and the air space above such land and water.
- R. "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.
- S. "Club" means a Class A or Class B club.
- T. "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.
- U. "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.
- V. "Conduct" means an act or a series of acts, and the accompanying mental state.
- W. "Conviction" includes a judgment of guilt entered upon a plea or finding of guilt.
- X. "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.
- Y. "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."
- Z. "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.
- AA. To "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.

BB. “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.

CC. “Domestic Pet” means any domesticated animal which is kept for pleasure rather than utility.

DD. “Drinking Establishment” means a premises which may be open to the general public, where alcoholic liquor by the individual drink is sold. Drinking establishment includes a railway car.

EE. “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.

FF. “Dwelling Unit” means a single-family residence, multiple-family residence and each living unit in a mixed-use building.

GG. “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.

HH. “Equine” means a horse, pony, mule, jenny, donkey or hinny.

II. “Farm Animal” means an animal raised on a farm or ranch and used or intended for use as food or fiber.

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

KK. “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.

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

MM. “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.

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

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

PP. "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.

QQ. "Furharvest" means to:

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

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

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

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

UU. "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.

VV. "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.

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

XX. "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.

YY. "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.

ZZ. "Juvenile Correctional Facility Officer or Employee" means any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 38-2302, and amendments thereto.

AAA. "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.

BBB. "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 university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

CCC. "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.

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

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

FFF. "Motor Vehicle" means every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

GGG. "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.

HHH. "Nonferrous Metal" means a metal that does not contain iron or steel, including but not limited to: copper, brass, aluminum, bronze, lead, zinc, nickel and their alloys.

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

- JJJ. "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, transfer of title to, interest in, or possession of property.
- KKK. "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.
- LLL. "Owner" means a person who has any interest in property.
- MMM. "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.
- NNN. "Person" means an individual, public or private corporation, government, partnership or unincorporated association.
- OOO. "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.
- PPP. "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
- QQQ. "Possession" means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.
- RRR. "Private Place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.
- SSS. "Property" means anything of value, tangible or intangible, real or personal.
- TTT. "Prosecution" means all legal proceedings by which a person's liability for an offense is determined.
- UUU. "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.

- VVV. "Public Employee" means a person employed by or acting for the city and who is not a "public officer."
- WWW. "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.
- XXX. "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.
- YYY. "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.
- ZZZ. "Real Property" or "real estate" means every estate, interest and right in lands, tenements and hereditaments.
- AAAA. "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.
- BBBB. "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.
- CCCC. "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.
- DDDD. "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.

- EEEE. "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.
- FFFF. "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.
- GGGG. "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.
- HHHH. "Sample" means cigarettes or tobacco products distributed to members of the general public at no cost for purposes of promoting the product.
- IIII. "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 twelve.
- JJJJ. "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.
- KKKK. "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.
- LLLL. "Solicit or Solicitation" means to command, authorize, urge, incite, request or advise another to commit an offense.
- MMMM. "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.
- NNNN. "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.
- OOOO. "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.

PPPP. "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.

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

RRRR. "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.

SSSS. "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.

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

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

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

WWWW. "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.

XXXX. "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.

YYYY. "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 and freon 12, and other halogenated hydrocarbons;
8. Hexane;
9. Methyl ethyl ketone;
10. Methyl isobutyl ketone;

11. Naptha;
12. Perchloroethylene;
13. Toluene;
14. Trichloroethane; or
15. Xylene.

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

AAAAA. "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.

BBBBB. "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:
 - i. 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;
 - ii. Public officers while performing their official duties;
 - iii. Employees of persons enumerated in provisions (1) and (2), when engaged in the specific performance of their duties as such employees;
 - iv. Auctioneers conducting auctions for persons enumerated in provisions (1), (2), or (3); or
 - v. Auctioneers who, while engaged in conducting an auction of tangible personal property for others, offer for sale:
 1. 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;
 2. Vehicles which meet the statutory definition of antique vehicles; or
 3. Vehicles for no more than four principals or households per auction.

All sales of vehicles exempted pursuant to provision (v), 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.

CCCCC. “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.

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

EEEEEE. “Wildlife” includes 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 (cattle, swine, sheep, goats, horses, mules and other equines) and poultry (domestic chickens, turkeys and guinea fowl).

FFFFF. “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.

GGGGG. “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, which is capable of being used to the advantage or disadvantage of some person.”

Section 2. Section 9.04.120 – Application; Kansas Criminal Code is hereby amended to read as follows:

“9.04.120—Application; Kansas Criminal Code

The provisions of the Kansas Criminal Code (K.S.A. Supp. 21-5101 through 21-6712, inclusive and amendments thereto), which are in their nature applicable to the jurisdiction of the city and in respect to which no special provision is made by ordinance of the city are applicable to this public offense code.”

Section 3. Section 9.08.040 – Battery against a law enforcement officer is hereby amended to read as follows:

“9.08.040--Battery against a law enforcement officer

(a) Battery against a law enforcement officer is a battery, as defined in section 9.08.030 of this chapter, committed against:

1. A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

2. A uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, or a juvenile detention facility officer, or employee, while such officer is engaged in the performance of such officer's duty; or
3. judge, while such judge is engaged in the performance of such judge's duty;
4. An attorney, while such attorney is engaged in the performance of such attorney's duty; or
5. A community corrections officer or court services officer, while such officer is engaged in the performance of such officer's duty;

(b) As used in this section:

1. Judge means a duly elected or appointed justice of the supreme court, judge of the court of appeals, judge of any district court of Kansas, district magistrate judge or municipal court judge;
2. Attorney means a
 - i. County attorney, assistant county attorney, special assistant county attorney, district attorney, assistant district attorney, special assistant district attorney, attorney general, assistant attorney general or special assistant attorney general; and
 - ii. Public defender, assistant public defender, contract counsel for the state board of indigents' defense services or an attorney who is appointed by the court to perform services for an indigent person as provided by article 45 of chapter 22 of the Kansas Statutes Annotated and amendments thereto;
3. Community Corrections Officer means an employee of a community correctional services program responsible for supervision of adults or juveniles as assigned by the court to community corrections supervision and any other employee of a community correctional services program that provides enhanced supervision of offenders such as house arrest and surveillance programs; and
4. Court Services Officer means an employee of the Kansas judicial branch or local judicial district responsible for supervising, monitoring or writing reports relating to adults or juveniles as assigned by the court, or performing related duties as assigned by the court.

(c) Battery against a law enforcement officer is a Class A violation.”

Section 4. Chapter 9.08 of the Derby Municipal Code is hereby amended by the addition of new Section 9.08.045 – Battery against a school employee to read as follows:

“9.08.045—Battery against a school employee

- (a) Battery against a school employee is a battery, as defined in section 9.08.030 of this chapter, committed against a school employee 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 one through twelve or at

any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(b) Battery against a school employee is a Class A violation."

Section 5. Section 9.12.050 – Intent; Permanently Deprive is hereby amended to read as follows:

“9.12.050--Intent; Permanently Deprive

- (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 buying, selling, leasing, trading, gathering, collecting, soliciting, procuring, receiving, dealing or otherwise obtaining or exerting control over the property;
 2. the failure of a person who leases or rents personal property to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return 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;
 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:
 - i. The time and place to return the vehicle; and
 - ii. 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.

7. removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or
 8. under the provisions of of K.S.A. 2011 Supp. 21-5801(a)(5), and amendments thereto, the failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.
- (b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from a 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) In a prosecution for theft as defined in Section 9.12.040, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.
- (d) In prosecution for theft as defined in Section 9.12.040, and such theft is of regulated scrap metal as defined in K.S.A. 2014 Supp. 50-6,109, and amendments thereto, either in whole or in part, the failure to give information or the giving of false information to a scrap metal dealer pursuant to the requirements of the scrap metal theft reduction act, the transportation of regulated scrap metal outside the county from where it was obtained, the transportation of regulated scrap metal across state lines or the alteration of any regulated scrap metal prior to any transaction with a scrap metal dealer shall be prima facie evidence of intent to permanently deprive the owner of the regulated scrap metal of the possession, use or benefit thereof.
- (e) As used in this section:
1. **Notice** means 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.

2. **Tampering** includes, but is not limited to:
 - i. Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;
 - ii. defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;
 - iii. preventing any such meters from properly measuring or registering;
 - iv. knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity, water or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or
 - v. causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts."

Section 6. Section 9.12.090—Criminal Trespass is hereby amended to read as follows:

(a) Criminal trespass is entering or remaining upon or in any:

1. Land, nonnavigable body of water, structure, vehicle, aircraft or watercraft by a person who knows such person is not authorized or privileged to do so, and:
 - i. Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person;
 - ii. such premises or property are posted as provided in K.S.A. 32-1013, and amendments thereto, or in any other manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or
 - iii. such person enters or remains therein in defiance of a restraining order issued by a court of competent jurisdiction and the restraining order has been personally served upon the person so restrained.
2. Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) This section shall not apply to:

1. A land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized

agents and employees who enter upon lands, waters and other premises in the making of a survey; or

2. railroad property as defined in K.S.A. 2012 Supp. 21-5809, and amendments thereto, or nuclear generating facility as defined in K.S.A. 2012 Supp. 66-2302, and amendments thereto.

(c) Criminal trespass is a Class B Violation.

1. Upon a conviction of a violation of subsection (a)(1)(iii), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

Section 7. Section 9.12.100 – Trespassing on Railroad Property is hereby amended to read as follows:

“9.12.100--Trespassing on Railroad Property

(a) Trespassing on railroad property is:

1. Entering or remaining on railroad property, without consent of the owner or the owner's agent, knowing that it is railroad property; or
2. Recklessly causing in any manner the derailment of a train, railroad car or rail-mounted work equipment.

(b) Subsection (a) shall not be construed to interfere with the lawful use of public or private crossing.

(c) Nothing in this section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the railway labor act (45 U.S.C. 151 *et seq.*) and other federal labor laws.

(d) As used in this section "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.

(e) Trespassing on railroad property that results in a demonstrable monetary loss, damage, or destruction of less than \$1,500 is a Class A violation.”

Section 8. Section 9.12.200 – Criminal Use of a Financial Card is hereby amended to read as follows:

“9.12.200--Criminal Use of a Financial Card

(a) Criminal use of a financial card is any of the following acts done with intent to defraud and to obtain money, goods, property, or services:

1. Using a financial card without the consent of the cardholder; or

2. 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 a number or description thereof.
- (b) For the purposes of this section: .
1. **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.
 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, or services obtained within a seven-day period are of the value of less than \$1,000.”

Section 9. Section 9.12.210 – Motor Vehicle Dealers; Selling Motor Vehicles Without a License 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, and such term shall 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, which 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 10. Section 9.12.270 – Unlawfully Selling Scrap Metal is hereby deleted from the Derby Public Offense Code of the Derby Municipal Code. Section number 9.12.270 is hereby reserved for future use.

Section 11. Section 9.12.280 – Unlawfully Buying Scrap Metal is hereby deleted from the Derby Public Offense Code of the Derby Municipal Code. Section number 9.12.280 is hereby reserved for future use.

Section 12. Section 9.16.200 – Electioneering is hereby amended to read as follows:

“9.16.200--Electioneering

- (a) Electioneering is knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes 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. Electioneering shall not include bumper stickers affixed to a motor vehicle that issued to transport voters to a polling place or to an advance voting site for the purpose of voting.
- (b) 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. 2014 Supp. 25-2812.
- (c) Electioneering is a Class C violation.”

Section 13. Section 9.20.040 – Contributing to a child's misconduct or deprivation is hereby amended to read as follows:

“9.20.040--Contributing to a child's misconduct or deprivation

- (a) Contributing to a child's misconduct or deprivation is:
 1. Knowingly causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the revised Kansas code for care of children;
 2. knowingly causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto;
 3. failure to reveal, upon inquiry by a uniformed or properly identified law enforcement officer engaged in the performance of such officer's duty, any

- information one has regarding a runaway, with intent to aid the runaway in avoiding detection or apprehension; or
4. knowingly causing or encouraging a child to violate the terms or conditions of the child's probation or conditional release pursuant to subsection (a)(1) of K.S.A. 2011 Supp. 38-2361 , and amendments thereto.
- (b) Contributing to a child's misconduct or deprivation is a Class A violation.
 - (c) A person may be found guilty of contributing to a child's misconduct or deprivation even though no prosecution of the child whose misconduct or deprivation the defendant caused or encouraged has been commenced pursuant to the revised Kansas code for care of children, revised Kansas juvenile justice code or Kansas criminal code.
 - (d) As used in this section, "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.”

Section 14. Section 9.20.050 – Furnishing alcoholic liquor or cereal malt beverage to a minor is hereby amended to read as follows:

“9.20.050--Furnishing alcoholic liquor or cereal malt beverage to a minor

- (a) Furnishing alcoholic liquor or cereal malt beverage to a minor is recklessly, directly or indirectly buying for, or distributing any alcoholic liquor or cereal malt beverage to any minor.
- (b) This section shall not apply to wine intended for use and used by any church or religious organization for sacramental purposes.
- (c) It shall be a defense to a prosecution under this section if:
 1. the defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or is an employee thereof;
 2. the defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and
 3. to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document, that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

- (d) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child's or ward's parent or legal guardian.
- (e) As used in this section, "minor" means a person under 21 years of age.
- (f) Furnishing alcoholic liquor or cereal malt beverage to a minor is a Class B violation for which the minimum fine is \$200."

Section 15. Section 9.20.080 – Lifesaving devices is hereby amended to read as follows:

“9.20.080--Lifesaving devices

- (a) The operator of every vessel shall require every person 12 years of age or under to wear a United States Coast Guard approved type I, type II or type III personal flotation device while aboard or being towed by such vessel. A life belt or ring shall not satisfy the requirement of this section.
- (b) As used in this section, "operator" means the person who operates or has charge of the navigation or use of a motorboat or a vessel.
- (c) Violation of this section is a Class C violation."

Section 16. Section 9.20.100 – Selling, Furnishing Or Distributing Cigarettes or Tobacco Products to a Minor is hereby amended to read as follows:

“9.20.100--Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor

- (a) It shall be unlawful for any person to:
 1. Sell, furnish, or distribute cigarettes, electronic cigarettes, or tobacco products to any person under 18 years of age; or
 2. Buy any cigarettes, electronic cigarettes, or tobacco products for any person under 18 years of age.
- (b) It shall be a defense to a prosecution under this section if:
 1. The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
 2. The defendant sold, furnished or distributed the cigarettes, or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, or tobacco products; and
 3. To purchase or receive the cigarettes, or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, or tobacco products.
- (c) For purposes of this section the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

- (d) It shall be a defense to a prosecution under this section if:
1. The defendant engages in the lawful sale, furnishing or distribution of cigarettes, or tobacco products by mail; and
 2. The defendant sold, furnished or distributed the cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 18 or more years of age.
- (e) As used in this section, "sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, electronic cigarettes, or tobacco products, with or without consideration.
- (f) Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200."

Section 17. Section 9.20.160 – Gambling; definitions is hereby amended to read as follows:

“9.20.160--Gambling; definitions

Definitions of gambling terms used in this sections 9.20.160 through 9.20.180 shall be as follows:

- (a) "**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:
- i. Bona fide business transactions which 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;
 - ii. 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;
 - iii. a lottery as defined in this section;
 - iv. 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;
 - v. a lottery operated by the state pursuant to the Kansas lottery act;
 - vi. any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act;
 - vii. tribal gaming;
 - viii. charitable raffles as defined by section 3 of Senate Sub. for HB 2155, and amendments thereto; or
 - ix. a fantasy sports league as defined in this section.

- (b) "**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:
- i. A lottery operated by the state pursuant to the Kansas lottery act; or
 - ii. tribal gaming.
- (c) "**Consideration**" means anything which 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:
- i. 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;
 - ii. participants in any lottery operated by the state pursuant to the Kansas lottery act;
 - iii. participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
 - iv. a person to participate in tribal gaming.
- (d) "**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.

(e) **"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. Which 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, which 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. Which 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 which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or
4. any token, chip, paper, receipt or other document which 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 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, which is not designed and manufactured primarily for use in connection with gambling, and:
 1. Which 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;
 - iii. any so-called claw, crane or digger machine and similar devices which are designed and manufactured primarily for use at carnivals or county or state fairs; or
 - iv. any machine, mechanical device, electronic device or other contrivance used in tribal gaming;
- (f) "**Gambling Place**" means any place, room, building, vehicle, tent or location which 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;
- (g) "**Tribal Gaming**" means the same as in K.S.A. 74-9802 , and amendments thereto; and
- (h) "**Tribal Gaming Commission**" means the same as in K.S.A. 74-9802, and amendments thereto.
- (i) **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.
- (j) Gambling is a Class B violation."

Section 18. Section 9.20.190—Cruelty to Animals is hereby amended to read as follows:

“9.20.190--Cruelty to Animals

- (a) Cruelty to animals is:
1. knowingly abandoning any animal in any place without making provisions for its proper care;
 2. having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal;
 3. intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; or
 4. knowingly but not maliciously killing or injuring any animal.
- (b) The provisions of this section shall not apply to:
1. Normal or accepted veterinary practices;
 2. Bona fide experiments carried on by commonly recognized research facilities;
 3. Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;

4. Rodeo practices accepted by the rodeo cowboys' association;
 5. The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;
 6. With respect to farm animals, normal or accepted practices of animal husbandry including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;
 7. The killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;
 8. An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;
 9. Laying an equine down for medical or identification purposes;
 10. Normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or
 11. Accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.
- (c) Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (e), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime
- (d) If a person is adjudicated guilty of the crime of cruelty to animals, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.
- (e) Cruelty to animals is a Class A violation on a first conviction.

Section 19. Section 9.28.010 – Criminal Use of Weapons is hereby amended to read as follows:

“9.28.010--Criminal Use of Weapons

- (a) Criminal use of weapons is knowingly:
1. Selling, manufacturing, purchasing or possessing any bludgeon, sand club, metal knuckles or throwing star;
 2. possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, or any other dangerous or deadly weapon or instrument of like character;
 3. setting a spring gun;
 4. 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;
 5. selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;
 6. 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;
 7. possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance;
 8. possessing 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 one through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;
 9. refusing 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
 10. possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age.
- (b) Criminal use of weapons as defined in:
1. Subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6) or (a)(9) is a class A violation;
 2. subsection (a)(7) or (a)(8) is a Class B violation;

3. subsection (a)(10) is a Class A violation on the first offense.
- (c) Subsections (a)(1) and (a)(2) shall not apply to:
1. Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
 2. wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
 3. members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or
 4. the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.
- (d) Subsection (a)(8) 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;
 2. 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;
 3. possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student;
 4. possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or
 5. possession of a concealed handgun by an individual who is not prohibited from possessing a firearm under either federal or state law.
- (e) Subsection (a)(6) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 75-7c26, and amendments thereto.
- (f) Subsection (a)(10) shall not apply if such person, less than 18 years of age, was:
1. In attendance at a hunter's safety course or a firearms safety course;
 2. engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located, or at another private range with permission of such person's parent or legal guardian;
 3. engaging in an organized competition involving the use of such 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 such performance;
 4. hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

5. traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections (f)(1) through (f)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;
 6. on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or
 7. at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. 21-5222, 21-5223 or 21-5225, and amendments thereto.
- (g) As used in this section, "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."

Section 20. Section 9.28.020 – Criminal carrying of a weapon is hereby amended to read as follows:

“9.28.020--Criminal Carrying of a Weapon

- (a) Criminal carrying of a weapon is knowingly carrying:
 1. Any bludgeon, sandclub, metal knuckles or throwing star;
 2. concealed on one's person, a billy, blackjack, slungshot or any other dangerous or deadly weapon or instrument of like character;
 3. 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; or
 4. any pistol, revolver or other firearm concealed on one's person if such person is under 21 years of age, except when on the such person's land or in the such person's abode or fixed place of business.
- (b) Criminal carrying of a weapon is a Class A violation.
- (c) Subsection (a) shall not apply to:
 1. Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
 2. wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
 3. members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or
 4. the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

- (d) As used in this section, "throwing star" means the same as prescribed by K.S.A. 2014 Supp. 21-6301, and amendments thereto."

Section 21. 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.

Section 22. Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

Section 23. This Ordinance shall take effect and be in force from and after its publication or a summary thereof once in the official city newspaper.

ADOPTED BY THE GOVERNING BODY this 27th day of October, 2015.



Randy White, Mayor





Karen Friend, City Clerk

Approved as to form:



Jacqueline R. Butler, City Attorney