

Passed: _____
Published: _____

ORDINANCE NO. 2283

AN ORDINANCE RELATING TO THE PUBLIC OFFENSE CODE FOR THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING SECTIONS 9.04.020, 9.04.060, 9.04.070, 9.04.090, 9.04.100, 9.04.110, 9.04.140, 9.08.040, 9.08.050, 9.08.140, 9.08.160, 9.12.040, 9.12.060, 9.12.220, 9.12.250, 9.12.260, 9.16.010, 9.16.110, 9.20.030, 9.20.110, 9.20.120, 9.20.130, 9.24.050, 9.28.010, 9.28.020, 9.28.100, 9.28.110, 9.28.170, 9.28.220, 9.32.010, 9.32.040, AND 9.32.050 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR; FURTHER AMENDING CHAPTER 9.20 BY ADDITION OF NEW SECTION 9.20.135; FURTHER AMENDING CHAPTER 9.24 BY ADDITION OF NEW SECTION 9.24.110; DELETING AND RESERVING SECTION 9.28.060 OF THE SAME FOR FUTURE USE.

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

Section 1. Section 9.04.020 of the Derby Municipal Code is hereby amended to read as follows:

9.04.020—Civil Remedies Preserved.

This title does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based on conduct which it makes punishable. The civil injury caused by criminal conduct is not merged in the crime.

Section 2. Section 9.04.060 of the Derby Municipal Code 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 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.

AAA. "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.

BBB. "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.

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

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

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

FFF. "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.

GGG. "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.

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

III. "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.

JJJ. "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.

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

LLL. "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.

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

NNN. "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.

OOO. "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

PPP. "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.

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

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

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

TTT. "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.

UUU. "Public Employee" means a person employed by or acting for the city and who is not a "public officer".

VVV. "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.

WWW. "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.

XXX. "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.

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

ZZZ. "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.

AAAA. "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.

BBBB. "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.

CCCC. "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.

DDDD. "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.

EEEE. "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.

FFFF. "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.

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

HHHH. "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.

IIII. "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.

JJJJ. "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.

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. "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.

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

NNNN. "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.

OOOO. "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.

PPPP. "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.

QQQQ. "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.

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

SSSS. "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.

TTTT. "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.

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

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

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

XXXX. "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.

YYYY. "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.

ZZZZ. "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. Perchlorethylene;
13. Toluene;
14. Trichloroethane; or
15. Xylene.

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

BBBBB. "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.

CCCCC. "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.

DDDDD. "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.

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

FFFF. "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).

GGGGG. "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.

HHHHH. "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 3. Section 9.04.070 of the Derby Municipal Code is hereby amended to read as follows:

9.04.070 - Attempt.

- A. An attempt is any overt act toward the perpetration of a public offense done by a person who intends to commit such offense but fails in the perpetration thereof or is prevented or intercepted in executing such offense.
- B. It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.
- C. An attempt to commit a class A violation is a class B violation.
- D. An attempt to commit a class B or C violation is a class C violation.

Section 4. Section 9.04.090 of the Derby Municipal Code is hereby amended to read as follows:

9.04.090 - Liability for offenses of another.

- A. A person is criminally responsible for an offense committed by another if such person, acting with the mental culpability required for the commission thereof, advises, hires, counsels or procures the other to commit the offense or intentionally aids the other in committing the conduct constituting the offense.
- B. A person liable under subsection A hereof is also liable for any other offense committed in pursuance of the intended offense if reasonably foreseeable by such person as a probable consequence of committing or attempting to commit the offense intended.
- C. A person liable under this section may be charged with and convicted of the offense although the person alleged to have directly committed the act constituting the offense lacked criminal or legal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the offense or of some other offense based on the same act.

Section 5. Section 9.04.100 of the Derby Municipal Code is hereby amended to read as follows:

9.04.100 - Corporations: criminal responsibility; individual liability.**A. Corporations; Criminal Responsibility.**

1. A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.
2. Agent means any director, officer, servant, employee or other person who is authorized to act on behalf of the corporation.

B. Individual Liability for Corporate Offenses.

1. An individual who commits public offenses, or causes public offenses to be performed, in the name of or on behalf of the corporation is legally responsible to the same extent as if such acts were in the person's own name or on the person's own behalf;
2. An individual who has been convicted of an offense based on conduct performed by the individual for and on behalf of a corporation is subject to punishment as an individual upon conviction of such offense, although a lesser or different punishment is authorized for the corporation.

Section 6. Section 9.04.110 of the Derby Municipal Code is hereby amended to read as follows:

9.04.110 - Public offenses—Penalties.

- A. It is unlawful for any person to commit any of the offenses hereinafter described in this title, and any person so offending is guilty of a public offense and, upon conviction thereof, shall be punished as set forth herein.
- B. Classes of Violations and Confinement:
 1. For the purpose of sentencing, the following classes of violations and the punishment and the terms of confinement authorized for each class are established:
 - i. Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year;
 - ii. Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months;
 - iii. Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month; and
 - iv. Unclassified violations, which shall include all offenses declared to be violations without specification as to class, the sentence for which shall be in accordance with the sentence specified in the section that defines the offense; if no penalty is provided in such section, the sentence shall be the same penalty as provided herein for a class C violation.
- C. Upon conviction of a violation, a person may be punished by a fine, as provided in Section 9.04.110E instead of or in addition to confinement, as provided in this section.
- D. In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the offense was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training

program certified by the chief judge of the judicial district or licensed by the secretary for aging and disability services.

E. Fines.

1. A person convicted of a public offense violation may, in addition to or instead of the confinement set forth in Paragraph B above, be sentenced to pay a fine which shall be fixed by the court as follows:
 - i. Class A violation, a sum not exceeding two thousand five hundred dollars.
 - ii. Class B violation, a sum not exceeding one thousand dollars.
 - iii. Class C violation, a sum not exceeding five hundred dollars.
 - iv. Unclassified violation, any sum authorized by the section that defines the offense. If no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C violation.
2. As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

Section 7. Section 9.04.140 of the Derby Municipal Code is hereby amended to read as follows:

9.04.140 - Severability.

If any provision of this code is declared invalid or unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality or invalidity of the remainder of the code and the applicability thereof to other persons and circumstances shall not be affected thereby.

Section 8. Section 9.08.040 of the Derby Municipal Code 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.A.2 of this chapter, committed against:

1. uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or
2. uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, or a juvenile 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. attorney, while such attorney is engaged in the performance of such attorney's duty; or

5. 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. City attorney, assistant city attorney, city prosecutor, assistant city prosecutor, 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 9. Section 9.08.050 of the Derby Municipal Code is hereby amended to read as follows:

9.08.050 - Domestic battery.

A. Domestic battery is:

1. Knowingly or recklessly causing bodily harm by a family or household member against a family or household member; or

2. Knowingly causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

B. As used in this section "family or household member" means persons eighteen years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

C. 1. Upon a first conviction of a violation of domestic battery, an offender shall be guilty of a class B violation and sentenced to not less than forty-eight consecutive hours nor more than six months' imprisonment and fined not less than two hundred dollars, nor more than five hundred dollars or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

2. If, within five years immediately preceding commission of the crime, an offender is convicted of a violation of domestic battery a second time, the offender shall be guilty of a class A violation and sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than five hundred dollars nor more than one thousand dollars. The five days imprisonment mandated by this subsection may be served in a work release program only after such offender has served forty-eight consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court or department of corrections; and

3. A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any

county which prohibits the acts that this section prohibits only twice during any five-year period.

4. For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:

i. "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, K.S.A. 21-5414, this section, or section 3.1.1 of the Uniform Public Offense Code, or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

ii. "Conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

iii. Only convictions occurring in the immediately preceding five years including prior to the effective date of this code shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second, offender, whichever is applicable; and

iv. It is irrelevant whether an offense occurred before or after conviction for a previous offense.

Section 10. Section 9.08.140 of the Derby Municipal Code is hereby amended to read as follows:

9.08.140 - Breach of privacy.

A. Breach of privacy is knowingly and without lawful authority:

1. Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;

2. Divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the course of employment with an agency in transmitting it;

3. Entering with intent to listen surreptitiously to private conversations in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;

4. Installing or using outside or inside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible without the use of such device, without the consent of the person or persons entitled to privacy therein;

5. Installing or using any device or equipment for the interception of any telephone, telegraph or other wire or wireless communication without the consent of the person in possession or control of the facilities for such communication;

B. Breach of privacy as defined herein is a class A violation.

C. Subsection A.1. shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

D. The provisions of this section shall not apply to: (1) an operator of a switchboard, or any officer, employee or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility.; (2) a provider of an interactive computer service, as defined in 47 U.S.C. Section 230, for content provided by another person; (3) a radio common carrier, as defined in K.S.A. 66-1,143, and amendments thereto; and (4) a local exchange carrier or telecommunications carrier as defined in K.S.A. 66-1,187, and amendments thereto.

Section 11. Section 9.08.160 of the Derby Municipal Code is hereby amended to read as follows:

9.08.160 - Stalking.

A. Stalking is:

1. Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear; or
 2. Engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family.
- B. For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, prior to its repeal or K.S.A. Supp. 21-5924, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a law enforcement officer that such person's actions were in violation of this section, shall be presumed to have acted knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

- C. In a criminal proceeding under this section, a person claiming an exemption, exception, or exclusion has the burden of going forward with evidence of the claim.
- D. The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.
- E. As used in this section:
 - 1. Course of conduct means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:
 - i. Threatening the safety of the targeted person or a member of such person's immediate family.
 - ii. Following, approaching, or confronting the targeted person or a member of such person's immediate family.
 - iii. Appearing in close proximity to, or entering the targeted person's residence, place of employment, school, or other place where such person can be found, or the residence, place of employment, or school of a member of such person's immediate family.
 - iv. Causing damage to the targeted person's residence or property or that of a member of such person's immediate family.
 - v. Placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person.
 - vi. Causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family.
 - vii. Any act of communication.
 - 2. Communication means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer.
 - 3. Computer means a programmable, electronic device capable of accepting and processing data.
 - 4. Conviction includes being convicted of a violation of this section, K.S.A. 21-3438 prior to its repeal, K.S.A. 21-5427, section 3.13 of the Uniform Public Offense Code, or being convicted of a law of another state or municipality which prohibits the acts that this section prohibits.
 - 5. Immediate family means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.
- F. Upon a first conviction, stalking as described in subsection A is a class A violation.

Section 12. 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; or
 - 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 one thousand five hundred dollars is a Class A violation, except as provided below:
 - 1. Property of the value of less than one thousand five hundred dollars from three separate mercantile establishments within a period of seventy-two 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 fifty dollars but less than one thousand five hundred dollars 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 which is a firearm of the value of less than twenty-five thousand dollars.
- C. As used in this section:
 - 1. "Conviction" or "convicted" includes being convicted of a violation of K.S.A. 21-3701, prior to its repeal, K.S.A. 21-5801, this section, section 6.1 of the Uniform Public Offense Code, or a municipal ordinance which prohibits the acts that this section prohibits;
 - 2. "Regulated scrap metal" means the same as in K.S.A. 2012 Supp. 50-6,109, and amendments thereto; 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 to its condition at the time immediately prior to the theft of such regulated scrap metal, whichever is greater.

Section 13. Section 9.12.060 of the Derby Municipal Code is hereby amended to read as follows:

9.12.060 - Theft of property lost, mislaid or delivered by mistake.

- A. Theft of property lost, mislaid, or delivered by mistake is obtaining control of property of another by a person who:

1. Knows or learns the identity of the owner thereof;
 2. Fails to take reasonable measures to restore to the owner lost property, mislaid property or property delivered by mistake; and
 3. Intends to permanently deprive the owner of the possession, use or benefit of the property.
- B. As used in this section, property delivered by mistake includes, but is not limited to, a mistake as to the:
1. Nature or amount of the property; or
 2. Identity of the recipient of the property.
- C. Theft of property lost, mislaid or delivered by mistake of the value of less than one thousand dollars is a Class A violation.

Section 14. Section 9.12.220 of the Derby Municipal Code is hereby amended to read as follows:

9.12.220 - Equity skimming.

- A. It shall be unlawful for any person who, with intent to defraud, intentionally engages in a pattern or practice of:
1. Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including but not limited to an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage.
 2. Failing to deliver to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption, all rent proceeds received from the rental of the property, not to exceed the monthly payment of principal and interest required by the note and mortgage; and
 3. Applying or authorizing the application of rents from such dwellings for such person's own use.
- B. Violation of this section is a Class A violation. Each purchase of a dwelling pursuant to this section shall be deemed a separate offense.

Section 15. Section 9.12.250 of the Derby Municipal Code is hereby amended to read as follows:

9.12.250 - Criminal hunting.

- A. Criminal hunting is knowingly hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing:
1. Upon any land or nonnavigable body of water of another, without having first obtained permission of the owner or person in possession of such premises;
 2. Upon or from any public road, public road right-of-way or railroad right-of-way that adjoins occupied or improved premises, without having first obtained permission of the owner or person in possession of such premises; or

3. Upon any land or nonnavigable body of water of another by a person who knows such person is not authorized or privileged to do so; and

i. Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish 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; or

ii. Such premises or property are posted in a manner consistent with K.S.A. 32-1013, and amendments thereto.

B. Criminal hunting as defined in:

1. Subsection A.1 or A.2 is a Class C violation. Upon the first conviction of subsection A.1. or A.2., in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting, fishing or fur harvesting, or all, for up to one year from the date of such conviction. Upon a second or subsequent conviction of subsection A.1 or A.2, in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court shall require the forfeiture of a part or all of such license and the court shall order such person to refrain from hunting, fishing or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner thereof or other authorized person. For the purpose of determining whether a conviction is a first, second or subsequent conviction of subsection A.1 or A.2, "conviction" or "convicted" includes being convicted of a violation of subsection (a) of K.S.A. 21-3728, prior to its repeal, subsection (a)(1) or (a)(2) of K.S.A. 21-5810 or subsection A.1 or A.2; and

2. Subsection A.3 is a Class B violation. Upon the first conviction or a diversion agreement of subsection A.3, in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of subsection A.3, in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of subsection A.3, in addition to any authorized sentence imposed by the court, such court shall require forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction of subsection A.3, "conviction" or "convicted" includes being convicted of a violation of subsection (b) of K.S.A. 21-3728, prior to its repeal, subsection (a)(3) of K.S.A. 21-5810, or subsection A.3.

C. The court shall notify the department of wildlife and parks of any conviction or diversion for a violation of this section.

Section 16. Section 9.12.260 of the Derby Municipal Code is hereby amended to read as follows:

9.12.260 - Unlawful use of a recording device.

- A. Unlawful use of a recording device is knowingly operating, in a motion picture theater, while a motion picture is being exhibited, an audiovisual recording function of a device without the consent of the owner or lessee of such theater.
- B. Unlawful use of a recording device is a Class A violation on conviction of the first offense.
- C. This section shall not apply to a person operating an audiovisual recording device as part of such person's lawfully authorized investigative, law enforcement, protective or intelligence gathering duties as a lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent of the state or federal government.
- D. The owner or lessee of a motion picture theater where a motion picture is being exhibited or the authorized agent or employee thereof, who alerts law enforcement authorities of an alleged violation of subsection A., and amendments thereto, shall not be liable in any civil action arising out of measures taken by such owner, lessee, agent, or employee in the course of subsequently detaining a person that the owner, lessee, agent, or employee in good faith believed to have violated subsection A., and amendments thereto, while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that such measures were manifestly unreasonable or the period of detention was unreasonably long.

Section 17. Section 9.16.010 of the Derby Municipal Code is hereby amended to read as follows:

9.16.010 - Failure to appear in municipal court.

- A. Any person who fails to appear in the municipal court at the time and date he is lawfully ordered to appear, either by traffic citation, complaint, warrant, subpoena, verbal order of the municipal judge pursuant to K.S.A. 14-812, prior to its repeal, or by any other lawful order, is guilty of a misdemeanor.
- B. Any person convicted to violating this section shall be punished by a fine of not more than five hundred dollars or by imprisonment not to exceed thirty days or by both such fine and imprisonment.

Section 18. Section 9.16.110 of the Derby Municipal Code is hereby amended to read as follows:

9.16.110 - Interference with judicial process.

- A. Interference with the judicial process is:
 - 1. Committing any of the following acts with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:

- i. Communicating in any manner a threat of violence to any judicial officer or any prosecutor;
 - ii. Harassing a judicial officer or a prosecutor by repeated vituperative communication; or
 - iii. Picketing, parading or demonstrating near such officer's or prosecutor's residence or place of abode;
 2. Picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;
 3. Knowingly accepting or agreeing to accept anything of value as consideration for a promise:
 - i. Not to initiate or aid in the prosecution of a person who has committed a crime; or
 - ii. To conceal or destroy evidence of a crime.
 4. Knowingly or intentionally in any criminal proceeding or investigation:
 - i. Inducing a witness or informant to withhold or unreasonably delay in producing any testimony, information, document or thing;
 - ii. Withholding or unreasonably delaying in producing any testimony, information, document or thing after a court orders the production of such testimony, information, document or thing;
 - iii. Altering, damaging, removing or destroying any record, document or thing, with the intent to prevent it from being produced or used as evidence; or
 - iv. Making, presenting or using a false record, document or thing with the intent that the record, document or thing, material to such criminal proceeding or investigation, appear in evidence to mislead a justice, judge, magistrate, master or law enforcement officer;
 5. Knowingly making available by any means personal information about a judge or the judge's immediate family member, if the dissemination of the personal information poses an imminent and serious threat to the judge's safety or the safety of such judge's immediate family member, and the person making the information available knows or reasonably should know of the imminent and serious threat.
- B. Nothing in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt.
- C. As used in this section:
1. "Immediate family member" means a judge's spouse, child, parent or any other blood relative who lives in the same residence as such judge.
 2. "Judge" means any 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.

3. "Personal information" means a judge's home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, personal photograph, immediate family member photograph, photograph of the judge's home, and information about the judge's motor vehicle, any immediate family member's motor vehicle, any immediate family member's place of employment, any immediate family member's child care or day care facility and any immediate family member's public or private school that offers instruction in any or all of the grades kindergarten through twelve.

D. Interference with the judicial process as defined in:

1. Section A.1 and A.2 is a class A violation.
2. Section A.3 and A.4 is a class A violation if the crime, matter or case does not involve a felony.

Section 19. Section 9.20.030 of the Derby Municipal Code is hereby amended to read as follows:

9.20.030 - Buying sexual relations.

A. Buying sexual relations is knowingly:

1. Entering or remaining in a place where sexual relations are being sold or offered for sale with intent to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act with a person selling sexual relations who is eighteen years of age or older; or
2. Hiring a person selling sexual relations who is eighteen years of age or older to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act.

B. Buying sexual relations is a class A violation on conviction of a first offense. In addition to any other sentence imposed, a person convicted under this section shall be fined two thousand five hundred dollars and, in addition to any other sentence imposed, the court may order the person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation. All fines collected pursuant to this subsection shall be remitted to the human trafficking victim assistance fund.

Section 20. Section 9.20.110 of the Derby Municipal Code is hereby amended to read as follows:

9.20.110 - Purchase or consumption of alcoholic beverage by minor; eighteen to twenty-one.

A. Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704 and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under twenty-one years of age shall possess, consume, obtain, purchase

or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.

- B. In addition to any other penalty provided for a violation of this section:
1. The court may order the offender to do either or both of the following:
 - i. Perform forty hours of public service; or
 - ii. Attend and satisfactorily complete a suitable educational or training program dealing with the effects of alcohol or other chemical substances when ingested by humans.
 2. Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for thirty days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for thirty days whether or not that person has a driver's license.
 3. Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for ninety days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for ninety days whether or not that person has a driver's license.
 4. Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.
- C. This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian.
- D. Violation of this section by a person eighteen or more years of age but less than twenty-one years of age is a class C violation for which the minimum fine is \$200.
- E.
1. A person and, if applicable, one or two other persons acting in concert with such person are immune from criminal prosecution for a violation of this section, K.S.A. 41-727 and amendments thereto or county resolution prohibiting the acts prohibited by this section, if such person:
 - i.
 1. Initiated contact with law enforcement or emergency medical services and requested medical assistance on such person's behalf because such person reasonably believed such person was in need of medical assistance;
 2. and cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance;
 - ii.

1. Initiated contact with law enforcement or emergency medical services, or was one of one or two other persons who acted in concert with such person, and requested medical assistance for another person who reasonably appeared to be in need of medical assistance;
 2. provided their full name, the name of one or two other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services;
 3. remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrived; and
 4. cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance; or
- iii.
1. Was the person who reasonably appeared to be in need of medical assistance as described in subsection E.1.ii., but did not initiate contact with law enforcement or emergency medical services; and
 2. cooperated with emergency medical services personnel and law enforcement officers in providing such medical assistance.
2. A person shall not be allowed to initiate or maintain an action against a law enforcement officer, or such officer's employer, based on the officer's compliance or failure to comply with this subsection.
- F. A law enforcement officer may request a person under twenty-one years of age to submit to a preliminary screening test of the person's breath to determine if alcohol has been consumed by such person if the officer has reasonable grounds to believe that the person has alcohol in the person's body except that, if the officer has reasonable grounds to believe the person has been operating or attempting to operate a vehicle under the influence of alcohol, the provisions of K.S.A. 8-1012, and amendments thereto, shall apply. No waiting period shall apply to the use of a preliminary breath test under this subsection. If the person submits to the test, the results shall be used for the purpose of assisting law enforcement officers in determining whether an arrest should be made for violation of this section. A law enforcement officer may arrest a person based in whole or in part upon the results of a preliminary screening test. Such results or a refusal to submit to a preliminary breath test shall be admissible in court in any criminal action, but are not per se proof that the person violated this section. The person may present to the court evidence to establish the positive preliminary screening test was not the result of a violation of this section.

Section 21. Section 9.20.120 of the Derby Municipal Code is hereby amended to read as follows:

9.20.120 - Promoting obscenity; promoting obscenity to minors

A. Promoting obscenity is recklessly:

1. Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting or advertising any obscene material or obscene device;

2. Possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;
 3. Offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit or advertise any obscene material or obscene device; or
 4. Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.
- B. Promoting obscenity to minors is promoting obscenity, as defined in subsection A, where a recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.
- C. Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:
1. The materials or devices were promoted to emphasize their prurient appeal; or
 2. The person is not a wholesaler and promotes the materials or devices in the course of the person's business.
- D. 1. Any material or performance is obscene if:
- i. The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;
 - ii. The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of:
 1. Ultimate sexual acts, normal, or perverted, actual or simulated, including sexual intercourse or sodomy; or
 2. Masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and
 - iii. Taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political, or scientific value.
2. Material. Any tangible thing which is capable of being used or adapted to arouse interest, whether throughout the medium of reading, observation, sound or other manner.
 3. Obscene Device. A device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.
 4. Performance. Any play, motion, picture, dance or other exhibition performed before an audience.
 5. Sexual intercourse and sodomy have the meaning provided by K.S.A. Supp. 21-5501 and amendments thereto.

6. Wholesaler. A person who sells, distributes or offers for sale or distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish, or produce such materials or devices.
- E. It is a defense to a prosecution for promoting obscenity that:
1. The persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;
 2. The defendant is an officer, director, trustee, or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or
 3. The allegedly obscene material or obscene device was purchased, leased, or otherwise acquired by a public, private, or parochial school, college, or university, and that such material was either sold, leased, distributed, or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
- F. Notwithstanding the provisions of K.S.A. 21-5204, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:
1. The defendant had reasonable cause to believe that the minor involved was eighteen years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was eighteen years old or more; or
 2. An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.
- G. The provisions of this section prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.
- H. Promoting obscenity and promoting obscenity to minors is a class A violation on conviction of a first offense.

Upon any conviction of promoting obscenity or promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity or promoting obscenity to minors within two years after such conviction, the defendant shall forfeit the recognizance.

Section 22. Section 9.20.130 of the Derby Municipal Code is hereby amended to read as follows:

9.20.130 – Unlawful transmission of a visual depiction of a child

- A. Unlawful transmission of a visual depiction of a child is knowingly transmitting a visual depiction of a child twelve or more years of age but less than eighteen years of age in a state of nudity when the offender is less than nineteen years of age.
- B. Unlawful transmission of a visual depiction of a child is a class A violation.
- C. The provisions of this section shall not apply to transmission of a visual depiction of a child in a state of nudity by the child who is the subject of such visual depiction.
- D. The provisions of this section shall not apply to a visual depiction of a child engaged in sexually explicit conduct or a visual depiction that constitutes obscenity as defined in Section 9.20.120 or K.S.A. 2015 Supp. 21-6401(f)(1), and amendments thereto.
- E. As used in this section and section 9.20, and amendments thereto:
 - 1. Sexually explicit conduct means actual or simulated: Sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation and sado-masochistic abuse for the purpose of sexual stimulation;
 - 2. State of nudity means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered;
 - 3. 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; and
 - 4. Visual depiction means any photograph, film, video picture, digital or computer-generated image or picture made or produced by electronic, mechanical or other means.

Section 23. Section 9.20.135 of the Derby Municipal Code is hereby established to read as follows:

9.20.135 Unlawful possession of a visual depiction of a child

- A. Unlawful possession of a visual depiction of a child is knowingly possessing a visual depiction of a child twelve years of age or older but less than sixteen years of age in a state of nudity, if committed by a person less than nineteen years of age, and the possessor of such visual depiction received such visual depiction directly and exclusively from the child who is the subject of such visual depiction.
- B. Unlawful possession of a visual depiction of a child is a class B violation.

- C. It shall be an affirmative defense to any prosecution under this section that the recipient of a visual depiction of a child in a state of nudity;
 - 1. Received such visual depiction without requesting, coercing or otherwise attempting to obtain such visual depiction;
 - 2. did not transmit, exhibit or disseminate such visual depiction; and
 - 3. made a good faith effort to erase, delete or otherwise destroy such visual depiction.
- D. The provisions of this section shall not apply to possession of a visual depiction of a child in a state of nudity if the person possessing such visual depiction is the child who is the subject of such visual depiction.
- E. The provisions of this section shall not apply to a visual depiction of a child engaged in sexually explicit conduct or a visual depiction that constitutes obscenity as defined in Section 9.20.120 or K.S.A. 2015 Supp. 21-6401(f)(1), and amendments thereto.
- F. It shall not be unlawful for a person who is less than nineteen years of age to possess a visual depiction of a child in a state of nudity who is sixteen years of age or older.

Section 24. Section 9.24.050 of the Derby Municipal Code is hereby amended to read as follows:

9.24.050 - Giving a false alarm.

- A. Giving a false alarm is:
 - 1. Transmitting in any manner to the fire department of any city, township or other municipality, a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or
 - 2. Making a call in any manner for emergency service assistance including police, fire, medical, or other emergency service provided under K.S.A. 12-5301 et seq., and amendments thereto, knowing at the time of such call that there is no reasonable ground for believing such assistance is needed.
- B. Giving a false alarm is a class A violation.
- C. An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for interference with law enforcement, section 9.16.090 or K.S.A. 2013 Supp. 21-5904, and amendments thereto.

Section 25. Section 9.24.110 of the Derby Municipal Code is hereby established to read as follows:

9.24.110 Public Nudity Prohibited

- (a) It is unlawful for any person to knowingly or intentionally appear in a state of nudity in a public place.
- (b) Definitions
 - 1) "Nudity" means the showing, in a public place, of the human male or female genitals, anus, anal cleft or cleavage, pubic region, or the showing of the female

breast below a horizontal line across the top of the areola at its highest point with less than a fully opaque covering. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part. "Nudity" also means the showing, in a public place, of the covered male genital in a discernibly turgid state.

- 2) "Public Place" means any location open to the public, or any location visible from public property or public right-of-way including but not limited to streets, avenues, highways, roads, parks and common areas (whether open to the public or whether entrance is limited by a cover charge or membership requirement), waterways, stores, meeting facilities, sidewalks, businesses or commercial establishments (whether for profit or not for profit and whether open to the public at large or whether entrance is limited by a cover charge or membership requirement).
- 3) "Places set apart for nudity" means public places outside of the home where nudity or exposure is necessary or customarily expected; included, but not limited to, public restrooms, enclosed single-sex functional shower, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, and medical facilities, hospitals, and similar places.

(c) The provisions of subsection (a) of this section shall not apply to:

- 1) A child under the age of ten years;
- 2) A mother breastfeeding her child;
- 3) Places set apart for nudity;
- 4) Sexually oriented businesses, as sexually oriented businesses are regulated by Chapter 5.32 of the Derby Municipal Code;
- 5) Any theater, concert hall, art center, museum or similar establishment that is primarily devoted to the arts or theatrical performances and in which nudity is incorporated into the art exhibit or theatrical performance and is not a mere guise or pretense used to exploit the conduct of being nude for profit or commercial gain.
- 6) Nudity incorporated into an educational curriculum at an accredited university, technical school or institution whose classes may transfer to an accredited university or technical school.

(d) Public nudity is a Class C violation.

Section 26. Section 9.28.010 of the Derby Municipal Code 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, dangerous knife, straight-edged razor, stiletto, 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.

Section 27. Section 9.28.020 of the Derby Municipal Code 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 above the age of eighteen but under twenty one years of age, except when on such person's land or in 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.

Section 28. Section 9.28.060-Confiscation and Disposition of weapons; use of proceeds of sale is hereby deleted from the Derby Public Offense Code of the Derby Municipal Code. Section number 9.28.060 is hereby reserved for future use.

Section 29. Section 9.28.100 of the Derby Municipal Code is hereby amended to read as follows:

9.28.100 - Seizure of weapon.

The chief of police of the city or his or her duly authorized representative is hereby empowered to seize and hold any air gun, air rifle, bow and arrow, slingshot or BB gun used in violation of Section 9.28.080 and 9.28.090 of this code, and is further empowered to seize and hold as evidence pending a hearing before a court of competent jurisdiction any air gun, air rifle, bow and arrow, slingshot or BB gun used in violation of Section 9.28.080 and 9.28.090.

Section 30. Section 9.28.110 of the Derby Municipal Code is hereby amended to read as follows:

9.28.110 - Unlawful aiding, abetting.

- A. It shall be unlawful for any person to conspire to or to aid and abet in the operation or discharging or causing to be operated or discharged any air gun, air rifle, bow and arrow, BB gun or slingshot except as provided in Section 9.28.080 and 9.28.090 within the city, whether individually or in connection with one or more persons or as principal, agent or accessory, and it is further unlawful for every parent or guardian of a minor child who willfully or knowingly permits or directs the operation or discharge of any air gun, air rifle, bow and arrow, BB gun or slingshot by such minor child within the city except as provided in Section 9.28.080 and 9.28.090 of this code.
- B. Violation of this section is a class C violation.

Section 31. Section 9.28.170 of the Derby Municipal Code is hereby amended to read as follows:

9.28.170 - Boating safety education, certificate of completion required for certain operators.

- A. 1. No person born on or after January 1, 1989, shall operate on public waters of this city any motorboat or sailboat unless the person possesses a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person as provided by K.S.A. 32-1101 et seq.
- 2. No owner or person in possession of any motorboat or sailboat shall permit another person, who is subject to the requirements in subsection A.1., to operate such motorboat or sailboat unless such other person either:
 - i. Has been lawfully issued a certificate of completion of an approved boater safety education course of instruction as provided by K.S.A. 32-1101 et seq.; or
 - ii. Is legally exempt from the requirements of subsection A.1.
- 3. The requirement in subsection A.1, shall not apply to a person twenty-one years of age or older.
- 4. The requirement in subsection A.1 shall not apply to a person operating a sailboat that does not have a motor and has an overall length of sixteen feet, seven inches or less, while such person is enrolled in an instructor-led class.

- B. The requirement in subsection A.1 shall not apply to a person operating a motorboat or sailboat accompanied by and under the direct and audible supervision of a person over seventeen years of age who either:
 - 1. Possesses a certificate of completion of an approved boater safety education course, or
 - 2. Is legally exempt from the requirements of subsection A.1.
- C. No person who is charged with a violation of subsection A.1 shall be convicted of the violation if such person produces in court or in the office of the arresting officer a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person and valid at the time of such person's arrest.

Section 32. Section 9.28.220 of the Derby Municipal Code is hereby amended to read as follows:

9.28.220 - Sale of medicines, drugs and poisons through vending machines.

- A. Any person, firm or corporation who offers for sale, sells or distributes any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison through or by means of any vending machine or other mechanical device, or who uses any vending machine in or for the sale or distribution of any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison, shall be guilty of illegal sale of medicines and drugs through a vending machine.
- B. No nonprescription drugs shall be offered for sale or sold through a vending machine in anything other than the manufacturer's original tamper-evident and expiration-dated packet. No more than twelve different nonprescription drug products shall be offered for sale or sold through any one vending machine. Any vending machine in which nonprescription drugs are offered for sale or sold shall be located so that the drugs stored in such vending machine are stored in accordance with drug manufacturer's requirements. Drugs offered for sale or sold in such vending machine shall not be older than the manufacturer's expiration date. Each vending machine through which nonprescription drugs are offered for sale or sold shall have an obvious and legible statement on the machine that identifies the owner of the machine, a toll-free telephone number at which the consumer may contact the owner of the machine, a statement advising the consumer to check the expiration date of the product before using the product and the telephone number of the state board of pharmacy. As used in this subsection, "nonprescription drug" does not include any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison.
- C. A violation constituting illegal sale of medicines or drugs through a vending machine is a class C violation and upon conviction the violator shall be fined not less than twenty-five dollars nor more than five hundred dollars.

Section 33. Section 9.32.010 of the Derby Municipal Code is hereby amended to read as follows:

9.32.010 - Possession of marijuana prohibited; penalty.

- A. It is unlawful for any person to manufacture, possess, have under his or her control, possess with intent to sell, sell, prescribe, administer, dispense, or compound any form of cannabis.
- B. "Marijuana" includes all parts of all varieties of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination.
- C. Violation of this section is a:
 - 1. Class B violation, except as provided in (C)(2);
 - 2. Class A violation, if that person has a prior conviction under this section, K.S.A. 21-5706(b)(3), under a substantially similar offense from another jurisdiction, or under any city ordinance or county resolution for a substantially similar offense.

Section 34. Section 9.32.040 of the Derby Municipal Code is hereby amended to read as follows:

9.32.040 - Possession or use of simulated controlled substances or drug paraphernalia prohibited.

- A. It shall be unlawful for any person to use or possess with intent to use:
 - 1. Any simulated controlled substance; or
 - 2. Any drug paraphernalia to store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substance Act; or
 - 3. Any drug paraphernalia to plant, propagate, grow, cultivate or harvest fewer than five marijuana plants.
- B. Violation of this section is a class A violation.

Section 35. Section 9.32.050 of the Derby Municipal Code is hereby amended to read as follows:

9.32.050 - Representation that non-controlled substance is a controlled substance.

- A. It shall be unlawful for any person to distribute or possess with the intent to distribute any substance which is not a controlled substance:
 - 1. Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or
 - 2. Under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

- B. If any one of the following factors is established, there shall be a presumption that delivery of a substance was under circumstances which would give a reasonable person reason to believe that a substance is a controlled substance:
1. The substance was packaged in a manner normally used for the illegal delivery of controlled substances;
 2. The delivery of the substance included an exchange of or demand for money or other consideration for delivery of the substance, and the amount of the consideration was substantially in excess of the reasonable value of the substance;
 3. The physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.
- C. This section shall not be applicable to any person eighteen or more years of age who violates this section by delivering or causing to be delivered in this city a substance to a person under eighteen years of age and who is at least three years older than the person under eighteen years of age to whom the delivery is made.
- D. Violation of this section is a class A violation.

Section 36. The existing provisions of Sections 9.04.020, 9.04.060, 9.04.070, 9.04.090, 9.04.100, 9.04.110, 9.04.140, 9.08.040, 9.08.050, 9.08.140, 9.08.160, 9.12.040, 9.12.060, 9.12.220, 9.12.250, 9.12.260, 9.16.010, 9.16.110, 9.20.030, 9.20.110, 9.20.120, 9.20.130, 9.24.050, 9.28.010, 9.28.020, 9.28.060, 9.28.100, 9.28.110, 9.28.170, 9.28.220, 9.32.010, 9.32.040, AND 9.32.050 of the Derby Municipal Code are hereby repealed.

Section 37. 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 38. 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 39. This Ordinance shall take effect and be in force from and after its publication or a summary thereof once in the official city newspaper.

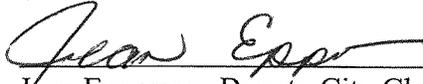
PASSED BY THE CITY COUNCIL this 9th day of August, 2016, and **SIGNED BY THE MAYOR.**



Randy White, Mayor



Seal
Attest:



Jean Epperson, Deputy City Clerk

Approved as to form:



Jacqueline R. Butler, City Attorney

