

ORDINANCE NO. 2352

AN ORDINANCE RELATING TO THE PUBLIC OFFENSE CODE FOR THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING SECTIONS 9.04.060, 9.20.190, 9.24.050 AND 9.32.010 OF THE DERBY MUNICIPAL CODE AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR; AMENDING CHAPTER 9.28 BY ADDITION OF NEW SECTION 9.28.290; AMENDING CHAPTER 9.32 BY ADDITION OF NEW SECTION 9.32.015; AND AMENDING CHAPTER 9.28 BY DELETING AND RESERVING SECTION 9.28.040.

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

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

“9.04.060 – General Definitions

- 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. "Animal Shelter" means the same as such term is defined in K.S.A. 47-1701, and amendments thereto.
- I. "Another" means a person or persons as defined in this code other than the person whose act is claimed to be an offense.
- J. "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.
- K. "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.
- L. "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.
- M. "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.
- N. "Cardholder" means the person or entity to whom or for whose benefit a financial card is issued.
- O. "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.
- P. "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.

- Q. "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.
- R. "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.
- S. "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.
- T. "Club" means a Class A or Class B club.
- U. "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.
- V. "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.
- W. "Conduct" means an act or a series of acts, and the accompanying mental state.
- X. "Conviction" includes a judgment of guilt entered upon a plea or finding of guilt.
- Y. "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.
- Z. "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."
- AA. "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.
- BB. 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.

CC. "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.

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

EE. "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.

FF. "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.

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

HH. "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.

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

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

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

LL. "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.

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

NN. "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.

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

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

QQ. "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.

RR. "Furharvest" means to:

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

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

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

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

VV. "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.

WW. "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.

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

YY. "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.

ZZ. "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.

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

BBB. "Law Enforcement Officer" means:

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

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

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

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

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

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

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

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

- JJJ. "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, transfer of title to, interest in, or possession of property.
- KKK. "Ordinance Cigarette or Tobacco Infraction" means a violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto.
- LLL. "Owner" means a person who has any interest in property.
- MMM. "Paint Ball Gun" means any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any paint ball, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.
- NNN. "Person" means an individual, public or private corporation, government, partnership or unincorporated association.
- OOO. "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property, real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged or dismissed.
- PPP. "Police Dog" means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders
- QQQ. "Possession" means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.
- RRR. "Private Place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance.
- SSS. "Property" means anything of value, tangible or intangible, real or personal.
- TTT. "Prosecution" means all legal proceedings by which a person's liability for an offense is determined.
- UUU. "Public Demonstration" means
1. Any picketing or similar conduct, or
 2. Any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral.

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

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

XXX. "Public Officer" includes the following, whether elected or appointed:

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

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

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

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

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

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

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

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

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

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

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

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

IIII. "School Employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through twelve.

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

KKKK. "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.

LLLL. "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.

MMMM. "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.

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

OOOO. "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.

PPPP. "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.

QQQQ. "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.

RRRR. "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.

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

TTTT. "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.

UUUU. "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.

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

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

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

YYYY. "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.

ZZZZ. "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.

AAAAA. "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.

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

CCCCC. "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.

DDDDD. "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.

EEEE. "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.

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

GGGG. "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).

HHHH. "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.

IIII. "Written Instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying,

conveying or recording information, and any money, tokens, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.”

Section 2. Section 9.20.190 of the Derby Municipal Code is hereby amended to read as follows:

“9.20.190 – Cruelty to animals.

A. Cruelty to animals is:

1. Knowingly abandoning any animal in any place without making provisions for its proper care;
2. Having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal;
3. Intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; or
4. Knowingly but not maliciously killing or injuring any animal.

B. The provisions of this section shall not apply to:

1. Normal or accepted veterinary practices;
2. Bona fide experiments carried on by commonly recognized research facilities;
3. Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;
4. Rodeo practices accepted by the rodeo cowboys' association;
5. The humane killing of an animal that is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an animal shelter, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such shelter;
6. With respect to farm animals, normal or accepted practices of animal husbandry including the normal and accepted practices for the slaughter of such animals for food or by-products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;
7. The killing of any animal by any person at any time that may be found outside of the owned or rented property of the owner or custodian of such animal and that is found injuring or posing a threat to any person, farm animal or property;
8. An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such

animal is vicious or could not be captured after reasonable attempts using other methods;

9. Laying an equine down for medical or identification purposes;
 10. Normal or accepted practices of pest control, as defined K.S.A. 2-2438a(x), and amendments thereto; or
 11. Accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the Animal Welfare Act, Public Law 89-544, as amended and in effect on July 1, 2006.
- C. Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (e), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime.
- D. If a person is adjudicated guilty of the crime of cruelty to animals, such animal shall not be returned to or remain with such person. Such animal may be turned over to an animal shelter or licensed veterinarian for sale or other disposition.
- E. Cruelty to animals is a Class A violation on a first conviction.”

Section 3. Section 9.24.050 of the Derby Municipal Code is hereby amended to read as follows:

“9.24.050 – Making an unlawful request for emergency service assistance.

A. Making an unlawful request for emergency service assistance is:

Transmitting or communicating false or misleading information in any manner to request emergency service assistance including law enforcement, fire, medical or other emergency service knowing at the time of such request there is no reasonable ground for believing such assistance is needed.

B. Making an unlawful request for emergency service assistance 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. 2017 Supp. 21-5904, and amendments thereto.”

Section 4. Section 9.28.040-Drawing a weapon upon another is hereby deleted from the Derby Municipal Code. Section number 9.28.040 is hereby reserved for future use.

Section 5. New Section 9.28.290 of the Derby Municipal Code is hereby enacted to read as follows:

“9.28.290 – Illegal operation of an amusement ride.

- A. It shall be unlawful an owner or operator of an amusement ride, as defined in K.S.A. 44-1601 and amendments thereto, to knowingly operate, or cause to be operated, any amusement ride without a valid permit issued by the State of Kansas.
- B. Violation of this section is a Class B violation.”

Section 6. Section 9.32.010 of the Derby Municipal Code is hereby amended to read as follows:

“9.32.010 –Controlled Substances—Definitions

Words and phrases used in this Chapter 9.32 shall have the same meaning as their corresponding definitions set forth in K.S.A. 21-5701 and amendments thereto.”

Section 7. New Section 9.32.015 of the Derby Municipal Code is hereby enacted as follows:

“9.32.015- Possession of controlled substances prohibited; penalty.

- A. It shall be unlawful for any person to possess any of the following controlled substances or controlled substance analogs thereof:
 1. Any depressant designated in K.S.A. 65-4105(e), K.S.A. 65-4107(e), K.S.A. 65-4109(b) or (c) or K.S.A. 65-4111(b), and amendments thereto;
 2. Any stimulant designated in K.S.A. 65-4105(f), K.S.A. 65-4107(d)(2), (d)(4), (d)(5) or (f)(2) or K.S.A. 65-4109(e), and amendments thereto;
 3. Any hallucinogenic drug designated in K.S.A. 65-4105(d) including marijuana, K.S.A. 65-4107(g) or K.S.A. 65-4109(g), and amendments thereto;
 4. Any substance designated in K.S.A. 65-4105(g) and K.S.A. 65-4111(c), (d), (e), (f), or (g), and amendments thereto;
 5. Any anabolic steroids as defined in K.S.A. 65-4109(f), and amendments thereto;
 6. Any substance designated in K.S.A. 65-4113, and amendments thereto; or
 7. Any substance designated in K.S.A. 65-4105(h), and amendments thereto”
- B. Violation of section A is a Class A violation, except as provided in subsection (C)(1) below.
- C. If the substance involved is marijuana, as defined in K.S.A. 21-5701 and amendments thereto, violation of subsection (A) 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.
- D. It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog.”

Section 8. Repeal

The existing sections of 9.04.060, 9.20.190, 9.24.050, 9.28.040, and 9.32.010 of the Derby Municipal Code are hereby repealed.

Section 9. 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 10. Severability

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 11. Effective Date

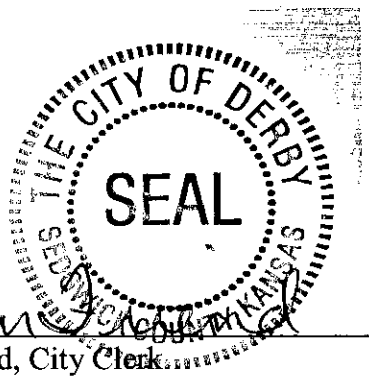
This Ordinance shall take effect and be in force from and after its passage and publication of the ordinance or a summary thereof once in the City's official newspaper as provided by State law.

PASSED by the City Council this 26th day of June, 2018 and **SIGNED** by the Mayor.



Randy White, Mayor

Seal
Attest:





Karen Friend, City Clerk

Approved as to form:



Jacqueline R. Butler, City Attorney