

(Summary Published in the Leavenworth Times on August 31, 2018)

**ORDINANCE NO. 8084**

**AN ORDINANCE AMENDING CHAPTER 70 OF THE CODE OF ORDINANCES REGULATING PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF LEAVENWORTH, KANSAS; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES" EDITION OF 2018, WITH CERTAIN OMISSIONS AND CHANGES.**

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

**Section 1.** That the Code of Ordinances, City of Leavenworth, Kansas, Chapter 70, Offenses, Section 70-1, is hereby deleted in its entirety and amended to read as follows:

**Sec. 70-1 Incorporating Uniform Public Offense Code – Incorporated by reference.**

Is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Leavenworth, Kansas, that certain code known as the *Uniform Public Offense Code for Kansas Cities*, Edition of 2018 prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereinafter omitted, deleted, notified or changed. One official copy of said *Uniform Public Offense Code* shall be marked or stamped "Official Copy as Adopted by Ordinance No. 8084" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this Ordinance and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

**Section 2.** That the Code of Ordinances, City of Leavenworth, Kansas, Chapter 70, Offenses, Section 70-2, is hereby deleted in its entirety and amended to read as follows:

**Sec. 70-2 Same-Amendments.**

Notwithstanding the foregoing, Section 5.7, Section 9.9.2, and Section 10.6 of said *Uniform Public Offense Code* are hereby deleted in their entirety and amended to read as follows:

**5.7 SELLING, GIVING OR FURNISHING CIGARETTES OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE.**

- (a) It shall be unlawful for any person to:
  - (1) Sell, furnish or distribute to any person under the age of 21 years any cigarettes, electronic cigarettes, or tobacco products; or

- (2) Buy any cigarettes, electronic cigarettes, or tobacco products for any person under 21 years of age.
- (b) It shall be a defense to a prosecution under subsection (a) of this section if:
- (1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
  - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person under 21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes or tobacco products; and
  - (3) To purchase or receive the cigarettes, electronic cigarettes, or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, or tobacco products.
- (c) It shall be a defense to a prosecution under subsection (a) of this section if:
- (1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and
  - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601, that the person was 21 or more years of age.
- (d) For purposes of this section, the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age, or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.
- (e) Notwithstanding any separate definition in Sec. 1.1 of the *Uniform Public Offense Code for Kansas Cities*, the term *electronic cigarette* means a device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to any electronic cigarette, cigar, pipe, or hookah, including any component, part, or accessory of such a device, whether or not sold separately. Electronic cigarette shall not include any products that

have been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

- (f) As used in this section, *sale* means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration.
- (g) It is unlawful for any person who is a retail dealer to fail to post and maintain in a conspicuous place in the dealer's establishment the following notice: "BY LAW, CIGARETTES AND TOBACCO PRODUCTS MAY BE SOLD ONLY TO PERSONS 21 YEARS OF AGE AND OLDER." Retailer shall mean any person, firm or corporation engaged in the business of selling tobacco products, alternative nicotine products, or vapor products by personal handling to an ultimate customer or consumer.

Violation of this section is a class B violation punishable by a minimum fine of \$200.

**9.9.2 DRUG PARAPHERNALIA, SIMULATED DRUGS AND CONTROLLED SUBSTANCES; DISPLAY, SALE, POSSESSION OR DELIVERY PROHIBITED.**

- (a) No person shall sell or offer for sale, use or possess with intent to use:
  - (1) Any simulated controlled substance as designated in K.S.A. 21-5701;
  - (2) Any drug paraphernalia, as designated in K.S.A. 21-5701, to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, K.S.A. 65-4101 *et seq.*, and any amendments thereto; or
  - (3) Any drug paraphernalia to plant, propagate, cultivate, grow or harvest less than five marijuana plants.
- (b) The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.
- (c) No person shall deliver, possess with intent to deliver, manufacture with intent to deliver or cause to be delivered within this City any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act and amendments thereto.
- (d) It shall be unlawful for any person to display for sale any drug paraphernalia

or simulated controlled substance or simulated drug in or upon any premises.

- 1) Nothing in this Section shall be construed to prohibit the selling, dispensing, or giving away of such items by a practitioner or pharmacist to a patient for lawful purposes.
- (e) For the purpose of sentencing the offense is classified as a Class A misdemeanor as set forth in the Uniform Public Offense Code and the sentence shall be a definite term of confinement in the city or county jail which shall be fixed by the Court and shall not exceed one year. In addition to or instead of the confinement authorized by law a fine up to \$2,500.00 may be imposed by the Court.

#### **10.6 AIR GUN, AIR RIFLE, BOW AND ARROW, SLINGSHOT OR BB GUN.**

The unlawful operation of an air gun, air rifle, bow and arrow, slingshot or BB gun is the shooting, discharging or operating of any air gun, air rifle, bow and arrow, slingshot or BB gun, within the city, except by permit authorized by the city for deer hunting or within the confines of a building or other structure from which to projectiles cannot escape; provided, that a bow and arrow may be used in an open air archery range meeting the following requirements.

- (1) An open, flat plain with a clear and unobstructed field of distance. The maximum distance between archer and target shall be no more than 40 yards.
- (2) Target shall be situated so that any path, target, road or building is located with a 30 degree arc centered perpendicular with the shooter and target extending a minimum of 40 yards behind the target.
- (3) A target backstop be constructed which is at least 12 feet wide and 8 feet high behind each target. The backstop is to be constructed and maintained using a material, which would capture and trap arrows shot into it. The material used must not cause arrows to be deflected in another direction.
- (4) A secondary earthen backstop consisting of an earthen berm, material hill or excavated face shall be provided. The secondary backstop should be at least 30 feet wide and 16 feet high.
- (5) Operation of an archery range shall be allowed between the hours of sunrise and sunset.

Unlawful operation of an air gun, air rifle, bow and arrow, slingshot or BB gun is a class C violation.

**Section 3. REPEAL.** Sections 70-1 and 70-2 of Chapter 70, Offenses, of the Code of Ordinances of the City of Leavenworth, Kansas, in existence as of and prior to the adoption of this ordinance, are hereby repealed.

**Section 4. EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

**PASSED and APPROVED** by the Governing Body on this 28th day of August, 2018.

{Seal}



Mark Preisinger, Mayor

ATTEST:

Carla K. Williamson, CMC, City Clerk