

PART 10

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CHAPTER 1

OFFENSES IN GENERAL

§ 10-101 **Attempts to commit an offense.**

§ 10-102 **Aiding in an offense.**

§ 10-101 **ATTEMPTS TO COMMIT AN OFFENSE.**

Every person who attempts to commit an offense against the ordinances of the city, and in such attempt does any act toward the commission of such offense, but fails or is prevented or intercepted in the perpetration thereof, is guilty of an offense, and shall be punished in the manner prescribed for the attempted offense itself.

§ 10-102 **AIDING IN AN OFFENSE.**

When no punishment for counseling or aiding in the commission of a particular offense is expressly prescribed by ordinance, every person who counsels or aids another in the commission of such is guilty of an offense, or misdemeanor, and punishable in the same manner as the principal offender.

CHAPTER 2

OFFENSES AGAINST PROPERTY

- § 10-201 **Petit larceny prohibited.**
- § 10-202 **Injuring automobiles and other vehicles.**
- § 10-203 **Destroying or injuring buildings and other property.**
- § 10-204 **Placing signs on property of another or on public utility.**
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- § 10-210 **Throwing injurious substances.**
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§ 10-201 PETIT LARCENY PROHIBITED.

A. Petit larceny is the taking of personal property of value not exceeding Fifty Dollars (\$50.00) accomplished by fraud or stealth and with intent to deprive another thereof, but it does not include the taking of such property from the "person" of another.

B. Petit larceny is unlawful, and any person who commits larceny shall be guilty of a misdemeanor.

State Law Reference: Petit larceny defined, 21 O.S. §§ 1704, 1706.

§ 10-202 INJURING AUTOMOBILES AND OTHER VEHICLES.

It is unlawful for any person to start, otherwise meddle with, molest, enter, occupy, loiter in, or injure any automobile or other vehicle belonging to another, without the consent of the owner or person in charge thereof.

§ 10-203 DESTROYING OR INJURING BUILDINGS AND OTHER PROPERTY.

It is unlawful for any person to destroy, injure, deface, besmear, or molest any structure, building, outbuilding, fence, or any other property, real or personal, public or private, belonging to another; or to use any such property wrongfully to the detriment of the owner or other person entitled to its use; or to interfere wrongfully with the use of any such property by its owner or any other person entitled to its use.

§ 10-204 PLACING SIGNS ON PROPERTY OF ANOTHER OR ON PUBLIC UTILITY.

It is unlawful for any person to post or place, or to stick, tack, paste, paint, mark, write or print, any sign, poster, picture, announcement, advertisement, bill placard, device or inscription, including political signs, upon any public or private building, fence, sidewalk, bridge, viaduct, post, automobile, other vehicle or other property of another, without the consent of the owner or person in charge thereof, or on any public utility pole or apparatus in the city.

Ed. Note: Ordinance 1991-3 set a \$25.00 fine for placing or posting any sign, including political signs, on utility poles.

§ 10-205 THROWING OR SHOOTING AT PERSONS OR PROPERTY.

It is unlawful for any person to throw or shoot any stone, shot or other object in to or across any street or alley, or .in any place where he is likely to hit another person wrongfully or to injure property, or to throw or shoot any stone, shot or other object at any person, vehicle, structure, electric light or other property of another (whether public or private), except in case where such is done in defense of oneself, of another person or of property.

§ 10-206 TAMPERING WITH OR DAMAGING PUBLIC UTILITIES.

It is unlawful for any person to connect or attach any kind of pipe, wire or other contrivance to any pipe, line, wire or other conductor carrying gas, water or electricity and belonging to a public utility (whether publicly or privately owned), in such a manner as to enable him to consume or use the gas, water or electricity without it passing through the meter or any other way so as to evade payment therefore. It is also unlawful for any person to damage, molest, tamper with, or destroy any pipe, line, wire, meter, or other part of any public utility, including any telegraph or telephone system.

§ 10-207 UNLAWFUL INTRUSION UPON LAND.

It is unlawful for any person to intrude or squat upon any lot or piece of land within the city without a license or authority from the owner thereof, or to erect or occupy thereon any hut, hovel, shanty or other structure without such license or authority, or to place, erect or occupy within the bounds of any street, alley or avenue of the city, any hut, shanty, hovel, or other structure without authority of law or ordinance.

§ 10-208 ILLEGAL ENTRANCE.

It is illegal for any person to enter upon the property of another or into an area or structure on such property (whether such property, area or structure is public or private), when such entrance is plainly forbidden by signs or any notice or when the property, area or structure is enclosed, except when such entrance is in line of duty, or with the expressed, or tacit consent of the owner or person in charge, or otherwise by authority of law or ordinance. It is unlawful for

any person to remain on the property of another after having been given notice, written or verbal, to leave by the owner or person in charge.

Cross Reference: See also trespass, § 10-213 of this code.

§ 10-209 **THROWING ADVERTISING ON STREET, PROHIBITED.**

It is unlawful for any person to throw, leave or deposit, or cause to be thrown, left or deposited, upon any street, alley, sidewalk, or other public area, any handbill, circular, or other advertising matter.

Cross Reference: For provision prohibiting placing signs on property of another without consent, etc., see § 10-204 of this code.

§ 10-210 **THROWING INJURIOUS SUBSTANCES.**

It is unlawful for any person to purposely or premeditatedly put or throw upon the person or property of another, or upon any animal, any acid, corrosive or other irritating or harmful substance, or human or animal waste or urine, with intent to injure or harass the person, property or animal.

§ 10-211 **INJURY TO PLANTS AND TREES.**

It is unlawful for any person to willfully and without authority cut, pull, pluck or otherwise injure any flowers, flowering plants, shrubs or trees growing in or around any park or public street within the city, or willfully or without authority to tear down, remove, cut or otherwise injure or destroy any gate or fence enclosing any such park or ground, or willfully injure or destroy any stand, bench, seat or other property situated upon such park or ground, any person violating this section, upon conviction, shall be deemed guilty of an offense.

§ 10-212 **PUBLIC STREETS AND TREES.**

It is unlawful for any person to:

1. Willfully or wantonly cut, deface or in any way injure any tree or sapling standing or growing in any of the streets, alleys or public places within the city;
2. Attach any guy wires, telephone, telegraph, or electric wire, or any wire to any live tree;
3. Dig any hole, ditch or trench in any public street, road, avenue or alley, or any other public premises or ground within, belonging to or under the supervision or control of the city;

4. Take or remove any dirt, earth or any substance from any street, road, alley or other public place in the city, or to cut, break or otherwise injure any pavement, curb or gutter therein; or

5. Connect any driveway to any street or other public place without first securing permission from the city inspector so to do.

Any such digging, removing, or driveway connection shall be done under the supervision of the city.

§ 10-213 **TRESPASS PROHIBITED.**

A. For the purpose of this section, the following terms shall be defined as follows:

1. "Public property" means that property which is dedicated to public use and over which the federal, state or municipal government or any subdivision thereof exercises control;

2. "Private property" means any property other than public property; and

3. "Trespass" means each and every actual entry upon the premises of an owner or other person in lawful possession of the premises without the express or the implied consent of the owner or other person in lawful possession. Trespass shall also mean remaining upon the premises of an owner or other person in lawful possession after having been told to leave the premises by the owner, or the agent, or employee of the owner, or other person in lawful possession of the premises. Trespass shall also be defined as the act of remaining on private property at any time other than during posted hours of business operation after having been directed to vacate such premises by a police officer. The provisions of this paragraph shall not apply to persons, including employees, whose presence upon such premises is authorized by the owner or by a person in lawful possession of such premises nor shall the provisions of this sentence apply unless hours of business operations are posted upon such premises. Trespass shall also be defined as the act of returning to private property before the posted time of opening for business operation on the next business day after having been directed to vacate such premises under the terms of this subsection.

B. It is unlawful for any person to trespass on private property.

Cross Reference: For provisions on illegal entrance, see § 10-208 of this code.

§ 10-214 **PARKING ON PROPERTY OF ANOTHER.**

It is unlawful for any person to park an automobile or other vehicle, or to place any structure or object on the driveway, yard, or property of another without the expressed or tacit consent of the owner or person in charge or by authority of law or ordinance.

§ 10-215 INTERFERENCE WITH FIRE HYDRANTS.

A. It is unlawful for any person except one duly authorized by the city utility personnel or a member of the fire department to open, turn on or off, interfere with, attach any pipe or hose to, or connect anything with, any fire hydrant or stop cock belonging to the city.

B. It is unlawful for any person to obstruct access to any fire hydrant by placing around or thereon brick, lumber, dirt or other thing, or in any other manner obstructing access to a fire hydrant.

CHAPTER 3

OFFENSES AGAINST THE PUBLIC

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§ 10-301 DISTURBING THE PEACE.

A. It is unlawful to disturb or alarm the peace of another or others by doing any of the acts set out in Subsection B of this section.

B. Disturbing the peace is the doing of any of the following in such a manner as would foreseeably alarm or disturb the peace of another or others:

1. Using obscene, offensive, abusive, profane, vulgar, threatening, violent or insulting language or conduct;
2. Appearing in an intoxicated condition;
3. Engaging in a fistic encounter;
4. Lewdly exposing one's person, or private parts thereof, in any public place or in any place where there are present other persons to be offended or annoyed thereby;
5. Pointing any pistol or any other deadly weapon whether loaded or not at any other person or persons either in anger or otherwise;

6. Holding an unlawful assembly of two (2) or more persons, including being assembled together and acting In concert, to do any unlawful act against the peace or to the terror of others or preparing for or moving toward such acts, or otherwise assembling unlawfully or riotously;

7. Interrupting any lawful assembly of people by making noise, by rude, indecent or improper behavior, by profane, improper or loud language, or in any other manner, either within the place of assembly or within hearing distance thereof;

8. Making unnecessarily loud, offensive noises;

9. Disturbing any congregation or assembly of persons meeting for religious worship by making noise, by rude, indecent or improper behavior, by profane, improper or loud language, or in any other manner, either within the place of worship or within hearing distance thereof; or

10. Committing any other act in such a manner as to unreasonably disturb or alarm the public.

Cross Reference: See also § 2-208 on unlawful disruption of city council or utilities authority meetings.

§ 10-302 INSULTING SIGNS; LITERATURE OR LANGUAGE.

A. It is unlawful for any person, firm or corporation within the city to display any sign, emblem, badge, flag or device, which in its common acceptance is insulting, profane, or abusive to the citizens of the city, and which is calculated, or of which the natural consequence is, to cause a breach of the peace or an assault.

B. It is unlawful for any person to willfully use, utter, publish, circulate or distribute any profane, violent, abusive, or insulting language or literature where:

1. A natural consequence of the language or literature is to cause a breach of the peace or an assault; or

2. The language or literature, in its common acceptance, is calculated to cause a breach of the peace or an assault.

§ 10-303 FIREWORKS REGULATED.

A. For the purpose of this section, "fireworks" shall have the meaning prescribed by state law, § 1622 of Title 68 of the Oklahoma Statutes.

B. The purchase or sale of fireworks at retail within the corporate limits of the city is hereby prohibited.

C. State laws and city fire code governing discharge of fireworks shall be fully applicable in the city and enforceable as offenses against the city.

D. Those fireworks vendors who were in operation in the annexed area of the Highway 281 Spur prior to the annexation on April 14, 2003, and the 1-40 - Highway 281 Spur intersection area prior to the annexation on December 13, 2002, may continue to sell fireworks, and the discharge of fireworks is permitted in the above described areas. (Added 6-5-2003 by Ord. No. 2003-3)

State Law Reference: Bottlerockets prohibited by state law, 68 O.S. § 1624; state fireworks licenses required, 68 O.S. §§ 1621 et seq.

Cross Reference: Fire Prevention Code, § 13-101.

§ 10-304 STORING OR KEEPING EXPLOSIVES: NITROGLYCERINE PROHIBITED.

It is unlawful for any person to store or keep within the City any nitroglycerin, dynamite, gunpowder, or any other highly explosive material or substance of any kind without having first complied with the laws of the state and ordinance of the City for the purpose of selling, storing or keeping such items.

§ 10-305 CARRYING WEAPONS: EXCEPTIONS.

It is unlawful for any person to carry concealed upon or about his person any pistol, revolver, dagger, bowie knife, dirk knife, switch-blade knife, spring-type knife, metal knuckle, or any other dangerous or deadly weapon or instrument except when doing so in line of duty or as may be permitted by law.

State Law Reference: State Firearms Act, 21 O.S. §§ 1289.1 et seq.

§ 10-306 RECKLESS CONDUCT.

It is unlawful for any person to engage in reckless conduct while having in his possession any shotgun, rifle or pistol, such actions consisting of creating a situation of unreasonable risk and probability of death or great bodily harm to another, and demonstrating a conscious disregard for the safety of another person.

§ 10-307 DISCHARGING FIREARMS: EXCEPTIONS.

No person shall discharge any species of firearm, in the City except when doing so in the line of duty, when lawfully doing so in defense of oneself, of another person, or of property, or when otherwise authorized by law or ordinance. It is unlawful to discharge an air rifle or BB gun in the city.

Cross Reference: See also § 10-205 for provisions on throwing or shooting at persons or property.

§ 10-308 **DECLARATION OF POLICY.**

Whereas, the making and creation of excessive, unnecessary or unusually loud noises within the limits of Geary, Oklahoma, is a condition which has existed for some time and the extent and magnitude of such noises is increasing; and

Whereas, the making, creation or maintenance of such excessive, unnecessary or unusually loud noises which are prolonged, unusual or unreasonable in their time, place and use affect and are a detriment to public health, comfort, convenience, safety and welfare of the residents of Geary, Oklahoma; and

Therefore, the necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared as a matter of public policy, and the provisions and prohibitions hereinafter contained and enacted are in pursuance of and for the purpose of securing and promoting the public health, comfort convenience, safety, welfare and the peace and quiet of the inhabitants of Geary, Oklahoma. (Amended 9-9-2002 by Ord. No. 2002-1)

§ 10-309 **CITY OF GEARY CONTRACTS AND PURCHASES.**

A. Compliance of city' contractors and subcontractors. It is the policy of the City of Geary to comply with the noise emission standards, as set forth in this chapter, in its own operations and the operations of its contractors and subcontractors shall be notified of and required to comply with the provisions of this chapter.

B. City purchases. It is the policy of the City of Geary to purchase only equipment which complies to the standards established for the same by this chapter. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-310 **DEFINITIONS AND STANDARDS.**

Terminology used in this chapter may be found in § 10-311 and, if not defined therein, shall be in conformance with applicable American National Standards Institute Publication, including but not limited to SI. 1-1960, R 1971, or those from its successor publications or bodies. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-311 **USE DISTRICT NOISE LEVELS.**

A. Maximum permissible sound levels. It shall be a violation of this chapter for any person to operate or permit to be operated any stationary source of sound which either:

1. Creates a sound level greater than 15dB(A) above the ambient sound level (L90) within any land use district during any measurement period; or

2. Creates a ninetieth percentile sound level (L90), a tenth percentile sound level (L10) or a first percentile sound level (L1) for any measurement period which exceeds the limits set forth for the following receiving land use districts when measured at the boundary or at any point within the property affected by the noise:

Use District	L90		L10		L1	
	9:00 p.m. to 7:00 a.m.	7:00 a.m. to 9:00 p.m.	9:00 p.m. to 7:00 a.m.	7:00 a.m. to 9:00 p.m.	9:00 p.m. to 7:00 a.m.	7:00 a.m. to 9:00 p.m.
Residential	50dB(A)	55dB(A)	60dB(A)	65dB(A)	65dB(A)	70dB(A)
Commercial	55dB(A)	60dB(A)	65dB(A)	70dB(A)	70dB(A)	75dB(A)
Industrial	65dB(A)	70dB(A)	75dB(A)	80dB(A)	80dB(A)	85dB(A)

When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories. For the purpose of enforcing these provisions, a measurement period shall not be less than five (5) minutes nor more than fifteen (15) minutes.

B. Correction for character of sound.

1. For any stationary source of sound, which emits a pure tone, cyclically varying sound or repetitive impulsive sound, the limits set forth in Subsection A above shall be reduced by 5dB(A).

2. Notwithstanding compliance with Subsection B1 of this subsection, it shall be a violation of this chapter for any person to operate or permit to be operated any stationary source of sound which emits a pure tone, cyclically varying or repetitive impulsive sound which creates a noise disturbance. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-312 MOTOR VEHICLE NOISE.

A. No person shall drive or move or cause or knowingly permit to be driven or moved a motor vehicle or combination of vehicles at any time in such a manner as to exceed the following noise limits for the category of motor vehicle shown below. The standard measurement height shall be five (5) feet (1.5 meters) and the measurement distance no less than twenty-five (25) feet (7.5 meters). The distance shall be measured from the near side of the nearest monitored traffic lane to the microphone.

	Sound Level, dB(A)
Motor vehicles with a manufacturers gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) of	88

ten thousand (10,000) pounds or more, or any combination of vehicles towed by such motor vehicle

	Sound Level, dB(A)
Motorcycles	78
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	78

B. This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of this chapter relating to motor vehicle mufflers for noise control.

C. No person shall operate or cause to be operated any motor vehicle unless the exhaust system of such vehicle is:

1. Free from defects which affect sound reduction;
2. Equipped with a muffler or other noise dissipative device;
3. Not equipped with any cutout, bypass or similar device; and
4. Not modified in a manner, which will amplify or increase the noise emitted by the motor of such vehicle above that emitted by a muffler of the type originally installed on the vehicle. (Added 9-9-2002 by Ord. NO.2002-1)

§ 10-313 SOUND LEVEL MEASUREMENT.

Sound level measurements shall be made with a sound level meter Type II or better using the "A" weight scale, in accordance and conforming with the standards promulgated by the American National Standards Institute. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-314 NOISES PROHIBITED.

A. General prohibitions. In addition to the specific prohibitions outlined in Subsection B and §§ 10-311 and 10-319 below of this chapter, it shall be unlawful for any person to make, continue or cause to be made or continued any noise disturbance within the limits of Geary.

B. Specific prohibitions, the following acts are declared to be in violation of this chapter:

1. Horns and signaling devices. Sounding of any horn or signaling device on any truck, automobile, motorcycle, emergency vehicle or other vehicle on any street or public place therein, except as a danger warning signal as provided in the Vehicle Code of the State of

Oklahoma, or the sounding of any such signaling device for an unnecessary and unreasonable period of time.

2. Radios, television sets, musical instruments and similar devices.

- a. Using, operating or permitting the use or operation of any radio receiving set musical instrument, television, phonograph, drum or other machine or device for the production or reproduction of sound, except as provided for in Subsection B3 below, in such a manner as to violate § 10-311 or cause a noise disturbance.
- b. The operating of any such device in such a manner as to be plainly audible at the property boundary of the source or plainly audible at fifty (50) feet [fifteen (5) meters] from such device when operated in or on a vehicle on a public right-of-way or public space or in a boat on public waters.

3. Public loudspeakers. Using or operating a loudspeaker or sound-amplifying equipment in a fixed or movable position or mounted upon any sound vehicle in or upon any street alley, sidewalk, park, place or public property for the purpose of commercial advertising, giving instructions, directions, talks, addresses, lectures or transmitting music to any persons or assemblages of persons in such a manner as to violate § 10-311 or cause a noise disturbance unless a permit as provided by § 10-316 is first obtained.

4. Hawkers and peddlers. Selling anything by outcry (vocal, electrical or mechanical amplification) within any area of the city therein zoned primarily for residential uses in such a manner as to violate § 10-311 or cause a noise disturbance. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food and beverages at licensed sporting events, parades, fairs, circuses and other similar licenses public entertainment events.

5. Animals. Owning, keeping, possessing or harboring any animal which by frequent or habitual noisemaking violates § 10-311 or causes a noise disturbance. The provisions of this section shall apply to all private and public facilities, including any animal pounds, which hold or treat animals.

6. Loading operation. Loading, unloading, opening or otherwise handling boxes, crates, containers, garbage containers or other objects between the hours of 9:00 p.m. and 7:00 a.m. the following day in such a manner as to violate § 10-311 or cause a noise disturbance.

7. Construction work. Operating or causing to be used or operated any equipment used in construction, repair, alteration or demolition work on buildings, structures, streets, alleys or appurtenances thereto:

- a. In residential or commercial land use districts between the hours of 9:00 p.m. and 7:00 a.m. the following day;

- b. In any land use district where such operation exceeds the sound level limits for an industrial land use as set forth in § 10-311.

8. Domestic power equipment. Operating or permitting to be operated any power equipment used for home or building repair or grounds maintenance, including, but not limited to power saw, sander, lawn mower or garden equipment, in residential or commercial zones:

- a. Outdoors between the hours of 9:00 p.m. and 7:00 a.m. the following day;
- b. Any such power equipment which emits a sound level in excess of seventy-four (74) dB(A) measured at a distance of fifty (50) feet [fifteen (15) meters].

9. Commercial power equipment. Operating or permitting to be operated any power equipment, except construction equipment used for construction activities, including, but not limited to, chain saws, pavement breakers, log chippers or powered hand tools:

- a. In residential or commercial land use districts between the hours of 9:00 p.m. and 7:00 a.m. the following day;
- b. In any land use district if such equipment emits a sound pressure level in excess of eighty-two (82) dB(A) measured at a distance fifty (50) feet [fifteen (15) meters].

10. Enclosed place of public entertainment. Operating or permitting to be operated in any place of public entertainment any loudspeaker or other source of sound which produces, at a point that is normally occupied by a customer, maximum sound levels of ninety (90) dB (A) or greater as read with the slow response on a sound level meter, unless a conspicuous and legible sign at least two hundred twenty-five (225) square inches in area is posted near each public entrance stating: "WARNING: SOUND LEVELS WITHIN MAY CAUSE HEARING IMPAIRMENT." This provision shall not be construed to allow the operation of any loudspeaker or other source of sound in such a manner as to violate § 10-311 of this chapter.

11. Fireworks or explosives. The use of explosives or fireworks or the firing of guns or other explosive devices so as to be audible across a property boundary or on a public space or right-of-way without first obtaining a permit as provided by § 10-316. This provision shall not be construed to permit conduct prohibited by other statutes, ordinances or regulations governing such activity.

12. Racing events. Permitting any motor vehicle racing event at any place in such manner as to violate § 10-311 or cause a noise disturbance without first obtaining a permit as provided by § 10-316.

13. Powered model mechanical devices. The flying of a model aircraft powered by internal combustion engines, whether tethered or not, or the firing or operating of model rocket

vehicles or other similar noise-producing devices between the hours of 9:00 p.m. and 7:00 a.m. the following day or in such a manner as to violate § 10-311 or cause a noise disturbance.

14. Dynamic engine braking devices (commonly referred to as "Jacobs Brake"). Operating any motor vehicle with a dynamic engine braking device engaged except for the aversion of imminent danger.

15. Defect in vehicle. Operating or permitting to be operated or used any truck, automobile, motorcycle or other motor vehicle which, by virtue of disrepair or manner of operation, violates § 10-311 or causes a noise disturbance.

16. Refuse compacting vehicles. The operating or causing or permitting to be operated or used any refuse compacting vehicles which creates a sound pressure level in excess of seventy-four (74) dB(A) at fifty (50) feet [fifteen (15) meters] from the vehicle.

17. Garbage collection. The collection of garbage, waste or refuse between the hours of 9:00 p.m. and 7:00 a.m. the following day:

- a. In any area zoned residential, or within three hundred (300) feet of an area zoned residential;
- b. In any land use district so as to cause a noise disturbance.

18. Standing motor vehicles. The operating or causing or permitting to be operated any motor vehicle or any auxiliary equipment attached thereto in such a manner as to violate § 10-311 or cause a noise disturbance for a consecutive period longer than fifteen (15) minutes during which such vehicle is stationary in a residential zone.

19. Quiet zones. Creating noise in excess of the residential standard as defined in § 10-311 within the vicinity of any school, hospital, nursing home, institution of learning, court or other designated area while the same is in use, provided conspicuous signs are displayed in the streets indicating that the same is a quiet zone.

20. Bells and chimes. Sounding, operating or permitting to sound or operate an electronically amplified signal from any bell, chime or clock, including but not limited to bells, chimes or clocks in schools, houses of religious worship or governmental buildings, which fails to meet the sound level standards set forth in § 10-311 for more than five (5) minutes in any hour.

21. Fixed sirens, whistles and horns. The sounding or causing the sounding of any whistle, horn or siren as a signal of commencing or suspending work or for any other purpose, except as a sound signal of imminent danger or the testing of such equipment in such a manner as to violate § 10-311 or cause a noise disturbance.

22. Vehicle, recreational vehicle or motorboat repairs and testing. Repairing, rebuilding, modifying or testing any vehicle, recreational vehicle, motorcycle or motorboat in

such a manner as to cause a noise disturbance across a residential real property boundary or within a quiet zone.

23. Groups of gatherings of people. Talking, laughing, yelling, singing or otherwise making noise by two (2) or more people between the hours of 9:00 p.m. and 7:00 a.m. the following day in such a manner as to violate § 10-311 or cause a noise disturbance.

24. Emergency-type alarms. The sounding, operating or permitting to sound or operate an electronically amplified signal from an alarm, which fails to meet the sound level standards set forth in § 10-311 for more than fifteen (15) minutes in any hour; or the testing of such emergency alarm which fails to meet the sound level standards set forth in § 10-311 for more than five (5) minutes in any twenty-four-hour period. Testing of any emergency-type alarm shall be prohibited between the hours of 9:00 p.m. and 7:00 a.m. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-315 EXEMPTIONS.

The provisions of this chapter shall not apply to:

A. The emission of sound for the purpose of alerting persons to the existence of an emergency; or

B. The emission of sound in the performance of emergency work. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-316 PERMIT.

A. Applications for a permit for relief from the noise restrictions in this chapter on the basis of undue hardship may be made to the mayor of Geary. Any permit granted by the Mayor or his authorized representative shall contain all conditions upon which said permit has been granted, including but not limited to the effective dates, time of day, location, sound pressure level or equipment limitation. The relief requested may be granted upon good and sufficient showing.

1. That additional time is necessary for the applicant to alter or modify his activity or operation to comply with this chapter; or

2. That the activity, operation or noise source will be of temporary duration and cannot be done in a manner that would comply with this chapter; and

3. That no reasonable alternative is available to the applicant.

B. The mayor may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon a community or the surrounding neighborhood. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-317 ENFORCEMENT RESPONSIBILITY.

The environmental protection officer, mayor or designated representative or agent will have enforcement responsibility for this chapter as it relates to stationary sources, and joint enforcement responsibility with appropriate law enforcement agencies as it relates to vehicular sources. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-318 TERMINOLOGY.

For the purposes of this chapter, certain words and phrases used herein are defined as follows:

1. "A-weighted sound level" means the sound level as measured with a sound level meter using the A-weighting network. The standard notation is dB (A) or dBA.
2. "Ambient sound pressure level" means the sound pressure level of the all encompassing noise associated with a given environment usually a composite of sounds from many sources. It is also the A-weighted sound pressure level exceeded ninety (90) per cent of the time based on a measurement period of not less than ten (10) minutes nor more than thirty (30) minutes.
3. "Continuous sound" means any sound, which exists, essentially without interruption, for a period of ten (10) minutes or more.
4. "Cyclically varying noise" means any sound, which *varies* in sound level such that the same level is obtained repetitively at reasonably uniform intervals of time.
5. "Decibel" means logarithmic and dimensionless unit of measure used in describing the amplitude of sound. Decibel is denoted as dB.
6. "Device" means any mechanism, which is intended to produce, *or* which actually produces, noise when operated or handled.
7. "Dynamic braking device (commonly referred to as 'Jacobs Brake')" means a device used primarily on trucks for the conversion of the engine from an internal combustion engine to an air compressor for the purpose of braking without the use of wheel brakes.
8. "Emergency work" means work made necessary to restore property or a public utility to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger.
9. "Emergency vehicle" means a motor vehicle used in response to a public calamity or to protect persons or property from an imminent exposure to danger.

10. "Impulsive noise" means a noise containing excursions, usually less than one second, of sound levels of twenty (20) dB(A) or more over the ambient sound level using the fast meter characteristic.

11. "Motor vehicle" means any vehicle which is self-propelled by mechanical power, including but not limited to passenger cars, trucks, truck trailers, semitrailers, campers, motorcycles, minibikes, go-carts, mopeds, and racing vehicles.

12. "Muffler" means an apparatus consisting of a series of chambers or baffle plates designed for the purpose of transmitting gases while reducing sound emanating from such apparatus.

13. "Noise disturbance" means any sound which annoys or disturbs reasonable persons with normal sensitivities or which injures or endangers the comfort repose, health, hearing, peace or safety of other persons.

14. "Noise" means any sound which is unwanted or which causes or tends to cause an adverse psychological or physiological effect on human beings.

15. "Percentile sound pressure level" means:

- a. Tenth percentile noise level-The A-weighted sound pressure level that is exceeded ten (10) per cent of the time in any measurement period (such as the level that is exceeded for one (1) minute in a ten-minute period). It is denoted L10.
- b. Ninetieth percentile noise level-The A-weighted sound pressure level that is exceeded ninety (90) per cent of the time in any measurement period (such as the level that is exceeded for nine (9) minutes in a ten-minute period). It is denoted L90.

16. "Person" means any human being, firm, association, organization, partnership, business, trust corporation, company, contractor, supplier, installer, user, owner or operator, including any municipal corporation or its officers or employees.

17. "Plainly audible noise" means any noise for which the information content of that noise is unambiguously transferred to the listener. such as but not limited to understanding of spoken speech, comprehension of whether a voice is raised or normal or comprehension of musical rhythms.

18. "Property boundary" means an imaginary line exterior to any enclosed structure, at the ground surface, and its vertical extension, which separates the real property owned by one person from that owner by another person or such imaginary line which separates individual living units in a multiple-family dwelling.

19. "Public right-of-way" means any street, avenue, boulevard, highway or alley or similar place owned or controlled by a public governmental entity.

20. "Pure tone" means any sound, which can be distinctly heard as a single pitch or a set of single pitches. For the purposes of measurement, a pure tone shall exist if the one third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third octave bands by five (5) dB for center frequencies of five hundred (500) Hz and above, by eight (8) dB for center frequencies between one hundred sixty (160) and four hundred (400) Hz, and by fifteen (15) dB for center frequencies less than or equal to one hundred twenty-five (125) Hz.

21. "Repetitive impulsive noise" means any noise which is composed of impulsive noises that are repeated at sufficiently slow rates such that a sound level meter set at "fast" meter characteristic will show changes in sound pressure level greater than ten (10) dB (A).

22. "Sound" means mechanical energy transmitted by a cyclic series of compressions and rarefactions of molecules of the material or materials through which it passes.

23. "Sound level meter" means an instrument, including a microphone, amplifier, RMS detector and integrator or time averager, output meter and/or visual display and weighting networks, used to measure sound levels. The sound level meter shall conform as a minimum to the requirements of ANSI S 1.4 - 1971 Type 2, or its successor publication, and be set to an A-weighted response. An acoustical calibrator accurate to within plus or minus one (1) decibel shall be used to verify the before and after calibration of the sound level meter on each day noise measurements are taken.

24. "Sound pressure" means the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space, as produced by sound.

25. "Sound pressure level" means twenty (20) times the logarithm to the base 10 of the ration of the RMS sound pressure to the reference pressure of twenty (20) micropascals. The sound pressure level is denoted L or SPL.

26. "Stationary noise source" means any device, fixed or movable, including motor vehicles, which is located or used on property other than a public right-of-way.

27. "Steady noise" means a sound pressure level which remains essentially constant during the period of observation, i.e., does not vary more than six (6) dB (A) when measured with the "slow" meter characteristic of a sound level meter.

28. "Use district" means those districts established by the Geary Zoning Ordinances. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-319 VIOLATIONS.

Any person violating any provision of §§ 10-308 through 10-318 may be punished by a fine of not more than one hundred dollars (\$100.00), or by imprisonment not to exceed sixty (60) days, or by both such fine and imprisonment. Each time such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. (Added 9-9-2002 by Ord. No. 2002-1)

§ 10-320 ADDITIONAL REMEDIES.

Violations of §§ 10-311 through 10-316 of this chapter are deemed and declared to be a nuisance, and such may be subject to summary abatement by means of a restraining order or injunction issued by a court of competent jurisdiction. (Added 9-9-2002 by Ord. No. 2002-1)

CHAPTER 4

OFFENSES AGAINST THE HEALTH, WELFARE AND MORALS

- § 10-401 Public intoxication and drinking prohibited.
- § 10-402 Possession; intoxicating and nonintoxicating beverages.
- § 10-403 Intoxicating liquors.
- § 10-404 Marijuana prohibited.
- § 10-405 Prostitution.
- § 10-406 Disorderly house.
- § 10-407 Maintaining or leasing a disorderly house.
- § 10-408 Residents and visitors to disorderly house.
- § 10-409 Nudity; improper dress; indecent exposure.
- § 10-410 Definitions, obscenity regulations.
- § 10-411 Prohibited obscene conduct.
- § 10-412 Vagrancy defined for specific acts, offenses.
- § 10-413 Sleeping in public.
- § 10-414 Begging prohibited.
- § 10-415 Gambling prohibited.
- § 10-416 Being about place where gambling is going on.
- § 10-417 Harmful deception.
- § 10-418 False or bogus checks.
- § 10-419 Swindling unlawful.
- § 10-420 Curfew for minors.

§ 10-401 PUBLIC INTOXICATION AND DRINKING PROHIBITED.

A. It is unlawful for any person to appear or be upon or in any street, alleys or other public place in the city in a state of intoxication. It is unlawful for any person to drink intoxicating or nonintoxicating liquor or beverage, as defined by § 163.1 of Title 37 of the Oklahoma Statutes, upon or in any street, alley, or other public place within the city.

B. For the purposes of this section, a state of intoxication means the condition in which a person is under the influence of any intoxicating, nonintoxicating, spirituous, vinous or malt liquors, or of any narcotic or drug, to such extent as to deprive the person of his or her full physical or mental power, or in which a person is a danger to himself or others.

§ 10-402 POSSESSION; INTOXICATING AND NONINTOXICATING.

A. It is unlawful for any person under the age of twenty-one (21) years to be in possession of any intoxicating or nonintoxicating alcoholic beverage while such person is upon any public street, road or highway or in any public place within the city limits.

B. It is unlawful for any parent or guardian of a person under the age of twenty-one (21) years to permit such person to be in possession of an intoxicating alcoholic beverage.

C. For the purpose of this section "za intoxicating beverage" and "nonintoxicating beverage shall be as defined in §§ 3-101 and 3-201 et seq. of this code.

§ 10-403 **INTOXICATING LIQUORS.**

It is unlawful:

1. For any person to barter, sell, give away or otherwise furnish to another any intoxicating or nonintoxicating liquor or beverage of any kind except as permitted by law;
2. To have in possession or under control any intoxicating or nonintoxicating liquor or beverage except as permitted by law, or to transport or in any manner convey from place to place in the city any intoxicating or nonintoxicating liquor or beverage except as permitted by law;
3. To loiter in a place where intoxicating or nonintoxicating liquor is sold, bartered, given away or otherwise furnished contrary to law; or
4. To keep, maintain, aid or abet in keeping or maintaining a place where intoxicating or nonintoxicating liquor is sold, bartered, given a way or otherwise furnished in violation of law.

§ 10-404 **MARIJUANA PROHIBITED.**

A. It is unlawful for any person knowingly to:

1. Manufacture, grow, harvest, cultivate, propagate, plant, compound, convert, produce, process, test, pack, repack, store, distribute, dispense or possess with intent to manufacture, distribute or dispense marijuana;
2. Use, have, inject, in jest, inhale, otherwise introduce into the human body or possess marijuana;
3. Use or possess drug paraphernalia or to deliver, possess or manufacture any such paraphernalia singly or in conjunction with any other person; or
4. Appear or be upon or in any street, alley, place of business or other public place in the city while under the influence of a controlled dangerous substance or marijuana;

B. For the purpose of this section, "marijuana" shall have the meaning prescribed by § 2-101 of Title 63 of the Oklahoma Statutes. "Drug paraphernalia" shall have the meaning prescribed by § 2-101 of Title 63 of the Oklahoma Statutes, including the factors to determine in § 2-101.1 of Title 63.

C. This section shall not apply to any marijuana lawfully obtained or authorized by valid prescription order from a licensed physician while acting in the course of his professional practice.

§ 10-405 **PROSTITUTION.**

- A. It is unlawful for any person to:
1. Be a prostitute;
 2. Solicit, entice, or procure another to commit or engage in any act of prostitution;
 3. Engage in any act of prostitution;
 4. Knowingly let premises for purposes of prostitution;
 5. Conduct a business or premises for prostitution; or
 6. Be a party to an act of prostitution or solicitation of prostitution in the limits of city.
- B. For the purposes of this section:
1. Prostitution is the giving of the body for sexual intercourse or sodomy for hire or money;
 2. Soliciting for prostitutes is the soliciting, inviting, inducing, directing, or transporting of a person to any place with the intention of promoting prostitution; and
 3. Letting premises for prostitution *is* the granting of the right of use or the leasing of any premises, knowing that they are to be used for the practice of prostitution, or allowing the continued use of the premises with that knowledge.

§ 10-406 **DISORDERLY HOUSE.**

A disorderly house means any structure or vehicle by which the peace, comfort, health, welfare or decency of the public is disturbed by reason of the people therein committing or resorting to any of the following acts:

1. The sale, distribution, possession or use of any controlled dangerous substance, the sale, distribution, possession or use of which is declared unlawful by state statute;
2. The violation of any of the ordinances of this city or statutes of this state regulating the sale, distribution, possession or use of alcoholic beverages including beer containing more than one-half of one percent (.5%) alcohol by volume;

3. The performance of any sexual act declared unlawful by state statute or city ordinance including, but not limited to, soliciting for purposes of prostitution; or

4. The violation of any state statute or city ordinance prohibiting gambling.

§ 10-407 MAINTAINING OR LEASING A DISORDERLY HOUSE.

A. No person shall keep or maintain, or aid, abet or assist in keeping and maintaining a disorderly house.

B. No owner, lessee, lessor, or other person, partnership or corporation having control over any house, building, structure, tent, vehicle, mobile home, or recreational vehicle shall knowingly use, lease, sublease or otherwise permit the use of same for the purpose of keeping therein any disorderly house, and knowing or ascertaining that such house, building, structure, tent, vehicle, mobile home, or recreational vehicle is so occupied as a disorderly house, no persons, partnership or corporation shall continue to grant permission to so use such premises as a disorderly house.

§ 10-408 RESIDENTS AND VISITORS TO DISORDERLY HOUSE.

No person shall knowingly reside in, enter into, or remain in a disorderly house. In any prosecution for violation of this section, the city shall have the burden to prove such knowledge by direct evidence only and not by circumstantial evidence. This section shall not apply to physicians or officers in the discharge of their professional or official duties.

§ 10-409 NUDITY; IMPROPER DRESS; INDECENT EXPOSURE.

It is unlawful for any person to:

1. Appear in any public place in the city in a state of nudity;
2. Appear in any public place in the city in any offensive, indecent or lewd dress; or
3. Make an indecent public exposure of his or her person.

§ 10-410 DEFINITIONS; OBSCENITY REGULATIONS.

The following terms when used in the chapter shall have the meaning respectively ascribed to them in this section:

1. "Obscene" means that to the average person applying contemporary community standards:
 - a. The predominant appeal of the matter taken as a whole, is to prurient interest; i.e. shameful or morbid interest in sexual conduct) nudity, or excretion;

- b. The matter depicts or describes in a patently offensive manner sexual conduct regulated by Title 21 of the Oklahoma Statutes; and
- c. The work, taken as a whole, lacks serious literary, artistic, political or scientific value;

2. "Material" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical, or electrical reproduction or any other articles, equipment or machines;

3. "Person" means any individual, partnership, firm, association, corporation or other legal entity;

4. "Disseminate" means to transfer possession of, with or without consideration;

5. "Knowingly" means being aware of the character and the content of the material;

6. "Nudity" means the showing of the human male or female genitals or pubic area with less than a fully opaque covering, or the depiction of covered male genitals in a discernible turgid state;

7. "Performance" means any preview, play, show, skit, film, dance or other exhibition performed before an audience;

8. "Available to the public" means that the matter or performance may be purchased or attended on a subscription basis, on a membership fee arrangement, or for a separate fee for each item or performance;

9. "Service to patrons" means the provision of services to paying guests in establishments providing food and beverages; including but not limited to hostessing, hat checking, cooking, bar tending, serving, table setting and clearing, waiter and waitressing, and entertaining; and

10. "Promote" means to cause, permit, procure, counsel or assist.

§ 10-411 PROHIBITED OBSCENE CONDUCT.

A. It is unlawful for any person to:

1. Knowingly disseminate, sell, offer for sale, publish, display, distribute, make available to the public or buy any obscene material;

2. Knowingly engage in commerce for commercial gain with materials depicting and describing explicit sexual conduct, nudity, or exhibition utilizing displays, circulars,

advertisements and other public sales efforts that promote such commerce primarily on the basis of their prurient appeal;

3. Knowingly engage or participate in any obscene performance made available to the public; or

4. Provide service to patrons in such a manner as to expose to public view:

- a. His or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region;
- b. Any device, costume or covering which gives the appearance of or simulates the genitals, pubic hair, buttocks, perineum, anal region or pubic hair region;
- c. Any portion of the female breast at or below the areola thereof; or
- d. Knowingly promote the commission of any of the above listed unlawful acts.

B. Each complete or partial display or other material exhibition of any motion picture film or other material shall be deemed to constitute a separate offense. The provisions of §§ 10-410 and 10-411 shall not apply to a projectionist, assistant projectionist, usher or cashier provided such person has no financial interest in the motion picture theatre so long as that person is not acting as director or manager of the theatre.

§ 10-412 VAGRANCY DEFINED FOR SPECIFIC ACTS, OFFENSES.

It is unlawful to be a vagrant in the limits of the city. For the purposes of this section, a vagrant means any person who loiters or remains in or wanders about, a public or private place for any of the following purposes:

1. For the purpose of gambling with cards, dice or other gambling paraphernalia;
2. For the purpose of engaging in prostitution or soliciting prostitution or soliciting for an act of lewdness;
3. For the purpose of engaging in theft, or breaking and entering any building, property or automobile of another;
4. For the purpose of injuring, destroying, molesting or defacing any property of another;
5. For the purpose of assaulting any person;

6. For the purpose of begging or soliciting alms, provided that this section shall not apply to persons soliciting alms for bona fide religious, charitable or eleemosynary organizations with the authorization of such organizations; or

7. For the purpose of selling, purchasing, trading or otherwise exchanging, procuring or making available illegal drugs or contraband.

§ 10-413 SLEEPING IN PUBLIC.

It is unlawful for any person, between the hours of 12:00 A.M. midnight and 6:00 A.M., to sleep on any street, in any other public place, or on any property of another without the express or tacit consent of the owner or person in charge of such place.

§ 10-414 BEGGING PROHIBITED.

It is unlawful for any person to beg alms for any person, organization or agency except an organization or agency, public or private, whose purpose or one of whose purposes is to aid persons in need.

§ 10-415 GAMBLING PROHIBITED.

A. It is unlawful for any person, firm or corporation, or agent or employee thereof, to do any of the following:

1. To play, to open or cause to be opened, or to operate, carry on or conduct, whether for hire or not, any game of faro, monte, poker, roulette, craps, any banking, percentage or other game played with dice, cards, or any device, for money, checks, chips, credit or any other thing of value;

2. To set up, operate or permit to be operated, any slot machine or other device whatsoever where money, checks, chips, credit or any other things of value are played, when the act of playing the same might result in a gain or loss to the party playing;

3. To gamble knowingly in any other manner; or

4. To knowingly permit his or its premises, houses, lot or other property to be used in connection with, or for, any act declared unlawful in this section.

B. It is unlawful and an offense against the city for any person to play any roulette wheel or slot machine or any other device or machine wherein the element of chance is involved by losing or winning money, credits, checks or any other representatives of value.

State Law Reference: Authority to prohibit gambling, 11 O.S. § 22-108.

§ 10-416 BEING ABOUT PLACE WHERE GAMBLING IS GOING ON.

It is unlawful for any person to be about in the immediate vicinity where a person or persons are gambling, whether by playing games, operating a slot machine or other device, or otherwise.

§ 10-417 HARMFUL DECEPTION.

It is unlawful for any person knowingly to deceive another, whether by impersonation, misrepresentation, or otherwise, when such deception results in or contributes to the loss, damage, harm or injury of the person deceived or of a third party, or results in or contributes to the benefit of the deceiver.

§ 10-418 FALSE OR BOGUS CHECKS.

It is unlawful for any person, with intent to cheat and defraud, to obtain or attempt to obtain from any person, firm or corporation, any money, property or valuable thing of the value of fifty dollars (\$50.00) or less by means of any false or bogus check or by any other written or printed or engraved instrument or spurious coin. The term "false or bogus check" shall include checks or orders given for money or property which are not honored on account of insufficient funds of the maker to pay same, as against the maker or drawer thereof. The making, drawing, issuing or delivering of a check, draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and the knowledge of insufficient funds in or credit with, such bank or other depository. Such maker or drawer shall not have paid the drawee the amount due thereon, together with the protest fees, and the check or order shall be presented for payment within thirty (30) after same is delivered and accepted.

§ 10-419 SWINDLING UNLAWFUL.

It is unlawful to get money or property from any other person or persons or businesses under false pretences, deception, cheating or by any other fraudulent act.

§ 10-420 CURFEW FOR MINORS.

A. For the purposes of this section, the following terms, phrases, words and their derivations shall have the meaning given herein:

1. "Minor" means any person under the age of eighteen (18);
2. "Parent" means any person having legal custody of a minor:
 - a. As a natural or adoptive parent;
 - b. As a legal guardian;
 - c. As a person who stands in loco parentis; or

d. As a person to whom legal custody has been given by order of the court;

3. "Public place" means any street, alley, highway, sidewalk, park, playground or place to which the general public has access and a right to resort for business, entertainment, or other lawful purpose. A public place shall include but not be limited to any store, shop, restaurant, tavern, bowling alley, cafe, theater, drug store, pool room, shopping center and any other place devoted to amusement or entertainment of the general public. It shall also include the front or immediate area of the above;

4. "Remain" means to stay behind, to tarry and to stay unnecessarily upon the streets, including the congregating of groups (or of interacting minors) totaling four (4) or more persons in which any minor involved would not be using the streets for ordinary or serious purposes such as mere passage or going home;

5. "Street" means a way or place, of whatsoever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term street includes the legal right-of-way, including but not limited to the cartway or traffic lanes, the curb, the sidewalks whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street;

6. "Time of night" means the prevailing standard of time, whether central standard time or central daylight saving time, generally observed at that hour by the public; and

7. "Year of age" continues from one birthday, such as the seventeenth (17) to (but not including the day of) the next, such as the eighteenth (18th) birthday, making it clear that seventeen (17) or less years of age is herein treated as equivalent to the phrase "under eighteen (18) years of age."

B. It shall be unlawful for any person seventeen (17) or less years of age (under eighteen (18)) to be or remain in or upon the streets within the city at night during the period of times as follows:

1. For minors fourteen (14) years of age or younger from 11:00 p.m. until 6:00 a.m.;

2. For minors more than fourteen (14) years of age on Sunday through Thursday from 12:00 a.m. midnight until 6:00 a.m., and on Saturday morning and Sunday morning from 1:00 a.m. until 6:00 a.m.

C. In the following exceptional cases a minor on a city street during the nocturnal hours for which this section is intended to provide the maximum limits of regulation shall not, however, be considered in violation of this section:

1. When accompanied by a parent of such minor;

2. When accompanied by an adult authorized by a parent of such minor to take the parent's place in accompanying the minor for a designated period of time and purpose within a specified area;

3. When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly. Such minor shall evidence the bona fides of such exercise by possessing a written communication, signed by such minor and countersigned, by a parent of such minor with their home address and telephone number, specifying when, and where and in what manner the minor will be on the streets at night (during hours when the curfew section is otherwise applicable to the minor) in the exercise of a First Amendment right specified in such communication;

4. In case of reasonable necessity, but only if the minor has in the minor's possession a written communication signed by the minor, countersigned by a parent of such minor evidencing their home address and telephone number, and establishing such reasonable necessity relating to specified streets at a designated time for a described purpose including points of origin and destination;

5. When a minor is on the sidewalk of the place where such minor resides, or on the sidewalk of either next-door neighbor not communicating an objection to the police officer;

6. When returning home, by a direct route, from (and within thirty (30) minutes of the termination of) a school activity, or an activity of a religious or the voluntary association, provided the minor has a written communication in the minor's possession, countersigned by the parent indicating the home address and telephone number, the purpose for the event, when, where and in what manner the minor will be on the streets at night;

7. When authorized, by regulation issued by the city council, in other similar cases of reasonable necessity, similarly handled but adapted to necessary night-time activities of more for minors than can readily be dealt with on an individual special permit basis. Normally such regulation by the city council permitting use of the streets should be issued sufficiently in advance to permit appropriate publicity through news media and through other agencies such as the schools, and shall define the activity, the scope of the use of the streets permitted, the period of time involved, not to extend more than thirty (30) minutes beyond the time for termination of such activity, and the reason for finding that such regulation is reasonably necessary and is consistent with the public interest and the purpose of this curfew section;

8. When the minor carries a certified card of employment, briefly identifying the minor, the addresses of his home and his place of employment and his hours of employment or carries a valid proof of employment which may include the latest payroll receipt not over thirty (30) days old; or

9. Whenever the minor is engaged in interstate or intrastate vehicular travel.

D. It shall be unlawful for a parent having legal custody of a minor knowingly to permit or by inefficient control to allow, such a minor to be or remain upon any city street under

circumstances not constituting an exception to, or otherwise beyond the scope of, the curfew section. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor in that parent's legal custody. It is intended to continue to keep neglectful or careless parents up to a reasonable community standard of parental responsibility through an objective test. It shall, a fortiori, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such minor.

E. A police officer of the city, upon finding or having attention called to any minor on the streets in prima facie violation of the curfew section, normally shall take the minor to the city police station, or other place designated by the chief of police, where a parent shall immediately be notified to come for such minor, whereupon they shall be interrogated. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the personnel then on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available experienced supervisory personnel, the best of facilities and access to information and records. In the absence of convincing evidence such as a birth certificate, a police officer on the street shall in the first instance use his best judgment in determining age:

1. Police procedures shall constantly be refined in the light of experience and may provide, inter alia, that the police officer may deliver to a parent thereof a minor under appropriate circumstances, for example a minor of tender age near home whose identity may readily be ascertained or are known;

2. In any event such police officer shall, within twenty-four (24) hours, file a written report with the chief of police, or shall participate to the extent of the information for which he is responsible; the report shall be treated for purposes of juvenile records in accordance with state statutes; or

3. When a parent, immediately called, has come to take charge of the minor, and the appropriate information has been recorded, the minor shall be released to the custody of such parent. If the parent cannot be located, or falls to take charge of the minor, then the minor shall be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the minor may temporarily be entrusted to a relative, neighbor or other person who will on behalf of a parent assume the responsibility of caring for the minor pending the availability or arrival of a parent.

F. It shall be unlawful for any person operating or having charge of any public place to knowingly allow, permit or suffer the presence of minors in violation of the curfew established in this section.

G. Any person, firm or corporation, or other legal entity which shall violate any of the provisions of this section, or fail to comply therewith, or with any of the requirements thereof, shall be deemed guilty of an offense punishable as provided in § 1-108 of this code. (Added 1992)

CHAPTER 5

OFFENSES AGAINST PERSONS

§ 10-501 Assault and battery prohibited.

§ 10-501 ASSAULT AND BATTERY PROHIBITED.

A. An assault is any intentional, willful, or unlawful attempt or offer with force or violence to do a corporal hurt to another.

B. A battery is any intentional, willful or unlawful use of force or violence upon the person of another, or by making any physical contact with another without consent.

C. It is unlawful to commit an assault or an assault and battery within the jurisdiction of the city. Any person committing an assault or an assault and battery within the jurisdiction of the city shall be guilty of an offense.

CHAPTER 6

OFFENSES AGAINST PUBLIC AUTHORITY

- § 10-601 **Resisting an officer.**
- § 10-602 **Refusing or failing to assist an officer.**
- § 10-603 **Assault or battery upon police or other law officer.**
- § 10-604 **Rescuing prisoners.**
- § 10-605 **Escape of prisoners.**
- § 10-606 **Impersonating an officer or employee.**
- § 10-607 **False alarms.**
- § 10-608 **False representation to an officer,**
- § 10-609 **Removal of barricades.**
- § 10-610 **Resisting public officials.**
- § 10-611 **Eluding police officer.**

§ 10-610 RESISTING AN OFFICER.

A. It is unlawful to resist, oppose or assault, or in any way interfere with a police officer or any person duly authorized to act as such, while the officer or person is discharging or attempting to discharge his official duties within the limits of the city.

B. It is unlawful for any person to warn or signal another so as to assist such other person to flee, escape or evade an officer seeking to make an arrest or for any person to bar or lock any door or barrier in the face of or in front of an approaching officer.

C. Resisting an officer is the intentional opposition or resistance to, or obstruction of, an individual acting in his official capacity, and authorize by law to make a lawful arrest or seizure of property, or to serve any lawful process or court order, when the offender knows or has reason to know that the person arresting, seizing property, or serving process is acting in his official capacity.

D. The words “obstruction of” shall, in addition to their common meaning, include:

1. Flight by on sought to be arrested before the arresting officer can restrain him and after notice is given that he is under arrest;

2. Any violence toward or any resistance or opposition to the arresting officer after the arrested party is actually placed under arrest and before he is under arrest; or

3. Refusal by the arrested party to give his name and make his identity known to the arresting officer.

§ 10-602 **REFUSING OR FAILING TO ASSIST AN OFFICER.**

A. An officer of the city making or about to make an arrest, or executing or about to execute a warrant or other process, in accordance with the ordinances of the city or with state or federal law, or suppressing or about to suppress a riot, affray or unlawful assembly, may call upon person or persons to assist him in making such arrest, executing such process or suppressing such riot, affray or unlawful assembly.

B. It is unlawful for any person lawfully called upon thus to assist an officer of the city to refuse or fail to do so.

§ 10-603 **ASSAULT OR BATTERY UPON POLICE OR OTHER LAW OFFICER.**

It is unlawful for any person to knowingly commit any assault, battery or assault and battery upon the person of a police officer or other officer of the law while in the performance of his duties.

§ 10-604 **RESCUING PRISONERS.**

It is unlawful for any person, in any illegal manner, to set at liberty, rescue or attempt to set at liberty, any prisoner or prisoners, from any officer or employee of the city having legal custody of the same or from the city jail or other place of confinement by the city, or to assist such prisoner in any manner to escape from such prison or custody either before or after conviction, including escape from a vehicle of confinement.

§ 10-605 **ESCAPE OF PRISONERS.**

It is unlawful for any person confined in the city jail or other place of confinement by the city, or working upon the streets or other public places of the city in pursuance of any judgment, or otherwise held in legal custody by authority of the city, to escape or attempt to escape from any such jail, prison or custody.

§ 10-606 **IMPERSONATING AN OFFICER OR EMPLOYEE.**

It is unlawful for any person to impersonate any officer or employee of the city, falsely represent himself to be an officer or employee of the city, or exercise or attempt to exercise any of the duties, functions or powers of an officer or employee of the city without being duly authorized to do so.

§ 10-607 **FALSE ALARMS.**

It is unlawful for any person to turn in a false alarm of any nature or in any manner to deceive or attempt to deceive the fire department or police department or any officer or employee thereof with reference to any fire alarm or reported fire, accident or other emergency or knowingly to cause the fire department or police department or its officers or employees to make a useless run.

§ 10-608 FALSE REPRESENTATION TO AN OFFICER.

It is unlawful for any person, firm or corporation, or any agent or employee thereof, knowingly to make any material misrepresentation to any officer, employee or agency of the city government in any official application to, or official dealing or negotiation with, such officer or agency; or to commit perjury before any tribunal or officer of the city.

§ 10-609 REMOVAL OF BARRICADES.

It is unlawful for any person except by proper authority to remove any barricade or obstruction placed by authority of the city to keep traffic off any pavement, street, curb, sidewalk or other area.

§ 10-610 RESISTING PUBLIC OFFICIALS.

§ 10-611 ELUDING POLICE OFFICER.

It is unlawful for any operator of a motor vehicle who has received a visual and audible signal, a red light and a siren from a police officer driving a motor vehicle showing the same to be an official police car, directing the operator to bring his vehicle to a stop, and who willfully increases his speed or extinguishes his lights in an attempt to elude such police officer, or who does elude such police officer.

CHAPTER 7

PENALTIES

§ 10-701 **General penalties.**

§ 10-701 **GENERAL PENALTIES.**

Any violation of the provisions of this part is punishable as provided in § 1-108 of this code.

CHAPTER 8

TOBACCO TO MINORS

- § 10-801 **Definitions.**
- § 10-802 **Furnishing or sale of tobacco products and vapor products to minors.**
- § 10-803 **Receipt of tobacco products and vapor products by minors.**
- § 10-804 **Distribution of tobacco product and vapor product samples.**
- § 10-805 **Public access to displayed tobacco products and vapor products.**
- § 10-806 **Report of violations and compliance checks.**

§ 10-801 **DEFINITIONS.**

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

- a) *Cigarette*: means any product that contains nicotine, is intended for use, and is made of or heated tobacco:
 - (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco,
 - (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filter, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

The term "cigarette" includes "roll-your-own" (i.e. any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, Consumers as tobacco for making cigarettes.) For purposes of this definition of cigarette, nine one-hundredths (0.09) of an ounce of "roll-your-own" tobacco shall constitute one individual "cigarette."

- b) *Person*: means any individual, firm, fiduciary, partnership, corporation, trust, or association, however formed;
- c) *Proof of age*: means a form of identification that describes the individual, is eighteen (18) years of age or older and contains a photograph or other likeness of the individual and is valid;
- d) *Sample*: means a tobacco product or vapor product distributed for the purpose of members of the public;
- e) *Sampling*: means the distribution of samples to members of the public in a public place;
- f) *Tobacco*: means any product that contains nicotine or is derived from tobacco as defined by the United States Food and Drug Administration. This includes cigarettes and vapor products.

- g) *Transaction scan devices* the validity of a driver license, books, by means of a search photo identification; and
- h) *Transaction point of device entry* that is compatible of device being in a machine readable format the information encoded on the magnetic stripe bar code of a photo identification.
- i) *Vapor products* that shall mean mechanical smoking devices, that may, or may not contain or other means for reg. "Vapor products" shall include any device that can be used to produce a vapor or smoke without a cigarette or other cigarette or pipe, or used with a product or device that is a "Vapor product" do not include any device regulated by the United States Food and Drug Act.

§ 10-802 FURNISHING OR SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO MINORS.

- a) It is unlawful for any person (as the definition) furnish the same person under the age of 18 years of age for any such person in violation of the law to provide or provide or provide or provide (18) years of age to handle tobacco, tobacco products or vapor products or any of its derivatives.
- b) A person who shall the sale or distribution of tobacco products or vapor products or any of its derivatives shall be liable for the sale or distribution of tobacco products or vapor products or any of its derivatives if an ordinary person would conclude on the basis of appearance that the prospective purchaser may be less than of eighteen, (18) years of age. If a person provides or provides or provides or provides proof of age from a prospective purchaser or recipient who is not under eighteen (18) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.
- c) Any violation of subsection a) or b) of this article is an offense against the City of Geary; upon conviction of any such offense, the violator shall be punished as follows:
 - (1) Not more than One Hundred Dollars (\$100.00) for the first offense;
 - (2) Not more than Two Hundred Dollars (\$200.00) for the second offense within a two year period following the first offense;
 - (3) Not more than Three Hundred Dollars (\$300.00) for the third or subsequent offense within a two-year period following the first offense.
- d) Proof shall be the first demand brought upon a person who is cited for a person cited for violating this section shall be held to be guilty of a violation if such person of age and that:
 - (1) The individual who purchased or received the tobacco product or vapor product presented a driver license or other government issued photo identification purporting to establish that such individual was eighteen (18) years of age or older; or
 - (2) The person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by such

individual by performing a transaction scan by means of a transaction scan device.

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if the person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

§ 10-803 **RECEIPT OF TOBACCO PRODUCTS AND VAPOR PRODUCTS BY MINORS.**

- a) It is unlawful for any person who is under eighteen (18) years of age to purchase, receive, or have in his or her possession a tobacco product, or vapor product, or to present or offer to ~~purchase any or receive any tobacco product which is false or fraudulent for the purpose of~~ for an employee under age eighteen (18) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.
- b) ~~When a person is convicted under this section, the total of any fines, sentences or costs shall not exceed the following:~~
 - (1) One Hundred Dollars (\$100.00) for a first offense; and
 - (2) Two Hundred Dollars (\$200.00) for a second or subsequent offense within a one-year period following the first offense.

§ 10-804 **DISTRIBUTION OF TOBACCO PRODUCT AND VAPOR PRODUCT SAMPLES.**

- a) ~~It shall be unlawful for any person to distribute tobacco samples to any person under eighteen (18) years of age.~~
- b) ~~No person shall distribute, to a school, to a park, to a playground, to a public building, to a public facility, or to a public place, any tobacco product with a depth of three (3) inches or more, or any vapor product, within a distance of thirty (30) feet of any playground, school, or other facility when the facility is being used by a person under eighteen (18) years of age.~~
- c) ~~When a person is convicted under (a) or (b) of this section, the total of any fines, sentences or costs shall not exceed the following:~~
 - (1) One Hundred Dollars (\$100.00) for the first offense;
 - (2) Two Hundred Dollars (\$200.00) for the second offense; and
 - (3) Three Hundred Dollars (\$300.00) for the third or subsequent offense.

§ 10-805 PUBLIC ACCESS TO DISPLAYED TOBACCO PRODUCTS AND VAPOR PRODUCTS.

- a) It is unlawful for any person or retail store to display or offer for sale tobacco products or vapor products with any assistance to allow the person access to the tobacco product or vapor products or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under eighteen (18) years of age.
- b) When a person is convicted under the statute of any offense, a fine of not more than Two Hundred Dollars (\$200.00) for each offense.

§ 10-806 REPORT OF VIOLATIONS AND COMPLIANCE CHECKS.

- a) Any violation of this Article or any other law or regulation shall be reported by the Police Department in writing to the Alcohol Beverage Law Enforcement (ABLE) Commission within thirty (30) days of the date of the violation in the manner prescribed by the ABLE Commission. Any violation shall be reported by the Chief of Police or his designee.
- b) Persons under eighteen (18) years of age may be enlisted by the Police Department to assist in enforcement of this Article pursuant to the rules of the ABLE Commission.

- b) All buildings and other properties, including indoor and outdoor areas, owned or operated by this city, shall be entirely tobacco free to include all forms of ~~tobacco and vapor~~ tobacco products.
- c) All indoor and outdoor recreational areas owned or operated by this city, shall be entirely tobacco free to include all forms of tobacco products including vapor products.

§ 10-903 POSTING.

- a) The City of Cheney shall be responsible for posting a sign or decal at least four inches high on the property is tobacco-free.
- b) The posting of signs or decals is the responsibility of the ~~manager and/or supervisor of a facility.~~ manager and/or supervisor of a facility.

§ 10-904 VIOLATION AND PENALTY.

Any person who knowingly violates this article is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as set by the city.

§ 10-905 ENFORCEMENT.

The State or local governmental agency shall, at a minimum, do the following in order to prevent tobacco and vapor product use in city owned/operated places:

- a) Post signs at entrances to city owned/operated places which state that tobacco use is prohibited; and
- b) Ask tobacco users to refrain from using any form of tobacco products, including vapor products upon observation of anyone violating the provisions of this act.