

ORDINANCE NO. 2479

**AN ORDINANCE AMENDING THE CODE OF THE CITY OF GARDNER CHAPTER 9.05.030
“AMENDMENTS AND ADDITIONS TO UNIFORM PUBLIC OFFENSE CODE”.**

WHEREAS, said Gardner Municipal Code, Chapter 9.05.030 “Amendments and additions to Uniform Public Offense Code” outlines the amendments adopted by the City of Gardner to the Uniform Public Offense Code; and

WHEREAS, amendments were made to the Unlawful Use of Weapons that exceed the permissible scope of local regulation of firearms; and

WHEREAS, the amendments previously made must be removed from the City's Municipal Code;

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: The Governing Body of the City of Gardner, Kansas now deems it advisable to revise Chapter 9.05.030 “Amendments and additions to Uniform Public Offense Code” as follows:

9.05.030 Amendments and additions to Uniform Public Offense Code.

4.6 DEFINITIONS. For the purpose of this article, the definitions provided by K.S.A. 21-5501 of “sexual intercourse”, “sodomy”, “spouse”, and “unlawful sexual act” shall apply unless a different meaning is plainly required.

6.26 RIDING OR LEADING HORSES, OPERATING UNAUTHORIZED VEHICLES UPON GARDNER GOLF COURSE. It shall be unlawful for any person to ride or lead a horse or operate a vehicle other than an electric or gasoline powered golf cart upon the fairways or other grassy playing areas of Gardner Golf Course.

Nothing in this section shall prohibit the use of mowing devices attached to or integral with tractors or riding lawn mowers or other vehicles associated with the maintenance of the Gardner Golf Course when operated by employees of the City of Gardner or Gardner Golf Course.

Violation of this section is an unclassified misdemeanor.

10.9.1 EXPLOSIVES. It shall be unlawful for any person, firm or corporation to sell, give away, or otherwise dispose of any detonating explosive without keeping a record as required by K.S.A. 21-6311; it shall also be unlawful for any person to possess any explosive or detonating substance who, within five years preceding such possession, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony as prohibited by K.S.A. 21-6312(a); it shall also be unlawful for any person, firm or corporation to sell, give away or otherwise dispose of any of the explosives named above to any intoxicated or irresponsible person K.S.A. 21-6312; and when said explosives shall lawfully be in the possession of any person, firm or corporation they shall not be kept closer to any inhabited building than provided in K.S.A. 21-6318; and no person having in his possession

any of the explosives mentioned above shall carry same in a wholly or partially concealed manner on or about his person.

Violation of this section is an unclassified misdemeanor.

10.9.2 STORAGE OF EXPLOSIVES. It shall be unlawful for any person, firm or corporation to bring into, keep or store within the corporate limits of this City, gunpowder or blasting powder in quantities of more than seventy-five pounds (75 lbs.) or dynamite in quantities of more than fifty pounds (50 lbs.).

Violation of this section is an unclassified misdemeanor.

10.9.3 NITROGLYCERIN. It shall be unlawful for any person to transport or convey through or along the streets or to keep in this City any liquid nitroglycerin.

Violation of this section is an unclassified misdemeanor.

10.27 CONTROLLED SUBSTANCES

(a) Possession of Marijuana; Penalties.

- (1) It shall be unlawful for any person to manufacture, possess, have under such person's control, administer, deliver, distribute, dispense or compound marijuana.
- (2) As used in this section, "marijuana" means all parts of all varieties of the plant cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted there from, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.
- (3) Upon a conviction, plea of no contest or guilty for violation of this section by a person 18 or more years of age, but less than 21 years of age, the Municipal Judge shall order such person to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that person is indigent, the fee may be waived.

(b) Use or Possession of Controlled Substances, Simulated Controlled Substances and Drug Paraphernalia; Penalties.

- (1) It shall be unlawful for any person to manufacture, possess, have under such person's control, administer, deliver, distribute, dispense or compound any controlled substances, simulated controlled substances, or drug paraphernalia.
- (2) Definitions. As used in this section:
 - (A) "Controlled substance" means any drug, substance or immediate precursor

included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

- (B) "Deliver" or "delivery" means actual, constructive or attempted transfer from one person to another, whether or not there is an agency relationship.
- (C) "Drug paraphernalia" means all equipment, products and materials of any kind which are used or intended for uses in planting, propagating, cultivating, growing, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substance Act. "Drug paraphernalia: shall include, but is not limited to:
 - (.1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting species of plant which is a controlled substance or from which controlled substances can be derived.
 - (.2) Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.
 - (.3) Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance.
 - (.4) Testing equipment used or intended for use in identifying or analyzing the strength, effectiveness or purity of controlled substances.
 - (.5) Scales and balances used or intended for use in weighing or measuring controlled substances.
 - (.6) Diluents and adulterants such as quinine, hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances.
 - (.7) Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana.
 - (.8) Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances.
 - (.9) Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of controlled substances.
 - (.10) Containers and other objects used or intended for use in storing or concealing controlled substances.
 - (.11) Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body.
 - (.12) Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
 - (.a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - (.b) Water Pipes;
 - (.c) Carburetion Tubes and Devices;
 - (.d) Smoking and Carburetion Masks;
 - (.e) Roach clips (objects used to hold burning material, such as marijuana cigarette that has become too small or too short to be held in the hand);
 - (.f) Miniature Cocaine spoons and Cocaine vials;
 - (.g) Chamber Pipes;

- (.h) Carburetor Pipes;
 - (.i) Electric Pipes;
 - (.j) Air-driven Pipes;
 - (.k) Chillums;
 - (.l) Bonges; and
 - (.m) Ice Pipes or Chillers.
- (D) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership, association or other legal entity.
- (E) "Simulated Controlled Substance" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.
- (F) "Minor" shall mean any person who has not attained eighteen (18) years of age.
- (G) "Premises open to minors" means any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.
- (H) "Place of display" means any museum, library, school or other similar public place upon which business is not transacted for a profit.
- (I) "School" means any public or private elementary, junior high or high school.
- (J) "Close proximity" means within one thousand five hundred (1,500) feet on a straight line commencing at the property lines nearest to each other.
- (K) "Premises" means a business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.
- (3) In determining whether an object is drug paraphernalia, a court or other authority shall consider in addition to all other logically relevant factors, the following:
- (A) Statements by an owner or person in control of the object concerning its use.
 - (B) Prior convictions, if any, of an owner or person in control of the object, under any state or federal law relating to any controlled substance.
 - (C) The proximity of the object in time and space, to a direct violation of the uniform controlled substances act.
 - (D) The proximity of the object to controlled substances.
 - (E) The existence of any residue of controlled substances.
 - (F) Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person, the owner or person in control of the object knows or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act. The innocence of an owner or person in control of the object as to a direct violation of the Uniform Controlled Substances Act shall not prevent a finding that the object is intended for use as drug paraphernalia.
 - (G) Oral or written instructions provided with the object concerning its use.
 - (H) Descriptive materials accompanying the object which explain or depict its use.
 - (I) National and local advertising concerning the object's use.
 - (J) The manner in which the object is displayed for sale.
 - (K) Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community, such as a distributor or dealer of

tobacco products.

- (L) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
- (M) The existence and scope of legitimate uses for the object in the community.
- (N) Expert testimony concerning the object's use.

(4) Sales and Display Prohibited.

- (A) It shall be unlawful for any person, firm or corporation to sell, offer to sell, dispense, give away or display any instrument or simulated controlled substance or simulated drug in or upon any premises which;
 - (.1) Are premises open to minors;
 - (.2) Are places of display; or
 - (.3) Are in close proximity to a school.

Provided, however, that display of any such items at a place of display for educational or scientific purposes shall not be unlawful.

- (B) A violation of Section 10.27 (3) is declared to be public nuisance and shall be subject to abatement as provided by law.

(5) No person shall use or possess with intent to use:

- (A) Any simulated controlled substances; or
- (B) Any drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substance Act.
- (C) Upon a conviction, plea of no contest or guilty for violation of this section by a person 18 or more years of age, but less than 21 years of age, the Municipal Judge shall order such person to submit to and complete an alcohol and drug evaluation by a community based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the judge finds that person is indigent, the fee may be waived.

Any person who violates this section 10.27, shall, unless otherwise stated, be guilty of a Class A Public Offense.

10.30 DISCHARGE OF FIREWORKS PROHIBITED; EXCEPTIONS. It shall be unlawful for any person to discharge or fire any fireworks or firearms of any kind within this City, including firecrackers, cap pistols, canes, skyrockets, Roman candles, blank cartridges, torpedoes, spit devils or any other explosives: Provided, that nothing in this section shall be construed as prohibiting the Governing Body of this City from granting permission to responsible persons, firms or corporations to give pyrotechnical displays in said City in places to be determined by said Governing Body and; to the discharge of firearms by officers of the law, when necessary in the discharge of their official duties, nor to the discharge of firearms in any licensed shooting gallery in this City.

Violation of this section is an unclassified misdemeanor.

10.31 FIREWORKS; SALE. It shall be unlawful for any person, firm or corporation to sell

or offer for sale within the City limits of this City any fireworks or articles that can be used in pyrotechnical displays, including Roman candles, blank cartridges, torpedoes, spit devils, firecrackers, cap pistols, canes, skyrockets, or any other explosives; provided, that this section shall not be construed to prohibit the sale of fireworks to persons holding permits from the Governing Body to give pyrotechnical displays.

Violation of this section is an unclassified misdemeanor.

11.20 PROHIBITION OF SEX BOOKSTORES, COIN-OPERATED MOTION PICTURE DEVICES SHOWING SEX MOVIES AND EATING OR DRINKING ESTABLISHMENTS FEATURING NUDE DANCERS OR SIMILAR ENTERTAINMENT.

(a) Purpose and Intent. It is declared to be the purpose and intent of this section to protect the public health, safety, welfare and morals of the community to promote the stability of property values and impose restrictions upon those activities which pander to gross sexuality in a manner that would detract from the neighborhood, adversely affect the property values, increase crime and violence, and be repugnant to the morals of the community. In recognition of the protections afforded to the citizens under the First and Fourteenth Amendments, it is not the intent of this section to inhibit freedom of speech or the press, but rather to deter those of low morals from imposing their lack of morals upon the rest of the community; and further recognizing that those parts of a community, which become centers of loose moral conduct, frequently become places of rowdiness, criminality and indecent behavior. It is further the belief that just as advertising is designed to stimulate one's appetite for desiring goods or a service, an over-abundance of preoccupation with sexual displays or material arouses the appetites of those so preoccupied and encourages violations of the criminal statutes involving sexual offenses and is contrary to the health, safety and welfare of the community.

(b) Definitions.

(1) For the purpose of this section, "specified sexual activities" is defined as:

(A) Human genitals in a state of sexual stimulation or arousal;

(B) Acts of human masturbation, sexual intercourse or sodomy.

(C) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(2) For the purposes of this section, "specified anatomical areas", is defined as:

(A) Less than completely and opaquely covered:

(.1) Human genitals, pubic region,

(.2) Buttock, and

(.3) Female breast below a point immediately above the top of the areola;

and

- (B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (3) For the purpose of this section, "eating or drinking establishments" are defined as: any premises which may be open to the general public in which any food as defined by K.S.A. 36-501 or any beverage is sold, distributed or consumed or any premises operated for profit by a corporation, partnership or individual, to which members of such establishment may resort for the consumption of food or any beverage and/or for entertainment.
- (4) Book sales. No person firm or corporation shall establish any bookstore or book department of a store in which a substantial or significant portion of its stock in trade is in books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."
- (5) Mini-motion picture displays - No person, firm or corporation shall show, present or offer for viewing, for money consideration, movie or video films or pictures or other materials distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as herein defined, for observation by patrons therein.
- (6) Eating or drinking establishments. No person, firm or corporation shall feature or permit dancers or any other employee or persons to be engaged in specified sexual activities or to expose to view or display specified anatomical areas.
- (7) Any person, firm or corporation violating any provision of this section shall be guilty of a Class A Public Offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues."

SECTION TWO: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

SECTION THREE: This Ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

PASSED by the City Council this 2nd day of February, 2015.

SIGNED by the Mayor this 2nd day of February, 2015.

CITY OF GARDNER, KANSAS

(SEAL)

/s/ Chris Morrow
Chris Morrow, Mayor

ATTEST:

/s/ Jeanne Koontz
Jeanne Koontz, City Clerk

APPROVED AS TO FORM:

/s/ Ryan B. Denk
Ryan B. Denk, City Attorney