ORDINANCE NO. 2568

AN ORDINANCE FIXING CERTAIN STANDARDS OF CONDUCT FOR PERSONS WITHIN THE CITY OF GARDNER, KANSAS; MAKING VIOLATION OF ANY SUCH STANDARDS A PUBLIC OFFENSE, SUBJECT TO PENALTY; INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES: EDITION OF 2017", AND ALL ACTS SUPPLEMENTARY AND AMENDATORY THERETO, PREPARED AND PUBLISHED IN BOOKLET FORM BY THE LEAGUE OF KANSAS MUNICIPALITIES; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH, UNDER THE PROVISIONS OF K.S.A. 12-3009 THROUGH 12-3012 AND K.S.A. 12-3301 AND 12-3302.

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

SECTION ONE. That certain standard code known as the "Uniform Public Offense Code for Kansas Cities: Edition of 2017", prepared and published by the League of Kansas Municipalities, is hereby incorporated by reference herein and made a part of this ordinance including supplements and amendments, thereto, save and except such portions as may hereinafter be deleted, added or amended, as authorized and in the manner prescribed by the Statutes of the State of Kansas.

SECTION TWO. That Chapter 9.05 of the Municipal Code of the City of Gardner, Kansas 2008, be and the same is hereby amended to read as follows:

CHAPTER 9.05 Uniform Offense Code.

9.05.010 UNIFORM OFFENSE CODE. The certain standard code known as the "Uniform Public Offense Code for Kansas Cities: Edition of 2017", prepared and published by the League of Kansas Municipalities, is hereby incorporated by reference herein and made a part of this chapter, including supplements and amendments thereto, save and except such portions as are hereinafter deleted, added or amended by this chapter. (K.S.A. 12-3009 through 12-3012, K.S.A. 12-3301, K.S.A. 12-3302)

9.05.020 MARKED COPIES OF STANDARD CODE ON FILE. No fewer than three copies of the Uniform Code shall be marked or stamped "Official Copy, adopted by Ordinance No. _____." All sections of portions of the filed copies of the standard code shall be clearly marked to show deletions from the standard code. Any additions shall be clearly described to show such addition to said standard code and a copy of the ordinance shall be attached to it and filed with the City Clerk to be open to inspection and available to the public at all reasonable business hours. The Police Department, Municipal Court Judge, and all administrative departments of the City charged with the enforcement of the ordinance shall be supplied, at the cost of the City, such number of official copies of said standard code, similarly marked, deleted and changed as may be deemed expedient.

9.05.030 AMENDMENTS AND ADDITIONS TO UNIFORM PUBLIC OFFENSE CODE. The following amendments to the Uniform Public Offense Code are hereby made:

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.

6.8 CRIMINAL LITTERING.

(A) Criminal littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:

1. Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or
2. Any private property without the consent of the owner or occupant of such property.

(B) Criminal littering is an unclassified violation punishable:
1. Upon a first conviction by a fine of not less than $250 nor more than $1,000;
2. Upon a second conviction by a fine of not less than $1,000 nor more than $2,000; and
3. Upon a third or subsequent conviction by a fine of not less than $2,000.

(C) In addition to the fines in subsection (b), a person convicted of criminal littering shall be required to pick up litter for a time prescribed by and a place within the jurisdiction of the court.

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.

9.3 DISTURBING THE PEACE.

(A) It shall be unlawful for any person to:

1. Make, continue, maintain or cause to be made or continued any excessive, unnecessary, unreasonable or unusually loud noise or any noise in such manner as to annoy, offend, disturb, injure or endanger the comfort, repose, health, peace or safety of any reasonable person of normal auditory sensitivity residing in the area.
2. Use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of any reasonable person of normal auditory sensitivity inhabiting the area.
3. Congregate because of, participate in or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of any reasonable person of normal auditory sensitivity residing in any residential area. No person shall visit or remain within any residential dwelling unit wherein such party or gathering is taking place except persons who have gone there for the sole purpose of abating said disturbance. A police officer may order all persons present in any group or gathering from the dwelling unit to immediately disperse in lieu of being charged under this Section.

(B) Prima Facie Violation: The operation of any tool, equipment, vehicle, electronic device, set, instrument, television, phonograph, machine or other noise- or sound-producing device at any time in such a manner as to be plainly audible across a property boundary line in a residential area, or for fifty feet (50') or more in the case of a multiple-family dwelling, between the hours of ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M. shall be prima facie evidence of a violation of this Section.

(C) Exceptions: The following shall not be considered to be violations of this Section:

1. Sound from law enforcement motor vehicles and other emergency motor vehicles including, but not limited to, snow-clearing equipment;
2. Sound from vehicles or equipment belonging to the city, state, county, federal government, school or other governmental agencies or utilities employed by a governmental agency engaged in preparing for or remedying a potentially hazardous

situation in which immediate physical trauma or property damage is occurring or threatened;

3. Sound that a person is making or causing to be made when said person has received and maintains a valid license or permit that specifically allows the sound from any department, board or commission of the City authorized to issue a license or permit; and
4. Sound from the operation of emergency generators used in emergency situations when electricity from the grid is unavailable.
5. Sound from the lawful use of fireworks as provided in Section 10.30.
6. Sound from the use of sound amplifiers, loud speakers or other devices emitting loud noises during unusual and non-commercial, national, state or municipal events of general public interest.

9.6 UNLAWFUL JUVENILE ACTIVITY

(A) It shall be unlawful for any juvenile to loiter on or about any street, road, highway, sidewalk, curb gutter, building, parking lot, alley, vacant lot, park, playground or yard, whether public or private, without the consent or permission of the owner or occupant thereof, during the hours between 11 P.M. and 6 A.M. unless accompanied by a parent, legal guardian, or other adult person over the age of twenty-one (21) years, who has been given custody or control over the juvenile by the juvenile's parent or legal guardian.

(B) It shall be unlawful for the parent, legal guardian, or any other person having custody or control of any juvenile to permit, or by insufficient control, to allow such juvenile to violate subsection (a) of this section.

(C) As used in this section:

"Loiter" shall mean remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include but be not limited to standing around, hanging out, sitting, kneeling, sauntering and prowling. "Juvenile" shall mean any person under the age of eighteen (18) years.

(D) Violation of this Section is a Class B Public Offense.

9.14 URINATION OR DEFACATION IN PUBLIC

(A) It is unlawful for any person to urinate or defecate upon any street, highway, alley, or upon the premises of any public place or building, or upon any private property in open view or any person, except if such public place, building or private property has been designated and designed as a restroom, lavatory or water closet.

(B) Urination or defecation in public is a Class C violation.

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) Bongs; 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 and SALE OF FIREWORKS.

A. DEFINITIONS. As used in this Section, unless the context clearly indicates otherwise, the following words and terms have the following meanings:

1. "Fireworks" - mean any combustible or deflagrating composition, article, or device suitable for the use of the public for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and previously approved for transportation by the chemical laboratory of the United States Department of Transportation.
   a. "1.4G, UN0336 (Consumer) Fireworks" - Small firework devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks which comply with the construction, chemical composition and labeling regulations of the Department of Transportation for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission, and as set forth in 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this Code. (The fireworks in this definition were formerly known as Class C, Common Fireworks).
   b. "1.3G, UNO335 (Display) Fireworks" - Large firework devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visual effects by combustion, deflagration or detonation. Such 1.3G, UN0335 fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as 1.4G, UN0335 fireworks. (The fireworks in this definition were formerly known as Class B, Special fireworks).
2. "Fireworks Stand" - means any permanent or temporary building, trailer, tent, display, awning, canopy, temporary membrane structure, or location from which a Person sells or otherwise distributes 1.4G, UN0336 (Consumer) Fireworks within the city limits of Gardner, Kansas.
3. "Operator" - means any Person who sells or otherwise distributes 1.4G, UN0336 Fireworks or owns, manages or operates a Fireworks Stand.

4. "Person" - means an individual, organizational entity of any type, partnership, church, corporation, limited liability company, trust, association of any type, or any agent, officer, employer, committee, or group of any of the foregoing.

B. DISCHARGE OF FIREWORKS. It shall be unlawful to ignite, explode, discharge, or use any Fireworks within the city limits, except as follows.

1. Consumer Fireworks, 1.4G, UNO336 – 1.4G, UN0336 consumer fireworks may lawfully be ignited, exploded, discharged or used within city limits as follows:
   a. Date and Time Limitations. The use of consumer fireworks shall be allowed on those dates and times as established annually by the Governing Body per Resolution.
   b. Prohibited Locations. Notwithstanding the date and time limitations of this section, it shall be unlawful to ignite, explode, discharge, or use any Fireworks:
      i. within 1,000 feet of any hospital, sanitarium or infirmary; or
      ii. within 100 feet of any Fireworks Stand; or
      iii. within 50 feet of a motor vehicle fuel-dispensing station; or
      iv. on any public property, including but not limited to roadways, sidewalks, paths, trails, greenways, parks and the right-of-way adjoining such property; or
      v. on any private property without the express permission and direct supervision of the owner, occupier, or other Person having control of such property.
   c. Throwing Prohibited. It shall be unlawful for any person to throw, cast or propel fireworks of any kind in the direction of or into the path of any animal, person or groups of persons, or from, in the direction of or into any vehicle of any kind.
   d. Prohibited Fireworks. Notwithstanding the date and time limitations of this section, it shall be unlawful to ignite, explode, discharge, or use Fireworks prohibited under the laws of the State of Kansas or under the laws of the United States.
   e. Modification Prohibited. It shall be unlawful to alter, modify or enhance fireworks for use in a manner other than intended.
2. Display Fireworks, 1.3G, UNO335 – 1.3G, UNO335 display fireworks, may lawfully be ignited, exploded, discharged or used within city limits as follows:
   a. A permit shall be required for the discharge of display (1.3G, UNO335) fireworks and a fee in the amount of $150.00 for such a permit shall be charged to the applicant. Application for such permit shall be made to the Business & Economic Development Department at least 30 days prior to the date for which the permit is requested.
   b. The Business & Economic Development Department shall submit each application to Fire District 1 for their comments and/or recommendations.
   c. The permit will be submitted to the Governing Body of the City of Gardner for formal action after receipt of the application. The Governing Body shall retain the privilege to waive the fee for the municipality or a non-profit organization.
   d. The individual(s), organization, municipality or landowner conducting the display fireworks exhibition shall maintain public liability and property damage insurance coverage, including spectator coverage in an amount not less than $1,000,000 per occurrence and $2,000,000 in aggregate, and shall submit to the City as part of its permit application, a certificate of insurance.
   e. The individual(s), organization, municipality or landowner submitting an application for the display fireworks exhibition shall provide a site plan of the exhibition site indicating the point of ignition of display (1.3G, UNO335) fireworks, the distance of any adjacent buildings, location of storage of display (1.3G, UN0335) fireworks and emergency ingress and egress to the property.
   f. Display (1.3G, UNO335) fireworks shall be kept and stored, prior to firing in a place and manner that presents neither a hazard to any property nor a danger to any person, such as a warehouse or magazine or comparable depository

that complies with the requirements of the current Bureau of Alcohol, Tobacco, firearms and explosives Federal Explosives law and Regulations, and the current Fire Code as adopted by the City of Gardner.

g. The discharge or display shall be arranged so that the display (1.3G, UNO335) fireworks are to be fired at least 100 feet from the nearest public right-of-way, person or building. Proximate fireworks may be fired within the distance limitations of NFPA 1126.

h. Display (1.3G, UN0335) fireworks that fire a projectile in the air shall be directed in such a manner that the projectile does not fire over or above any building, structure or person viewing the exhibition or display, and the angle of the projectile shall be no more than 15 degrees from vertical.

i. Persons firing display (1.3G, UNO335) fireworks shall be experienced pyrotechnic experts in the public exhibition or display of fireworks, shall be at least 21 years of age and shall possess a valid license as a Display Operator issued by the State Fire Marshall.

j. At least two approved fire extinguishers shall be present at the exhibition site.

k. All unfired display (1.3G, UN0335) fireworks and any residue remaining after the discharge shall be extinguished and shall be immediately disposed of in a nonflammable container.

C. SALE OF FIREWORKS. It shall be unlawful to sell or otherwise distribute fireworks at a Fireworks Stand, except as follows:

1. Permits Required. The sale or other distribution of Fireworks at a Fireworks Stand shall not be done without obtaining and holding both a valid Short Term Special Use Permit and a Seasonal Fireworks Retailer Permit, issued by the Business and Economic Development Department.
2. Date Limitations. The sale or distribution of consumer fireworks shall be allowed on those dates and times as established annually by the Governing Body per Resolution
3. Prohibited Fireworks. Sale or other distribution of Fireworks shall be limited to 1.4G, UN0336 (consumer) fireworks (formally known as Class "C" Fireworks) authorized under the laws of the State of Kansas.
4. Appropriate Zoning. Fireworks Stands may only be located on, and permits may only be issued for, property as allowed by this city's zoning regulations as they exist on the date the permit is granted. As of (date of passage), Fireworks Stands are allowed only in zoning districts A, C-1, C-2, C-3, M-1 and M-2.

D. PERMIT APPLICATION FOR FIREWORKS STAND. Applications for a Fireworks Stand permit shall be on forms and according to procedures prepared by the City's Business and Economic Development Department and shall be accompanied by a $1000.00 application fee for each location from which Fireworks will be sold. Applications will not be made available or accepted before January 2nd of each year and must be received on or before the close of business on June 15th of that same year. If June 15th is a day on which the City's offices are closed, the application must be received on or before the close of business on the last business day before June 15th. Submitted applications shall, at a minimum, contain the following information:

1. The name, address, legal description, phone number and written permission of the owner of the real estate upon which the Fireworks Stand is to be operated;
2. The name, address, and phone number of the Operator of the Fireworks Stand;
3. A site plan of the grounds on which the Fireworks Stand is to be located, showing the location of the Fireworks Stand; the location of all buildings, highways and any lines of communication; property lines, setbacks and adjoining structures; and the location of the off-street parking area designated for the Fireworks Stand;
4. If a sign will be used to advertise the Fireworks Stand, the diagram must show the location and size of the sign; and
5. The application shall contain a copy of the Operator's current Kansas Retailers' Sales Tax Registration Certificate. No permit shall be issued if the Fireworks Stand does

not or will not comply with the provisions of this ordinance. In addition, the Business and Economic Development Department is authorized to deny a permit to an Operator who has previously failed to comply with this ordinance governing the sale of Fireworks and the operation of a Fireworks Stand.

6. The applicant must provide a current valid certificate of insurance reflecting a minimum of $1,000,000 in Commercial General Liability coverage.

E. FIREWORKS STAND REQUIREMENTS. All Fireworks Stands shall be subject to and operate in compliance with the following minimum requirements:

1. Compliance with the Law. The tract of real estate on which the Fireworks Stand is located, and any and all buildings thereon (whether or not the buildings are actually used in connection with the Fireworks Stand), shall not have been found to be in violation of any of the City's zoning, site planning, building, plumbing, mechanical or electrical codes on or before the application for the permit is submitted. No permit shall be issued for a Fireworks Stand to be located on any real estate if any such violations have been determined on or before the application for the permit is submitted. In addition, any temporary or permanent structure used in connection with the Fireworks Stand shall comply with all applicable building codes relevant to the sale and storage of Fireworks, whether or not found to be in violation on or before the application for the permit is submitted. In addition, each Operator shall comply with all applicable local, state and federal laws and regulations, regardless of whether those legal requirements are specifically referenced herein. Without limiting the foregoing, all electrical systems and equipment, including temporary electrical connections, used in conjunction with the Fireworks Stand shall be installed and used in compliance with the National Electric Code (Article 590) or other applicable electric code, as then adopted and in force in this city.
2. Distance from Road and Residential Property. All Fireworks Stands shall be located at least 30 feet from any road rights-of-way or highway rights-of-way and 50 feet from residential zoned property.
3. Distance from Flammable Materials. No Fireworks shall be stored or sold within 50 feet of any source of flame, sparks, or more than one gallon of any explosive, flammable, combustible, or volatile material; provided, however, that the foregoing shall not apply to operable motor vehicles located more than 20 feet away from stored Fireworks or the Fireworks Stand.
4. Fireworks, Open Flames and Hot Objects. Fireworks, open flames and devices capable of igniting combustible materials shall not be used, discharged or exploded in or adjacent to any Fireworks Stand.
5. No Smoking/Alcoholic Beverages. Smoking and alcoholic beverages shall not be permitted within 100 feet of any Fireworks Stand or any adjacent areas where Fireworks are stored, sold or displayed. "FIREWORKS FOR SALE—NO SMOKING" signs shall be conspicuously posted inside and outside of the storage and/or sales location. The Operator shall enforce this provision with respect to all Persons at the Fireworks Stand. Both the Operator and the Person violating this provision may be subject to prosecution pursuant to Section G (VIOLATIONS, ENFORCEMENT AND PENALTIES).
6. Use of Awnings, Canopies, Temporary Membrane Structures and Tents. The use of awnings, canopies, temporary membrane structures or tents shall, in addition to all other requirements, comply with the following requirements:
    a. Location. No temporary membrane structure, canopy or tent shall be located within 30 feet of property lines, buildings, parked vehicles, internal combustion engines, other temporary membrane structures, tents, awnings, and/or canopies.
    b. Flame-retardant Treatments. The sidewalls, drops, and tops of awnings, canopies, temporary membrane structures and tents shall be composed of flame-resistant material or shall be treated with a flame-retardant material.
7. Means of Egress.

a. Location of Exits. Exits shall be spaced at approximately equal intervals around the perimeter of the Fireworks Stand and shall be located such that all points are no more than 75 feet from an exit.
b. Number of Exits. Every Fireworks Stand shall have at least 2 exits or as determined in NFPA 101 Life Safety Code, whichever is greater.
c. Maintenance of Exits. The required width of exits, aisles and passageways to a public way shall not be less than 48 inches. Guide wires and other support members shall not cross a means of egress.
d. Exit Signs. Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress.

8. Fire Extinguisher/Telephone. Each Fireworks Stand shall have at least 2 approved and operable fire extinguishers (2A10BC minimum) and telephone on site for emergencies at all times. The telephone requirement may be satisfied by maintaining an operable wireless phone on site.
9. Posting of Rules. Each Fireworks Stand shall display a sign provided by the city at each required exit, visible to the public, advising of the following rules:
    a. Fireworks shall only be discharged on private property within this City. An adult owner, occupier, or person having control of the property must consent to the activity and provide direct supervision of the discharge of fireworks.
    b. Fireworks shall not be discharged on any public property, including but not limited to roadways, sidewalks, paths, trails, parks, greenways and the right-of-way adjoining such property.
    c. Fireworks may be discharged in this City during the following dates and times; July 3 and July 4, 10:00 A.M. to Midnight.
    d. No smoking or alcoholic beverages are allowed at the Fireworks Stand.
    e. Violations are punishable by fines and/or confiscation of Fireworks.
10. Parking. Off street parking must be provided for all employees and customers, which shall be a minimum of 20 feet away from the Fireworks Stand and any Fireworks storage areas.
11. Site Preparation. Weeds and grass must be cut back a minimum of 100 feet from the Fireworks Stand.
12. Temporary Stand Removal. The temporary stand, signs and all debris on site shall be removed on or before July 6th.
13. Damage Deposit/Bond. Any Fireworks Stand which gains its principle means of ingress/egress by crossing either a public hike or bike path shall post a $1,000 refundable bond or pay a $1,000 deposit to ensure that the path is not damaged by the operation. The bond shall be made payable to the City of Gardner.
14. Advertising Sign. Only one advertising sign can be erected to advertise each Fireworks Stand, which may be illuminated but shall not be flashing. The sign cannot be larger than 32 sq. ft. and must be located in the front of the Fireworks Stand but not on the road or highway rights-of-way, and shall not represent a safety hazard. A temporary sign permit must be obtained from the Business and Economic Development Department before the sign is erected.
15. Sales Tax Registration Certificate. The Operator shall conspicuously display its current Kansas Retailers' Sales Tax Registration Certificate at the Fireworks Stand.
16. Only Fireworks May be Sold. Unless applicable zoning regulations and approved site-plans allow the sale of other items at retail, only Fireworks related items may be sold at Fireworks Stands and sale of other items is strictly prohibited.
17. Seasonal Fireworks Retailer Permit. The Operator shall conspicuously display its Seasonal Fireworks Retailer permit at the Fireworks Stand.
18. Original Packaging. All Fireworks shall remain in original packaging, unless otherwise permitted pursuant to regulations of the Kansas Fire Marshall.

F. INSPECTIONS OF FIREWORKS STANDS; REVOCATION OF PERMIT. One or more inspections of the proposed site for the Fireworks Stand may be required to ensure compliance with this Section prior to or after issuing the permit. Inspections may be made

by any Gardner, Kansas law enforcement officer, any member of the City's Business and Economic Development Department, or personnel of Fire District 1. By submitting any application for a Fireworks Stand permit, the applicant shall be deemed to have consented to all such inspections. If the applicant does not own the subject property, the filing of an application shall be deemed to be a representation by the applicant that the applicant has permission of the owner of the land that the applicant is authorized to consent to such inspection. Any permit previously issued may be revoked or suspended upon notice to the Operator if the Fireworks Stand is not operating in compliance with the provisions of this Section. Upon revocation or suspension of the permit, the Operator of the Fireworks Stand shall immediately cease sale of all Fireworks until the Fireworks Stand is brought into compliance and the permit is reinstated.

G. VIOLATIONS, ENFORCEMENT AND PENALTIES.

1. Criminal Penalties. Any Person who violates the provisions of this Section shall be guilty of an unclassified misdemeanor, punishable by a fine in an amount not to exceed $500, confinement in the county jail for a period not to exceed one month, or both.
2. Initiation of Proceedings. In addition to any other method of initiating a criminal proceeding under applicable law, criminal proceeding may be initiated for violation of any provision of this Section by making an offense report and serving a uniform complaint and notice to appear upon the accused. The offense report may be forwarded to the city prosecutor for prosecution.
3. Continuing Violation. Each day that any violation occurs shall constitute a separate offense and shall be punishable as a separate violation. Provided, however, that if any person is found guilty of a violation hereunder and it shall appear to the court that the violation complained of is continuing, then in addition to the penalty set forth, the court shall enter such order as it deems appropriate to cause the violation to be abated.
4. Confiscation of Fireworks. In addition to the other provisions of this Section, whenever a Gardner law enforcement officer, code enforcement officer, or personnel of Fire District 1 has probable cause to believe that a person possesses Fireworks with intent to violate the provisions of this Section or has violated the provisions of this Section, the law enforcement officer, code enforcement officer or personnel of the fire department may confiscate Fireworks from such person and arrange for their immediate destruction in a manner approved by the Fire Chief.

H. BURNING BAN. The use or discharge of all fireworks shall be prohibited whenever a fire or burn ban is put in effect by the Governor, Mayor, Fire Chief or Johnson County Emergency Manager. The Mayor may also suspend the sale of fireworks while the ban is in effect. If sales are suspended, permit fees for Firework Stands shall be refunded on a prorated basis to the permit applicants.

I. PARTIAL INVALIDITY. If any provision of this Section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are severable.

J. JURISDICTION. The provisions of this Article shall apply to the city limits of Gardner, Kansas."

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."

9.05.040. DELETIONS FROM THE UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES. The following deletions from the Uniform Public Offense Code for Kansas Cities are hereby made:

Section 4.5 is deleted in favor of prosecution in the District Court for State of Kansas for violation of State law.

Section 4.5.1 deleted in favor of prosecution in the District Court for State of Kansas for violation of State law.

Section 10.13 is deleted in its entirety.

9.05.050. INVALIDITY IN PART. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by any court of competent jurisdiction such decision shall not affect the validity of the remaining portions of this chapter.

9.05.060 VIOLATIONS AND PENALTIES. That any person firm or corporation who shall violate any of the provisions of this chapter, shall, upon conviction thereof, be fined or imprisoned as provided in Article 12 of said standard code incorporated herein by reference.

9.05.070 CONFLICTING ORDINANCES. Where this chapter conflicts with any other state or federal ordinance, statute or regulation, the most restrictive ordinance, statute or regulation shall apply. All local ordinances, or parts of local ordinance, in conflict herewith be and the same are hereby repealed.

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

SECTION FOUR: EFFECTIVE DATE. This ordinance shall take effect and be in force from and after its publication as provided by law.

PASSED and APPROVED this 5th day of March, 2018.

(SEAL)

CITY OF GARDNER, KANSAS

Steve Shute, Mayor

Attest:

Amy Waller, City Clerk

6SM3397.DOCX

Approved as to form:

Ryan B. Denk, City Attorney

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