

ORDINANCE NO. POC-2690

AN ORDINANCE RELATING TO THE PUBLIC OFFENSE CODE FOR THE CITY OF OVERLAND PARK, KANSAS; AMENDING AND REPEALING OVERLAND PARK MUNICIPAL CODE SECTIONS 11.28.061, 11.56.130, 11.56.185 AND 11.60.010.

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

SECTION 1. Overland Park Municipal Code Section 11.28.061 is hereby amended to read as follows:

11.28.061 Unauthorized possession of a weapon in City-owned buildings.

- A. It is unlawful to possess a weapon, concealed or unconcealed, in the following City-owned buildings:
 - 1. 12400 Foster known as the W. Jack Sanders Justice Center;
 - 2. 8500 Santa Fe known as City Hall;
 - 3. 8500 Antioch known as ~~Antioch Justice Center~~the Myron E. Scafe Building;
 - 4. 11900 Westgate known as Westgate Police Station; and
 - 5. any other City-owned building if said building is posted in a manner reasonably likely to come to the attention of persons entering the premises, such posting indicating weapons are prohibited in the building.
- B. This ~~s~~Section shall not apply to:
 - 1. commissioned law enforcement officers, City employed security officers, fire personnel authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, or military personnel when the above listed individuals are engaged in their duties and to the extent they are allowed to be armed by federal, state or municipal law and the Overland Park Police Department or Overland Park Fire Department policy.
 - 2. Attorneys when the weapon is possessed solely for the purpose of seeking to submit the items into evidence or seeking to examine said items in the course of a pending court proceeding.
- C. For purposes of this ~~s~~Section, a weapon is any object that is calculated or reasonably likely to produce death or serious bodily injury and shall include but not be limited to, a dagger, dirk, billy, blackjack, slung-shot, knife, straight-edged razor, switchblade, ballistics knife, stiletto, throwing star, nunchaku, metal knuckles, tear gas, smoke bomb or projector, pepper spray or any object containing a noxious liquid, gas or substance, stun gun, Taser gun, handgun, pistol, revolver, rifle, shotgun, any other firearm, any dangerous or deadly weapon or instrument. The definitions contained at O.P.M.C. 11.60.005 shall apply to the words used herein.
- D. A person who enters a City-owned building with a handgun and who is licensed to carry the handgun concealed under the Ppersonal and Ffamily Pprotection Aact, and amendments thereto, will not be charged under this Section, but will be charged through District Court with any such violation.

- | ~~DE~~. Nothing in this ~~s~~Section shall restrict enforcement of any provisions contained at O.P.M.C. 11.60.005 et seq.
- | ~~EF~~. Nothing in this ~~s~~Section shall restrict the ability of the Overland Park Municipal judge to find any person in violation of these provisions in direct contempt of court as otherwise provided by law.
- | ~~FG~~. A person who enters a City-owned building with a weapon in violation of this ~~s~~Section may be required to forfeit any weapon so possessed, either temporarily or permanently and may be ordered to leave the premises regardless of the public nature of the facility.
- | ~~GH~~. Every person convicted of violating this ~~s~~Section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.

SECTION 2. Overland Park Municipal Code Section 11.56.130 is hereby amended to read as follows:

11.56.130 Definitions.

As used in this article:

- A. "Controlled substance" means any drug or substance included in Schedules I through V of the Uniform Controlled Substances Act found in Chapter 65, Article 41 of the Kansas Statutes Annotated.
- B. "Drug" means:
 1. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;
 2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;
 3. Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 4. Substances intended for use as a component of any article specified in clause 1, 2, or 3 of this subsection. It does not include devices or their components, parts or accessories.
- | C. "Deliver" or "delivery" means ~~the~~ actual, constructive or attempted transfer from one person to another ~~of a controlled substance~~, whether or not there is an agency relationship.
- | ~~D. "Dangerous drug" means one that is unsafe for use except under the supervision of a practitioner because of its toxicity or other potentiality for human effect, method of use, or collateral measures necessary to use; "Dangerous Drugs" shall include all other drugs or compounds, preparations or mixtures thereof which the state board of health shall find and declare by rule or regulation duly promulgated after reasonable public notice and opportunity for hearing to have a dangerous hallucinogenic hypnotic, somnifacient or stimulating effect of the body of a human or animal.~~
- | ~~ED~~. "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 and every compound, manufacture, salt, derivative, mixture or preparation 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 therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

FE. "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:

1. By a practitioner or his agent pursuant to a lawful order of a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
2. By a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or hospital as an incident to his or its dispensing of a controlled substance.

GE. "Patient" means, as the case may be:

1. The individual for whom a drug is prescribed or to whom a drug is administered; or
2. The owner or the agent of the owner of the animal for which a drug is prescribed or to which a drug is administered; provided, that the prescribing or administering referred to in 1 and 2 of this subsection is in good faith and in the course of professional practice only;

HG. "Person" means any individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, ~~or~~ association or any other legal entity.

IH. "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.

IJ. "Practitioner" means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.

K. ~~"Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.~~

LJ. "Prescription" means a written order, and in cases of emergency, a telephonic order, issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of

such drug, and the signature of such practitioner.

MK. "Somnifacient" and "stimulating" have the meaning attributable in standard medical lexicons.

NL. "Warehouseman" means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage;

OM. "Wholesaler" means a person engaged in the business of lawfully distributing drugs to persons ~~described in~~included in any of the classes named in clauses a to be inclusive of 11.56.150(A)(2).

PN. "Drug paraphernalia" means all equipment and materials of any device kind which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, smoking, administering or otherwise introducing into the human body preparing marijuana, cocaine, phenylelidine, opium or any derivative thereof, or any other a controlled substance, in violation of the Uniform Controlled Substances Act. "Drug paraphernalia" shall include, but is not limited to:

1. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant which is a controlled substance or from which a controlled substance 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 in 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 a 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.

~~For purposes of this subsection, the phrase "intended for use" shall refer to the intent of the person selling, offering to sell, dispensing, giving away or displaying the drug paraphernalia herein defined.~~

In determining whether an ~~item constitutes~~object is drug paraphernalia, a court or other authority ~~should~~shall consider, in addition to all other logically relevant factors, the following:

- ~~1. Whether a person charged with violating this ordinance is a licensed distributor or dealer of tobacco products under Chapter 79, Article 33 of the Kansas Statutes Annotated. Statements by an owner or person in control of the object concerning its use.~~
- ~~2. Expert testimony as to the use of the item. 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.~~
- ~~3. Evidence concerning the total business of a person or business establishment and the type of items involved in the business. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Act.~~
- ~~4. National and local advertising concerning the use of the item of which the~~

- ~~person charged with violating this ordinance has knowledge. The proximity of the object to controlled substances.~~
5. ~~Evidence of advertising concerning the nature of the business establishment. The existence of any residue of controlled substances on the object.~~
 6. ~~Statements by a person charged with violating this ordinance concerning the use of the item. 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.~~
 7. ~~Prior convictions, if any, of a person charged with violating this ordinance, under any state, federal or municipal law relating to any controlled substance. Oral or written instructions provided with the object concerning its use.~~
 8. ~~Instructions, oral or written, provided with the item concerning its use. Descriptive materials accompanying the object which explain or depict its use.~~
 9. ~~Descriptive materials accompanying the item which explain or depict its use. National and local advertising concerning the object's use.~~
 10. ~~Catalogues or other promotional materials concerning the item of which the person charged with violating this ordinance has knowledge. The manner in which the object is displayed for sale.~~
 11. 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.
 12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
 13. The existence and scope of legitimate uses for the object in the community.
 14. Expert testimony concerning the object's use.
 15. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia.
 16. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, sale or cultivation of controlled substances.
- QO. "Minor" shall mean any person who has not attained 18 years of age.
- RP. "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.

- ~~SQ.~~ "Simulated ~~drugs~~ and "simulated-controlled substances" ~~are~~means any products which identify ~~themselves~~ by ~~using~~ a common name or slang term associated with a controlled substance ~~or and which~~ indicates by on its label or accompanying promotional material that the product simulates the effect of a controlled substance ~~or drug~~.
- ~~FR.~~ "Place of display" means any museum, library, school or other similar public place upon which business is not transacted for a profit.
- ~~US.~~ "School" means any public or private elementary, junior high or middle school, or high school.
- ~~VT.~~ "Close proximity" means within 500 feet on a straight line commencing at the property lines nearest to each other.
- ~~WU.~~ "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. (KSA 65-4101 et seq)

SECTION 3. Overland Park Municipal Code Section 11.56.185 is hereby amended to read as follows:

11.56.185 ~~Control of Drug Paraphernalia, and Control of Simulated Drugs and Simulated Drugs and Simulated~~ Controlled Substances; Display, Sale, Possession or Delivery Prohibited.

No person shall sell or offer for sale, use or possess with intent to use:

- A. 1. ~~Sale and display prohibited.~~ Any simulated controlled substance;
2. Any drug paraphernalia to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act and any amendments thereto; or
3. Any drug paraphernalia to plant, propagate, cultivate, grow or harvest less than five marijuana plants.
- B. The fact that an item has not yet been used or did not contain a controlled substance at the time of the seizure is not a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.
- C. No person shall deliver, possess with intent to deliver, manufacture with intent to deliver or cause to be delivered within this City any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act and amendments thereto.
- D. It shall be unlawful for any person to ~~sell, dispense, give away or display~~ for sale any drug paraphernalia or simulated controlled substance or simulated drug ~~to minors~~ in or upon any premises. ~~It shall also be unlawful for any person to sell, offer to sell, dispense, give away or display any drug paraphernalia or simulated controlled substance or simulated drug to persons other than minors in or upon any premises which:~~
1. ~~are premises open to minors, unless the drug paraphernalia, simulated controlled~~

- ~~substances or simulated drugs are kept in such part of the premises that is not open to view by minors and to which minors do not have access; or Nothing in this Section shall be construed to prohibit the selling, dispensing, or giving away of such items by a practitioner or pharmacist to a patient for lawful purposes.~~
2. ~~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. Provided further, that nothing in this section shall be construed to prohibit the selling, dispensing, or giving away of such items by a practitioner or pharmacist to a patient for lawful purposes. In addition to any penalty authorized by 11.56.180, a violation of 11.56.185.C. is hereby declared to be a public nuisance.~~

~~B. Nuisance:~~

~~In addition to any penalty authorized by 11.56.180, a violation of 11.56.185 is hereby declared to be a public nuisance.~~

SECTION 4. Overland Park Municipal Code Section 11.60.010 is hereby amended to read as follows:

11.60.010 Criminal Use of Weapons.

- A. "Criminal use of weapons" is knowingly;
1. Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, nunchaku, any gun that emits an electrical charge including, but not limited to, a gun commonly referred to as a stun gun or Taser gun, metal knuckles, or throwing star, or any knife, commonly referred to as a switchblade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement; or any knife, the blade of which can be fired, including but not limited to a knife commonly referred to as a ballistics knife; or
 2. Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slung-shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character; provided, an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument; or
 3. Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance; or
 4. Carrying any weapon as defined in 11.60.010.5(A) concealed on one's person except when on the person's land or in the person's abode or fixed place of business or except as authorized by K.S.A. 75-7c07~~1~~¹ et seq.; or
 5. Carrying any weapon as defined in 11.60.010.5(A) unconcealed on one's person except when on the person's land or in the person's abode or fixed place of business; or
 6. Transporting any pistol, revolver or other firearm unless it is unloaded and

encased in a container which completely encloses it; or

7. Setting a spring gun.

B. Subsections (A)(1), (2), (3), (4), (5) and (6) do not apply to or affect any of the following:

1. Law enforcement officers, or any person summoned by any such officers or summoned by any other lawfully authorized public officers to assist in making arrests or preserving the peace while actually engaged in assisting such officers; or
2. Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime while acting within the scope of their authority; or
3. Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or
4. Manufacture of, transportation to, or sale of weapons to persons authorized under this exemption to possess such weapons; or
5. Use and possession of the martial arts weapon "nunchaku" by students, instructors, and/or demonstrator instructors provided that such use, possession, instruction or demonstration shall be permitted only on the premises of individuals conducting a course of martial arts instruction for a fee and who have no fewer than five students enrolled in the instructional program at any given time, and only on premises zoned for such instruction within the City zoning ordinance, provided further that the "nunchaku" weapons shall be transported to and from the training or demonstration in a compartment or area of a motor vehicle not directly accessible from the passenger compartment. In addition, the use of nunchaku weapons is permitted at tournament locations approved by the Chief of Police. (KSA 21-4201)

C. Subsections (A)(4), (5) and (6) do not apply to or affect the following:

1. Watchmen while actually engaged in the performance of the duties of their employment; or
2. Licensed hunters or fishermen while engaged in hunting and fishing; or
3. Private detectives licensed by the state of Kansas to carry the firearm involved, while actually engaged in the duties of their employment; or
4. Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or
5. The state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and any amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and any amendments thereto; or
6. Special deputy sheriffs in counties over 100,000 population who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer.

D. Subsection (A)(6) shall not apply to persons authorized to carry a concealed weapon pursuant to K.S.A. 75-7c071 et seq.

- E. Subsection A shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the National Firearms Registration and Transfer Record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.
- F. Violation of this Section is a Class A violation.

SECTION 5. Existing Overland Park Municipal Code Sections 11.28.061, 11.56.130, 11.56.185 and 11.60.010 are hereby repealed.

SECTION 6. This ordinance shall take effect and be in force from and after its publication in *The Overland Park Sun*, an official City newspaper.

PASSED by the City Council this ____ day of _____, 2007.

APPROVED by the Mayor this ____ day of _____, 2007.

Carl Gerlach, Mayor

ATTEST

Marian Cook
City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney