



DATE: Tuesday, October 15, 2024
TO: Mayor and City Council
FROM: City Attorney
SUBJECT: 2024 Uniform Public Offense Code (UPOC) Ordinance

Background: Published by the League of Kansas Municipalities since 1980, the Uniform Public Offense Code (UPOC) contains approximately 100 public offenses that can be adjudicated in municipal court. While many of the provisions parallel state law, the UPOC also contains offenses that are frequently enforced only within cities. It is designed to provide a comprehensive public offense ordinance for Kansas cities. The costs are: 1-4 copies are \$10.00 each, 5-10 copies are \$9.50 each, 11-30 copies are \$9.00 each, 31 copies and over are \$8.50 each. An electronic copy is available for a fee of approximately \$13.75 and with a signed licensing agreement. It lasts for 1 year and may be extended for an additional fee. There is also a “website edition” for \$100.00.

Bel Aire currently incorporates the UPOC by reference, for the purpose of regulating public offenses within the corporate limits of the City of Bel Aire, Kansas.

Discussion: There have been updates to the UPOC. A few examples follow.

Section 9.1. Disorderly Conduct.

This section was amended to narrow the scope of what constitutes disorderly conduct. Specifically, Section 9.1(a)(3) no longer classifies the engagement in noisy conduct that tends to reasonably arouse alarm, anger or resentment in another person as disorderly conduct. This is in response to a recent Kansas Supreme Court case pertaining to this section of the Wichita Municipal Code, where the Court found the section’s deleted language to be unconstitutionally overbroad under the First Amendment.

Section 9.9.1. Unlawful Possession of Marijuana and Tetrahydrocannabinols.

This section was amended to allow for exceptions to Section 9.9.1 by adding subsections (d) through (h). These exceptions state that a law enforcement officer shall not take an individual into custody for violations of this section when the individual seeks medical assistance for themselves or others because of the use of a controlled substance. Individuals are also immune from prosecution unless the quantity of controlled substances found is sufficient to create a rebuttable presumption that there is an intent to distribute. Immunity does not apply if medical assistance is sought during an arrest or execution of a search warrant, or if prosecution is based on evidence from an independent source. Further, a person cannot initiate or maintain legal action against a law enforcement officer or their employee because of the officer’s compliance or failure to comply with this section. Officers are also protected from liability for arresting individuals who are later found to be immune from prosecution, unless the officer’s actions involved reckless or intentional misconduct.

Section 9.9.4. Unlawful Possession of Controlled Substances.

Substantially similar to changes made in Sections 9.9.1 and 9.9.2, this section was amended to allow for exceptions by adding subsections (c) through (g). These exceptions provide that a law enforcement officer shall not take an individual into custody for violations of this section when the individual seeks medical assistance for themselves or others because of the use of a controlled substance. Individuals are also immune from prosecution unless the quantity of controlled substances found is sufficient to create a rebuttable presumption that there is an intent to distribute. Immunity does not apply if medical assistance is sought during an arrest or execution of a search warrant, or if prosecution is based on evidence from an independent source. Further, a person cannot initiate or maintain legal action against a law enforcement officer or their employee because of the officer's compliance or failure to comply with this section. Officers are also protected from liability for arresting individuals who are later found to be immune from prosecution, unless the officer's actions involved reckless or intentional misconduct.

Financial Considerations: Other than the purchase of UPOC hard copy books and an electronic version, there will be no other costs to the City.

Legal Considerations: The City Attorney has drafted and approved the proposed ordinance. It requires a majority vote for approval.

Recommendation/Actions: It is recommended that City Council approve the proposed ordinance.

Attachments: Proposed ordinance