

CHAPTER 11.

PUBLIC OFFENSES

- Article 1. Uniform Public Offense Code
- Article 2. Local Regulations
- Article 3. Fireworks

ARTICLE 1. UNIFORM OFFENSE CODE

11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. ¹

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Westwood, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of 2022, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. ~~No fewer than three copies~~ At least one copy of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Incorporated by the Code of the City of Westwood, Kansas," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

(Code 2008, § 11-101; Ord. 879, Sec. 1; Ord. 888, Sec. 1; Ord. 900, Sec. 1; Ord. 912, Sec. 1; Ord. 917, Sec. 1; Ord. 929, Sec. 1, Ord. 938, Sec. 1; Ord. 954, Sec. 1; Ord. No. 962, § 1, 8-13-2015; Ord. No. 973, § 1, 8-11-2016; Ord. No. 983, § 1, 7-13-2017; Ord. 993, Sec. 1; Ord. 1003, Sec. 1; Ord. No. 1032, § 1, 10-13-2023)

11-102. SHORT; CITATION; REFERENCE.

This code shall be known as the "Uniform Public Offense Code, City of Westwood, Kansas" and it is sufficient to refer to the code as the "Uniform Public Offense Code" (or "UPOC") in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part of portion thereof as an addition to, amendment to, correction or repeal of the "Uniform Public Offense Code." Any such ordinance shall effectively add to, amend, correct or repeal the ordinance section which is the basis for the appropriate code provision Further reference may be had to the titles, chapters, sections and subsections of the "Uniform Public Offense Code" and such reference shall apply to that number title,

¹ **Legal analysis: 11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE.** As amended in 2007 Kansas Laws Ch. 142, K.S.A. 12-3010 now requires that only one copy of the adopted document be stamped and kept on file with the city clerk. Revise accordingly. Of course, nothing in said revision would prevent the city from retaining optional extra copies.

chapter, section or subsection as it appears in the code. ²
(Code 1993; Code 2008, § 11-102; Ord. 745, Sec. 1)

11-103. REFERENCE APPLIES TO AMENDMENTS.

Whenever a reference is made to this code as the “Uniform Public Offense Code” or to any portion thereof or to any ordinance of the city, the reference shall apply to all amendments, corrections, and additions now or thereafter made.
(Code 1993; Code 2008, § 11-103; Ord. 745, Sec. 1)

11-104. TITLE, CHAPTER AND SECTION HEADINGS.

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner effect the scope, meaning or intent Of the provisions of any title, chapter or section hereof.
(Code 1993; Code 2008, § 11-104; Ord. 745, Sec. 1)

11-105. SUPPLEMENTS AUTHORIZED. ³

This code shall be kept current and the city clerk is authorized to cause the periodic preparation of loose leaf supplements. The supplements may be added to this code by insertion of new pages for omitted sections, amended sections, sections for ordinances passed in the interim of code preparation and new provisions, or may be added as supplemental materials to the city’s official online code.
(Code 1993; Code 2008, § 11-105; Ord. 745, Sec. 1)

11-106. EFFECT OF CODE ON PAST ACTIONS AND OBLIGATIONS. ⁴

Neither the adoption of this code nor the repeal or amendments of any ordinances or part or portion of any ordinances of this city shall in any manner affect the prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at the effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, on the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof, required fine paid , filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining, shall continue in full force and effect.
(Code 1993; Code 2008, § 11-106; Ord. 745, Sec. 1)

11-107. PROHIBITED ACTS.

Whenever in this city any act or omission is made unlawful, it includes causing, allowing,

² **Legal analysis: 11-102. SHORT; CITATION; REFERENCE.** Revise to include the UPOC abbreviation, in case said shorthand may be used on any citations or other applicable city documents.

³ **Legal analysis: 11-105. SUPPLEMENTS AUTHORIZED.** Revise to allow for online publication and supplementation of code.

⁴ **Legal analysis: 11-106. EFFECT OF CODE ON PAST ACTIONS AND OBLIGATIONS.** If obsolete, delete.

permitting, aiding, abetting, suffering or concealing the fact of such act or omission.
(Code 1993; 11-108; Code 2008, § 11-107; Ord. 745, Sec. 1)

11-108. CIVIL REMEDIES PRESERVED.

This code does not bar, suspend or otherwise affect any civil right or remedy authorized by law to be enforced in a civil action, based on conduct which it makes punishable.
(Code 1993, 11-110; Code 2008, § 11-108; Ord. 745, Sec. 1)

~~**11-109. INVALIDITY.**~~⁵

~~If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The governing body hereby declares that it would have passed this code, any section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. If for any reason this entire code should be declared invalid or unconstitutional, then the original ordinance or ordinances as they existed prior to passage of this code, shall be in full force and effect.
(Code 1993, 11-111; Code 2008, § 11-109; Ord. 745, Sec. 1)~~

11-110 UNIFORM PUBLIC OFFENSE CODE, ADDITIONS AND DELETIONS.

Article 5 of the Uniform Public Offense Code is hereby amended by deleting existing Sections 5.6 and 5.7 and by inserting in place thereof the following:

Section 5.6 Purchase or Possession of Cigarettes or Tobacco Products by a Minor

(a) It shall be unlawful for any person:

(1) Who is under 21 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes, liquid nicotine or tobacco products; or

(2) Who is under ~~18~~ 21 years of age to possess or attempt to possess cigarettes, electronic cigarettes, liquid nicotine or tobacco products. (K.S.A. 79-3321—3322, as amended).⁶

(b) For the purposes of this Section, the terms described herein are used as defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

Violation of this Section shall be a cigarette or tobacco ordinance infraction for which the

⁵ **Legal analysis: 11-109. INVALIDITY.** Delete as covered by general provisions in Chapter 1.

⁶ **Legal analysis: 11-110 UNIFORM PUBLIC OFFENSE CODE, ADDITIONS AND DELETIONS, (a)(2).** Conform to K.S.A. 79-3321, which was amended by Laws 2023, ch. 18, § 3 to raise the age from 18 to 21.

fine shall be a minimum of \$25 and a maximum of \$100. In addition, the judge may require a person charged with violating this section to appear in court and/or may require completion of a tobacco education program.

Section 5.7 Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor.

(a) It shall be unlawful for any person, directly or indirectly, to:

(1) Sell, furnish or distribute cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under 21 years of age; or

(2) Buy any cigarettes, electronic cigarettes, liquid nicotine or tobacco products for any person under 21 years of age.

(b) It shall be a defense to a prosecution under this Section if:

(1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples; and⁷

~~(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, liquid nicotine or tobacco products to the person under 21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products; and~~

(3) To purchase or receive the cigarettes, electronic cigarettes, liquid nicotine or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products.

(4) For purposes of this Section a person who violates this Section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual; or both.

(c) It shall be a defense to a prosecution under this Section if:

(1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and

(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 21 or more years of age.

⁷ **Legal analysis: 11-110 UNIFORM PUBLIC OFFENSE CODE, ADDITIONS AND DELETIONS, (b)(1).** Added language for clarity, under the assumption that this is to be an inclusive list. Please advise if said assumption was incorrect.

(d) For the purposes of this Section, the terms described herein are used as defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

(e) As used in this Section, "sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration. (K.S.A. 79-3302; K.S.A. 79-3321—3322).

Violation of this Section shall constitute a Class B violation punishable by a minimum fine of \$200.

(Code 2008, 11-110; Ord. No. 971, § 1(11-110), 8-11-2016)

ARTICLE 2. LOCAL REGULATIONS

11-201. ALCOHOLIC LIQUOR.

(a) Definitions.

(1) For purposes of this section, alcoholic beverage or alcoholic liquor are defined to mean, alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being but not including cereal malt beverages.

(2) Cereal Malt Beverage - means any fermented but un-distilled liquor brewed or made from malt or from a mixture of malt or malt substitute, or any flavored malt beverage, but does not include any such liquor which contains more than 3.2 percent alcohol by weight. **8**

(b) Unlawful Acquisition of Alcoholic Beverage. - No person under 21 years of age shall obtain or purchase or attempt to obtain or purchase alcoholic beverage from any person except as authorized by law. Violation of this section is a Class B offense.

(c) Unlawful Possession or Consumption of Alcoholic beverage. - No person under 21 years of age shall possess or consume alcoholic beverage except as authorized by law. Violation of this section is a Class B offense.

(d) Unlawful Acquisition of Cereal Malt Beverages. - No person under the legal age for consumption of cereal malt beverage shall obtain or purchase cereal malt beverage from any person except as authorized by law. Violation of this section is a Class B offense.

(e) Legal Age for Consumption of Cereal Malt beverage. - Legal age for consumption of cereal malt beverage means 21 years of age.

(f) Unlawful Possession or Consumption of Cereal Malt Beverages. - No person under

⁸ Legal analysis: 11-201. ALCOHOLIC LIQUOR(a)(2). Conform to K.S.A. 41-2701(a).

the legal age for consumption of cereal malt beverage shall possess or consume cereal malt beverage except as authorized by law. Violation of this section is a Class B offense.

(g) Intoxicating Liquors and Cereal Malt Beverages Consumption Prohibited in Certain Places. - (1) It is unlawful for any person to consume any cereal malt or alcoholic beverages in or upon any street, avenue, alley or sidewalk, public way, public parking lot or upon any public property or within any vehicle in or upon any such place; provided further that it is unlawful for any person to have in his or her possession in any such place, an open cereal malt beverages container or alcoholic beverage container; provided further that the Chief of Police may authorize the consumption of cereal malt and alcoholic beverages on public property, at a block party if the street is blocked, or with a parade permit, pursuant to a valid application submitted to the Chief of Police and when the Chief of Police determines that such activity would not be detrimental to the health, safety and morals of the community.

(2) No person shall knowingly or unknowingly sell, or give away, furnish, dispose of, procure, exchange or deliver, or permit the selling, giving away, furnishing, disposing of, procuring of, exchanging or delivering of any cereal malt or alcoholic beverage, in any eating and drinking establishments, building, structure, land or premises, for consumption in such building or structure or for consumption upon such land or premises, unless such person has applied for and been granted the proper license as provided for in Chapter 3 of this Code.

(3) It is unlawful for any person to be intoxicated on any highway, street, or in any public place or building in the city.

(4) Nothing in this chapter shall be deemed to prevent, regulate, or control the lawful consumption of cereal malt and alcoholic beverages upon private property by those occupying such private property as the owner, or as a lessee and by the guests of the owner or lessee, provided that no charges made by the owner or lessee for the serving or mixing of any drink or drinks or of cereal malt or alcoholic beverages or for any substance co-mixed with such beverages. ⁹

(5) Violation of this section is a Class B offense.
(Code 1993, 11-105; Code 2008, § 11-201; Ord. 745, Sec. 3)

11-202. INTERFERENCE WITH LAW ENFORCEMENT OFFICER.

It is unlawful for any person to knowingly and intentionally interfere with, molest or assault, a law enforcement officer. Violation of this section is a Class B offense.
(Code 1993, 11-206; Code 2008, § 11-202; Ord. 745, Sec. 3)

11-203. RESISTING ARREST.

It is unlawful for any person to resist arrest by knowingly and intentionally obstructing, resisting, opposing, or interfering with a law enforcement officer while such officer is engaged in making an arrest. Violation of this section is a Class B offense.

⁹ **Legal analysis: 11-201. ALCOHOLIC LIQUOR, (g)(4).** Revised for clarity.

(Code 1993, 11-207; Code 2008, § 11-203; Ord. 745, Sec. 3)

11-204. FAILURE TO APPEAR.

It is unlawful for any person to fail to appear by willfully incurring a forfeiture of an appearance bond and failing to surrender one's self within 30 days of the date of such forfeiture by one who is charged with a public offense, has been released on bond for appearance before the municipal court of this city for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender one's self within 30 days after his or her conviction of a public offense has become final by one who has been released on an appearance bond by any court. Any person who is released upon his or her own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of this section. The provisions of this section shall not apply to any person who forfeits a cash bond supplied pursuant to law or city ordinance upon an arrest for a traffic offense. Violation of this section is a Class B offense. (Code 1993, 11-208; Code 2008, § 11-204; Ord. 745, Sec. 3)

11-205. DRUGS.

The provisions of the Uniform Controlled Substances Act (K.S.A. 65-4101 et seq.) and amendments hereto relating to controlled substances are hereby incorporated by reference.

(Code 1993, 11-213; Code 2008, § 11-205; Ord. 745, Sec. 3)

11-206. BLASTING.

It shall be unlawful for any person to blast or cause to be blasted rocks, stumps or other material unless the object or area to be blasted be covered in such a manner as to prevent any fragment, rocks, or other material from ascending into the air. A violation of this section is a Class B offense.

(Code 1993, 11-214; Code 2008, § 11-206; Ord. 745, Sec. 3)

11-207. UNLAWFUL REMOVAL OF MATERIALS TO BE RECYCLED.

(a) It shall be unlawful for any person not under contract with the city to remove any item including but not limited to newspapers, aluminum cans, glass bottles or plastic containers placed in or adjacent to city recycling containers or receptacles.

(b) Violation of this section is a Class C offense.

(Code 1993, 11-215; Code 2008, § 11-207; Ord. 745, Sec. 3)

11-208. PEDESTRIAN ON PUBLIC ROADWAYS.

(a) Prohibitions.

(1) Where a sidewalk is provided and its use is practicable it shall be unlawful for any pedestrian to walk, jog or run along and upon an adjacent roadway.

(2) Where a sidewalk is not available, any pedestrian walking, jogging or running along

and upon a highway shall walk, jog or run only on a shoulder, as far as practicable from the edge of the roadway.

(3) Where neither a sidewalk nor a shoulder is available, any pedestrian walking, jogging or running along and upon a highway shall walk, jog or run as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk, jog or run only on the left side of the roadway.

(4) Except as otherwise provided in this article, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

(b) **Pedestrian Reflective Clothing.** Any pedestrian using the public streets for walking, jogging and/or running in the city from one-half hour after sunset to one-half hour before sunrise and at any other time when there is not sufficient light to render clearly discernible persons and/or vehicles on a highway and/or streets at a distance of 500 feet ahead shall be required to wear on his or her person some type of reflective apparel or materials of sufficient size and placement so as to be visible to vehicular traffic from a distance of 200 feet.

(c) Violation of this section is a Class C offense.
(Code 1993, 11-216; Code 2008, § 11-208; Ord. 745, Sec. 3)

11-209. DISTURBING THE PEACE.

(a) It shall be unlawful for any person to make, continue, maintain or cause to be made or continued any excessive, ~~unnecessary~~, unreasonable or unusually loud noise or any noise which either annoys or disturbs others of reasonable sensitivities, or which injures or endangers the comfort, repose, health, peace or safety of others within the city.¹⁰

(b) It shall be unlawful for any person to 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 the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. Neighboring inhabitants shall include persons living within or occupying residential districts of single or multi-family dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in

¹⁰ **Legal analysis: 11-209. DISTURBING THE PEACE, (a), (c).** Revised to avoid potential constitutional issues. *State v. Garren*, 117 N.C.App. 393, 451 S.E.2d 315 (1994), held that an ordinance prohibiting "loud, raucous and disturbing" noises was unconstitutional (but severable); the court also cited numerous precedents which held that targeting "unnecessary" noises were unconstitutional. In *Jim Crockett Productions v. City of Charlotte*, 706 F.2d 486 (4th Cir. 1983), the court deemed the term "unnecessary" in a noise ordinance to be unconstitutionally vague. Also, an "annoyance" standard drew the fire of the U.S. Supreme Court in *Coates v. City of Cincinnati*, 402 U.S. 611 (1971); it is one thing for a sound to be some loud as to "disturb a reasonable person," but any given level of sound might "annoy" someone without rising to the level of disturbance.

any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons of reasonable sensitivities residing in any residential area. No person shall visit or remain within any residential dwelling unit or within the vicinity of a residential dwelling unit wherein such party or gathering of people is taking place except persons who have gone there for the sole purpose of abating the disturbance. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling until shall immediately abate the disturbance and, falling to do so, shall be in violation of this section.

(d) Prima Facie Violation. - The operation of any tool, equipment, vehicle, electronic device, set, instrument, television, phonograph and machine or other noise or sound producing device, at any time in such a manner as to be plainly audible at any adjacent property line, or for 50 or more feet in the case of a multiple-family dwelling, between the hours of 10:00 p.m. and 7:00 a.m. (except on Sundays, which such latter time shall be 8:00 a.m.), shall be prima facie evidence of a violation of this section.

(e) Exemptions. - Sounds emanating from the following shall be exempt from the provisions of (a) through (d) above:

- (1) Emergency vehicles;
- (2) Public safety vehicles;
- (3) Emergency activities of the fire or police department;
- (4) Emergency activities of any utility company;
- (5) Emergency activities of municipal maintenance vehicles and equipment;
- (6) Public projects, snow removal, or any other public, emergency, or safety activities;
- (7) Heating, ventilation, air-conditioning units or generators used during power outages;
- (8) Noise from construction sites, until 9:00 p.m. on weekdays.
- (9) Noise from parades, carnivals, fairs and other like public displays or entertainment for which a permit has been issued by the city according to Chapter 12, section 12-104, while operating under the conditions allowed by the permit. **11**

(f) Statement of Intent. - No provision of this article shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this article to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

¹¹ **Legal analysis: 11-209. DISTURBING THE PEACE, (e)(9)exemptions.** Added exemption for city-approved events.

(Code 1993, 11-217; Code 2008, § 11-209; Ord. 747, Sec. 1)

11-210. CAMPING ON PRIVATE PROPERTY.

Overnight camping on private property within the city limits is prohibited without first obtained, in advance, the permission of the owner of the property. Overnight camping on private property is only permitted two (2) nights per calendar week.

(Code 2008, § 11-210)

ARTICLE 3. FIREWORKS

11-301. DEFINITION.

Fireworks shall mean and include any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and shall include blank cartridges in which explosives are used, the type of balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles or other fireworks of the like construction, and any fireworks containing any explosive substance.

(Code 1993, 7-301; Code 2008, § 11-301; Ord. 268, Sec. 1)

11-302. USE OF FIREWORKS PROHIBITED.

It shall be unlawful for any person, firm, copartnership, or corporation to offer for sale, expose for sale, sell at retail, possess, or use or explode any fireworks in the city. This section shall not apply to a city sponsored display, or display for which a permit has been granted by the Governing Body.

(Code 1983, 7-302; Code 2008, § 11-302; Ord. 598)

11-303. PENALTY.

An person convicted of violating the provisions of this article shall be fined not more than \$500.00, or imprisoned not more than six months, or both.

(Code 1983, 7-303; Code 2008, § 11-303; Ord. 598)