CITY OF FAIRWAY, KANSAS
ORDINANCE NO. 1635

AN ORDINANCE RELATING TO PUBLIC OFFENSES WITHIN THE CORPORATE LIMITS OF THE CITY OF FAIRWAY, KANSAS, INCORPORATING BY REFERENCE THE "UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES," EDITION OF 2016, AMENDING AND REPEALING CERTAIN PROVISIONS OF EXISTING ARTICLE II OF CHAPTER 8, ENTITLED "UNIFORM PUBLIC OFFENSE CODE" AND ARTICLE III ENTITLED "DRUGS" OF THE CODE OF THE CITY OF FAIRWAY, KANSAS.

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

SECTION 1. That existing Section 8-25 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, be amended to read as follows:

Sec. 8-25. Incorporated by reference.

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City that certain code known as the "Uniform Public Offense Code for Kansas Cities," Edition of 2016 ("2016 UPOC"), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except those articles, parts or portions as are hereafter omitted, deleted, modified or changed, and with those additions thereto as are made by this or any other ordinance of the City hereafter adopted; this incorporation being authorized by K.S.A. 12-3009 to 12-3012 and 12-3301 to 12- 3302, inclusive, as amended. No fewer than three (3) copies of this Uniform Public Offense Code shall be marked or stamped "Official Copy as Adopted by Ordinance No.1632," with all sections or portions thereof intended to be changed clearly marked to show any change, and to which shall be attached a copy of this Ordinance, and shall be filed with the City Clerk to be open to inspection and to be available to the public at all reasonable hours. The Police Department, Municipal Judge and all administrative departments of the City, charged with enforcement of the Ordinance, shall be supplied, at the cost of the City, the number of Official copies of this Uniform Public Offense Code, similarly marked, as it may be deemed expedient.

SECTION 2. That existing section 8-25 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 3. That existing Section 8-26 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is hereby readopted to read as follows:

Sec. 8-26. Abusing toxic vapors.

Section 9.9 of the 2016 UPOC is hereby amended by deleting existing Section 9.9 and inserting in place thereof the following:

Section 9.9. Abusing Toxic Vapors.

(1) It shall be unlawful for any person to knowingly possess, buy, use, smell, or inhale the fumes of toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system.

(2) Definitions: For the purposes of this Section, the term "toxic vapors" means the following substances or products containing these substances:

a. Alcohols, including methyl, isopropyl, propyl or butyl;

b. Aliphatic acetates, including ethyl, methyl, propyl or methyl cellosolve acetate;

c. Acetone;

d. Benzene;

e. Carbon tetracholoride;

f. Cyclohexane;

g. Freons, including freon 11 and freon 12;

h. Hexane;

i. Methyl ethyl ketone;

j. Methyl isobutyl ketone;

k. Naptha;

l. Perchlorethylene;

m. Toluene;

n. Trichloroethane; or

o. Xylene.

(3) This section shall not be construed to apply to the inhalation of anesthesia or other substances for medical or dental purposes.

(4) In a prosecution for a violation of this Section, evidence that a container lists one (1) or more of the substances described in Subsection (2) of this section as one of its ingredients shall be prima facie evidence that the substance in that container contains toxic vapors and emits the fumes thereof.

(5) Penalty. Any person violating any provisions of this article shall upon conviction thereof, be punished by a fine of not more than five hundred dollars ($500.00). In addition to any sentence or fine imposed, the court shall enter an order requiring that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program, as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

SECTION 4. That existing Section 8-26 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 5. That existing Section 8-27 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is amended to read as follows:

Sec. 8-27. Criminal use of weapons.

Section 10.1 of the 2016 UPOC is hereby amended by deleting existing Section 10.1 and inserting in place thereof the following:

Section 10.1 Criminal Use of Weapons.

(1) Criminal use of weapons is knowingly:

a. Possessing with the intent to use the same unlawfully against another, any bludgeon, sand club, metal knuckles, throwing star, billy, blackjack, slingshot or any other dangerous or deadly weapon or instrument of like character;

b. Setting a spring gun;

c. Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;

d. Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of an controlled substance;

e. Selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

f. Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

g. Possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity event whether the person knows or has reason to know that the person was in or on that property or grounds.

h. Refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity

or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer; or

i. Possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age whether the person knows or has reason to know the length of the barrel.

(2) Criminal use of weapons as defined in:

a. Subsections (1)a, (1)b, (1)c, (1)d, and (1)h of this section is a Class A violation;

b. Subsections (1)f and (1)g of this section is a Class B violation;

c. Subsection (1)i of this section is a Class A violation on a first offense.

(3) Subsection (1)a shall not apply to:

a. Law enforcement officers, or any person summoned by any officers to assist in making arrests or preserving the peace while actually engaged in assisting that officer;

b. Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

c. 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

d. The manufacture of, transportation to, or sale of weapons to a person authorized under Subsections (3)a, (3)b, and (3)c to possess the weapons.

(4) Subsection (1)g shall not apply to:

a. Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

b. Any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

c. Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in that person's behalf who is delivering or collecting a student;

d. Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contained a polling place for the purpose of voting during polling hours on an election day; or

e. Possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. Supp. 75-

7c01 *et seq.*, and amendments thereto.

(5) Subsection (1)e shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 75-7c26, and amendments thereto.

(6) Subsection (1)i shall not apply if that person, less than 18 years of age, was:

a. In attendance at a hunter's safety course or a firearm safety course;

b. Engaging in practice in the use of the firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which the range is located;

c. Engaging in an organized competition involving the use of the firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of the organization's performance;

d. Hunting or trapping pursuant to a valid license issued to that person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

e. Traveling with the firearm in that person's possession being unloaded to or from any activity described in subsections(6)a through (6)d, only if the firearm is secured, unloaded and outside the immediate access of that person;

f. On real property under the control of that person's parent, legal guardian or grandparent and who has the permission of that parent, legal guardian or grandparent to possess the firearm; or

g. At that person's residence and who, with the permission of that person's parent or legal guardian, possesses the firearm for the purposes of exercising the rights contained in K.S.A. Supp. 21-5222, 21-5223 or 21-5225, and amendments thereto.

SECTION 6. That existing Section 8-27 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 7. That existing Section 8-28 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is hereby amended to read as follows:

Sec. 8-28. Unauthorized possession of a weapon in City-owned buildings.

(a) It is unlawful to possess a weapon in the following City-owned or leased buildings or offices; provided, that the premises are conspicuously posted in accordance with rules and regulations adopted by the attorney general as premises where carrying a concealed handgun is prohibited:

(1) Buildings where prohibited:

a. 5252 Belinder Road, known as the Police Building;

b. The offices within 4210 Shawnee Mission Parkway, known as City Hall, or any other office in control of or leased by the City of Fairway;

c. 4717 Roe Boulevard, Roeland Park, KS, known as the Public Works Facility;

d. Any other City-owned or leased building.

(2) This subsection (a) shall not apply to:

a. 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 Fairway Police Department or Johnson County Consolidated Fire District Number 2 policy.

b. Attorneys when the weapon is possessed solely for the purpose of seeking to submit the item into evidence or seeking to examine said items in the course of a pending court proceeding.

(b) For the purposes of this 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 billy, blackjack, slung-shot, 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, pistol, revolver, rifle, shotgun, any other firearm, any dangerous or deadly weapon or instrument.

(c) Nothing in this section shall restrict the ability of the Fairway Municipal judge to find any person in violation of these provisions in direct contempt of court as otherwise provided by law.

(d) A person who enters a City-owned building with a weapon in violation of this 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.

(e) It is unlawful to openly carry a loaded pistol, revolver, rifle, shotgun or other firearm on one's person or in the immediate control of a person, not licensed under the personal and family protection act, while on property open to the public, unless the firearm is secured in a holster with the safety on. Every individual openly carrying a loaded weapon shall maintain control of the weapon at all times.

(f) Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed $2,500 or both the fine and imprisonment.

SECTION 8. That existing section 8-28 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 9. That existing Section 8-29 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is hereby readopted to read as follows:

Sec. 8-29. Littering.

(a) 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 these acts; or

(2) Any private property without the consent of the owner or occupant of that property.

SECTION 10. That existing section 8-29 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 11. That Section 8-30 of Article II, entitled "Uniform Public Offense Code" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, is hereby readopted to read as follows:

Sec. 8-30. UNLAWFUL DISCHARGE OF A FIREARM.

Section 10.5 of the 2016 UPOC is hereby amended by deleting existing Section 10.5 and inserting in place thereof the following:

Section 10.5. Unlawful Discharge of a Firearm.

(1) Unlawful discharge of a firearm is the reckless discharge of a firearm within or into the corporate limits of any city.

(2) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:

a. The firearm is discharged in the lawful defense of one's person, another person or one's property;

b. The firearm is discharged at a private or public shooting range;

c. The firearm is discharged by authorized law enforecement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;

d. The firearm is discharged by special permit of the chief of police;

e. The firearm is discharged using blanks; or

f. The firearm is discharged in lawful self-defense or defense of another person against an animal attack. Unlawful discharge of firearms is a Class B violation.

SECTION 12. That Section 8-55 of Article III, entitled "Drugs" of Chapter 8, entitled "Public Offenses" of the Code of the City of Fairway, Kansas, be readopted to read as follows:

Sec. 8-55. CONTROLLED SUBSTANCES AND DRUG PARAPHERNALIA.

(a) *Use or Possession Unlawful*: No person shall use or possess, with the intent to use within this City:

(1) Any simulated controlled substance; or

(2) Any drug paraphernalia used 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 Substances Act.

(b) *Delivery or Manufacture Unlawful*:

(1) No person shall sell, offer for sale, have in that person's possession with intent to sell, deliver, possess with the intent to deliver, manufacture with the 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 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 this Section or the Uniform Controlled Substances Act.

(2) No person shall knowingly deliver or cause to be delivered in this City any substance that is not a controlled substance:

a. Upon an express representation that the substance is a controlled substance or that the substance is of a nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

b. Under circumstances that would give a reasonable person reason to believe that the substance is a controlled substance.

(3) If any one (1) of the following factors is established, there shall be a presumption that delivery of a substance was under circumstances that would give a reasonable person reason to believe that a substance is a controlled substance:

a. The substance was packaged in a manner normally used for the illegal

delivery of controlled substances;

b. The delivery of the substance included an exchange of or demand for money or other consideration for delivery of the substance, and the amount of the consideration was substantially in excess of the reasonable value of the substance; or

c. The physical appearance of the capsule or other material containing the substance is substantially identical to a specific controlled substance.

(4) As used in this section, the term "or under circumstances where one reasonably should know" that an item will be used in violation of this section, shall include, but not be limited to, the following:

a. Actual knowledge from prior experience or statements by customers;

b. Inappropriate or impractical design for alleged legitimate use;

c. Receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or

d. Receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

(c) *Determining Whether an Object is Drug Paraphernalia*: In determining whether an object is drug paraphernalia, a court shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or person in control of the object concerning its use;

(2) Prior convictions, if any, of any owner or person in control of the object under any municipal, state or Federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this Article or the Uniform Controlled Substances Act;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Advertising of the item in magazines or other means that specifically glorify, encourage or espouse the illegal use, manufacture, sale or cultivation of controlled substances;

(7) Oral or written instructions provided with the object concerning its use.

(8) Descriptive material accompanying the object that explains or depicts its use;

(9) National and local advertising concerning the object's use;

(10) 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 had been used to store a controlled substance or to introduce a controlled substance into the human body, as opposed to any legitimate use for alleged paraphernalia; and

(16) Direct or circumstantial evidence of the intent of an owner or person in control of the object to deliver it to a person in an instance where the owner or person in control of the object knows, or should reasonably know that the person to whom the object is delivered intends to use the object to facilitate a violation of this Section or the Uniform Controlled Substances Act. The innocence of an owner or person in control of the object as to a direct violation of this Section or the Uniform Controlled Substances Act shall not prevent a finding that the object is intended for use as drug paraphernalia.

(d) *Drug Paraphernalia Sale and Display Prohibited*: It shall be unlawful for any person to sell, offer to sell, dispense, give away or display any instrument intended for use for inhaling or ingesting any controlled substance or drug in or upon any premises:

(1) That are in close proximity to a school; or

(2) Open to minors, unless the instruments are kept in a part of the premises that is not open to view by minors or to which minors do not have access; provided, however, that display of any of these items at a place of display for educational or scientific purposes shall not be unlawful.

(e) *No defense to prosecution.* The fact that an item has not yet been used or did not contain a controlled substance or drug at the time it was seized as evidence shall not be a defense to a charge that the item was possessed with the intention for use as drug paraphernalia.

SECTION 13. That existing Section 8-55 of the Code of the City of Fairway, Kansas, is hereby repealed.

SECTION 14. That Ordinance No. 1584 is hereby repealed.

SECTION 15. That the repeal of any ordinance or parts of an ordinance by this Ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding under or by virtue of the repealed ordinance.

SECTION 16. That this ordinance shall take effect upon adoption and publication in the official City newspaper.

PASSED by the City Council this 10th day of October, 2016. **APPROVED** by the Mayor.

CITY OF FAIRWAY CORPORATE SEAL JOHNSON COUNTY JUNE 21 1949 STATE OF KANSAS

Jerry Wiley, Mayor

ATTEST:

Kathy Axelson, City Administrator /City Clerk

APPROVED AS TO FORM

Stephen P. Chinn, City Attorney