

Chapter 17

OFFENSES—MISCELLANEOUS*

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ARTICLE I. IN GENERAL

Sec. 17-1. Consumption of alcoholic beverages in public.

No person shall, open to public view, consume or drink any intoxicating liquor of any kind or any beer in or upon any public street or sidewalk. (Gen. Ords. 1959, §52.20; Ord. No. 6236, §1, 2-16-78)

Sec. 17-2. Model airplane glue, plastic cement; sale to minors; inhalation and intoxication.

(a) Except as otherwise provided herein, no person shall sell, display for sale, deliver or give to any individual under the age of twenty-one (21) years, any glue or cement commonly known as model airplane glue, plastic cement, household cement, cement, or any other similar substance, if the glue or cement contains one (1) or more of the following volatile solvents:

- (1) Toluol.
- (2) Hexane.
- (3) Trichloroethylene.
- (4) Acetone.
- (5) Toluene.
- (6) Ethyl acetate.
- (7) Methyl ethyl ketone.
- (8) Trichloroethane.
- (9) Isopropanol.

***Cross references**—General penalty, § 1-8; alcoholic beverages, Ch. 3; animals and fowl, Ch. 4; sale or discharge of fireworks, § 8-7; littering, § 10-55 et seq.; motor vehicles and traffic, Ch. 14; nuisances, Ch. 16.

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- (10) Methyl isobutyl ketone.
- (11) Methyl cellosolve acetate.
- (12) Cyclohexanone.

(b) The provisions of subsection (a) shall not apply where the glue or cement is sold, delivered or given simultaneously with and as part of a kit used for the construction of model airplanes, model boats, model automobiles, model trains or other similar models.

(c) No person shall intentionally smell or inhale the fumes of any solvent named in subsection (a) or induce any other person to do so, for the purpose of causing a condition of, or inducing symptoms of, intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of senses or nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental process; except that this subsection shall not apply to the inhalation of any anesthesia for medical or dental purposes.

(d) No person shall intentionally or willfully induce the symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses or nervous system, distortion of audio, visual or mental processes by the use of any solvent named in subsection (a).

(e) No person shall intentionally possess any solvent named in subsection (a) for the purpose of using it in the manner prohibited by subsection (d) and this section.

(Ord. No. 8797, §1, 2-18-99)

Sec. 17-3. Distributing samples of patent medicines.

No person shall distribute free samples of patent or other medicines by throwing into or leaving upon public or private property or premises, or by distributing the samples in stores or on the streets. Nothing in this section shall prohibit drugstores or licensed pharmacists from distributing such samples at their respective stores, but in such cases distribution shall be made to adults only. (Gen. Ords. 1959, §52.40)

Sec. 17-4. Conspiracy or attempt to commit an offense.

Two (2) or more persons shall not in the city, assemble together, or, being assembled, act in concert to do any unlawful act with force or violence against the property of this city, or the person or property of another, or against the peace or to the terror of others; nor shall they make any movement or preparation therefor. (Gen. Ords. 1959, §52.17)

Sec. 17-5. Games in streets.

No person shall play at ball, or fly any kite, or throw a stone, snowball or other missile in any street. (Gen. Ords. 1959, §52.41)

Sec. 17-6. Abandoned refrigerators and similar devices.

No person shall place or permit to be placed on his land or premises or place or cause to be placed on any premises in a place accessible to children any abandoned, unattended or discarded icebox, refrigerator, or any other container of any kind which has airtight doors. (Gen. Ords. 1959, §52.45)

Sec. 17-7. Crowding in places of amusement.

(a) Any person owning or operating any public amusement, entertainment, picture show or exhibition shall not permit persons to attend and assemble there at any time in excess of the seats or chairs provided for such purpose, or permit any person or assemblage to congregate in the aisles or corridors except for the orderly movement to and from the seats and chairs, or permit more than one (1) person to occupy any seat or chair.

(b) All buildings used in the city for public amusements, entertainments, picture shows or exhibitions shall be made to conform to the requirements of Section 316.060, Revised Statutes of Missouri. (Gen. Ords. 1959, §52.50)

Sec. 17-8. Curfew; responsibility of parents; duty of police officers.

(a) It shall be unlawful for any minor under the age of seventeen (17) years to loiter, idle, wander, stroll or to drive or ride in a motor vehicle, or play in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of 11:00 p.m. and 6:00 a.m. of the following day, official city time, except on Fridays and Saturdays when the hours shall be 12:00 midnight to 6:00 a.m. of the following day, official city time; provided, however, that the provisions of this subsection do not apply to a minor accompanied by his or her parent, guardian, or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian, or other adult person having the care and custody of the minor. Each violation of the provisions of this subsection shall constitute a separate offense.

(b) It shall be unlawful for the parent, guardian, or other adult person having the care and custody of a minor under the age of seventeen (17) years knowingly to permit such minor to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of 11:00 p.m. and 6:00 a.m. of the following day, official city time; provided, however, that the provisions of this subsection do not apply when the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor, or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian, or other adult person having the care and custody of the minor. Each violation of the provisions of this subsection shall constitute a separate offense.

(c) Any police officer finding a child violating the provisions of subsection (a) of this section, shall warn the child to desist immediately from such violation and take the child home to his or her parent or guardian. If said parent or guardian cannot be located, he shall retain custody until the parent or guardian is located, and the child delivered to him or to her. The officer shall also report the violation to his superior officer who shall cause a written report to be served upon the parent, guardian or other person in charge of said child, setting forth the manner in which the subsection has been violated. Any parent, guardian or person in charge of such child who shall knowingly permit such child again to violate the provisions of subsection (a) of this section, after receiving notice of the first violation, shall be

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fined not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00). (Ord. No. 5379, §§1-3, 12-10-70)

Editor's note—Ord. No. 5379, §§1-3, being nonamendatory of this Code, has been included herein as §17-8 at the discretion of the editors.

Sec. 17-9. Possession of marijuana, hashish or apparatus for illegal use thereof.

(a) It shall be unlawful for any person to grow, cultivate, possess, process, have under his control, or compound less than thirty-five (35) grams of the plant *Cannabis sativa* L. (commonly known as marijuana), except as authorized in sections 195.010 to 195.320 of the Revised Statutes of Missouri, or to possess any apparatus, device or instrument for any unauthorized use of the plant *Cannabis sativa* L. or to have in his possession five (5) grams of hashish or less.

(b) "Marijuana" means all parts of the plant *Cannabis sativa* L. 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. (Ord. No. 6605, §1, 6-12-80)

Sec. 17-10. Possession, manufacture, delivery, sale and advertising for sale of drug paraphernalia prohibited.

(a) *Definitions.* For purposes of this section, the following terms are defined:

City's drug possession ordinance means section 17-10 of the Code of the City of Kirkwood in effect upon passage and approval of Ordinance No. 6923.

Controlled substance as used herein shall be defined and include the following:

(1) *Marijuana* means all parts of the plant genus *Cannabis* in any species or form thereof, including, but not limited to, *Cannabis Sativa* L., *Cannabis Indica*, *Cannabis Americana*, *Cannabis Ruderalis*, and *Cannabis Gigantea*, 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 shall 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.

(2) *Controlled substances* as defined and enumerated in Chapter 195 of the Missouri Revised Statutes in effect upon the passage of this section.

Controlled substances act means Chapter 195 of the Missouri Revised Statutes in effect upon the passage of this section.

Drug paraphernalia means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, 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 city's drug possession ordinance or the Controlled Substances Act. It includes, but is not limited to:

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- (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (12) Objects used, intended for use, or designed 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;

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- e. "Roach clips," meaning objects used to hold burning materials, 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. Bonds;
- m. Ice pipes or chillers.

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

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any; of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of the city's drug possession ordinance or the 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. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of the city's drug possession ordinance or the Controlled Substances Act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of the city's drug possession ordinance or the Controlled Substances Act shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;

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11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community; and,
14. Expert testimony concerning its use.

(b) *Possession of drug paraphernalia.* It is unlawful for any person to use, or to possess with intent to use, 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 city's drug possession ordinance or the Controlled Substances Act.

(c) *Manufacture or delivery of drug paraphernalia.* It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, 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 the city's drug possession ordinance or the Controlled Substances Act.

(d) *Advertisement of drug paraphernalia.* It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. (Ord. No. 6923, §1, 8-19-82)

Sec. 17-11. City recycling depository usage.

(a) *Materials permitted to be deposited:* The following materials may be deposited at the city recycling depository, located at 350 South Taylor Avenue, in areas marked for the deposit of such items:

- (1) Aluminum cans;
- (2) Steel cans (fruit, beverage and vegetable cans);
- (3) Glass jars and bottles which are clear glass, green glass or brown glass;
- (4) Newspaper;
- (5) Corrugated cardboard, Kraft paper bags;
- (6) Mixed paper (junk mail, flat cardboard, office paper);
- (7) Plastic bottles #1 and #2 (such as milk jugs, soda bottles) with lids removed;
- (8) Magazines (no more than 1½" in width);
- (9) Telephone books;
- (10) Textiles

(b) *Depositing of unauthorized materials at Depository:* The dumping, depositing or placing of any material other than those set forth above in Section 17-11(a) at the City of Kirkwood Recycling Depository shall be prohibited.

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(c) *Ownership of authorized material deposited at the Depository:* All material authorized by Section 17-11(a) deposited at the Kirkwood Recycling Depository shall become the property of the City of Kirkwood and removal of such material without the expressed authorization of the City of Kirkwood shall be prohibited.

(d) *Violations:* Violations of any of the provisions set forth herein shall subject the violator to the penalties set forth in the Section 1-8 of the Kirkwood Code of Ordinances.

(Ord. No. 8491, §1, 3-7-96; Ord. No. 9077, §1, 9-20-01)

Sec. 17-12. Sale and use of certain fireworks prohibited.

(a) It shall be unlawful for any person, except the City of Kirkwood, to sell or use any pyrotechnics, commonly known as "fireworks".

(b) This section does not prohibit a manufacturer, distributor or any other person from storing, selling, shipping or otherwise transporting fireworks provided they possess the proper licensing as specified by state and federal law.

(Ord. No. 8394, §1, 3-2-95)

Sec. 17-13. Prohibition of the Sale of Tobacco Products to a Minor.

(a) *Definitions:* For purposes of this Section, the following terms shall be construed as follows:

"Distribute," means a conveyance to the public by sale, barter, gift or sample.

"Minor," means a person under the age of eighteen.

"Proof of age," means a driver's license or other generally accepted means of identification that contains a picture of the individual and appears on its face to be valid.

"Rolling papers," means paper designed, manufactured, marketed or sold for use primarily as a wrapping or enclosure for tobacco, which enables a person to roll loose tobacco into a smokeable cigarette.

"Sample," means a tobacco product distributed to members of the general public or tobacco product samples.

"Sampling," means the distribution to members of the general public of tobacco product samples.

"Tobacco products," means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco.

"Vending machine," means any mechanical electric or electronic self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

(b) No person shall sell any tobacco product or distribute any tobacco product or rolling papers to any minor. This paragraph shall not apply to the distribution by family members on property that is not open to the public.

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(c) No person seventeen (17) years of age or under shall purchase, attempt to purchase or have in his possession any cigarettes, cigarette wrappers or tobacco products (cigars, pipes, chewing tobacco, snuff, etc.) within the City limits.

(d) It shall be unlawful for any person of the age of seventeen (17) years or under to represent that he has attained the age of eighteen (18) for the purpose of purchasing, asking for or in any way receiving cigarettes, cigarette wrappers or tobacco products (cigars, pipes, chewing tobacco, snuff, etc.) except in cases authorized by law.

(e) It shall be unlawful for any person to give, lend, sell or otherwise provide any person of the age of seventeen (17) years and under any falsified identification or identification of another person for the purpose of establishing the age of the individual as being eighteen (18) years or older.

(f) The owner of an establishment at which tobacco products or rolling papers are sold at retail or through vending machines shall cause to be prominently displayed, in a conspicuous place at every display from which tobacco products are sold and upon every vending machine from which tobacco products may be purchased, a sign that shall:

(1) Contain in red lettering at least one-half inch high on a white background the following: "It is a violation of state law for cigarettes or other tobacco products to be sold to any person under the age of eighteen"; and

(2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle, and the words "Under 18".

(g) It shall be unlawful for any person to engage in tobacco product distribution to persons under eighteen (18) years of age.

(h) A person selling tobacco products or rolling papers or distributing tobacco product samples shall require proof of age from a prospective purchaser or recipient if an ordinary person would conclude on the basis of appearance that such prospective purchaser or recipient may be under the age of eighteen.

(i) Reasonable reliance on proof of age or on the appearance of the purchaser or recipient shall be a defense to any action for a violation of this section. No person shall be liable for more than one violation of this section on any single day.

(j) If a sale is made by an employee of the owner of an establishment in violation of this section, the employee shall be guilty of an offense established herein. If a vending machine is in violation of this section, the owner of the establishment shall be guilty of an offense established herein. If a sample is distributed by an employee of a company conducting the sampling, such employees shall be guilty of an offense established herein.

(k) Violation of this section shall be punishable by a fine of not less than five dollars (\$5.00) and not more than five hundred dollars (\$500.00) or by imprisonment for a period not to exceed three (3) months or by both such fine and imprisonment. Each day that the violation exists is to be considered a separate offense.

(Ord. No. 8440, §1, 8-3-95; Ord. No. 8754, §1, 9-10-98)

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Secs. 17-14. Responsibility for the Conduct of Another.

No person, with the purpose of promoting the commission of an offense, shall aid or agree to aid or attempt to aid another person, either before or during the commission of the offense, in planning, committing or attempting to commit the offense unless:

(a) That person is the victim of the offense committed or attempted;

(b) The offense is so defined that the person's conduct was necessarily incident to the commission or attempt to commit the offense. If the person's conduct constitutes a related but separate offense, he is criminally responsible for that offense but not for the conduct or offense committed or attempted by another person; or

(c) The defendant shows that before the commission of the offense he abandoned his purpose and gave timely warning to law enforcement authorities or otherwise made a proper effort to prevent the commission of the offense.

(Ord. No. 8720, §1, 4-16-98)

Sec. 17-15. Hate crimes.

(a) Definitions. For purposes of this section, the following terms mean:

1. "Disability," a physical or mental impairment which substantially limits one or more of a person's major life activities, being regarded as having such an impairment, or a record of having such an impairment, and
2. "Sexual orientation," male or female heterosexuality, homosexuality or bisexuality by inclination, practice, identity or expression, or having a self-image or identity not traditionally associated with one's gender.

(b) For all violations of the following Ordinances, which the city believes to be knowingly motivated because of the race, color, religion, national origin, sex, sexual orientation, or disability of the victim or victims, the city may charge the crime or crimes under this section:

1. Section 17-28, relating to assault and battery; affray;
2. Section 17-38, relating to harassment;
3. Section 17-58, relating to damaging, defacing property or another;
4. Section 17-59, relating to trespass;
5. Section 17-130, relating to discharge of firearms and similar weapons;
6. Section 17-131, relating to possession of dangerous weapons; or
7. Section 17-132, relating to concealed weapons.

(c) Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be subject to the penalty provided in Chapter 1, Section 1-8 of the Code of Ordinances of the City of Kirkwood, but in no event shall the penalty be less than \$500.00.

(Ord. No. 8988, §1, 1-18-01)

Secs. 17-16—17-27. Reserved.

**ARTICLE II. DISORDERLY AND
SIMILAR CONDUCT**

Sec. 17-28. Assault.

A person commits the crime of assault if:

- (1) The person attempts to cause or recklessly causes physical injury to another person; or
- (2) With criminal negligence the person causes physical injury to another person by means of a deadly weapon; or
- (3) The person purposefully places another person in apprehension of immediate physical injury; or
- (4) The person recklessly engages in conduct which creates a grave risk of death or serious physical injury to another person; or
- (5) The person knowingly causes physical contact with another person knowing the other person will regard the contact as offensive or provocative; or
- (6) The person knowingly causes physical contact with an incapacitated person which a reasonable person, who is not incapacitated, would consider offensive or provocative. "Incapacitated person" is defined as one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he or she lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur.

(Ord. 9430, §1, 10-7-04)

Sec. 17-29. Disturbing the peace.

No person shall disturb the peace of others by violent, tumultuous, offensive or obstreperous conduct or carriage, or by loud and unusual noises, or by unseemly, profane, obscene or offensive language, calculated to provoke a breach of the peace; or permit any such conduct in or upon any house or premises owned or possessed by him or under his management or control, so that others in the vicinity are disturbed thereby. (Gen. Ords. 1959, §52.04)

Sec. 17-30. Disorderly conduct.

No person shall disturb the Peace by any noisy, riotous or disorderly conduct in any street or other public place or public resort for pleasure or amusement, or use indecent, loud or profane language on the public streets, or other public places, or public resorts for pleasure or amusement. (Gen. Ords. 1959, §52.05)

Sec. 17-31. Responsibility of keepers of public resorts to prevent disorderly conduct.

No keeper of a place of public resort shall permit any breach of the peace or disturbance of public order or decorum by noisy, riotous and disorderly conduct on his premises, when it is in his power to prevent it. (Gen. Ords. 1959, §52.06)

Sec. 17-32. Disturbing religious worship, or other lawful assemblages.

(a) No person shall disquiet or disturb any congregation or assemblage met for religious worship by making a noise or by rude or indecent behavior, or profane discourses within their place of worship, or so near the same as to disturb the order or solemnity of the meeting.

(b) No person shall disturb any lawful assemblage of persons by rude or indecent behavior. (Gen. Ords. 1959, §§52.07, 52.08)

Secs. 17-33, 17-34. Reserved.

Editor's note—Sections 17-33 and 17-34, pertaining to loitering and vagrancy, and derived from Gen. Ords. 1959, §§52.07, 52.32, were repealed by Ord. No. 7007, §1, enacted March 3, 1983.

Sec. 17-35. Obstructing public ways by loitering.

It shall be unlawful for any person, after first being warned by a law enforcement officer, or where a "no loitering" sign or signs have been posted, to loiter, stand, sit or lie in or upon any public or quasi-public sidewalk, street, curb, crosswalk, walkway area, mall or that portion of private property utilized for public use, so as to hinder or obstruct unreasonably the free passage of pedestrians or vehicles thereon; nor shall any person block or obstruct, or prevent the free access to the entrance to any building open to the public. (Ord. 8260, 11-4-93)

Sec. 17-36. Disturbing noises prohibited.

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise which unreasonably or unnecessarily either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the city. The provisions of this section shall not apply to or be enforced against:

(a) Any vehicle of the city while engaged in necessary public business.

(b) Excavations or repairs of streets by or on behalf of the city, county or state at night when public welfare and convenience renders it impossible to perform such work during the day.

(c) The reasonable use of amplifiers or loudspeakers in the course of public addresses which are noncommercial in character.

Sec. 17-37. Conduct constituting disturbing noises.

The following activity, among others, shall constitute a violation of Section 17-36, but such enumeration shall not be exclusive:

(a) *Horns, signaling devices, etc.* The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place in the city except as a danger

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warning; the creation of any unreasonably loud or harsh sound by means of any such signaling device and the sounding of any such device for an unreasonable period of time; the use of any signaling device, except a police whistle or one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust and the use of any such signaling device when traffic is held up for any reason.

(b) *Radios, televisions, phonographs, etc.* The using, operating or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a 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 who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m., in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

(c) *Loudspeakers, amplifiers, etc., for advertising.* The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure without a special permit from the mayor and council. Announcements over loudspeakers can only be made by the announcer in person and without the aid of any mechanical device.

(d) *Yelling, shouting, etc.* Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of any person in the vicinity.

(e) *Animals, birds, etc.* The keeping of any animal or bird which will disturb the comfort or repose of any persons in the vicinity by making long, continual or frequent noise.

(f) *Steam whistle or horn.* The blowing of any train whistle, steam whistle or horn attached to any stationary boiler or locomotive except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper city authorities.

(g) *Exhausts.* The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, motorboat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(h) *Defect in vehicle or load.* The use of any automobile, motorcycle or vehicle so out of repair, so loaded or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.

(i) *Loading, unloading, opening boxes.* The creation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers.

(j) *Construction and repair work.* The exterior construction, demolition, alteration or repair of buildings involving the operation of machinery or equipment which causes loud or disturbing noise except between the hours of 7:00 a.m. and 8:00 p.m. on Monday through Saturday and between 9:00 a.m. and 8:00 p.m. on Sunday, and except for activities by governmental authorities or public utilities when the activities are in response to emergencies or otherwise in the interest of public health and safety.

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(k) *Schools, courts, churches, hospitals, residences.* The creation of any excessive noise on any street adjacent to any school, institution of learning, church or court while the same is in session or adjacent to any hospital or in any residential area, and which unreasonably interferes with the work of such institution, or which disturbs or unduly annoys patients in the hospital; provided, that conspicuous signs are displayed about such institutions indicating the presence of such institutions.

(l) *Hawkers, peddlers, etc.* The shouting and crying of peddlers, hawkers and vendors which disturb the peace and quiet of the neighborhood.

(m) *Noises to attract attention.* The use of any drum or other instrument or device for the purpose of attracting attention to any performance, show or sale by creation of noise.

(n) *Transportation of metal rails, etc.* The transportation of rails, pillars or columns of iron, steel or other material over and along streets and other public places upon carts, drays, cars, trucks or in any other manner so loaded as to cause loud noises or as to disturb the peace and quiet of such streets or other public places.

(o) *Pile drivers, hammers, etc.* The operation from 6:00 p.m. to 7:00 a.m. of any pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist or other appliance, the use of which is attended by loud or unusual noise without a special permit from the mayor and council.

(p) *Blowers.* The operation of any noise-creating blower or power fan or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise from such blower or fan is muffled and such engine is equipped with a muffler device sufficient to deaden such noise.

(q) *Sound trucks.* The use of mechanical loudspeakers or amplifiers on trucks or other moving or standing vehicles for advertising or other commercial purposes; the use of sound trucks for noncommercial purposes during such hours or in such places or with such volume as would constitute such use a public nuisance.

(r) *Automobile repair.* The doing of any activity in the course of repairing or altering a motor vehicle or equipment thereof, in the nighttime, which creates any disturbing noise audible on the premises of another.

(s) *Trash/sanitation services.* The pickup, servicing, loading, dumping, unloading, of any sanitation receptacle by a vehicle between the hours of 11:00 p.m. and 6:00 a.m. on weekdays and between the hours of 11:00 p.m. and 7:00 a.m. on Saturdays and Sundays.

(Ord. No. 8503, §1, 4-18-96)

Secs. 17-38. Harassment.

1. A person commits the crime of harassment if he or she:
 - (a) Knowingly communicates a threat to commit any felony to another person and in so doing frightens, intimidates, or causes emotional distress to such other person;
or

OFFENSES—MISCELLANEOUS

- (b) When communicating with another person, knowingly uses coarse language offensive to one of average sensibility and thereby puts such person in reasonable apprehension of offensive physical contact or harm; or
- (c) Knowingly frightens, intimidates, or causes emotional distress to another person by anonymously making a telephone call or any electronic communication; or
- (d) Knowingly communicates with another person who is, or who purports to be, seventeen years of age or younger and in so doing and without good cause recklessly frightens, intimidates, or causes emotional distress to such other person; or
- (e) Knowingly makes repeated unwanted communication to another person; or
- (f) Without good cause engages in any other act with the purpose to frighten, intimidate, or cause emotional distress to another person, cause such person to be frightened, intimidated, or emotionally distressed, and such person's response to the act is one of a person of average sensibilities considering the age of such person.

2. This section shall not apply to activities of federal, state, county, or municipal law enforcement officers conducting investigations of violation of federal, state, county, or municipal law.

(Ord. No. 8718, §1, 4-2-98; Ord. No. 9904, §1, 3-4-10)

Sec. 17-39. Business hours for service stations and garages in residentially zoned districts.

It shall be unlawful for any person to perform work or operate, or allow any person to perform work or operate a service station or garage in a residentially-zoned district except between the hours of 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 1 p.m. Saturdays, except during the legal holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day when no work shall be performed. Operate or perform work shall be defined as the repair, altering, operating, towing, or moving of a motor vehicle or equipment on the premises of a service station or garage. This restriction shall not prohibit the quiet deposit of a vehicle on the service station or garage premises at any time. (Sub. Bill 9008, §1, 11-4-99)

Sec. 17-40. Misuse of 9-1-1 Emergency Telephone Service.

- (1) **Definitions.** For purpose of this section, the following words, terms, and phrases shall have the following meanings:

Emergency. Any incident involving danger to life or property that calls for an emergency response dispatch of police, fire, EMS or other public safety organizations.

Misuse the 9-1-1 emergency telephone service. Calling “9-1-1” for non-emergency situations causing dispatchers, operators or equipment to be in use for such non-emergency situation.

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- (2) It shall be unlawful for any person to misuse the 9-1-1 emergency telephone service.

(Ord. 9430, §2, 10-7-04)

Secs. 17-41—17-57. Reserved.

ARTICLE III. OFFENSES AGAINST PROPERTY

Sec. 17-58. Damaging, defacing property of another.

No person shall deface or damage any building, fence, sign, tree, lamppost, telegraph, telephone or electric light pole, sidewalk, or other property belonging to the city or of any person, by cutting, breaking, daubing with paint or other substances, marking with chalk or in any other way or manner defacing, tearing down or injuring such property. (Gen. Ords. 1959, §52.39)

Sec. 17-59. Trespass.

No person shall enter upon private property by going upon or into any enclosure, or upon any lot, premise, orchard, or outbuilding of another, without the consent of the owner or occupant thereof. (Gen. Ords. 1959, §52.43)

Sec. 17-60. Damaging city property.

No person shall in this city cut, hack or otherwise injure any awning, post, sign, fire plug, hydrant, ornamental or shade trees, railing, fence or other enclosures, or any other property belonging to the city. (Gen. Ords. 1959, §12.03; Ord. No. 5902, §1, 12-11-75)

Sec. 17-61. Damaging, destroying, or unlawfully withholding library property.

(a) No person shall wilfully and wantonly cut, mutilate, tear, write upon or otherwise deface, destroy or injury, either in whole or in part, any book, magazine, pamphlet, or other publication or property belonging to the Kirkwood Public Library, or suffer or permit any such injuries to be inflicted upon any such property while in his possession or his control, or wilfully deface, damage or destroy any furniture, fixture or furnishing belonging to the Kirkwood Public Library.

(b) It shall be unlawful for any person to take, remove or withhold from the Kirkwood Public Library any book, pamphlet, periodical, picture, paper, map, written record, article, chattel, films, records, tapes, cash or other property except in accordance with the rules of the library. (Gen. Ords. 1959, §52.44; Ord. No. 5939, §1, 3-476)

Sec. 17-62. Stealing.

- (a) As used in this section, the following words shall have the meanings ascribed to them:

Property shall mean everything of the value of five hundred dollars (\$500.00) or less, whether personal, tangible or intangible, in possession or in action, and shall include but not limited to the evidence of a debt actually executed but not delivered or issued as a valid instrument, and personal property shall be construed to mean goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation or any right or title to property shall be created, acknowledged, assigned, transferred, increased, defeated, discharged or diminished.

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Steal shall mean to appropriate by exercising dominion over property in a manner inconsistent with the rights of the owner either by taking, obtaining, using, transferring, concealing or retaining possession of his/her property.

(b) No person shall intentionally steal the property of another, either without his consent or by means of deceit.

(c) If the property stolen within the meaning of subsection (b) is a chattel, and the person charged with stealing the chattel proved by a preponderance of the evidence that no further transfer was made, and, that at the time of the appropriation, intended merely to use the chattel and promptly to return or discontinue his use of it, he has a defense to a prosecution under subsection (b). "Chattel" as used in this subsection, does not include money, securities, negotiable instruments, documents of title, postage or revenue stamps or other valuable papers.

(d) A person who appropriates lost property shall not be deemed to have stolen it within the meaning of subsection (b) unless the property is found under circumstances which gives the finder knowledge of, or means of inquiry, as to the true owner.

(Ord. No. 1959, §52.52; Ord. No. 4670, §1, 12-8-60; Ord. No. 6507, §1, 12-6-79; Ord. No. 8761, §1, 9-17-98; Ord. No. 9205, §1, 11-21-02)

Sec. 17-63. Obtaining property by false pretenses; bad checks; prima facie evidence of violation.

(a) No person who, with the intent to cheat and defraud, shall obtain or attempt to obtain from any other person or persons any money, property or valuable thing whatever, by means or by use of any trick or deception, or false and fraudulent representation, including the fraudulent use of credit cards or other tokens of credit, or statement or by fraudulent pretense or by any other means or instrument or device, commonly called "the confidence game," or by means of or by use of any false or bogus check, or by means of a check drawn with intent to cheat and defraud on a bank in which the drawer of the check knows he has no funds, or by means or by use of any corporation stock or bonds, or by any other written or printed or engraved instrument or spurious coin or metal, and no person shall procure or attempt to procure any article or thing of value by making or drawing or uttering or delivering with intent to defraud, any check, draft or order for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer has not sufficient funds in or credit with such bank or depository for the payment of such check, draft or order in full upon its presentation.

As used in this subsection, the word "credit" shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check, draft or order.

(b) As against the maker or drawer thereof, the making, drawing, uttering or delivering of a check, draft, or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or credit with, such bank or other depository, provided such maker or drawer shall not have paid the drawee thereof, the amount due thereon, together with all costs and protest fees within ten (10) days after receiving notice that such check, draft or order has not been paid by the drawee. (Gen. Ords. 1959, §52.53; Ord. No. 4671, §1, 12-8-60)

Sec. 17-64. Failure to return leased or rented property.

- (1) *Defined.* A person commits the offense of failing to return leased or rented property if, with the intent to deprive the owner thereof, he knowingly fails to return leased or rented personal property to the place and within the time specified in an agreement in writing providing for the leasing or renting of such personal property.
- (2) *Evidence of offense.* It shall be prima facie evidence of the crime of failing to return leased or rented property when a person who has leased or rented personal property of another knowingly fails to return or make arrangements acceptable with the lessor or return the personal property to its owner within ten (10) days after proper notice following the expiration of the lease or rental agreement.
- (3) *Exceptions.* This section shall not apply if such personal property is a vehicle and such return is made more difficult or expensive by a defect in such vehicle which renders such vehicle inoperable, if the lessee shall notify the lessor of the location of such vehicle and such defect before the expiration of the lease or rental agreement or within ten (10) days after proper notice.
- (4) *Notice.* Proper notice by the lessor shall consist of a written demand addressed and mailed by certified or registered mail to the lessee at the address given at the time of making the lease or rental agreement. The notice shall contain a statement that failure to return the property may subject the lessee to prosecution.

(Ord. 9430, §3, 10-7-04)

Sec. 17-65. Prohibited uses of licenses.

It shall be unlawful for any person to display or to permit to be displayed, or to have in his possession, any license knowing the same to be fictitious or to have been canceled, suspended, revoked, disqualified or altered; to lend to or knowingly permit the use of by another any license issued to the person so lending or permitting the use thereof; to display or to represent as one's own any license not issued to the person so displaying the same, or fail or refuse to surrender to the clerk of any division of the circuit court or the director, any license which has been suspended, canceled, disqualified or revoked, as provided by law; to use a false or fictitious name or give a false or fictitious address on any application for a license, or any renewal or duplicate thereof, or knowingly to make a false statement, or knowingly to conceal a material fact, or otherwise commit a fraud in any such application.

(Ord. 9430, §4, 10-7-04)

Sec. 17-66. Tampering.

A person commits the crime of tampering if he or she:

- (1) Tamper with property of another for purpose of causing substantial inconvenience to that person or to another; or
- (2) Unlawfully rides in or upon another's automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle; or

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- (3) Tamper with or makes connection with property of a utility; or
- (4) Tamper with, or causes to be tampered with, any meter or other property of an electric, gas, steam or water utility, the effect of which tampering is either:
 - (a) To prevent the proper measuring of electric, gas, steam or water service; or
 - (b) To permit the diversion of any electric, gas, steam or water service.

In any prosecution under subsection (4), proof that a meter or any other property of a utility has been tampered with, and that the person or persons accused received the use or direct benefit of the electric, gas, steam or water service, with one or more of the effects described in subsections (4)(a) and (4)(b), shall be sufficient to support an inference which the trial court may submit to the trier of fact, from which the trier of fact may conclude that there has been a violation of such subsection by the person or persons who use or receive the direct benefit of the electric, gas steam or water service.

(Ord. 9430 §5, 10-7-04)

Secs. 17-67—17-83. Reserved.

ARTICLE IV. OFFENSES AGAINST PUBLIC DECENCY*

Sec. 17-84. Definitions.

(a) *Obscenity.* Material is obscene if, considered as a whole, its predominant appeal is to prurient interest, that is, a shameful or morbid interest, in nudity, sex or excretion, and if in addition it goes beyond customary limits of candor in describing or representing such matters. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or another especially susceptible audience. Undeveloped photographs, molds, printing plates and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(b) *Person.* As used in this article, the term "person" shall be taken to mean any natural person, firm, partnership, copartnership, association, corporation or organization of any kind or character.

- (c) *Sexual conduct* occurs when there is
 - (1) "Sexual intercourse" which means any penetration, however slight, of the female sex organ by the male sex organ whether or not an emission results; or
 - (2) "Deviate sexual intercourse" which means any sexual act involving the genitals of one person and the mouth, hand, tongue or anus of another person; or

***Editor's note**—Ord. No. 5651, § 1, enacted Dec. 13, 1973, repealed former Art. IV, §§17-84—17-86, relative to lewdness, indecent exposure, obscenity and houses of ill fame, and enacted in lieu thereof a new Art. IV, §§ 17-84—17-90, as herein set out. Former Art. IV was derived from Gen. Ords. 1959, §§ 52.21, 52.29, and provisions which did not contain a history note.

Cross reference—Immodest dress in city parks, § 18-18.

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- (3) “Sexual contact” which means any touching, manual or otherwise, of the anus or genitals of one person by another, done for the purpose of arousing or gratifying sexual desire of either party.

(d) *Something of value* means any money or property, or any token, object or article exchangeable for money or property.

(Ord. No. 5651, §1, 12-13-73; Ord. No. 9903, §1, 3-4-10)

Sec. 17-85. Offenses.

No person shall knowingly:

- (a) Sell, deliver or provide, or offer or agree to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment of the obscene; or
- (b) Present or direct an obscene play, dance or performance, or participate in that portion thereof which makes it obscene; or
- (c) Publish, exhibit or otherwise make available any obscene material; or
- (d) Possess any obscene material for the purpose of sale or other commercial dissemination;
or
- (e) Sell, advertise or otherwise commercially disseminate material, whether or not obscene, by representing or suggesting that such material is obscene; or
- (f) Display, draw or write in any place open to or used by the public, any obscene material, representations or drawings. (Ord. No. 5651, §1, 12-13-73)

Sec. 17-86. Exceptions.

Nothing herein contained shall be deemed to prohibit dissemination of materials, otherwise in violation of this article, restricted to:

- (a) Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or
- (b) Noncommercial dissemination to personal associates over the age of eighteen (18) years.
(Ord. No. 5651, §1, 12-13-73)

Sec. 17-87. Adjudication of obscenity.

In construing the meaning of the terms or phrases used in this article which relate to federal constitutional principles, only such meanings or inclusion shall be adopted as have been settled by controlling majority adopted opinions of the Supreme Court of the United States and not otherwise where such opinions exist; provided further, it is the intent of this article not to adopt any noncontrolling personal views or opinions of any justice or a number thereof less than the majority of the Supreme Court of the United States. (Ord. No. 5651, §1, 12-13-73)

Sec. 17-88. Indecent acts, exhibitions and conduct.

No person shall be or appear in or upon any street, sidewalk, park, public place or place open to the public view in a state of nudity, or shall make any indecent exposure or exhibition of his person for any reason whatsoever, or be guilty of an obscene or filthy act, or any lewd, indecent or immoral conduct or language. (Ord. No. 5651, §1, 12-13-73)

Sec. 17-89. Houses of ill fame.

(a) No person shall keep, maintain, superintend or manage a bawdy house, house of ill fame, house of bad repute, house of prostitution or assignation, or harbor, secrete or permit any girl, under the age of eighteen (18) years, to remain in, visit or frequent such bawdy house, house of ill fame, house of bad repute, prostitution or assignation.

(b) No person shall permit any house, rooms or tenements in his possession, or under his charge and control, to be used for the purpose of prostitution, or house of bad repute. (Ord. No. 5651, §1, 12-13-73)

Sec. 17-90. Prostitution.

(1) A person commits the crime of prostitution if the person engages or offers or agrees to engage in sexual conduct with another person in return for something of value to be received by the person or by a third person.

(2) The judge may order a drug and alcohol abuse treatment program for any person found guilty of prostitution, either after trial or upon a plea of guilty.

(Ord. No. 5651, §1, 12-13-73; Ord. No. 9903, §2, 3-4-10)

Sec. 17-91. Patronizing prostitution – penalty.

(1) A person commits the crime of patronizing prostitution if:

- (a) Pursuant to prior understanding, he or she gives something of value to another person as compensation for that person or a third person having engaged in sexual conduct with him or her, or with another; or
- (b) He or she gives or agrees to give something of value to another person on an understanding that in return therefore that person or a third person will engage in sexual conduct with him or her, or with another; or
- (c) He or she solicits or requests another person to engage in sexual conduct with him or her, or with another, or to secure a third person to engage in sexual conduct with him or her, or with another, in return for something of value.

(2) It shall not be an affirmation defense that the defendant believed that the person he or she patronized for prostitution was eighteen years of age or older.

(Ord. No. 9903, §2, 3-4-10)

Secs. 17-92—17-106. Reserved.

**ARTICLE V. INTERFERENCE WITH GOVERNMENTAL
FUNCTIONS**

Sec. 17-107. Impersonating city officer.

No person shall falsely represent himself to be an officer of the city or, without being duly authorized by the city, exercise or attempt to exercise any of the functions, duties or powers of a city officer. (Gen. Ords. 1959, §52.16)

Sec. 17-108. Interference with city officers.

No person shall hinder, obstruct, resist or otherwise interfere with any city officer in the discharge of his official duties, or attempt to prevent any such officer from arresting any person, or attempt to rescue from such officer any person in his custody. (Gen. Ords. 1959, §52.16)

Sec. 17-109. False statements in official documents.

No person shall knowingly or wilfully file with the city or any of its departments, boards, commissions or officers, any false statement, application, document or affidavit in writing. (Ord. No. 4682, §2, 3-9-61)

Sec. 17-110. Tampering with police dog.

No person may taunt, torment, tease, beat, strike, interfere with, endanger, injure or kill or administer or subject any desensitizing drugs, chemicals or substance to any dog used by a law enforcement officer in the performance of his duties or when the dog is placed in kennel or enclosure while off duty. Note: Does not apply to emergency euthanasia by a veterinarian. (Ord. No. 8858, §1, 10-7-99)

Secs. 17-111—17-129. Reserved.

ARTICLE VI. WEAPONS

Sec. 17-130. Discharge of firearms and similar weapons.

No person, except an official of the United States, the state, the county or the city government in the proper discharge of his official duties, shall fire or discharge any firearm, rifle, airgun, spring gun, or any other implement or weapon which impels- with force a metal pellet of any kind, within the city without a written permit therefor from the mayor. (Gen. Ords. 1959, §52.13)

Sec. 17-131. Unlawful use of weapons.

- (a) A person commits the offense of unlawful use of weapons if he or she knowingly:
 - (1) Carries concealed upon or about his or her person a knife in excess of 1½ inches, a firearm, a blackjack or any other weapon readily capable of lethal use; or
 - (2) Sets a spring gun; or

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- (3) Discharges or shoots a firearm into a dwelling house, a railroad train, boat, aircraft, or motor vehicle as defined in section 302.010, RSMo, or any building or structure used for the assembling of people; or
- (4) Exhibits, in the presence of one or more persons, any weapon readily capable of lethal use in an angry or threatening manner; or
- (5) Possesses or discharges a firearm or projectile weapon while intoxicated; or
- (6) Discharges a firearm within one hundred (100) yards of any occupied school house, courthouse, or church building; or
- (7) Discharges or shoots a firearm at a mark, at any object, or at random, on, along or across a public highway or discharges or shoots a firearm into any outbuilding; or
- (8) Carries a firearm or any other weapon readily capable of lethal use into any church or place where people have assembled for worship, or into any school, or into any election precinct on any election day, or into any building owned or occupied by any agency of the federal government, state government, or political subdivision thereof; or
- (9) Discharges or shoots a firearm at or from a motor vehicle, as defined in section 301.010, RSMo, discharges or shoots a firearm at any person, or at any other motor vehicle, or at any building or habitable structure, unless the person was lawfully acting in self-defense; or
- (10) Carries a firearm, whether loaded or unloaded, or any other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any function or activity sponsored or sanctioned by school officials or the district school board.

(b) Subdivisions (1), (3), (4), (6), (7), (8), (9) and 10 of Subsection (a) of this section shall not apply to or affect any of the following:

- (1) All state, county and municipal peace officers possessing the duty and power of arrest for violation of the general criminal laws of the state or for violation of ordinances of counties or municipalities of the state, whether such officers are within or outside their jurisdictions or on or off duty, or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
- (2) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime;
- (3) Members of the armed forces or National Guard while performing their official duty;
- (4) Those persons vested by Article V, Section 1 of the Constitution of Missouri with the judicial power of the state;
- (5) Any person whose bona fide duty is to execute process, civil or criminal;
- (6) Any federal probation officer;

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(7) Any state probation or parole officer, including supervisors and members of the board of probation and parole;

(8) Any corporate security advisor meeting the definition and fulfilling the requirements of the regulations established by the board of police commissioners under § 84.340, RSMo; and,

(9) Any coroner, deputy coroner, medical examiner, or assistant medical examiner.

(c) Subdivisions (1), (5), (8), and (10) of subsection (a) of this section do not apply when the actor is transporting such weapons in a nonfunctioning state or in an unloaded state when ammunition is not readily accessible or when such weapons are not readily accessible. Subdivision (1) of subsection (a) of this section does not apply to any person twenty-one years of age or older transporting a concealable firearm in the passenger compartment of a motor vehicle, so long as such concealable firearm is otherwise lawfully possessed, nor when the actor is also in possession of an exposed firearm or projectile weapon for the lawful pursuit of game, or is in his or her dwelling unit or upon premises over which the actor has possession, authority or control, or is traveling in a continuous journey peaceably through this state. Subdivision (10) of subsection I of this section does not apply if the firearm is otherwise lawfully possessed by a person while traversing school premises for the purposes of transporting a student to or from school, or possessed by an adult for the purposes of facilitation of a school-sanctioned firearm-related event.

(d) Subdivisions (1), (8), and (10) of subsection (a) of this section shall not apply to any person who has a valid concealed carry endorsement issued pursuant to section 571.094 or a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state.

(e) Subdivisions (3), (4), (5), (6), (7), (8), (9), and (10) of subsection (a) of this section shall not apply to persons who are engaged in a lawful act of defense pursuant to section 563.031, RSMo.

(f) Nothing in this section shall make it unlawful for a student to actually participate in school-sanctioned gun safety courses, student military or ROTC courses, or other school-sponsored firearm-related events, provided the student does not carry a firearm or other weapon readily capable of lethal use into any school, onto any school bus, or onto the premises of any other function or activity sponsored or sanctioned by school officials or the district school board.

(Gen. Ords. 1959, §52.18; Ord. No. 9397, §1, 5-20-04)

Sec. 17-132. Concealed weapons.

(a) No person who has been issued a concealed carry endorsement by the Missouri Director of Revenue under Section 571.094 R.S.Mo. or who has been issued a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state, shall, by authority of that endorsement or permit, be allowed to carry a concealed firearm or to openly carry a firearm into:

(1) Any police station without the consent of the Chief of Police of the City of Kirkwood. Possession of a firearm in a vehicle on the premises of the police station shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.

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- (2) Within twenty-five feet of any polling place on any election day. Possession of a firearm in a vehicle on the premises of the polling place shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- (3) The facility of any adult or juvenile detention or correctional institution, prison or jail. Possession of a firearm in a vehicle on the premises of any adult, juvenile detention, or correctional institution, prison or jail shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- (4) Any meeting of the Kirkwood City Council, except that nothing in this subdivision shall preclude a member of the Kirkwood City Council, holding a valid concealed carry endorsement, from carrying a concealed firearm at a meeting of the City Council provided that it is not otherwise prohibited herein. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;
- (5) Any building owned, leased or controlled by the City of Kirkwood which is clearly identified by signs posted at the entrance to the building or at the restricted area to indicate that carrying a concealed weapon in the building or in a restricted area is prohibited. However, firing ranges, any building used for public housing by private persons, and any private dwellings owned, leased or controlled by the City of Kirkwood are exempted from this restriction unless carrying of a firearm is otherwise prohibited by federal law. All persons violating this subdivision shall be denied entrance to the building, ordered to leave the building, and if any person refuses to leave the premises, such person shall be deemed to be trespassing upon City property and shall be subject to the penalties prescribed under Section 1-8 of the Kirkwood Code of Ordinances in addition to being issued a citation for violation of this section as provided for herein. If such persons are employees of the City of Kirkwood, they may also be subjected to disciplinary measures;
- (6) Any establishment licensed to dispense intoxicating liquor or nonintoxicating beer for consumption on the premises, which portion is primarily devoted to that purpose without the consent of the owner or manager. The provisions of this subdivision shall not apply to the licensee of said establishment. The provisions of this subdivision shall not apply to any bona fide restaurant open to the general public having dining facilities for not less than fifty persons and that receives at least fifty-one percent of its gross annual income from the dining facilities by the sale of food. This subdivision does not prohibit the possession of a firearm in a vehicle on the premises of the establishment and shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. Nothing in this subdivision authorizes any individual who has been issued a concealed carry endorsement to possess any firearm while intoxicated;
- (7) Any place where the carrying of a firearm is prohibited by federal law;
- (8) Any higher education institution or elementary or secondary school facility without the consent of the governing body of the higher education institution or a school official or the district school board. Possession of a firearm in a vehicle on the premises

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of any higher education institution or elementary or secondary school facility shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

(9) Any portion of a building used as a child care facility without the consent of the manager. Nothing in this subdivision shall prevent the operator of a child care facility in a family home from owning or possessing a firearm or a driver's license or nondriver's license containing a concealed carry endorsement;

(10) Any gated area of an amusement park. Possession of a firearm in a vehicle on the premises of the amusement park shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

(11) Any church or other place of religious worship without the consent of the minister or person or persons representing the religious organization that exercises control over the place of religious worship. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

(12) Any private property whose owner has posted the premises as being off-limits to concealed firearms by means of one or more signs displayed in a conspicuous place of a minimum size of eleven inches by fourteen inches with the writing thereon in letters of not less than one inch. The owner, business or commercial lessee, manager of a private business enterprise, or any other organization, entity, or person may prohibit persons holding a concealed carry endorsement from carrying concealed firearms on the premises and may prohibit employees, not authorized by the employer, holding a concealed carry endorsement from carrying concealed firearms on the property of the employer. If the building or the premises are open to the public, the employer of the business enterprise shall post signs on or about the premises if carrying a concealed firearm is prohibited. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. An employer may prohibit employees or other persons holding a concealed carry endorsement from carrying a concealed firearm in vehicles owned by the employer;

(13) Any sports arena or stadium with a seating capacity of five thousand or more. Possession of a firearm in a vehicle on the premises shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises;

(14) Any hospital accessible by the public. Possession of a firearm in a vehicle on the premises of a hospital shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.

(b) Carrying of a concealed firearm in a location prohibited by this section by any individual who holds concealed carry endorsement issued pursuant to this section shall not be a criminal act but may subject the person to denial to the premises or removal from the premises. If such person refuses to leave the premises and a peace officer is summoned, such person may be issued a citation for a violation of this section in an amount not to exceed one hundred dollars for the first offense in addition to citation(s) for violation(s) of other provisions of the Kirkwood Code of Ordinances. If a second citation for a similar violation of this section occurs within a six-month period, such person shall be fined an amount not to exceed two hundred dollars and his or her endorsement to carry concealed firearms shall be suspended for

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a period of one year. If a third citation for a similar violation of this section is issued within one year of the first citation such person shall be fined an amount not to exceed five hundred dollars and shall have his or her concealed carry endorsement revoked and such person shall not be eligible for a concealed carry endorsement for a period of three years. Upon conviction of charges arising from a citation issued pursuant to this subsection, the court shall notify the sheriff of the county which issued the certificate of qualification for a concealed carry endorsement and the department of revenue. Nothing contained herein shall prohibit the issuance of citations for violations of any other provisions of the Kirkwood Code of Ordinances.

(Gen. Ords. 1959, §52.19; Ord. No. 9397, §2, 5-20-04)

Secs. 17-133—17-152. Reserved.

ARTICLE VII. GAMBLING*

Sec. 17-153. Prohibited.

No person shall play at any game for money, or property of any nature or gain, with cards, dice or any other device which may be adapted to or used in playing any game of chance, or in which chance is a material element, or bet or wager on the hands of cards or any game. (Gen. Ords. 1959, §52.28)

Sec. 17-154. Gambling devices.

No person shall set up or keep in the city any table or gambling device, commonly called A B C, faro bank, E O, roulette, equality, keno, or any kind of gambling table or gambling device adapted, devised and designed for the purpose of playing any game of chance, for money or property, and shall induce, entice or permit any person to bet or play at or upon any such gambling table or gambling device, or at or upon any game played only by means of such table or gambling device, or on the side of or against the keeper thereof. (Gen. Ords. 1959, §52.22)

Sec. 17-155. Persons who are deemed keepers of gambling devices.

Each person appearing or acting as master or mistress, or having the care, use or management for the time, of any prohibited gaming table, bank or device, shall be deemed a keeper thereof, and each person who shall appear or act as master or mistress, or having the care, use or management of any house or building, or room or rooms therein, in which any gaming table, bank or device is set up or kept, or of any gaming house, shall be deemed to be the keeper thereof. (Gen. Ords. 1959, §52.27)

Sec. 17-156. Betting on gambling devices.

No person shall in the city bet any money or property of any nature whatsoever upon any gambling device prohibited by this article, or at or upon any other gambling device, or bet upon any game played at or by means of such gaming table or other gambling device, or loan or furnish any money to any other person to bet as prohibited by this section, and the money shall be so used, or in any manner be interested in any such playing or betting at such a device. (Gen. Ords. 1959, §52.23)

*Cross reference—Gambling in city parks, § 18-22.

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Sec. 17-157. Gaming houses.

(a) No person shall knowingly permit any gambling table, bank or device to be set up or used for the purpose of gaming in any house, building, shed, booth, shelter, lot or other premises to him belonging or by him occupied, or of which he has at the time the possession or control.

(b) No person shall in the city set up and keep a common gaming house. (Gen. Ords. 1959, §§52.24, 52.25)

Sec. 17-158. Leasing premises to another for use as a gaming house.

No person shall lease or let to another, any house or other building, or any rooms therein, for the purpose of setting up or keeping therein any of the gaming tables, banks or devices prohibited by this article, or for the purpose of being used and kept as a gaming house. (Gen. Ords. 1959, §52.26)

Sec. 17-159. Bingo.

(a) *Defined.* As used in this section the term "bingo" means a game in which each participant receives one or more cards marked off into twenty-five (25) squares arranged on five (5) horizontal rows of five (5) squares each. Each square is designated by number, letter or by a combination of numbers and letters, except that the center square on the card shall be designated with the word "free." No two (2) cards shall be identical. As the announcer of the game announces a number, letter or combination of numbers and letters, each player covers the square corresponding to the announced number, letter or combination. The numbers, letters or combination of numbers and letters which are announced shall appear on an object selected by chance, either manually or mechanically, from a receptacle containing the objects bearing numbers, letters or combinations of numbers and letters. The winner of each game shall be the player or players who are first to properly cover a predetermined and announced pattern of squares upon the card or cards used by such player or players. A prize or prizes may be awarded to the winner or winners of a game.

(b) *License required.* When the game of bingo is being conducted pursuant to a license issued therefor by the director of the department of revenue of the State of Missouri, the conduct of such game shall not be deemed prohibited or unlawful by any ordinance of the City of Kirkwood.

(c) *Prohibited conduct.* It shall be unlawful for any person or organization to conduct a game of bingo in the City of Kirkwood unless such person or organization has received a license therefor from the director of revenue of the State of Missouri. Any person engaged in any activity for and on behalf of the person or organization conducting such game shall be deemed to be violating this section.

(d) *Penalty for violation.* Any person or organization who shall be found guilty of violation of any provision of this section shall upon conviction be subject to the penalties provided in Section 1-8 of this Code of Ordinances. (Ord. No. 6818, §1, 11-19-81)

Secs. 17-160—17-178. Reserved.

ARTICLE VIII. RAILROADS

Sec. 17-179. Operating regulations.

(a) No railroad car or locomotive shall obstruct any street crossing in the city by standing thereon longer than five (5) minutes.

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- (b) The bell of a railroad engine shall be constantly sounded while moving within the city.
- (c) A man shall be stationed on top of the car at the end of the train farthest from the engine to give danger signals while any railroad cars are being moved backward in the city.
- (d) The whistle of a locomotive engine shall not be sounded within the city. (Gen. Ords. 1959, §52.47)

Sec. 17-180. Trespass on railroad cars.

No person shall climb upon, hold to, or in any manner attach himself to any locomotive or railroad car while the same is in motion. This section shall not apply to any employee of the railroad company, nor to any passenger, nor to any other person who may be acting by permission or under the rules of the railroad company. (Gen. Ords. 1959, §52.48)

Sec. 17-181. Protection of crossings.

(a) Each person operating railroad cars upon a railroad track along or across any street shall erect gates at all cross or intersecting streets, and shall keep a watchman or install an automatic mechanism to close the gates immediately before the passage of any engine, train of cars, and to open the gates immediately after such passage.

(b) No engineer, conductor or employee of a railroad company shall operate any engine, car or train of cars along or across any street which has not been provided with the crossing gates required by subsection (a). (Gen. Ords. 1959, §52.49)

Sec. 17-182—17-189. Reserved.

ARTICLE IX. WATER CONTROL AND LAND DISTURBANCE CONTROL

Sec. 17-190. Water Courses.

(a) No person shall disturb the land surface by grading, filling, or excavating in such a manner to allow the natural or established water course to be diverted or reduced in capacity except as part of an approved building permit, subdivision development, site plan development, grading permit, or authorization of the Metropolitan Sewer District.

(b) No person shall disturb a natural or established water course by reducing the capacity of the water course or diverting the water flow, except as part of an approved building permit, subdivision development, site plan development, grading permit, or authorization of the Metropolitan Sewer District.

Sec. 17-191. Water Control.

(a) No person shall direct storm water or sump pump discharge water through a pipe, culvert, or drain, which discharges within ten feet of the adjacent property line except for (1) house roof or foundation drains, which may be discharged within two feet of the house foundation, (2) discharge into an open natural swale or creek on the same property, or (3) discharge parallel to the adjacent property line within 5 feet of said property line.

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(b) No person shall reconstruct, remove, damage, or restrict a storm water drainage system, private or public, or restrict storm water entry to any storm water drainage system, private or public, except as approved by the City or Metropolitan Sewer District. Property owners shall maintain all private drainage systems on the premises.

(c) No person shall direct water through a pipe, culvert, drain, or sump pump across a public sidewalk. Water may be directed to the street pavement or a pipe may be connected to a street or public storm sewer inlet providing the system is maintained by the property owner.

Sec. 17-192. Land Disturbance.

During land disturbance operations and until ground cover is established, adjoining properties (public or private) shall be protected from dust, deposit of mud or silt or erosion damage.

(a) No person shall disturb the land surface in such a manner to cause or allow siltation on adjacent property, public property (including street pavements, sidewalks and storm water systems), or to cause or allow pollution of a watercourse. A grading permit shall be required in accordance with Chapter 20 of this code.

(b) No person shall disturb the land surface to allow the blowing and scattering of dust particles on adjacent property, public or private.

(c) Before Land disturbance operations begin, during land disturbance operations, during the period the land is disturbed and until ground cover is established, siltation and erosion control devices shall be installed in sufficient numbers and sizes, and shall be maintained to function at their design capacity, to prevent siltation, erosion, or pollution on adjacent properties (public or private) or in water courses. The Public Works Director shall approve erosion and siltation control devices.

(d) No person shall disturb the land in such a manner as to allow the ponding or pooling of water at any time.

(e) Disturbed land areas shall be covered by grass, vegetation, or paved as soon as practical after disturbance.

(f) Land disturbance operations shall be performed in such a manner as not to unreasonably alter, increase, or redirect the surface water runoff so as to cause harm to any person or property.

(Ord. No. 9174, §1, 6-20-02)

Sec. 17-193. Stop Work Order Authorized.

(a) Failure to install and maintain sufficient siltation control devices as approved by the Public Works Director or failure to effectively control the blowing or scattering of dust shall authorize the Public Works Department to issue a Stop Work Order for any grading, foundation, or building permits issued for work on the premises. (Ord. No. 9174, §2, 6-20-02)

Sec. 17-194. Right of Entry.

The Public Works Director or his authorized representative may enter the premises at any reasonable time to perform inspections and the duties imposed by this code. (Ord. No. 9174, §2, 6-20-02)

Sec. 17-195. Penalties.

Any person, firm, or corporation who shall violate any provision of this chapter or shall fail to comply with any requirement thereof, shall, upon conviction thereof, be guilty of a misdemeanor, punishable as prescribed in Section 1-8 of the Code of Ordinances of the City of Kirkwood. Each day's violation of, or refusal or neglect to comply with, any provision of this ordinance or the Code hereby adopted, shall constitute a separate and distinct offense. (Ord. No. 9174, §2, 6-20-02)

Secs. 17-196—17-199. Reserved.

ARTICLE X. CLEAN AIR ACT - SMOKING PROHIBITED

Sec. 17-200. Purpose.

The purposes of this Article are (1) to promote public health by creating environments which reduce citizens' and workers' exposure to secondhand tobacco smoke and (2) to create tobacco smoke free environments for citizens and workers through regulation in public places and the workplace.

Sec. 17-201. Definitions.

(a) The following words, terms and phrases, when used in this Article, shall be construed as defined in this Section:

- (1) “*Bar*” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (2) “*Code Enforcement Officer*” means the Code Enforcement Officer of the City of Kirkwood, Missouri or his or her designee.
- (3) “*Employee*” means any person who performs services for an employer, with or without compensation.
- (4) “*Employer*” means a person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.
- (5) “*Enclosed*” means a space bound on all sides by walls or windows continuous from the floor to the ceiling and enclosed by doors, including, but not limited to, lobbies, offices, rooms, all space therein screened by partitions, which do not extend to the ceiling or are not solid, “office landscaping” or similar structures, and hallways.
- (6) “*Place of Employment*” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

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- (7) “*Public Place*” means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundering facilities, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.
- (8) “*Restaurant*” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers at no cost or for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include an attached bar.
- (9) “*Smoking*” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

Sec. 17-202. Prohibition of smoking in all enclosed places of employment and all enclosed public places.

(a) Smoking shall be prohibited in all enclosed places of employment within the City of Kirkwood.

(b) Smoking shall be prohibited in all enclosed public places within the City of Kirkwood, including but not limited to the following enclosed places:

- (1) Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs;
- (2) Elevators;
- (3) Restrooms;
- (4) Libraries, educational facilities, child care and adult day care facilities, museums, auditoriums, aquariums and art galleries;
- (5) Any health care facility, health clinic or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors’ offices and dentists’ offices;
- (6) Any place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, bowling alley, arenas, health spas, swimming pools, and roller and ice skating rinks;
- (7) Any place used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance;
- (8) Shopping malls;
- (9) Bars;
- (10) Restaurants;

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- (11) Convenience facilities;
- (12) All public areas and waiting rooms of public transportation facilities, including but not limited to bus and train facilities;
- (13) All facilities, buildings, and all vehicles owned, leased, or operated by the City of Kirkwood; and
- (14) Rooms in which meetings or hearings open to the public are held, except where such meetings or hearings are in a private residence.

Sec. 17-203. Responsibilities of proprietors, owners and managers.

(a) A person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this Article in such place. It shall be an affirmative defense to an alleged violation of this Article that a person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished or asked the person to leave the establishment if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.

(b) A person who owns, manages, operates, or otherwise controls a place listed in Section 17-202 shall clearly and conspicuously post “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representations or a burning cigarette enclosed in a red circle with a red bar across it) near all entrances where smoking is prohibited by this Article.

Sec. 17-204. Where smoking is not regulated.

Notwithstanding any other provision of this Article to the contrary, smoking shall be permitted in any and all places not specified in Section 17-202. In particular, but not by limitation, the following shall not be subject to this Article.

(a) Private residences, except when used as licensed child care facilities, adult day care facilities, health care facilities, or enclosed places of employment.

(b) Private vehicles.

(c) Twenty percent (20%) of hotel and motel rooms may be permanently designated as smoking rooms.

(d) Membership associations that were in existence as of March 1, 2009, provided, however, that smoking shall only be allowed in such associations wherein all duties related to the operation of such association, including, but not limited to, the preparation of food and beverages, the service of food and beverages, reception and secretarial work are performed by members of such association who are at least 18 years of age and who do not receive compensation of any kind for the performance of such duties.

(e) Retail tobacco stores that derive more than eighty percent (80%) of their total gross revenue from the sale of loose tobacco, cigarettes, cigars, pipes, or other tobacco-related products, and which are not merely a department or subsection of a larger commercial establishment.

Sec. 17-205. Penalty for violation of this article.

(a) A person who smokes in an area where smoking is prohibited by this Article shall be guilty of an Article violation, punishable by a fine of twenty-five dollars (\$25.00) for the first violation, and fifty dollars (\$50.00) for each subsequent violation.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with this Article shall be guilty of an Article violation, punishable by:

- (1) A fine of fifty dollars (\$50.00) for the first violation;
- (2) A fine of one hundred dollars (\$100.00) for a second violation within a one (1) year period; and
- (3) A fine of two hundred dollars (\$200.00) for a third or subsequent violation within a one (1) year period.

(c) Each day on which a violation of this Article occurs shall be a separate and distinct violation.

Sec. 17-206. Other applicable laws.

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 17-207. Construction.

This Article shall be strictly construed in any interpretation of its meaning. The provisions of this Article are severable. If any provision or its application to any person or circumstance is held invalid by a court of competent jurisdiction the remaining provisions shall continue in full force and effect.

Sec. 17-208. Enforcement of Article.

(a) The authority to administer the provisions of this Article is vested in the Code Enforcement Officer.

(b) The Code Enforcement Officer may call upon the fire and police departments and other departments of the City to aid in the enforcement of the provisions of this Article.

(c) Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Kirkwood, Missouri.

(d) Any person who desires to register a complaint under this Article may initiate enforcement with the Code Enforcement Officer.

(Initiative Petition Vote 11-3-09)