

ORDINANCE NO. 394

AN ORDINANCE DEFINING CERTAIN PUBLIC OFFENSES AND PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF, AND REPEALING ORDINANCES NO. 5-13-14-25-34-49-50-56-64. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HAVEN, KANSAS:

GENERAL PROVISIONS

Section 1. Classification of Misdemeanors and terms of confinement. (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established;

(a) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) year:

(b) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six (6) months;

(c) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one (1) month:

(d) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be a definite term of confinement in the county jail fixed by the court which shall not exceed one (1) year.

Section 2. Fines. A person who has been convicted of a misdemeanor may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(a) For a class A misdemeanor, a sum not exceeding \$2,500;

(b) For a class B misdemeanor, a sum not exceeding \$1,000;

(c) For a class C misdemeanor, a sum not exceeding \$500;

(d) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed \$2,500:

Crimes Against Persons

Section 3. Assault. An assault is an intentional threat or attempt to do bodily harm to another coupled with apparent ability and resulting in immediate apprehension of bodily harm. No bodily contact is necessary.

Assault is a class C misdemeanor

Section 4. Assault of a law enforcement officer. Assault of a law enforcement officer is an assault: as defined in Section 3, committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of his duty.

Assault of a law enforcement officer is a class A misdemeanor. Section 5. Battery. Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

Battery is a class B misdemeanor.

Section 6. Battery against a law enforcement officer. Battery against a law enforcement officer is a battery, as defined in Section 5, committed against a uniformed or properly identified state, county, or city law enforcement officer while such officer is engaged in the performance of his duty.

Battery against a law enforcement officer is a class A misdemeanor.

Section 7. Unlawful interference with a fireman or fire fighter, emergency medical trainee or personnel. Unlawful interference with a fireman or fire fighter or emergency personnel is knowingly and intentionally interfering with, molesting or assaulting, as defined in Section 3, any fireman or fire fighter, any emergency personnel while engaged in the performance of his duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any fireman, fire fighter, or emergency medical personnel, to reach the location of a fire or injured person.

Unlawful interference with a fireman, or fire fighter or emergency medical personnel is a class B misdemeanor.

Section 8. Permitting dangerous animal to be a large. Permitting a dangerous animal to be at large is the act or omission of the owner or custodian of an animal of dangerous or vicious propensities who, knowing of such propensities, permits or suffers such animal to go at large or keeps such animal without taking ordinary care to restrain it.

Permitting a dangerous animal to be at large is a class B misdemeanor.

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CRIMES AGAINST PROPERTY

Section 9. Theft. Theft is any of the following acts done with intent to deprive the owner permanently of his possession, use or benefit of his property.

- (a) Obtaining or exerting unauthorized control over
- (b) Obtaining by deception control over property: or
- (c) Obtaining by threat control over property: or
- (d) Obtaining control over stolen property knowing the

property to have been stolen by another. Theft of property of the value of less than fifty dollars (\$50) is a class A misdemeanor.

Section 10. Criminal trespass. Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft, or watercraft by one who knows he is not authorized or privileged to do so, and

(a) He enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to him by the owner thereof or other authorized person: or

(b) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are fenced or otherwise enclosed. Criminal trespass is a class C misdemeanor.

Section 11. Littering. Littering is dumping, throwing, placing, depositing or leaving, or causing to be dumped, thrown, deposited or left any refuse of any kind or any object or substance which tends to pollute, mar or deface, into, upon or about:

(a) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, water course, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts: or

(b) Any private property without the consent of the owner of occupant of such property.

Littering is a class C misdemeanor.

Section 12. Tampering with a traffic signal. Tampering with a traffic signal is intentionally manipulating, altering, destroying or removing any light, sign, marker, or other signal device erected or installed for the purposes of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft.

Tampering with a traffic signal is a class C misdemeanor.

Section 13. Public Property, Defacing or Injuring.

(a) That any person who shall cut, curve, mark, etch, or engrave any character, figure, letter or name upon any building owned, occupied or used by the city, or who shall in any manner, mar, deface, or injure any trees, shrub, plant, vines, or any other public property, in, on or around the grounds thereof, be fined not less than five dollars nor more than one hundred dollars.

(b) Injury, Parks, Flowers, Etc. That any person who shall willfully and without authority cut, pluck, or otherwise injure any flowers, shrubs, or trees growing in or around any public park, or other public grounds in this city, or who shall willfully injure or destroy any stand, bench, or other property situated on such park or ground, shall upon conviction thereof be fined not less than one dollar nor more than fifty dollars.

CRIMES AGAINST THE PUBLIC PEACE

Section 14. Disorderly conduct. Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace.

(a) Engaging in brawling or fighting: or

(b) Disturbing an assembly, meeting, or procession, not unlawful in its character: or

(c) Using offensive, obscene, or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

Disorderly conduct is a class C misdemeanor.

Section 15. Maintaining a public nuisance. Maintaining a public nuisance is by act, or by failure to perform a legal duty, intentionally causing or permitting a condition to exist which injures or endangers the public health, safety, or welfare.

Maintaining a public nuisance is a class C misdemeanor.

Section 16. Permitting a public nuisance. Permitting a public nuisance is knowingly permitting property under the control of the offender to be used to maintain a public nuisance, as defined in Section 15.

Permitting a public nuisance is a class C misdemeanor.

Section 17. Vagrancy. Vagrancy is:

(a) Engaging in an unlawful occupation: or

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(b) Being of the age of eighteen (18) years or over and able to work and without lawful means of support and failing or refusing to seek employment: or

(c) Loitering on the streets or in a place open to the public with intent to solicit for immoral purposes: or

(d) Loitering in any community without visible means of support: or

(e) Deriving support in whole or in part from begging.

Vagrancy is a class C misdemeanor.

Section 18. Public Intoxication. Public intoxication is being on a highway or street or in a public place or public building while under the influence of intoxicating liquor, narcotics or other drug to the degree that one may endanger himself or other persons or property, or annoy persons in his vicinity.

Public intoxication is a class C misdemeanor.

Section 19. Giving a false alarm. Giving a false alarm is:

(a) Initiating or circulating a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is baseless and under such circumstances that it is likely to cause evacuation of a building, place of assembly, or facility of public transport or to cause public inconvenience or alarm: or

(b) Transmitting in any manner to the fire department of any city, township or other municipality a false alarm of fire, or emergency, knowing at the time of such transmission that there is no reasonable ground for believing that such fire or emergency exists.

Giving a false alarm is a class A misdemeanor.

Section 20. Criminal desecration. (a) Criminal desecration is purposely desecrating any public monument or structure, or any place of worship or purposely and publicly desecrating the national flag, the state flag of Kansas or any other object venerated by the public or a substantial segment thereof.

(2) "Desecrate" means to deface, damage, pollute or otherwise physically mistreat in a way that will outrage the sensibilities of persons likely to observe or discover the action.

(3) Criminal desecration is a class C misdemeanor.

CRIMES AGAINST THE PUBLIC SAFETY

Section 21. Unlawful use of weapons. (1) Unlawful use of weapons is knowingly: (a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sand club, shotgun with a barrel less than eighteen (18) inches in length, metal knuckles or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward, or centrifugal thrust or movement: or

(b) Carrying concealed on one's person or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, sling shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character; Provided, An ordinary pocket knife with no blade more than four (4) inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument; or

(c) Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance; or

(d) Carrying any pistol, revolver or other firearm concealed on the person except when on his land or in his abode or fixed place of business: or

(e) Setting a spring gun: or

(f) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm: or

Unlawful use of a weapon is a class B misdemeanor.

(2) Exemptions. (a) Subsections (1) (a), (b), (c), (d), of this section shall not apply to or affect any of the following; (i) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (ii) Wardens, superintendents and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of a crime; (iii) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; (iv) Manufacture of, transportation to, or sale of weapons to person authorized under (i) through (iii) of this subsection to possess such weapons.

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(b) Subsection (1) (d) of this section shall not apply to or affect the following: (i) Watchmen while actually engaged in the performance of the duties of their employment; or (ii) Licensed hunters or fishermen while engaged in hunting or fishing; or (iii) Persons licensed as private detectives by the state of Kansas, detective or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service.

(3) It shall be a defense that the defendant is within an exemption. Section 22. Unlawful possession of a firearm.

Unlawful possession of a firearm is:

(a) Possession of any firearm by an habitual drunkard or narcotics addict.

Violation of this section is a class B misdemeanor.

Section 23. Creating a hazard. (1) Creating a hazard is:

(a) Storing or abandoning in any place accessible to children, a container which has a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container; or

(b) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located and knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or

(c) Exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children.

(2) Creating a hazard is a class B misdemeanor.

Section 24. Barriers and Guards. That it shall be the duty of every person who shall have charge of the construction of any excavation or obstruction adjacent to or under any sidewalk or street of this city, during the progress of such work, to cause such excavation to be securely guarded by a fence with at least three strings of good six-inch boards or otherwise securely fixed in place: such posts to be not more than six feet apart and the top of the highest post shall be not less than four feet and a half from the surface of the sidewalk or street, and from one-half hour after sunset to one-half hour before sunrise to illuminate such excavation or obstruction with red lights sufficient in number and so placed as to show the full extent thereof. Any person or persons convicted of violating any of the provisions of this section shall be fined not less than five dollars nor more than one hundred dollars.

Section 25. Removing Barricades. That it shall be unlawful for any persons to remove, throw down, run over, or interfere with any barricade or barricades erected by the city or any contractor executing a municipal contract, placed to guard and protect any grading, paving, sidewalk construction or other public work, and any person or persons who shall violate the provisions of this section shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine of not less than five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than five days or more than sixty days, or by both such fine and imprisonment.

Section 26. Public Property: Molesting Sewers. That any person or persons who shall willfully injure or destroy or attempt to injure or destroy any public sewer or sewer system without authority to do so, shall upon conviction thereof be deemed guilty of a misdemeanor and shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, or imprisonment in the county jail for not less than five days nor more than thirty days, or by both such fine and imprisonment.

CRIMES AFFECTING GOVERNMENTAL FUNCTION

Section 27. Obstructing legal process or official duty. Obstructing legal process or official duty is knowingly and willfully obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

Obstructing legal process or official duty in a case of misdemeanor or a civil case is a class A misdemeanor.

Section 28. Failure to appear. Failure to appear is willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days following the date of such forfeiture by one who is charged with a misdemeanor and has been released on bond for appearance before any court of this state, other than the municipal court of a city, for trial or other proceeding prior to conviction, or willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days after his conviction

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of a misdemeanor has become final by one who has been released on an appearance bond by any court of this state.

(2) Any person who is released upon his own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of subsection (1) of this section.

(3) The provisions of subsection (1) of this section shall not apply to any person who forfeits a cash bond supplied pursuant to law upon an arrest for a traffic offense.

(4) Failure to appear is a class B misdemeanor.

INTOXICATING LIQUOR

Section 29. Intoxicating Liquor. Intoxicating liquor includes alcohol, spirits, wine, and beer, and every liquid or solid, patented or not, containing alcohol, spirits wine or beer, and capable of being consumed as a beverage by a human being, but shall not include beer or cereal malt beverage containing not more than three and two-tenths percent (3.2%) of alcohol by weight.

Section 30. Sales to, purchases by or for, or possession by minors forbidden; sales or gifts to, or procurement for incompetents unlawful.

(a) No person shall knowingly or unknowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor as defined by State Statute (41-102), to or for any minor: and no such minor shall represent that he is of age for the purpose of asking for, purchasing or receiving alcoholic liquor from any person except in cases authorized by law.

(b) No minor shall attempt to purchase or purchase alcoholic liquor from any person. No minor shall possess alcoholic liquor. No person shall purchase alcoholic liquor from any person for, on behalf of or at the request of any minor.

(c) No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is mentally incompetent, or any person who is physically or mentally incapacitated by the consumption of such liquor.

(d) Any person violating any of the provisions of this section shall be deemed guilty of a class A misdemeanor, and upon conviction thereof shall be punished at the discretion of the court.

Section 31. Intoxicating Liquors: Prima Facie Evidence. In all prosecutions under this ordinance, for maintaining a common nuisance as herein defined, the finding of intoxicating liquors in the possession of one not legally authorized to sell the same, shall be prima facie evidence that such liquors are kept for sale or use in violation of this ordinance.

Section 32. Intoxicating Liquor: Complaint: Proof, Sufficiency Of. In prosecutions for violations of this ordinance, it shall not be necessary to describe in the complaint the kind of liquor sold or kept for sale or use, or the place where sold or kept, except where the charge is for maintaining a common nuisance; nor shall it be necessary to state the same of the person to whom sold.

Section 33. Severability. In any section, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 34. That this Ordinance shall be in full force and effect from and after its publication once in the official newspaper.

PASSED AND APPROVED this 6th day of March, 1978.

/s/Arthur Peitsch
Mayor

ATTEST:

/s/Vera R. Hiatt
City Clerk