

ORDINANCE NO. G-1173

AN ORDINANCE AMENDING SECTIONS TO CHAPTER 220, ENTITLED "OFFENSES", OF ARTICLE IX, ENTITLED "OFFENSES AGAINST THE PUBLIC SAFETY", OF TITLE II, ENTITLED "PUBLIC HEALTH, SAFETY, AND WELFARE", OF THE CODE OF THE CITY OF JUNCTION CITY, KANSAS.

WHEREAS, Junction City is currently not in compliance with state law regarding weapons ordinances.

WHEREAS, Junction City recognizes the importance in protecting the individuals' rights to keep and bear arms, while at the same time keeping in mind general public safety concerns.

WHEREAS, Junction City will be able to enforce and hold those persons accountable for weapons violations.

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

Section 1. All changes to read as follows:

SECTION 220.745 CRIMINAL CARRYING OF A WEAPON

- A. Criminal carrying of a weapon is knowingly carrying:
1. Any bludgeon, sand club, metal knuckles or throwing star;
 2. Concealed on or about one's person, a billy, blackjack, slingshot, or any other dangerous or deadly weapon or instrument of like character;
 3. On or about 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
 4. Any pistol, revolver or other firearm concealed on or about one's person if such person is under 21 years of age, except when on such person's land or in such person's abode or fixed place of business; or
- B. Criminal carrying of a weapon is a class A nonperson misdemeanor.
- C. Subsection (A) shall not apply to:
1. 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;
 2. Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime while acting within the scope of their authority;
 3. Members of the armed service or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or
 4. The manufacture of, transportation to, or sale of weapons to a person authorized under (1) through (3) of this Subsection to possess such weapons.

- D. As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

SECTION 220.750 CRIMINAL USE OF WEAPONS

A. Criminal use of a weapon is knowingly:

1. Selling, manufacturing, purchasing, or possessing any bludgeon, sand club, metal knuckles or throwing star;
2. Possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slingshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character;
3. Setting a spring gun;
4. Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;
5. Selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful use of a controlled substance;
6. Selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto.
7. Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;
8. Possession of a firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds; or
9. Refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer.

B. Criminal use of weapons as defined in:

1. Subsection (A)(1), (A)(2), (A)(3), (A)(4), (A)(5), (A)(6), or (A)(9) is a class A nonperson misdemeanor;
2. Subsection (A)(7) or (A)(8) is a class B nonperson misdemeanor.

C. Subsections (A)(1) and (A)(2) shall not apply to:

1. 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;
 2. Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime while acting within the scope of their authority;
 3. Members of the armed service or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or
 4. The manufacture of, transportation to, or sale of weapons to a person authorized under (1) through (3) of this Subsection to possess such weapons.
- D. Subsection (A)(8) shall not apply to:
1. Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;
 2. Any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;
 3. Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting the student; or
 4. Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or
 5. Possession of a concealed handgun by an individual who is not prohibited from possessing a firearm under either federal or state law.
- E. Subsection (A)(6) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 75-7c26, and amendments thereto.
- F. As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

SECTION 220.755 RESERVED.

SECTION 220.775 CONFISCATION AND DISPOSITION OF WEAPONS

- A. Upon conviction of violating Sections 220.745, 220.750, or 220.785 of this Article, any weapon seized in connection therewith shall remain in the custody of the trial court.
- B. Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court, be:

1. Destroyed;
 2. Forfeited to the law enforcement agency seizing the weapon for use within such agency, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency's use; or,
 3. Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation forensic laboratory.
- C. If weapons are sold as authorized by subsection (B), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency.

SECTION 220.785 POSSESSION OF A FIREARM WHILE UNDER THE INFLUENCE

- A. Possession of a firearm under the influence is knowingly possessing or carrying a loaded firearm on or about such person, or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm.
- B. Possession of a firearm under the influence is a class A nonperson misdemeanor.
- C. This section shall not apply to:
1. A person who possesses or carries a firearm while in such person's own dwelling or place of business or on land owned or possessed by such person; or
 2. the transitory possession or use of a firearm during an act committed in self-defense or in defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.
- D. If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.
- E. Testing.
1. If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:
 - a. A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;
 - b. a registered nurse or a licensed practical nurse;
 - c. any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive

care technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or

d. a phlebotomist.

2. A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection D.
3. When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.
4. Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.
5. If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.
6. A law enforcement officer may request a urine sample upon meeting the requirements of subsection D.
7. If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:
 - a. A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

- b. a registered nurse or a licensed practical nurse; or
- c. a law enforcement officer of the same sex as the person being tested.

The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in paragraphs (2) and (3) shall apply to the collection of a urine sample.

- 8. The person performing or assisting in the performance of any such test and the law enforcement officer requesting any such test who is acting in accordance with this section shall not be liable in any civil and criminal proceeding involving the action.

F. Evidence.

- 1. The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of possession of a firearm under the influence of alcohol or drugs, or both.
- 2. Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.
- 3. In any criminal prosecution for a violation of this section, if the court finds that a person refused to submit to testing when requested pursuant to this section, the county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this section, a civil penalty not exceeding \$1,000 for each violation.

G. If a person who holds a valid license to carry a concealed handgun issued pursuant to K.S.A. 75-7c01 et seq., and amendments thereto, is convicted of a violation of this section, such person's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or subsequent offense.

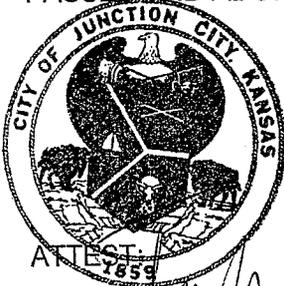
H. In any criminal prosecution for possession of a firearm under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

- 1. If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol or drugs, or both.

2. If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol.
 3. If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapacitated, that fact may be considered to determine if the defendant was under the influence of alcohol or drugs, or both.
- I. The provisions of subsection H shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or drugs, or both.
 - J. Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

Section 2. This ordinance shall become effective upon publication in the Junction City Daily Union as required by law.

PASSED AND ADOPTED THIS 21st DAY OF JULY, 2015.



MICK MCCALLISTER
Mayor



Tyler Ficken
City Clerk