

## CHAPTER V. PUBLIC OFFENSES

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### ARTICLE 1. PUBLIC OFFENSES

- 5-101. *UNIFORM PUBLIC OFFENSE CODE INCORPORATED BY REFERENCE.*** The standard code known as the “Uniform Public Offense Code for Kansas Cities, Edition of 2015,” sponsored by The League of Kansas Municipalities, except for such portions as are hereinafter deleted, modified or amended, is hereby incorporated by reference and shall be as much a part of this article as if set out in full herein. No fewer than three (3) copies of the uniform code shall be marked or stamped “Official Copy as Incorporated by Ordinance No. 1776” and shall be filed with the City Clerk to be open for inspection and available to the public at all reasonable hours of business, provided that Sections 10.6 which prohibits the operation or discharge of any air gun, except within the confines of a building or other structure from which the projectiles cannot escape, shall not be applicable if the Governing Body has adopted a resolution authorizing the operation and discharge of certain air guns, commonly known as “paint ball guns” within an area of the city and during a time specified by such resolution. All sections or portions of the filed copies shall be clearly marked to show deletions or amendments from the standard code.
- 5-102. *UNLAWFUL POSTING.*** It shall be unlawful for any person, firm, or corporation to post or place or cause to be posted or placed any written or printed materials upon any public property or upon private property without the consent of the owner thereof. Unlawful posting is an unclassified misdemeanor.
- 5-103. *BLOCKING CROSSINGS.*** It shall be unlawful for any person having charge, control of management of any railway engine, car or train to cause or permit the same to obstruct any street for more than ten (10) minutes at any one time. Blocking crossings is an unclassified misdemeanor.

**5-104.**

***CURFEW.***

(a) It shall be unlawful for any person under the age of eighteen (18) years to be in, upon or about any public street, alley, sidewalk, public park, public parking lot or other outdoor areas open to general public access within the City after the hour of 11:00 p.m. on Sunday through Thursday and before the hour of 5:00 a.m. the following day, or after the hour of 12:00 midnight on Friday or Saturday and before 5:00 a.m. the following day.

(b) The above provisions shall not apply under the following circumstances:

(1) When the person, while in, on or about such prescribed areas, is at all times accompanied by his or her parent or legal guardian;

(2) When the person is traveling by the most direct route to or from such person's place of employment, or to or from a church, school or organized recreational activity that is sponsored or supervised by one or more adults;

(3) When the person is engaged in normal travel through the City by a direct, continuous route, or is engaged in normal travel by a direct route between a location outside the City and a location inside the City; or

(4) When the person is traveling by the most direct route to a destination under circumstances of an emergency nature necessitating such travel at such time.

(c) Any law enforcement officer finding a person under the age of eighteen (18) years in, upon or about any public street, alley, sidewalk, public park, public parking lot or other outdoor areas open to general public access within the City between the hours as designated in subsection (a) above may stop such person and ascertain the name and address of the person and determine if such person is in violation of the curfew restrictions. If any such person refuses to give his or her correct name or address, or is found to be in violation of the curfew restrictions, such person shall be taken to the police station and held until a parent or legal guardian of such person, or some other adult having the care or custody of such person, can be contacted and take charge of such person.

(d) It shall be unlawful for any parent, guardian or other person lawfully entitled to the care, custody or control of a person under the age of eighteen (18) years to knowingly cause or permit such person to be in violation of the curfew.

(e) Any violation of the above curfew provisions shall be punishable as and for a Class C violation under the Uniform Public Offense Code as adopted by the City.

**5-105. POSSESSION OF MARIJUANA.** It shall be unlawful for any person to possess or have under such person's control the substance commonly known as marijuana or any substance which contains any quantity of the hallucinogenic substances known as tetrahydrocannabinols. Possession of marijuana is a Class A Misdemeanor.

**5-106. DRUG PARAPHERNALIA.** The provisions of K.S.A. 65-4150 through 65-4157, inclusive, and K.S.A. 65-4171 through 65-4175, inclusive, all as amended, are hereby incorporated by reference. Possession of drug paraphernalia is a Class A violation.

**5-107. FAILURE TO APPEAR OR COMPLY.**

(a) It shall be unlawful for any person to fail to appear in court at the appointed time to respond to a traffic citation, complaint, summons, or warrant.

(b) It shall be unlawful for any person to fail to pay in full any fine or court cost imposed by the court or to fail to comply with any other order issued by the court.

(c) Any person who forfeits a cash bond in accordance with the established bond schedule for a traffic citation not requiring appearance shall not be considered in violation of this article.

(d) Failure to appear or comply is an unclassified misdemeanor.

(e) Any person violating this article shall be punished pursuant to the penalties listed in the Uniform Public Offense Code.

**5-108. PROHIBITED NOISES.**

(a) Statement of intent. No provision of this section shall be constructed to limit or abridge the rights of any person to speak, peacefully assemble and express opinions. It is the purpose of this section to protect individuals from unreasonable intrusions caused by excessive, unnecessary or unusually loud noises.

(b) Definitions. As used in this section:

(1) Emergency means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage or loss which demands immediate action.

(2) Motorcycle means every vehicle defined as a motorcycle in the standard traffic ordinance as adopted by the city.

(3) Motorized bicycle means every vehicle defined as a motorized bicycle in the standard traffic ordinances as adopted

by the city.

(4) Motor vehicle means every vehicle defined as a motor vehicle in the standard traffic ordinances as adopted by the city.

(5) Neighboring inhabitants includes those persons in single-family dwellings, multiple-family dwellings, boarding house rooms, hotel or motel rooms within the vicinity of the noise.

(6) Noise means any sound which annoys or disturbs or which causes or tends to cause an adverse psychological or physiological effect on humans.

(7) Noise disturbance means any sound which:

- a. Endangers or inures the safety or health of humans or animals;
- b. Annoys or disturbs a reasonable person of normal sensitivities; or
- c. Endangers or injures personal or real property.

(8) Person means any individual, association, partnership, or corporation and includes any officer, employee, department, agency or instrumentality of state or any political subdivision of a state.

(9) Powered model vehicle means any self-propelled airborne, waterborne, or land borne plane, vessel, or vehicle, which is not designated to carry persons including, but not limited to, any model airplane, boat, car or rocket.

(10) Public right-of-way means any street, avenue, boulevard, highway, sidewalk, or alley.

(11) Real property boundary means single-family, two-family or multifamily zoning district classifications.

(12) Residential area means the property line along the ground surface and its vertical extension, which separates the real property owned by one person from that owned by another person.

(13) Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter in a medium with internal or interval forces that cause compression and rarefaction of that medium, and which propagates at finite

speed. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

(c) General Prohibitions. In addition to the specific prohibitions outlined in this section, no person shall unreasonably make, continue, or cause to be made, continued, or permitted, any noise disturbance. This section shall not apply to noncommercial public speaking and public assembly activities conducted on any public space or public right-of-way which is otherwise authorized.

(d) Specific Prohibitions. The following acts, and the causing or permitting thereof, are hereby declared to be in violation of this section:

(1) Emergency signaling devices. It shall be unlawful to intentionally sound or permit the sounding outdoors of any fire, burglar or civil defense alarm, siren, whistle, or similar stationary emergency signaling device, except for emergency purposes or for testing, as provided in this section. Testing of a signaling device shall not occur before 7:00 a.m. or after 10:00 p.m. or the closing time of a commercial establishment, whichever shall occur later. Any such testing shall use only the minimum cycle test time.

(2) Powered Model Vehicle. It shall be unlawful to operate or permit the operation of a powered model vehicle or vehicles so as to create a noise disturbance across a residential real property boundary or in a public space between the hours of 10:00 p.m. and 7:00 a.m.

(3) Radios, Television Sets, Musical Instruments, and Similar Devices. It shall be unlawful to operate, play, or permit the operation or playing of any radio, television set, phonograph, drum, musical instrument, or similar device:

- (a) In such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants; or
- (b) In such a manner as to create a noise disturbance across a residential, real property boundary; or
- (c) At any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such instrument or device is operated and who are voluntary listeners thereto; or
- (d) In such a manner as to create a continuing noise disturbance at fifty (50) feet (15.25 meters) from such

device, when operated in or on a motor vehicle on a public right-of-way or space open to the public.

(4) Vehicle or Motorboat Repairs and Testing. It shall be unlawful to repair, rebuild, modify, or test any motor vehicle, motorcycle, motorized bicycle, or motorboat in such a manner as to cause a noise disturbance across a residential real property boundary in any residential district, between the hours of 10:00 p.m. and 7:00 a.m.

(e) Abatement Orders. In lieu of issuing a notice of violation, any city law enforcement officer may issue an order requiring the immediate abatement of any source of sound in violation of this section.

(f) Violation Described; Abatement. No person shall congregate with the other persons because of, participate in, or be in any party or gathering of people from which sound emanates of a sufficient volume so as to be a violation of this section. No person shall visit or remain within any residential dwelling unit wherein such party or gathering of people is taking place except persons who have gone there for the sole purpose of abating said disturbance. A police officer shall order all persons present in any group or gathering from which such sound emanates, other than owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section; failure to disperse shall subject such person or persons to being so charged. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(g) Notice of Violation. Except where a person is acting in good faith to comply with an abatement order issued pursuant to this section any violation shall be cause for a notice of violation to be issued by any city law enforcement officer.

(h) Other Remedies. No provision of this section shall be construed to impair any common-law or statutory cause of action, or legal remedy there from, of any person for injury or damage arising from any violation of this section.

(i) Exception. Provided, however, that the provisions of this section shall not apply to the following:

(1) The emission of sound for the purpose of alerting persons to the existence of an emergency or for the performance of emergency work

(2) Noise resulting from activities of a temporary duration planned by school/university, governmental or community groups

(3) Trash and waste pickup operations

(4) Church bells and campanile chimes

(5) Railroads

(6) Air conditioners

(7) Motorized lawn and garden implements

(j) Penalty. Any person, firm or corporation violating any provision of this section shall be fined not more than five hundred dollars (\$500.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

**5-109.** **PENALTY.** Any person violating any of Sections 5-102 through 5-108 shall be punished pursuant to the applicable penalties listed in the Uniform Public Offense code.

**5-110.** **POSSESSION OF ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE.** It shall be unlawful for any person to have in his or her possession any alcoholic liquor or cereal malt beverage not in its original, unopened container upon any public street, alley, sidewalk, road, highway or any place generally open to the public and not licensed to sell cereal malt beverage for consumption on the premises, or within any vehicle while upon any of these said places, except as provided by Section 3-204.

**5-111.** **TEMPORARY SUSPENSIONS.** The provisions of Section 5-110 may by resolution of the governing body be suspended for such period of time and such places as designated by such duly adopted resolution.

**5-112.** **PENALTY.** Any person convicted of violating Section 5-110 shall, upon conviction, be fined in any sum not to exceed Five Hundred Dollars (\$500.00) or confined in jail for a term not to exceed Thirty (30) days.

## **ARTICLE 2. TRAFFIC OFFENSES AND REGULATIONS**

- 5-201. STANDARD TRAFFIC ORDINANCE INCORPORATED BY REFERENCE.** The standard code known as “Standard Traffic Ordinance for Kansas Cities, Edition 2015,” prepared by The League of Kansas Municipalities, except such portions as are hereinafter deleted, modified or amended, is hereby incorporated by reference and shall be as much a part of this article as if set out in full herein. The filed copies of the code shall be marked or stamped “Official Copy as Incorporated by Ordinance No. 1775”. All sections or portions of the filed copies shall be clearly marked to show deletions or amendments from the standard code.
- 5-202. TRAFFIC CONTROL DEVICES AND MARKINGS.** The Standard Traffic Ordinance as adopted is hereby modified by adding thereto the following: The City Manager shall establish and fix the location of such traffic control devices as may be deemed necessary to guide and warn traffic under the provisions of this chapter, other traffic ordinances and the state laws. The Chief of Police shall place and maintain such traffic control signs, signals and devices when and as may be required to make effective the provisions of this chapter and other ordinances for the regulation of traffic. Any official traffic control device placed pursuant to this section shall be marked and labeled on a map of the City of Herington for the purpose of displaying all such traffic control devices and shall be filed with the City Clerk to be open to inspection and available to the public at all reasonable hours of business. The Manual on Uniform Traffic Control Devices, Millennium Edition, published by the U. S. Department of Transportation, Federal Highway Administration, is adopted and incorporated by reference in it’s entirety and shall be as much a part of this article as if set out in full herein. The filed copies of the manual shall be marked or stamped “Official Copy as Incorporated by Ordinance No. 1582.” All sections or portions of the filed copies shall be clearly marked to show deletions or amendments from the standard manual.
- 5-203. CARELESS DRIVING.**
- (a) It shall be unlawful for any person to operate a vehicle in a careless heedless, or inattentive manner, or without due caution or circumspection, or in any manner not constituting reckless driving, but so as to endanger or be likely to endanger any person or property.
- (b) Any person violating this ordinance shall be punished pursuant to the general penalty provisions of the Standard Traffic Ordinance.



**5-204.**

***PARKING OF CERTAIN VEHICLES AND EQUIPMENT.***

(a) It shall be unlawful for any person to cause or allow any truck with a registered gross weight of 24,000 pounds or more, truck tractor, trailer, semi-trailer, transport, implement or machinery, which is registered in the name or under the control of such person, to be parked for a period of two (2) hours or more upon any street, alley, or public right-of-way.

(b) Any person violating this section shall be subject to the penalty set forth in Section 1-811.

**5-205.**

***OPERATION OF OFF-ROAD VEHICLES PROHIBITED ON CITY STREETS.***

For purposes pertinent to this Article, "Off-road Vehicles" shall include, but are limited to three and four wheel all-terrain vehicles, go-carts, dune buggies, midget vehicles and any other motorized vehicle not required by law to have a license plate. This Ordinance does not pertain to farm tractors or farm implements when used for agricultural purposes, nor shall it pertain to the above mentioned vehicles when used for legitimate agricultural purposes, or lawnmowers. Exceptions may be made for vehicles used by handicapped persons with authorization to be granted by the Police Chief and for such vehicles used in parades and other official city events.

For purposes pertinent to this Article, "Utility Vehicle", means a motor vehicle that has not less than three wheels in contact with the ground, an unladen weight of not more than 1,800 pounds, is designed to be operated at not more than 25 miles per hour, is designed to carry not more than four persons, including the driver and is not expressly prohibited for operation within the city limits under this or any other Article of the Herington City Code as currently adopted. Utility vehicles contemplated and included under this definition may include but are not limited to various motorized vehicles commonly known or referred to as Golf carts, Mules, or Gators. Any other similar vehicles are expressly subject to City Manager approval prior to issuance of any permit required under Section 5-210 herein.

This ordinance does not pertain to or authorize use of "All-Terrain Vehicles", farm tractors, or farm implements within the city limits when used for agricultural purposes, nor shall it pertain to utility vehicles when used for agricultural purposes. Further, this Article does not pertain to or authorize use of any form of riding lawnmower on public streets within the city limits. Exceptions may be made for vehicles used by handicapped persons and for such vehicles used in parades and other official city events with

authorization in either case to be granted by the City Manager or Police Chief.

No all-terrain or off-road vehicles may be operated within the limits of the City, except that a person may operate such a vehicle on real property owned by the person or upon private real property with the written permission of the owner of said real property. No all-terrain or off-road vehicle shall be operated for agricultural purposes by an operator that does not have a valid Kansas driver's license.

**5-206. OPERATION OF UTILITY VEHICLES.**

(a) Utility vehicles, as defined or authorized in this section, may be operated upon the public highways, streets, roads and alleys within the corporate limits of the city; provided, however, that no utility vehicle may be operated upon any public highway, street, road and alley with a posted speed limit in excess of 30 miles per hour. No utility vehicle shall be operated on any interstate highway, federal highway or state highway; provided, however, that the provisions of this subsection shall not prohibit a utility vehicle from crossing a federal or state highway with a posted speed limit greater than 30 miles per hour.

(b) Any such vehicle operated on any public highway, street, road or alley shall be equipped with all lighting required of any personal vehicle including but not limited to headlights, brake lights, and turn signals.

(c) Every person operating a utility vehicle on the public highways, streets, roads and alleys of the city shall be subject to all of the duties applicable to a driver of a vehicle imposed by law.

**5-207. SAME; VALID DRIVER'S LICENSE REQUIRED; PENALTY.** No person shall operate a utility vehicle on any public highway, street, road or alley within the corporate limits of the city unless such person has a valid driver's license. Violation of this section is punishable by a fine of not more than \$500.00 or by imprisonment for not more than ninety (90) days or by both such fine and imprisonment.

**5-208. SAME; DEFINITION:** "Utility Vehicle", for purposes of this section, means a motor vehicle that has not less than three wheels in contact with the ground, an unladen weight of not more than 1,800 pounds, is designed to be operated at not more than 25 miles per hour, is designed to carry not more than four persons, including the driver and is not expressly prohibited for operation within the city limits under Section 2-205 of this Article as an "All-Terrain Vehicle" or "Off-Road Vehicle" .

- 5-209. SAME; PENALTY.** Unless specifically provided herein, a violation of this section shall be deemed an ordinance traffic infraction. Upon an entry of a plea of guilty or no contest or upon being convicted of such violation, the penalty imposed shall be in accordance with Section 201, 2015 Standard Traffic Ordinance, and amendments thereto, or such other similar provision as the City may then have in effect.
- 5-210. PERMIT REQUIRED.** Any such utility vehicle to be operated within the city limits of the City of Herington, Kansas shall be authorized to do so by permit granted by the City. Any owner shall, prior to operation within the city limits, make proper application with the City and receive a permit authorizing such operation. Any submitted application is subject to review by the City Manager or his designate for qualification of the utility vehicle as permissible under Section 2-206 of the Article and shall be assessed an annual permit fee of ten dollars (\$10.00) which must be paid prior to issuance of any required permit.
- 5-211. SAME; INSURANCE REQUIRED; PENALTY:**
- (a) Every owner of a utility vehicle, as defined herein, shall provide liability coverage in accordance with Section 200 of the 2015 Standard Traffic Ordinance, and amendments thereto, or such other similar provision as the City may then have in effect and the Kansas Automobile Injury Reparations Act, K.S.A. 40-3101, et seq., and amendments thereto.
- (b) All provisions of Section 200 of the 2015 Standard Traffic Ordinance, and amendments thereto, or such other similar provision as the City may then have in effect, including penalty provisions, shall be applicable to all owners and operators of utility vehicles.

### **ARTICLE 3. IMPOUNDMENT OF VEHICLES**

- 5-301. IMPOUNDMENT OF VEHICLES.** The Chief of Police, or any law enforcement officer, or any person authorized to act thereunder may tow or cause to be towed and removed and impounded any vehicle from any street, alley, or highway, sidewalk, or any public right-of-way, or public property without the permission of the owner, under the following circumstances:
- (a) When any vehicle is left unattended upon any bridge, roadway, street, alley, public right-of-way or public property where such vehicle obstructs the normal traffic flow.
- (b) When any vehicle is disabled and inoperable and such vehicle obstructs the normal traffic flow.

(c) When a vehicle is illegally parked and it constitutes a traffic hazard or disrupts the natural flow of the traffic.

(d) When the driver of a vehicle is taken into custody by law enforcement authorities and such vehicle would thereby remain unattended.

(e) When the removal of a vehicle is necessary in the public's interest because of snow, flood, fire, storm, or other reasons that may constitute an emergency.

(f) When any vehicle is reasonably suspected of being a stolen vehicle, or contains stolen goods or contraband.

(g) When any vehicle is parked upon private property without the permission of the property owner.

(h) When a vehicle is illegally parked or left standing so as to obstruct the normal movement of traffic to and from private property.

**5-302.        *PRE-TOW NOTICE.*** Whenever vehicles are subject to being towed and impounded, as herein provided, the owner, driver or person in charge of such vehicle shall be notified and given a reasonable time under the circumstances involved to remove the vehicle. However, where the owner, driver or other person in charge of such vehicle cannot be located after a bona fide effort has been made to do so, then the vehicle may be towed and impounded as provided under this article.

**5-303.        *NOTICE.***  
(a) Whenever a vehicle which is registered in Kansas is impounded pursuant to this article the police department shall mail a notice by certified mail to the registered owner thereof, addressed to the address shown on the certificate of registration, and to the lienholder if any, stating the reason for the impoundment, the rights of the owner or lienholder as set forth in this chapter as to recovery of the vehicle, and the statement that unless the owner or lienholder exercises his or her rights within thirty (30) days from the date of the mailing of the notice, that the vehicle will be sold at public auction to cover the cost of towing and storage, as well as any fines accrued as of the date of the towing. Notice shall be mailed before the fifth full working day following the date of towing. Failure to receive such notice shall not invalidate any subsequent action taken.

(b) If the impounded vehicle is registered in another state, or bears no registration plates, the police department shall take prompt action, reasonably calculated to apprise the owner, or lienholder, if any, of the vehicle's location and potential disposition. If the police department is unsuccessful in determining the name and address of the owner or any lienholder of the vehicle, the police

department shall publish a notice once each week for two (2) consecutive weeks in the official city newspaper describing the motor vehicle by name of make, model, color, and serial number, and also state the reasons for the impoundment, information regarding the right of the owner or lienholder in the recovery of the vehicle and a statement that unless the owner or lienholder takes action within thirty (30) days of the date of the second publication, the vehicle will be sold at public auction to cover any towing and storage costs, as well as any fines accrued as to the date of towing. If the police department is successful in locating the name and address of the owner or any lienholder, the department shall afford the same notice to such person or persons set forth in the preceding subsection.

**5-304. SAME; RELEASE TO OWNER OR LIENHOLDER.** Once a vehicle has been impounded, the owner or lienholder may obtain release by:

(a) Presenting proof of ownership in the form of motor vehicle title or certificate of registration to the police department. The police department will advise the claimant of outstanding fines which shall be paid before release of the vehicle.

(b) If there are not fines accrued against an impounded vehicle, the claimant will be advised of the place of storage. The police department will then notify the storage yard and tow service that the vehicle may be released. Release may be accomplished by the claimant upon settlement of tow and storage charges with the tow service.

(c) The impounded vehicle may be withheld from release if needed for evidentiary purposes.

**5-305. SAME: DISPOSITION OF VEHICLE.** Whenever, pursuant to the terms of this article, a vehicle has been stored in any public or private garage or yard maintained or designed by the city for the storage of impounded vehicles for a period of sixty (60) days, and no claim of ownership or the right to possession thereof has been made, or when such claim has been made but not established to the satisfaction of the Chief of Police, and no suit or action to determine such claim has been instituted, the Chief of Police shall order the appraisal of the value of the vehicle, shall declare the vehicle to be abandoned and shall dispose of the vehicle in the manner provided by K.S.A. 8-1102.

#### **ARTICLE 4. HAZARDOUS MATERIALS**

- 5-401. TRANSPORTATION OF HAZARDOUS MATERIALS.** It shall be unlawful for any person, firm, corporation or other entity to park, house, store or permit to remain upon any public street, alley, park, or upon private property within the City of Herington, Kansas, any other vehicle or trailer or container which shall be used to transport hazardous materials, except while such vehicle shall be attended at all times by the driver thereof or other responsible party while loading or unloading.
- 5-402. HAZARDOUS MATERIAL DEFINED.** As used in this article, the term hazardous materials shall mean any substance that due to its nature may cause injury upon contact therewith, or shall be extremely volatile, flammable or radioactive.
- 5-403. SAME; EXCEPTIONS.** The provisions of this article shall not apply to any container which shall have a capacity of one hundred fifty (150) gallons or less which shall be used for the purpose of supplying fuel for the vehicle on which it is mounted. Except further that these provisions shall not apply to vehicles, trailers, containers or tanks containing anhydrous ammonia or other material primarily used by farmers for fertilizer purposes when such vehicles, trailers, containers or tanks are parked or housed upon property designated for the placement of such vehicle, trailer, container or tank by any farmers cooperative, elevator company or farm supply store located within the city limits.
- 5-404. PENALTY.** Any person, firm, or corporation violating this article shall upon conviction be fined an amount not to exceed five hundred (\$500.00) dollars or imprisoned for a period not to exceed thirty (30) days or both so fined and imprisoned.

## **ARTICLE 5. EMERGENCY ENVIRONMENTAL RESPONSE**

- 5-501. DEFINITIONS.** For the purposes of this article the following terms shall have the indicated meanings:
- (a) *Emergency action* shall mean all of the concerted activities conducted in order to prevent or mitigate injury to human health or the environment from a release or threatened release of any material into or upon the environment.
  - (b) *Governmental entities* shall include the City of Herington, Dickinson County, the Dickinson County Emergency Preparedness Department, The Herington Regional Airport, and any entity responding under a mutual aid agreement with the City of Herington.
  - (c) *Person* shall include any individual corporation, association, partnership, firm, trustee, or legal representative.

(d) *Recoverable expenses*. In general recoverable expenses are those that are reasonable, necessary, and allocable to the emergency action. Recoverable expenses shall not include normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine fire fighting. Expenses allowable for recovery may include, but are not limited to:

(1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the emergency action.

(2) Compensation of employees for the time and efforts devoted specifically to the emergency action that is not otherwise provided for in the government entity's operating budget.

(3) Rental or leasing of equipment used specifically for the emergency action (e. g. protective equipment or clothing, scientific and technical equipment).

(4) Replacement costs for equipment owned by the governmental entity that is contaminated beyond reuse or repair, if the government entity can demonstrate that the equipment was a total loss and that the loss occurred during the emergency action (e. g., self-contained breathing apparatus irretrievably contaminated during the response.)

(5) Decontamination of equipment contaminated during the response.

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the governmental entity.).

(7) Other special services specifically required for the emergency action.

(8) Laboratory costs for purposes of analyzing samples taken during the emergency action.

(9) Any costs of cleanup, storage, or disposal of the released material.

(10) Costs associated with the services, supplies and equipment procured for a specific evacuation.

(11) Medical expenses incurred as a result of response activities.

(12) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this article.

(e) *Release* shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon the environment.

**5-502. PURPOSE.** This article provides a means for the governmental

entities to recover, through civil suit, the recoverable expenses they incur in taking an emergency action.

**5-503.        *LIABILITY.*** Any and all persons responsible for a release or threatened release which results in an emergency action shall be liable to the governmental entities for the recoverable expenses resulting from the emergency action.

**5-504.        *RECOVERY OF EXPENSE.*** The staffs of the governmental entities involved in the emergency action shall keep a detailed record of its recoverable expenses resulting from the emergency action. Promptly after completion of the emergency action, the staffs shall certify those expenses to the appropriate legal counsel and shall request that legal counsel bring a civil action for the recovery of the recoverable expenses against any and all persons responsible for the emergency action. Not less than thirty (30) days before filing the civil suit, legal counsel shall submit a written, itemized claim for the total certified expenses incurred by the governmental entities for the emergency action responsible party and a written notice that, unless the amounts are paid in full to the respective governmental entities within thirty (30) days after the date of the mailing of the claim and notice, legal counsel will file a civil action for the stated amount. Moneys recovered under this article shall be credited to the appropriate funds of the governmental entity from which moneys were expended in performing the emergency action.

## **ARTICLE 6. POSSESSION, USE, AND SALE OF FIREWORKS**

**5-601.        *DEFINITIONS.*** The term "fireworks" and the type and kind of such fireworks permitted under this ordinance shall be referred to and be in compliance with KSA 31155 and the Rules and Regulations of the Kansas State Fire Marshall in Section 2267 of such Rules and Regulations effective January 1, 1973, which are hereby incorporated by reference as provided by law. In addition, fireworks shall not be permitted which are of the "bottlerocket" type.

**5-602.        *PROVISIONS.***

(a) The retail sale of fireworks, which are defined as "Class C Fireworks" not including "bottle rockets", which are expressly prohibited, may only be sold in areas of the city zoned (B-2) Neighborhood Commercial District, (B-3) Highway Industrial District, (B-4) General Commercial District, (I-1) Light Industrial



District and (I-2) Heavy Industrial District between the hours of 8:00 am to 11:00 pm on the days specified by Kansas Administrative Regulation subsection 22-6-5 (2011) and any subsequent amendments thereto specifically relating to authorized dates of sale, as authorized and implemented by K.S.A. 1984 Supp. 31-133 and all amendments thereto (most recently amended December 29, 2008) by persons or organizations holding a valid, current unrevoked permit issued by the City of Herington, Kansas. The permit application fee shall be the sum of \$200 and shall be renewed annually. Such fee shall be paid, in advance of issuance, to the City Clerk by cash, certified check, money order, Visa, or MasterCard. No sales of Fireworks shall be permitted in areas zoned Residential or in the Central Business District.

(b) The Fire Chief, or his designee, and/or the building official shall approve all locations proposed for sale and storage of fireworks before a permit is issued by the City Clerk. No fireworks shall be set off within a 200 foot radius of a fireworks stand. As a condition of the City issuing a permit, the applicant shall provide proof of a sales tax number or an exemption certificate issued by the Kansas State Department of Revenue. Applications must be received no later than 21 business days prior to the permit issuance date to allow the Fire Chief time to investigate.

(c) Licensee shall hold the City harmless and indemnify it against all claims of liability arising, in any way, from sale of fireworks. Licensee shall further secure and maintain in force a policy of comprehensive general liability with a combined single limit of \$1,000,000 naming the City of Herington as additional insured. A certificate evidencing such insurance shall be furnished to the City.

(d) The Fire Chief shall adopt, for approval by City Manager, administrative regulations/requirements, which may be amended from time to time, regarding the type of sale facility and all related safety/code requirements including fire extinguishers, which are hereby incorporated by reference.

**5-603.            *POSSESSION AND DISCHARGE OF FIREWORKS.***

(a) Discharge of fireworks, which are defined as “Class C Fireworks, not including “bottle rockets” by the Rules of Regulations of the Kansas State Fire Marshall shall be permitted between the hours of 8:00 am and 12:00 am, midnight, on the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> of July. Fireworks may be possessed July 1<sup>st</sup> through July 5<sup>th</sup>. When or if the 3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup> of July calendar day falls on a Sunday,

fireworks shall not be allowed to set off or fired until after 12 noon and must cease at 12 midnight.

(b) The discharging, firing or igniting of fireworks, as defined in Section 5-601 of this Ordinance, is hereby prohibited except in areas provided in this ordinance that includes in residential areas on private property, or in designated public areas. An officer of the law observing reckless discharge of fireworks shall be authorized to confiscate all fireworks in the possession of the person recklessly discharging the same.

(c) It shall be prohibited to discharge or use fireworks in a reckless manner which creates a risk of injury, death, or damage to property.

(d) The Fire Chief has the authority to ban the discharge or use of fireworks within the city limits due to weather conditions.

**5-604. PENALTIES/VIOLATIONS.**

(a) Any person or persons in violation of the sections of this article shall be guilty of an unclassified Misdemeanor. Parent or parents shall be responsible for supervising children (under the age of eighteen) who are discharging fireworks. Failure to properly supervise children discharging fireworks shall be punishable pursuant to this section.

(b) Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and shall be punishable by a fine of not more than \$500.00 and/or by a term of confinement in the county jail not to exceed thirty days.