

Chapter 205

OFFENSES

ARTICLE I

General Provisions

Section 205.005. Uniform Public Offense Code. [R.O. 2008 §205.005; Ord. No. 2860 §§1 – 2, 9-28-2004; Ord. No. 2887 §§1 – 2, 8-9-2005; Ord. No. 2924 §§1 – 2, 9-12-2006; Ord. No. 2952 §§1 – 2, 8-28-2007; Ord. No. 2979 §1, 9-23-2008; Ord. No. 3001 §1, 9-22-2009; Ord. No. 3023 §1, 9-28-2010; Ord. No. 3033 §1, 7-26-2011; Ord. No. 3049 §1, 8-14-2012; Ord. No. 3059 §1, 8-27-2013; Ord. No. 3073 §1, 9-9-2014; Ord. No. 3086 §1, 8-25-2015; Ord. No. 3095 §1, 4-12-2016; Ord. No. 3100 §1, 8-23-2016; Ord. No. 3116, 8-8-2017; Ord. No. 3127, 8-14-2018; Ord. No. 3147, 9-10-2019]

- A. Incorporating Uniform Public Offense Code. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Paola, Kansas, that certain code known as the "Uniform Public Offense Code, Edition of 2019," prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No less than one (1) copy of said Uniform Public Offense Code shall be marked or stamped "OFFICIAL COPY AS ADOPTED BY ORDINANCE NO. 3147," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this Section, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.
- B. Omission. The following sections of the Uniform Public Offense Code, Edition of 2019, relating to the following matters, are hereby omitted and deleted:
1. Section 3.1.1 Domestic Battery.
 2. Section 6.16 Giving a Worthless Check.
 3. Section 6.19 Equity Skimming.
- C. Amendment. Sections 5.6 and 5.7 of the Uniform Public Offense Code for Kansas Cities, Edition of 2019, shall be amended to read as follows:
1. Sec. 5.6. Purchase Of Cigarettes Or Tobacco Products By Persons Under Twenty-One (21). It shall be unlawful for any person:
 - (a) Who is under twenty-one (21) years of age to purchase or attempt to purchase cigarettes, electronic cigarettes, liquid nicotine or tobacco products in any form.
 - (b) For the purposes of this Section, the terms are defined in K.S.A. § 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the

tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

2. Sec. 5.6.1 Possession Of Cigarettes Or Tobacco Products By Persons Under Eighteen (18). It shall be unlawful for any person:
 - (a) Who is under eighteen (18) years of age to possess or attempt to possess cigarettes, electronic cigarettes, liquid nicotine or tobacco products in any form. (K.S.A. § 79-3321:3322, as amended)
 - (b) For the purposes of this Section, the terms are defined in K.S.A. § 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

Violation of this Section shall be an ordinance infraction for which the fine shall be a minimum of twenty-five dollars (\$25.00) and a maximum of one hundred dollars (\$100.00). In addition, the judge may require a person charged with violating this Section to appear in court and/or may require completion of a tobacco education program.

3. Sec. 5.7. Selling, Giving Or Furnishing Cigarettes Or Tobacco Products To Persons Under Twenty-One (21).
 - (a) It shall be unlawful for any person, directly or indirectly, to:
 - (1) Sell, furnish or distribute cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under twenty-one (21) years of age; or
 - (2) Buy any cigarettes, electronic cigarettes, liquid nicotine or tobacco products for any person under twenty-one (21) years of age.
 - (b) It shall be a defense to a prosecution under this Section if:
 - (1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
 - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, liquid nicotine or tobacco products to the person under twenty-one (21) years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products; and
 - (3) To purchase or receive the cigarettes, electronic cigarettes, liquid nicotine or tobacco products, the person under twenty-one (21) years of age exhibited to the defendant a driver's license, Kansas non-driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, liquid nicotine or tobacco products.

- (4) For purposes of this Section, the person who violates this Section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under twenty-one (21) years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.
 - (c) It shall be a defense to a prosecution under this Section if:
 - (1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and
 - (2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. § 53-601 and amendments thereto, that the person was twenty-one (21) or more years of age.
 - (d) For the purposes of this Section, the terms are defined in K.S.A. § 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.
 - (e) As used in this Section, "sale" means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes or tobacco products, with or without consideration. (K.S.A. Supp. §§ 79-3302, 79-3321, 79-3322.)
 - (f) Violations of this Section shall constitute a Class B violation punishable by a minimum fine of two hundred dollars (\$200.00).
- D. Amendment. Section 6.8 of the Uniform Public Offense Code for Kansas Cities, Edition of 2019, shall be amended to read as follows:
- 1. Sec. 6.8. Criminal Littering.
 - (a) Criminal littering is recklessly depositing or causing to be deposited any object or substance into, upon or about:
 - (1) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or
 - (2) Any private property without the consent of the owner or occupant of such property.
 - (b) Criminal littering is an unclassified offense punishable upon conviction by a fine of not less than one hundred dollars (\$100.00) nor more than two thousand five hundred dollars (\$2,500.00);
 - (c) The provisions of Standard Traffic Ordinance Section 112.1, Littering from a motor vehicle, are excepted from the application of this Section.

- (d) In addition to the fines in Subsection (b), a person convicted of littering shall be required to pick up litter for a time prescribed by and at a place within the jurisdiction of the court. (K.S.A. § 21-5815)

Section 205.010. Unlawful Acts. [R.O. 2008 §205.010; CC 1968 §11-101]

The doing of any of the acts or things prohibited or the failure to do any of the acts or things commanded to be done as set forth in this Chapter is hereby declared to be an offense against the good order, public peace, morals, health, proper government and welfare of the City, and unlawful. Any person violating any of the provisions of this Chapter shall be deemed guilty of an offense and punished as hereinafter set out.

ARTICLE II

Offenses Concerning Peace and Order

Section 205.015. Disturbing The Peace. [Ord. No. 3130, 9-11-2018]

- A. It shall be unlawful for any person to make, continue, maintain, or cause to be made or continue any excessive, unnecessary, unreasonable, or unusually loud noise which disturbs the repose, health, peace, or safety of other people of reasonable sensibility within the vicinity of the noise.
- B. It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such 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 or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. "Neighboring inhabitants" shall include persons living or occupying within residential districts of single- or multiple-family dwellings and shall include areas where multiple-unit dwellings, high-rise apartments and high-density residential districts are located.
- C. Prima Facie Violation. The operation of any electronic device, set, instrument, television, phonograph, machine or other sound-producing device at any time in such a manner as to be plainly audible at either the adjacent property line, or fifty (50) feet in the case of multiple-family dwelling between the hours of 10:00 p.m. and 7:00 a.m. shall be prima facie evidence of a violation of this Section.
- D. Exemptions. The following shall not be considered to be a disturbance for purposes of this Section:
 - 1. Sound from law enforcement motor vehicles and other Emergency Motor Vehicles, including, but not limited to, snow-clearing equipment.
 - 2. Sound from vehicles or equipment belonging to the City, State, County, Federal government, school or other governmental agencies or utilities engaged in the operation, installation, or repair of an essential utility.
 - 3. Sound from any business enterprise in full compliance with existing zoning

- regulations.
4. Sound that a person or entity is making or causing to be made when said person or entity has received and maintains a valid Community Event Permit from the City of Paola. When any such permits or licenses are issued, the City Clerk shall provide the City's law enforcement with copies of the same.
 5. Sound from vehicles involved in trash and waste pickup operations.
 6. Sound from fields, grounds, or facilities from any sporting arena, playground, stadium, or sports complex operated by a school or governmental entity during activities sponsored by a school or governmental entity.
 7. Sound created by fire alarms.
 8. Sound created by church bells and campanile chimes.
- E. Penalties. Any person who violates the aforesaid provisions, upon conviction thereof, may be fined in the sum not to exceed two hundred fifty dollars (\$250.00).

Section 205.020. Loud Sound Amplification Systems Prohibited – Vehicles. [Ord. No. 2686 §§1 – 2, 9-30-1997; Ord. No. 3130, 9-11-2018¹]

- A. No person operating or occupying a motor vehicle on a street, highway, alley, parking lot, or driveway shall operate or permit the operation of any sound amplification system from within the vehicle so that the sound is plainly audible at a distance of fifty (50) or more feet from the vehicle.
- B. Sound amplification system means any radio, tape player, compact disc player, loud speaker, or other electronic device used for the amplification of sound.
- C. Plainly audible means any sound produced by a sound amplification system from the vehicle, which clearly can be heard at a distance of fifty (50) feet or more. Measurement standards shall be by the auditory senses, based upon direct line of sight. Words or phrases need not be discernible and bass reverberations are included. The motor vehicle may be stopped, standing, parked or moving on a street, highway, alley, parking lot, or driveway.
- D. It is an affirmative defense to a charge under this Section that the operator was not otherwise prohibited by law from operating the sound amplification system, and that any of the following apply:
 1. The system was being operated to request medical or vehicular assistance or to warn of a hazardous road condition;
 2. The vehicle was an emergency or public safety vehicle;
 3. The vehicle was owned and operated by the City of Paola or a gas, electric, communications or refuse company;
 4. The system was used for the purpose of giving instructions, directions, talks,

1. Editor's Note: Ord. No. 3130 only changed the title of this Section to include "Vehicles."

addresses, lectures or transmitting music to any persons or assemblages of persons in compliance with the ordinances of the City of Paola;

5. The vehicle was used in authorized public activities, such as parades, fireworks, sport events, musical productions and other activities which have the approval of the department of the City authorized to grant such approval.
- E. *Penalty.* Any person, individual, partnership, corporation or association who violates any of the provisions of this Section is guilty of an ordinance violation, and upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment of not more than six (6) months, or by both such fine and imprisonment. Each day any violation hereof is found to exist or continues to exist shall be a separate offense and punishable as such hereunder.

Section 205.030. Urinating or Defecating in Public. [R.O. 2008 §205.231; Ord. No. 2907 §1, 3-14-2006]

- A. No person shall urinate or defecate in or upon any street, sidewalk, alley, plaza, park, public building, public property, private parking lot or in any place open to the public or exposed to public view. This Section shall not apply to urination or defecation utilizing appropriate fixtures in any restroom or other facility designed for the sanitary disposal of human waste.
- B. Any person convicted of a violation of any provision of this Section shall be punished by a fine of a minimum of one hundred dollars (\$100.00) but not exceeding two hundred fifty dollars (\$250.00).

ARTICLE III Offenses Concerning Public Safety

Section 205.040. Creating A Hazard.

No person, firm or corporation shall create a hazard by storing or abandoning in any place accessible to children, a container which has a compartment of more than one and one-half (1½) 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. (K.S.A. §21-4212(a)(1))

Section 205.050. Dangerous Wells and Cisterns. [R.O. 2008 §205.250; CC 1968 §11-607]

It shall be unlawful for the owner or person in charge of any property to maintain or permit any well or cistern on the premises without a safe, secure and durable covering.

Section 205.060. Barbed-Wire Fences. [R.O. 2008 §205.260; Ord. No. 2608 §1, 11-9-1993]

It shall be unlawful for any person to have or maintain a barbed-wire fence along or next to any sidewalk, street, or public place, except when the property so fenced is both zoned and used continuously for agricultural purposes. The expense of installing and maintaining a barbed-wire fence shall be the sole responsibility of the landowner(s) using said fence or when such fence is used in property zoned commercial or industrial and such barbed wire is installed and maintained

at least six (6) feet above the adjoining ground.

ARTICLE IV
Offenses Concerning Property

Section 205.070. Posting Bills. [R.O. 2008 §205.290; CC 1968 §11-205]

No person shall post any bills or advertisement on any public property without lawful authority or on any property without permission of the owner thereof.

Section 205.080. Criminal Trespass On Public Property. [R.O. 2008 §205.360; Ord. No. 2536 §1(11-620), 3-13-1990]

- A. It shall be unlawful for any person to criminally trespass upon public property of the City of Paola, Kansas, when the same is posted as provided for in Subsection (B) hereof. "*Criminal trespass on public property*" of the City of Paola, is entering or remaining upon or in any land, or structure, or vehicle of the City of Paola by a person who knows he/she is not authorized or privileged to do so, and
1. Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by any authorized officer of the Police Department of the City of Paola; or
 2. Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry.
- B. *Posting Of Sign.* Public premises or property of the City of Paola, Kansas, may be posted at each entrance thereto with a permanently lettered clearly legible sign with the following legend:

**"THIS PROPERTY CLOSED TO THE PUBLIC BETWEEN THE HOURS OF
11:00 P.M. AND 5:00 A.M. UNLESS VALID PERMIT IS OBTAINED. TRESPASSERS
WILL BE PROSECUTED."**

(Authority: PAOLA CITY ORDINANCE NO. _____.)

Thereafter, such premises or property shall be deemed posted in a manner reasonably likely to come to the attention of intruders.

- C. *Permission Of The City.* Permission to be in said area by the Governing Body of the City of Paola shall be a defense to this Section. Any such permission shall be evidenced by a written permit issued by the City, and shall be affixed to the interior of the rear window on the left side thereof for any vehicle entering upon said premises aforesaid, or when no vehicle is involved, the person granted such permission shall carry in his/her possession any permit so issued. Application for such permission shall be filed with the Police Department on forms provided for that purpose.

Section 205.090. Littering. [R.O. 2008 §205.370; Ord. No. 2536 §1(11-619), 3-13-1990; K.S.A. 21-3722]

- A. It shall be unlawful to intentionally or recklessly deposit or cause to be deposited any

object or substance into, upon or about:

1. Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or
2. Any private property without the consent of the owner or occupant of such property.

ARTICLE V
Offenses Concerning Morals

Section 205.100. Window Peeping. [R.O. 2008 §205.430; Ord. No. 2536 §1(11-316), 3-13-1990]

It shall be unlawful for any person to trespass upon the property owned or occupied by another for the purpose of looking into or peeping into any window, door, skylight or other opening in any house or building located thereon without having a lawful purpose of such observation.

Section 205.110. Promoting Obscenity. [R.O. 2008 §205.450]

- A. It shall be unlawful to promote obscenity. Promoting obscenity is knowingly or recklessly:
1. Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device;
 2. Possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or device;
 3. Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material or obscene device; or
 4. Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to obscenity.
- B. Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:
1. The materials or devices were promoted to emphasize their prurient appeal; or
 2. The person is not a wholesaler and promotes the materials or devices in the course of the person's business.
- C. Any material or performance is "*obscene*" if:
1. The average person applying contemporary community standards would find that the material or performance taken as a whole, appeals to the prurient interest;
 2. The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of

ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy or masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

3. Taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value.

D. *Definitions.* For the purposes of this Section, the following terms shall be deemed to have the meaning indicated below:

MATERIAL — Any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.

OBSCENE DEVICE — A device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

PERFORMANCE — Any play, motion picture, dance or other exhibition performed before an audience.

SEXUAL INTERCOURSE AND SODOMY — Have the meanings provided by K.S.A. 21-3501 and amendments thereto.

WHOLESALE — A person who sells, distributes or offers for sale or distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

E. It is a defense to a prosecution for obscenity that:

1. The persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possession or viewing the same;
2. The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or
3. The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and such material was either sold, leased, or distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

F. Any person violating any of the provisions of this Section shall, upon conviction thereof, be fined in a sum not less than one hundred fifty dollars (\$150.00) nor more than five hundred dollars (\$500.00) or be imprisoned not to exceed three (3) months, or be both so fined and imprisoned.

ARTICLE VI
Offenses Concerning Minors

Section 205.120. Minors – Curfew. [R.O. 2008 §205.540; CC 1968 §11-603]

It shall be unlawful for any minor under the age of eighteen (18) years to loiter, idle, wander, stroll, play, drive or ride upon or over any of the streets, sidewalks, alleys, parks or other public grounds in the City, between the hours of 11:00 P.M. and 5:00 A.M., excepting that on Friday and Saturday evenings the hours shall be between 1:00 A.M. and 5:00 A.M.; provided, that the provisions of this Section shall not apply when the minor is accompanied by his/her parent, guardian or legal custodian, or when the minor is in the performance of an errand directed by his/her parent, guardian or legal custodian. Any person violating the provisions of this Section shall be taken before the Miami County Juvenile Court to be dealt with according to law.

Section 205.130. Person Responsible For Minor. [R.O. 2008 §205.550; Ord. No. 2150 §1(11-604), 3-12-1974; Ord. No. 2694 §1, 1-13-1998]

It shall be unlawful for any parent, guardian or legal custodian of a minor under the age of eighteen (18) years to permit such minor to loiter, idle, wander, stroll, play, drive or ride upon or over any of the streets, sidewalks, alleys, parks or other public grounds in the City of Paola, in violation of Section 205.120 of this Article.

ARTICLE VII

Offenses Concerning Trees or Shrubs

Section 205.140. Trees and Shrubs. [R.O. 2008 §205.570; CC 1968 §11-616]

The Governing Body of the City of Paola has elected and does hereby elect to assume control of the planting, maintenance, treatment or removal of trees and shrubbery upon all streets, alleys, avenues and boulevards of the City and said City will plant, maintain, treat or remove such trees as a municipal function: provided, that the owner or owners of property abutting such streets, alleys, avenues, and boulevards shall have the right to plant, maintain, treat, trim or remove such trees by first obtaining the permission from the City and all of such planting, maintenance, treatment, trimming or removal shall be done under the supervision of, and in accordance with all rules and regulations established by the City. The City shall have the right to designate the kind and location of such trees and shrubbery so planted.

Section 205.150. Plant Diseases. [R.O. 2008 §205.580; CC 1968 §11-617]

Whenever any competent City authority or competent State or Federal authority when requested by the Governing Body of the City shall file with the Governing Body a statement in writing based upon a laboratory test or other supporting evidence that trees or tree materials or shrubs located upon private property within said City are infected or infested with or harbor any tree or plant disease or insect pest or larvae, the uncontrolled presence of which may constitute a hazard to or result in the damage or destruction of other, trees or shrubs in the community, describing the same and where located, said Governing Body shall direct the City Clerk to forthwith issue notice requiring the owner or agent of the owner of the premises to treat or remove any such designated tree, tree material or shrub within a time specified in such notice; said notice shall be served by the Chief of Police or other Police Officer, by delivering a copy thereof to the owner, or agent of such property or if the same be unoccupied and the owner a non-resident, then the City Clerk shall notify the owner by mailing a notice to his/her last known address. If the owner or agent shall fail to comply with the requirements of said notice within the time specified in the

notice, then the City Manager, or other designated officer shall proceed to have the designated tree, tree material or shrub treated or removed and report the cost thereof to the City Clerk, and the cost of such treatment or removal shall be paid by the owner of the property or shall be assessed and charged against the lot or parcel of ground on which the tree, tree material or shrub was located. The City Clerk shall at the time of certifying other City taxes to the County Clerk, certify the unpaid costs and the County Clerk shall extend the same on the tax roll of the County against said lot or parcel of ground. The cost of such work shall, except as hereinafter provided, be paid from the General Fund and such fund shall be reimbursed when payments therefor are received or when such assessments are collected and received by the City.

Section 205.160. Preventative Control. [R.O. 2008 §205.590; CC 1968 §11-618]

The Governing Body of the City, when it appears that there is or likely to be a general infection or infestation of the trees or shrubs within the City by tree or plant disease or insect pest or larvae resulting in damage to or the death of many trees or shrubs, may provide such preventive measures of treatment as may be necessary and pay the cost from the General Fund.

ARTICLE VIII
Offenses Concerning Drugs

Section 205.170. Definitions. [R.O. 2008 §205.600; Ord. No. 2536 §2(11-701), 3-13-1990]

As used in this Article, the following terms shall have these prescribed meanings:

CLOSE PROXIMITY — Within five hundred (500) feet on a straight line commencing at the property lines nearest to each other.

CONTROLLED SUBSTANCE — Any drug, substance or immediate precursor included in Schedules I through V, both inclusive, of the Uniform Controlled Substances Act found in Chapter 65, Article 41 of the Kansas Statutes Annotated or K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4115 and amendments thereto.

DANGEROUS DRUG — One that is unsafe for use except under the supervision of a practitioner because of its toxicity or other potentiality for human effect, method of use, or collateral measures necessary to use; "*dangerous drugs*" shall include all other drugs or compounds, preparations or mixtures thereof which the State Board of Health shall find and declare by rule or regulation duly promulgated after reasonable public notice and opportunity for hearing to have a dangerous hallucinogenic hypnotic, somnifacient or stimulating effect of the body of a human or animal.

DELIVER OR DELIVERY — The actual, constructive or attempted transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship.

DRUG — Shall mean:

1. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;
2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;

3. Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
4. Substances intended for use as a component of any article specified in Subsection (1), (2) or (3) of this definition. It does not include devices or their components, parts or accessories.

DRUG PARAPHERNALIA — For the purposes of this definition, the phrase "*intended for use*" shall refer to the intent of the person selling, offering to sell, dispensing, giving away, possessing, in control of or displaying the "*drug paraphernalia*" herein defined. — "*Drug paraphernalia*" means all equipment, products and materials of any kind which are used or are intended 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 Uniform Controlled Substances Act. "*Drug paraphernalia*" shall include, but is not limited to:

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

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

1. Whether a person charged with violating this Article is a licensed distributor or dealer of tobacco products under Chapter 79, Article 33 of the Kansas Statutes Annotated.
2. Expert testimony as to the use of the item.
3. Evidence concerning the total business or a person or business establishment and the type of items involved in the business.
4. National and local advertising concerning the use of the item of which a person charged with violating this Article has knowledge.
5. Evidence of advertising concerning the nature of the business establishment.
6. Statements by an owner or person in control of the object concerning its use.
7. Prior convictions, if any, of an owner or person in control of the object, under any State or Federal law relating to any controlled substance.
8. Instructions, oral or written, provided with the item concerning its use.
9. Descriptive materials accompanying the item which explain or depict its use.
10. The proximity of the object, in time and space, to a direct violation of the Uniform Controlled Substances Act.
11. The proximity of the object to controlled substances.
12. The existence of any residue or controlled substances on the object.
13. Direct or circumstantial evidence of the intent of an owner or person in control of the object, to deliver it to a person, the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act. The innocence of an owner or person in control of the object as to a direct violation of the Uniform Controlled Substances Act shall not prevent a finding that the object is

intended for use as drug paraphernalia.

14. Oral or written instructions provided with the object concerning its use.
15. The manner in which the object is displayed for sale.
16. Whether the owner or person in control of the object is a legitimate supplier of similar related items to the community, such as a distributor or dealer of tobacco products.
17. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
18. The existence and scope of legitimate uses for the object in the community.
19. Catalogs or other promotional materials concerning the item of which the person charged with violating this Article has knowledge.

MANUFACTURE — The production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his/her own use or the preparation, compounding, packaging or labeling of a controlled substance:

1. By a practitioner or by his/her agent pursuant to a lawful order of a practitioner as an incident to his/her administering or dispensing of a controlled substance in the course of his/her professional practice; or
2. By a practitioner or by his/her authorized agent under his/her supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or hospital as an incident to his/her or its dispensing of a controlled substance.

MARIJUANA — All parts of all varieties of the plant Cannabis, 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 seed or resin. It does 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.

MINOR — Any person who has not attained eighteen (18) years of age.

PATIENT — Means, as the case may be:

1. The individual for whom a drug is prescribed or to whom a drug is administered; or
2. The owner or the agent of the owner of the animal for which a drug is prescribed or to which a drug is administered; provided, that the prescribing or administering referred in Subsection (1) and (2) of this definition is in good faith and in the course of professional practice only.

PERSON — Individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

PHARMACIST — An individual currently licensed by the board to practice the profession of

pharmacy in this State.

PLACE OF DISPLAY — Any museum, library, school or other similar public place upon which business is not transacted for a profit.

PRACTITIONER — A person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, optometrist licensed under the optometry law as a therapeutic licensee or diagnostic and therapeutic licensee, or scientific investigator or other person authorized by law to use a controlled substance in teaching or chemical analysis or to conduct research with respect to a controlled substance.

PREMISES — A business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.

PREMISES OPEN TO MINORS — Any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.

PRESCRIPTION — A written order, and in cases of emergency, a telephonic order, issued by a practitioner in good faith in the course of his/her professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

PRODUCTION — The manufacture, planting, cultivation, growing or harvesting of a controlled substance.

SCHOOL — Any public or private elementary, junior high, or high school.

SIMULATED DRUGS AND SIMULATED CONTROLLED SUBSTANCES — Any products which identify themselves by using a common name or slang term associated with a controlled substance or indicate by label or accompanying promotional material that the product simulates the effect of a controlled substance or drug.

SOMNIFACIENT AND STIMULATING — They have the meaning attributable in standard medical lexicons.

WAREHOUSEMAN — A person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.

WHOLESALE — A person engaged in the business of distributing drugs to persons included in any of the classes named in Section 205.190.

Section 205.180. Unlawful Possession of Drugs – Exceptions. [R.O. 2008 §205.610; Ord. No. 2536 §2(11-702), 3-13-1990]

A. It is unlawful for any person to possess, have under such person's control, possess with intent to sell, offer for sale, sell, prescribe, administer, deliver, distribute, dispense or compound any drug, controlled substance or marijuana all as defined in Section 205.170 unless:

1. Such drug is delivered by a pharmacist, or his/her authorized agent, in good faith

- upon prescription and there is affixed to the immediate container in which such drug is delivered a label bearing:
- a. The name and address of the owner of the establishment from which such drug was delivered,
 - b. The date on which the prescription for such drug was filled,
 - c. The number of such prescription as filed in the prescription files of the pharmacist who filled such prescription,
 - d. The name of the practitioner who prescribed such drug,
 - e. The name and address of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal, and
 - f. The direction for use of the drug and cautionary statements, if any, as contained in the prescription; and
2. In the event that such delivery is pursuant to telephonic order, such prescription shall be promptly reduced to writing and filed by the pharmacist; or
 3. Such drug is delivered by a practitioner in good faith and in the course of his/her professional practice only,
- B. It is unlawful for any person to refill any prescription for a drug unless such refilling is specifically authorized by the prescriber.
- C. It is unlawful for any person to fail to keep the records required by Section 205.200.
- D. It is unlawful for any person to possess a drug unless such person obtained such drug on the prescription of a practitioner or in accordance with Subsection (A)(3) of this Section or from a person licensed by the laws of any other State or the District of Columbia to prescribe or dispense drugs.
- E. It is unlawful for any person to refuse to make available and to afford full opportunity to check any record, file, stock or inventory as required Section 205.210.
- F. It is unlawful for any person to use to his/her own advantage, or to reveal other than to a public officer or employee charged with the duty of enforcing laws relating to the handling, sale and distribution of drugs, or to a court when relevant in a judicial proceeding, any information acquired under the authority of Section 205.210 concerning any method or process which has a trade secret and is entitled to protection.
- G. It is unlawful for any person to obtain or attempt to obtain a drug by fraud, deceit, misrepresentation or subterfuge; or by the forgery or alteration of a prescription; or by the use of a false name or the giving of a false address.
- H. It is unlawful for any person to sell, offer for sale or have in his/her possession with the intent to sell any hallucinogenic or stimulating drug described in Section 205.170.

Section 205.190. Exemptions. [R.O. 2008 §205.620; Ord. No. 2536 §2(11-703), 3-13-1990]

- A. The provisions of Subsections (A – E) of Section 205.180 shall not be applicable:
1. To the delivery of drugs for medical or scientific purposes only to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or
 2. To the possession of drugs by such persons or their agents or employees for such use:
 - a. Pharmacists,
 - b. Practitioners,
 - c. Persons who procure drugs:
 - (1) For disposition by or under the supervision of pharmacists or practitioners employed by them or
 - (2) For the purpose of lawful research, teaching, or testing and not for resale.
 - d. Hospitals and other institutions which procure drugs for lawful administration by or under the supervision of practitioners.
 - e. Manufacturers and wholesalers,
 - f. Carriers and warehousemen.
- B. Nothing contained in Section 205.180 shall make it unlawful for a Public Officer, agent or employee, or person aiding such Public Officer in performing his/her official duties to possess, obtain, or attempt to obtain a drug for the purpose of enforcing the provisions of any law of this State or of the United States relating to the regulation of the handling, sale or distribution of drugs.
- C. Nothing in this Section shall apply to a compound, mixture, or preparation containing a drug which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this Section if such compound, mixture, or preparation contains a sufficient quantity of another therapeutic agent or agents, in addition to such a drug, to cause it to prevent the ingestion of a sufficient amount of drug to cause a dangerous hypnotic somnifacient or stimulating action.

Section 205.200. Records and Inventories By Certain Persons. [R.O. 2008 §205.630; Ord. No. 2536 §2(11-704), 3-13-1990]

- A. Persons (other than carriers) to whom the exemptions of Section 205.190 are applicable shall maintain detailed, but not necessarily separate, records and inventories relating to drugs manufactured, purchased, sold, distributed and handled and retain all such records and inventories required by this Subsection (A) for not less than two (2) calendar years after the date of the transaction shown by such record and inventory.
- B. Pharmacists shall, in addition to complying with the provisions of Subsection (A) of this Section, retain each prescription and written record of telephonic order for a drug filled by them, for not less than two (2) calendar years immediately following the date of the filling

or the date of the last refilling of such prescription whichever is the later date.

Section 205.210. Access To Records – Inspection. [R.O. 2008 §205.640; Ord. No. 2536 §2(11-705), 3-13-1990]

- A. Persons required by Section 205.200 to keep files, inventories or records relating to drugs shall, upon the written request of a Public Officer or employee charged with the duty of enforcing laws relating to the handling, sale or distribution of drugs;
 - 1. Make such files, inventories or records available to such officer or employee, at all reasonable hours, for inspection and copying; and
 - 2. Accord to such officer or employee full opportunity to check the correctness of such files, inventories or records, including opportunity to make inventory of all stocks or drugs on hand.

Section 205.220. Control of Drug Paraphernalia and Control of Simulated Drugs and Simulated Controlled Substances. [R.O. 2008 §205.650]

- A. *Sale And Display Prohibited.* It shall be unlawful for any person to sell, deliver, dispense, give away, possess with intent to deliver, manufacture with intent to deliver, cause to be delivered, give away or display any drug paraphernalia or simulated controlled substance or simulated drug to minors in or upon any premises. It shall also be unlawful for any person to sell, deliver, possess with intent to deliver, manufacture with intent to deliver, cause to be delivered, offer to sell, dispense, give away or display any drug paraphernalia or simulated controlled substance or simulated drug to persons other than minors.
- B. In addition to any penalty authorized by Section 205.230, a violation of the above is hereby declared to be a public nuisance.
- C. *Possession Prohibited.* It shall be unlawful for any person to possess, have under such person's control, or possess with intent to sell drug paraphernalia or simulated controlled substance or simulated drug all as defined in Section 205.170.

Section 205.230. Violation of Article – Penalty. [R.O. 2008 §205.660; Ord. No. 2536 §2(11-707), 3-13-1990]

Any person violating Sections 205.180, 205.190, 205.200, 205.210 or 205.220 shall be punished by a fine of not less than five hundred dollars (\$500.00) nor more than two thousand five hundred dollars (\$2,500.00) and imprisoned not less than two (2) days nor more than one (1) year. In addition, any person under the age of twenty-one (21) who is convicted of a violation of this Article or diverted in lieu of further criminal proceedings shall be required to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee for such evaluation.

ARTICLE IX
Offenses Concerning Firearms

Section 205.240. (Reserved) ²

Section 205.245. Unlawful Hunting [Ord. No. 3079 §1, 11-25-2014]

- A. It shall be unlawful to hunt any animal or bird within the City limits of Paola, except as follows:
1. The person hunting is in compliance with all State laws and Kansas Department of Wildlife and Parks rules and regulations relating to deer or turkey hunting; and
 2. Only when using a bow and arrow from an elevated shooting position to hunt only deer or turkey; and
 3. The person is hunting upon land with the consent of the landowner, whose land:
 - a. Is primarily undeveloped; and
 - b. Contains an area of twenty (20) acres or more; and
 - c. Has at least one (1) boundary that is contiguous with the corporate limits of the City of Paola.
- B. Violation of this Section shall constitute a public offense and is punishable as set forth in Section 205.280 of this Chapter. In addition to the penalty assessed for a violation of this Section, the Municipal Court Judge may order any weapon used in violation of this Section forfeited to the Paola Police Department.

ARTICLE X
Miscellaneous Offenses

Section 205.250. Person Obstructing The Public Ways, Buildings, or Private Buildings To Which The Public Has Access. [R.O. 2008 §205.670; Ord. No. 2536 §1(11-317), 3-13-1990]

It shall be unlawful for persons to gather in a crowd or to collect in such a manner to prevent, interrupt, or obstruct the travel, free passage, or access over the same by the public upon any public park, sidewalk, street, alley, building, parking lot, entrance ways to public establishments, stairways to buildings facing the public square, or other similar public place open to use by the public, or square, or other similar public place open to use by the public, or where the public may congregate, either owned publicly or privately, or upon any private property to which the public has access. Any person violating the provisions of this Section shall, upon conviction thereof, be fined in a sum not less than seventy-five dollars (\$75.00) nor more than two hundred dollars (\$200.00), or be imprisoned not to exceed thirty (30) days, or be both so fined and imprisoned.

Section 205.260. Fireworks. [R.O. 2008 §205.720; Ord. No. 2105 §1(A), 6-13-1972; Ord. No. 2330 §1(B), 6-23-1983; Ord. No. 2536 §1(C), 3-13-1990;]

- A. *Defined.* The term "*fireworks*" shall mean and include any combustible or explosive composition or any substance, or combination of substances or article prepared for the

2. Editor's Note: Former Section 205.240, was repealed 6-10-2014 by Ord. No. 3071 §1. This Section was derived from K.S.A. Supp. 21-4201, as amended; Ord. No. 2998 §1, 8-25-2009; Ord. No. 2999 §§1 – 2, 8-25-2009; Ord. No. 3001 §2, 9-22-2009; Ord. No. 3023 §2, 9-28-2010; Ord. No. 3033 §2, 7-26-2011; Ord. No. 3049 §2, 8-14-2012; Ord. No. 3059 §2, 8-27-2013.

purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, any type of balloons which require fire underneath to propel the same, fire crackers, torpedoes, skyrockets, Roman candles, sparklers, or other fireworks of like construction, or any fireworks containing any explosive or inflammable compound or any tablets or any device containing any explosive substance. Nothing in this Article shall be construed as applying to toy paper caps and cap guns, and to the manufacture, storage, sale or use of signals necessary for the safe operation of railroads or other classes of public or private transportation or applying to the military or Naval Forces of the United States or of this State, or to any Peace Officers, nor as prohibiting sale and use of blank cartridges for ceremonial or theatrical or athletic events, nor as prohibiting the firing of skyrockets or missiles when produced by a science class of any school and when under the supervision of the science instructor, and when the place of firing the skyrocket or missile has been approved by the Fire Chief.

- B. *Fireworks – Sale, Storage Or Discharge Prohibited – Exceptions.* The sale, storage or discharge of fireworks as defined in Subsection (A) above, in the City of Paola, Kansas, including those areas defined by State Fire Marshal regulations, all public property, the Paola Waterworks, Sewer Lagoon property, and Lake Miola, shall be and is hereby prohibited, provided however, the Governing Body of the City of Paola may grant permission for public display of fireworks by responsible individuals if such display or displays shall be of such character and so located, discharged and fired as shall not be hazardous to surrounding property or endangering person or persons, all under rules and regulations as prescribed by the Governing Body.

Section 205.270. Regulation of Skateboards, Roller Skates and Street Skates. [R.O. 2008 §205.740; Ord. No. 2658 §§1 – 5, 8-27-1996]

- A. *Definitions.* For the purpose of this Section, certain items and words are hereby defined as follows:

EJECT — To oust, remove, to put out or to expel.

ROLLER SKATES, STREET SKATES AND SKATES — Small wheels near the toe and the heel of a shoe or frame that would attach to a shoe which are used for gliding on a hard surface such as a floor, sidewalk, etc.

SKATE — To operate or ride a skateboard, roller skates or street skates.

SKATEBOARDS — Refer to an item consisting of a short, oblong board with small wheels at each end, ridden on a hard surface such as a floor or sidewalk.

- B. *Skates And Skateboards Regulated.* No person shall roller skate or ride a skateboard within the City of Paola without complying with the terms of this Section.
- C. *Skating Or Riding Prohibited.* No person shall roller skate or ride a skateboard upon the streets, sidewalks and other public space in the central business district, an area bounded by Gold, Piankishaw, Agate and Shawnee Streets.
- D. *Reckless Or Dangerous Skating Prohibited.* No person shall roller skate or ride a

skateboard on any sidewalk or other paved surface intended for pedestrians in a reckless or careless manner, or in a manner which is likely to result in injury or harm to any person or property.

E. *Penalties.*

1. Violation of this Section is an unclassified misdemeanor and punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00).
2. In addition to and independent of the penalties provided in Paragraph (1) above, a Law Enforcement Officer detaining a person for violating this Section may impound the skateboard or roller skates for a minimum of seven (7) days and a maximum of fourteen (14) days. If the violator is a person eighteen (18) years of age or older, the skateboard or roller skates shall be released by the City Police Department if the violator appears at the City Police Department after the impoundment period has expired and produces identification. In the event the violator of this Section is under eighteen (18) years of age, the person or persons must appear at the City Police Department to obtain the release of the skateboard or roller skates with a parent or guardian after the impoundment period has expired. However, if the parent or guardian resides outside the City limits of Paola, the skateboard or roller skates may be released if the parent or guardian provides a letter addressed to the City of Paola Police Department requesting that the skateboard or roller skates be released to the minor.
3. In addition to and independent of the penalties provided in Paragraphs (1) and (2) hereof, a Law Enforcement Officer may eject any person from the area specified in Subsection (C) who is using a skateboard or roller skates within the specified area.

ARTICLE XI
Penalty

Section 205.280. General Penalty.

- A. Unless another penalty is stated herein, whenever in this Chapter, any act is prohibited or is declared to be unlawful or an offense, misdemeanor or ordinance violation or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a misdemeanor or ordinance violation, and no specific penalty is provided for the violation thereof, upon conviction of a violation of any such provision of this Chapter or of any such ordinance, rule, regulation, notice or order, the violator shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the City or County Jail not exceeding thirty (30) days, or by both such fine and imprisonment; provided, that in any case wherein the penalty for an offense is fixed by a Statute of the State, the statutory penalty, and no other, shall be imposed for such offense, except that imprisonments may be in the City prison or workhouse instead of the County Jail.
- B. Every day any violation of this Chapter or any other ordinance or any such rule, regulation, notice or order shall continue shall constitute a separate offense.
- C. Whenever any act is prohibited by this Chapter, by an amendment thereof, or by any rule or regulation adopted thereunder, such prohibition shall extend to and include the causing,

securing, aiding or abetting of another person to do said act. Whenever any act is prohibited by this Chapter, an attempt to do the act is likewise prohibited.