

CHAPTER 24

CRIMES AND PUNISHMENTS

Article I. In General

- 24-101 Short title
- 24-102 Liability for Offenses of Another
- 24-103 Attempt

Article II. Offenses Affecting Children

- 24-201 Possession of a firearm by a minor; definition
- 24-202 Possession of a firearm by a minor prohibited, exceptions
- 24-203 Forfeiture of firearms possessed by a minor
- 24-204 Stolen weapons
- 24-205 Penalty
- 24-206 Forfeiture of conveyances
- 24-207 Curfew – Generally
- 24-208 Curfew – Violation with permission of parents or legal guardian
- 24-209 Curfew – Authority to suspend

Article III. Offenses Against Property

- 24-301 Theft – Of services; tampering defined
- 24-302 Littering

Article IV. Offenses Affecting Governmental Functions

- 24-401 Driving any vehicle or riding or leading any horse upon the flood control works
- 24-402 Pawnbrokers and precious metal dealers – definitions
- 24-403 Licensure; application; fee; display
- 24-404 Change in location of place of business
- 24-405 Records to be kept
- 24-406 Suspension or revocation of license; notice and hearing
- 24-407 Contract requirements
- 24-408 Retention period
- 24-409 Retention period for pawned or pledged property
- 24-410 Inspection of books and premises
- 24-411 Acquisition of property from minors
- 24-412 Use of fictitious name
- 24-413 Redelivery of stolen property

Article V. Denial of Civil Rights

- 24-501 Bias Crimes

Article VI. Offenses Against the Public Peace

- 24-601 Loud speakers and sound amplifiers – Permit required
- 24-602 Trespass for the purpose of observing
- 24-603 Use of City Right of Way
- 24-604 Urinating/Defecating in Public Prohibited
- 24-605 Public Nudity Prohibited

Article VII. Offenses Against the Public Safety

- 24-701 Dangerous missiles
- 24-702 Unlawful inhalation of toxic vapors from certain substances; sale
- 24-703 Aerial Luminaries
- 24-704 Smoking – Definitions
- 24-705 Smoking – Prohibited
- 24-706 Smoking; Posting Premises
- 24-707 Smoking – Prohibited; Penalties

Article VIII. Offenses Against the Public Morals

- 24-801 Clothing guidelines at restaurants, taverns or any establishments licensed to sell alcoholic liquor or cereal malt beverage
- 24-802 Entertainment dancing
- 24-803 Attendance at Professional Regulated Sports Contests

Article IX. Classification of Misdemeanors and Penalties

- 24-901 Classes of misdemeanors and confinement
- 24-902 Fines
- 24-903 Sentencing for bias crimes

Article X. Miscellaneous Provisions

- 24-1001 Expungement of conviction

Article XI. Adult Entertainment Business

- 24-1101 License required
- 24-1102 Persons ineligible for City license
- 24-1103 License exclusive to premises issued
- 24-1104 Requirements of licensure
- 24-1105 Hours of operation
- 24-1106 Display of license
- 24-1107 Right of entry and inspection of licensed premises
- 24-1108 Revocation of license

Article I. In General.

Sec. 24-101 Short title

This chapter is called and may be cited as the "Hutchinson Criminal Code," and shall apply in the City of Hutchinson, Kansas. (*Ord. 2007-06, Adop. 2/20/07*)

This chapter supplements the Uniform Public Offense Code adopted by reference by the governing body.

Sec. 24-102 Liability for Offenses of Another

a. A person is criminally responsible for an offense committed by another if such person intentionally aids, abets, advises, hires, counsels or procures the other to commit the offense;

b. A person liable under subsection (a) hereof is also liable for any other offense committed in pursuance of the intended offense if reasonably foreseeable by such person as a probable consequence of committing or attempting to commit the offense intended;

c. A person liable under this section may be charged with and convicted of the offense although the person alleged to have directly committed the act constituting the offense lacked criminal or legal capacity to commit the offense or has not been convicted or has been acquitted or has been convicted of some other degree of the offense or of some other offense based on the same act.
(*Ord. 2007-06, Adop. 2/20/07*)

Sec. 24-103 Attempt

a. An attempt is any overt act toward the perpetration of an offense done by a person who intends to commit such offense but fails in the perpetration thereof or is prevented or intercepted in executing such offense.

b. It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the offense was not possible.
(*Ord. 2007-06, Adop. 2/20/07*)

Article II. Offenses Affecting Children.

Sec. 24-201 Possession of a firearm by a minor, definitions.

For the purpose of this chapter, the following terms shall have the meaning ascribed to them in this section:

a. **“Minor”** means a person who is under the age of eighteen (18) years.

b. **“Firearm”** means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion, expanding gases or other combustion. Air rifles, air pistols and BB guns are included in this definition. This term shall not include a firearm which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841, et. seq. and any amendments thereto.
(Ord. 2007-06, Adop. 2/20/07; Ord. 7397, Adop. 6/22/93)

Sec. 24-202 Possession of a firearm by a minor prohibited, exceptions.

a. Unless otherwise specifically provided herein, it shall be unlawful for a minor to possess any firearm within the City of Hutchinson, except when the minor is in the presence of and under the direct supervision of a parent, stepparent, grandparent, stepgrandparent or legal guardian.

b. Any minor who is not in the presence of and under the direct supervision of his or her parent, stepparent, grandparent, stepgrandparent or legal guardian may only possess a firearm in the City of Hutchinson under the following circumstances:

1. During a hunter education class held pursuant to K.S.A. 32-920 and conducted by a Kansas Hunter Education Instructor who is certified by the Kansas Department of Wildlife and Parks, provided said possession is under the supervision of the instructor;

2. During a firearm instructional or safety training class taught by an instructor certified by the National Rifle Association or other nationally recognized hunting, target or sports shooting organization, provided said possession is under the direct supervision of the instructor;

3. While transporting an unloaded firearm to and from an excursion for lawful hunting of game birds or animals provided:

(a) the minor is in possession of a valid hunting license, if said license is required by State or Federal law for the purposes of the hunting excursion; and

(b) the minor is in possession of a valid hunter education certificate issued to said minor; and

(c) ammunition for the firearm is stored in a box or container separate from the firearm.

4. While participating in a game or test of skill upon the Kansas State Fairgrounds during, and as part of, the Kansas State Fair.
(Ord. 2007-06, Adop. 2/20/07; Ord. 7397, Adop. 6/22/93))

Sec. 24-203 Forfeiture of firearms possessed by a minor.

Except as provided in 24-202, any firearm seized in connection with a violation of this chapter shall be destroyed by the chief of police whenever the weapon is no longer needed for evidence, or the same shall be forfeited to the Hutchinson Police Department. Any weapon forfeited to the Hutchinson Police Department shall be traded for materials for use by the Hutchinson Police Department or sold to a federally licensed firearm dealer and the proceeds used for law enforcement purposes. (Ord. 2007-06, Adop. 2/20/07; Ord. 7397, Adop. 6/22/93)

Sec. 24-204 Stolen weapons.

Any stolen firearm confiscated in connection with any violation of this chapter shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. (Ord. 2007-06, Adop. 2/20/07; Ord. 7397, Adop. 6/22/93)

Sec. 24-205 Penalty.

Any minor violating the provisions of this chapter shall be dealt with in accordance with the Kansas Juvenile Offenders Code, K.S.A. 38-1601 et. seq. and any amendments thereto. (Ord. 2007-06, Adop. 2/20/07; Ord. 7397, Adop. 6/22/93)

Sec. 24-206 Forfeiture of Conveyances.

a. The following property is subject to forfeiture pursuant to this chapter:

All conveyances which are used to transport firearms the possession of which is prohibited by Sec. 24-202. No conveyance is subject to forfeiture under this chapter by reason of any act or omission established by the owners thereof to have been committed or omitted without any of the owners' knowledge or consent. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties.

b. The City Attorney shall promptly proceed against the conveyance by filing in the Reno County District Court a petition for an order to show cause why the court should not order the forfeiture of such property. The petition shall be verified and shall set forth:

1. A description of the property sought to be forfeited;
2. A statement that on or about a date certain the property was subject to forfeiture, and a statement detailing the facts in support thereof;

3. A list of all persons known to the Hutchinson Police Department, after diligent search and inquiry, that may claim an ownership interest in the conveyance, a lien thereon or a security interest therein.

c. Upon receipt of such a petition, the Judge of the District Court shall issue an order to show cause why said property shall not be forfeited. In addition, the order shall set a date, at least 41 days from the date of the first publication of the order pursuant to the following subsection for all persons claiming an interest in the property to file such pleadings as they desire as to why the court shall not order the forfeiture of said conveyance to sale or other disposition by the Hutchinson Police Department. The court shall further order that all other persons who do not appear on that date are deemed to have defaulted and waived any claim to the conveyance.

d. The City Attorney shall give notice of the forfeiture proceedings by:

(1) Causing to be published a copy of the order to show cause, once each week for three consecutive weeks in the official city newspaper; and

(2) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having an ownership interest, a lien on or security interest in said conveyance.

e. At the hearing on the matter, the city shall have the burden to establish by clear and convincing evidence that the conveyance is subject to forfeiture. The final order of forfeiture by the court shall perfect in the City of Hutchinson right, title and interest in and to such conveyance and shall relate back to the date of seizure. Upon the sale of said conveyance, the state shall issue a title certificate to the purchaser.

f. Physical seizure of the conveyance shall not be necessary in order to allege in a petition under this chapter that property is forfeitable. Upon filing the petition, the City Attorney may also seek such protective orders as are necessary to prevent the transfer, encumbrance or other disposal of any conveyance named in the petition.

g. Proceedings brought pursuant to this section, are separate and distinct from and in no way supplemental to, or dependant upon the outcome of any criminal charges or juvenile petitions.

h. Conveyances forfeited pursuant to this chapter shall be, at the option of the City Manager:

1. sold at public auction by the City of Hutchinson and the proceeds paid to the City of Hutchinson Treasury. All proceeds shall be used for drug prevention and enforcement purposes, or youth projects, as determined by the governing body. Forfeiture funds shall be separately accounted for from all other City funds; or

2. if the conveyance is not subject to a lien which has been preserved by the court, it may be retained by the City of Hutchinson for official use. (Ord. 2007-06, Adop. 2/20/07)

Sec. 24-207 Curfew - Generally

It shall be unlawful for any child under the age of 16 years to be upon or about any public street, alley, sidewalk, vacant lot, parking lot, park, playground, public place or other place normally accessible to the general public for public use, whether on foot or in a vehicle or by any other means after the hour of 10:30 p.m. and before the hour of 6 a.m., and it further shall be unlawful for any child under the age of 18 years to be upon or about any public street, alley, sidewalk, vacant lot, park, playground, public place or other place normally accessible to the public for public use, whether on foot or in a vehicle or by other means after the hour of 12 Midnight and before the hour of 6 a.m.; provided, however, that such prohibition shall not apply to those children who are accompanied by a parent or legal guardian, nor to those who are enroute by the most direct and accessible route from their homes to an authorized place of employment, nor to those who are enroute by the most direct and accessible route from authorized place of employment, authorized place of entertainment, or authorized place of attendance to their residences; provided, further, that the term "authorized" as used in this section shall denote prior authorization by a parent or legal guardian. (Ord. 2007-06, Adop. 2/20/07; Ord. 6368, Adop. 6/04/74)

Sec. 24-208 Curfew - Violation with permission of parents or legal guardian

It shall be unlawful for any parent or legal guardian of any child under the age of 18 years to suffer, permit or allow such child to wander, lounge, loaf, loiter or play in, about or upon any public street, alley, sidewalk, vacant lot, parking lot, park, playground, public place or other place normally accessible to the general public for public use, during the hours of curfew applicable to such child in violation of Sec. 24-207. (Ord. 2007-06, Adop. 2/20/07)

Sec. 24-209 Curfew - Authority to suspend

The governing body of the city, on specific occasions and in response to written request submitted not less than seven calendar days prior to the occasion, shall have the authority to suspend by official proclamation published in the official city paper, the hours of curfew stated in Sec. 24-207. (Ord. 2007-06, Adop. 2/20/07)

Article III. Offenses Against Property.

Sec. 24-301 Theft - Of services; tampering defined

Theft of services as described in Uniform Public Offense Code Sec. 6.4 (K.S.A. Supp. 21-3704) may include tampering, defined as:

- a. "Tampering" within the meaning of this section, includes but is not limited to:

1. making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;
2. defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, telephone service or cable television service;
3. preventing any such meters from properly measuring or registering;
4. knowingly taking, receiving, using or converting to such person's own use, or the use of another, any electricity or natural gas which has not been measured; or any telephone or cable television service which has not been authorized; or
5. causing, procuring, permitting, aiding or abetting any person to do any of the preceding acts.

b. In any prosecution under this section, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, telephone service or cable television service, specified in subsection "c" hereof, shall be prima facie evidence of intent to violate the provisions of this section by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, telephone service or cable television service which has not been authorized or measured.

(Ord. 2007-06, Adop. 2/20/07; Ord. 7253, Adop. 10/18/88)

Sec.24-302 Littering

a. Except as provided in K.S.A. 2007 Supp. 8-15,102, and amendments thereto, criminal littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:

- (1) Any public alley, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officers or employee authorized by law to direct or permit such acts; or
- (2) Any public street, highway or road by any means other than being thrown, placed or dropped from a motor vehicle; or
- (3) Any private property without the consent of the owner or occupant of such property.

b. Criminal littering is a Class C misdemeanor.
(Ord. 2008-14, Adop. 7/15/08)

Article IV. Offenses Affecting Governmental Functions.

Sec. 24-401 Driving any vehicle or riding or leading any horse upon the flood control works

a. No person shall drive any motor vehicle or ride or lead any horse upon flood control property belonging to the City of Hutchinson between the toe of the levee of the land side and ten feet beyond the toe of the berm on the water side of the levee, except at authorized ramp crossings.

b. Section 24-401 shall not apply to City employees authorized to maintain the levee system, or to any person permitted by the Flood Control Superintendent, or his designee, to be upon the works.
(Ord. 2007-06, Adop. 2/20/07)

Sec. 24-402 Pawnbrokers and Precious Metals Dealers-Definitions

a. As used in this chapter, the following terms shall have the meanings indicated in this section:

“City” means the City of Hutchinson, Kansas.

“Pawnbroker” means any person who loans money on deposit or pledge of personal property or valuable things other than intangible property, or a person who deals in the purchase of personal property on condition of selling the same back again at a stipulated price, but the term shall not include any person operating under the supervision of the State Banking Commissioner, Credit Union Commissioner or the Consumer Credit Commissioner of this State.

“Person” means any individual, firm, company, partnership, corporation or association.

“Precious metal” means any gold, silver, or platinum group metals or any used articles or other used personal property containing such metals, but shall not include uncirculated coins purchased for their numismatic value rather than their metal content or ingots or other industrial residue or by-products composed of such metals and purchased from manufacturing firms.

“Precious metal dealer” means any person who engages in the business of purchasing precious metal for the purpose of reselling such metal in any form.
(Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-403 Licensure; application; fee; display

No person, whether as principal, officer, agent or employee, shall conduct, pursue, carry on or operate as a pawnbroker or precious metal dealer in the City of Hutchinson without having first obtained a license therefor. The application for such license shall be made on forms provided by the City Clerk for that purpose, shall be in writing and shall state the full name and place of residence of the applicant. If the applicant is a partnership, the application shall give the full name and place of residence of each partner. If the applicant is a corporation, then the name and address of each principal stockholder of the corporation shall be stated on the application. The application shall also contain the address of the place(s) where the business is to be conducted and the hours of the day and the days of the week during which the applicant proposes to engage in business. No license or any renewal thereof shall be granted to any person or business who falls into any of the following categories:

- a. any person who is not a citizen of the United States;
- b. any person who has not been an actual resident of the State of Kansas for at least two years immediately preceding the date of his application;
- c. any person who has been convicted of or has pleaded guilty to a felony under the laws of this state, or any other state, or of the United States, or shall have forfeited his bond to appear in court to answer charges for any such offense within the ten years immediately prior to such person's application for a license;
- d. any person who has had his license revoked for cause under the provisions of this chapter or any statute regulating similar conduct;
- e. any person who is not at least 21 years of age;
- f. any person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;
- g. any person who does not own the premises for which a license is sought, unless he has a written lease therefor for at least three-fourths of the period for which the license is to be issued;
- h. any person whose spouse would be ineligible to receive a license hereunder for any reason other than the age, citizenship and residence requirements;
- i. any partnership, unless all of the partners shall be eligible to receive a license as an individual; and
- j. a corporation, if any officer, manager, director or stockholder would be ineligible to receive a license as an individual.

A license must be posted in a conspicuous place in the place of business at all times. There shall be an annual license fee of \$50 for pawnbrokers and precious metal dealers. (Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-404 Change in location of place of business

Whenever a licensee changes his place of business to another location within the city, licensee shall within 24 hours give written notice thereof to the City Clerk who shall then issue a duplicate license which shall show, in addition to all the information appearing on the original license, a record of the change of location and the date thereof. Such duplicate license shall be authority for the operation of such business at such new location. (Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-405 Records to be kept

a. Every pawnbroker and precious metal dealer shall keep at its place of business a register in which he or she shall enter a legibly printed or typed, comprehensive description of all property taken, purchased or received by him or her in the conduct of business, including:

1. Any trade name or brand;
2. Any serial or other identification number in or upon such article;
3. The date and time of the purchase;
4. The name, date of birth, physical description and place of residence, including street address of the person selling or leaving the article;
5. The driver's license number or, if unavailable, similar identification, of the person selling or leaving the article; and
6. The amount paid for or loaned upon the article.

All such entries shall be made within 1 hour after such property is purchased or left. They shall be made in ink and shall not be in any manner altered, erased, or destroyed.

b. Such register or an exact duplicate thereof shall be delivered to the police department weekly or more often if required by the chief of police. (Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-406 Suspension or revocation of license; notice and hearing

a. Any license issued pursuant to this chapter may be suspended or revoked, after due notice and public hearing before the Governing Body, if it is proved by a preponderance of evidence the licensee:

1. has failed to pay the annual license fee;
2. has violated any provision of this chapter; or
3. no longer meets the requirements for issuance of a new or renewal license.

b. Any license issued pursuant to this chapter shall be revoked if it is proved by a preponderance of evidence that the licensee sold any handgun to a minor.

c. Any such hearing, unless waived by the licensee, shall be held within 30 days after notice thereof, and a determination made by the Governing Body within 60 days after such hearing is concluded. No revocation, suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

(Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-407 Contract requirements

Every loan made by a licensee for which goods are received in pledge as security shall be evidenced by a written contract. The contract shall be in ink. A copy of the contract shall be furnished to the borrower. The loan contract shall set forth the loan period, which shall be 30 days, the date on which the loan is due and payable, and the charges and it shall clearly inform the borrower of its right to redeem the pledge during the contract redemption period of 60 days after the due date. Except as otherwise provided herein, the holder of such contract shall be presumed to be the person entitled to redeem the pledge, and the licensee shall deliver the pledged property to the person presenting the contract upon payment of the principal and charges; provided, that it shall be the duty of the licensee to inquire of the person presenting the contract for his or her name and address. If such person's name and address is different from the name and address of the person who pledged the property, the licensee shall require the person presenting the contract to furnish proof of identification by presenting his or her driver's license or other like identification, and the licensee shall thereafter make such information available to the police department upon request therefore.

(Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-408 Retention period

a. Every precious metal dealer shall retain in its possession all precious metal purchased for a period of seven days, and such precious metal shall remain for such period in the condition in which it was purchased. Such retention period shall commence on the date that the police department receives the register reporting the acquisition of such precious metal, as required by this chapter. If a law enforcement officer has probable cause to believe that any precious metal acquired by a precious metal dealer has been stolen, such law enforcement officer shall give written notice to the dealer to retain such precious metal for an additional period of 15 days. Upon such notice, the dealer shall retain such precious

metal in an unaltered condition for such period unless prior to the expiration of the 15 day period, the law enforcement officer notifies the dealer in writing that the waiting period is terminated.

b. Upon notice to the appropriate law enforcement officer showing particular circumstances which indicate that compliance with the retention period would create an unnecessary hardship for the precious metal dealer, such law enforcement officer may execute a written waiver of the remaining portion of the retention period. Such written waiver shall contain the name and address of the licensee, a comprehensive description of the property subject to the waiver, the reason for the waiver and the signature of the law enforcement officer granting the waiver.

(Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-409 Retention period for pawned or pledged property, or purchased property

a. It shall be unlawful for any pawnbroker to sell, transfer or otherwise convey any pawned or pledged article or property which has been received in the operation of its business within the 90 day period commencing on the date such article or property was pawned, pledged or otherwise received in the operation of its business.

b. Every pawnbroker shall retain possession of purchased property upon the licensed premises and withhold the property from resale or salvage use for fourteen (14) calendar days from the date of the transaction and make the property available for inspection at the licensed premises by any police officer or official designated by the police chief during regular business hours.

(Ord. 2012-27, Adopt. 11/06/12; Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-410 Inspection of books and premises

Every person licensed pursuant to this chapter, and every agent or employee of such licensee, shall:

a. Admit any law enforcement officer to any and every part of the premises which is described in the license for the purpose of examining any goods, pledges or pawns or the books or other records of the business; and

b. Upon request by any police officer produce, for inspection by such officer, a specific article or specific articles purchased or received by him in the course of business.

(Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92)

Sec. 24-411 Acquisition of property from minors

It shall be unlawful for any person licensed pursuant to this chapter to purchase or receive any article or property in the operation of such licensee's business from any person younger than 18 years of age. *(Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92; Ord. 7295, Adop. 3/27/90)*

Sec. 24-412 Use of fictitious name

It shall be unlawful for any person to pawn, pledge or sell any article or property to any person licensed pursuant to this chapter by use of any name, address or personal identification other than that which is true and correct. (*Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92*)

Sec. 24-413 Redelivery of stolen property

Upon demand and presentation of a written notice from a law enforcement agency, that particular property has been reported stolen, and satisfactory proof of ownership of such property by the rightful owner thereof, any licensee in possession of such property shall deliver the same to the rightful owner without charge. When converted or stolen property has been pawned, and the pawnbroker refuses to redeliver such property to the rightful owner upon demand and presentation of satisfactory proof of ownership by the owner, and legal action by the rightful owner to recover such property becomes necessary, the court may assess the licensee for reasonable attorney's fees incurred by the rightful owner if the court finds that the licensee wrongfully withheld the converted or stolen property. (*Ord. 2007-06, Adop. 2/20/07; Ord. 7373, Adop. 9/15/92*)

Article V. Denial of Civil Rights.

Sec. 24-501 Bias Crimes

a. It shall be unlawful for any person to commit a bias crime as defined in this section.

b. For the purposes of this chapter, "bias crime" means any act defined as a crime by any provision of this chapter, when committed, in whole or in part, for the purpose of manifesting hatred of, or antipathy, animosity or hostility toward, or to intimidate, harass, oppress or threaten, another person or group based upon the race, gender, age, religion, national origin, color, ancestry, ethnic background or handicap of such person, one or more members of any such group or any other person.

c. Commission of any bias crime is a class A misdemeanor.
(*Ord. 2007-06, Adop. 2/20/07; Ord. 7329, Adop. 3/26/91*)

Article VI. Offenses Against the Public Peace.

Sec. 24-601 Loud speakers and sound amplifiers-Permit Required

It shall be unlawful for any person to play, use or operate on the streets, alleys, or public grounds of the city any instrument known as a loud speaker or sound amplifier, without first procuring a permit therefore from the city manager. Such permit shall be granted or refused at the discretion of the city manager. (*Ord. 2007-06, Adop. 2/20/07; Ord. 7365, Adop. 5/26/92*)

Sec. 24-602 Trespass for the Purpose of Observing

It shall be unlawful for any person to trespass upon the property owned or occupied by another for the purpose of looking or peeping into any window, door, skylight or other opening in a house, room or building, or to loiter in a public street, alley, parking lot or other public place for the purpose of wrongfully observing the actions of occupants of any such house, room or building. *(Ord. 2007-06, Adop. 2/20/07)*

Sec. 24-603 Use of City Right of Way

Use of the City right of way shall be restricted to ingress and egress only in and across the City right of way on the east side of Main from 20th St. to State Fair Road; on the north and south side of 20th Street from Main to Poplar; on the east side of Plum St., from Norman Rd. to State Fair Road; on the west side of Plum St. from Norman Rd. to a point 50 feet north of the entrance to State Fair parking lot B; and on the east and west side of Poplar St. from 20th south to the south edge of State Fair property; during the Kansas State Fair, beginning at 8 a.m. on Friday of Opening day and ending at 10 p.m. Sunday of Closing day. *(Ord. 2010-14, Adop. 4/20/10)*

Sec. 24-604. Urinating/Defecating in Public Prohibited

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. Violation of this section is a Class C non-person misdemeanor. *(Ord. 2012-18; Adop. 8/21/12)*

Sec. 24-605 Public Nudity Prohibited

a. Public nudity is any person knowingly and intentionally, in a public place, appearing in a state of nudity. It is unlawful for any person to engage in public nudity within the corporate limits of the city.

b. Definitions.

- (1) "Nudity" means the showing, in a public place, of the human male or female genitals, anus, anal cleft or cleavage, or the showing of the female breast below a horizontal line across the top of the areola at its highest point with less than a fully opaque covering. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

(2) "Public place" means any location frequented by the public, or where the public is present or likely to be present. Public place includes but is not limited to, streets, sidewalks, parks, and business and commercial establishments (whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement).

c. The provisions of Hutchinson City Code Section 24-605(a) shall not apply to:

(1) A child under the age of ten (10) years,

(2) A person appearing in a state of nudity modeling in an art class operated by a college, community college or university supported entirely or primarily by taxation,

(3) A mother breastfeeding her child.

d. Violation of Hutchinson City Code Section 24-605 is a Class B non-person misdemeanor.

(Ord. 2013-18, Adop. 8/06/2013)

Article VII. Offenses Against the Public Safety.

Sec. 24-701 Dangerous missiles

a. It shall be unlawful for any person within the city to throw or project any ball, stone, brick, piece of wood, clay or other hard substance along, over or upon any street, alley, sidewalk or public ground or at or against any house, building, vehicle, or at or towards any person.

b. Violation of this section is a Class B misdemeanor.
(Ord. 2007-06, Adop. 2/20/07)

Sec. 24-702 Unlawful inhalation of toxic vapors from certain substances; sale

a. As used in this section, the phrase "substance containing a solvent having the property of releasing toxic vapors or fumes" shall mean and include any substance, the contents of which may include, but are not limited to one or more of the following chemical compounds: acetone, acetate, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, ethyl ketone, pentachlorophenol, petroleum ether, toluene (toluol), or any other chemical compound or ingredient which causes intoxication, inebriation, euphoria, excitement, exhilaration, stupefaction or dulling of the brain or nervous system when inhaled or smelled.

b. No person shall for the purpose of causing a condition of intoxication, inebriation, euphoria, excitement, exhilaration, stupefaction or dulling of his brain or nervous

system, intentionally smell or inhale the fumes from any substance containing a solvent having the property of releasing toxic vapors or fumes; provided, that nothing in this section shall be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes.

c. No person shall, for the purpose of violating subsection "b" hereof use or possess for the purpose of so using any substance containing a solvent having the property of releasing toxic vapors or fumes.

d. No person shall sell, give or offer to sell or give to any person any container of substance containing a solvent having the property of releasing toxic vapors or fumes, if he has knowledge that the product sold, given nor offered to be sold or given will be used for the purpose set forth in subsection "b" hereof.

e. Violation of this section is a Class B misdemeanor.
(Ord. 2007-06, Adop. 2/20/07)

Sec. 24-703 Aerial Luminaries Prohibited

a. It shall be unlawful to ignite or otherwise use aerial luminaries, commonly known as sky lanterns or flying luminaries, within the City. As used in this section, "aerial luminary" refers to airborne paper objects containing a device for fuel that heats air from the inside causing it to rise into the air and remain airborne until extinguished.

b. Violation of this section is a Class B misdemeanor.
(Ord. 2012-26, Adop. 11/6/12)

Sec. 24-704 Smoking – Definitions.

The following definitions shall apply when the words and phrases defined herein are used in Hutchinson City Code Sections 24-705 through 24-707, and amendments thereto:

(a) "Access point" means the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of Hutchinson City Code Section 24-705.

(b) "Bar" means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.

(c) "Electronic cigarette" (E-Cigarette) means an electronic and/or battery operated device that may resemble a cigarette, but uses an atomizer or similar device that allows users to inhale nicotine vapor or other flavored vapor without fire, smoke or ash. An electronic cigarette includes but is not limited to an electronic smoking device, electronic

vaping device, personal vaporizer, electronic pipe (e-pipe), electronic hookah, e-pen or vapor pen.

(d) "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.

(e) "Employer" means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.

(f) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.

(g) "Food service establishment" means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(h) "Gaming floor" means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.

(i) "Medical care facility" means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.

(j) "Outdoor recreational facility" means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.

(k) "Place of employment" means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a "place of employment" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

(l) "Private club" means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.

(m) "Public building" means any building owned or operated by: (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof; (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state or any municipality.

(n) "Public meeting" means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.

(o) "Public place" means any enclosed areas open to the public or used by the general public including, but not limited to: Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a "public place" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

(p) "Smoke or Smoking" means any of the following: (1) the use of an electronic cigarette; (2) use of an electronic or battery-powered vaporizer that simulates tobacco smoking by producing an aerosol that resembles smoke.

(q) "Smoke shop" means any indoor area operated primarily for the retail sale of electronic cigarettes, tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of these items.

(r) "Substantial dues or membership fee requirements" means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a ban on smoking.

Sec. 24-705 Smoking – Prohibited.

(a) It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

- (1) Public places;
- (2) Taxicabs and limousines;
- (3) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;
- (4) Restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;
- (5) Access points of all buildings and facilities not exempted pursuant to subsection (d); and
- (6) Any place of employment.

(b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

(c) Notwithstanding any other provision of this section, Section 24-706 or Section 24-707, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

(d) The provisions of this section shall not apply to:

- (1) The outdoor areas of any building or facility beyond the access points of such building or facility;
- (2) Private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 5-530, and amendments thereto;
- (3) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
- (4) The gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;
- (5) That portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such

- adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;
- (6) That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;
 - (7) Smoke shops;
 - (8) A Class A or Class B club defined in K.S.A. 41-201, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and
 - (9) A private club in designated areas where minors are prohibited.
 - (10) Any benefit cigar dinner or other cigar dinner of a substantially similar nature that:
 - (A) is conducted specifically and exclusively for charitable purposes by a nonprofit organization which is exempt from federal income taxation pursuant to Section 501(c)(3) of the federal internal revenue code of 1986;
 - (B) is conducted no more than once per calendar year by such organization; and
 - (C) has been held during each of the previous three years prior to January 1, 2011; and
 - (11) That portion of a medical or clinical research facility constituting a separately ventilated, secure smoking room dedicated and used solely and exclusively for clinical research activities conducted in accordance with regulatory authority of the United States or the State of Kansas, as determined by the director of alcoholic beverage control of the department of revenue.

Sec. 24-706 Smoking; Posting Premises.

The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall post or cause to be posted in a conspicuous place signs at each entrance clearly stating that smoking, including electronic cigarettes, is prohibited.

Sec. 24-707 Smoking – Prohibited; Penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of Sections 24-705 through 24-707.

(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person:

- (1) Has knowledge that smoking is occurring; and
- (2) Recklessly permits smoking under the totality of the circumstances.

(c) It shall be unlawful for any person, with no requirement of a culpable mental state, to smoke in any area where smoking is prohibited by the provisions of Section 24-705.

(d) Any person who violates any provision of Sections 24-705 through 24-707, shall be guilty of an e-cigarette or smoking infraction punishable by a fine:

- (1) Not exceeding \$100 for the first violation;
- (2) Not exceeding \$200 for a second violation within a one year period after the first violation; or
- (3) Not exceeding \$500 for a third or subsequent violation within a one year period after the first violation.

For purposes of this subsection, the number of violations within a year shall be measured by the date the e-cigarette or smoking violations occur.

(e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).

(f) No employer shall discharge, refuse to hire or take any other adverse action against an employee, applicant for employment or customer with the intent to retaliate against that employee, applicant or customer for reporting or attempting to prosecute a violation of any of the provisions of Sections 24-705 through 24-707.

(Ord. 2015-45, Adop. 11/03/2015)

Article VIII. Offenses Against the Public Morals.

Sec. 24-801 Clothing Guidelines at Restaurants, Taverns or any Establishments licensed to sell alcoholic liquor or cereal malt beverage

a. It shall be unlawful for any person working or performing or otherwise engaged at any restaurant, tavern or any establishment licensed to sell alcoholic liquor or cereal malt beverages located within the City to do so in a manner in which breasts, reproductive, sexual organs or the buttocks are substantially uncovered or covered by clothing which is transparent or wet or covered by paint.

b. It shall be unlawful for any owner or persons in charge of any such establishment located within the City premises to allow the act made unlawful by this section. *(Ord. 2007-06, Adop. 2/20/07; Ord. 2005-05, Adop. 3/01/05)*

Sec. 24-802 Entertainment dancing

a. It shall be unlawful for any person performing entertainment dancing to do so upon the bar or upon any other place used for serving food or beverages or in any place within the premises open to the view from the sidewalk, street, or alley, or to perform such dance other than on a raised dais or platform or some designated area adequately set aside from the immediate vicinity where patrons or audience may be seated or standing.

b. It shall be unlawful for any person performing entertainment dancing to sit at or occupy any table or counter when any patron or spectator is also sitting at or occupying such table or counter.

c. It shall be unlawful for any person performing entertainment dancing to mix socially with any patron or member of the audience for any purpose. Normal duties as a waitress or other regular employee shall not constitute mixing socially.

d. It shall be unlawful for any person performing entertainment dancing to perform any manner of obscene, lewd, lustful, lascivious, prurient, or sexually indecent dance and it shall be prima facie evidence of violation of this section to wear any costume or other clothing which does not cover or which is transparent or does not conceal the breasts, reproductive or sexual organs or the buttocks.

e. It shall be unlawful for any owner or persons in charge of premises where entertainment dancing is performed to allow any acts made unlawful by this section.

f. "**Entertainment dancing**" means any dance performed by a person or persons before an audience. *(Ord. 2007-06, Adop. 2/20/07)*

Sec. 24-803 Attendance at Professional Regulated Sports Contests

No person under the age of eighteen (18) may be admitted to or be present at a professional regulated sports contest, as that event is defined in K.S.A. 74-50,181 et seq. and City Code 29-101 to 29-106, and as may be amended from time to time. (*Ord. 2009-05, Adop. 2/03/09*)

Article IX. Classification of Misdemeanors and Penalties.

Sec. 24-901 Classes of misdemeanors and confinement

a. For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

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

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

3. Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed 1 month;

4. Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the section that defines the crime; if no penalty is provided in such section, the sentence shall be the same penalty as provided herein for a Class C misdemeanor.

b. Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in Sec. 24-1202 instead of or in addition to confinement, as provided in this section.

c. In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the violation was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the administrative judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(*Ord. 2007-06, Adop. 2/20/07*)

Sec. 24-902 Fines

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

1. For a Class A misdemeanor, a sum not exceeding \$2,500;
2. For a Class B misdemeanor, a sum not exceeding \$1,000;
3. For a Class C misdemeanor, a sum not exceeding \$500.00;
4. For an unclassified misdemeanor, any sum authorized by the section that defines the offense; if no penalty is provided in such section, the fine shall not exceed \$500. (*Ord. 2007-06, Adop. 2/20/07*)

Sec. 24-903 Sentencing for bias crimes

Any person convicted of a bias crime, as defined in section 24-801 of this chapter, shall, in addition to any other punishment imposed therefore, be sentenced to confinement in the City or County jail for a period of not less than 10 days, and such person shall not be placed on probation or otherwise released until he or she has served at least 48 consecutive hours in confinement, in the case of a first conviction, or 10 consecutive days in confinement, in the case of a second or subsequent conviction. (*Ord. 2007-06, Adop. 2/20/07; Ord. 7329, Adop. 3/26/91*)

Article X. Miscellaneous Provisions.

Sec. 24-1001 Expungement of conviction

a. Except as provided in subsection (b) any person who has been convicted in municipal court of a violation of city ordinance may petition the municipal court for the expungement of such conviction if three (3) or more years have elapsed since the person:

1. Satisfied the sentence imposed; or
2. Was discharged from probation, parole, or a suspended sentence.

b. In the case of a conviction for the violation of a city ordinance which would also constitute a violation of any of the items enumerated in K.S.A. 8-285 (a), and amendments thereto, no person may petition for expungement until five years or more years have elapsed since the person:

1. Satisfied the sentence imposed; or

2. Was discharged from probation, parole or a suspended sentence.

c. When a petition for expungement is filed, the court shall set a date for a hearing thereon and shall give notice thereof to the prosecuting attorney. The petition shall state:

1. The defendant's full name;
2. The full name of the defendant at the time of arrest and conviction, if different;
3. The defendant's sex, race and date of birth;
4. The crime for which the defendant was convicted;
5. The date of the defendant's conviction; and
6. The identity of the convicting court.

Any person petitioning the court for an order of expungement pursuant to this section shall pay the court a fee of \$50.00 upon the filing of such petition. Any person who may have relevant information about petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas adult authority.

d. At the hearing on the petition, the court shall order the petitioner's conviction expunged if the court finds:

1. That the petitioner has not been convicted of a felony in the past three years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;
2. That the circumstances and behavior of the petitioner warrant the expungement; and
3. That the expungement is consistent with the public welfare.

e. When the court has ordered a conviction expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Federal Bureau of Investigation, the Kansas Bureau of Investigation, the Secretary of Corrections and any other criminal justice agency which may have a record of the conviction. After the order of expungement is entered, the petitioner shall be treated as not having been convicted of the crime, except that:

1. Upon conviction for any subsequent crime the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

2. In any application for employment;

a. As a detective with a private detective agency, as defined by K.S.A. 75-7601;

b. As security personnel with a private patrol operator, as defined by K.S.A. 75-7601; or

c. With a criminal justice agency, as defined by section 1 of Senate Bill No. 406, as enacted by the 1978 legislature; the petitioner, if asked about previous convictions, must disclose that the conviction took place;

3. The court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed; and

4. The conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged.

f. Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such violation or is placed on parole or probation or is given a suspended sentence for such a violation, the person shall be informed of the ability to expunge the conviction.

g. Subject to the disclosures required pursuant to subsection "e", in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of an offense has been expunged pursuant to this section may state that he or she has never been convicted of such offense.

(Ord. 2007-34, Adop. 8/07/07; Ord. 2007-06, Adop. 2/20/07)

Article XI. Adult Entertainment Business

Sec. 24-1101 License required.

No person shall operate an adult book and/or video store, adult entertainment establishment or adult novelty store ("adult entertainment business") without first having in his or her possession for each place of business as provided by this chapter, unexpired and unrevoked licenses issued by the City.

Sec. 24-1102 Persons ineligible for City license.

No license shall be issued under the provisions of this Article to:

- a. A person who possesses a valid alcoholic liquor license issued by the State of Kansas and the City for the same location as the proposed adult entertainment business;
- b. A person who possesses a valid cereal malt beverage license issued by the City for the same location as the proposed adult entertainment business;
- c. A person who has been convicted of a felony under the laws of any State or of the United States.
- d. A person who has had a license revoked for cause under the provisions of Sec. 18-204 or Sec. 18-217 of the Hutchinson City Code;
- e. A person who has been convicted of being the keeper or is keeping a house of prostitution or has forfeited bond to appear in court to answer charges of being a keeper of a house of prostitution;
- f. A person who has been convicted of being a proprietor of a gambling house or of pandering or other crimes or other offenses involving morals charges or moral turpitude, or who has forfeited a bond to appear in court to answer charges of such a nature;
- g. A person who is not at least twenty-one (21) years of age;
- h. A person who, other than as a member of the governing body of the City or of Reno County, appoints or supervises any law enforcement officer or who is a law enforcement official;
- i. A person who intends to carry on the business authorized by the license as an agent of another;
- j. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application, except as provided in subsection I. of this section;
- k. A person who does not own the premises for which a license is sought, or does not have a written lease thereon for at least three-fourths of the period for which the license is to be issued;
- l. Any person if the spouse of such person would be ineligible to receive such license hereunder for any reason other than age; provided, that this subsection may not apply in determining eligibility for a renewal license;

- m. A person who is not a resident of Reno County, Kansas;
- n. A partnership, unless all of the partners are qualified to obtain a license;
- o. A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation would be ineligible to receive a license hereunder for any reason;
- p. A corporation, if any officer, manager or director thereof, or any stockholder owning in the aggregate more than 5% of the common or preferred stock of such corporation has been an officer, manager or director, or a stockholder owning in the aggregate more than 5% of the common or preferred stock of a corporation which has had a license revoked under the provisions of City Code Sections 18-204 or 18-217.

Sec. 24-1103. License exclusive to premises issued.

a. The license provided for herein shall be issued for one particular premises which shall be described in the application and the license. No license shall be issued for premises wherein the use thereof would be in violation of City Code, the City's zoning regulations, building regulations or fire protection regulations.

Sec. 24-1104. Requirements of Licensure.

a. The holder of an Adult Entertainment Business license must possess a City issued Conditional Use Permit for the facility;

b. The holder of an Adult Entertainment Business license must comply at all times with the requirements of the City issued Conditional Use Permit for the facility;

c. No person younger than eighteen (18) years of age may be employed in an Adult Entertainment Business;

d. No person younger than eighteen (18) years of age may patronize an Adult Entertainment Business;

e. Possession or consumption of alcoholic liquor or cereal malt beverage is not permitted on the premises;

f. The licensee must install and have operational at all times video surveillance of entrances, exit points and cash registers. The video must be made available to law enforcement officers to review when the licensee is the victim of burglary, robbery or theft.

g. The applicant has paid an annual license fee of \$250.00 to the City Clerk.

Sec. 24-1105. Hours of Operation.

A licensee may be open for business between the hours of 9:00 a.m. and 11:00 p.m.

Sec. 24-1106. Display of License.

Every licensee shall cause his or her license to be framed and hung in plain view in a conspicuous place on the licensed premises at all times when such license is in force.

Sec. 24-1107. Right of Entry and Inspection of Licensed Premises.

The right of immediate entry to and inspection of any Adult Entertainment Business, at any time by any duly authorized officer or agent of the City, or by any law enforcement officer, shall be a condition on which every license is issued, and the application for and acceptance of any license shall conclusively be deemed to be the consent of the applicant and licensee or permit holder to such immediate entry and inspection. Such consent shall not be revocable during the term of the license. Refusal of such entry shall be grounds for revocation of the license.

Sec. 24-1108. Revocation of License.

a. The City may take immediate action to close temporarily an Adult Entertainment Business if a violation of this code is cited by a law enforcement officer, pending the scheduling of a temporary hearing in Hutchinson Municipal Court within 72 hours after serving notice;

b. If the violation is corrected, the Court may permit continued operation of the business. If the violation is not corrected, or if the violation is a second such complaint cited in the calendar year, the Court will continue the closure of the business pending a hearing before the governing body as provided in Sec. 11-108(c);

c. At the next regularly scheduled City Council meeting, the governing body shall review the evidence of the violation and may revoke such license for cause, or if the violation has been corrected, allow continuation of the license;

d. The revocation of an Adult Entertainment Business license may also be considered by the governing body, upon five (5) days written notice to a person holding such a license, for the following reasons:

1. The licensee has fraudulently obtained the license by giving false information in the application therefore or any hearing thereof;
2. The nonpayment of any license fee payable pursuant to this chapter;

e. Within twenty (20) days after the order of the governing body revoking or suspending any license, the licensee may appeal from such order in the manner provided by law; provided, that any appeal taken from an order revoking any such license shall not suspend the order of revocation during the pendency of the appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any person acting for or on behalf of such person, for a period of six (6) months after the revocation becomes effective.

(Ord. 2011-7, 4/19/11)