ORDINANCE NO. 18821

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., regulating public offenses within the corporate limits of the City of Topeka, Kansas; incorporating by reference the “Uniform Public Offense Code for Kansas Cities,” edition of 2006, with certain deletions and omissions; adopting new language regarding attempted offenses; and amending City of Topeka Code § 54-8 and creating City of Topeka Code § 54-9 and specifically repealing original City of Topeka Code §§ 54-36, 54-37, 54-38, 54-39, 54-40, 54-41, 54-42, 54-72, 54-74, 54-101, 54-103 and 54-121 in their entirety.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That City of Topeka Code § 54-8, Uniform Public Offense Code, is hereby amended to read as follows:

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 Topeka, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of 1996 2006, 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 Sections 4.3 ("Prostitution"), 4.4 ("Promoting Prostitution"), and 4.5 ("Patronizing A Prostitute"), which are specifically deleted and omitted. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as adopted by Ordinance No. 17025 ________," 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 Ordinance No. 47025 ______ and filed with the city clerk to be open to inspection and available to the public at all reasonable hours.

Section 2. That City of Topeka Code Chapter 54, Article I, § 54-9 is hereby created to read as follows:

**Attempt.**

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

(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 crime was not possible.

(c) An attempt to commit a Class A violation is a Class B violation.

(d) An attempt to commit a Class B or Class C violation is a Class C violation.

Section 3. That City of Topeka Code § 54-36, Theft, is hereby repealed.

**Theft.**

It shall be unlawful for any person willfully to take possession of the property of another with the intent to permanently deprive the owner thereof of the use or benefit of such property.

Section 4. That City of Topeka Code § 54-37, Theft of services, is hereby repealed.

**Theft of services.**
(a) Theft of services is obtaining services from another by deception, threat, coercion, stealth, tampering or use of false token or device.

(1) "Services" within the meaning of this section includes, but is not limited to, labor, professional service, cable television service, public or municipal utility or transportation service, telephone service, entertainment and the supplying of equipment for use.

(2) "Tampering" within the meaning of this section includes, but is not limited to:

a. 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;

b. 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;

c. Preventing any such meters from properly measuring or registering;

d. 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
e. — 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 (a)(2), shall be prima facie evidence of intent to violate the provisions of this section by the 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.

(e) — Theft of services is a misdemeanor.

Section 5. That City of Topeka Code § 54-38, Shoplifting, is hereby repealed.

Shoplifting.

(a) — Any person who shall willfully take possession of any goods, wares or merchandise offered for sale by any store or other mercantile establishment with the intention of converting the same to such person's own use without paying the purchase price thereof, shall be guilty of the offense of shoplifting.

(b) — Concealment from view of any goods, wares or merchandise, on the person or otherwise under the control of that person, shall be deemed prima facie evidence of shoplifting.

Section 6. That City of Topeka Code § 54-39, Criminal trespass, is hereby repealed.

Criminal trespass.
(a) Criminal trespass is:

(1) Entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by a person who knows such person is not authorized or privileged to do so, and:

a. 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 the owner thereof or other authorized person;

b. Such property or premises 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;

c. Such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106 or 60-3107, or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or
structure personally communicated to such person by the owner of the 
health care facility or other authorized person.

(b) As used in this section:

*Health care facility* means any licensed medical care facility, certificated health 
maintenance organization, licensed mental health center or mental health clinic, licensed 
psychiatric hospital, or other facility or office where services of a health care provider are 
provided directly to patients.

*Health care provider* means any person:

1. Licensed to practice a branch of the healing arts;
2. Licensed to practice psychology;
3. Licensed to practice professional or practical nursing;
4. Licensed to practice dentistry;
5. Licensed to practice optometry;
6. Licensed to practice pharmacy;
7. Registered to practice podiatry;
8. Licensed as a social worker; or
9. Registered to practice physical therapy.

(c) Criminal trespass is a misdemeanor.

Section 7. That City of Topeka Code § 54-40, Trespassing on railroad property, is 
hereby specifically repealed.

**Trespassing on railroad property.**

(a) It shall be unlawful for any person not authorized by law or an 
employee of a railroad company, within the corporate limits of the city, to jump, climb
or ride upon any railroad train or car standing or moving upon the main or side tracks of such railroad company, or to habitually or unnecessarily lounge, loaf or remain in or upon the grounds, buildings, cars or conveyances of such railroad company.

(b) It shall be unlawful for any person to enter or trespass upon any portion of any railway bridge or its approaches over and across the Kansas River within the city, except the portion thereof which may have been set apart for the use of foot passengers.

Section 8. That City of Topeka Code § 54-41, Changing price tags, is hereby specifically repealed.

**Changing price tags.**

Any person who shall willfully change the price tag on any goods, wares or merchandise offered for sale by any store or other mercantile establishment shall be guilty of an offense.

Section 9. That City of Topeka Code § 54-42, Alteration of serial numbers, is hereby repealed.

**Alteration of serial numbers.**

(a) No person shall change, cover, alter, remove, obliterate or deface the serial number or other manufacturer's numbers or identification letters, words or numbers of any of the following machines, apparatuses or manufactured articles with the intent to conceal, destroy or misrepresent the identity or type of ownership of the following machines, apparatuses or articles:
(1) TV's, radios, phonographs, tape recorders or tape players, typewriters, adding machines and other office machines;

(2) Handguns, rifles and shotguns;

(3) Musical instruments such as clarinets, saxophones, trumpets and flutes;

(4) Power equipment, including lawnmowers, tree saws, power drills, saws, sanders and buffers, but not excluding any mechanical equipment sold;

(5) Gasoline engines, such as outboard motor engines and other engines, including automobile engines and transmissions;

(6) Home appliances, such as vacuum cleaners, sewing machines and electric mixers;

(7) Photographic equipment, such as cameras, motion picture projectors and slide-projectors;

(8) Binoculars; and

(9) Any machines, apparatuses or articles that carry a manufacturer's serial number, including such articles as boats, boat motors and camping trailers, but not excluding any other articles that bear manufacturer's serial numbers.

(b) No person shall knowingly buy, sell, receive, barter, trade, dispose of or have in his possession any of the aforementioned manufacturer's articles, devices, apparatuses or machines from which the manufacturer's number or identification mark, or the name of the manufacturer, or maker, or model, or any other...
identification letters, words or numbers have been changed, covered, altered, removed, obliterated, defaced or destroyed.

(c) Possession of any of the aforenamed manufacturer's articles, devices, apparatuses or machines from which the manufacturer's serial number or other manufacturer's number or identification mark, or the name of the manufacturer, or make, or model, or any other identification letters, words or numbers have been changed, covered, altered, removed, obliterated, defaced or destroyed shall be prima facie evidence that the possessor has changed, covered, altered, removed, obliterated, defaced or destroyed the same with the intent to cancel, destroy or misrepresent the identity, type or ownership of such machine, apparatus or article.

Section 10. That City of Topeka Code § 54-72, False impersonation, is hereby repealed.

**False impersonation.**

(a) It shall be unlawful for any person to knowingly or unknowingly falsely represent himself to be a public officer or employee.

(b) It shall be unlawful for any person who is not authorized to do so, to wear the official uniform, badge or insignia of any department, or any uniform to which is attached any buttons, badges or insignia which would or could lead the public to believe such person to be a member of such department; nor to in any other manner represent himself to be in the service of such department.

Section 11. That City of Topeka Code § 54-74, Interfering with and abusing police or arson dogs, is hereby repealed.

**Interfering with and abusing police or arson dogs.**
It shall be unlawful for any person to willfully or maliciously torture, torment, beat, kick, strike, mutilate, injure, disable or kill any dog used by the police or fire department in the performance of the functions or duties of such department, or to interfere with or meddle with any such dog while being used by the department or any officer or member thereof in the performance of any of the duties or functions of the department or of such officer or member.

Section 12. That City of Topeka Code § 54-101, Carrying of deadly weapons, is hereby repealed.

Carrying of deadly weapons.

(a) It shall be unlawful for any person who is not an officer of the law, or a deputy to such officer:

(1) To be found within the city limits carrying upon his person a concealed deadly weapon. A deadly weapon includes, by way of illustration, but not limitation: pistols, knives, not including an ordinary pocket knife with a blade not more than four inches in length, dirks, slingshots, knucks or replicas;

(2) To carry on his person or have within the immediate control of his person on or about public property or a public place within the city limits, any loaded firearm or automatic firearm with the magazine loaded, detached or attached, which when used is likely to cause death or great bodily harm; or

(3) To allow a minor, either through negligence of the owner or an intentional act by the owner, to have access to or gain possession of a
firearm, loaded or unloaded except as provided in K.S.A. 32-920. This subsection shall not apply if the minor obtains the firearm as a result of unlawful entry by any person.

(b) This section shall not apply to those persons exempt under the provisions of K.S.A. 21-4201 or amendments thereto, or to those persons licensed under the provisions of chapter 30, article XI.

(c) For any violation of this section, the municipal judge shall, upon conviction, order any such weapons to be confiscated and the weapon shall, whenever it is no longer needed for evidentiary purposes in the discretion of the trial court, be destroyed. Unless otherwise provided by law, all other property shall be disposed of in such manner as the court in its sound discretion may direct.

Section 13. That City of Topeka Code § 54-103, Drawing a weapon upon another, is hereby repealed.

Drawing a weapon upon another.

(a) It shall be unlawful for any person, not a peace officer in the execution of duty, to draw a pistol, revolver, knife or any other deadly weapon upon another person.

(b) The provisions of subsection (a) do not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the
detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) Members of the armed services or reserve forces of the United States or the state national guard while in the performance of their official duty; or

(4) A person engaged in defense of his person against an aggressor when and to the extent it appears to him and he reasonably believes that such conduct is necessary to defend himself or another against such aggressor's imminent use of unlawful force, or in defense of his dwelling when and to the extent that it appears to him and he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon his dwelling.

The preceding exceptions in this subsection (b)(4) are not available to a person who:

a. Is attempting to commit, is committing, or is escaping from the commission of, a forcible felony;

b. Initially provokes the use of force against himself or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

c. Otherwise initially provokes the use of force against himself or another, unless:

1. The person has reasonable grounds to believe that he is in imminent danger of death or great
bodily harm, and he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

2. In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

Section 14. That City of Topeka Code § 54-121, Disorderly conduct, is hereby repealed.

**Disorderly-conduct.**

(a) Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace:

(1) Engaging in brawling or fighting;

(2) Disturbing an assembly, meeting or procession, not unlawful in its character; or

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

(b) Disorderly conduct is a misdemeanor.
Section 15. That City of Topeka Code §§ 54-8, 54-36, 54-37, 54-38, 54-39, 54-40, 54-41, 54-42, 54-72, 54-74, 54-101, 54-103 and 54-121 are hereby specifically repealed.

Section 16. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

PASSED and APPROVED by the City Council February 20, 2007.

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William Bunten, Mayor

ATTEST:

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Brenda Younger, City Clerk