

CHAPTER 15

OFFENSES

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Article 1. Offenses in General

Section 15-1. Offense Defined.

An "offense" is hereby defined as the doing of any act or thing which, by this Chapter or any ordinance of the City of Elk City, Oklahoma, is prohibited, forbidden or declared to be unlawful, or the failure or refusal to do any act or perform any duty which, by any provision of this Chapter or by any ordinance of the City of Elk City, Oklahoma, is commanded or required to be done.

Section 15-2. Attempts to Commit an Offense.

Every person who attempts to commit an offense against the Code of Ordinances of the City of Elk City, Oklahoma, and in such attempt does any act toward the Commission of such offense, but fails, is prevented or intercepted in the perpetration thereof, shall be guilty of an offense and shall be punished in the manner prescribed for the offense itself.

Section 15-3. Effect of Intoxication.

No act committed by any person while in a state of voluntary intoxication, whether from alcoholic beverages or drugs, shall be deemed less an offense by reason of his being in such condition.

Section 15-4. Aiding in an Offense.

When no punishment for counseling or aiding in the commission of a particular offense is expressly prescribed by ordinance, every person who counsels or aids another in the commission of such, shall be guilty of an offense and punishable in the same manner as the principal offender.

Sections 15-5 through 15-9. (Reserved for future use.)

**Article 2. Offenses Against Public Decency,
Morality and Policy**

Section 15-10. Gambling Prohibited.

No person, firm or corporation (or agent or employee thereof) shall play, open or cause to be opened, operate, carry on or conduct any game of roulette, craps, or any percentage played with dice, for money, checks, chips, credit or any other things of value; or shall set up, operate or permit to be operated, any slot machine or other device whatsoever where money, checks, chips, credit or any other things of value are played, when the act of playing the same might result in a gain or loss to the party playing; or shall gamble knowingly in any other similar manner; or knowingly shall permit his or its premises, houses, lot or other property to be used in connection with or for, any act declared unlawful in this Chapter.

Section 15-11. False Or Bogus Checks.

1. It shall be unlawful for any person, with intent to cheat or defraud, to obtain, or attempt to obtain, from any person, firm or corporation, any money, property or valuable thing, of the value of fifty dollars (\$50.00) or less, by means of any false or bogus check or by any other written, printed or engraved instrument or spurious coin. The term "false or bogus check" shall include checks or orders given for money or property which are not honored on account of insufficient funds of the maker to pay same, as against the maker or drawer thereof.

2. The making, drawing, issuing or delivering of a check draft or order, payment of which is refused by the drawee, shall be prima facie evidence of intent to defraud and the knowledge of insufficient funds in, or credit with, such bank or other depository; provided, such maker or drawer shall not have paid the drawee the amount due thereon, together with the protest fees, within five (5) days from the date the same is presented for payment; and, provided further, that said check or order is presented for payment within thirty (30) days after same is delivered and accepted.

Section 15-12. Harmful Deception.

It shall be unlawful for any person knowingly to deceive another (whether by impersonation, misrepresentation or otherwise), when such deception results in, or contributes to, the loss, damage, harm or injury of the person deceived or of a third party, or results in or contributes to the benefit of the deceiver.

Section 15-13. Loitering.

1. It shall be unlawful for any person, without lawful reason, between the hours of 12:00 o'clock midnight and 5:00 o'clock a.m., to wander aimlessly within the City of Elk City, Oklahoma, on the streets, in other public places or on property of other persons; or during such time

to sleep upon any street or in any other public place or on any property of another person without the express or tacit consent of the owner or person in charge of such place.

2. It shall be unlawful for any person to loiter in or about any public building, in or about the station or depot of a public carrier or on or about the premises of a public or private school.

3. No person shall loiter in the immediate vicinity where a person or persons are gambling by the use of any means or device.

4. It shall be unlawful for any person to loiter, loaf, wander, stand or remain idle, either alone or in consort with others, in a public place or building in such a manner as to:

- a. Obstruct any public street, highway, sidewalk or any other public place or building by hindering, impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians; or
- b. Commit in or upon any public street, highway, sidewalk or any other public place or building, any act or thing which is an obstruction or interference to the free and uninterrupted use of property or with any business lawfully conducted by anyone in, upon, facing or fronting on any such public street, highway, sidewalk or any other public place or building, all of which prevents the free and uninterrupted ingress, egress and regress therein, thereon and thereto.

Section 15-14. Offenses Relating to Drugs and Related Substances.

1. “Controlled Dangerous Substance” shall be defined in 63 Oklahoma Statutes Section 2-101.

2. “Marijuana” shall be defined as all parts of a plant of the genus cannabis, whether growing or not; the seed of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. “Marijuana” does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.

3. It shall be unlawful for any person under the influence of marijuana or any narcotic or other controlled dangerous substance, to appear or be upon or in any street, alley, place of business or other public place within the City of Elk City, Oklahoma; or for any person without a medical marijuana license to use or possess marijuana or to use or possess any other narcotic or controlled dangerous substance; in any place within said City, except as legally prescribed by a physician licensed to practice in the State; or for any person to loiter about a place where any narcotic or other controlled dangerous substance is sold or furnished illegally; or for any person to sell or furnish

illegally to another person marijuana or any narcotic or other controlled dangerous substance.

4. It is unlawful for any person with an Oklahoma State issued medical marijuana license to knowingly or intentionally possess marijuana in quantities greater than permitted by state law.

5. It shall be unlawful for any person without a license to use medical marijuana or to use or possess drug paraphernalia upon or in any street, alley, place of business or other public place within the City of Elk City, Oklahoma.

6. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not to exceed Seven Hundred Fifty Dollars (\$750.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-15. Illicit use of Certain Chemical Compounds.

1. It shall be unlawful for any person to deliberately smell, inhale, breathe, drink or otherwise consume any compound, liquid, chemical, narcotic, drug or any other substance or chemical containing any ketones, aldehydes, organic aldehydes, organic acetones, ether, chlorinated hydrocarbons, such as gasoline, glue, fingernail polish, adhesive cement, mucilage, dope or any other substance or combination thereof containing solvents releasing toxic vapors, with the intent to cause conditions of intoxication, inebriation, excitement, elation, stupefaction, paralysis, irrationality, dulling of the brain or nervous system or any other changing, distorting or disturbing of the eyesight, thinking processes, judgment, balance or coordination of such person.

2. The provisions of this Section shall not pertain to any person who inhales, breathes, drinks or otherwise consumes such material or substance pursuant to the direction or prescription of any licensed doctor, physician, surgeon, dentist or podiatrist, nor to the consumption of intoxicating liquor.

Section 15-16. Immoral Conduct, Shows or Exhibitions; Nudity.

1. It shall be unlawful for any person to conduct himself in a lewd or immoral manner in any public place within the City of Elk City, Oklahoma.

2. It shall be unlawful to show, rent, loan or sell obscene or immoral motion pictures, VCRs, DVDs or other visual reproductions thereof or present any kind of a show or exhibition within the City of Elk City, Oklahoma, which is obscene or immoral.

3. It shall be unlawful for any person to appear in any public place within the City of Elk City, Oklahoma, in a state of total nudity, or for any person to make an indecent public exposure of his or her person.

4. It shall be unlawful to publicly display pornographic magazines or books for sale in any store within the corporate limits of the City of Elk City, Oklahoma.

5. It shall be unlawful for any person to urinate or defecate in any publicly-exposed place within the corporate limits of the City of Elk City, Oklahoma.

Section 15-17. Prostitution; Illicit Sexual Relations.

1. For the purpose of this Section, "illicit sexual relations" shall mean sexual relations with any person other than one's lawful husband or wife.

2. It shall be unlawful for any person to offer, submit or give himself or herself to a lewd or immoral use, such as illicit sexual relations, or to engage in any lewd or immoral act for money or any other thing of value.

3. It shall be unlawful for any person to engage in illicit sexual relations or any other immoral act, to knowingly consort with a prostitute or other person of immoral vocation, or to consort with another for an immoral purpose, in any public place within the City of Elk City, Oklahoma.

4. It shall be unlawful for any person, firm or corporation, or any agent or employee thereof, to keep, or assist in keeping, a house of prostitution or a house or place within the City Elk City, Oklahoma, where persons meet or assemble for illicit sexual relations or for any other lewd or immoral purpose, or to permit a known prostitute or other person of a known immoral vocation to become or remain a guest in a hotel or rooming house.

5. It shall be unlawful and an offense for any person to act as a procurer for any house or place of prostitution or for any prostitute or other person engaged in an immoral vocation, or to procure, assist in procuring or attempt to procure any person for another for illicit sexual relations or any other immoral purpose.

Section 15-18. Certain Conduct Prohibited on or Near School Grounds.

No person shall engage in any conduct or commit any of the acts enumerated herein, around or on the grounds of, any school in the City of Elk City, Oklahoma, or in any street or alley adjacent to a school:

1. Loitering by any person not having lawful business in connection with the school, an employee thereof or student therein;

2. Any conduct that disturbs the orderly conduct of the school;

3. Annoying or molesting any student or employee of the school;
4. Lewd or wanton conduct; or
5. Moving or parking any vehicle in the vicinity of any school or in any street or alley adjacent thereto, in such a manner as to annoy or molest any student or employee of the school.

Section 15-19. Alcoholic or Intoxicating Beverages.

1. It shall be unlawful for any person under twenty-one (21) years of age to misrepresent his age through false documentation, for the purpose of inducing any person to sell him alcoholic beverages.

2. It shall be unlawful for any person under twenty-one (21) years of age to have in his or her possession any alcoholic beverage.

3. It shall be unlawful for any person to open a retail container or consume alcoholic beverages on the premises of a retail package store.

4. No person drunk or in a state of intoxication shall appear, or be upon or in, any street, alley, place of business or other public place, nor shall any person drink any alcoholic beverage upon or in any street, alley, except when the City issues a special event license. -(amended 08/01/22)

5. It shall be unlawful for any person to transport in any vehicle upon any street, alley, or other public way within the City of Elk City, Oklahoma any alcoholic beverage except in the original container, which shall not have been opened, the seal of which shall not have been broken, and from which the original cap or cork shall not have been removed, unless the opened container be in the trunk or any closed compartment or other container out of public view and out of reach of the driver or any occupant of the vehicle.

6. It shall be unlawful for any person, firm or corporation to buy, receive, possess, sell, barter, give away, manufacture or use any alcoholic or nonintoxicating beverages in violation of the State Constitution and Laws or Code of Ordinances of the City of Elk City, Oklahoma. (See Chapter 2, this Code of Ordinances.)

Section 15-20. Beer.

1. It shall be unlawful for any person under twenty-one (21) years of age to be, or remain within, any place of business where beer are sold for consumption on the premises.

2. It shall be unlawful for any person under twenty-one (21) years of age to purchase, receive, procure, drink or be in the possession of any beer.

3. It shall be unlawful for any person under twenty-one (21) years of age to work in a

place where beer are sold for consumption on the premises, except an eating place where the service of such beverages is incidental to the main business of serving food.

4. It shall be unlawful for any person to knowingly transport in any moving vehicle, upon any public highway, street, alley or roadway within the corporate limits of the City of Elk City, Oklahoma, or in or upon any property owned by said City outside of its corporate limits, any beer, except in the original container which shall not have been opened and from which the original cap or seal shall not have been removed, unless the opened container is in the rear trunk or rear compartment, which shall include the spare tire compartment in a station wagon or panel truck, or any outside compartment which is not accessible to the driver or any other person in the vehicle while it is in motion. (See Chapter 2, this Code of Ordinances.) (amended 08/01/22)

Section 15-21 Adult Entertainment-Definitions.

1. The following terms are defined as set forth for use in this article:
 - a. **Adult Entertainment.** The term “adult entertainment” encompasses all uses of the term “sexually oriented” herein.
 - b. **Employee.** The word "employee" means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. Whether or not said person is paid salary, wages, tips or other compensation by the operator or by the customers of said business shall not change the defined status as an "employee". Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to or the removal of waste from the premises.
 - c. **Escort.** The word "escort" means a person who, for wage, fee, tip or other consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
 - d. **Escort Agency.** The term "escort agency" means a person or business association who furnished, offers to furnish, or advertise to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
 - e. **Establishment.** The word "establishment" means and includes any of the following:
 - The opening or commencement of any sexually oriented business as a new business;

- The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- The addition of any sexually oriented business to any other existing sexually oriented business as defined under this article; or
- The relocation of any sexually oriented business.

f. **Licensee.** The word "licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

g. **Nude Model Studio.** The term "nude model studio" means any place where a person who appears in a state of nudity or semi-nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a) a proprietary school licensed by the State of Oklahoma or a college, junior college or university supported entirely or in part by public taxation; b) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or c) in a structure:

- That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- Where in order to participate in a class as student must enroll at least three days in advance of the class; and
- Where no more than one nude or semi-nude model is on the premises at any one time.

h. **Nudity Or A State Of Nudity.** The term "nudity or a state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

i. **Person.** The word "person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

- j. **Sexually Oriented Arcade.** The terms "sexually oriented arcade" means any place to which the public is permitted or invited wherein coin-operated, token-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- k. **Sexually Oriented Bookstore or Novelty Store.** The term "sexually oriented bookstore or novelty store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
- Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
 - Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as sexually oriented bookstore or novelty store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an sexually oriented bookstore or novelty store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." Provided that if such materials are rented for use on site, the business shall be considered either a sexually oriented arcade or a sexually oriented theater.
- l. **Sexually Oriented Cabaret.** The term "sexually oriented cabaret" means a nightclub, bar, restaurant, auditorium, concert hall, or similar commercial establishment which regularly features:
- Persons who appear in a state of nudity or semi-nudity; or
 - Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities". Provided that the provision of films, motion pictures, video cassettes, slides or other

photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas", in addition to live entertainment shall not change this classification of business.

- m. **Sexually Oriented Motel.** The term "sexually oriented motel" means a hotel, motel or similar commercial establishment which:
- Offers accommodations to the public for any form of consideration and 1) provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and 2) has a sign visible from the public right-of-way which advertises the availability of this adult of graphic reproductions: or
 - Offers a sleeping room for rent for a period of time that is less than ten hours; or
 - Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.
- n. **Sexually Oriented Theatre.** The term "sexually oriented theatre" means a commercial establishment designed to accommodate audiences of more than five persons where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- o. **Sexual Encounter Center.** The term "sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - Contact activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.
- p. **Sexually Oriented Business.** The term "sexually oriented business" means any arcade, bookstore, novelty store, video store, cabaret, motel, theatres, escort agency, nude model studio, or sexual encounter center where live performances or recorded media in any form, or various devices are used or made available, for any consideration, to patrons for use in or viewing of specified criminal activity or specified sexual activity.

q. **Specified Anatomical Areas.** The term "specified anatomical areas" means:

- The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- Less than completely and opaquely covered human genitals, pubic area, vulva, anus or anal cleft.

r. **Specified Criminal Activity.** The term "specified criminal activity" means any of the following offenses:

- Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor, sexual performance by a child; possession or distribution of a child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; regardless of how dominated, any offense for which a convicted person must register as a sex offender; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other cities, states or countries;

- For which:

Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor or an offense;

Less than ten years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

Less than ten years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of a) two or more misdemeanors or b) any offenses or combination of misdemeanor offenses occurring within any 24-month period.

- The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

- s. **Specified Sexual Activities.** The term "specified sexual activities" means any of the following:
- The fondling or other erotic touching of human genitals, pubic area, buttocks, anus, vulva or female breasts;
 - Sexual acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or anal copulation; or
 - Excretory functions as part of or in connection with any of the activities set forth above.
- t. **Substantial Enlargement.** The term "substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than 25 percent, as the floor areas exist on the date this article takes effect or the date of the most recent permit.
- u. **Transfer Of Ownership Or Control Of A Sexually Oriented Business.** The term "transfer of ownership or control of a sexually oriented business" means and includes any of the following:
- The sale, lease, or sublease of the business;
 - The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
 - The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Section 15-22. Adult Entertainment - Licensing, Fees and Inspection.

1. It is unlawful:
 - a. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the city.
 - b. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed by the city as a sexually oriented business employee.
 - c. For any person to obtain employment with a sexually oriented business

without having secured a sexually oriented business employee license pursuant to this article.

2. An application for a license must be made on a form provided by the city.

3. All applicants must be qualified according to the provisions of this article. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this article.

4. Any person, who wishes to operate a sexually oriented business, must sign the application for a license as an applicant. If a person other than an individual wishes to operate a sexually oriented business, all persons legally responsible for the operations of the sexually oriented business or who have power to control or direct its operations must each sign the application for a license as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s). Each application must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.

5. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

a. If the applicant is:

- An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;

- A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

- A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing and entitled to do business under the laws of Oklahoma, the names and capacity of all officers, directors and controlling stockholders, and the name of the registered corporate agent and the address of the registered officer for service of process.

b. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; her or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.

c. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this article, and, if so,

the specified criminal activity involved, the date, place, and jurisdiction of each conviction. If the applicant does not specify whether the offense was a felony or a misdemeanor the city shall not treat the conviction as it most likely be defined in Oklahoma. Misdemeanors under the state law and offenses under municipal law shall all be considered to be misdemeanors.

- d. Whether the applicant, or a person residing with the applicant, has had a previous license under this article or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked; in these events, applicant shall identify the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.
- e. Whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this article whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- f. Whether the applicant, or a person residing with the applicant, holds any other licenses under this article or other similar sexually oriented business article form another city or county and, if so, the names and location of such other licensed businesses.
- g. The type of sexually oriented business (as defined herein) for which the applicant is applying.
- h. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
- i. The applicant's mailing address and residential address.
- j. A recent photograph of the applicant(s).
- k. The applicant's driver's license number.
- l. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus three inches.
- m. A current certificate and straight-line drawing prepared within 30 days prior to the application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within

1,000 feet of the property to be certified; the property lines of any established place of public worship, school, public park, or recreation area within 1,000 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

- n. If an applicant wishes to operate a sexually oriented business, other than a sexually oriented motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth herein.

6. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the city the following information;

- a. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- b. Age, date, and place of birth;
- c. Height, weight, hair and eye color;
- d. Present residence address and telephone number;
- e. Present business address and telephone number;
- f. Date, issuing state and number of driver's permit or other identification card information; and
- g. Proof that the individual is at least 18 years of age.

7. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

- a. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
- b. A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the applicant, including whether such applicant previously operated or is seeking to operate, in this or any other city, state or county has ever had a license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation,

or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

- c. A statement whether the applicant has been convicted of a specified criminal activity as defined in this article and, if so, the specified criminal activity involved, the date, place and jurisdiction of each conviction, and the sentence imposed.

8. Upon the filing of said application for a sexually oriented business employee license, the city shall issue a temporary license to said applicant, which shall be valid for 30 days. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within 30 days from the date the completed application is filed. After the investigation, the city shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- a. The applicant has failed to provide accurate information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- b. The applicant is under the age of 18 years;
- c. The applicant has been convicted of a "specified criminal activity" as defined in this article within the time frames set forth above;
- d. The applicant is under some form of probation or parole as a result of "specified criminal activity" or must register as a sex offender.
- e. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this article; or
- f. The applicant has had a sexually oriented business employee license revoked by the city within five years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth herein.

9. A license granted shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this article or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth herein.

10. Within 30 days after receipt of a completed sexually oriented business application, the

city shall approve or deny the issuance of a license to an applicant. The city shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- a. An applicant is under 18 years of age.
- b. An applicant who is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.
- c. An applicant has failed to provide accurate information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- d. An applicant or a person with whom the applicant is residing has been denied a license by the city to operate a sexually oriented business within the preceding 24 months or whose license to operate a sexually oriented business has been revoked within the preceding 24 months.
- e. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this article and within the time frames set forth above.
- f. An applicant or a person with whom the applicant is residing is under some form of probation or parole as a result of "specified criminal activity" or must register as a sex offender.
- g. The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the inspection department as being in compliance with applicable laws and ordinances.
- h. The license fee required by this article has not been paid.
- i. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.

11. The license, if granted shall state on its face the name of the person or persons to who it is granted, the expiration date, the address of the sexually oriented business and the type of sexually oriented business (as defined herein) for which the license is issued. All business licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. All employees' licenses shall be kept by the employee with a copy provided to and maintained by the on-premises manager.

12. The health department, fire department, and the inspection department shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the city.

13. A sexually oriented business license shall issue for only one type of sexually oriented business (as defined herein).

14. Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$1,000.00 non-refundable application and investigation fee.

- a. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the city an annual non-refundable license fee of \$500.00 within 30 days of license issuance or renewal.
- b. Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$150.00 non-refundable application, investigation, and license fee.
- c. All license applications and fees shall be submitted to the city clerk of the city.

15. An applicant or licensee shall permit representative of the police department, health department, fire department, planning and zoning department, and inspection department or other city agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises or of the employee licenses at any time the business is open.

16. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided herein. Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected. When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

17. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Section 15-23. Adult Entertainment - Suspension, Revocation, Location.

1. The city shall suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

- a. Violated or is not in compliance with any section of this article;
- b. Refused to allow an inspection of the sexually oriented business premises as

authorized by this chapter.

2. The city shall revoke a license if cause for suspension occurs and the license has been suspended within the preceding 12 months. The city shall revoke a business license if three or more employees are found to have been employees in the business without first obtaining an employee license within any 24 consecutive month period.

3. The city shall revoke a license if it determines that:

- a. A licensee gave false or misleading information in the material submitted during the application process.
- b. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- c. A licensee has knowingly allowed prostitution or sexual assault on the premises;
- d. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- e. Except in the case of a sexually oriented motel, a licensee has knowingly allowed any act of sexual intercourse, anal copulation, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
- f. A licensee is delinquent in payment to the city, county, or state for any taxes or fees past due.

4. When the city revokes a license, the revocation shall continue for two years, and the license shall not be issued a sexually oriented business license for two years from the date the revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

5. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

6. A person commits an offense if that person operates or causes to be operated a sexually oriented business in any zoning district other than C-3 General Commercial District, as defined and described in the Elk City Zoning Code.

7. A person commits an offense if the person operates or causes to be operated a sexually oriented business within 1,000 feet of:

- a. A place of public religious worship;
- b. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; a school includes the school grounds, but does not include facilities used primarily for another purpose such as offices and vehicle maintenance facilities and only incidentally used by students;
- c. A boundary of a residential district as defined in the Elk City Zoning Code;
- d. A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, golf course, basketball or tennis courts, wilderness area, or other similar public land within the city which is under the control, operation, or management of the parks department or any public trusts, provided that a recreation area as used in this article shall not be interpreted as including turnpikes and highways that also contain jogging or bicycle paths;
- e. The property line of a lot actually devoted to a residential use as defined in the Elk City Zoning Code.
- f. An entertainment business which is oriented primarily towards the children or family entertainment; or
- g. A premises licensed pursuant to the alcoholic beverage control regulations of the state where any beverage containing alcohol is sold, distributed or served. The distance between a sexually oriented business and any use names above shall be measured in a straight line, without regard to the intervening structures, objects or political boundaries, from the nearest exterior boundary of the parcel or the premises where a sexually oriented business is conducted, to the nearest property boundary of the premises of a listed use.

8. A person commits an offense if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business. The distance between any two sexually oriented businesses shall be measure in a straight line, without regard to the intervening structures or objects or political boundaries, from the nearest exterior walls of the structures in which each business is located.

9. A person commits an offense if that person causes or permits the operation,

establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

Section 15-24. Adult Entertainment -Other Regulations.

1. Evidence that a sleeping room in any hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

2. A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person and, within ten hours from the time the same room is rented or sub-rented again.

3. For purposes of subsection (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

4. A person who operates or causes to be operated a sexually oriented business, other than an sexually oriented motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- a. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted.. A manager's station may not exceed 32 square feet of floor area. A professionally prepared diagram in the nature of an engineer's or architect's blueprint under seal shall be required. Each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus three inches. The city may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- b. The application shall be sworn to be true and correct by the applicant.
- c. No alteration in the configuration or location of a manger's station may be made without the prior approval of the city.

- d. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- e. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain exhibition equipment nor live entertainment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- f. It shall be the duty of the licensee to ensure that the view area specified herein remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- g. It shall be the duty of the employee on duty at the manager's station to ensure that no violations of law involving specified criminal activity, or specified sexual activity, or the distribution of controlled substances occur inside the business premises.
- h. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
- i. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present on the premises.
- j. No licensee shall allow openings of any kind to exist in the walls or partitions between viewing rooms or booths.
- k. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- l. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- m. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

- n. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.
5. A person having a duty under subsection a. through o. of paragraph 4 above commits an offense if he knowingly fails to fulfill that duty.
6. An escort agency shall not employ any person under the age of 18 years.
7. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.
8. A nude model studio shall not employ any person under the age of 18 years.
9. A person under the age of 18 years commits an offense if the person appears in a state of nudity or semi-nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to the public view or visible to any other person.
10. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises, which can be viewed from the public right of way.
11. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.
12. It shall be an offense for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
13. It shall be an offense for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least five feet from any patron or customer and on a state raised at least two feet higher than the adjacent floor.
14. It shall be an offense for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity directly to any employee while said employee is semi-nude in a sexually oriented business.
15. It shall be an offense for an employee, while semi-nude, to touch a customer or the clothing of a customer.
16. A person commits an offense if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

Section 15-25. Adult Entertainment - Hours of Operation, Exemptions.

1. No sexually oriented business, except for a sexually oriented motel, may remain open at any time between the hours of eleven o'clock (11:00) p.m. and nine o'clock (9:00) a.m. on weekdays and Saturdays. No sexually oriented business except a sexually oriented motel may remain open at any time on Sundays.

2. It is a defense to prosecution that a person appearing in a state of nudity did so in a modeling class operated:

- a. By a proprietary school, licensed by the State of Oklahoma; a college, junior college, or university supported entirely or partly by taxation;
- b. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- c. In a structure:
 - Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
 - Where no more than one nude model is on the premises at any one time.

Section 15-26. City Owned/Operated Property to be Tobacco-Free; Definitions.

All City owned or operated property shall be tobacco-free. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. Definitions.

Indoor area. The term "indoor area" means any indoor city-owned/operated property. An indoor area includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees or the public, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The

provisions of this section shall apply to such indoor areas at any given time, whether or not work is being performed.

Outdoor area. The term “outdoor area” means any covered area, partially covered area or area open to the sky that is on a property owned or operated by the city.

Recreational area. The term “recreational area” means any area that is owned, controlled or used by the City of Elk City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “recreational area” includes but is not limited to parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, beaches surrounding lakes and skateboard parks.

Tobacco Product. The term “tobacco product” means any product that contains or is derived from tobacco and is intended for human consumption excluding drugs or devices approved for cessation by the United States Food and Drug Administration. This includes e-cigarettes and vapor products, with or without nicotine.

Tobacco-free. This term means to prohibit the use of any tobacco product by anyone, anywhere, at any time.

Vapor product. This term shall mean noncombustible products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. "Vapor products" shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. "Vapor products" do not include any products regulated by the United States Food, Drug and Cosmetic Act.

2. Prohibition.

- a. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor or outdoor areas owned or operated by this city.
- b. All buildings and other properties, including indoor and outdoor areas, owned or operated by this city, shall be entirely tobacco free to include all forms of tobacco products including vapor products.
- c. All indoor and outdoor recreational areas owned or operated by this city, shall be entirely tobacco free to include all forms of tobacco products including vapor products.

3. Posting.

- a. The City of Elk City shall be responsible for posting a sign or decal, at least four inches by two inches in size, at each entrance of city owned/operated property indicating the property is tobacco-free.
- b. The posting of signs or decals is the responsibility of the manager and/or supervisor of the city owned/operated facility.
- c. Any person who knowingly violates this article is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as set by the city.

4. Violation and Penalty.

Any person who knowingly violates this Section is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine as set forth by the city.

5. Enforcement.

The State or local governmental agency shall, at a minimum, do the following in order to prevent tobacco and vapor product use in city owned/operated places:

- a. Post signs at entrances to city owned/operated places which state that tobacco use is prohibited; and
- b. Ask tobacco users to refrain from using any form of tobacco products, including vapor products upon observation of anyone violating the provisions of this act.

Sections 15-27 through 15-29. (Reserved for future use.)

Article 3. Offenses Against the Peace

Section 15-30. Carrying Concealed Weapons.

It shall be unlawful for any person to carry concealed upon or about his person any pistol, revolver, knife, dagger, metal knuckle or other dangerous or deadly weapon or instrument, except when doing so in the line of duty or may be permitted by law.

Section 15-31. Discharging Firearms.

It shall be unlawful for any person to discharge a firearm within the corporate limits of the City of Elk City, Oklahoma, except when doing so in the line of duty, when lawfully doing so in

defense of oneself or of another person or property, when otherwise authorized by law or ordinance, when doing so for the preservation of the peace, health or safety of residents or the abatement of nuisances, or when engaged in authorized hunting or other related activities; it shall also be unlawful to discharge an air rifle or BB gun within the City of Elk City, Oklahoma, in such a manner as to harm or damage persons or property.

Section 15-32. & 15-33. (amended 08/01/22)

Section 15-34. Disturbing Lawful Assemblies.

It shall be unlawful for any person to disturb any lawful gathering, by making noise, by rude, indecent or improper behavior, by profane, improper or loud language, or in any other manner, either within the place of assembly or within hearing distance thereof.

Section 15-35. Disturbing the Peace; Obscene Gestures and Phone Calls.

1. It shall be unlawful for any person to disturb the peace of another or others by violent or improper conduct, by loud or unusual noise, by unseemly, obscene, insulting offensive or abusive language, or by conducting oneself in a disorderly manner.

2. It shall be unlawful for any person to use a telephone to:

- a. Make any obscene, lewd, lascivious, filthy or indecent comment, suggestion or proposal;
- b. Make a telephone call without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;
- c. Knowingly permit any telephone under his control to be used for any purposes prohibited in this Subsection; or
- d. In conspiracy or concerted action with other persons, make repeated or continuous calls solely to harass any person at the called number.

3. It shall be unlawful for any person to make, demonstrate or otherwise symbolize any obscene gesture by use of said person's extremities, toward any other human being or object within the corporate limits of the City of Elk City, Oklahoma.

Section 15-36. Operating Vehicle Emitting Excessive Music Volume.

1. It shall be unlawful for any person to operate a vehicle located upon any public street or other right-of-way and to be playing or operating, or permitting the playing, use or operation, of any radio, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound if such is for the purpose of entertainment or is used for that purpose and can be

heard from the distance of fifty (50) feet or more when the source of such sound is located upon any public right-of-way, and/or

2. It shall be unlawful if said source is located upon any public right-of-way and can be heard inside a structure or in a motor vehicle other than the source of said noise and if the receiving motor vehicle which is located a distance of fifty (50) feet or more from source of the noise all doors and windows are closed.

3. Any person convicted of violating any provision in this Section shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200.00), plus court costs.

Sections 15-37 through 15-39. (Reserved for future use.)

Article 4. Offenses Against Persons

Section 15-40. Assault and Battery.

1. An assault is any willful and unlawful attempt or offer with force or violence to do a corporal hurt to another.

2. A battery is any willful and unlawful attempt or offer with force or violence upon the person of another.

3. It shall be unlawful to commit an assault or any assault and battery within the City of Elk City, Oklahoma.

4. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not to exceed Seven Hundred Fifty Dollars (\$750.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Sections 15-41 through 15-49. (Reserved for future use.)

Article 5. Offenses Against Property.

Section 15-50. Petty Larceny.

1. Petty Larceny is the taking of personal property of value not to exceed Fifty Dollars (\$50.00), accomplished by fraud, stealth, or with intent to deprive another thereof when the property

is not taken from the person of another.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not to exceed Seven Hundred Fifty Dollars (\$750.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-51. Receiving Stolen Property.

It shall be unlawful for any person to buy, receive or to bring into the City of Elk City, Oklahoma, any property which he knows has been stolen.

Section 15-52. Damages or Destroying Property.

1. It shall be unlawful for any person to destroy, injure, deface, besmear or molest any structure, building, outbuilding, fence or any other property, real or personal, public or private, belonging to another, including automobiles or other vehicles, to use any such property wrongfully to the detriment of the owner or other person entitled to its use, or to interfere wrongfully with the use of any such property by its owners or any other person entitled to its use.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not to exceed Seven Hundred Fifty Dollars (\$750.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-53. Unlawful Entry.

1. It shall be unlawful for any person to enter upon the property of another or into an area or structure on such property (whether such property, area or structure is public or private), when such entrance is plainly forbidden by signs or otherwise, or when the property, area or structure is enclosed, except when such entrance is in line of duty, with the expressed or tacit consent of the owner or person in charge, or otherwise by authority of law or ordinance.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not to exceed five hundred dollars (\$500.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-54. Unlawful Intrusion Upon Land.

Every person who intrudes or squats upon any lot or piece of land within the City of Elk City, Oklahoma, without a license or authority from the owner thereof, or who erects or occupies thereon any hut or other structure without such license or authority, and every person who places, erects or occupies within the bounds of any street, alley or avenue of the City, any hut or other structure whatever, shall be guilty of an offense.

Section 15-55. Unlawful Posting of Advertising Matter.

It shall be unlawful for any person to place, post, paint, mark, write or print any sign, poster, picture, announcement, advertisement, device or inscription upon any public or private building, fence, sidewalk, bridge, automobile, other vehicle or other property of another, without the consent of the owner or person in charge thereof.

Section 15-56. Damaging Utility Poles.

1. It shall be unlawful for any person to make, write, print, paint upon, or otherwise make any signs or marks, by indentation or otherwise, or by posting signs or posters, upon any telephone, television, electric or power pole, either wood, concrete, steel or of any other substance, within the corporate limits of the City of Elk City, Oklahoma. The word "pole" shall be construed to mean any pole supporting telephone, television, electric or power lines or braces, and any device used to support or brace such a pole.

2. This Section shall not apply to the owners of such poles who may make such necessary or authorized marks or signs thereon.

Section 15-57. Unlawful Throwing or Shooting of Objects.

It shall be unlawful for any person to throw or shoot any stone, shot or other object into or across any street or alley, or in any place where he is likely to hit another person wrongfully or to injure property, or to throw or shoot any stone, shot or other object at any person, vehicle, structure, electric light or other property of another, whether public or private, except in the case where such is done in defense of oneself, of another person or of property.

Section 15-58. Littering.

1. For the purpose of this Section, "litter" is defined to be any garbage, refuse, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, paper, wrappings, cigarette butts, cardboard, tin cans, yard clippings, leaves, wood, grass, bedding or crockery and similar materials commonly referred to as rubbish or trash.

2. No person shall throw or deposit litter in or upon any open or vacant property within the City of Elk City, Oklahoma, irrespective of the ownership of such property.

3. No person shall throw or deposit litter in or upon any street, alley, sidewalk or other public place within the City of Elk City, Oklahoma, except in public receptacles, authorized private receptacles or in the Municipal Sanitary Landfill.

4. No person shall sweep into, or deposit in, any gutter, street or other public place within the City, the accumulation of litter from any building or lot, or from any public or private sidewalk or driveway; persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

5. No person shall drive or move any truck or other vehicle within the City, unless such vehicle is so constructed or loaded as to prevent any load as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public place; nor shall any person drive or move any vehicle or truck within the City, the wheels or tires of which carry onto, or deposit in, any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind, in excessive or damaging amounts.

6. No person shall throw or deposit any commercial or non-commercial handbill on or upon any sidewalk, street or other public place within the City; no person shall hand out, distribute or sell commercial handbills in public places.

7. No person shall throw or deposit any commercial or non-commercial handbill in or upon any vehicle; however, it shall not be unlawful, in any public place, for a person to hand out or distribute, without charge to the receiver, a non-commercial handbill to any occupant of a vehicle who is willing to accept it.

8. No person shall throw or deposit any commercial or non-commercial handbill in or upon any private premises which are temporarily or continuously vacant.

9. No person shall throw, deposit or distribute any commercial or non-commercial handbill upon any private premises, if requested not to do so or if signs are posted bearing the words "no trespassing," "no peddlers or agents," "no advertisement," or similar notice, indicating that the occupants do not desire to have their privacy disturbed.

10. No person shall throw, deposit or distribute any commercial or non-commercial handbill in or upon private premises which are inhabited, except by transmitting them directly to the owner, occupant or persons present upon such private premises; in cases of inhabited private premises which are not posted, handbills must be placed securely, to prevent them from blowing on sidewalks or other public places.

11. The provisions of Subsection 10 (above) shall not apply to the distribution of mail by the United States, nor to newspapers, except that newspapers shall be placed on private property so as to prevent being carried or deposited upon any street, sidewalk or public place, or on other private

property.

12. No person in an aircraft shall throw out, drop or deposit within City, any litter, handbill or any other object.

Section 15-59. Junk Automobiles.

1. It shall be unlawful for any person, firm, corporation or other entity to permit an inoperative automobile or other vehicle, or a junk automobile or other vehicle to be parked upon any street, alley or highway within the corporate limits of the City of Elk City, Oklahoma.

2. It shall be unlawful to keep, or allow to be kept, an inoperative automobile or other vehicle, or a junk automobile or other vehicle to be parked, maintained or otherwise kept on any private property within the City of Elk City, Oklahoma, closer than fifty (50) feet to the traveling surface of any street, alley or highway in said municipality.

Sections 15-60 through 15-69. (Reserved for future use.)

Article 6. Offenses Against Public Authority

Section 15-70. Resisting Arrest.

1. It shall be unlawful for any person knowingly or willfully to resist, oppose or obstruct the Chief of Police, any policeman, the Municipal Judge or other municipal officer or employee in the discharge of his official duties; or, by threats or otherwise, to intimidate, or attempt to intimidate, any such officer or employee from the discharge of his official duties; or to assault, beat, revile, abuse, be disrespectful to or use abusive or indecent language toward or about, any such officer or employee, while such officer or employee is in the discharge of his official duties.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not OT exceed five hundred dollars (\$500.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-71. Impersonating Municipal Officer or Employee.

It shall be unlawful for any person to impersonate any municipal officer or employee, or exercise, or attempt to exercise, any of the duties, functions or powers of any municipal officer or employee, without being duly authorized to do so.

Section 15-72. False Representation to Municipal Officials.

It shall be unlawful for any person knowingly to make any material misrepresentation to any municipal officer, employee or agency in any official application to, or official dealing or negotiation with, such officer or agency, or to commit perjury before any tribunal or office of the City.

Section 15-73. Escape of Prisoners.

1. It shall be unlawful for any person confined in the Municipal Jail or other place of confinement by the City, working upon the streets or other public places of the City in pursuance of any judgment, or otherwise held in legal custody by authority of the City, to escape, or attempt to escape, from any such Municipal Jail, prison or custody.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not OT exceed five hundred dollars (\$500.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-74. Assisting Prisoners to Escape.

1. It shall be unlawful for any person, in any unlawful manner, to set at liberty, rescue or attempt to set at liberty or rescue, any prisoner from any officer or employee of the City of Elk City, Oklahoma, having legal custody of such prisoner, or from the Municipal Jail or other place of confinement by the City, or to assist such prisoner in any manner to escape from such prison or custody, or to give such prisoner any weapon or object which might be used as a weapon or instrument to assist him in escape, or to give such prisoner any alcoholic beverages, narcotics or other controlled dangerous substances.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not OT exceed five hundred dollars (\$500.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-75. Removal of Barricades.

1. No person, unless authorized by proper authority, shall remove any barricade or obstruction placed by authority of the City of Elk City, Oklahoma, to keep traffic off any pavement, street, curb, sidewalk or other area.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not OT exceed five hundred dollars (\$500.00) plus costs and may be imprisoned for any amount of time not to exceed

sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-76. Flight From An Officer.

A person commits the offense of flight from an Officer, if:

1. He is the operator of a vehicle and refuses to stop his vehicle as soon as is safely possible, when signaled to do so by a law enforcement officer; or, upon stopping his vehicle at the signal of a law enforcement officer, abandons said vehicle and leaves, or attempts to leave the immediate area without the permission of the law enforcement officer; or

2. He is a passenger in a vehicle and abandons the vehicle after a law enforcement officer has signaled the vehicle to stop, or, after the vehicle has stopped, leaves the immediate area without the permission of the law enforcement officer; or

3. He is a pedestrian and leaves, or attempts to leave, the immediate area after being directed by a law enforcement officer to stop, or to remain in said area for a reasonable length of time.

Section 15-77. Refusing or Failing to Assist a Policeman.

1. Any policeman of the City of Elk City, Oklahoma making or about to make an arrest, or executing or about to execute a warrant or other process, in accordance with the Code of Ordinances of said municipality or with State or Federal Law, or suppressing or about to suppress a riot, affray or unlawful assembly, may call upon a person or persons to assist him in making such arrest, executing such process or suppressing such riot, affray or unlawful assembly.

2. No person lawfully called upon thus to assist any policeman of the City of Elk City, Oklahoma, shall refuse or fail to do so, whenever such assistance is reasonably possible.

Section 15-78. False Fire Alarms.

1. No person shall turn in a false fire alarm, or in any manner shall deceive or attempt to deceive the Fire Department or any officer or employee with reference to any fire alarm or reported fire, or knowingly shall cause the Fire Department or its officers or employees to make a useless run.

2. Any person, firm or corporation who shall violate any provision of this Section shall be guilty of an offense and, upon conviction thereof, shall be punished by fine not OT exceed five hundred dollars (\$500.00) plus costs and may be imprisoned for any amount of time not to exceed sixty (60) days. Each day such violation is committed or continues to exist shall constitute a separate offense and shall be punishable as such.

Section 15-79 through 15-88. (Reserved for future use.)

Article 7. Juvenile Crime Act

Section 15-89. Purpose; Definitions.

The purpose is to curb the increasing problem of juvenile crime; to educate and reform juvenile offenders; to punish juvenile offenders; and to create an environment whereby adults and juveniles take responsibility for the actions of juveniles. It is intended to hold neglectful or careless parents to a reasonable community standard of parental responsibility through an objective test. It shall not be a defense to the commission of any offense that a parent, guardian or any other person whose responsibility it is to exercise control over a minor, was completely unaware or indifferent to the activities, conduct or whereabouts of such minor.

1. **Definitions.** For the purposes of this Act, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. The word "may" is always directory and not mandatory.

- a. **Parent.** Any person having legal custody of a minor (i) as a natural or adoptive parent; (ii) as a legal guardian; (iii) as a person who stands in loco parentis; or (iv) as a person to whom legal custody has been given by order of a court.
- b. **Public place in public view.** Any public street, highway, road, alley, parking lot, park, playground, public building, parkway, sidewalk, vacant lot, yard, driveway, automobile or cycle in public view.
- c. **Remain.** To stay behind, to tarry and stay unnecessarily upon a public place in public view.
- d. **Minor.** Any person under the age of eighteen (18) years of age, or in equivalent phrasing, any person of the age of seventeen (17) years old or younger. The term "minor" shall be synonymous with the term "juvenile".
- e. **Time of night.** The prevailing local standard of time at the date in question, whether Central Standard Time, or Central Daylight Savings Time, as observed by the public. The time maintained by the Elk City Police Department shall be prima facie evidence of the time of day for continued implementation of this division.

- f. **Years of age.** This term means the time from one birthday, such as seventeenth to the next, but not including the day of the next birthday. Thus upon a person's eighteenth birthday, he or she will cease to be a minor regulated by this ordinance.

Section 15-90. Curfew for Minors.

1. **Curfew for Minors.** It shall be unlawful for any person seventeen (17) years old or younger be or remain in or upon any public place in public view within the City of Elk City between the hours of 11:00 p.m. and 6:00 a.m. Sunday through Thursday and between the hours of 12:00 midnight and 6:00 a.m. Friday and Saturday.

2. **Exceptions.** This section is intended as a clear general guide for minors, their parents, and enforcement officials. In the following exceptional cases, a minor in or upon any public place in public view shall not be deemed in violation of this division:

- a. When the minor is accompanied by his parent.
- b. When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the rights of assembly. It shall be deemed a bona fide exercise of such rights if the assembly, whether parade or demonstration, has been permitted by the City of Elk City or other bona fide religious, social or school activities involving the right to assemble.
- c. When engaged in performing an errand or other legitimate business at the direction of a parent including travel to and from such location by a direct route.
- d. When the minor is engaged in employment activities, such as, but not restricted to, newspaper delivery.
- e. All of the above cited exceptions to the Curfew Ordinance include travel to and from such activity by a direct route, and this division is in no way to be construed as a limitation upon normal travel by a minor engaged in interstate movement.
- f. Each of the foregoing exceptions are severable and in addition other possible exceptions may be added hereto in the future as warranted by experience as illuminated by the views of student government associations, school personnel, citizens, neighborhood spokesmen, parents, officers and persons in authority concerned positively with minors as well as juvenile delinquency.

3. **Parental responsibility.** It shall be unlawful for a parent knowingly to permit or by insufficient control to allow a minor to be or remain in any public place in public view other than for the exceptions set forth above during curfew hours. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a minor. It shall be prima facie evidence of violation of this section if a responsible parent has no knowledge of a minors' whereabouts during the hours of curfew established by this division.

4. **Police procedures.** A police officer of the city, upon finding or having attention called to any minor in prima facie violation of the Curfew Ordinance, may take the minor to the city police station, where a parent shall immediately be notified to come for such minor, whereupon the parent may be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the personnel then on duty for accurate, effective, fair, impartial and uniform enforcement, and recording, thus making available experienced supervisory personnel, the best of facilities and access to information and records. In the absence of convincing evidence such as a birth certificate or driver's license a police officer on the street shall use his best judgment in determining age.

- a. Police procedure shall constantly be refined in the light of experience and may provide that the police officer may deliver to a parent thereof a minor, under appropriate circumstances.
- b. In any event such police officer shall within twenty-four (24) hours file a written report with the chief of police, or shall participate to the extent of the information for which he is responsible; said report shall be treated for purposes of juvenile records in accordance with state statutes.
- c. When a parent, immediately called, has come to take charge of the minor, and the appropriate information has been recorded, the minor shall be released to the custody of such parent. If the parent cannot be located, or fails to take charge of the minor, then the minor may be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the minor may temporarily be entrusted to a relative, neighbor or other person who will on behalf of a parent assume the responsibility of caring for the minor pending the availability or arrival of a parent. However, the police department shall have the discretion to refuse to turn the child over to persons other than natural parents or legal guardians, if circumstances warrant such refusal in their opinion.

5. **Penalty.**

- a. If a parent violates the parental responsibility section, this shall be treated as an offense by the parent. The penalty upon a plea of guilty, nolo contendere, or finding of a guilt shall be a fine of not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200.00), plus costs, or by imprisonment for not more than thirty

(30) days, or by both such fine and imprisonment; and/or parental counseling classes, and/or community service, and/or restitution when damages are a result of/or are involved in the violation.

- b. Any minor who shall violate any of the provisions of this Curfew more than one time may be reported to the District Juvenile Court for the treatment, supervision and rehabilitation of such minor.

Section 15-91. Original jurisdiction of municipal court in certain juvenile cases.

The municipal court of Elk City may elect to have and possess original jurisdiction to hear and determine any offenses committed by persons under the age of eighteen (18) years of age and penalize juveniles found guilty as allowed by Title 10 of the Oklahoma Statutes, Section 7303-1.2 (E).

Section 15-92. Allowing or encouraging a minor to commit offenses; Penalty.

1. It shall be unlawful for any person to knowingly or willfully aid, abet, allow, encourage or, by omission of a duty, encourage or assist a minor to commit any municipal, state or federal offense.

2. Any person convicted of violating any provision in this section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred dollars (\$200.00), plus costs, or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

Section 15-93. Parental responsibility; Failure to control; Penalty.

1. It shall be unlawful for any parent to fail to control a minor that is under the parent's supervision by, after notification of a prior offense committed by the minor, failing to prevent the minor from committing the same offense or more than one other offenses within one (1) year of the date the minor committed the first offense.

2. Any person convicted of violating any provision in this section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred dollars (\$200.00), plus costs, or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

Section 15-94. Commission of a crime in the presence of minors; Penalty.

1. It shall be unlawful for any person to commit any municipal, state or federal offense in the presence of any person under eighteen (18) years of age.

2. Any person convicted of violating any provision in this section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred dollars (\$200.00),

plus costs, or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

Section 15-95. Permitting crimes or disorderliness on premises; Penalty.

1. No owner, operator, proprietor, manager or employee of any place shall permit minors who have congregated on the premises to commit any offense, or to carouse, make unnecessary noises, disturb, disrupt or annoy the people residing or carrying on business in the immediate neighborhood or so as to disturb the peace.

2. Definitions. For purposes of this Section, the following definitions shall apply:

- a. “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- b. “Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one half of one (1) percent or more of alcohol by volume and which is fit for beverage purposes whether alone or when diluted, mixed, or combines with other substances. This term includes intoxicating beverages and low point beer as defined herein.
- c. “Gathering” is a party, gathering, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.
- d. “Intoxicating Beverage” includes beverage containing more than three and two-tenths percent (3.2%) alcohol by weight.
- e. “Legal Guardian” means (1) a person who, by court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the Court.
- f. “Low Point Beer” means and includes beverages containing more than one-half of one percent (2 of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other grain, malt or similar products.
- g. “Minor” means any person under twenty-one years of age.
- h. “Parent” means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.
- i. “Premises” means any residence or other private property, place, or

premises, including any commercial or business premises.

3. Except as permitted by state law, it is unlawful for any minor to:
 - a. consume any alcoholic beverage at any public place or any place open to the public; or
 - b. consume any alcoholic beverage at any place not open to the public, unless in connection with the consumption of the alcoholic beverage that minor is being supervised by his or her parent or legal guardian.

4. It is the duty of any person having control of any premises, who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps are controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages present at the gathering; verifying the age of the persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure that minors do not consume alcoholic beverages while at the gathering; and supervising the activities of minors at the gatherings.

5. It is unlawful for any person having control of any premises, who knowingly hosts, permits, or allows a gathering to take place at said premises where at least one minor consumes an alcoholic beverage, whenever the person having control of the premises either knows a minor has consumed an alcoholic beverage or reasonably should have known that a minor consumed an alcoholic beverage had the person taken all reasonable steps to prevent the consumption of an alcoholic beverage by a minor as set forth in subsection (4) of this Section.

6. This Section shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between a minor and his or her parent or legal guardian.

7. This Section shall not apply to any premises licensed by the State of Oklahoma to dispense alcoholic beverages.

8. Any person convicted of violating any provision in this section shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200.00), plus costs, or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

Section 15-96. Truancy; Penalty.

1. It shall be unlawful for a parent of a minor who is over the age of six (6) years and under the age of eighteen (18) years, to neglect or refuse to cause or compel such minor to attend and comply with the rules of a public, private or other school of the parent's choosing in which the minor is enrolled.

2. It shall be unlawful for any minor who is over the age of six (6) and who has not finished four (4) years of high school work, to neglect or refuse to attend and comply with the rules of some public, private or other school, or receive an education by other means for the full term the schools of the district in which the minor attends are in session.

Provided, that this section shall not apply:

- a. If any such minor is prevented from attending school by reason of mental or physical disability, as determined by the Board of Education of the district upon a certificate of the school physical or public health physician or, if no such physician is available, a duly licensed and practicing physician;
- b. If any such minor is excused from attendance at school, due to an emergency, by the principal of the school in which the minor is enrolled, at the request of the parent of the minor;
- c. If any such minor is excused from attending school by:
 - (1) The administrator of the school or district where the minor attends school, and
 - (2) The parent of the minor. Provided, further, that no minor shall be excused from attending school by such joint agreement between a school administrator and the parent of the minor unless and until it has been determined that such action is in the best interest of the minor and/or the community, and that said minor shall thereafter be under the supervision of the parent until the minor has reached the age of eighteen (18) years; or
- d. If any such minor is observing religious holy days and, prior to the absence, the parent of the minor submits a written request for the absence.

3. Any adult person convicted of violating any provision in this section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred dollars (\$200.00), plus costs, or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment. Each separate day of violation shall constitute a separate offense.

4. Any minor convicted of violating any provision in this section shall be punished on the first offense by a fine of not more than fifty dollars (\$50.00); on the second offense by a fine of not more than one hundred dollars (\$100.00); and on every subsequent offense by a fine of not more than two hundred dollars (\$200.00); plus costs. Each separate day of violation shall constitute a separate offense.

Section 15-97. Prevention of Youth Access to Tobacco; Penalties.

1. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- a. “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and costs of or contains:
- (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco,
 - (2) tobacco, in any form, that is functional in the production, which because of its appearance, the type of tobacco used in the filter, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

The term “cigarette” includes “roll-your-own” (i.e. any tobacco which, because of its appearance type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.) For purposes of this definition of cigarette, nine one-hundredths (0.09) of an ounce of “roll-your-own” tobacco shall constitute one individual “cigarette”.

- b. “Person” means any individual, firm, fiduciary, partnership corporation, trust, or association, however formed;
- c. “Proof of age” means a driver license, license for identification only, or other generally accepted means of identification that describes the individual as eighteen (18) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid;
- d. “Sample” means a tobacco product or vapor product distributed to members of the public at no cost for the purpose of promoting the product;
- e. “Sampling” means the distribution of samples to members of the public in a public place;
- f. “Tobacco product” means any product that contains tobacco and is intended for human consumption excluding drugs or devices approved for cessation by the United States Food and Drug Administration. This includes e-cigarettes and vapor products, with or without nicotine;

- g. “Transaction scan” means the process by which a seller checks, by means of a transaction scan device, the validity of a driver license or other government-issued photo identification; and
- h. “Transaction scan device” means any commercial device or combination of devices used at a point of sale or entry that is capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of a driver license or other government-issued photo identification.
- i. ”Vapor product” shall mean noncombustible [products, that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit, or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form. “Vapor products” shall include any vapor cartridge or other container with or without nicotine or other form that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. “Vapor products” do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

2. Furnishing of tobacco products to minors prohibited – Proof of age – Fines – Multiple violations.

- a. It is unlawful for any person to sell, give or furnish in any manner any tobacco product or vapor product (see definition) to another person who is under eighteen (18) years of age, or to purchase in any manner a tobacco, a tobacco products or vapor product on behalf of any such person. It shall not be unlawful for an employee under eighteen (18) years of age to handle tobacco, tobacco products or vapor products when required in the performance of the employee’s duties.
- b. A person engaged in the sale or distribution of tobacco, tobacco products or vapor products shall demand proof of age from a prospective purchaser or recipient of an ordinary person would conclude on the basis of appearance that the prospective purchaser may be less than eighteen (18) years of age. If an individual engaged in the sale or distribution of tobacco, tobacco products or vapor products has demanded proof of age from a prospective purchaser or recipient who is not under eighteen (18) years of age, the failure to subsequently require proof of age shall not constitute a violation of this subsection.
- c. Any violation of subsection a or b of this sub-section 2 is an offense against the City of Elk City; upon conviction of any such offense, the violator shall be punished as follows:

1. Not more than One Hundred Dollars (\$100.00) for the first offense;
 2. Not more than Two Hundred Dollars (\$200.00) for a second offense within a two year period following the first offense;
 3. Not more than Three Hundred Dollars (\$300.00) for the third or subsequent offense within a two-year period following the first offense.
- d. Proof that the defendant demanded, was shown and reasonably relied upon proof of age shall be a defense to any action brought pursuant to this section. A person cited for violating this section shall be deemed to have reasonable relied upon proof of age and such person shall not be found guilty of such violation if such person proves that:
1. the individual who purchased or received the tobacco product or vapor product presented a driver license or other government-issued photo identification purporting to establish that such individual is eighteen (18) years of age or older; and
 2. the person cited for the violation confirmed the validity of the driver license or other government-issued photo identification presented by such individual by performing a transaction scan by means of a transaction scan device.

Provided, that this defense shall not relieve from liability any person cited for a violation of this section if such person failed to exercise reasonable diligence to determine whether the physical description and picture appearing on the driver license or other government-issued photo identification was that of the individual who presented it. The availability of the defense described in this subsection does not affect the availability of any other defense under any other provision of law.

3. Purchase, receipt or possession of tobacco products and vapor products by minors prohibited – Falsifying proof of age.
 - a. It is unlawful for a person who is under eighteen (18) years of age to purchase, receive, or have in their possession a tobacco product or vapor product, or to present or offer to any person any purported proof of age which is false or fraudulent, for the purpose of purchasing or receiving any tobacco product or vapor products. It shall not be unlawful for an employee under age eighteen (18) years of age to handle tobacco products or vapor products when required in the performance of the employee's duties.
 - b. When a person is convicted or enters a plea and receives a referred sentence for a violation of subsections (a) of this sub-section 3, the total of any fines, fees, or costs shall not exceed the following:

1. One Hundred Dollars (\$100.00) for the first an offense; and
 2. Two Hundred Dollars (\$200.00) for a second or subsequent offense within an one year period following the first offense
4. Distribution of tobacco product and vapor product samples restricted..
- a. It shall be unlawful for any person or retailer to distribute tobacco, tobacco products, tobacco or tobacco product samples or vapor products samples to any person under eighteen (18) years of age.
 - b. No person shall distribute tobacco, tobacco product or vapor product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under eighteen (18) years of age.
 - c. When a person is convicted or enters a plea and receives a deferred sentence for a violation of subsections a or b of this sub-section 4, the total of any fines, fees, or costs shall not exceed the following:
 1. One Hundred Dollars (\$100.00) for the first offense;
 2. Two Hundred Dollars (\$200.00) for a second offense; and
 3. Three Hundred Dollars (\$300.00) for the third or subsequent offense
 - a. It shall be unlawful for any person or retailer to distribute tobacco, tobacco products, tobacco or tobacco product samples or vapor products samples to any person under eighteen (18) years of age.
 - b. No person shall distribute tobacco, tobacco product or vapor product samples in or on any public street, sidewalk, or park that is within three hundred (300) feet of any playground, school, or other facility when the facility is being used primarily by persons under eighteen (18) years of age.
 - c. When a person is convicted or enters a plea and recives a deferred sentence for a violation of subsections a or b of this sub-section 4, the total of any fines, fees, or costs shall not exceed the following:
 1. One Hundred Dollars (\$100.00) for the first offense;
 2. Two Hundred Dollars (\$200.00) for the second offense; and
 3. Three Hundred Dollars (\$300.00) for the third or subsequent offense.
5. Display or sale of tobacco products and vapor products – Public access.
- a. It is unlawful for any person or retail store to display or offer for sale tobacco

products or vapor products in any manner that allows public access to the tobacco products or vapor products without assistance from the person displaying the tobacco products or vapor products or an employee or the owner of the store. The provisions of this subsection shall not apply to retail stores which do not admit into the store persons under eighteen (18) years of age.

- b. When a person is convicted or enters a plea and receives a deferred sentence for a violation of this sub-section 5, the total of any fines, fees, or costs shall not exceed Two Hundred Dollars (\$200.00) for each offense.

6. Report of Violations; Compliance Checks; Penalty.

- a. Any conviction for a violation of this Article and any compliance checks conducted by the Police Department pursuant to Subsection (b) of this section shall be reported in writing to the Alcoholic Beverage Laws Enforcement (ABLE) Commission within thirty (30) days of the conviction or compliance check. Such reports shall be compiled in the manner prescribed by the ABLE Commission. Convictions shall be reported by the [Court Administrator/Court Clerk] or his designee and compliance checks shall be reported by the Chief of Police or his designee.
- b. Persons under eighteen (18) years of age may be enlisted by the Police Department to assist in enforcement of this Article pursuant to the rules of the ABLE Commission.
- c.. Any person convicted of violating any provision in this sub-section 6 shall be punished by a fine of not less than Twenty-Five (\$25.00) and not more than Two Hundred Dollars (\$200.00), plus costs.

Section 15-98. Original jurisdiction of municipal court in traffic cases; Minors.

The municipal court of Elk City may elect to have and possess original jurisdiction to hear and determine any violations of traffic ordinances by any person of any age, including minors.

Section 15-99. Parental accountability for involvement of minors in Municipal Court; Penalty.

1. It shall be unlawful for any parent having legal custody of a minor, to fail, neglect or refuse to require such minor to appear in Municipal Court for an initial appearance, trial, hearing to explain non-performance of a court order, or for any other Municipal Court proceeding, or to pay fines or perform community service or any other sentence imposed in the Municipal Court, when the minor has been so directed or sentenced by the Municipal Court, the clerk thereof or members of the Elk City Police Department as the case may be. Upon notification that a case is pending against a minor in their legal custody, it shall be the duty of the parent to be aware of all scheduled court

appearances or directives in such case.

2. Any person convicted of violating any provision in this section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred dollars (\$200.00), plus costs, or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

Article 8. Offenses Related to Smoking

Section 15-100. Possession of Lighted Tobacco.

1. The possession of lighted tobacco in any form is a public nuisance and dangerous to public health and is hereby prohibited when such possession is in any indoor place used by or open to the public, in any enclosed indoor area where individuals other than employees are invited or permitted, in any indoor workplace, within fifteen (15) feet of any entrance, exit or air intake of any such places, or in any vehicle providing public transportation, except where specifically allowed by law.

2. As used in this section, “indoor workplace” means any indoor place of employment or employment-type service for or at the request of another individual or individuals, or any public or private entity, whether part-time or full-time and whether for compensation or not. Such services shall include, without limitation, any service performed by an owner, employee, independent contractor, agent, partner, proprietor, manager, officer, director, apprentice, trainee, associate, servant or volunteer. An indoor workplace includes work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, any other spaces used or visited by employees, and all space between a floor and ceiling that is predominantly or totally enclosed by walls or windows, regardless of doors, doorways, open or closed windows, stairways, or the like. The provisions of this section shall apply to such indoor workplace at any given time, whether or not work is being performed.

3. An employer not otherwise restricted from doing so may elect to provide smoking rooms where no work is performed except for cleaning and maintenance during the time the room is not in use for smoking, provided each smoking room is fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area, under negative air pressure so that no smoke can drift or circulate into a nonsmoking area when a door to an adjacent nonsmoking area is opened, and the air from the smoking space is not exhausted within fifteen (15) feet of any entrance, exit or air intake.

Section 15-101. Permitted Smoking.

1. Smoking is permitted in the following space if (1) the smoking space occupies the entire building or (2), if the smoking space shares space in the building with any indoor public places or indoor workplaces in which smoking is prohibited, is fully enclosed, exhausted directly to the outside with no air from the smoking space circulated to any nonsmoking area within the building, and under negative air pressure so that no smoke can drift or circulate into a nonsmoking area within the building when a door to an adjacent nonsmoking area is opened, and the air from the smoking

space is not exhausted within fifteen (15) feet of any entrance, exit or air intake:

- a. The room or rooms where licensed charitable bingo games are being operated, but only during the hours of operation of such games;
- b. Up to twenty-five (25%) of the guest rooms at a hotel or other lodging establishment;
- c. Retail tobacco stores predominantly engaged in the sale of tobacco products and accessories and in which the sale of other products is merely incidental and in which no food or beverage is sold or served for consumption on the premises;
- d. Workplaces where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access. "Incidental public access" means that a place of business has only an occasional person, who is not an employee, present at the business to transact business or make a delivery. It does not include businesses that depend on walk-in customers for any part of their business;
- e. Workplaces occupied exclusively by one or more smokers, if the workplace has only incidental public access;
- f. Private offices occupied exclusively by one or more smokers;
- g. Workplaces within private residences, except that smoking shall not be allowed inside any private residence that is used as a licensed child care facility during hours of operation;
- h. Medical research or treatment centers, if smoking is integral to the research or treatment;
- i. A facility operated by a post or organization of past or present members of the Armed Forces of the United States which is exempt from taxation pursuant to Section 501 (c) (19) of the Internal Revenue Code, 26 U.S.C., Section 501 (c) (19), when such facility is utilized exclusively by its members and their families and for the conduct of post or organization nonprofit operations except during an event or activity which is open to the public;
- j. Any outdoor seating area of a restaurant; provided, smoking shall not be allowed within fifteen (15) feet of any exterior public doorway or any air intake of the restaurant;
- k. A stand-alone bar, stand-alone tavern, or cigar bar that (1) derives more than sixty percent (60%) of its gross receipts, subject to verification by competent authority, from the sale of alcoholic beverages and low-point beer, (2) admits no person under twenty-one (21) years of age except for members of a musical band employed or hired as provided in paragraph 2 of subsection B of Section 537 of Title 37 of the

Oklahoma Statutes, and (3) is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace, including a restaurant; and

1. Until March 1, 2006, restaurants (any eating establishment regardless of seating capacity) may have designated smoking areas or may be designated as being a totally nonsmoking area. Beginning March 1, 2006, restaurants shall be totally nonsmoking or may provide nonsmoking areas and designated smoking rooms. Food and beverage may be served in such designated smoking rooms, which shall be in a location that is fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is recirculated to nonsmoking areas of the building. No exhaust from such room shall be located within twenty-five (25) feet of any entrance, exit or air intake. Such room shall be subject to verification for compliance with the provisions of the subsection by the State Department of Health.

Section 15-102. Posting Smoking Signs or Decals.

1. The person who owns or operates a place where smoking or tobacco use is prohibited by law shall be responsible for posting a sign or decal, a least four (4) inches by (2) inches in size, at each entrance to the building indicating that the place is smoke-free or tobacco-free.

2. Responsibility for posting signs or decals shall be as follows:

- a. In privately owned facilities, the owner or lessee, if a lessee is in possession of the facilities, shall be responsible;
- b. In corporately owns facilities, the manager and/or supervisor of the facility involved shall be responsible; and
- c. In publicly owned facilities, the manager and/or supervisor of the facility shall be responsible.

Section 15-103. Penalty for Smoking Offenses.

Any person who knowingly violates this act is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than Ten Dollars (\$10.00) nor more than One Hundred Dollars (\$100.00).”

Sections 15-104 through 15-109. (Reserved for future use.)

Article 9. Penalty

Section 15-110. Penalty.

Any person, firm or corporation who shall violate any provision of this Chapter shall be guilty of any offense and, upon conviction thereof, shall be punished by fine and costs as provided for in Section 1-40 of this Code, unless a separate and distinct penalty is otherwise specifically set forth in this Chapter. Each day's continuation of any such violation shall constitute a separate offense.