

First Published in The Wichita Eagle on _____

07/15/12

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 5.88.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WEAPONS AND REPEALING THE ORIGINAL OF SAID SECTION.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Unlawful use of weapons. (1) Unlawful use of a weapon is knowingly:

(a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, night stick, metal knuckles or throwing star, or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward or centrifugal thrust or movement. This subsection shall not prohibit an ordinary pocket knife which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the

blade of the knife to overcome the bias towards closure to assist in the opening of the knife;

(b) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, any bludgeon, sandclub a dagger, dirk, billy, blackjack, slingshot, nightstick, nun-chucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(c) Carrying unconcealed on one's person or in any vehicle under one's immediate control, with intent to use the same unlawfully against another, any bludgeon, sandclub, a dagger, dirk, billy, blackjack, slingshot, nightstick, nunchucks, sap gloves, tomahawk, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly instrument of like character, except that an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife or a dangerous or deadly weapon or instrument;

(d) Carrying any pistol, revolver or other firearm concealed on one's person, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(e) Carrying on one's person any unconcealed, loaded firearm, while on property open to the public, except when on one's land or in one's

abode or fixed place of business, unless the firearm is carried in a holster with its safety in place and such weapon remains within the immediate control of the person at all times;

(f) Carrying in any vehicle a loaded firearm which is under one's immediate control, while on property open to the public, except when on one's land or in one's abode or fixed place of business;

(g) Carrying in any air, land or water vehicle an unloaded firearm that is not encased in a container which completely encloses the firearm;

(h) Carrying a loaded or unloaded firearm in a courtroom or within City Hall;

(i) Drawing a pistol, revolver, knife or any other deadly weapon upon any person;

(j) As used in this section, "*throwing star*" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

(k) As used in this section, 'under one's immediate control' shall mean within reaching distance of the person.

(2) Subsections (1)(a), (b), (c), (d), (e), (f) and (g), (h), and (i) of this subsection shall not apply to or affect any of the following:

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

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

(c) Members of the Armed Services or Reserve Forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(e) Qualified law enforcement officers or qualified retired law enforcement officers pursuant to the Law Enforcement Officers Safety Act 18 U.S.C. 926B and 18 U.S.C. 926C and amendments thereto.

(f) Individuals employed as security officers by the City of Wichita, who are authorized by the chief of police, with the approval of the city manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.

(3) Subsection (1)(d), (e) and (f) of this section shall not apply to or affect the following:

(a) Private security officers who have been issued and are in possession of both a valid permit as required by Section 3.72.040 of this Code, and any amendments thereto, and a valid firearm permit issued by the Chief of Police pursuant to Section 3.72.210 of this code, and any amendments thereto, and are actually engaged in the performance of the duties of their employment;

(b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;

(c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

(e) Special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.

(f) Persons who are employed by a licensed armored car service and whose duties include providing secured transportation,

protecting and safeguarding valuable cargo from one place to another and providing cash services for automated teller machines, all by means of bullet-resistant armored vehicles.

(4) Subsection (1)(i) of this section shall not apply to or affect historical re-enactors and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.

(5) Subsection (1)(d), (e), (f), and (g) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq., in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(6) Subsections 1(d), 1(f), and 1(g) shall not apply to:

(a) Any person carrying a concealed weapon as authorized by K.S.A. 75-7c01 through K.S.A. 75-7c17, and amendments thereto.

(b) The United States Attorney for the District of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any Assistant United States Attorney if authorized by the

United States Attorney for the District of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c01, *et seq.* and amendments thereto.

(7) Subsection 1(d) shall not apply to licensed hunters or fishermen, while engaged in hunting or fishing;

(8) Subsection 1(h) shall not apply to individuals employed as security officers by the City of Wichita, who are authorized by the chief of police, with the approval of the city manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.

(9) It shall be a defense that the defendant is within an exemption.

(10) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$2,500.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(11) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the municipal court judge:

(a) To order any weapon seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be destroyed or caused to be destroyed by the chief of police whenever the weapon is no longer needed for evidence;

(b) To order any weapon seized in connection with such violation when no longer needed for evidentiary purposes, shall, in the discretion of the trial court, be:

(i) Destroyed;

(ii) Forfeited to the Wichita Police Department for use within the police department, for sale to a properly licensed federal firearms dealer or for trading to a properly licensed federal firearms dealer by the police department for other new or used firearms or accessories for the police department's use; or

(iii) Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation Forensic Laboratory.

If weapons are sold as authorized above, the proceeds from any such sale shall be credited to the asset seizure and forfeiture fund of the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council.

(c) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection shall

be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (11)(a) and (b) of this section.

SECTION 2. The original of Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2012.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law