

ARTICLE 12 – DISORDERLY BUSINESS ORDINANCE

14-1201 GENERAL DEFINITIONS.

For the purpose of this Article, the following definitions shall apply:

(A) Business Location means the physical location of any corporation, company, organization, entity or any other structure(s) or place(s) used or intended to be used for conducting business activities in any fashion or degree.

(B) In or on the premises of any Business Location means either within a Business Location or the area within the boundary lines of any real property and in a 50' radius thereof of the same ownership on which such Business Location is located.

(C) Business means any corporation, company, organization, or other for-profit entity doing business within the City of Lawrence.

(D) Owner means any person, agent, operator, firm or corporation having a legal or equitable interest in the Business Location; or recorded in the official records of the State of Kansas, Douglas County, or the City of Lawrence as holding title to the Business Location; or otherwise having control of the Business Location, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of such property by a court.

(E) Triggering Event means any of the following:

1. An act or failure to act that would constitute a felony or misdemeanor codified in the laws of the State of Kansas in Chapters 21, 41 or 65 of the Kansas Statutes Annotated or a violation of a local ordinance of the City of Lawrence; or

2. Conviction or diversion of an individual on a felony charge defined in Chapters 21, 41 or 65 of the Kansas Statutes Annotated, except for alcohol violations; or

Except that:

1. When an act or failure to act by an individual would constitute a triggering event under this section and the same individual has been convicted or diverted on a charge arising from that act or failure to act, then both the act or failure to act and the conviction or diversion shall constitute a single triggering event; and
2. No individual's own conviction or diversion shall constitute a triggering event under this section for the purposes of a concurrent or subsequent prosecution of that individual under this article; and
3. No individual's own act or failure to act that would otherwise constitute a triggering event under this section shall constitute a triggering event against that individual if the individual has been or may be subject to prosecution for that act or failure to act.

14-1202 DISORDERLY BUSINESS NUISANCE DEFINED.

A Business is a "Disorderly Business Nuisance" when it is associated with:

- (A) Two (2) or more triggering events arising out of separate and distinct facts and circumstances within any consecutive three hundred sixty-five (365) day period; or
- (B) Three (3) or more triggering events by separate individuals arising from the same general facts and circumstances.

A Business is associated with a triggering event when the triggering event has occurred on the premises of, or immediately adjacent to the Business Location, or, if the triggering event consists of a conviction or diversion agreement on a

criminal charge, a Business is associated with that event when one or more acts that constitute the elements of the criminal offense occurred on or immediately adjacent to the premises of the Business Location.

14-1203 VIOLATION.

(A) No owner or occupant of any Business Location shall allow or permit such Business to be, or become, a Disorderly Business Nuisance.

(B) An owner and/or occupant, as the case may be, shall be deemed to have allowed or permitted a Business to be, or become, a Disorderly Business Nuisance, if:

(1) The owner or occupant has personally committed the acts set forth in Section 14-1202; or

(2) Such acts were committed by invitees of the occupant or owner; or

(3) Such acts were committed by persons attending events, or functions, sponsored, permitted or allowed by the occupant or owner; or

(4) Such acts were committed by a combination of subsections 1, 2 or 3; or

(5) The owner or occupant has been provided with the written notice of a Disorderly Business Nuisance pursuant to Section 14-1104, below, the facts alleged therein are true, and the owner or occupant fails or refuses to enter into a Nuisance Abatement Agreement, or after entering into such Agreement, fails to comply with its terms.

14-1204 WRITTEN NOTICE OF DISORDERLY BUSINESS NUISANCE.

No person or Business shall be prosecuted for a violation of Section 14-1102 until the Director of Legal Services for the City of Lawrence, Kansas, or his or her designee, shall serve such person or Business with the notice provided herein, and the person has either failed, or refused, to enter into the Business Nuisance Abatement Agreement, provided for hereinafter, or after entering into such Agreement, the person fails to comply with its provisions. Such Notice may be 1) served upon the Registered Agent of the Business, if such agent exists, or 2) mailed, return-receipt, to the owner(s) of the Business so listed with the City. Such notice shall contain, at a minimum, the following:

(A) That a Disorderly Business Nuisance exists, as defined by Section 14-1202, at the location specified in the notice.

(B) The date of the commission of the acts which constitute the basis for the Disorderly Business Nuisance, the name(s) of the person(s) committing such acts, if known, and all other facts and circumstances that the City relies upon to allege that such acts form the basis for the Disorderly Business Nuisance.

(C) The date, time and place where the person is to appear, and meet with the Director of Legal Services or his or her designee, to participate in the Business Nuisance Abatement Conference.

(D) That failure to appear, or failure to make satisfactory arrangements for an alternative date and time, at the time and place designated in the notice may result in prosecution of a violation of Section 14-1202 and the imposition of penalties, as prescribed by this Code.

14-1205 BUSINESS NUISANCE ABATEMENT CONFERENCE.

At the nuisance abatement conference, the Director of Legal Services or his or her designee, and the owner or their designee and/or occupant or their designee, shall discuss the facts constituting the Disorderly Business Nuisance and shall attempt to agree on specific actions that the owner and/or occupant can take to abate said Disorderly Business Nuisance.

14-1206 BUSINESS NUISANCE ABATEMENT AGREEMENT.

(A) At the conclusion of the nuisance abatement conference, the Director of Legal Services or his or her designee shall submit to the owner and/or occupant a proposed written nuisance abatement agreement. If at the conclusion of the conference, the Director of Legal Services or his or her designee needs more time to draft said proposed agreement, then a follow up meeting shall be scheduled with the owner and/or occupant, within ten (10) days of the initial conference for submittal and review of the completed proposed nuisance abatement agreement.

(B) Any nuisance abatement agreement under this Article shall include a list of specific actions and specific schedule of deadlines for said actions to abate the Disorderly Business Nuisance. It may also include provisions for a periodic reassessment of the agreement effectiveness, and the procedure for a modification of the agreement. A nuisance abatement agreement or any written modification to said agreement may impose conditions or requirements on the owner and/or occupant for a period of twenty-four (24) months from the date the original agreement is entered into by the owner and/or occupant and the City. A nuisance abatement agreement may impose one or more of the following conditions or requirements on the owner and/or occupant:

- (1) Eviction of the Business from the Business Location in question,
- (2) Prohibiting the Business from engaging in alcohol sales of any kind,
- (3) Restrictions upon the hours of operation of the Business,
- (4) Restrictions upon the maximum occupancy within the Business Location,
- (5) Written notification from the owner and/or occupant to an identified individual or individuals that they are prohibited from entering onto the Premises of the Business Location,
- (6) Utilization of written leases containing a provision or provisions requiring eviction for criminal activity,
- (7) The completion of improvements upon the Premises of the Business Location which have the impact of mitigating crime, including but not limited to the erection of fences, installation of security devices upon the entrances or increased

lighting,

(8) Any other reasonable condition or requirement designated to abate the Disorderly Business Nuisance.

(C) Once a proposed written nuisance abatement agreement or written modification to nuisance abatement agreement has been submitted to the owner and/or occupant, said owner and/or occupant shall have forty-eight (48) hours to review it and enter into said agreement by signing it and returning it to the Director of Legal Services or his or her designee.

14-1207 DECLARATION OF DISORDERLY BUSINESS NUISANCE AND COMMENCEMENT OF PROSECUTION.

The City may only commence prosecution against an owner or occupant alleging a violation of this Article if:

(A) That owner or occupant does not attend a nuisance abatement conference within the time period described previously; or

(B) That owner or occupant fails or refuses to sign a proposed written nuisance abatement agreement or proposed written modification to said agreement within the prescribed time set forth in this article; or

(C) That owner or occupant fails or refuses to comply with any conditions or requirements set forth in a nuisance abatement agreement that he or she has signed, including any prescribed deadlines for taking particular actions.

The initiation of prosecution pursuant to this section shall have the effect of the City declaring the subject business a Disorderly Business Nuisance on the date prosecution is initiated for purposes of 14-1210.

Prosecution pursuant to this section need not be delayed pending the resolution of any other criminal prosecution against any party resulting from the occurrence of the

triggering events, and this matter should be determined independently of any such pending prosecution, unless required by compulsory joinder or other legal considerations.

14-1208 ACTION TO ABATE; EQUITABLE RELIEF; TERMINATION OF UTILITY SERVICES.

In addition to prosecution of the offense defined in this Article or pursuing any other remedies available under this Code, the City upon receipt of reliable information that any Business Location within the corporate limits of the City is being maintained as a Disorderly Business Nuisance may prosecute an action for equitable relief, the name of the City, to abate the nuisance and to enjoin any person who shall own, rent, or occupy the Business Location in question from using or permitting its use in violation of the provisions of this ordinance. The types of equitable relief that the City may ask for includes, but is not limited to,

- (1) restrictions on the hours of operation of the subject Business,
- (2) restrictions on whether alcohol can be served at the Business Location,
- (3) restrictions on the occupancy of the Business Location,

The initiation of prosecution pursuant to this section shall have the effect of the City declaring the subject business a Disorderly Business Nuisance on the date prosecution is initiated for purposes of 14-1210.

14-1209 JUDGMENT.

No judgment finding a violation of this ordinance shall be entered against an owner and/or occupant who has, in good faith, endeavored to prevent the nuisance. Any owner and/or occupant who has complied with all conditions or requirements of a nuisance abatement agreement and any modifications to said agreement, as defined by the ordinance, shall be deemed to have endeavored in good faith to prevent the nuisance.

14-1210 PENALTIES.

Upon conviction for a violation of this Article the owner of the Business and the owner of the Business Location, should they be separate entities, shall be punished by a fine not to exceed \$2,500 per day for each day the Business is found to be a Disorderly Business

Nuisance. In determining an appropriate fine amount, the Court shall consider the cost of the police response to the triggering events and shall assess a fine proportionate to the cost of that response.