

ORDINANCE NO. 2324

**AN ORDINANCE RELATING TO THE PUBLIC OFFENSE CODE FOR THE CITY OF DERBY, KANSAS; AMENDING AND REPEALING SECTIONS 9.08.050, 9.08.120, 9.20.030 AND 9.32.040 AND PROVIDING SUBSTITUTE PROVISIONS THEREFOR; FURTHER AMENDING CHAPER 9.20 BY ADDITION OF NEW SECTION 9.20.035.**

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

**Section 1.** Section 9.08.050 of the Derby Municipal Code is hereby amended to read as follows:

**“9.08.050 – Domestic battery.**

A. Domestic battery is:

1. Knowingly or recklessly causing bodily harm to a person with whom the offender is involved or has been involved in a dating relationship or a family or household member; or
2. Knowingly causing physical contact with a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting or angry manner.

B. As used in this section:

1. "family or household member" means persons eighteen years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time;
2. “dating relationship” means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since the termination of the relationship, if applicable; and
3. “protective order” means:
  - i A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 or 60-3107, and amendments thereto;

- ii a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. § 2265;
- iii a restraining order issued pursuant to K.S.A. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto, or K.S.A. 60-1607, prior to its transfer;
- iv an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case or upon appeal that orders the person to refrain from having any direct or indirect contact with a family or household member;
- v an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or
- vi a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

## C.

1. Upon a first conviction of a violation of domestic battery, an offender shall be guilty of a Class B violation and sentenced to not less than forty-eight consecutive hours nor more than six months imprisonment and fined not less than two hundred dollars, nor more than five hundred dollars or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;
2. If, within five years immediately preceding commission of the crime, an offender is convicted of a violation of domestic battery a second time, the offender shall be guilty of a Class A violation and sentenced to not less than ninety days nor more than one year's imprisonment and fined not less than five hundred dollars nor more than one thousand dollars. The five days imprisonment mandated by this subsection may be served in a work release program only after such offender has served forty-eight consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court or department of corrections; and
3. A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any five-year period.
4. For the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:
  - i. "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, K.S.A. 21-5414, this section, or section 3.1.1 of the Uniform

Public Offense Code, or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

- ii. "Conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;
- iii. Only convictions occurring in the immediately preceding five years including prior to the effective date of this code shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offender, whichever is applicable; and
- iv. It is irrelevant whether an offense occurred before or after conviction for a previous offense.

D. In determining the sentence to be imposed within the limits provided for a first or second offense under this section, a court shall consider information presented to the court relating to any current or prior protective order issued against such person.”

**Section 2.** Section 9.08.120 of the Derby Municipal Code is hereby amended to read as follows:

**“9.08.120 – Violation of a protective order.**

A. Violation of a protective order is knowingly violating:

- 1. A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106, or 60-3107, and amendments thereto.
- 2. A protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. Section 2265, and amendments thereto;
- 3. A restraining order issued pursuant to K.S.A. 23-2707, 38-2243, 38-2244 or 38-2255, and amendments thereto; or K.S.A. 60-1607, prior to its transfer;
- 4. An order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person;
- 5. An order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person;
- 6. A protection from stalking or sexual assault order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.
- 7. Order includes any order issued by a municipal or district court.

- B. No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in any civil or criminal proceeding, from contacting the protected party for a legitimate purpose within the scope of the civil or criminal proceeding. The attorney, or person acting on the attorney's behalf, shall be identified in any such contact.
- C. Violation of a protective order is a class A violation.”

**Section 3.** Section 9.20.030 of the Derby Municipal Code is hereby amended to read as follows:

**“9.20.030 – Buying sexual relations.**

- A. Buying sexual relations is knowingly:
  - 1. Entering or remaining in a place where sexual relations are being sold or offered for sale with intent to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act with a person selling sexual relations who is eighteen years of age or older; or
  - 2. Hiring a person selling sexual relations who is eighteen years of age or older to engage in manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another, sexual intercourse, sodomy or any unlawful sexual act.
- B. Buying sexual relations is a Class A violation on conviction of a first offense. In addition to any other sentence imposed, a person convicted under this section shall be fined not less than one thousand two hundred dollars nor more than five thousand dollars and, in addition to any other sentence imposed, the court may order the person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation. One half of all fines collected pursuant to this section shall be remitted to the human trafficking victim assistance fund created by K.S.A. 2016 Supp. 75-758, and amendments thereto, and the remainder shall be remitted as otherwise provided by law.
- C. For the purpose of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section:
  - 1. Convictions for a violation of this section, or any prior version of this section, or a violation of an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits, or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging any such violations, shall be taken into account; and
  - 2. A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance which prohibits the acts of this section only once during the person's lifetime.”

**Section 4.** New Section 9.20.035 – of the Derby Municipal Code is hereby added and is enacted to read as follows:

**“9.20.035 – Unlawful use of a communication facility to buy sexual relations.**

- A. It shall be unlawful for any person to knowingly or intentionally use any communication facility in committing, causing, or facilitating the commission of any felony or misdemeanor under K.S.A. 2016 Supp. 21-6421, and amendments thereto or section 9.20.030, or in a any attempt to commit, any conspiracy to commit, or in any criminal solicitation of any felony or misdemeanor under K.S.A. 2016 Supp. 21-6421, and amendments thereto or Section 9.20.030. Each separate use of a communication facility may be charged as a separate offense under this subsection.
- B. Violation of this section is a Class A violation.”
- C. As used in this section, “communication facility” means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers and all other means of communication.

**Section 5.** Section 9.32.040 of the Derby Municipal Code is hereby amended to read as follows:

**“9.32.040 – Possession or use of simulated controlled substances or drug paraphernalia prohibited.**

- A. It shall be unlawful for any person to use or possess with intent to use:
  - 1. Any simulated controlled substance; or
  - 2. Any drug paraphernalia to store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substance Act; or
  - 3. Any drug paraphernalia to plant, propagate, grow, cultivate or harvest fewer than five marijuana plants.
- B. It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any thirty-day period.
- C. Violation of subsection A is a Class B violation.
- D. Violation of subsection B is a Class A Violation”

**Section 6. Repeal**

Original sections 9.08.050, 9.08.120, 9.20.030, and 9.32.040 of the Derby Municipal Code are hereby repealed. All other provisions of the Municipal Code of the City of Derby, Kansas shall remain in full force and effect except as specifically amended herein. All other ordinances or parts

of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

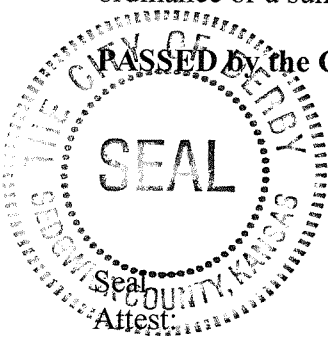
**Section 7. Severability**

Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

**Section 8. Effective Date**

This Ordinance shall take effect and be in force from and after its passage and publication of the ordinance or a summary thereof once in the City's official newspaper as provided by State law.

**PASSED** by the City Council this 25<sup>th</sup> day of July, 2017 and **SIGNED** by the Mayor.



*Randy White*  
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Randy White, Mayor

*Karen Friend*  
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Karen Friend, City Clerk

Approved as to form:

*Jacqueline R. Butler*  
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Jacqueline R. Butler, City Attorney