

## TITLE IX

### OFFENSES AND PENALTIES

#### CHAPTER 1

### **MISCELLANEOUS OFFENSES**

Section:

- 9-1-1: Applicability
- 9-1-2: Complicity
- 9-1-3: Criminal Liability of a Corporation
- 9-1-4: Criminal Liability of an Individual for Corporate Conduct
- 9-1-5: Criminal Attempt
- 9-1-6: Accessory to an Offense
- 9-1-7: Destruction of Property
- 9-1-7.5: Graffiti (Ord. 2007-1)
- 9-1-8: Unlawful Entry
- 9-1-9: Trespass
- 9-1-10: Discharge of Guns Prohibited
- 9-1-11: Interference with an Officer
- 9-1-12: Resisting Arrest
- 9-1-13: Indecent Conduct
- 9-1-14: Disorderly Conduct
- 9-1-15: Impersonating an Officer
- 9-1-16: Petty Theft
- 9-1-17: Posting of Handbills
- 9-1-18: Unreasonable Noise
- 9-1-19: Cruelty to Animals
- 9-1-20: Window Peeping
- 9-1-21: Tampering with Public Utilities
- 9-1-22: False Alarms (Ord. 2013-05)
- 9-1-23: Removal of Barricades
- 9-1-24: Possession of Marijuana (Ord. 2013-01)
- 9-1-25: Prohibiting the Use or Possession of Tobacco
- 9-1-26: Juvenile Loitering
- 9-1-27: Occupying All Town of Olathe Parks

#### **9-1-1: Applicability**

All provisions of this Chapter shall apply within the Olathe Town Limits and upon any property owned or under the control of the Town outside of the Town.

#### **9-1-2: Complicity**

A person is legally accountable as principal for the behavior of another constituting a violation of any provision of any Town ordinance, if, with the

intent to promote or facilitate the commission of the offense, he aids, abets, or advises the other person in planning or committing the offense.

**9-1-3: Criminal Liability of a Corporation**

A corporation is guilty of an offense if the conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on the corporation by ordinance; or the conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or knowingly tolerated by the Board of Directors, or by a high managerial agent, acting within the scope of employment or in behalf of the corporation.

**9-1-4: Criminal Liability of an Individual for Corporate Conduct**

A person is criminally liable for conduct constituting an offense, which he performs or causes to occur in the name of or on behalf of a corporation to the same extent as if that conduct were performed or caused by him in his own behalf.

**9-1-5: Criminal Attempt**

- A. A person commits criminal attempt, if, acting with the kind of culpability otherwise required for commission of a violation of a Town ordinance, he engages in conduct constituting a substantial step towards the commission of the offense. A substantial step is any conduct, whether act, omission or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense, if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense if the crime attempted was actually perpetrated by the accused.
- B. A person who engages in conduct intending to aid another to commit an offense commits criminal attempt if the conduct would establish his complicity under Section 9-1-2 were the offense committed by the other person, even if the other is not guilty of committing or attempting the offense.
- C. It is an affirmative defense to a charge under this Subsection that the defendant abandoned his effort to commit the offense or otherwise prevented its commission under circumstances manifesting the complete and voluntary renunciation of his criminal intent.

**9-1-6: Accessory to an Offense**

- A. A person is an accessory to an offense, if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, conviction or punishment of another for the commission of a violation of a Town ordinance he renders assistance to such person.
- B. "Renders Assistance" means to:
  - 1. Harbor or conceal the other; or
  - 2. Warn such person of impending discovery or apprehension; or
  - 3. Provide such person with money for transportation, weapon, disguise, or other things to be used in avoiding discovery or apprehension; or
  - 4. By force, intimidation, or deception, obstruct anyone in the performance of any act, which might aid in the discovery, detection, apprehension, prosecution, conviction or punishment of such person.

**9-1-7: Destruction of Property**

- A. It shall be unlawful for any person to willfully deface, destroy or damage real or personal property belonging to another.
- B. This Subsection shall not apply where, in a single criminal episode, the aggregate damage to personal and real property exceeds three hundred dollars (\$300.00).

**9-1-7.5: Graffiti (Ord. 2007-01)**

- A. It shall be unlawful for any person to apply graffiti upon any natural or manmade surface on any Town owned property or any non-Town owned property, without the permission of the owner or occupant of such property.
- B. "Graffiti" is defined as any unauthorized inscription, work, figure, painting or other defacement that is written, marked etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property.

- C. "Graffiti Implement" is defined as an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or man-made surface.
- D. Penalties:
  - 1. **Fines:** Any person violating this Ordinance shall be punished by a fine or imprisonment as set for the Olathe Municipal Code, Title IX, Chapter 3.
  - 2. **Restitution:** In addition to any punishment specified in this Section, the court may order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount determined by the court. In addition, the court may order the offender to clean graffiti for a specified period of time, in lieu of restitution. In the case of a minor, the parents or legal guardian shall be jointly and severally liable with the minor to make such restitution. (Ord. 2007-4)

**9-1-8: Unlawful Entry**

- A. It shall be unlawful for any person to enter upon the premises of another, which are enclosed in a manner designed to exclude intruders, or are fenced, when he is not licensed, invited or otherwise privileged to do so.
- B. For purposes of this Subsection, "premises" shall mean real property, buildings and other improvements on real property, excluding a dwelling or a motor vehicle.

**9-1-9: Trespass**

- A. It shall be unlawful for any person to remain on the premises of another if he has been advised that his permission, license or privilege to be there has been revoked by the owner of the premises or other authorized person.
- B. For purposes of this Subsection, "premises" shall mean real property, buildings and other improvements thereon, except a dwelling or a motor vehicle.

**9-1-10: Discharge of Guns Prohibited**

- A. It is unlawful for any person, other than a law enforcement officer, to discharge a firearm, spring gun, air gun, pellet gun, BB gun or any other gun within the Town, except upon a range totally enclosed within a

building adequately constructed so that no noise or odor is observable and no projectiles travel off of the range premises.

- B. This Section shall not apply to the lawful use of a gun in protection of persons or property.
- C. This Section shall not apply when a permit has been granted by the Board of Trustees for a special event. No permit shall be granted unless the Board determines that no nuisance, unreasonable noise or safety hazard will be created.
- D. This Section shall not apply to the lawful discharge of shotguns or similar firearms used for bird hunting within the Agriculture Zoning District "A" so long as none of the projectiles cross or impact the land of another, without permission. (Ord. NO. 03-02)

**9-1-11: Interference with an Officer**

- A. It shall be unlawful for any person to interfere with, or by using or threatening to use violence, force or physical interference or obstacle, to obstruct, impair, or hinder the enforcement of the law or preservation of the peace by a peace officer acting under color of his official authority, or the performance of a governmental function by an officer, employee or agent of the Town acting in the lawful performance of his duties.

**9-1-12: Resisting Arrest**

- A. It shall be unlawful to prevent or attempt to prevent a peace officer acting under color of his official authority, from effecting the arrest of the actor or another person by using or threatening to use physical force or violence against the peace officer or another, or by using other means which creates a substantial risk of causing physical injury to the peace officer or another.
- B. It is no defense to a prosecution under this Section that the peace officer was attempting to make an arrest, which in fact was unlawful, if he was acting under the color of his official authority, and in attempting to make the arrest he was not resorting to unreasonable or excessive force giving rise to the right of self-defense.

**9-1-13: Indecent Conduct**

It shall be unlawful for any person to urinate or defecate in any place except sanitary facilities constructed for that purpose connected to an authorized sewage collection system or authorized individual sewage disposal system.

**9-1-14: Disorderly Conduct**

It is unlawful for any person to intentionally, knowingly or recklessly:

- A. Make a coarse and obviously offensive utterance, gesture or display in a public place and the utterance, gesture or display tends to invite the immediate breach of peace; or
- B. Fight with another person in a public place, except in an amateur or professional contest of athletic skill; or
- C. Not being a peace officer, display a deadly weapon in a public place in a manner calculated to alarm; or
- D. Make unreasonable noise in a public place or near a private residence that he has no right to occupy; or
- E. Abuse or threaten a person in a public place in an obviously offensive manner; or
- F. Strike, shove, kick or otherwise touch a person or subject him to physical contact with intent to harass, annoy or alarm.

**9-1-15: Impersonating an Officer**

It shall be unlawful for any person to impersonate a peace officer or other Town officer, agent or employee and perform any act in that pretended capacity.

**9-1-16: Petty Theft**

- A. It is unlawful for any person to knowingly obtain or exercise control over anything of value, having a value of less than THREE HUNDRED DOLLARS (\$300.00), of another without authorization or by threat or deception, or knowing said thing of value to have been stolen; and
  - 1. Intend to deprive the other person permanently of the use or benefit of the thing of value; or
  - 2. Knowingly use, conceal, or abandon the thing of value in such a manner as to deprive the other person permanently of its use or benefit; or
  - 3. Use, conceal or abandon the thing of value intending that such use, concealment or abandonment will deprive the other person permanently of its use and benefit; or
  - 4. Demand any consideration to which he is not legally entitled as a condition of restoring the thing of value to the other person.

- B. If any person willfully conceals un-purchased goods, wares or merchandise owned or held by and offered or displayed for sale by any store or any other mercantile establishment, whether such concealment is on his own person or otherwise, and whether on or off the premises of such store or mercantile establishment, such concealment shall constitute prima facie evidence that such person intended to commit the offense of petty theft.
- C. The offense of petty theft shall not include theft from the person of another.

**9-1-17: Posting of Handbills**

- A. It shall be unlawful to post or attach any handbill, placard, poster, or printed material upon any building, fence, utility pole or other structure without permission of the owner or party in lawful possession of such structure.
- B. Anything posted or attached in violation of this Section is hereby declared to be a nuisance, which may be abated pursuant to law.

**9-1-18: Unreasonable Noise**

- A. It shall be unlawful for any person to make cause to be made or continued, or to allow any unreasonable noise, which unreasonably annoys, injures, or endangers the comfort, health, peace or safety of others.
- B. Unreasonable noise is hereby declared to be a nuisance and may be abated in accordance with law.

**9-1-19: Cruelty to Animals**

- A. It shall be unlawful for any person owning or in custody of any animal to fail to provide any animal with adequate food, water, shelter and veterinary care when reasonably required.
- B. It shall be unlawful for any person to beat, cruelly ill-treat, overload, overwork, or otherwise abuse any animal, or cause or permit any dog fight, cockfight, bullfight or other combat between animals or between animals and humans.
- C. It shall be unlawful for the owner or custodian of any animal to abandon such animal.

**9-1-20: Window Peeping**

It shall be unlawful for any person to enter or remain upon the property of another with the intent to peer or peep into any window of a dwelling of another.

**9-1-21: Tampering with Public Utilities**

It shall be unlawful for any person to interfere with, tamper with, damage, destroy, or operate any part of any utility system, including power, gas, telephone, CATV systems, or to connect to such systems, or utilize service from such systems without lawful authorization to do so.

**9-1-22: False Alarms (Ord. 2013-05)**

- A. It shall be unlawful to maintain a defective police and/or fire alarm system.
- B. A police and/or fire alarm system shall be deemed to be defective if it causes in excess of two (2) alarm signals which meet the definition of a “false alarm” as set forth in this Section 9-1-22, in any one (1) year period as defined herein: (Ord. 2013-05, 01-28-2013)
  - 1. The term “false alarm” as used in this Section 9-1-22 shall mean an alarm signal eliciting notification to and a response by the police when there is no evidence of a crime or other activity that warrants a call for immediate police and/or fire assistance, and no person who was on or near the property or has viewed a video communication from the property called for the police dispatch or confirmed the need for police and/or fire assistance. The term “false alarm” does not include an alarm signal caused by violent conditions of nature or other extraordinary circumstances beyond the control of the alarm user.
  - 2. As used in this Section 9-1-22, a one (1) year period shall be calculated beginning the first day of January of each year, and shall extend through the last day of December of the year. The Town’s tally of the number of false alarms for all alarm users or police and/or fire alarm systems shall return to zero (0) at 12:01 AM the first day of January each year.
  - 3. The term “alarm user” as used in this Section 9-1-22 shall mean any individual, partnership, corporation or other form of association that owns or leases a police and/or fire alarm system or on whose premises a police and/or fire alarm system is maintained for the protection of the premises.
  - 4. The term “police and/or fire alarm system” as used in this Section 9-1-22 means any system, device, or mechanism for the detection and reporting of any unauthorized entry or attempted entry or property damage upon premises protected by said system that may be activated by sensors or

other techniques and, when activated, automatically transmits a telephone message or omits an audible, visible, or electronic signal that can be heard, seen or received by persons outside of the protected premises and is intended to summon police and/or fire assistance.

- C. A defective police and/or fire alarm system is hereby declared to be a nuisance which may be abated by the Town as detailed in Section 8-3-2.
- D. Police and/or fire alarm systems which cause more than two (2) false alarms during any one (1) year period as calculated herein, shall incur a \$50.00 fee to the alarm user for all false alarms after the second false alarm during said period.
  - 1. The Town may enforce collection of such amounts in any lawful manner and may certify such amounts as a delinquent charge to the County Treasurer to be collected similarly as delinquent taxes against the property upon which such police and/or fire alarm system is located. It shall be unlawful to fail to pay such amounts within thirty (30) days after billing by the Town.
  - 2. Disputes as to any fee assessed pursuant to this Section 9-1-22 may be appealed by the alarm user to the Town Administrator, who shall decide the matter following a hearing in compliance with the requirements of due process.

**9-1-23: Removal of Barricades**

It is unlawful for any person except by proper authority to remove any barricade, warning light, or obstruction placed by authority of the Town to keep traffic off any pavement, street, curb, sidewalk, or other area, or otherwise to warn or direct traffic.

**9-1-24: Possession of Marijuana (Repealed Ord. 2013-01)**

**9-1-25: Consumption (Ord. 02-1996)**

- A. It shall be unlawful for any person under the age of 18 years to purchase, possess, use or consume any cigarettes, or tobacco products as defined by C.R.S.39-28.5-101 (5) as amended, including chewing tobacco, at or upon any public place. (Ord. 02-1996; 98-06; 99-02)

**9-1-26: Juvenile Loitering (Ord. 07-1996)**

- A. It shall be unlawful for any person under the age of 18 years to loiter on or about any street, avenue, highway, road, sidewalk, curb, gutter, parking lot, alley, vacant lot, playground, yard, building, place of amusement, or eating place, whether public or private, without the consent or permission of the owner or occupant thereof, during the

hours beginning at 10:00 p.m. on Sunday through Thursday nights and ending at 6:00 a.m. the following day, and beginning at 11:00 p.m. on Friday and Saturday nights and ending at 6:00 a.m. the following day. No violation of the Subsection will have occurred if the person under 18 years is accompanied by a parent, guardian or other adult person over the age of 21 years who is authorized by a parent or guardian of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purposed within a specified area. (Ord. 5-2007)

- B. It shall be unlawful for the parent, guardian, or other adult person having the care and custody of a juvenile under the age of 18 years to knowingly permit or allow such juvenile to loiter at the places and within the time prohibited by Subsection (A) of this Section. The term "knowingly" includes knowledge, which a parent should be reasonably expected to have concerning the whereabouts of a juvenile in that parent or guardian's custody. It shall be no defense that a parent, guardian, or other person having the care and custody of the juvenile was indifferent to the activities, conduct or whereabouts of such juvenile.
- C. "Loitering" or "Loiter" shall mean remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and, shall include but not be limited to standing around, hanging out, sitting, kneeling, sauntering, or prowling.

**9-1-27      Occupying All Town of Olathe Parks** (Ordinance 2010-09)

- A. It shall be unlawful for any person to be in any park within the Town of Olathe before sunrise or after sunset without first obtaining permission from the Town of Olathe.
- B. Penalties:
  - 1. **Fines:** Any person violating this Ordinance shall be punished by a fine or imprisonment as set forth in the Olathe Municipal Code, Title IX, Chapter 3.