

(Published in the Topeka Metro News September 9, 2019)

ORDINANCE NO. 20203

AN ORDINANCE introduced by City Manager Brent Trout, adopting the 2019 Uniform Public Offense Code (UPOC) and local amendments thereto, amending TMC 9.05.080.

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

Section 1. That section 9.05.080, Uniform Public Offense Code, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Uniform Public Offense Code.

(a) Adoption. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the city of Topeka, Kansas, the Uniform Public Offense Code for Kansas Cities, ~~34th~~ 35th Edition (~~2018~~2019), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, (hereinafter referred to as “UPOC ~~2018~~2019”) except for 10.24 (“Smoking Prohibited”), 10.25 (“Smoking; Posting Premises”), 10.26 (“Smoking Prohibited; Penalties”) and 11.11 (“Cruelty to Animals”), which are specifically deleted and omitted. One copy of said Uniform Public Offense Code shall be marked or stamped “Official Copy as adopted by Ordinance No. ~~20174~~_____,” with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of said ordinance and filed with the city clerk to be open to inspection and available to the public at all reasonable hours. The Uniform Public Offense Ordinance, as amended, shall also be posted on the City’s website.

(b) Amendments.

(1) Section 10.6, relating to bows and arrows, is hereby amended by adding the following exception:

29 Exception: Operation of a bow and arrow is permitted in
30 accordance with the provisions set forth in TMC 6.05.110.

31 (2) Section 5.7, relating to selling, giving or furnishing cigarettes or
32 tobacco products to a minor, is hereby deleted and the following language is
33 substituted therefor:

34 (a) It shall be unlawful for any person to:

35 (1) Sell, furnish or distribute cigarettes, electronic cigarettes,
36 tobacco products or liquid nicotine to any person under 21
37 years of age; or

38 (2) Buy any cigarettes, electronic cigarettes, tobacco products
39 or liquid nicotine for any person under 21 years of age.

40 (b) It shall be a defense to a prosecution under this section if:

41 (1) The defendant is a licensed retail dealer, or employee
42 thereof, or a person authorized by law to distribute samples;

43 (2) The defendant sold, furnished or distributed the cigarettes,
44 electronic cigarettes, tobacco products, or liquid nicotine to the person
45 under 21 years of age with reasonable cause to believe the person
46 was of legal age to purchase or receive cigarettes, electronic
47 cigarettes, tobacco products or liquid nicotine; and

48 (3) To purchase or receive the cigarettes, electronic cigarettes,
49 tobacco products or liquid nicotine, the person under 21 years of age
50 exhibited to the defendant a driver's license, Kansas non driver's
51 identification card or other official or apparently official document
52 containing a photograph of the person and purporting to establish that

53 the person was of legal age to purchase or receive cigarettes,
54 electronic cigarettes, tobacco products or liquid nicotine.

55 (4) For purposes of this section the person who violates this
56 section shall be the individual directly selling, furnishing or distributing
57 the cigarettes, electronic cigarettes, tobacco products or liquid nicotine
58 to any person under 21 years of age or the retail dealer who has actual
59 knowledge of such selling, furnishing or distributing by such individual
60 or both.

61 (c) It shall be a defense to a prosecution under this subsection if:

62 (1) The defendant engages in the lawful sale, furnishing or
63 distribution of cigarettes, electronic cigarettes, tobacco products or liquid
64 nicotine by mail; and

65 (2) The defendant sold, furnished or distributed the cigarettes,
66 electronic cigarettes, tobacco products or liquid nicotine to the person by
67 mail only after the person had provided to the defendant an unsworn
68 declaration, conforming to K.S.A. 53-601 and amendments thereto, that
69 the person was 21 or more years of age.

70 (d) The words and phrases in Section 5.7 of UPOC 2015 shall have the
71 same meanings as defined in K.S.A. 79-3301, and amendments thereto.
72 "Liquid nicotine" shall mean the active ingredient of the tobacco plant
73 (nicotine) in liquefied form suitable for the induction of nicotine, whether by
74 nasal spray, ingestion, smoking or other means, into the human body.
75 "Sale" shall mean any transfer of title or possession or both, exchange,

barter, distribution or gift of cigarettes, electronic cigarettes, tobacco products or liquid nicotine with or without consideration.

(f) Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200.

Section 2. That original § 9.05.080 of The Code of the City of Topeka, Kansas, is hereby specifically repealed.

Section 3. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 4. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 5. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body on September 3, 2019.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk