

(Published in the Topeka Metro News April 12, 2021)

ORDINANCE NO. 20289

AN ORDINANCE introduced by Councilmember Spencer Duncan, concerning all-night retailer business licenses, repealing Topeka Municipal Code § 5.10.220 and Chapter 5.20.

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

Section 1. That section 5.10.220, Retail business from midnight to 6:00 a.m., of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Retail business from midnight to 6:00 a.m.~~

~~The fee for a license to operate or carry on a retail business between the hours of midnight and 6:00 a.m. shall be \$40.00 per year. All such licenses shall expire on May 1st of each calendar year.~~

Section 2. That section 5.20.010, Scope, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Scope.~~

~~This chapter shall include all retail businesses providing goods and services between 12:00 midnight and 6:00 a.m.; provided, however, that any emergency services, telephone and telegraph services, hotels, motels, taxicabs and buses shall be exempt from the provisions of this chapter. This chapter shall apply regardless of whether the business is conducted within the confines of a structure, under a roof or on the premises adjacent thereto in the City.~~

Section 3. That section 5.20.020, Official acts, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Official acts.~~

28 ~~For the purpose of this chapter, all duties and acts of the Chief of Police may be~~
29 ~~performed by any duly authorized member of the Police Department acting under the~~
30 ~~direction of the Chief of Police.~~

31 Section 4. That section 5.20.030, Required, of The Code of the City of
32 Topeka, Kansas, is hereby repealed.

33 **~~Required.~~**

34 ~~It shall be unlawful for any person to operate or carry on any business when~~
35 ~~under the ordinary operation or conduct of such business it is necessary that the place~~
36 ~~of business remain open between the hours of 12:00 midnight and 6:00 a.m. unless the~~
37 ~~person has obtained a license as provided in this article.~~

38 Section 5. That section 5.20.040, Application, of The Code of the City of
39 Topeka, Kansas, is hereby repealed.

40 **~~Application.~~**

41 ~~Application for a license under this article shall be made to the City Clerk along~~
42 ~~with the payment of the license fee.~~

43 Section 6. That section 5.20.050, Scope, of The Code of the City of Topeka,
44 Kansas, is hereby repealed.

45 **~~Fee.~~**

46 ~~The license fee under this article is prescribed in TMC 5.10.220.~~

47 Section 7. That section 5.20.060, Investigation, of The Code of the City of
48 Topeka, Kansas, is hereby repealed.

49 **~~Investigation.~~**

50 ~~Before any license can be granted by the Council under this article, the~~

51 ~~application shall be referred to the Chief of Police. The Chief of Police shall have power~~
52 ~~to inquire and make findings as to the method to be used in the operation and carrying~~
53 ~~on of the enterprise or business, the commodity to be sold or dispensed, the hours and~~
54 ~~time which the business shall be open to the public and shall be retained by the City to~~
55 ~~cover its costs in investigating the application.~~

56 Section 8. That section 5.20.070, Approval, of The Code of the City of Topeka,
57 Kansas, is hereby repealed.

58 **Approval.**

59 ~~After investigation, the Chief of Police shall refer all applications under this article~~
60 ~~to the Council with a written endorsement thereon stating the Chief's recommendations~~
61 ~~as to whether the license shall be granted or denied, and the Council shall then act~~
62 ~~upon the application after the recommendations as made by the Chief of Police have~~
63 ~~been noted in the record.~~

64 Section 9. That section 5.20.080, Cancellation and suspension, of The Code
65 of the City of Topeka, Kansas, is hereby repealed.

66 **Cancellation and suspension.**

67 ~~(a) — Any person holding a license issued under this article shall be responsible~~
68 ~~for the manner and method of operating or carrying on their business, and the Chief of~~
69 ~~Police upon information and after investigation shall have power to suspend the license~~
70 ~~if in the Chief's opinion the business or enterprise is conducted in such a manner as to~~
71 ~~constitute a nuisance within the meaning of subsection (c) of this section and that the~~
72 ~~commodities sold or the services rendered are unlawful or the business or enterprise is~~
73 ~~operated or carried on in such a manner as to disturb the peace of the community, or in~~

74 ~~such a manner as to impair the value of any property of any person residing in or doing~~
75 ~~business in the City. Before any suspension order shall become effective, a written~~
76 ~~notice of such order shall be delivered by the Chief of Police to the person so operating~~
77 ~~or carrying on such business or enterprise. The service by the Chief of Police upon any~~
78 ~~person in charge of such business or enterprise or upon any agent of any person who is~~
79 ~~in charge of such business or enterprise or any person in charge of or agent for the~~
80 ~~person who is in charge of the premises on which the business or enterprise is~~
81 ~~operated, shall be deemed sufficient service, and upon completion of the service the~~
82 ~~license is suspended until further order of the Council.~~

83 ~~The Chief of Police shall be sole judge as to whether the manner, means, method,~~
84 ~~operation or carrying on of the business or enterprise or the commodity sold by the~~
85 ~~person is such that the same constitutes a nuisance for the purpose of the suspension~~
86 ~~order.~~

87 ~~(b) — After the license has been suspended by the Chief of Police, the Chief~~
88 ~~shall immediately report such fact to the Council. At the next meeting of the Council, the~~
89 ~~license may be reinstated or cancelled by the Council, and the Council may receive any~~
90 ~~information other than that furnished by the Chief of Police, or the Council may order the~~
91 ~~Chief of Police to make further investigation before acting on the matter of the~~
92 ~~cancellation of the license.~~

93 ~~(c) — For the purpose of this section, a “nuisance” shall be defined to be any act~~
94 ~~done or permitted to be done by any person in the City, which act is intended to or does~~
95 ~~disturb any person or destroy or impair any property right of any person in the City, or~~
96 ~~engaging in any unlawful enterprise.~~

Section 10. That original § 5.10.220 and Chapter 5.20 of the Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 11. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 12. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 13. 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 City Council on April 6, 2021.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk