

(Published in the Topeka Metro News October 11, 2021)

**ORDINANCE NO. 20319**

AN ORDINANCE introduced by City Manager Brent Trout, adopting the 2021 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, ~~35<sup>th</sup>~~37<sup>th</sup> Edition (~~2019~~2021), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, (hereinafter referred to as “UPOC ~~2019~~2021”) 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. ~~20203~~20319,” 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 accordance   with  
30                   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 years   of  
37                               age; or

38                               (2) Buy any cigarettes, electronic cigarettes, tobacco  
39                               products 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  
44                               cigarettes, electronic cigarettes, tobacco products, or liquid nicotine  
45                               to the person under 21 years of age with reasonable cause to  
46                               believe the person was of legal age to purchase or   receive  
47                               cigarettes, electronic cigarettes, tobacco products or liquid nicotine;  
48                               and

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

document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, tobacco products or liquid nicotine.

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

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

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

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

(d) The words and phrases in Section 5.7 shall have the same meanings as defined in K.S.A. 79-3301, and amendments thereto. "Liquid nicotine" shall mean the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body. "Sale"

77 shall mean any transfer of title or possession or both, exchange, barter,  
78 distribution or gift of cigarettes, electronic cigarettes, tobacco products or  
79 liquid nicotine with or without consideration.

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

82 Section 2. That section 9.40.045, Possession of firearm during commission of  
83 certain misdemeanors, of The Code of the City of Topeka, Kansas, is hereby repealed.

84 **~~Possession of firearm during commission of certain misdemeanors.~~**

85 ~~(a) Definitions.~~

86 ~~(1) "Firearm" shall mean any weapon designed or having the capacity to~~  
87 ~~propel a projectile by force of an explosion or combustion.~~

88 ~~(2) "Possess" shall mean to have on one's person or within the person's~~  
89 ~~immediate control.~~

90 ~~(b) It shall be unlawful to possess a firearm during the commission or attempted~~  
91 ~~commission of any of the following misdemeanors: battery, battery against a law~~  
92 ~~enforcement officer, sexual battery, assault, assault of a law enforcement officer,~~  
93 ~~unlawful restraint, violation of a protective order, stalking, theft, criminal trespass,~~  
94 ~~disorderly conduct, endangerment, and possession of controlled substances prohibited~~  
95 ~~by Chapter 9.50 TMC.~~

96 ~~(c) Any person who violates subsection (b) of this section within the corporate~~  
97 ~~limits of the City shall be guilty of a misdemeanor and shall be punished by a fine not to~~  
98 ~~exceed \$2,500, or by imprisonment not to exceed one year, or both such fine and~~  
99 ~~imprisonment.~~

100 Section 3. That original § 9.05.080 of The Code of the City of Topeka, Kansas,

is hereby specifically repealed.

Section 4. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 5. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 6. 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 October 5, 2021.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk