

(Published in the Topeka Metro News September 19, 2022)

ORDINANCE NO. 20376

AN ORDINANCE introduced by Interim City Manager William E. Cochran, adopting the 2022 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, ~~37~~38th Edition (~~2021~~2022), prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas (hereinafter referred to as "UPOC ~~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. ~~20319~~20376," 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 age; or

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

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

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

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

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

(e) Violation of this section shall constitute a Class B violation punishable

77 by a minimum fine of \$200.

78 (3) Sections 10.24 ("Smoking Prohibited"), 10.25 ("Smoking; Posting
79 Premises"), 10.26 ("Smoking Prohibited; Penalties") are hereby omitted and deleted and
80 the provisions set forth in Chapter 8.20 TMC shall be substituted therefore.

81 (4) Section 11.11 ("Cruelty to Animals") is hereby omitted and deleted and the
82 provisions set forth in TMC 6.05.100 shall be substituted therefore.

83 Section 3. That original § 9.05.080 of The Code of the City of Topeka, Kansas,
84 is hereby specifically repealed.

85 Section 4. This ordinance shall take effect and be in force on October 1, 2022,
86 and after its passage, approval and publication in the official City newspaper.

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

89 Section 6. Should any section, clause or phrase of this ordinance be declared
90 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
91 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

92 PASSED AND APPROVED by the City Council on September 13, 2022.

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94 CITY OF TOPEKA, KANSAS

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Michael A. Padilla, Mayor

100 ATTEST:

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105 Brenda Younger, City Clerk