

(Published in the Topeka Metro News October 5, 2009)

ORDINANCE NO. 19315

AN ORDINANCE introduced by Councilmember Deborah Swank, amending City of Topeka Code § 78-226 through § 78-239 concerning clean indoor air in public places and places of employment and specifically repealing said original sections and creating § 78-240 through § 78-242.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. That Chapter 78, Article IV of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

DIVISION 1. SMOKING PROHIBITED; GENERALLY

Section 2. That § 78-226, Definitions, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~(a) *Bar* means an area which is devoted to the serving of alcoholic beverages and in which the serving of food is incidental to the consumption of such beverages.~~

~~(b) *Business* means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.~~

30 ~~(c) — Dining area means any enclosed area containing a counter or tables upon~~
31 ~~which meals are served.~~

32 ~~(d) — Employee means any person who is employed by any employer in~~
33 ~~consideration for direct or indirect monetary wages or profit, and any person who~~
34 ~~volunteers his services for a nonprofit entity.~~

35 ~~(e) — Employer means any person, partnership, corporation or nonprofit entity,~~
36 ~~including a municipal corporation, who employs the services of one or more persons.~~

37 ~~(f) — Enclosed means closed in by a roof and four walls with appropriate~~
38 ~~openings for ingress and egress.~~

39 ~~(g) — Environmental code services director or director means the director of the~~
40 ~~environmental code services division.~~

41 ~~(h) — Nonprofit entity means any corporation, unincorporated association, or~~
42 ~~other entity created for charitable, educational, political, social or other similar purposes,~~
43 ~~the net proceeds from the operations of which are committed to the promotion of the~~
44 ~~objects or purposes of the organization and not to private financial gain. A public agency~~
45 ~~is not a nonprofit entity within the meaning of this definition.~~

46 ~~(i) — Place of employment means any enclosed area under the control of a~~
47 ~~public or private employer which employees normally frequent during the course of~~
48 ~~employment, including, but not limited to, work areas, employee lounges and restrooms,~~
49 ~~conference and class rooms, cafeterias and hallways; except:~~

50 ~~(1) — A private residence is not a place of employment unless it is used~~
51 ~~as a child care or health care facility.~~

52 ~~(2) The dining area of a restaurant is not a place of employment.~~

53 ~~(j) — *Public place* means any enclosed area to which the public is invited or in~~
54 ~~which the public is permitted, including, but not limited to, banks, educational facilities,~~
55 ~~health facilities, public transportation facilities, reception areas, restaurants, retail food~~
56 ~~production and marketing establishments, retail service establishments, retail stores,~~
57 ~~theaters and waiting rooms.~~

58 ~~(k) — *Restaurant* means any coffee shop, cafeteria, tavern, sandwich stand,~~
59 ~~soda fountain, private or public school cafeteria, and any other eating establishment,~~
60 ~~organization, club, boardinghouse, or guesthouse which gives or offers food for sale to~~
61 ~~the public, guests, patrons or employees, except that the term shall not include a~~
62 ~~cocktail lounge or tavern if such cocktail lounge or tavern is a bar.~~

63 ~~(l) — *Fast food restaurant* means an establishment whose principal business is~~
64 ~~the sale of prepared or rapidly prepared food directly to the consumer over the counter~~
65 ~~(not served by a waiter or waitress) in a ready to eat consumed state, for consumption~~
66 ~~either elsewhere or within the restaurant building or off-premises. The products sold are~~
67 ~~usually serviced in containers that are either edible or made of paper, plastic or other~~
68 ~~disposable material.~~

69 ~~(m) — *Retail tobacco store* means a retail store utilized primarily for the sale of~~
70 ~~tobacco products and accessories.~~

71 ~~(n) — *Service line* means any indoor line at which one or more persons are~~
72 ~~waiting for or receiving services of any kind, whether or not such service involves the~~
73 ~~exchange of money.~~

74 ~~(o) — *Smoke or smoking* means inhaling, exhaling, burning or carrying any~~
75 ~~lighted cigar, cigarette, pipe or weed.~~

(p) ~~Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.~~

Purpose.

The purpose of this article is to (1) improve and protect the public's health by eliminating smoking in public places and places of employment; (2) protect the right of nonsmokers to breathe smoke-free air; and (3) recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

Section 3. That § 78-227, Declaration of policy, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Declaration of policy.

~~It is the policy of the city in furtherance of its responsibility to protect the public health, safety and welfare to:~~

~~(1) Prohibit the smoking of tobacco products in public places, except in designated smoking areas;~~

~~(2) Regulate the smoking of tobacco products in places of employment; and~~

~~(3) Strike a reasonable balance between the needs of smokers and the needs of nonsmokers to breathe smokefree air, recognizing that, where these needs conflict, the need to breathe smokefree air shall have priority.~~

Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

99 (a) Business means any sole proprietorship, partnership, joint venture,
100 corporation or other business entity formed for profit or not for profit purposes, including
101 places where goods or services are sold at retail or wholesale as well as professional
102 corporations and other entities where legal, medical, dental, engineering, architectural
103 or other professional services are delivered.

104 (b) Employee means any person who is employed by an employer in
105 consideration for direct or indirect monetary wages or profit, and any person who
106 volunteers his or her services for a non-profit entity.

107 (c) Employer means any person, partnership, corporation, including a
108 municipal corporation, or non-profit entity, which employs in consideration for direct or
109 indirect monetary wages or profit the services of one or more individual persons.

110 (d) Enclosed area means all space between a floor and ceiling which is
111 enclosed on all sides by solid walls or windows (exclusive of door or passage ways)
112 which extend from the floor to the ceiling, including all space therein screened by
113 partitions which do not extend to the ceiling or are not solid, "office landscaping" or
114 similar structures.

115 For the purposes of this article, the following shall not be considered an enclosed
116 area:

117 (1) Rooms or areas enclosed by walls or windows having neither a
118 ceiling nor a roof and which are completely open to the elements and weather at
119 all times.

(2) Rooms or areas, enclosed by walls or windows and a roof or ceiling, having an opening at least eighty percent (80%) of the total perimeter wall area completely and permanently open to the elements and weather.

(e) Food service establishment shall mean any place in which food or alcoholic liquor or cereal malt beverages, or both, is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen, commissary and any other private, public or nonprofit organization or institution routinely serves or prepares food or drink with or without charge.

(f) Licensed premises shall mean any premises where alcoholic liquor or cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41, and amendments thereto, is served or provided for consumption or use on the premises with or without charge. Such term shall include drinking establishments, Class A Private Clubs, Class B Private Clubs, and cereal malt beverage or alcoholic liquor retailer establishments, all as defined by K.S.A. Chapter 41, and amendments thereto, and this article.

(g) Place of employment means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

143 (h) Private place means any enclosed area to which the public is not invited
144 or in which the public is not permitted, including but not limited to, personal residences
145 or personal motor vehicles. A privately owned business, open to the public, is not a
146 “private place.”

147 (i) Public place means any enclosed area to which the public is invited or in
148 which the public is permitted, including but not limited to, banks, educational facilities,
149 health facilities, health care facilities, laundromats, public transportation facilities,
150 reception areas, production and marketing establishments, retail service
151 establishments, retail stores, theaters, and waiting rooms. A private residence is not a
152 “public place.”

153 (j) Retail tobacco store means a retail store where sixty-five percent (65%) of
154 the sales are derived from tobacco products and in which the sale of other products is
155 merely incidental.

156 (k) Smoking means possession of a cigarette, cigar, or pipe partially or wholly
157 consisting of or containing burning vegetation, or possession of any other device
158 containing burning vegetation that is used for the introduction of smoke from the burning
159 vegetation into the human body. For the purposes of this definition, the term vegetation
160 includes, but is not limited to, tobacco, but does not include any controlled substance
161 listed in K.S.A. 65-4105 through K.S.A. 65-4113 inclusive, and amendments thereto.

162 (l) Sports arena means sports pavilions, gymnasiums, health spas, boxing
163 arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places
164 where members of the general public assemble either to engage in physical exercise,
165 participate in athletic competition, or witness sports events.

166 (m) Wall means a side of a room, building or structure connecting the floor and
167 ceiling or foundation and roof, including temporary, moveable, and retractable sides.

168 Section 4. That § 78-228, Purpose, of the Code of the City of Topeka, Kansas,
169 is hereby amended to read as follows:

170 **Purpose.**

171 ~~It is the purpose of this article to effectuate the policies set forth in section 78-227~~
172 ~~by providing for:~~

173 ~~(1) A program of effective regulation of the use of tobacco products for the~~
174 ~~protection of the public health, safety and welfare.~~

175 ~~(2) A program to promote the public education as to the health hazards and~~
176 ~~other ill effects of breathing secondhand smoke.~~

177 ~~(3) A program to establish procedures for the assumption and performance of~~
178 ~~certain regulatory and enforcement responsibilities with respect to the smoking of~~
179 ~~tobacco products~~

180 **Prohibition of smoking in public places.**

181 Smoking shall be prohibited in all enclosed public places within the City of
182 Topeka, including, but not limited to, the following places:

183 (a) Elevators.

184 (b) Restrooms, lobbies, reception areas, hallways, and any other common-
185 use areas.

186 (c) Buses, bus terminals, taxicabs, train stations, the airport, and other
187 facilities and means of public transit under the authority of the City of Topeka, as well as
188 ticket, boarding, and waiting areas of public transit depots.

189 (d) Service lines.

190 (e) Retail stores.

191 (f) All areas available to and customarily used by the general public in all
192 businesses and non-profit entities patronized by the public including, but not limited to,
193 attorneys' offices, and other offices, banks, laundromats, and hotels and motels in which
194 at least 80% of the rooms are available for rent by guests.

195 (g) Food service establishments and licensed premises, excluding areas of a
196 food service establishment or licensed premises that are not enclosed such as patios,
197 outdoor dining areas, and courtyards.

198 (h) Within ten (10) feet of the main entrance or air handling unit of a public
199 place.

200 (i) Galleries, libraries and museums.

201 (j) Any facility which is primarily used for exhibiting any motion picture, stage,
202 drama, lecture, musical recital or other similar performance, except that performers may
203 smoke when the smoking is a part of a theatrical production.

204 (k) Sports arenas and convention halls, including bowling facilities.

205 (l) Every room, chamber, place of meeting or public assembly, including
206 school buildings under the control of any board, council, commission, committee,
207 including joint committees, or agencies of the City of Topeka or any political subdivision
208 of the State to the extent such place is subject to the jurisdiction of the City of Topeka.

209 (m) Waiting rooms, hallways, wards and rooms of health care facilities,
210 including, but not limited to, hospitals, clinics, nursing homes, physical therapy facilities,
211 doctors' offices, and dentists' offices.

(n) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(o) Polling places.

(p) Private clubs and fraternal organization facilities.

Section 5. That § 78-229, Areas where smoking is prohibited, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Areas where smoking is prohibited.~~

~~(a) Smoking shall not be permitted and smoking areas shall not be designated in those areas where smoking is prohibited by the fire chief, state statute, ordinances or regulations of the city or other applicable laws.~~

~~(b) No person shall smoke in a public place or at a public meeting except as permitted in this article. The following listed areas are declared to be public areas; provided, however, the enumerated areas are not to be construed as an exclusive enumeration of the only public areas covered:~~

~~(1) Elevators and restrooms.~~

~~(2) Buses and other means of public transit under the authority of the city, and ticket, boarding and waiting areas of public transit depots; provided, however, that this prohibition does not prevent the establishment of separate waiting areas for smokers and nonsmokers, or the establishment of a maximum of 50 percent of a given waiting room as a smoking area.~~

~~(3) Service lines.~~

234 ~~(4) — Retail stores, except areas in such stores not open to the public~~
235 ~~and all areas within retail tobacco stores.~~

236 ~~(5) — Retail food marketing establishments, including grocery stores and~~
237 ~~supermarkets, except those areas of such establishments set aside for the~~
238 ~~purpose of serving food and drink, restrooms and offices, and areas thereof not~~
239 ~~open to the public, which are otherwise regulated by this article.~~

240 ~~(6) — Restaurants and private clubs regularly serving food with a seating~~
241 ~~capacity of less than 30 and all fast food restaurants.~~

242 ~~(7) — Restaurants and private clubs with a seating capacity of 30 or~~
243 ~~more, regularly serving food, shall provide a nonsmoking section provided that~~
244 ~~the nonsmoking section is of sufficient size with contiguous seating to~~
245 ~~accommodate patrons who request to be seated in such an area. These~~
246 ~~establishments may also elect to use physical barriers and/or ventilation to help~~
247 ~~ensure smokefree air.~~

248 ~~(8) — All areas available to and customarily used by the general public in~~
249 ~~all businesses and nonprofit entities patronized by the public, including, but not~~
250 ~~limited to, offices, banks, hotels and motels.~~

251 ~~(9) — Public areas of libraries and museums when open to the public; provided,~~
252 ~~however, that this prohibition does not prevent the designation of separate smoking~~
253 ~~areas.~~

254 ~~(10) — Any building not open to the sky which is used primarily for~~
255 ~~exhibiting any motion picture, stage, drama, lecture, musical recital or other~~
256 ~~similar performance, except when smoking is part of a stage production;~~

provided, however, that this prohibition does not prevent the designation of a contiguous area containing a maximum of 50 percent of a lobby as a smoking area.

~~(11) Every room, chamber and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.~~

~~(12) Polling places.~~

~~(13) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices. In bed space areas of health facilities used for two or more patients, smoking shall be prohibited unless all patients within the room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted.~~

~~(14) Enclosed sports arenas and convention halls, except in designated smoking areas, which cannot include designating the entire area as smoking.~~

~~(15) Kansas Expocentre, except in designated smoking areas; provided, however, this exception will be effective only so long as the Kansas Expocentre has a smoking policy that is comparable to and compatible with this article.~~

Prohibition of smoking in places of employment

(a) Smoking shall be prohibited in all enclosed areas in places of employment within the City of Topeka.

(b) It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

(c) Each employer having any enclosed area in a place of employment located within the City of Topeka shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed areas within a place of employment without exception. This includes work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas.

(d) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this ordinance.

(e) All employers shall make available a written copy of the smoking policy to any existing or prospective employee.

Section 6. That § 78-230, Penalty for violation of article, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Penalty for violation of article.

~~Any person, business or employer who violates any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum of \$25.00. Each and every day that such violation continues shall constitute a separate offense.~~

Additional declaration of non-smoking establishment.

301 Notwithstanding any other provision of this article, any owner, operator, manager
302 or other person who controls any establishment described in this article may declare the
303 entire establishment as a non-smoking establishment.

304 Section 7. That § 78-231, Enforcement; duties of director, of the Code of the
305 City of Topeka, Kansas, is hereby amended to read as follows:

306 **Enforcement; duties of environmental code services director.**

307 ~~(a) — The environmental code services director shall be responsible for carrying~~
308 ~~out the purposes and intent of this article and enforcing its provisions within the city.~~

309 ~~(b) — The environmental code services director shall, for the protection of the~~
310 ~~public health, safety and welfare, develop programs for the evaluation of health hazards~~
311 ~~associated with the use of tobacco products.~~

312 **Application of article to city owned facilities.**

313 All enclosed facilities owned by the City of Topeka shall be non-smoking at all
314 times notwithstanding other provisions of this article.

315 Section 8. That § 78-232, Exemptions, of the Code of the City of Topeka,
316 Kansas, is hereby amended to read as follows:

317 **Exemptions.**

318 ~~(a) The environmental code services director may fix, charge and collect fees~~
319 ~~for investigating a request for exemption from the provisions of this article. After~~
320 ~~investigation, the director shall make a finding on the significant risks, if any, to the~~
321 ~~health, safety and welfare of the public if the exemption was granted. The director shall~~
322 ~~forward a summary of the investigation and the findings to the city council.~~

323 ~~(b) The city council, after reviewing the environmental code services director's~~
324 ~~investigation and findings, may grant or deny the request for exemption. The period of~~
325 ~~exemption shall be for two years. The council may review an exemption if changes at~~
326 ~~the exempted public place or business cause the exemption to create a significant risk~~
327 ~~to the health, safety and welfare of the public. The director may fix, charge and collect~~
328 ~~fees for an exemption.~~

329 ~~(c) An exemption may be renewed. A renewal request shall follow the~~
330 ~~procedure and requirements of an initial exemption request as detailed above. The~~
331 ~~director may fix, charge and collect a fee for renewal of an exemption.~~

332 **Where smoking is not regulated: private and public places.**

333 Notwithstanding any other provision of this Article to the contrary, the following
334 areas shall not be subject to the smoking restrictions of this Article:

335 (a) Private residences, except when used as a childcare, adult day care or
336 health care facility.

337 (b) No more than twenty percent (20%) of hotel or motel rooms which are
338 available to be rented to guests.

339 (c) Retail tobacco stores.

340 (d) Outdoor places of employment.

341 (e) Private places.

342 Section 9. That § 78-233, Permitted public smoking areas, of the Code of the
343 City of Topeka, Kansas, is hereby amended to read as follows:

344 **Permitted public smoking areas.**

345 ~~Smoking may be permitted in the following public places:~~

- 346 ~~(1) — Bars or taverns.~~
- 347 ~~(2) — Fully enclosed rooms occupied exclusively by smokers, even though the~~
348 ~~rooms may be visited by nonsmokers.~~
- 349 ~~(3) — Rooms and halls being used by a person or group for a social or business~~
350 ~~function where the seating arrangements are under the control of the sponsor of the~~
351 ~~function.~~
- 352 ~~(4) — Smoking areas designated by the proprietor or person in charge of a~~
353 ~~public place or public meeting pursuant to this article.~~
- 354 ~~(5) — Retail businesses primarily engaged in the sale of tobacco or tobacco~~
355 ~~products.~~
- 356 ~~(6) — Private residences, except when used as a child care or health care~~
357 ~~facility.~~
- 358 ~~(7) — Hotel and motel rooms rented to guests.~~
- 359 ~~(8) — Restaurants and private clubs with a seating capacity of 30 or more~~
360 ~~persons.~~
- 361 ~~(9) — Restaurant, hotel and motel conference or meeting rooms, and public and~~
362 ~~private assembly rooms while these places are being used for private functions.~~
- 363 ~~(10) — Bowling centers. During league play, a league may determine a smoking~~
364 ~~policy for the league. During open play, if a nonsmoker requests a lane where there is~~
365 ~~no smoking, he shall be provided with such a lane, if available. If there is a request for~~
366 ~~more than one nonsmoking lane, the owner or manager on duty shall select bowling~~
367 ~~lanes that are contiguous with and adjacent to another nonsmoking lane.~~

368 **Posting of signs.**

(a) Any owner, manager, operator or employee of any premises regulated by this article shall be responsible for informing persons violating this article of the provisions through appropriate signage.

(b) The owner, manager or other person having control of such building or other areas where smoking is prohibited by this article shall have a conspicuously posted sign at each entrance clearly stating that smoking is prohibited.

(c) Such "No Smoking" signs shall have bold lettering of not less than one (1) inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

Section 10. That § 78-234, Declaration of establishments as nonsmoking, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Declaration of establishments as nonsmoking.~~

~~Notwithstanding any other provisions of sections 78-232 and 78-234, any owner, operator, manager or other person who controls any establishment described in such sections may declare that entire establishment as a nonsmoking establishment.~~

Responsibilities of owner, manager or operator.

Any owner, manager, operator or other person having control of a place, business, office or other establishment or activity subject to this article shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this article in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this article. "Necessary steps" means to take all reasonable actions to prevent smoking in violation of this article by employees, patrons and visitors

in the place, business, office or establishment, including: posting no-smoking signs and removing all ashtrays; verbally asking a person who is smoking to extinguish the smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this article is hard of hearing, the communications with that person may be written, in sign language or other effective means of communication.

Section 11. That § 78-235, Responsibility of proprietors, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Responsibility of proprietors.~~

~~The proprietor or person in charge of a public place or public meeting shall make reasonable efforts to obtain compliance with this article in such places by:~~

~~(1) Posting appropriate signs.~~

~~(2) Arranging seating and work areas to provide a smokefree area.~~

~~(3) Asking smokers to refrain from smoking upon request if a client or an employee suffers discomfort from the smoke.~~

~~(4) Affirmatively directing smokers to designated smoking areas.~~

~~(5) Using existing physical barriers and ventilation systems to minimize the toxic effect of transient smoke in adjacent no smoking areas.~~

Non-retaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee,

applicant or customer exercises any right to a smoke free environment afforded by this article.

Section 12. That Chapter 78, Article IV of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

DIVISION 2. ENFORCEMENT AND PENALTIES.

Section 13. That § 78-236, Designation of nonsmoking areas in places of employment, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~**Designation of nonsmoking areas in places of employment.**~~

~~(a) — It shall be the responsibility of employers to provide smokefree areas.~~

~~(b) — No person shall smoke in any work area in places of employment, except that any employer may designate as much as 50 percent of the total work area as a smoking area.~~

~~(c) — Smoking is prohibited in auditoriums, classrooms, conference and meeting rooms, elevators, medical facilities and restrooms.~~

~~(d) — There shall be provision for and maintenance of separate and contiguous nonsmoking areas in cafeterias, lunchrooms and employee lounges or provision for and maintenance of separate cafeterias, lunchrooms and employee lounges, for smokers and nonsmokers.~~

~~(e) — If an employer designates a smoking area in his work area pursuant to this section and if a dispute arises concerning the designation of a smoking area, the nonsmoker shall be given precedence. In determining the dispute, the employer shall consider the following factors:~~

- (1) ~~Health impact on nonsmokers;~~
(2) ~~Square footage of the work area;~~
(3) ~~Ventilation;~~
(4) ~~Existing physical barriers;~~
(5) ~~Office traffic patterns;~~
(6) ~~Availability of fully enclosed rooms for use by smokers; and~~
(7) ~~Any other relevant factors.~~

(f) ~~In no event shall restrooms, lobbies, hallways or other common areas typically shared by smokers and nonsmokers be designated as smoking areas, except that lobbies, hallways or other common areas which exceed 1,200 square feet in area may have within them designated smoking areas, provided that no more than 25 percent of the total area of such lobby, hallway or common area is so designated, and further provided that such designated areas are located such that it is not necessary for nonsmokers to pass through such areas to reach other nonsmoking areas.~~

(g) ~~Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.~~

(h) ~~The city council may, by special permit, exempt a public place or business from the provisions of this section, upon a showing by the applicant that the public place or business has implemented a satisfactory smoking policy.~~

Enforcement.

(a) The purpose of this article is to provide for the administrative adjudication of violations of provisions under this article regulating smoking in public places within

the City and to establish a fair and efficient system for the enforcement of such provisions.

(b) The police chief or his or her designee shall be responsible for enforcing the provisions of this article within the City, but nothing in this section shall be interpreted to prohibit any other person who would otherwise be lawfully entitled to enforce the provisions of this article from taking enforcement action under this article.

(c) Any person may register a complaint under this article to initiate enforcement with the police chief or his or her designee.

(d) The police chief or his or her designee shall be authorized to:

(1) Issue notice of violations and additional notices, collect money paid as fines and penalties for violations of the provision of this article;

(2) Establish procedures necessary for the prompt, fair and efficient operation of the administrative adjudication system; and

(3) Adopt administrative rules and regulations pertaining to the administration of this article, including, but not limited to, the content of forms and procedures, and the daily operation of the administrative adjudication of violations of this article.

Section 14. That § 78-237, Nonretaliation, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Nonretaliation.

~~No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this article.~~

Administrative monetary penalties for violations.

(a) Persons. The following fine schedule is hereby adopted for a violation by any person who smokes in an area where smoking is prohibited by the provisions of this article:

(1) \$50 per violation for a first violation.

(2) \$100 per violation for a second violation within a continuous twelve (12) month period of the first violation.

(3) \$200 per violation for a third or subsequent violation within a continuous twelve (12) month period of the two previous violations.

(b) Owner, manager, or operator of public places or place of employment.

The following fine schedule is hereby adopted for a violation by any owner, manager or operator of a public place or place of employment who fails to comply with the provisions of this Article:

(1) \$100 per violation for a first violation.

(2) \$250 per violation for a second violation within a continuous twelve (12) month period of the first violation.

(3) \$500 per violation for a third or subsequent violation within continuous twelve (12) month period of the two previous violations.

(4) In addition to the fines established in this section, a third or subsequent violation within a continuous twelve (12) month period of any provisions of this Article by a owner, manager or operator of a public place or place of employment may result in the suspension or revocation of a business

506 permit or license issued by the City to the person for the premises on which the
507 violation occurred.

508 Section 15. That § 78-238, Posting of signs, of the Code of the City of Topeka,
509 Kansas, is hereby amended to read as follows:

510 **Posting of signs.**

511 ~~(a) — To advise persons of the existence of no smoking or smoking permitted~~
512 ~~areas, signs shall be posted as follows:~~

513 ~~(1) In public places where the proprietor or person in charge prohibits~~
514 ~~smoking in the entire establishment, the international no smoking symbol shall be~~
515 ~~conspicuously posted either on all public entrances or in a position clearly visible~~
516 ~~on entry into the establishment.~~

517 ~~(2) — In public places where certain areas are designated as no smoking~~
518 ~~or smoking permitted areas pursuant to this article, the international no smoking~~
519 ~~symbol shall be conspicuously posted and clearly visible in the nonsmoking~~
520 ~~areas and the international smoking symbol shall be conspicuously posted and~~
521 ~~clearly visible in the smoking areas.~~

522 ~~(3) — In public places where smoking is permitted in the entire~~
523 ~~establishment, the international smoking symbol shall be conspicuously posted~~
524 ~~either on all public entrances or in a position clearly visible on entry into the~~
525 ~~establishment.~~

526 ~~(4) — Every restaurant and private club where smoking is permitted shall~~
527 ~~have posted at every public entrance a conspicuous sign clearly stating that a~~
528 ~~nonsmoking section is available. Every patron shall be asked as to his or her~~

529 preference by the host or hostess (if one is on duty). A person taking
530 reservations for a restaurant shall likewise ask if there is a nonsmoking or
531 smoking preference.

532 (5) In work areas where an area is designated as a no smoking or
533 smoking permitted area, the international no smoking symbol shall be
534 conspicuously posted and clearly visible in the nonsmoking areas and the
535 international smoking symbol shall be conspicuously posted and clearly visible in
536 the smoking areas.

537 (b) In addition to the above, signs posted in restaurants, private clubs, bars,
538 and taverns where smoking is permitted shall be at least nine inches wide by six inches
539 high, utilizing clearly legible bold black lettering on a white background. Each sign shall
540 have a black border around the perimeter of the sign. Each sign shall state: "Notice to
541 Patrons: You and your children will be exposed to Second Hand Smoke on these
542 premises." The signs shall be posted in a position clearly visible on entry into the
543 establishment.

544 **Notice of violations.**

545 (a) The notice of violation shall state the following information:

- 546 (1) The section of this Article allegedly violated; and
547 (2) The name and address of violator; and
548 (3) The place, date and time of the alleged violation.

549 In addition, the notice of violation shall state the applicable administrative
550 monetary penalty, the fee which shall be automatically assessed for late payment, that
551 payment of the indicated administrative monetary penalty, and any applicable late fee

shall operate as a final disposition of the violation, and information about the availability of the administrative hearing in which the violation may be contested on its merits and the time and manner in which such hearing may be had.

(b) The police chief or his or her designee shall compile and maintain complete and accurate records relating to all violations of this Article and the dispositions thereof.

Section 16. That section 78-239, Sale to or purchase of tobacco products by minors, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Sale to or purchase of tobacco products by minors.

~~(a) It shall be unlawful for any person to sell any tobacco product in any form to any person under the age of 18.~~

~~(b) It shall be unlawful for any person under the age of 18 to purchase any tobacco product in any form.~~

Appeals.

Appeals from notices of violation and administrative hearings shall be in accordance with the administrative appeal procedure set forth in Chapter 2, Article IX of this Code.

Section 17. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 78-240, which said section reads as follows:

Other applicable laws.

This article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 18. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 78-241, which said section reads as follows:

Severability.

If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Section 19. That § 78-226 through § 78-339 of the Code of the City of Topeka is hereby specifically repealed.

Section 20. This ordinance shall take effect and be in force sixty (60) days from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council September 29, 2009.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk