

(Published in the Topeka Metro News February 21, 2011)

## ORDINANCE NO. 19514

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., regulating public offenses within the corporate limits of the City of Topeka, Kansas; incorporating by reference the "Uniform Public Offense Code for Kansas Cities," edition of 2010, with certain deletions and omissions; amending § 9.053.080 and specifically repealing original said section and repealing in their entirety §§ 8.35.020, 9.05.030, 9.05.040, 9.05.090, 9.15.140, 9.15.030, 9.35.020, 9.40.010, 9.40.030, 9.40.060, 9.40.070, 9.40.080, 9.45.020, 9.45.110, 9.45.260, 10.35.020, 10.35.030, 10.35.040 and 10.35.050.

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

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

### **Uniform public offense code.**

There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the city of Topeka, Kansas, that certain code known as the "Uniform Public Offense Code," Edition of ~~2006~~2010, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except Sections 1.1 ("Definitions"), 4.3 ("Prostitution"), 4.4 ("Promoting Prostitution"), and 4.5 ("Patronizing A Prostitute"), 9.11 ("Picketing of Funerals") and 11.11 ("Cruelty to Animals"), which are specifically deleted and omitted. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as adopted by Ordinance No. ~~48824~~ 19514," 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 ~~Ordinance No. 18821~~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 Code, Edition of ~~2006~~2010, is hereby further amended by adding the following exception to Section 10.6:

Exception: Operation of a bow and arrow is permitted in accordance with the provisions set forth in TMC 6.05.070.

Section 2. That § 8.35.020, Interference with a Firefighter, of the Code of the City of Topeka is hereby repealed.

**~~Interference with a Firefighter.~~**

~~It shall be unlawful for any person at or near a fire to conduct themselves in a disorderly manner or to neglect or refuse to obey promptly any proper order of the chief of the fire department or any assistants, or to resist, obstruct, hinder or abuse any officer of the fire department or any firefighter in the proper discharge of their duty.~~

Section 3. That § 9.05.030, Liability for Crimes of Another, of the Code of the City of Topeka is hereby repealed.

**~~Liability for crimes of another.~~**

~~(a) A person is criminally responsible for a crime committed by another if such person intentionally aids, abets, advises, hires, counsels or procures the other to commit the crime.~~

~~(b) A person liable under subsection (a) of this section is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by such person as a probable consequence of committing or attempting to commit the crime intended.~~

~~(c) A person liable under this section may be charged with and convicted of the crime although the person alleged to have directly committed the act constituting the crime lacked criminal capacity or has not been convicted or has been acquitted or has been convicted or some other degree of the crime or of some other crime based on the same act.~~

Section 4. That § 9.05.040, Entrapment, of the Code of the City of Topeka is hereby repealed.

**~~Entrapment.~~**

~~A person is not guilty of a crime if the person's criminal conduct was induced or solicited by a public officer or the officer's agent for the purposes of obtaining evidence to prosecute such person, unless:~~

~~(a) The public officer or the officer's agent merely afforded an opportunity or facility for committing the crime in furtherance of a criminal purpose originated by such person or a coconspirator; or~~

~~(b) The crime was of a type which is likely to occur and recur in the course of such person's business, and the public officer or the officer's agent in doing the inducing or soliciting did not mislead such person into believing the person's conduct to be lawful.~~

Section 5. That § 9.05.090, Attempt, of the Code of the City of Topeka is hereby repealed.

**~~Attempt.~~**

~~(a) An "attempt" is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.~~

~~(b) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.~~

~~(c) An attempt to commit a class A violation is a class B violation.~~

~~(d) An attempt to commit a class B or class C violation is a class C violation.~~

Section 6. That § 9.15.140, Legal Age to Possess, Purchase or Consume Alcohol, of the Code of the City of Topeka is hereby repealed.

**~~Legal age to possess, purchase and consume.~~**

~~(a) No licensee shall knowingly or unknowingly permit a person under 21 years of age to consume or purchase any cereal malt beverage in or about a licensed premises, and no licensee shall permit a person under 21 years of age to possess cereal malt beverage in or about a licensed premises, except that a licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverages if:~~

~~(1) The licensee's premises is licensed only to sell cereal malt beverage at retail in the original and unopened containers and not for consumption on the premises; or~~

~~(2) The licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50 percent of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.~~

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

~~(1) The defendant is a licensed retailer, or an employee thereof;~~

~~(2) The defendant sold the cereal malt beverage to the person with reasonable cause to believe such person was 21 or more years of age; and~~

~~(3) To purchase the cereal malt beverage, the person exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such person was 21 or more years of age.~~

~~(c) Except as provided in subsection (a) of this section, no person under 21 years of age shall possess in an open or unopened container, consume, obtain, purchase or attempt to obtain or purchase any alcoholic liquor or cereal malt beverage. A person under 21 years of age but at least 18 years of age may serve alcoholic liquor without being in violation of this section, provided such person is employed in connection with the serving of alcoholic liquor by a licensee licensed by the state Director of Alcoholic Beverage Control. In no instance shall a person less than 21 years of age mix or dispense drinks containing alcoholic liquor.~~

~~(d) Any person found violating subsection (c) of this section shall be fined not less than \$250.00. In lieu of or in addition to such fine, the court may order such offender to do either or both of the following:~~

~~(1) Perform 40 hours of community service work.~~

~~(2) Attend and satisfactorily complete a suitable alcohol education or treatment program and pay for the costs thereof.~~

Section 7. That § 9.15.030, Furnishing Alcohol to Minors, of the Code of the City of Topeka is hereby repealed.

**~~Furnishing alcoholic liquors or cereal malt beverage to minors, incapacitated persons or intoxicated persons.~~**

~~(a) No person shall knowingly or unknowingly, directly or indirectly, sell to, buy for, give or furnish any alcoholic liquor or cereal malt beverage to any person under 21 years of age. It shall be a defense to a prosecution under this subsection if:~~

~~(1) The defendant is a licensed alcoholic liquor or cereal malt beverage retailer, club, drinking establishment or caterer or holds a temporary permit, or is an employee of any such establishment;~~

~~(2) The defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe the minor was 21 or more years of age; and~~

~~(3) To purchase the alcoholic liquor or cereal malt beverage, the minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 21 or more years of age.~~

~~(b) No person shall, knowingly or unknowingly, directly or indirectly, sell to, buy for, give or furnish alcoholic liquor or cereal malt beverage to any person who is an incapacitated person.~~

~~(c) No person shall, knowingly or unknowingly, directly or indirectly, sell to, buy for, give or furnish any alcoholic liquor or cereal malt beverage to any person while that person is physically or mentally incapacitated by the reason of consumption of alcoholic liquor, cereal malt beverages or drugs.~~

Section 8. That § 9.35.020, Interference with a City Officers and Employees, of the Code of the City of Topeka is hereby repealed.

~~**Interference with city officers and employees — Obstruction or interference with law enforcement officers.**~~

144           ~~(a) It shall be unlawful for any person to knowingly or unknowingly interfere with~~  
145 ~~any city officer or employee in the performance of duty for the city.~~

146           ~~(b) It shall be unlawful for any person to knowingly or unknowingly obstruct or~~  
147 ~~interfere with any law enforcement officer in the performance of their official duties or~~  
148 ~~while the law enforcement officer is attempting to detain or arrest any person as~~  
149 ~~provided in TMC 2.110.250 or 2.110.260 or K.S.A. 22-2401 or 22-2402, or while the law~~  
150 ~~enforcement officer is investigating any complaint or allegation of any violation of law.~~

151           ~~(c) For the purposes of subsection (b) of this section, “obstruct or interfere” shall~~  
152 ~~include, but not be limited to, any statement or act that impedes a law enforcement~~  
153 ~~officer’s investigation of activity that is suspicious, illegal, or threatens the safety of any~~  
154 ~~person or property. Such acts include, but are not limited to, physical or passive~~  
155 ~~resistance, attempting to flee from a law enforcement officer, or intentionally giving false~~  
156 ~~information to a law enforcement officer. Interference or obstruction may be committed~~  
157 ~~by physical act, verbal act, or by a failure to act.~~

158           ~~(d) For the purposes of subsection (b) of this section, “law enforcement officer”~~  
159 ~~includes any federal, state, county or city employee who is empowered to effect an~~  
160 ~~arrest with or without a warrant and who is authorized to carry a firearm as part of such~~  
161 ~~employment, regardless of whether they are on or off duty, any law enforcement officer~~  
162 ~~as defined in K.S.A. 12-4113(j) and amendments thereto, K.S.A. 21-3110(10) and~~  
163 ~~amendments thereto, K.S.A. 22-2202(13) and amendments thereto, K.S.A. 74-5602(e)~~  
164 ~~and amendments thereto, or any member of the Topeka police department reserves or~~  
165 ~~the Shawnee County sheriff’s office reserves.~~

Section 9. That § 9.40.010, Discharging of firearms, of the Code of the City of Topeka is hereby repealed.

**~~Discharging of firearms.~~**

~~(a) It shall be unlawful for any person, other than a law enforcement officer in the performance of duty, to discharge any cannon, gun, pistol, rifle or other firearm, or to discharge or use any spring gun or slingshot within the corporate limits of this city, except discharge of blank rounds as part of a ceremonial event for which prior written notice has been provided to the chief of police.~~

~~(b) Discharge of Paintball Guns. It shall be unlawful for any person, other than a law enforcement officer in the performance of duty, to discharge any paintball gun within the corporate limits of this city, except at a properly licensed paintball business in accordance with all of the paintball business's rules and regulations.~~

~~(c) Discharge of Airguns. It shall be unlawful for any person, other than a law enforcement officer in the performance of duty, to discharge any airgun within the corporate limits of this city unless they have obtained and maintain a valid permit as provided herein.~~

~~(d) Permits for Discharge of BB/Pellet Guns. Upon the written application made at least two weeks before the proposed event, in a form acceptable to the chief of police and the payment of an application fee of \$50.00, the chief of police may issue a permit to discharge airguns on specified premises in the city for the purposes of allowing the establishment of shooting ranges. No permit shall be issued unless the proposed activity is found to be in compliance with administrative regulations established by the chief of police and approved by city council resolution, for the purpose of regulating the~~



~~discharge of airguns as provided herein. Further, any permit so issued shall be subject to such terms and conditions as the chief of police determines reasonably necessary or advisable to protect the safety of the participants therein and the general public, including, but not limited to, the following:~~

~~(1) The applicant shall provide proof of public liability insurance for the permitted activity with a minimum single occurrence coverage of \$500,000. The policy shall name the city of Topeka as an additional insured.~~

~~(2) The applicant shall provide written proof that the location of the proposed activity is zoned appropriately and that the activity is permitted by the owner of the property.~~

~~(3) The applicant shall provide a description of activity safeguards that are intended and designed to minimize the exposure to members of the public or adjoining properties from the activity.~~

~~(4) The applicant shall provide proof of adequate training and supervision of the activity by qualified persons over the age of 18.~~

~~Any permit so issued shall be valid for no more than two weeks, but may be revoked at any time by the chief of police upon the failure of the permittee to abide by any of the permit regulations, terms and conditions. No person or organization shall be issued a permit more than once each quarter of each calendar year.~~

~~(e) Definitions. For the purposes of this chapter the following terms and phrases shall have the meanings hereinafter ascribed to them:~~

~~(1) "Airgun" shall mean an instrumentality designed for and used to fire or eject one or more projectiles by means of a spring or by compressed air or other gas or~~

vapor. The term "airgun" shall not include instrumentalities designed and intended to fire or eject a projectile under water in conjunction with scuba diving, instrumentalities designed and intended to fire or eject a fastener as part of the construction trades or children's toys; an airgun of the type commonly referred to as a BB gun is not a children's toy for the purposes of this subsection;

(2) "Chief of police" shall mean the chief of the Topeka police department or his or her designee;

(3) "Firearm" shall mean an instrumentality designed for and intended to fire or eject one or more projectiles by means of an explosive charge or by the ignition of one or more flammable or explosive substances. The term "firearm" shall include those instrumentalities commonly referred to as rifles, shotguns, revolvers, handguns and pistols, but shall not include instrumentalities designed and intended to fire or eject a fastener as part of the construction trades;

(4) "Law enforcement officer" includes any federal, state, county or city employee who is empowered to effect an arrest with or without a warrant and who is authorized to carry a firearm as part of such employment, regardless of whether they are on or off duty, any law enforcement officer as defined in K.S.A. 12-4113(i) and amendments thereto, K.S.A. 21-3110(10) and amendments thereto, K.S.A. 22-2202(13) and amendments thereto, K.S.A. 74-5602(e) and amendments thereto, or any member of the Topeka police department reserves or the Shawnee County sheriff's office reserves;

(5) "Paintball gun" shall mean an airgun designed and used to fire or eject a hollow, plastic-like frangible pellet containing nontoxic, paint-like marking fluid.

Section 11. That § 9.40.030, Furnishing Weapons to Minors, of the Code of the City of Topeka is hereby repealed.

**~~Furnishing weapons to minors.~~**

~~It shall be unlawful for any person to sell, give, loan or otherwise furnish any pistol or revolver by which a cartridge may be exploded, or any dirk, Bowie knife, knucks, slingshot or other dangerous weapons to any minor.~~

Section 12. That § 9.40.060, Definitions, of the Code of the City of Topeka is hereby repealed.

**~~Definitions.~~**

~~The term “polymer tipped ammunition” means a projectile which may be used in a handgun or other firearm and which is constructed, in whole or in part, of carbon-based plastics (polymers), including but not limited to ammunition which is known as a “Black Rhino” or “Rhino Ammo” bullets or shells.~~

Section 13. That § 9.40.070, Definitions, of the Code of the City of Topeka is hereby repealed.

**~~Unlawful.~~**

~~It shall be unlawful for any person to sell, possess or use any polymer tipped ammunition within the city limits.~~

Section 14. That § 9.40.080, Definitions, of the Code of the City of Topeka is hereby repealed.

**~~Penalty.~~**

~~Any person convicted of violating the provisions of TMC 9.40.070 shall be punished by a fine not to exceed \$499.00 and/or imprisonment not to exceed 179 days.~~

~~A person so convicted shall not be eligible for parole until they have paid a fine of \$499.00 or served an imprisonment of 179 days.~~

Section 15. That § 9.45.020, Throwing of Missiles, of the Code of the City of Topeka is hereby repealed.

**~~Throwing of missiles.~~**

~~(a) It shall be unlawful for any person to throw any stones, snowballs or any other missiles upon or at any vehicle, building, tree or other public or private property, upon or at any other person in any public or private way or place or enclosed or unenclosed ground.~~

~~(b) It shall be unlawful for any person to throw any stone, snowball or any other missile from any vehicle, either moving, stopped or parked, upon or at any building, tree, sign or other public or private property, or upon or at any person in any public or private way or place of enclosed or unenclosed ground.~~

Section 16. That § 9.45.110, Criminal Nuisances, of the Code of the City of Topeka is hereby repealed.

**~~Criminal nuisances.~~**

~~(a) Maintenance Prohibited. Maintaining a public nuisance is, by act or by failure to perform a legal duty, intentionally causing or permitting a condition to exist which injures or endangers the public health, safety or welfare. For purposes of this section, "public nuisance" shall mean and include any brothel, bawdyhouse, house of prostitution, house of assignation, gambling house, gaming room, open saloon, any place in which lewd, indecent, lascivious or obscene films, pictures, books or paraphernalia are exhibited, any building or structure that prevents, interrupts or~~

~~obstructs the travel, free passage, or access by the public upon any public sidewalk,  
street or alley or any other place usually included within the meaning of a public  
nuisance.~~

~~(b) Liability. Any person who uses, occupies, establishes or conducts a public  
nuisance or aids or abets therein, and the owner, agent or lessee of any interest in such  
premises together with the persons employed in or in control of any such premises is  
guilty of maintaining a public nuisance and shall be enjoined as provided in this section.~~

~~(c) Notice. Upon the filing of a complaint, under oath, the municipal judge shall,  
within 48 hours after the filing of such complaint, issue a notice directed to the  
defendant in the action and to the record title owner or owners of the premises, directing  
the defendant to appear at a time and place fixed by the judge, not later than five days  
from the time of filing the complaint, and show cause, if any, why the public nuisance  
alleged shall not be abated. The notice shall be served in the same manner as a  
summons, and a copy of the notice shall be posted on the premises in question. The  
defendant may file an answer to the complaint as the only other pleading required.~~

~~(d) Abatement. Upon judgment by the municipal court that the place or premises  
in question is a public nuisance, the judge shall order the chief of police to padlock and  
fasten all doors, entries and windows into the place or part thereof so that such place or  
premises may not be used, and such place or premises shall remain closed for a period  
of not less than three months nor more than two years and until the owner, lessee,  
tenant or occupant thereof shall give bond with sufficient surety to be approved by the  
municipal judge in a sum of not less than \$5,000, payable to the city, and conditioned  
that the place shall not be used, kept or maintained as a public nuisance. In addition,~~

the municipal court shall allow reasonable attorneys' fees to the city as costs of the action.

~~(e) Appeal from Order. The city or any defendant may appeal from the judgment of the municipal court on any proceedings under this section to abate a public nuisance in the manner provided by taking an appeal in criminal cases. Any defendant who appeals an order abating a public nuisance must provide a surety, payable to the city, to be approved by the municipal judge, in a sum of not less than \$5,000, conditioned that the defendant will prosecute the appeal without unnecessary delay, and if judgment is rendered against the defendant on that appeal, the defendant will satisfy the judgment and costs of the action.~~

Section 17. That § 9.45.260, Yelling, shouting, etc., of the Code of the City of Topeka is hereby repealed.

**~~Yelling, shouting, etc.~~**

~~Yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 11:00 p.m. and 7:00 a.m., or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or of any persons in the vicinity, is unlawful.~~

Section 18. That § 10.35.020, Required, of the Code of the City of Topeka is hereby repealed.

**~~Required.~~**

~~It shall be unlawful for any person residing in the city to ride or use a bicycle without first obtaining a license therefor as prescribed in TMC [10.35.030](#).~~

Section 19. That § 10.35.030, Insurance, of the Code of the City of Topeka is hereby repealed.

**~~Insurance.~~**

~~The fire department, or any person approved by the fire department, is hereby authorized and directed to issue, upon written application, to residents of the city, bicycle licenses that shall be effective for not less than two years. Such license, when issued, shall entitle the licensee to operate the bicycle for which the license shall have been issued upon all of the streets and public highways of the city, and upon the sidewalks of any streets or highways where riding is permitted by law.~~

Section 20. That § 10.35.040, Licensing procedure, of the Code of the City of Topeka is hereby repealed.

**~~Licensing procedure.~~**

~~(a) The fire department, or any person approved by the fire department to issue bicycle licenses, shall provide a license, together with a registration certificate that shall have numerical numbers thereon in numerical order beginning with the number one, shall indicate the year of expiration and shall include letters indicating that they were issued by the city, and the serial number of the bicycle. The license shall be suitable for attachment to the bicycle as near to the top of the seat tube as possible, facing the front wheel, and it shall also be the duty of the issuer to attach the license to the bicycle in such manner as will prevent its removal. The issuer shall also provide and issue a registration certificate with numbers corresponding with the numbers on the license.~~

~~(b) The issuance of the registration certificate and license to the licensee shall be after the collection of the registration fee for the license as provided for in TMC~~

~~10.35.050. Funds collected by the issuer for the licenses provided for in this article shall be returned by the issuer as collected, and under conditions to be determined by the treasurer of the registration fund. The license shall remain attached to the bicycle during the valid term of such license. The fire and police departments and any person approved by the fire department to issue bicycle licenses shall keep a record of the date of issue of each license.~~

Section 21. That § 10.35.050, Fees, of the Code of the City of Topeka is hereby repealed.

**~~Fees.~~**

~~There shall be no fee assessed for issuing a bicycle license.~~ **10.35.060 Altering license.**

~~It shall be unlawful for any person to willfully, maliciously remove, destroy, mutilate or alter any license plate, seal or registration card during the time in which the license plate, seal or registration card is operative; provided, however, that nothing in this section shall prohibit the fire department from stamping on the frame of bicycles on which no serial number can be found, or on which the number is illegible for identification purposes. The fire department may also stamp upon the frame of any bicycle registered a number which shall be the secret number of the fire department, if so required in the administration of this article to prevent bicycle larceny and recover stolen bikes. (Code 1981 § 43-605. Code 1995 § 142-680.)~~

Section 22. That original City of Topeka Code § 9.05.080 is hereby specifically repealed.



Section 23. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

Section 24. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 25. 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 February 15, 2011.

CITY OF TOPEKA, KANSAS

William Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk