

(Published in the Topeka Metro News October 17, 2011)

ORDINANCE NO. 19653

AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager, concerning controlled substances, amending City of Topeka Code § 9.50.010, § 9.50.020, § 9.50.030, § 9.50.040, § 9.50.050, § 9.50.060 and § 9.50.070 and specifically repealing said original sections.

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

Section 1. That section 9.50.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

Words and phrases used in this chapter shall have the same meaning as their corresponding definitions set forth in K.S.A. ~~65-4101 and 65-4150~~21-5701, and amendments thereto.

Section 2. That section 9.50.020, Controlled substances prohibited, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Controlled substances prohibited.

Except as authorized by the Kansas Uniform Controlled Substances Act, K.S.A. ~~65-4101 through 65-4164~~21-5705 and 21-5706, and amendments thereto, it shall be unlawful for any person to possess or have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute, any controlled substance, provided the Kansas Uniform Controlled Substances Act classifies the offense as a misdemeanor.

Section 3. That section 9.50.030, Controlled substances analogs prohibited, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

30 **Controlled substances analogs prohibited.**

31 Except as authorized by the Kansas Uniform Controlled Substances Act, K.S.A.
32 ~~65-4101 through 65-4164~~21-5701 and 21-5705, and amendments thereto, it shall be
33 unlawful for any person to possess or have under such person's control, prescribe,
34 administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such
35 person's possession with intent to sell, deliver or distribute, any controlled substance
36 analog, provided the Kansas Uniform Controlled Substances Act classifies the offense
37 as a misdemeanor.

38 Section 4. That section 9.50.040, Simulated controlled substances and drug
39 paraphernalia – Use or possession prohibited, of The Code of the City of Topeka,
40 Kansas, is hereby amended to read as follows:

41 **Simulated controlled substances and drug paraphernalia – Use or**
42 **possession prohibited.**

43 (a) It shall be unlawful for any person to use or possess with intent to use:

44 (1) Any simulated controlled substance;

45 (2) Any drug paraphernalia to use, store, contain, conceal, inject,
46 ingest, inhale or otherwise introduce into the human body a controlled substance
47 in violation of the Uniform Controlled Substances Act; or

48 (3) Any drug paraphernalia to plant, propagate, cultivate, grow,
49 harvest, manufacture, compound, convert, produce, process, prepare, test,
50 analyze, pack, repack, sell or distribute a controlled substance in violation of the
51 Uniform Controlled Substances Act.

(b) The provisions of subsection (a) of this section shall apply only if the offense is classified as a misdemeanor by K.S.A. ~~65-4152(b)~~ or ~~(d)~~21-5709, and amendments thereto.

Section 5. That section 9.50.050, Simulated controlled substances and drug paraphernalia – Prohibited acts, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Simulated controlled substances and drug paraphernalia – Prohibited acts.

(a) It shall be unlawful for any person to deliver, possess with intent to deliver, manufacture with intent to deliver or cause to be delivered:

(1) Any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of K.S.A. ~~65-4162~~21-5706, and amendments thereto;

(2) Any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to use, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Act, except K.S.A. ~~65-4162~~21-5706, and amendments thereto; or

(3) Any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, sell or distribute a controlled substance in violation of the Uniform Controlled Substances Act.

(b) The provisions of subsection (a) of this section shall apply only if K.S.A. ~~65-4153(c)~~21-5710 and 21-5713, and amendments thereto, classify the offense as a misdemeanor.

Section 6. That section 9.50.060, Factors for determining what constitutes drug paraphernalia, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Factors for determining what constitutes drug paraphernalia.

In determining whether an object is drug paraphernalia, the court shall consider the factors set forth in K.S.A. ~~65-4154~~21-5711, and amendments thereto, in addition to any other logically relevant factors.

Section 7. That section 9.50.070, Representation that noncontrolled substance is a controlled substance, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Representation that noncontrolled substance is a controlled substance.

(a) It shall be unlawful for any person to knowingly deliver or cause to be delivered any substance which is not a controlled substance:

(1) Upon an express representation that the substance is a controlled substance or that the substance is of such nature or appearance that the recipient will be able to distribute the substance as a controlled substance; or

(2) Under circumstances which would give a reasonable person reason to believe that the substance is a controlled substance.

96 (b) If any one of the following factors is established, there shall be a
97 presumption that delivery of a substance was under circumstances which would give a
98 reasonable person reason to believe that a substance is a controlled substance:

99 (1) The substance was packaged in a manner normally used for the
100 illegal delivery of controlled substances.

101 (2) The delivery of the substance included an exchange of or demand
102 for money or other consideration for delivery of the substance, and the amount of
103 the consideration was substantially in excess of the reasonable value of the
104 substance.

105 (3) The physical appearance of the capsule or other material
106 containing the substance is substantially identical to a specific controlled
107 substance.

108 (c) The provisions of subsection (a) of this section shall apply only if K.S.A.
109 ~~65-4155(c)~~21-5714, and amendments thereto, classify the offense as a misdemeanor.

110 Section 8. That original § 9.50.010, § 9.50.020, § 9.50.030, § 9.50.040, §
111 9.50.050, § 9.50.060 and § 9.50.070 of The Code of the City of Topeka, Kansas, are
112 hereby specifically repealed.

113 Section 9. This ordinance shall take effect and be in force from and after its
114 passage, approval and publication in the official City newspaper.

115 Section 10. This ordinance shall supersede all ordinances, resolutions or rules,
116 or portions thereof, which are in conflict with the provisions of this ordinance.

Section 11. 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 October 11, 2011.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk