

(Published in the Topeka Metro News December 10, 2012)

ORDINANCE NO. 19781

AN ORDINANCE introduced by Jim Colson, City Manager, amending City of Topeka Code § 9.05.080 and specifically repealing said original section, repealing §9.45.120 in its entirety, all concerning the adoption of the 2012 Uniform Public Offense Code and amendments thereto.

BE IT ORDAINED BY THE COUNCIL 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.

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 ~~2011~~2012, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except Sections 3.1.1 ("Domestic Battery"), ~~4.3 ("Prostitution"), 4.4 ("Promoting Prostitution"), 4.5 ("Patronizing a Prostitute"),~~ 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. No fewer than three copies of said Uniform Public Offense Code shall be marked or stamped "Official Copy as adopted by Ordinance No. ~~19703~~19781," 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 Code, Edition of ~~2011~~2012, is hereby further amended by adding the following exception to Section 10.6:

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

32 The Uniform Public Offense Code, Edition of 20112012, is hereby further
33 amended by adding the following exception to Section 10.5:

34 Exception: Discharge of a firearm is permitted in accordance with the
35 provisions set forth in TMC 6.05.070.

36 Section 2. That section 9.45.120, Prostitution, sodomy, soliciting acts of
37 prostitution or sodomy, and establishment of prostitution elimination zones, of The Code
38 of the City of Topeka, Kansas, is hereby repealed.

39 **~~Prostitution, sodomy, soliciting acts of prostitution or sodomy, and~~**
40 **~~establishment of prostitution elimination zones.~~**

41 ~~(a) Prohibited. It shall be unlawful within the corporate limits of the city for any person to~~
42 ~~perform prostitution or sodomy, or solicit or agree with any other person to participate in~~
43 ~~an act of prostitution or sodomy. A person is guilty of prostitution if the person:~~

44 ~~(1) Regularly conducts sexual activity for money or other things of value in a house of~~
45 ~~prostitution; or~~

46 ~~(2) Engages in sexual activity for money or other things of value or offers or agrees to~~
47 ~~engage in sexual activity for money or other things of value; or~~

48 ~~(3) Loiters in or within view of any public place for the purpose of being hired to engage~~
49 ~~in sexual activity; or~~

50 ~~(4) Loiters in a prostitution elimination zone after being banned from such zone pursuant~~
51 ~~to subsection (d) of this section, for the purpose of being hired to engage in sexual~~
52 ~~activity.~~

~~(b) Definitions. For the purposes of this section, the following terms shall have the meanings respectively ascribed to them:~~

~~“Emergency circumstances” means the imminent death or serious bodily injury of a person living with the person charged with violating this section, or the imminent death or serious bodily injury of that person’s spouse, mother, father, siblings or children.~~

~~“Prostitution” means performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:~~

~~(1) Sexual intercourse;~~

~~(2) Sodomy; or~~

~~(3) Manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of any person.~~

~~“Prostitution elimination zone” means the city block in which the person is arrested and four adjacent city blocks in each direction surrounding the city block of the current arrest for a violation of this section, which zone shall be specifically defined by the judge at the time of pronouncing sentence for a conviction of this section.~~

~~“Public place” means any place to which the general public has access and a right to resort for business, entertainment or other lawful purpose.~~

~~“Sodomy” means oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal.~~

~~“Solicit” means to approach another person with an offer of sexual services.~~

~~(c) On the issue of whether a place is a house of prostitution, the following shall be admissible in evidence:~~

~~(1) The place's general reput;~~
~~(2) The reput of the persons who reside in or frequent the place;~~
~~(3) The frequency, timing and duration of visits by nonresidents of the place; and~~
~~(4) Prior convictions within one year of persons found in violation of this section while within such place.~~

~~(d) Prostitution and sodomy, and solicitation of prostitution or sodomy, are misdemeanors. Persons convicted of prostitution or sodomy, or solicitation of prostitution or sodomy, shall be sentenced as follows:~~

~~(1) Upon a first conviction, the court shall impose a mandatory minimum jail sentence of not less than 30 days, and order such person banned from the prostitution elimination zone defined above for a period of one year unless they live in such zone or emergency circumstances require their presence in such zone. The court shall also order a presentence evaluation to be performed by a community-based alcohol and drug safety action program certified in accordance with K.S.A. 8-1008, or another provider approved by the court. The presentence evaluation report shall be made available to the court, the defendant or defendant's attorney and the prosecuting attorney, and shall be considered by the court prior to sentencing. The presentence evaluation report shall contain a history of the defendant's prior criminal record, characteristics and alcohol or drug problems, and a recommendation concerning the amenability of the defendant to education, rehabilitation and mental health counseling. The cost of any education, rehabilitation and treatment programs for any defendant shall be paid by the defendant, and will be levied as costs in the action, but any assessment fee may be waived by the court if the court finds that the defendant is an indigent person. If financial obligations~~

99 are not met or cannot be met, the sentencing court shall be notified for the purpose of
100 collection or review and further action on the defendant's sentence. In lieu of a jail
101 sentence, the court may sentence the person to a 30-day mandatory treatment program
102 deemed acceptable to the court.

103 ~~(2) Upon a second conviction, the court shall impose a mandatory minimum jail~~
104 ~~sentence of not less than 90 days and a 30-day mandatory treatment program deemed~~
105 ~~acceptable to the court. The court shall also order such person banned from the~~
106 ~~prostitution elimination zone defined above for a period of two years unless they live in~~
107 ~~such zone or emergency circumstances require their presence in such zone.~~

108 ~~(3) Upon a third or subsequent conviction, the court shall impose a mandatory minimum~~
109 ~~jail sentence of not less than 150 days and a 30-day mandatory treatment program~~
110 ~~deemed acceptable to the court. The court shall also order such person banned for a~~
111 ~~period of five years from the prostitution elimination zone unless they live in such zone~~
112 ~~or emergency circumstances require their presence in such zone. No person convicted~~
113 ~~of a second or subsequent offense shall be eligible for probation or parole from the~~
114 ~~mandatory minimum sentences established by this subsection.~~

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

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

119 Section 5. This ordinance shall supersede all ordinances, resolutions or rules,
120 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 Governing Body on December 4, 2012.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk