

1 (Published in the Topeka Metro News December 31, 2012)

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3 **ORDINANCE NO. 19783**

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5 AN ORDINANCE introduced by City Manager Jim Colson, concerning the prohibition
6 of smoking in public places, amending City of Topeka Code
7 Sections 8.20.020, 8.20.030, 8.20.070, 8.20.080, 8.20.110,
8 8.20.120 and 8.20.130 and specifically repealing said original
9 sections as well as repealing in its entirety Section 8.20.140.

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

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13 Section 1. That section 8.20.020, Definitions, of The Code of the City of
14 Topeka, Kansas, is hereby amended to read as follows:

15 **Definitions.**

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

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

23 (b) "Employee" means any person who is employed by an employer in
24 consideration for direct or indirect monetary wages or profit, and any person who
25 volunteers his or her services for a nonprofit entity.

26 (c) "Employer" means any person, partnership, corporation, including a
27 municipal corporation, or nonprofit entity, which employs in consideration for direct or
28 indirect monetary wages or profit the services of one or more individual persons.

29 (d) “Enclosed area” means all space between a floor and ceiling which is
30 enclosed on all sides by solid walls or windows (exclusive of door or passage ways)
31 which extend from the floor to the ceiling, including all space therein screened by
32 partitions which do not extend to the ceiling or are not solid, “office landscaping” or
33 similar structures.

34 For the purposes of this chapter, the following shall not be considered an
35 enclosed area:

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

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

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

49 (f) “Licensed premises” shall mean any premises where alcoholic liquor or
50 cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41,
51 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 chapter.

(g) "Place of employment" means any enclosed area under the control of a 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.

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

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

~~(j) "Retail tobacco store" means a retail store where 65 percent of the sales are derived from tobacco products and in which the sale of other products is merely incidental.~~

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

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

(l) “Tobacco Shop” means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of tobacco.

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

Section 2. That section 8.20.030, Prohibition of smoking in public places, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Prohibition of smoking in public places.

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

(a) Elevators.

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

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

(d) Service lines.

(e) Retail stores.

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

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

(h) Within a 10 foot radius of the main entrance any doorway, open window or air handling unit of a public place intake leading into a building or facility that is not exempted pursuant to TMC 8.20.070.

(i) Galleries, libraries and museums.

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

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

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

(m) Waiting rooms, hallways, wards and rooms of health care facilities, including, but not limited to, hospitals, clinics, nursing homes, physical therapy facilities, 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 3. That section 8.20.070, Where smoking is not regulated – Private and public places, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Where smoking is not regulated – Private and public places.

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

(a) Private residences, except when used as a ~~child care~~ day care home as defined in K.S.A. 65-530, and amendments thereto, adult day care as defined in K.S.A. 923, and amendments thereto, or health care facility.

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

(c) ~~Retail tobacco stores~~ Tobacco shops.

(d) Outdoor places of employment.

(e) Private places.

Section 4. That section 8.20.080, Posting of signs, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Posting of signs.

(a) Any owner, manager, operator or employee of any premises regulated by this chapter shall be responsible for informing persons violating this chapter 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 chapter 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 inch in height. The international “no smoking” symbol ~~may also~~ shall be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

Section 5. That section 8.20.110, Enforcement, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Enforcement.

(a) The purpose of this article is to provide for the ~~administrative~~ adjudication of violations of provisions under this chapter 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 chapter 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 chapter from taking enforcement action under this chapter.~~

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

(d) ~~The police chief or his or her designee~~Any law enforcement officer shall be authorized to issue a uniform complaint and notice to appear.:

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

~~(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 chapter, including, but not limited to, the content of forms and procedures, and the daily operation of the administrative adjudication of violations of this chapter.~~

Section 6. That section 8.20.120, Administrative monetary penalties, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Administrative monetary penalties~~Penalties for violations.

(a) Persons. ~~The following fine schedule is hereby adopted for a violation by any~~Any person who smokes in an area where smoking is prohibited by theviolates any provisions of this chapter shall be punished by a fine:

(1) ~~Fifty dollars per violation~~ Not exceeding \$100 for ~~athe~~ first violation.

(2) ~~One hundred dollars per violation~~ Not exceeding \$200 for a second violation within a continuous 12-month period of the first violation.

(3) ~~Two hundred dollars per violation~~ Not exceeding \$500 for a third or subsequent violation within a continuous 12-month period of the ~~two~~ previous ~~first~~ violations.

(b) Owner, Manager, or Operator of Public Places or Place of Employment.

~~The following fine schedule is hereby adopted for a violation by a~~ Each person allowed to smoke by an owner, manager or operator of a public place or place of employment where smoking is prohibited, in violation of TMC 8.20.090 shall be considered a separate violation for purposes of determining the number of violations under subsection (a). ~~who fails to comply with the provisions of this chapter:~~

~~(1) One hundred dollars per violation for a first violation.~~

~~(2) Two hundred fifty dollars per violation for a second violation within a continuous 12-month period of the first violation.~~

~~(3) Five hundred dollars per violation for a third or subsequent violation within a continuous 12-month period of the two previous violations.~~

~~(4)~~ 1 In addition to the fines established in ~~this~~ subsection (a), a third or subsequent violation within a continuous 12-month period of any provisions of this chapter by an owner, manager or operator of a public place or place of employment may result in the suspension or revocation of a business permit or license issued by the city to the person for the premises on which the violation occurred.

211 Section 7. That section 8.20.130, Record of violations, of The Code of the City
212 of Topeka, Kansas, is hereby amended to read as follows:

213 ~~Notice~~**Record of violations.**

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

215 ~~(1) The section of this chapter allegedly violated; and~~

216 ~~(2) The name and address of violator; and~~

217 ~~(3) The place, date and time of the alleged violation.~~

218 ~~In addition, the notice of violation shall state the applicable administrative~~
219 ~~monetary penalty, the fee which shall be automatically assessed for late payment, that~~
220 ~~payment of the indicated administrative monetary penalty, and any applicable late fee,~~
221 ~~shall operate as a final disposition of the violation, and information about the availability~~
222 ~~of the administrative hearing in which the violation may be contested on its merits and~~
223 ~~the time and manner in which such hearing may be had.~~

224 ~~(b) The police chief~~clerk of the municipal court ~~or his or her designee shall~~
225 compile and maintain complete and accurate records relating to all violations of this
226 chapter and the dispositions thereof.

227 Section 8. That section 8.20.140, Appeals, of The Code of the City of Topeka,
228 Kansas, is hereby repealed.

229 **Appeals.**

230 ~~Appeals from notices of violation and administrative hearings shall be in~~
231 ~~accordance with the administrative appeal procedure set forth in Chapter 2.145 TMC.~~

Section 9. That original §8.20.020, §8.20.030, §8.20.070, §8.20.080, §8.20.110, §8.20.120 and §8.20.130 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 10. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 11. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 12. 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 on December 18, 2012.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk