

(Published in the Topeka Metro News August 24, 2015)

**ORDINANCE NO. 19964**

AN ORDINANCE introduced by Councilmember Elaine Schwartz concerning the prohibition of electronic cigarettes, amending City of Topeka Code § 8.20.020, § 8.20.070, and § 8.20.080 and repealing original sections.

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

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

**Definitions.**

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

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

(b) "Electronic Cigarette" (E-Cigarette) means an electronic and/or battery operated device that may resemble a cigarette, but uses an atomizer or similar device that allows users to inhale nicotine vapor or other flavored vapor without fire, smoke or ash. An electronic cigarette includes but is not limited to an electronic smoking device, electronic vaping device, personal vaporizer, electronic pipe (e-pipe), electronic hookah, e-pen or vapor pen.

28           (~~b~~c) “Employee” means any person who is employed by an employer in  
29 consideration for direct or indirect monetary wages or profit, and any person who  
30 volunteers his or her services for a nonprofit entity.

31           (~~e~~d) “Employer” means any person, partnership, corporation, including a  
32 municipal corporation, or nonprofit entity, which employs in consideration for direct or  
33 indirect monetary wages or profit the services of one or more individual persons.

34           (~~d~~e) “Enclosed area” means all space between a floor and ceiling which is  
35 enclosed on all sides by solid walls or windows (exclusive of door or passage ways)  
36 which extend from the floor to the ceiling, including all space therein screened by  
37 partitions which do not extend to the ceiling or are not solid, “office landscaping” or  
38 similar structures.

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

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

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

47           (~~e~~f) “Food service establishment” shall mean any place in which food or  
48 alcoholic liquor or cereal malt beverages, or both, is served or is prepared for sale or  
49 service on the premises or elsewhere. Such term shall include, but not be limited to,  
50 fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill,

51 tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen,  
52 commissary and any other private, public or nonprofit organization or institution that  
53 routinely serves or prepares food or drink with or without charge.

54 (fg) "Licensed premises" shall mean any premises where alcoholic liquor or  
55 cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41,  
56 and amendments thereto, is served or provided for consumption or use on the premises  
57 with or without charge. Such term shall include drinking establishments, Class A private  
58 clubs, Class B private clubs, and cereal malt beverage or alcoholic liquor retailer  
59 establishments, all as defined by K.S.A. Chapter 41, and amendments thereto, and this  
60 chapter.

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

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

71 (ij) "Public place" means any enclosed area to which the public is invited or in  
72 which the public is permitted, including, but not limited to, banks, educational facilities,  
73 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) “Smoking” means ~~possession of~~ any of the following: (1) the use of an electronic cigarette; (2) possession of a cigarette, cigar, or pipe partially or wholly consisting of or containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body; or (3) 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~~ Smoke shop” means any indoor area operated primarily for the retail sale of electronic cigarettes, tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65 percent of its gross receipts from the sale of ~~tobacco~~ these items.

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

96           Section 2.   That section 8.20.070, Where smoking is not regulated – Private  
97 and public places, of The Code of the City of Topeka, Kansas, is hereby amended to  
98 read as follows:

99           **Where smoking is not regulated – Private and public places.**

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

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

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

107           (c)   ~~Tobacco~~Smoke shops.

108           (d)   Outdoor places of employment.

109           (e)   Private places.

110           Section 3.   That section 8.20.080, Posting of signs, of The Code of the City of  
111 Topeka, Kansas, is hereby amended to read as follows:

112           **Posting of signs.**

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

116           (b)   The owner, manager or other person having control of such building or  
117 other areas where smoking is prohibited by this chapter shall have a conspicuously

118 posted sign at each entrance clearly stating that smoking, including electronic  
119 cigarettes, is prohibited.

120 (c) Such “no smoking” signs shall have bold lettering of not less than one inch  
121 in height. ~~The international “no smoking” symbol shall be used (consisting of and shall~~  
122 include a pictorial representation of a burning cigarette and an electronic cigarette  
123 enclosed in a red circle with red bar across it). The following is an example of an  
124 appropriate sign:



125  
126 Section 4. That original § 8.20.020, § 8.20.070, and § 8.20.080 of The Code of  
127 the City of Topeka, Kansas, are hereby specifically repealed.

128 Section 5. This ordinance shall take effect and be in force on November 1,  
129 2015 after its passage, approval and publication of the summary in the official City  
130 newspaper.

131 Section 6. This ordinance shall supersede all ordinances, resolutions or rules,  
132 or portions thereof, which are in conflict with the provisions of this ordinance.

Section 7. 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 August 18, 2015.

CITY OF TOPEKA, KANSAS

ATTEST:

Larry E. Wolgast, Mayor

Brenda Younger, City Clerk