

1 (Published in the Topeka Metro News _____)

2
3 ORDINANCE NO. _____

4
5 AN ORDINANCE introduced by Councilmember Elaine Schwartz concerning the
6 prohibition of electronic cigarettes, amending City of Topeka Code
7 § 8.20.020, § 8.20.070, and § 8.20.080 and repealing original
8 sections.
9

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

11
12 Section 1. That section 8.20.020, Definitions, of The Code of the City of
13 Topeka, Kansas, is hereby amended to read as follows:

14 **Definitions.**

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

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

22 (b) "Electronic Cigarette" (E-Cigarette) means an electronic and/or battery
23 operated device that may resemble a cigarette, but uses an atomizer or similar device
24 that allows users to inhale nicotine vapor or other flavored vapor without fire, smoke or
25 ash. An electronic cigarette includes but is not limited to an electronic smoking device,
26 electronic vaping device, personal vaporizer, electronic pipe (e-pipe), electronic hookah,
27 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,

74 reception areas, production and marketing establishments, retail service
75 establishments, retail stores, theaters, and waiting rooms. A private residence is not a
76 “public place.”

77 (j~~k~~) “Smoking” means ~~possession of~~any of the following: (1) the use of an
78 electronic cigarette; (2) possession of a cigarette, cigar, or pipe partially or wholly
79 consisting of or containing burning vegetation that is used for the introduction of smoke
80 from the burning vegetation into the human body; or (3) possession of any other device
81 containing burning vegetation that is used for the introduction of smoke from the burning
82 vegetation into the human body. For the purposes of this definition, the term
83 “vegetation” includes, but is not limited to, tobacco, but does not include any controlled
84 substance listed in K.S.A. 65-4105 through 65-4113, inclusive, and amendments
85 thereto.

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

90 (l~~m~~) “~~Tobacco~~Smoke shop” means any indoor area operated primarily for the
91 retail sale of electronic cigarettes, tobacco, tobacco products or smoking devices or
92 accessories, and which derives not less than 65 percent of its gross receipts from the
93 sale of ~~tobacco~~ these items.

94 (m~~n~~) “Wall” means a side of a room, building or structure connecting the floor
95 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 _____.

CITY OF TOPEKA, KANSAS

Larry E. Wolgast, Mayor

ATTEST:

Brenda Younger, City Clerk