

1 (Published in the Topeka Metro News _____)

2
3 ORDINANCE NO. _____

4
5 AN ORDINANCE introduced by Councilmember Elaine Schwartz, amending §
6 9.05.080 of the Code of the City of Topeka, adding a local
7 amendment to the Uniform Public Offense Code concerning the
8 sale or furnishing of cigarettes, electronic cigarettes, tobacco
9 products and liquid nicotine to any person under age 21.

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11 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF TOPEKA,
12 Kansas:

13
14 Section 1. That section 9.05.080, Uniform Public Offense Code, of The Code
15 of the City of Topeka, Kansas, is hereby amended to read as follows:

16 **Uniform Public Offense Code.**

17 (a) Adoption. There is hereby incorporated by reference for the purpose of
18 regulating public offenses within the corporate limits of the city of Topeka, Kansas, the
19 Uniform Public Offense Code for Kansas Cities, 31st Edition (2015), prepared and
20 published in book form by the League of Kansas Municipalities, Topeka, Kansas,
21 (hereinafter referred to as "UPOC 2015") except for 10.24 ("Smoking Prohibited"), 10.25
22 ("Smoking; Posting Premises"), 10.26 ("Smoking Prohibited; Penalties") and 11.11
23 ("Cruelty to Animals"), which are specifically deleted and omitted. One copy of said
24 Uniform Public Offense Code shall be marked or stamped "Official Copy as adopted by
25 Ordinance No. 19988," with all sections or portions thereof intended to be omitted or
26 changed clearly marked to show any such omission or change and to which shall be
27 attached a copy of said ordinance and filed with the city clerk to be open to inspection
28 and available to the public at all reasonable hours.

29 (b) Amendments.

30 (1) Section 10.6 of UPOC 2015, relating to bows and arrows, is hereby
31 amended by adding the following exception:

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

(2) Section 5.7 of UPOC 2015, relating to selling, giving or furnishing cigarettes or tobacco products to a minor is hereby deleted and the following language is substituted therefor:

(a) It shall be unlawful for any person to:

(1) Sell, furnish or distribute cigarettes, electronic cigarettes, tobacco products or liquid nicotine to any person under 21 years of age; or

(2) Buy any cigarettes, electronic cigarettes, tobacco products or liquid nicotine for any person under 21 years of age.

(b) It shall be a defense to a prosecution under this section if:

(1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;

(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, tobacco products, or liquid nicotine to the person under 21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes, tobacco products or liquid nicotine; and

(3) To purchase or receive the cigarettes, electronic cigarettes, tobacco products or liquid nicotine, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official

56 document containing a photograph of the person and purporting to
57 establish that the person was of legal age to purchase or receive
58 cigarettes, electronic cigarettes, tobacco products or liquid nicotine.

59 (4) For purposes of this section the person who violates this
60 section shall be the individual directly selling, furnishing or
61 distributing the cigarettes, electronic cigarettes, tobacco products or
62 liquid nicotine to any person under 21 years of age or the retail
63 dealer who has actual knowledge of such selling, furnishing or
64 distributing by such individual or both.

65 (c) It shall be a defense to a prosecution under this subsection

66 if:

67 (1) The defendant engages in the lawful sale, furnishing or
68 distribution of cigarettes, electronic cigarettes, tobacco products or
69 liquid nicotine by mail; and

70 (2) The defendant sold, furnished or distributed the
71 cigarettes, electronic cigarettes, tobacco products or liquid nicotine
72 to the person by mail only after the person had provided to the
73 defendant an unsworn declaration, conforming to K.S.A. 53-601
74 and amendments thereto, that the person was 21 or more years of
75 age.

76 (d) The words and phrases in Section 5.7 of UPOC 2015 shall
77 have the same meanings as defined in K.S.A. 79-3301, and amendments
78 thereto. "Liquid nicotine" shall mean the active ingredient of the tobacco
79 plant (nicotine) in liquefied form suitable for the induction of nicotine,

whether by nasal spray, ingestion, smoking or other means, into the human body. "Sale" shall mean any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, electronic cigarettes, tobacco products or liquid nicotine with or without consideration.

(f) Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200.

Section 2. That original § 9.05.080 of The Code of the City of Topeka, Kansas, is hereby specifically repealed.

Section 3. This ordinance shall take thirty (30) days after publication in the official newspaper.

Section 4. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 5. 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 _____.

CITY OF TOPEKA, KANSAS

Larry E. Wolgast, Mayor

ATTEST:

Brenda Younger, City Clerk