

1 (Published in the Topeka Metro News July 26, 2006)

2
3 ORDINANCE NO. 18676

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5 AN ORDINANCE introduced by Councilmember John Nave amending City of Topeka
6 Code Chapter 30 by the addition of Article XIV relating to
7 tobacco/novelty retail licenses.
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9 WHEREAS, the City desires to protect the health, safety, and general welfare of
10 persons in the City of Topeka by enacting this Ordinance to regulate the licensed and
11 unlicensed sale or dispensation of tobacco paraphernalia and novelty items used,
12 designed, marketed, or intended for use of controlled substances and tobacco and to
13 provide regulation via the licensing process and resulting penalties for the violation hereof.

14 NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
15 TOPEKA, KANSAS:

16 Section 1. That City of Topeka Code Chapter 30 is hereby amended by the
17 addition of the following article:

18 **ARTICLE XIV. TOBACCO/NOVELTY RETAIL LICENSE**

19 Section 2. That City of Topeka Code Chapter 30, Article XIV, Tobacco/novelty
20 retail license, is hereby amended by the addition of the following language:

21 **Definitions.**

22 Tobacco and /or novelty item(s): Any items used, designed, marketed, or intended
23 for use of controlled substances and tobacco. These items may be, but are not limited to,
24 objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise
25 introducing controlled substances into the human body, such as:

- 26 (a) Tobacco smoking devices of metal, wood, acrylic, glass, stone, plastic
27 or ceramic pipes with or without screens.

- 28 (b) Tobacco rolling papers;
- 29 (c) Tobacco/cigarette rollers; and
- 30 (d) Tobacco wraps/blunt wraps (flavored or unflavored).

31 Controlled substances: A drug or other substance, or immediate precursor,
32 included in schedule I, II, III, IV, or V of part B of 21 USCS Section 812. The term does not
33 include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or
34 used in subtitle E of the Internal Revenue Code of 1954 (26 USCS Sections 5001 et seq.)

35 Person: An individual, firm, partnership, corporation, joint venture, or other
36 association of persons.

37 Section 3. That City of Topeka Code Chapter 30, Article XIV, Tobacco/novelty
38 retail license, is hereby amended by the addition of the following language:

39 **Regulation.**

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41 1. License Required. From and after thirty (30) days of the effective date of this
42 Ordinance, it shall be unlawful for a person to sell or otherwise dispense tobacco and/or
43 novelty items via retail unless the premises from which the items are sold or dispensed is
44 licensed as provided herein.

45 2. Initial Application for License. Any person desiring to license a premises
46 for the sale of tobacco/drug paraphernalia and/or novelty items within the corporate limits of
47 the City of Topeka, shall first make application at the City Clerk's office and submit an
48 application fee of five hundred dollars (\$500.00). Each such license shall be effective for
49 one (1) calendar year from the date of issuance. The application shall be made upon a form
50 approved by the City Attorney and shall be completed by submitting the following
51 information:

- 52 a. The name, address, and telephone number of the applicant and
53 length of time the applicant has resided at the address given;
- 54 b. The name and address of the owner of the property upon which the
55 premises is located (if different from the applicant);
- 56 c. The name, address, and telephone number of the location of the
57 premises desired to be licensed; and
- 58 d. A sworn statement that the applicant is a citizen of the United States
59 and not less than twenty-one (21) years of age, and that he or she has
60 not within the last five (5) years immediately preceding the date of
61 application been convicted of a felony or any crime involving moral
62 turpitude, alcoholic beverages, or any controlled substance including
63 laws pertaining to the operation or attempted operation of a motor
64 vehicle while under the influence of intoxicating liquor or drugs.

65 3. Issuance of License. Within thirty (30) days of receiving the application,
66 the City Clerk shall notify the applicant as to whether the license has been granted or
67 rejected. In the event a license is rejected, the City Clerk shall refund any license fee paid
68 and advise the applicant in writing of the reasons for such action within fifteen (15) days of
69 said denial.

70 4. Annual Reapplication. Any person desiring to renew a license issued
71 pursuant to this Ordinance by the City shall make reapplication at the Office of the City
72 Clerk not more than sixty (60) days prior to the expiration of an existing license. Each such
73 reapplication shall be accompanied by a five hundred dollars (\$500.00) license fee. The
74 reapplication shall be verified and made upon the same form as an application.

75 5. Transfer of License. A license issued pursuant to this Ordinance shall
76 not be transferable to any other person or premises.

77 6. Receipt, Issuance and Display of License. The City Clerk shall issue to
78 the license holder a receipt showing that the license application fees have been paid and
79 that such payment shall be the payment in full for the term of the license as shown by the
80 certified copy of the license as authorized by the City Clerk. The license shall be
81 prominently displayed at the licensee's premises.

82 7. Revocation of License. The City may revoke a license for any of the
83 following reasons:

84 a. False or misleading information or data was given on any application
85 or material facts were omitted from any application;

86 b. The fee required to be paid by this Ordinance is not paid in full; and/or

87 c. Any person is convicted of any crime involving the sale or distribution
88 of controlled substances on the licensed premises.

89 8. Sale to Minors Prohibited. It shall be unlawful for a person to sell tobacco
90 paraphernalia and/or novelty items to a person under eighteen (18) years of age.

91 Section 4. That City of Topeka Code Chapter 30, Article XIV, Tobacco/novelty
92 retail license, is hereby amended by the addition of the following language:

93 Penalty for Violation. If any person is convicted of any violation of this
94 Ordinance, the following fines and penalties shall be imposed, without parole;

95 a. For the first (1st) violation, a fine in the amount of five hundred dollars
96 (\$500.00) and forfeiture of any tobacco/drug paraphernalia or novelty

97 items confiscated as evidence; and

98 b. For the second (2nd) violation, a fine in the amount of seven hundred
99 fifty dollars (\$750.00) and forfeiture of any tobacco/drug paraphernalia
100 or novelty items confiscated as evidence; and

101 c. For the third (3rd) or any subsequent violation, a fine in the amount of
102 one thousand dollars (\$1,000.00) and forfeiture of any tobacco/drug
103 paraphernalia or novelty items confiscated as evidence; and

104 d. In addition to fines as set forth above, the City may seek, in a civil
105 action, a declaratory judgment and/or an injunction, or other
106 appropriate relief against another person for committing any act or
107 practice that violates this Ordinance.

108 Section 5. That City of Topeka Code Chapter 30, Article XIV, Tobacco/novelty
109 retail license, is hereby amended by the addition of the following language:

110 **Other Provisions.**

111 Distribution of Fees/Fines Collected. All license fees collected pursuant to this
112 Ordinance shall be transferred annually by the City Treasurer to the Crime Prevention
113 Fund. Any fines collected for violations of this Ordinance shall be paid into the general fund.

114 Section 6. If any section, subsection, subdivision, paragraph, sentence, clause, or
115 phrase in this ordinance or any part thereof, is for any reason held to be unconstitutional,
116 invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect
117 the validity or effectiveness of the remaining portions of this Ordinance or any part thereof.

118 Section 7. This Ordinance shall take effect and be in force from and after its

119 passage, approval and publication in the official City newspaper.

120 PASSED and APPROVED by the City Council July 18, 2006.

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William W. Bunten, Mayor

ATTEST:

Iris E. Walker, City Clerk