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2
3 **ORDINANCE NO. 19315**

4
5 AN ORDINANCE introduced by Councilmember Deborah Swank, amending City of
6 Topeka Code § 78-226 through § 78-239 concerning clean indoor
7 air in public places and places of employment and specifically
8 repealing said original sections and creating § 78-240 through § 78-
9 242.

10
11 DIVISION 1. SMOKING PROHIBITED; GENERALLY

12
13 Section 78-226.

14 **Purpose.**

15 The purpose of this article is to (1) improve and protect the public's health by
16 eliminating smoking in public places and places of employment; (2) protect the right of
17 nonsmokers to breathe smoke-free air; and (3) recognize that the need to breathe
18 smoke-free air shall have priority over the choice to smoke.

19 Section 78-227.

20 **Definitions.**

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

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

28 (b) *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 non-profit entity.

31 (c) *Employer* means any person, partnership, corporation, including a
32 municipal corporation, or non-profit entity, which employs in consideration for direct or
33 indirect monetary wages or profit the services of one or more individual persons.

34 (d) *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 article, the following shall not be considered an enclosed
40 area:

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

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

47 (e) *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 café, 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 routinely
53 serves or prepares food or drink with or without charge.

54 (f) *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 article.

61 (g) *Place of employment* means any enclosed area under the control of public
62 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 (h) *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 (i) *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) *Retail tobacco store* means a retail store where sixty-five percent (65%) of
78 the sales are derived from tobacco products and in which the sale of other products is
79 merely incidental.

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

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

92 Section 78-228.

93 **Prohibition of smoking in public places.**

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

96 (a) Elevators.

- 97 (b) Restrooms, lobbies, reception areas, hallways, and any other common-
98 use areas.
- 99 (c) Buses, bus terminals, taxicabs, train stations, the airport, and other
100 facilities and means of public transit under the authority of the City of Topeka, as well as
101 ticket, boarding, and waiting areas of public transit depots.
- 102 (d) Service lines.
- 103 (e) Retail stores.
- 104 (f) All areas available to and customarily used by the general public in all
105 businesses and non-profit entities patronized by the public including, but not limited to,
106 attorneys' offices, and other offices, banks, laundromats, and hotels and motels in which
107 at least 80% of the rooms are available for rent by guests.
- 108 (g) Food service establishments and licensed premises, excluding areas of a
109 food service establishment or licensed premises that are not enclosed such as patios,
110 outdoor dining areas, and courtyards.
- 111 (h) Within ten (10) feet of the main entrance or air handling unit of a public
112 place.
- 113 (i) Galleries, libraries and museums.
- 114 (j) Any facility which is primarily used for exhibiting any motion picture, stage,
115 drama, lecture, musical recital or other similar performance, except that performers may
116 smoke when the smoking is a part of a theatrical production.
- 117 (k) Sports arenas and convention halls, including bowling facilities.
- 118 (l) Every room, chamber, place of meeting or public assembly, including
119 school buildings under the control of any board, council, commission, committee,

120 including joint committees, or agencies of the City of Topeka or any political subdivision
121 of the State to the extent such place is subject to the jurisdiction of the City of Topeka.

122 (m) Waiting rooms, hallways, wards and rooms of health care facilities,
123 including, but not limited to, hospitals, clinics, nursing homes, physical therapy facilities,
124 doctors' offices, and dentists' offices.

125 (n) Lobbies, hallways, and other common areas in apartment buildings,
126 condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit
127 residential facilities.

128 (o) Polling places.

129 (p) Private clubs and fraternal organization facilities.

130 Section 78-229.

131 **Prohibition of smoking in places of employment**

132 (a) Smoking shall be prohibited in all enclosed areas in places of employment
133 within the City of Topeka.

134 (b) It shall be the responsibility of employers to provide a smoke-free
135 workplace for all employees.

136 (c) Each employer having any enclosed area in a place of employment
137 located within the City of Topeka shall adopt, implement, make known and maintain, a
138 written smoking policy which shall contain the following requirements:

139 Smoking shall be prohibited in all enclosed areas within a place of employment
140 without exception. This includes work areas, auditoriums, classrooms, conference and
141 meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias,
142 employee lounges, stairs, restrooms, and all other enclosed areas.

143 (d) The smoking policy shall be communicated to all employees within four (4)
144 weeks of the adoption of this ordinance.

145 (e) All employers shall make available a written copy of the smoking policy to
146 any existing or prospective employee.

147 Section 78-230.

148 **Additional declaration of non-smoking establishment.**

149 Notwithstanding any other provision of this article, any owner, operator, manager
150 or other person who controls any establishment described in this article may declare the
151 entire establishment as a non-smoking establishment.

152 Section 78-231.

153 **Application of article to city owned facilities.**

154 All enclosed facilities owned by the City of Topeka shall be non-smoking at all
155 times notwithstanding other provisions of this article.

156 Section 78-232.

157 **Where smoking is not regulated: private and public places.**

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

160 (a) Private residences, except when used as a childcare, adult day care or
161 health care facility.

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

164 (c) Retail tobacco stores.

165 (d) Outdoor places of employment.

166 (e) Private places.

167 Section 78-233.

168 **Posting of signs.**

169 (a) Any owner, manager, operator or employee of any premises regulated by
170 this article shall be responsible for informing persons violating this article of the
171 provisions through appropriate signage.

172 (b) The owner, manager or other person having control of such building or
173 other areas where smoking is prohibited by this article shall have a conspicuously
174 posted sign at each entrance clearly stating that smoking is prohibited.

175 (c) Such "No Smoking" signs shall have bold lettering of not less than one (1)
176 inch in height. The international "No Smoking" symbol may also be used (consisting of a
177 pictorial representation of a burning cigarette enclosed in a red circle with red bar
178 across it).

179 Section 78-234.

180 **Responsibilities of owner, manager or operator.**

181 Any owner, manager, operator or other person having control of a place,
182 business, office or other establishment or activity subject to this article shall not
183 knowingly permit, cause, suffer or allow any person to violate the provisions of this
184 article in that place and shall take all necessary steps to prevent or stop another person
185 from smoking in violation of this article. "Necessary steps" means to take all reasonable
186 actions to prevent smoking in violation of this article by employees, patrons and visitors
187 in the place, business, office or establishment, including: posting no-smoking signs and
188 removing all ashtrays; verbally asking a person who is smoking to extinguish the

189 smoking materials; refusing service to a person who is illegally smoking; verbally asking
190 anyone illegally smoking to leave the premises; and applying standard business
191 procedures in the same manner for violations of house rules or other local ordinances or
192 state laws. If the employee, patron or visitor smoking in violation of this article is hard of
193 hearing, the communications with that person may be written, in sign language or other
194 effective means of communication.

195 Section 78-235.

196 **Non-retaliation.**

197 No person or employer shall discharge, refuse to hire or in any manner retaliate
198 against any employee, applicant for employment or customer because such employee,
199 applicant or customer exercises any right to a smoke free environment afforded by this
200 article.

201 DIVISION 2. ENFORCEMENT AND PENALTIES.

202 Section 78-236.

203 **Enforcement.**

204 (a) The purpose of this article is to provide for the administrative adjudication
205 of violations of provisions under this article regulating smoking in public places within
206 the City and to establish a fair and efficient system for the enforcement of such
207 provisions.

208 (b) The police chief or his or her designee shall be responsible for enforcing
209 the provisions of this article within the City, but nothing in this section shall be
210 interpreted to prohibit any other person who would otherwise be lawfully entitled to
211 enforce the provisions of this article from taking enforcement action under this article.

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

214 (d) The police chief or his or her designee shall be authorized to:

215 (1) Issue notice of violations and additional notices, collect money paid
216 as fines and penalties for violations of the provision of this article;

217 (2) Establish procedures necessary for the prompt, fair and efficient
218 operation of the administrative adjudication system; and

219 (3) Adopt administrative rules and regulations pertaining to the
220 administration of this article, including, but not limited to, the content of forms and
221 procedures, and the daily operation of the administrative adjudication of
222 violations of this article.

223 Section 78-237.

224 **Administrative monetary penalties for violations.**

225 (a) Persons. The following fine schedule is hereby adopted for a violation by
226 any person who smokes in an area where smoking is prohibited by the provisions of this
227 article:

228 (1) \$50 per violation for a first violation.

229 (2) \$100 per violation for a second violation within a continuous twelve
230 (12) month period of the first violation.

231 (3) \$200 per violation for a third or subsequent violation within a
232 continuous twelve (12) month period of the two previous violations.

233 (b) Owner, manager, or operator of public places or place of employment.

234 The following fine schedule is hereby adopted for a violation by any owner, manager or

235 operator of a public place or place of employment who fails to comply with the
236 provisions of this Article:

237 (1) \$100 per violation for a first violation.

238 (2) \$250 per violation for a second violation within a continuous twelve
239 (12) month period of the first violation.

240 (3) \$500 per violation for a third or subsequent violation within
241 continuous twelve (12) month period of the two previous violations.

242 (4) In addition to the fines established in this section, a third or
243 subsequent violation within a continuous twelve (12) month period of any
244 provisions of this Article by a owner, manager or operator of a public place or
245 place of employment may result in the suspension or revocation of a business
246 permit or license issued by the City to the person for the premises on which the
247 violation occurred.

248 Section 78-238.

249 **Notice of violations.**

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

251 (1) The section of this Article allegedly violated; and

252 (2) The name and address of violator; and

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

254 In addition, the notice of violation shall state the applicable administrative
255 monetary penalty, the fee which shall be automatically assessed for late payment, that
256 payment of the indicated administrative monetary penalty, and any applicable late fee
257 shall operate as a final disposition of the violation, and information about the availability

258 of the administrative hearing in which the violation may be contested on its merits and
259 the time and manner in which such hearing may be had.

260 (b) The police chief or his or her designee shall compile and maintain
261 complete and accurate records relating to all violations of this Article and the
262 dispositions thereof.

263 Section 78-239.

264 **Appeals.**

265 Appeals from notices of violation and administrative hearings shall be in
266 accordance with the administrative appeal procedure set forth in Chapter 2, Article IX of
267 this Code.

268 Section 78-240.

269 **Other applicable laws.**

270 This article shall not be interpreted nor construed to permit smoking where it is
271 otherwise restricted by other applicable laws.

272 Section 78-241.

273 **Severability.**

274 If any provision, clause, sentence or paragraph of this Article or the application
275 thereof to any person or circumstances shall be held invalid, such invalidity shall not
276 affect the other provisions of this Article which can be given effect without the invalid
277 provision or application, and to this end the provisions of this article are declared to be
278 severable.