

1 (Published in the Topeka Metro News December 11, 2017)

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3 **ORDINANCE NO. 20099**

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5 AN ORDINANCE introduced by Councilmember Elaine Schwartz, amending Section  
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:

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

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

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

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

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

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

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

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

52 (3) To purchase or receive the cigarettes, electronic  
53 cigarettes, tobacco products or liquid nicotine, the person under 21  
54 years of age exhibited to the defendant a driver's license, Kansas  
55 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,

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

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

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87 is hereby specifically repealed.

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

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

92 Section 5. Should any section, clause or phrase of this ordinance be declared  
93 invalid by a court of competent jurisdiction, the same shall not affect the validity of this  
94 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

95 PASSED AND APPROVED by the Governing Body on December 5, 2017.

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CITY OF TOPEKA, KANSAS

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Larry E. Wolgast, Mayor

103 ATTEST:

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Brenda Younger, City Clerk