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

DIVISION 1. SMOKING PROHIBITED; GENERALLY

Section 78-226.

Purpose.

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

Section 78-227.

Definitions.

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

(a) Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit or not for profit purposes, including places where goods or services are sold at retail or wholesale as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
(b) *Employee* means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

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

(d) *Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

For the purposes of this article, the following shall not be considered an enclosed area:

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

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

(e) *Food service establishment* shall mean any place in which food or alcoholic liquor or cereal malt beverages, or both, is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill,
tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen, commissary and any other private, public or nonprofit organization or institution routinely serves or prepares food or drink with or without charge.

(f) Licensed premises shall mean any premises where alcoholic liquor or cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41, and amendments thereto, is served or provided for consumption or use on the premises with or without charge. Such term shall include drinking establishments, Class A Private Clubs, Class B Private Clubs, and cereal malt beverage or alcoholic liquor retailer establishments, all as defined by K.S.A. Chapter 41, and amendments thereto, and this article.

(g) Place of employment means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

(h) Private place means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal residences or personal motor vehicles. A privately owned business, open to the public, is not a “private place.”

(i) Public place means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, health care facilities, laundromats, public transportation facilities,
reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place.”

(j) *Retail tobacco store* means a retail store where sixty-five percent (65%) of the sales are derived from tobacco products and in which the sale of other products is merely incidental.

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

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

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

Section 78-228.

Prohibition of smoking in public places.

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

(a) Elevators.
(b) Restrooms, lobbies, reception areas, hallways, and any other common-use areas.

(c) Buses, bus terminals, taxicabs, train stations, the airport, and other facilities and means of public transit under the authority of the City of Topeka, as well as ticket, boarding, and waiting areas of public transit depots.

(d) Service lines.

(e) Retail stores.

(f) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public including, but not limited to, attorneys’ offices, and other offices, banks, laundromats, and hotels and motels in which at least 80% of the rooms are available for rent by guests.

(g) Food service establishments and licensed premises, excluding areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards.

(h) Within ten (10) feet of the main entrance or air handling unit of a public place.

(i) Galleries, libraries and museums.

(j) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is a part of a theatrical production.

(k) Sports arenas and convention halls, including bowling facilities.

(l) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee,
including joint committees, or agencies of the City of Topeka or any political subdivision
of the State to the extent such place is subject to the jurisdiction of the City of Topeka.

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

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

(o) Polling places.

(p) Private clubs and fraternal organization facilities.

Section 78-229.

Prohibition of smoking in places of employment

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

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

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

Smoking shall be prohibited in all enclosed areas within a place of employment
without exception. This includes work areas, auditoriums, classrooms, conference and
meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias,
employee lounges, stairs, restrooms, and all other enclosed areas.
(d) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this ordinance.

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

Section 78-230.

Additional declaration of non-smoking establishment.

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

Section 78-231.

Application of article to city owned facilities.

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

Section 78-232.

Where smoking is not regulated: private and public places.

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

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

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

(c) Retail tobacco stores.

(d) Outdoor places of employment.
(e) Private places.

Section 78-233.

Posting of signs.

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

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

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

Section 78-234.

Responsibilities of owner, manager or operator.

Any owner, manager, operator or other person having control of a place, business, office or other establishment or activity subject to this article shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this article in that place and shall take all necessary steps to prevent or stop another person from smoking in violation of this article. "Necessary steps" means to take all reasonable actions to prevent smoking in violation of this article by employees, patrons and visitors in the place, business, office or establishment, including: posting no-smoking signs and removing all ashtrays; verbally asking a person who is smoking to extinguish the
smoking materials; refusing service to a person who is illegally smoking; verbally asking anyone illegally smoking to leave the premises; and applying standard business procedures in the same manner for violations of house rules or other local ordinances or state laws. If the employee, patron or visitor smoking in violation of this article is hard of hearing, the communications with that person may be written, in sign language or other effective means of communication.

Section 78-235.

Non-retaliation.

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

DIVISION 2. ENFORCEMENT AND PENALTIES.

Section 78-236.

Enforcement.

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

(b) The police chief or his or her designee shall be responsible for enforcing the provisions of this article within the City, but nothing in this section shall be interpreted to prohibit any other person who would otherwise be lawfully entitled to enforce the provisions of this article from taking enforcement action under this article.
(c) Any person may register a complaint under this article to initiate enforcement with the police chief or his or her designee.

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

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

2. Establish procedures necessary for the prompt, fair and efficient operation of the administrative adjudication system; and

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

Section 78-237.

**Administrative monetary penalties for violations.**

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

1. $50 per violation for a first violation.

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

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

(b) Owner, manager, or operator of public places or place of employment. The following fine schedule is hereby adopted for a violation by any owner, manager or
operator of a public place or place of employment who fails to comply with the provisions of this Article:

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

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

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

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

Section 78-238.

Notice of violations.

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

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

(2) The name and address of violator; and

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

In addition, the notice of violation shall state the applicable administrative monetary penalty, the fee which shall be automatically assessed for late payment, that payment of the indicated administrative monetary penalty, and any applicable late fee shall operate as a final disposition of the violation, and information about the availability
of the administrative hearing in which the violation may be contested on its merits and
the time and manner in which such hearing may be had.

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

Section 78-239.

Appeals.

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

Section 78-240.

Other applicable laws.

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

Section 78-241.

Severability.

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