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ORDINANCE NO. 194-26

AN ORDINANCE introduced by Councilmember Jim Gardner amending City of Topeka Code §§ 78-226, Definitions; 78-229, Areas where smoking is prohibited; 78-233, Permitted public smoking areas, and 78-238, Posting of signs and specifically repealing said original sections.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

Section 1. City of Topeka Code §78-226, Definitions, is hereby amended to read as follows:

Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) Bar means an area which is devoted to the serving of alcoholic beverages and in which the serving of food is incidental to the consumption of such beverages.

(b) Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profitmaking purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(c) Dining area means any enclosed area containing a counter or tables upon which meals are served.

(d) Employee means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who
volunteers his services for a nonprofit entity.

(e) *Employer* means any person, partnership, corporation or nonprofit entity, including a municipal corporation, who employs the services of one or more persons.

(f) *Enclosed* means closed-in by a roof and four walls with appropriate openings for ingress and egress.

(g) *Environmental code services director or director* means the director of the environmental code services division.

(h) *Nonprofit entity* means any corporation, unincorporated association, or other entity created for charitable, educational, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a nonprofit entity within the meaning of this definition.

(i) *Place of employment* means any enclosed area under the control of a 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 class rooms, cafeterias and hallways; except:

1. A private residence is not a place of employment unless it is used as a child care or health care facility.

2. The dining area of a restaurant is not a place of employment.

(j) *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, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores,
theaters and waiting rooms.

(k) Restaurant means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boardinghouse, or guesthouse which gives or offers food for sale to the public, guests, patrons or employees, except that the term shall not include a cocktail lounge or tavern if such cocktail lounge or tavern is a bar.

(l) Fast food restaurant means an establishment whose principal business is the sale of prepared or rapidly prepared food directly to the consumer over the counter (not served by a waiter or waitress) in a ready to eat consumed state, for consumption either elsewhere or within the restaurant building or off-premises. The products sold are usually serviced in containers that are either edible or made of paper, plastic or other disposable material.

(m) Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories.

(n) Service line means any indoor line at which one or more persons are waiting for or receiving services of any kind, whether or not such service involves the exchange of money.

(o) Smoke or smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or weed.

(p) Sports arena means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.
Section 2. City of Topeka Code § 78-229, Areas where smoking is prohibited, is amended to read as follows:

**Areas where smoking is prohibited.**

(a) Smoking shall not be permitted and smoking areas shall not be designated in those areas where smoking is prohibited by the fire chief, state statute, ordinances or regulations of the city or other applicable laws.

(b) No person shall smoke in a public place or at a public meeting except as permitted in this article. The following listed areas are declared to be public areas; provided, however, the enumerated areas are not to be construed as an exclusive enumeration of the only public areas covered:

1. Elevators and restrooms.
2. Buses and other means of public transit under the authority of the city, and ticket, boarding and waiting areas of public transit depots; provided, however, that this prohibition does not prevent the establishment of separate waiting areas for smokers and nonsmokers, or the establishment of a maximum of 50 percent of a given waiting room as a smoking area.
3. Service lines.
4. Retail stores, except areas in such stores not open to the public and all areas within retail tobacco stores.
5. Retail food marketing establishments, including grocery stores and supermarkets, except those areas of such establishments set aside for the purpose of serving food and drink, restrooms and offices, and
areas thereof not open to the public, which are otherwise regulated by this article.

(6) Restaurants and private clubs, except those regularly serving food with a seating capacity of less than 30 and all fast food restaurants, or more shall provide a nonsmoking area of sufficient size with contiguous seating to accommodate patrons who request to be seated in such an area. These establishments may also elect to use physical barriers and/or ventilation to help ensure smokefree air.

(7) Restaurants and private clubs with a seating capacity of 30 or more, regularly serving food, shall provide a nonsmoking section provided that the nonsmoking section is of sufficient size with contiguous seating to accommodate patrons who request to be seated in such an area. These establishments may also elect to use physical barriers and/or ventilation to help ensure smokefree air.

(78) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, offices, banks, hotels and motels.

(89) Public areas of libraries and museums when open to the public; provided, however, that this prohibition does not prevent the designation of separate smoking areas.

(910) Any building not open to the sky which is used primarily for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except when smoking is part of a stage
production; provided, however, that this prohibition does not prevent the designation of a contiguous area containing a maximum of 50 percent of a lobby as a smoking area.

(101) Every room, chamber and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.

(142) Polling places.

(123) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices. In bed space areas of health facilities used for two or more patients, smoking shall be prohibited unless all patients within the room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted.

(134) Enclosed sports arenas and convention halls, except in designated smoking areas, which cannot include designating the entire area as smoking.

(145) Kansas Expocentre, except in designated smoking areas; provided, however, this exception will be effective only so long as the Kansas
Expo centre has a smoking policy that is comparable to and compatible with this article.

Section 3. City of Topeka Code § 78-233, Permitted public smoking areas, is amended to read as follows:

**Permitted public smoking areas.**

Smoking may be permitted in the following public places:

1. Bars or taverns.
2. Fully enclosed rooms occupied exclusively by smokers, even though the rooms may be visited by nonsmokers.
3. Rooms and halls being used by a person or group for a social or business function where the seating arrangements are under the control of the sponsor of the function.
4. Smoking areas designated by the proprietor or person in charge of a public place or public meeting pursuant to this article.
5. Retail businesses primarily engaged in the sale of tobacco or tobacco products.
6. Private residences, except when used as a child care or health care facility.
7. Hotel and motel rooms rented to guests.
8. Restaurants and private clubs with a seating capacity of 30 or fewer more persons.
9. Restaurant, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions.
(10) Bowling centers. During league play, a league may determine a smoking policy for the league. During open play, if a nonsmoker requests a lane where there is no smoking, he shall be provided with such a lane, if available. If there is a request for more than one nonsmoking lane, the owner or manager on duty shall select bowling lanes that are contiguous with and adjacent to another nonsmoking lane.

Section 4. City of Topeka Code § 78-238, Posting of signs, is amended to read as follows:

Posting of signs.

(a) To advise persons of the existence of no smoking or smoking permitted areas, signs shall be posted as follows:

(1) In public places where the proprietor or person in charge prohibits smoking in the entire establishment, the international no smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.

(2) In public places where certain areas are designated as no smoking or smoking permitted areas pursuant to this article, the international no smoking symbol shall be conspicuously posted and clearly visible in the nonsmoking areas and the international smoking symbol shall be conspicuously posted and clearly visible in the smoking areas.

(3) In public places where smoking is permitted in the entire establishment, the international smoking symbol shall be conspicuously posted either on all public entrances or in a position clearly visible on entry into the establishment.
Every restaurant and private club where smoking is permitted, except these with less than 30 seating capacity, shall have posted at every public entrance a conspicuous sign clearly stating that a nonsmoking section is available. Every patron shall be asked as to his or her preference by the host or hostess (if one is on duty). A person taking reservations for a restaurant shall likewise ask if there is a nonsmoking or smoking preference.

In work areas where an area is designated as a no smoking or smoking permitted area, the international no smoking symbol shall be conspicuously posted and clearly visible in the nonsmoking areas and the international smoking symbol shall be conspicuously posted and clearly visible in the smoking areas.

In addition to the above, signs posted in restaurants, private clubs, bars, and taverns where smoking is permitted shall be at least nine (9) inches wide by six (6) inches high, utilizing clearly legible bold black lettering on a white background. Each sign shall have a black border around the perimeter of the sign. Each sign shall state: “Notice to Patrons: You and your children will be exposed to Second-Hand Smoke on these premises.” The signs shall be posted in a position clearly visible on entry into the establishment.

Section 5. Original Topeka City Code §§ 78-226, 78-229, 78-233 and 78-238 are hereby specifically repealed.

Section 6. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official city newspaper.

LORD/Smoking-RestaurantAssoc 12-20-00
PASSED and APPROVED by the City Council

DEC 19 2000

Joan Wagnon, Mayor

ATTEST:

Iris E. Walker, City Clerk

APPROVED AS TO FORM AND LEGALITY
DATE 12/26/00 BY
TO BE CODIFIED
NOT TO BE CODIFIED