ORDINANCE NO. 18676

AN ORDINANCE introduced by Councilmember John Nave amending City of Topeka Code Chapter 30 by the addition of Article XIV relating to tobacco/novelty retail licenses.

WHEREAS, the City desires to protect the health, safety, and general welfare of persons in the City of Topeka by enacting this Ordinance to regulate the licensed and unlicensed sale or dispensation of tobacco paraphernalia and novelty items used, designed, marketed, or intended for use of controlled substances and tobacco and to provide regulation via the licensing process and resulting penalties for the violation hereof.

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

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

ARTICLE XIV. TOBACCO/NOVELTY RETAIL LICENSE

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

Definitions.

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

(a) Tobacco smoking devices of metal, wood, acrylic, glass, stone, plastic or ceramic pipes with or without screens.
(b) Tobacco rolling papers;

(c) Tobacco/cigarette rollers; and

(d) Tobacco wraps/blunt wraps (flavored or unflavored).

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

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

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

Regulation.

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

2. Initial Application for License. Any person desiring to license a premises for the sale of tobacco/drug paraphernalia and/or novelty items within the corporate limits of the City of Topeka, shall first make application at the City Clerk’s office and submit an application fee of five hundred dollars ($500.00). Each such license shall be effective for one (1) calendar year from the date of issuance. The application shall be made upon a form approved by the City Attorney and shall be completed by submitting the following information:
a. The name, address, and telephone number of the applicant and length of time the applicant has resided at the address given;

b. The name and address of the owner of the property upon which the premises is located (if different from the applicant);

c. The name, address, and telephone number of the location of the premises desired to be licensed; and

d. A sworn statement that the applicant is a citizen of the United States and not less than twenty-one (21) years of age, and that he or she has not within the last five (5) years immediately preceding the date of application been convicted of a felony or any crime involving moral turpitude, alcoholic beverages, or any controlled substance including laws pertaining to the operation or attempted operation of a motor vehicle while under the influence of intoxicating liquor or drugs.

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

4. Annual Reapplication. Any person desiring to renew a license issued pursuant to this Ordinance by the City shall make reapplication at the Office of the City Clerk not more than sixty (60) days prior to the expiration of an existing license. Each such reapplication shall be accompanied by a five hundred dollars ($500.00) license fee. The reapplication shall be verified and made upon the same form as an application.
5. Transfer of License. A license issued pursuant to this Ordinance shall not be transferable to any other person or premises.

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

7. Revocation of License. The City may revoke a license for any of the following reasons:
   a. False or misleading information or data was given on any application or material facts were omitted from any application;
   b. The fee required to be paid by this Ordinance is not paid in full; and/or
   c. Any person is convicted of any crime involving the sale or distribution of controlled substances on the licensed premises.

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

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

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

a. For the first (1st) violation, a fine in the amount of five hundred dollars ($500.00) and forfeiture of any tobacco/drug paraphernalia or novelty
items confiscated as evidence; and

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

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

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

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

**Other Provisions.**

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

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

Section 7. This Ordinance shall take effect and be in force from and after its
passage, approval and publication in the official City newspaper.

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

_________________________________
William W. Bunten, Mayor

ATTEST:

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Iris E. Walker, City Clerk