

**CITY OF WESTWOOD HILLS, KANSAS  
ORDINANCE NO. 255**

AN ORDINANCE AMENDING CHAPTER 10 OF THE CITY OF WESTWOOD HILLS, KANSAS, MUNICIPAL CODE BY AMENDING CERTAIN PROVISIONS OF THE “UNIFORM PUBLIC OFFENSE CODE FOR KANSAS CITIES,” EDITION OF 2015, AS INCORPORATED BY REFERENCE IN SECTION 10-101 OF THE MUNICIPAL CODE.

WHEREAS, cigarettes are the only consumer products that, when used as intended, kill up to one-third of regular users; and

WHEREAS, raising the minimum age of tobacco sales to age 21 would reduce tobacco use and improve the public health in the City of Westwood Hills, Kansas, according to a March 12, 2015, report by the Institute of Medicine; and

WHEREAS, more than 100 communities in ten states have enacted local regulations to raise the tobacco purchase age to 21 years old; and

WHEREAS, studies have shown that cigarettes smoked by children under 18 are often purchased legally by 18 to 20 year olds and then supplied to minors; and

WHEREAS, 95% of adult smokers begin smoking before they turn 21; and

WHEREAS, according to the U.S. Surgeon General’s 2014 report, “The Health Consequences of Smoking – 50 Years of Progress,” every year tobacco products siphon off an estimated \$289 billion in directly related healthcare and lost worker productivity costs and lead to the deaths of almost one-half million Americans; and

WHEREAS, a September 2014 study, “Retail Impact of Raising Tobacco Sales Age to 21 Years,” published by the American Journal of Public Health, concluded that raising the minimum age for tobacco purchase to 21 years old would have minimal retail impacts; and

WHEREAS, the state of Kansas prohibits the distribution or sale of cigarettes and other tobacco products to minors under the age of 18; and

WHEREAS, state law does not expressly permit sales to all people over the age of 18; and

WHEREAS, banning the sale and distribution of cigarettes and other tobacco products in the City of Westwood Hills, Kansas, to persons under the age of 21 minimizes the accessibility of cigarettes and other tobacco products to minors and serves an important public interest in furtherance of the health, safety, and general welfare of the residents of the City of Westwood Hills, Kansas; and

WHEREAS, the Governing Body of Westwood Hills, Kansas, has determined that it is advisable to amend Section 101 of Chapter 10 of the Municipal Code of the City to amend certain provisions pertaining to tobacco products and smoking.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD HILLS, KANSAS, as follows:

**Section 1. AMENDMENT TO CHAPTER 10, ARTICLE 1 OF THE CITY OF WESTWOOD HILLS, KANSAS, MUNICIPAL CODE.**

Section 10-101 of Chapter 10 of the Code of the City of Westwood Hills is hereby amended to read as follows:

**“10-101.** INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Westwood Hills, Kansas, that certain code known as the “Uniform Public Offense Code for Kansas Cities,” Edition of 2015, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts, or portions as are hereafter omitted, deleted, modified, or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said standard public offense ordinance shall be marked or stamped “Official Copy as Incorporated by the Code of the City of Westwood Hills, Kansas”, with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this section, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

**10-101.1.** Amendment of “Smoking; Definitions. (a) Access Point” of Section 1.1 of the Uniform Public Offense Code for Kansas Cities.

The definition of “Access Point” in the “Smoking; Definitions” paragraph of Section 1.1 of the Uniform Public Offense Code for Kansas Cities, Edition of 2015, is hereby amended to read as follows:

(a) Access Point means the area within a 15 foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of section 10.24.

**10-101.2.** Amendment of “Smoking; Definitions. (o) Smoking” of Section 1.1 of the Uniform Public Offense Code for Kansas Cities.

The definition of “Smoking” in the “Smoking; Definitions” paragraph of Section 1.1 of the Uniform Public Offense Code for Kansas Cities, Edition of 2015, is hereby amended to read as follows:

(o) Smoking means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco or possession and use of an electronic or battery-operated device that simulates tobacco smoking and is used to deliver a vaporized or

aerosolized solution for human consumption by means of cartridges or other chemical delivery systems.

**10-101.3.** Amendment of Section 5.6 of the Uniform Public Offense Code for Kansas Cities – Purchase or Possession of Cigarettes or Tobacco Products.

Section 5.6 of the Uniform Public Offense Code for Kansas Cities, Edition of 2015, is hereby amended to read as follows:

**5.6 Purchase or Possession of Cigarettes or Tobacco Products.** It shall be unlawful for any person:

(a) Who is under 21 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes, or tobacco products; or

(b) Who is under 18 years of age to possess or attempt to possess cigarettes, electronic cigarettes, or tobacco products. (K.S.A. Supp. 79-3321, 79-3322)

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be \$25. In addition, the judge may require any juvenile to appear in court with a parent or legal guardian.

**10-101.4.** Amendment of Section 5.7 of the Uniform Public Offense Code for Kansas Cities - Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor.

Section 5.7 of the Uniform Public Offense Code for Kansas Cities, Edition of 2015, is hereby amended to read as follows:

**5.7 Selling, Giving or Furnishing Cigarettes or Tobacco Products to a Minor.**

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

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

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

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

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

(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person under 21

years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, electronic cigarettes or tobacco products; and

(3) To purchase or receive the cigarettes, electronic cigarettes, or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, electronic cigarettes, or tobacco products.

(4) For purposes of this section the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, electronic cigarettes, or tobacco products to any person under 21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(c) It shall be a defense to a prosecution under this subsection if:

(1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, electronic cigarettes, or tobacco products by mail; and

(2) The defendant sold, furnished or distributed the cigarettes, electronic cigarettes, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 21 or more years of age.

(d) As used in this section, **sale** means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, electronic cigarettes, or tobacco products, with or without consideration. (K.S.A. Supp. 79-3302, 79-3321, 79-3322)

Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200.

**10-101.5.** Amendment of Section 10.24 of the Uniform Public Offense Code for Kansas Cities – Smoking Prohibited.

Section 10.24 of the Uniform Public Offense Code for Kansas Cities, Edition of 2015, is hereby amended to read as follows:

**10.24 Smoking Prohibited.**

(a) It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

(1) Public places;

(2) Taxicabs and limousines;

(3) Restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities;

(4) Restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;

(5) Access points (defined as the area within a 15 foot radius of any doorway, open window or air intake) of all buildings and facilities not exempted pursuant to subsection (d); and

(6) Any place of employment.

(b) Smoking is also prohibited in the City's public outdoor green space known as The Green.

(c) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.

(d) Notwithstanding any other provision of this section, 10.25 or 10.26, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

(e) The provisions of this section shall not apply to:

(1) The outdoor areas of any building or facility by a non-public entrance to such building or facility and the outdoor areas of any building or facility beyond the other access points (defined as the area within a 15 foot radius of any doorway, open window or air intake) of such building or facility;

(2) Private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;

(3) A hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;

(4) The gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;

(5) That portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;

(6) That portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;

(7) Tobacco shops;

(8) A Class A or Class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and

(9) A private club in designated areas where minors are prohibited.

(10) Any benefit cigar dinner or other cigar dinner of a substantially similar nature that:

(A) Is conducted specifically and exclusively for charitable purposes by a nonprofit organization which is exempt from federal income taxation pursuant to Section 501(c)(3) of the federal internal revenue code of 1986;

(B) is conducted no more than once per calendar year by such organization; and

(C) has been held during each of the previous three years prior to January 1, 2011; and

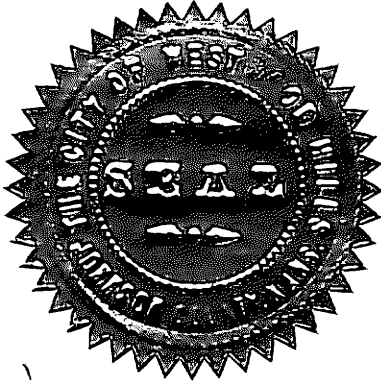
(11) That portion of a medical or clinical research facility constituting a separately ventilated, secure smoking room dedicated and used solely and exclusively for clinical research activities conducted in


accordance with regulatory authority of the United States or the state of Kansas, as determined by the director of alcoholic beverage control of the department of revenue. (K.S.A. Supp. 21-6110)”

**Section 2. REPEAL AND SAVINGS CLAUSE.** Section 1. of Ordinance No. 248 and all other ordinances inconsistent herewith are repealed; however, the repeal of said ordinances does not affect any right which has accrued, any duty imposed, any penalty incurred, nor any proceeding commenced, under or by virtue of the ordinance repealed. The provisions of any ordinance, so far as they are the same as those of any prior ordinance, shall be construed as a continuation of such provisions, and not as a new enactment.


**Section 3.** This Ordinance shall be effective upon its passage, approval by the Mayor and publication once in the official city newspaper.

PASSED by the Governing Body and APPROVED by the Mayor this 13<sup>th</sup> day of June, 2016.

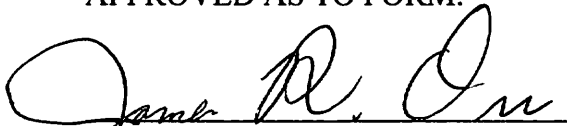


  
Paula Schwach, Mayor

Attest:

  
Beth O'Bryan, City Clerk

APPROVED AS TO FORM:

  
James R. Orr, City Attorney