

ORDINANCE NO. 971

AN ORDINANCE AMENDING IN PART CHAPTER I, ARTICLE 1 OF THE WESTWOOD CITY CODE, THE “UNIFORM PUBLIC OFFENSE CODE”; BY AMENDING SECTIONS 5.6 AND 5.7 OF THE UNIFORM PUBLIC OFFENSE CODE RELATING TO THE POSSESSION OF CIGARETTES, LIQUID NICOTINE OR TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF 18, PURCHASE OF CIGARETTES, LIQUID NICOTINE OR TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF 21, AND SELLING, GIVING OR FURNISHING CIGARETTES, LIQUID NICOTINE OR TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21.

WHEREAS, City of Westwood Ordinance No. 962, passed on August 13, 2015, incorporated by reference into Chapter 11, Article 1, Section 11-101 of the Code of the City of Westwood the “Uniform Public Offense Code,” Edition of 2015 prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas;

WHEREAS, Sections 5.6 and 5.7 of the Uniform Public Offense Code addresses the purchase, possession and use of liquid nicotine or tobacco products by minors; and

WHEREAS, the City of Westwood desires to enact certain changes to Sections 5.6 and 5.7 of the Uniform Public Offense Code which is incorporated by reference to Chapter 11, Article 1, Section 11-101 of the Code of the City of Westwood.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WESTWOOD, KANSAS:

SECTION 1. Chapter 11, Article 1, of the Code of the City of Westwood is hereby amended to add Section 11-110 to read as follows:

11-110 **UNIFORM PUBLIC OFFENSE CODE, ADDITIONS AND DELETIONS.**
Article 5 of the Uniform Public Offense Code is hereby amended by deleting existing Sections 5.6 and 5.7 and by inserting in place thereof the following:

Section 5.6 Purchase or Possession of Cigarettes or Tobacco Products by a Minor

- (a) It shall be unlawful for any person:
 - (1) Who is under 21 years of age to purchase or attempt to purchase cigarettes, electronic cigarettes, liquid nicotine or tobacco products; or
 - (2) Who is under 18 years of age to possess or attempt to possess cigarettes, electronic cigarettes, liquid nicotine or tobacco products. (K.S.A. 79-3321:3322, as amended).
- (b) For the purposes of this Section, the terms are described herein are used as defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine

which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

Violation of this Section shall be a cigarette or tobacco ordinance infraction for which the fine shall be a minimum of \$25 and a maximum of \$100. In addition, the judge may require a person charged with violating this section to appear in court and/or may require completion of a tobacco education program.

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

- (a) It shall be unlawful for any person, directly or indirectly, to:
 - (1) Sell, furnish or distribute cigarettes, electronic cigarettes, liquid nicotine or tobacco products to any person under 21 years of age; or
 - (2) Buy any cigarettes, electronic cigarettes, liquid nicotine 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, liquid nicotine 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, liquid nicotine or tobacco products; and
 - (3) To purchase or receive the cigarettes, electronic cigarettes, liquid nicotine 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, liquid nicotine or tobacco products.
 - (4) For purposes of this Section a 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 Section 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) For the purposes of this Section, the terms described herein are used as defined in K.S.A. 79-3301 and amendments thereto, except liquid nicotine which is the active ingredient of the tobacco plant (nicotine) in liquefied form suitable for the induction of nicotine, whether by nasal spray, ingestion, smoking or other means, into the human body.

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

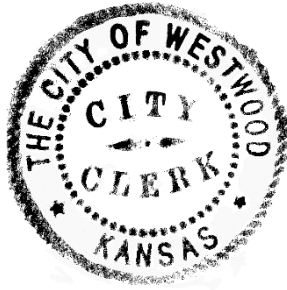
Violation of this Section shall constitute a Class B violation punishable by a minimum fine of \$200.

SECTION 2. Except as provided herein, all other provisions of Ordinance No. 962 and Chapter 11, Article 1 of the Westwood City Code shall remain in full force and effect.

SECTION 3. This ordinance shall take effect and be enforced from and after its passage, approval, and publication as provided by law.

PASSED by the Governing Body this 11th day of August, 2016.

APPROVED by the Mayor this 11th day of August, 2016.



ATTEST:

A handwritten signature in black ink, appearing to read "F-L-S", written over a horizontal line.

Frederick L. Sherman, City Clerk

A handwritten signature in black ink, appearing to read "John M. Yick", written over a horizontal line.

John M. Yick, Mayor

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "Ryan B. Denk", written over a horizontal line.

Ryan B. Denk, City Attorney