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ORDINANCE NO. 20216

AN ORDINANCE introduced by City Manager Brent Trout, concerning hazardous material and civil emergencies, amending City of Topeka Code § 2.55.020 and § 2.55.030 and repealing § 2.55.010.

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

Section 1. That section 2.55.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby repealed.

Definitions.

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

“Disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, epidemics, air contamination, blight, drought, infestation, explosion, riot or hostile military or paramilitary action.

“Emergency preparedness” means the preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters.

Section 2. That section 2.55.020, Release or threatened release of hazardous materials – Recovery of expenses, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Release or threatened release of hazardous materials – Recovery of
expenses.

(a) Purpose. For the purpose of promoting the public health, safety and welfare, it is hereby declared to be in the public interest to enact a means for recovery, through civil suit if required, of the recoverable expenses incurred in taking an emergency action in response to a release or threatened release of hazardous materials to save life, prevent suffering or disability or to protect and save property.

(b) Definitions. As used in this section:

“Emergency action” means all of the activities conducted in order to prevent or mitigate injury to human health or the environment from a release or threatened release of hazardous materials into or upon the environment.

“Governmental entities” means and includes the city, the county, the board of Shawnee county commissioners, the Topeka-Shawnee city-county emergency preparedness agency, and any entity responding under a mutual aid agreement with the city or the county.

“Hazardous materials” means those chemicals or substances which are physical hazards or health hazards as defined and classified in Article 80 of the Uniform Fire Code, whether the materials are in usable or waste condition, waste, or a combination of wastes, chemicals, or substances which, because of their quantity, concentration, or physical, chemical, biological, or infectious characteristics, cause or significantly contribute to an increase in mortality or serious personal injury; or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or released.

“Person” means and includes any individual, corporation, association, partnership, firm, trustee, or legal representative.
“Recoverable expenses” means those expenses that are reasonable, necessary and allocable to the emergency action. “Recoverable expenses” shall not include normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine firefighting. Expenses allowable for recovery may include, but are not limited to:

1. Disposable materials and supplies acquired, consumed and expended for the emergency action.

2. Compensation of employees for the time and efforts devoted specifically to the emergency action.

3. Rental or leasing of equipment used for the emergency action (e.g., protective equipment or clothing, scientific and technical equipment).

4. Replacement, repair and/or cleaning costs for equipment utilized in the emergency action.

5. Special technical services utilized in the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the governmental entity).

6. Other special services utilized in the emergency action.

7. Laboratory costs for purposes of analyzing samples taken during the emergency action.

8. Any costs of cleanup, storage or disposal of the released material.

9. Costs associated with the services, supplies and equipment procured for an evacuation.

10. Medical expenses incurred as a result of response activities.

11. Legal expenses that may be incurred as a result of the emergency
action, including efforts to recover expenses pursuant to this section.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon the environment.

“Threatened release” means any imminent, impending, or potential release which causes the City to take emergency action.

(c) Liability. Any and all persons responsible for a release or threatened release which results in an emergency action shall be liable to the governmental entities for the recoverable expenses resulting from the emergency action. “Persons responsible” shall include, but not be limited to, owners and/or those people or entities in control of any container from which a hazardous substance is released. The following persons shall be jointly and severally liable to the City for the recoverable expenses incurred by the City during the emergency action:

(1) The person or persons whose willful or negligent acts, or omission thereof, were the proximate cause of the release or threatened release of any hazardous materials.

(2) The person or persons who owned, controlled, or were in custody of the hazardous materials at the time of the release or threatened release, with no regard to fault or proximate cause.

(3) The person or persons who owned, controlled, or were in custody of the container which held the hazardous materials released, or threatened to be released, at the time of the release or threatened release, with no regard to fault or proximate cause.

(d) Recovery of Expense.
(1) The staffs of the governmental entities involved in an emergency action shall keep a detailed record of their recoverable expenses resulting from the emergency action. Promptly after completion of the emergency action, the staffs shall certify any such recoverable expenses to the appropriate legal counsel and shall with a corresponding request that legal counsel bring a civil action for the recovery of the recoverable expenses process be initiated against any and all persons responsible for the emergency action.

(2) Not less than thirty (30) days before filing a civil action, legal counsel shall submit a written, itemized claim for the total certified expenses incurred by the governmental entities responding to the emergency action to the responsible party with a written notice that unless the amounts are paid in full to the respective governmental entities within thirty (30) days after the date of the mailing of the claim and notice, legal counsel will file a civil action for the stated amount. Moneys recovered under this section shall be credited to the appropriate funds of the governmental entity from which moneys were expended in carrying out the emergency action.

(e) Conflicting Ordinances. Any other resolution or ordinance in conflict with this section is hereby repealed.

(f) Rescission. This section is not contractual and may be rescinded by a majority vote of either governing body. This section is not an interlocal cooperation agreement as contemplated in K.S.A. 12-2901 et seq. or K.S.A. 12-3901 et seq.

(g) Applicability. This section is not to be construed as conflicting with the provisions of K.S.A. 19-101a(5), which confers home rule powers and shall be
Section 3. That section 2.55.030, Requests for assistance, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Requests for assistance.

(a) As used in this section, “disaster” means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, epidemics, air contamination, blight, drought, infestation, explosion, riot or hostile military or paramilitary action.

(b) In the event of a disaster when there is a request for assistance, if the city can provide assistance without unduly jeopardizing the protection of its own community, that this article hereby authorizes the city manager or his or her designee, with consent of the council, to provide such assistance as may be required under authority granted in K.S.A. 12-16117 (1994 Supp.) with all the privileges and immunities provided therein.

Section 4. That original § 2.55.020 and § 2.55.030 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 5. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 6. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 7. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.
PASSED AND APPROVED by the Governing Body on October 15, 2019.

CITY OF TOPEKA, KANSAS

ATTEST:

Michelle De La Isla, Mayor

Brenda Younger, City Clerk