

(Published in the Topeka Metro News October 14, 2019)

ORDINANCE NO. 20211

AN ORDINANCE introduced by Councilmember Sandra Clear, concerning parking on nonpaved surfaces, amending City of Topeka Code § 2.40.130, § 2.40.210 and § 10.60.120 and repealing original sections.

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

Section 1. That section 2.40.130, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

As used in this article:

(a) ~~“Appearance bond” means an undertaking, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions of the undertaking.~~ “Accused person” means a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance.

(b) ~~“Accused person” means a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance.~~ “Appearance bond” means an undertaking, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions of the undertaking.

(c) “Arraignment” means the formal act of calling the person accused of violating an ordinance before the municipal court to inform the person of the offense with which the person is charged, to ask the person whether the person is guilty or not guilty and, if guilty, to impose sentence.

26 (d) "Arrest" means the taking of a person into custody in order that the person will
27 appear to answer for the violation of an ordinance. The giving of a notice to appear is
28 not an arrest.

29 (e) "Bail" is the security given for the purpose of insuring compliance with the
30 terms of an appearance bond.

31 (f) "City attorney" means any attorney who represents the city in the prosecution
32 of an accused person for the violation of a city ordinance.

33 (g) "Complaint" means a sworn written statement, or a written statement by a law
34 enforcement officer, the city attorney or an assistant city attorney, an animal control
35 officer, a parking control officer as specifically authorized by TMC 10.60.350, a property
36 maintenance inspector as specifically authorized by TMC 10.60.120 or a fire department
37 employee with authority to enforce the fire code ~~of~~ that recites the essential facts
38 constituting a violation of an ordinance.

39 (h) "Custody" means the restraint of a person pursuant to an arrest.

40 (i) "Detention" means the temporary restraint of a person by a law enforcement
41 officer.

42 (j) "Law enforcement officer" means any person who by virtue of office or public
43 employment is vested by law with a duty to maintain public order and to make arrests
44 for violation of the laws of the state of Kansas or ordinances of any municipality thereof.
45 For the purposes of signing and serving a uniform complaint and notice to appear or a
46 subpoena, the term shall also mean the city attorney or an assistant city attorney, an
47 animal control officer, a parking control officer as specifically authorized by TMC

10.60.350, a property maintenance inspector as specifically authorized by TMC
10.60.120 or a fire department employee with authority to enforce the fire code.

(k) "Notice to appear" is a written notice to a person accused by a complaint of
having violated an ordinance of a city to appear at a stated time and place to answer to
the charge of the complaint.

~~(l) "Subpoena" is a process issued by the court to cause a witness to appear and
give testimony at a time and place therein specified.~~

(l) "Ordinance cigarette or tobacco infraction" is a violation of an ordinance that
proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321
and amendments thereto.

(m) "Ordinance traffic infraction" is a violation of an ordinance that proscribes or
requires the same behavior as that proscribed or required by a statutory provision that is
classified as a traffic infraction in K.S.A. 8-2118 (1998 Supp.) and amendments thereto.

~~(n) "Warrant" is a written order made by a municipal judge directed to any law
enforcement officer commanding the officer to arrest the person named or described in
it.~~

~~(o) "Ordinance cigarette or tobacco infraction" is a violation of an ordinance that
proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321
and amendments thereto.~~

(n) "Subpoena" is a process issued by the court to cause a witness to appear and
give testimony at a time and place therein specified.

69 (o) "Warrant" is a written order made by a municipal judge directed to any law
70 enforcement officer commanding the officer to arrest the person named or described in
71 it.

72 Section 2. That section 2.40.210, Notice to appear – Service – Return, of The
73 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

74 **Notice to appear – Service – Return.**

75 The notice to appear shall be served upon the accused person by delivering a
76 copy to him or her personally, or by leaving it at the dwelling house of the accused
77 person or usual place of abode with some person of suitable age and discretion then
78 residing therein, or by mailing it to the last known address of said person. A notice to
79 appear may be served by any law enforcement officer, the municipal judge, the clerk of
80 the municipal court, the city attorney, an assistant city attorney, an animal control
81 officer, a parking control officer as specifically authorized by TMC 10.60.350, a property
82 maintenance inspector as specifically authorized by TMC 10.60.120 or a fire department
83 employee with authority to enforce the ~~Uniform Fire Code~~, and, if mailed, shall be
84 mailed by a law enforcement officer, the municipal judge, the clerk of the municipal
85 court, the city attorney, any animal control officer, a parking control officer as specifically
86 authorized by TMC 10.60.350, a property maintenance inspector as specifically
87 authorized by TMC 10.60.120 or a fire department employee with authority to enforce
88 the ~~Uniform Fire Code~~. Upon service by mail, the person serving the notice to appear
89 shall execute a verification to be filed with a copy of the notice to appear. Said
90 verification shall be deemed sufficient if in substantially the following form:

The undersigned hereby certifies that on the ____ day of _____,
_____, a copy of notice to appear was mailed to _____
at _____

/s/ _____

Signature of Person Serving Notice to Appear

Section 3. That section 10.60.120, Parking of vehicles on nonpaved surfaces,
of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Parking of vehicles on nonpaved surfacesresidential property.

~~(a) It shall be unlawful for any person to park or allow to be parked any
vehicle or machinery on the back yard of a residential lot for more than six months or on
any other part of a residential lot for any period of time unless the area used for parking
is improved with at least four inches of rock, gravel, paver brick, asphalt, or concrete.~~

~~(b) Subsection (a) of this section shall not apply to any motor vehicle or
machinery which displays a special license plate or placard issued to a person with a
disability by the Director of Vehicles, Kansas Department of Revenue in accordance
with K.S.A. 8-1,125and amendments thereto. This section shall not apply to any vehicle
or machinery which displays acceptable official identification devices issued to persons
with a disability by any other state, district or territory recognized by the Kansas
Department of Revenue.~~

~~(c) For purposes of this section the following definitions shall apply:~~

~~(1) "Park" shall mean to halt a vehicle, whether occupied or not,
otherwise than temporarily for the purpose of and while actually engaged in
receiving or discharging passengers or personal property.~~

116 (2) ~~“Vehicle or machinery” shall mean a machine propelled by power~~
117 ~~other than human power and designed to travel along the ground by use of~~
118 ~~wheels, treads, runners or slides and which transports persons or property. And~~
119 ~~shall include, without limitation, an automobiles, trucks, trailers, recreational~~
120 ~~vehicles, motorcycles, boats, campers, or tractors.~~

121 (d) ~~Police officers and property maintenance inspectors shall have the~~
122 ~~authority to issue a uniform complaint and notice to appear for violations of this section.~~

123 (e) ~~The city council may, by resolution, waive the provisions of subsection (a)~~
124 ~~of this section at specific properties identified by address for community events or~~
125 ~~activities designated by the council for periods of time not to exceed two weeks.~~

126 (a) Definitions. For purposes of this section the following definitions shall
127 apply:

128 (1) “Driveway” is a paved or graveled area that is intended for off-street
129 vehicular parking.

130 (2) “Park” or “parking” shall mean the standing of a vehicle or
131 machinery on or over a paved or graveled area, whether occupied or not, other
132 than temporarily for the purpose of loading or unloading property or passengers.

133 (3) “Paved or graveled area” shall mean (i) an area comprised of a
134 solid, permanent sealed surface constructed of asphalt, concrete, stone, brick or
135 other similar impermeable material of sufficient dimension to accommodate the
136 entire vehicle or machinery; with no overhang onto dirt or grass; or (ii) an area
137 comprised of a loose aggregation of rock fragments (e.g. gravel) thick enough to
138 prevent grass, weeds and dirt from permeating or penetrating through (there can

be no visible vegetation or debris) and of sufficient dimension to accommodate the entire vehicle or machinery; with no overhang onto dirt or grass.

(4) "Vehicle or machinery" shall mean a machine propelled by power (other than human power) that is designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property. "Vehicle or machinery" shall include, without limitation, automobiles, trucks, trailers, recreational vehicles, motorcycles, boats, campers, or tractors.

(b) Prohibitions – Enforcement – Waiver.

(1) It shall be unlawful for an owner of real property to park, or allow to be parked, any vehicle or machinery on the back yard of a residential lot for more than six (6) months, or on any other part of a residential lot for any period of time, unless on a paved or graveled area or on a driveway, as defined by TMC 10.60.210(a)(1) and (3). Such paved or graveled area or driveway must be maintained free of vegetation, debris and standing water.

(2) Subsection (1) shall apply to any motor vehicle that displays a special license plate or placard issued to a Kansas resident who is a person with a disability or is responsible for the transportation of a person with a disability in accordance with K.S.A. 8-1,125 and K.S.A. 8-1,126 and amendments thereto.

(3) In addition to law enforcement officers, property maintenance inspectors shall also have the authority to issue a uniform complaint and notice to appear for violations of this section, as provided in TMC 2.110.130 and TMC 2.110.210.

(4) The governing body may, by resolution, waive the provisions of subsection (1) for designated properties identified (by specific address) in the resolution in order to accommodate a special event approved pursuant to TMC Chapter 12.70.

Section 4. That original § 2.40.130, § 2.40.210 and § 10.60.120 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 5. This ordinance shall take effect on March 1, 2020, 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 City Council on October 8, 2019.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk