

(Published in the Topeka Metro News October 21, 2019)

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 That section 2.55.010, Definitions, of The Code of the City of Topeka, Kansas, is hereby repealed.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

53 “Recoverable expenses” means those expenses that are reasonable, necessary
54 and allocable to the emergency action. “Recoverable expenses” shall not include
55 normal expenditures that are incurred in the course of providing what are traditionally
56 local services and responsibilities, such as routine firefighting. Expenses allowable for
57 recovery may include, but are not limited to:

58 (1) Disposable materials and supplies acquired, consumed and
59 expended for the emergency action.

60 (2) Compensation of employees for the time and efforts devoted
61 specifically to the emergency action.

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

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

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

69 (6) Other special services utilized in the emergency action.

70 (7) Laboratory costs for purposes of analyzing samples taken during
71 the emergency action.

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

73 (9) Costs associated with the services, supplies and equipment
74 procured for an evacuation.

75 (10) Medical expenses incurred as a result of response activities.

76 (11) Legal expenses that may be incurred as a result of the emergency

77 action, including efforts to recover expenses pursuant to this section.

78 "Release" means any spilling, leaking, pumping, pouring, emitting, emptying,
79 discharging, injecting, escaping, leaching, dumping or disposing into or upon the
80 environment.

81 "Threatened release" means any imminent, impending, or potential release which
82 causes the City to take emergency action.

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

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

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

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

100 (d) Recovery of Expense.

101 ~~(1) The staffs of the governmental entities~~Each department involved in
102 an emergency action shall keep a detailed record of ~~their~~its recoverable
103 expenses resulting from the emergency action. ~~P then,~~ promptly after completion
104 of the emergency action, ~~the staffs shall certify those~~any such recoverable
105 expenses to the appropriate legal counsel ~~and shall~~with a corresponding request
106 that ~~legal counsel bring a civil action for~~the recovery of the recoverable
107 ~~expenses~~process be initiated against any and all persons responsible for the
108 emergency action.

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

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

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

123 ~~(g) Applicability. This section is not to be construed as conflicting with the~~
124 ~~provisions of K.S.A. 19-101a(5), which confers home rule powers and shall be~~

125 ~~applicable to all incorporated areas of the county.~~

126 Section 3. That section 2.55.030, Requests for assistance, of The Code of the
127 City of Topeka, Kansas, is hereby amended to read as follows:

128 **Requests for assistance.**

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

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

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

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

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

145 Section 7. Should any section, clause or phrase of this ordinance be declared
146 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
147 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

149 PASSED AND APPROVED by the Governing Body on October 15, 2019.

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151 CITY OF TOPEKA, KANSAS

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156 Michelle De La Isla, Mayor

157 ATTEST:
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160 Brenda Younger, City Clerk