

(Published in the Topeka Metro News November 7, 2022)

ORDINANCE NO. 20383

AN ORDINANCE introduced by City Manager Stephen Wade concerning procedures for prosecuting International Property Maintenance Code violations in Municipal Court, amending Topeka Municipal Code sections 2.40.040, 2.40.130, 2.40.180, 2.40.210, 8.60.070, 8.60.110 and 8.75.040 and repealing original sections and creating new sections 2.40.405 and 2.45.050.

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

Section 1. That section 2.40.040, Intent-Construction-Procedure not provided, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Intent – Construction – Procedure not provided; Liability for legal entities.

(a) This Code is intended to provide for the just determination of every proceeding for violation of City ordinances. Its provisions shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. If no procedure is provided by this Code, the court shall proceed in any lawful manner consistent with any applicable law and not inconsistent with this Code.

(b) A legal entity is responsible for acts committed by its agents when acting within the scope of the agent's authority.

(c) A person who violates an ordinance, or causes such acts to be performed, in the name of or on behalf of a legal entity is legally responsible to the same extent as if such acts were performed in the person's own name or on the person's behalf.

Section 2. 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:

31 (a) "Accused person" means a person, corporation or other legal entity accused
32 by a complaint of the violation of a City ordinance.

33 (b) "Agent" means any director, officer, partner, member, employee or other
34 person who is authorized to act on behalf of a legal entity.

35 (bc) "Appearance bond" means an undertaking, with or without security, entered
36 into by a person in custody by which the person is bound to comply with the conditions
37 of the undertaking.

38 (ed) "Arraignment" means the formal act of calling the person accused of
39 violating an ordinance before the Municipal Court to inform the person of the offense
40 with which the person is charged, to ask the person whether the person is guilty or not
41 guilty and, if guilty, to impose sentence.

42 (de) "Arrest" means the taking of a person into custody in order that the person
43 will appear to answer for the violation of an ordinance. The giving of a notice to appear
44 is not an arrest.

45 (ef) "Bail" is the security given for the purpose of insuring compliance with the
46 terms of an appearance bond.

47 (fg) "City Attorney" means any attorney who represents the City in the
48 prosecution of an accused person for the violation of a City ordinance.

49 (gh) "Complaint" means a sworn written statement, or a written statement by a
50 law enforcement officer, the City Attorney or an Assistant City Attorney, an animal
51 control officer, a parking control officer as specifically authorized by TMC 10.60.350, a
52 property maintenance inspector as specifically authorized by TMC 10.60.120 or a Fire
53 Department employee with authority to enforce the fire code that recites the essential
54 facts constituting a violation of an ordinance.

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

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

(~~j~~k) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the State of Kansas or ordinances of any municipality thereof. For the purposes of signing and serving a uniform complaint and notice to appear or a subpoena, the term shall also mean the City Attorney or an Assistant City Attorney, an 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.

(~~l~~l) "Legal entity" means a business trust, corporation, limited partnership, limited liability partnership, limited liability company and a foreign covered entity, as defined in K.S.A. 17-7902 and amendments thereto.

(~~k~~m) "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~~n) "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~~o) "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.

(~~p~~p) "Resident agent" is the representative of a legal entity appointed pursuant

to K.S.A. 17-7901 et seq. and amendments thereto.

(g) “Show cause order” is a process issued by the court to require a resident agent or other representative of a legal entity to appear and give testimony regarding whether the court should proceed to trial and judgment without further process.

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

(i) “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.

Section 3. That section 2.40.180, Notice to appear – Contents - Form, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Notice to appear – Contents – Form.

(a) A notice to appear shall describe the offense charged, shall summon the accused person to appear, shall contain a space in which the accused person may agree, in writing, to appear at a time not less than five days after such notice to appear is given, unless the accused person shall demand an earlier hearing. A notice to appear may be signed by a Municipal Judge, the clerk of the Municipal Court, the City Attorney, an Assistant City Attorney, a law enforcement officer of the City, an animal control officer, or a Fire Department employee with authority to enforce the Uniform Fire Code.

(b) If the accused person is a legal entity, the notice to appear shall summon an agent.

(c) A notice to appear shall be deemed sufficient if in substantially the form of the notice to appear set out in K.S.A. 12-4204 and amendments thereto, or if in substantially the following form:

IN THE MUNICIPAL COURT
OF TOPEKA, KANSAS

The City of Topeka, Kansas

vs.

(Accused person)

(Address)

NOTICE TO APPEAR

The City of Topeka, Kansas, To The Above Named Accused Person.

You are hereby summoned to appear before the Municipal Court of Topeka, Kansas, on the _____ day of _____, _____, at _____ o'clock, _____ .m., to answer a complaint charging you with

_____.

If you fail to appear a warrant will be issued for your arrest.

Dated _____, _____.

/s/ _____

Signature of Official

/s/ _____

Title of Official

I agree to appear in said Court at said time and place.

/s/ _____

Signature of Accused Person or Agent

RETURN

The undersigned hereby certifies that on the _____ day of _____, _____, the notice to appear was served, mailed or delivered.

/s/ _____

Signature and Title of Official

Section 4. That section 2.40.210, Notice to appear – Service - Return, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Notice to appear – Service – Return.

(a) The notice to appear shall be served upon the accused person by delivering a copy to him or her personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of said person.

(b) If the accused person is a legal entity, the notice to appear shall be served by mailing it to the address of the legal entity identified in the records maintained by the Kansas Secretary of State and serving the notice to appear as follows:

(1) serving a copy on an officer, manager, partner or agent;

(2) leaving a copy at any of the business offices with the person having charge; or

(3) serving a copy on any resident agent by mailing the notice to the address of the resident agent identified in the records maintained by the Kansas Secretary of State.

(c) A notice to appear may be served by any law enforcement officer, the Municipal Judge, the clerk of the Municipal Court, the City Attorney, an Assistant City Attorney, an 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, and, if mailed, shall be mailed by a law enforcement officer, the Municipal Judge, the clerk of the Municipal Court, the City Attorney, any 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.

(d) Upon service by mail, the person serving the notice to appear shall execute a verification to be filed with a copy of the notice to appear. Said 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 5. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 2.40.405, which said section reads as follows:

Failure to appear; show cause.

(a) If the accused person fails to appear, the court shall declare the appearance bond to be forfeited and may issue a warrant for the arrest of the accused person.

(b) If the accused person is a legal entity and the resident agent or other agent of the legal entity fails to appear, the court shall issue a show cause order to the resident agent. Upon failure to appear at the show cause hearing, the court shall proceed to trial and judgment without further process.

Section 6. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 2.45.050, which said section reads as follows:

Appeal to district court.

(a) Pursuant to K.S.A. 60-2101 and amendments thereto, any person

aggrieved by a determination issued by a hearing officer may appeal to the district court by doing all of the following:

(1) Submit a written notice of appeal to the City Clerk within 30 days of the determination. The notice shall include: (i) the person's name, mailing address, email address and telephone number; (ii) the date of the determination; (iii) case number; and (iv) type of case (i.e. parking, property maintenance costs). The City Clerk shall file-stamp or memorialize the date of receipt of the notice and return a copy to the person.

(2) Submit a written request to the City Clerk for one copy of all pertinent records relative to the proceeding including but not limited to any recording or transcript of the proceedings. The request shall be submitted to the City Clerk within 10 days of the date of receipt of the notice of appeal. Prepayment of all copying and other fees set forth in TMC 2.10.120 shall be required prior to production of the records.

(3) File with the Clerk of the Shawnee County District Court the pertinent records prepared by the City Clerk within 60 days from the date of receipt of the notice of appeal.

(b) Failure to file the records with the Clerk of the Shawnee County District Court within the 60 day period may result in the appeal being dismissed by the district court.

(c) Unless the person requests from the district court a stay of the determination of the hearing officer within 70 days from the date of receipt of the notice of appeal, the City may proceed with enforcement.

Section 7. That section 8.60.070, Section 106 – Violations, abatements, fees,

of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Section 106 – Violations, abatements, fees.

Section 106.3, Prosecution of violation, is deleted in its entirety and the following provisions shall be substituted therefor:

(a) A person who fails to comply with a notice of violation served in accordance with Section 107, shall be guilty of a misdemeanor and, if convicted, may be punished in accordance with subsection (b). A violation of this chapter shall be deemed a strict liability offense. Abatement of a violation by the Code Official shall not be a defense or excuse to a violation. The pendency of an administrative hearing pursuant to section 8.60.110 or section 8.75.040 shall not be a defense to a violation or prevent prosecution and adjudication in Municipal Court.

(b) Punishment for a violation of the International Property Maintenance Code (IPMC), adopted pursuant to TMC 8.60.010, shall be as follows:

(1) Upon a first conviction, a fine of not more than one thousand dollars;

(2) Upon a second conviction, a fine of not less than one hundred dollars nor more than one thousand dollars;

(3) Upon a third conviction, a fine of not less than five hundred dollars nor more than one thousand dollars;

(4) Upon a fourth or subsequent conviction, a fine of not less than one thousand dollars nor more than two thousand five hundred dollars;

(5) In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed six (6) months, or by both such fines and imprisonment.

(c) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section:

(1) conviction includes being convicted of a violation of the IPMC, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(2) conviction includes being convicted of a violation of the IPMC or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(3) any convictions occurring during the three years prior to the date of the occurrence shall be taken into account when determining the sentence to be imposed.

(d) Each day that any violation of this ordinance continues shall constitute a separate offense and be punishable hereunder as a separate violation.

(e) In addition to the penalties set forth above, the court may require that the owner register the property pursuant to Chapter 8.65 TMC.

Section 8. That section 8.60.110, Section 111 – Hearing, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Section 111 – Hearing.

Sections 111.1 through 111.8 are deleted in their entireties and the following provisions shall be substituted therefor:

Section 111.1 Administrative Appeal Hearing

(a) An owner shall have the right to appeal the notice of violation to an Administrative Hearing Officer provided that a written application is submitted to the Code Official on or before the date designated in the notice.

(b) An application for an appeal hearing shall be based on a claim that (i) the provisions of Chapter 8.60 do not apply; (ii) the Code Official has incorrectly interpreted Chapter 8.60; and/or (iii) the requirements of Chapter 8.60 can be adequately satisfied by other means. The owner may not appeal a requirement imposed by Chapter 8.60. The intent of the appeal process is not to waive or set aside a requirement; it is to provide a means of reviewing a Code Official's decision on an interpretation or application of Chapter 8.60 or reviewing a Code Official's decision to approve or reject the equivalency of protection to a Chapter 8.60 requirement.

(c) Written notice of the hearing date and time shall be provided to the person requesting the hearing within 10 calendar days of the hearing request.

(d) The Administrative Hearing Officer shall affirm, modify or reverse the decision of the Code Official upon a determination that: (i) the notice of violation was served in accordance with TMC 8.60.080, subsection 107.3; (ii) the provisions of Chapter 8.60 apply; (iii) the Code Official has correctly interpreted Chapter 8.60; and/or (iv) the requirements of Chapter 8.60 cannot be adequately satisfied by other means. The Hearing Officer may order abatement of the violation, impose an administrative penalty, and assess the abatement costs against the owner.

(e) The Administrative Hearing Officer may administer oaths and affirmations, examine witnesses and receive evidence. The Hearing Officer may grant continuances where the officer finds that there is practical difficulty or undue hardship and that such extension is consonant with the general purpose to secure compliance with Chapter 8.60.

(f) ~~The order may be appealed to the district court in accordance with K.S.A. 60-2101 and amendments thereto.~~ Pursuant to K.S.A. 60-2101 and amendments

281 thereto, any person aggrieved by a determination issued by the administrative hearing
282 officer may appeal to the district court by doing all of the following:

283 (1) Submit a written notice of appeal to the City Clerk within 30 days of
284 the determination. The notice shall include: (i) the person's name, mailing
285 address, email address and telephone number; (ii) the date of the order; and (iii)
286 case number. The City Clerk shall memorialize the date of receipt of the notice
287 by file-stamp or another method and return a copy to the person.

288 (2) Submit a written request to the City Clerk for one copy of all
289 pertinent records relative to the proceeding including but not limited to any
290 recording or transcript of the proceedings. The request shall be submitted to the
291 City Clerk within 10 days of the date of receipt of the notice of appeal.
292 Prepayment of all copying and other fees set forth in TMC 2.10.120 shall be
293 required prior to production of the records.

294 (3) File with the Clerk of the Shawnee County District Court the
295 pertinent records prepared by the City Clerk within 60 days from the date of
296 receipt of the notice of appeal.

297 (4) Failure to file the records with the Clerk of the Shawnee County
298 District Court within the 60 day period may result in the appeal being dismissed
299 by the district court.

300 (5) Unless the person requests from the district court a stay of the
301 hearing officer's order within 70 days from the date of receipt of the notice of
302 appeal, the City may proceed with enforcement.

303 Section 9. That section 8.75.040, Hearing, of The Code of the City of Topeka,
304 Kansas, is hereby amended to read as follows:

Hearing.

(a) The Administrative Hearing Officer may administer oaths and affirmations, examine witnesses and receive evidence. The Hearing Officer may grant continuances where the officer finds that there is practical difficulty or undue hardship and that such extension is consonant with the general purpose to secure compliance with this chapter.

(b) If the Hearing Officer determines that: (1) the complaint was served in accordance with TMC 8.75.030; (2) the structure is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, such that it is unreasonable to repair the structure, the officer will provide findings to that effect, in writing, and shall issue an order which requires the owner to:

(1) Demolish and remove the structure within a prescribed period of time;

(2) Repair and/or make safe and sanitary the structure within a prescribed period of time if the structure is capable of being made safe by repairs;

(3) Board up the structure for future repair, subject to conditions; or

(4) Demolish or board up for future repair a structure under construction where construction has ceased for more than two years. Boarding the structure for future repair shall not extend beyond one year, unless approved by the Hearing Officer.

(c) Any order shall be served on the property owner pursuant to TMC 8.75.030 and a copy served personally or by first class mail to the other persons identified in TMC 8.75.030. Additionally, except for continuances, the order shall be

328 posted in a conspicuous place on the premises and filed with the Register of Deeds and
329 the clerk of the district court in which the property is located.

330 (d) ~~The order may be appealed to the district court in accordance with K.S.A.~~
331 ~~60-2101 and amendments thereto.~~Pursuant to K.S.A. 60-2101 and amendments
332 thereto, any of the parties identified in TMC 8.75.030 may appeal to the Shawnee
333 County District Court by doing all of the following:

334 (1) Submit a written notice of appeal to the City Clerk within 30 days of
335 the determination. The notice shall include: (i) the person's name, mailing
336 address, email address and telephone number; (ii) the date of the order; and (iii)
337 case number. The City Clerk shall memorialize the date of receipt of the notice
338 by file-stamp or another method and return a copy to the person.

339 (2) Submit a written request to the City Clerk for one copy of all
340 pertinent records relative to the proceeding including but not limited to any
341 recording or transcript of the proceedings. The request shall be submitted to the
342 City Clerk within 10 days of the date of receipt of the notice of appeal.
343 Prepayment of all copying and other fees set forth in TMC 2.10.120 shall be
344 required prior to production of the records.

345 (3) File with the Clerk of the Shawnee County District Court the
346 pertinent records prepared by the City Clerk within 60 days from the date of
347 receipt of the notice of appeal.

348 (4) Failure to file the records with the Clerk of the Shawnee County
349 District Court within the 60 day period may result in the appeal being dismissed
350 by the district court.

(5) Unless the person requests from the district court a stay of the hearing officer's order within 70 days from the date of receipt of the notice of appeal, the City may proceed with demolition.

Section 10. That original § 2.40.040, § 2.40.130, § 2.40.180, § 2.40.210, § 8.60.070 § 8.60.110 and § 8.75.040 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 11. This ordinance shall take effect on January 1, 2023, and be in force from and after its passage, approval and publication in the official City newspaper.

Section 12. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 13. 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 November 1, 2022.

CITY OF TOPEKA, KANSAS

Michael A. Padilla, Mayor

ATTEST:

Brenda Younger, City Clerk