

(Published in the Topeka Metro News February 12, 2024)

ORDINANCE NO. 20478

AN ORDINANCE introduced by Interim City Manager Richard Nienstedt concerning exterior property area maintenance provisions of the International Property Maintenance Code, amending § 8.60.140, § 8.60.070 and § 8.60.080 of the Topeka Municipal Code and repealing original sections.

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

Section 1. That section 8.60.140, Section 302 – Exterior property areas, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Section 302 – Exterior property areas.

Section 302.4, Weeds, is deleted in its entirety and the following provisions shall be substituted therefor:

WeedsVegetation.

(a) All premises and exterior property shall be maintained free from weeds or plant growth vegetation in excess of twelve inches in height.

(b) All noxious weeds, as defined by the Kansas Department of Agriculture pursuant to K.S.A. 2-1313a and amendments thereto, shall be prohibited. ~~Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however this term shall not include cultivated flowers and gardens.~~

(c) Vegetation means, but is not limited to, weeds, woody vines, volunteer saplings under four to six inches in diameter, shrubs, brush, grass and uncultivated plants; however this term shall not include cultivated trees, shrubs and vines and gardens, which are defined as areas cultivated for growth of vegetables, fruits, herbs, flowers, ornamental grasses and native plants. A native plant is any plant indigenous to

the local ecosystem.

(d) Notwithstanding subsection (a), an owner of undeveloped property that exceeds two acre is responsible for removing or destroying vegetation, except for grass or ground cover, within fifteen feet of any sidewalks, streets or adjacent property lines.

(e) Upon failure of the owner or agent having charge of the property to comply with Section 302.4 after service of a notice of violation, the person may be subject to prosecution in accordance with Section 106.3. Upon failure to comply with the notice, the City or its contractor may enter upon the property to remove or destroy the weeds and/or vegetation and assess the costs against the owner.

Section 2. 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) 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 106.4, Violation penalties, is deleted in its entirety and the following provisions shall be substituted therefor:

Administrative penalties.

(a) There shall be an administrative monetary penalty of \$100.00 imposed on the owner or, in the case of inoperative vehicles, the vehicle owner for each violation of this chapter that remains uncorrected after the time period stated in the notice of violation has elapsed.

(b) The administrative monetary penalty for a second or subsequent violation for which an administrative penalty has been imposed under this chapter that remains uncorrected after the time period stated in the notice of violation has elapsed for the same property within 12 months of the same or substantially same violation shall be \$200.00.

Section 106.5, Abatement of violations, is deleted in its entirety and the following provisions shall be substituted therefor:

(a) Abatement. Upon the expiration of the compliance period stated in the notice of violation, the Code Official shall inspect the property. The Code Official may grant an extension of time if the owner demonstrates that due diligence is being exercised in abating the violation. If the owner has failed to comply within the compliance period or has failed to timely request an appeal hearing, the Code Official may abate the violation and assess the costs against the owner. If the costs are not paid within 30 days, the cost may be collected pursuant to K.S.A. 12-1,115 and amendments thereto and/or charged against the property pursuant to K.S.A. 12-1617e, K.S.A. 12-1617f, K.S.A. 12-1755, or K.S.A. 17-4759 and amendments thereto.

(b) Fees. The costs incurred by the City for abatement, including any administrative costs, shall be paid by the owner or, in the case of inoperative vehicles, the vehicle owner. The administrative costs shall be:

General violations of the IPMC \$140.00

~~Weeds and grasses~~ Vegetation \$140.00

Inoperative vehicles \$175.00

Section 3. That section 8.60.080, Section 107 – Notices, of the Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Section 107 – Notices.

Section 107.2, Form, is deleted in its entirety and the following provisions shall be substituted therefor:

The notice prescribed in Section 107.1 shall include the following:

1. Description of the real estate sufficient for identification.

2. A statement that includes a description of the conditions and identifies violations of Chapter 8.60.

3. A statement that the property owner must abate the violation by the date designated in the notice.

4. A statement advising that any owner may request an appeal hearing before an Administrative Hearing Officer. The request shall be submitted to the Code Official on or before the date designated in the notice. The scope of the appeal shall be limited to the following: (i) whether the provisions of Chapter 8.60 apply; (ii) whether the Code Official has correctly interpreted Chapter 8.60; and/or (iii) whether the requirements of Chapter 8.60 can be adequately satisfied by other means.

121 5. A statement that if the violations(s) is not corrected or a hearing requested, the
122 City may impose administrative penalties, abate the violation, and assess the costs
123 against the owner.

124 6. A statement advising that failure to timely comply with the notice may result in
125 prosecution in Municipal Court regardless whether an administrative hearing is pending.

126 Section 107.3, Method of Service, is deleted in its entirety and the following
127 provisions shall be substituted therefor:

128 (a) Method of Service. Notice shall be served in one of the following manners:

129 1. Personal service; residence service. Delivering the notice to the
130 property owner or leaving the notice at the property owner's dwelling or usual
131 place of abode with someone of suitable age and discretion who resides there.

132 2. Personal service; residence service unsuccessful. If personal or
133 residence service cannot be made, service may be effected by: (i) leaving a copy
134 of the notice at the property owner's dwelling or usual place of abode; and (ii)
135 mailing to the property owner by first-class mail a notice that the copy has been
136 left at the dwelling or usual place of abode.

137 3. Personal service; legal entity. If the property owner is a legal entity,
138 service may be effected as follows:

139 (i) serving the notice on an officer, manager, partner or a resident,
140 managing or general agent;

141 (ii) leaving a copy of the notice at any business office with the
142 person having charge of the office; or

143 (iii) serving the notice on any agent authorized by appointment or

144 by law to receive service of process.

145 4. Certified mail, return receipt requested, to the last known address of the
146 property owner as reflected in the records of the County Appraiser.

147 5. Delivery failure. If the property owner or the property owner's agent has
148 failed to accept delivery of notice or otherwise failed to effectuate receipt of
149 notice during the preceding twenty-four month period, notice may be provided by
150 other methods, including but not limited to door hangers, conspicuously posting
151 notice on the property, personal notification, telephone communication, electronic
152 communication, or first class mail.

153 6. In addition to the methods identified in this section, but not in lieu of, the
154 Code Official may provide notice by other methods, including, but not limited to,
155 door hangers, conspicuously posting notice on the property, personal notification,
156 telephone or electronic communication, or first class mail.

157 7. As authorized by K.S.A. 12-1617f, the Code Official may provide a one-
158 time yearly written notice by mail or personal service to the owner or occupant
159 which will permit subsequent abatement mowings without any additional notice.
160 The notice shall also include a statement that no further notice shall be given
161 prior to cutting or removing ~~weeds~~vegetation.

162 (b) Proof of Service. Proof of service of the notice shall be certified at the time
163 of service by a written declaration under penalty of perjury executed by the person
164 effecting service, declaring the time, date and manner in which service was made.

165 Section 4. That original § 8.60.140, § 8.60.070 and § 8.60.080 of The Code of
166 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 City Council on February 6, 2024.

CITY OF TOPEKA, KANSAS

ATTEST:

Michael A. Padilla, Mayor

Brenda Younger, City Clerk