

1 (Published in the Topeka Metro News October 19, 2009)

2
3 **ORDINANCE NO. 19319**

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5 AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending
6 City of Topeka Code creating Article IX in Chapter 2 establishing an
7 appeals and administrative hearings procedure for the City.
8

9 WHEREAS, the City Council desires to establish a uniform procedure for the
10 appeal from a notice of violation or imposition of an administrative fee, charge or
11 penalty; and

12 WHEREAS, appeals should be directed to the appropriate department director so
13 that issues may be resolved, if possible, without the need for an administrative hearing;
14 and

15 WHEREAS, all appeals of administrative action should be done in an expedient
16 and fair manner and hearings scheduled as soon as possible to allow for a timely
17 resolution of issues.

18 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
19 TOPEKA, KANSAS:

20 CHAPTER 2, ARTICLE IX
21 APPEALS AND ADMINISTRATIVE HEARINGS PROCEDURE.

22 Section 1. That The Code of the City of Topeka, Kansas, is hereby amended
23 by adding a section to be numbered 2-486, Scope, which said section reads as follows:

24 **Scope.**

25 Appeals of a violation of the City Code or the imposition of a fee, charge or
26 penalty shall be governed by this article unless a different appeal procedure is specified
27 under this code or by state or federal law.

28 Section 2. That The Code of the City of Topeka, Kansas, is hereby amended
29 by adding a section to be numbered 2-487, Administrative appeals, which said section
30 reads as follows:

31 **Administrative appeals.**

32 (a) A person to whom a notice of a violation, other administrative action, or
33 the imposition of a fee, charge or penalty has been issued shall within the time period
34 stated in the notice:

35 (1) Correct the violation cited in the notice, if applicable; and/or

36 (2) Pay the indicated fee, charge or penalty

37 (b) Alternatively, a person to whom a notice of a violation, other administrative
38 action, or the imposition of a fee, charge or penalty has been issued may within ten (10)
39 business days from the date of the notice appeal all or part of the finding of the violation
40 or imposition of a fee, charge or penalty.

41 (1) The request for appeal must be in writing, give the person's full
42 name, and mailing address, and at least one other method of contact such as
43 telephone number or E-mail address, and must set forth the reasons for the
44 appeal. The request for appeal must be made to the director of the applicable
45 department. The director of the applicable department shall schedule an
46 administrative hearing to be held as soon as practicable but no later than (15)
47 fifteen business days of the request for appeal. Additionally, the director of the
48 applicable department shall serve personally or by first class mail written notice
49 to the person of the date and time of the hearing.

50 (2) The written request for an appeal hearing must be accompanied by
51 an appeal fee in an amount to be determined by the city manager. Appeal fees
52 will be refunded to the person appealing the finding of a violation or imposition of
53 an administrative fee, charge or penalty including the amount thereof, if the
54 administrative hearing officer does not find there was a violation.

55 (3) Compliance with this time limit within which an appeal must be filed
56 shall be a jurisdictional prerequisite to any appeal brought under this article, and
57 failure to comply shall bar any such appeal.

58 (4) The appeal shall be limited to the issues set forth in the request for
59 appeal.

60 (5) Filing of a request for appeal shall stay the action by the director of
61 the applicable department enforcing a finding of a violation or requiring payment
62 of an administrative monetary penalty until the administrative hearing officer has
63 made his or her decision.

64 Section 3. That The Code of the City of Topeka, Kansas, is hereby amended
65 by adding a section to be numbered 2-488, Administrative hearing procedure, which
66 said section reads as follows:

67 **Administrative hearing procedure.**

68 (a) Administrative hearings for the adjudication of the finding of a violation,
69 other administrative action, or the imposition of a fee, charge or penalty of this article
70 shall be conducted by a hearing officer appointed by the city. The selection and
71 contracting for the services of the administrative hearing officer shall be done in
72 accordance with the city's competitive bidding requirements.

73 **(b) The person requesting the appeal may appear pro se or, at his or her own**
74 **expense, by an attorney. An attorney who appears on behalf of any person shall file a**
75 **written entry of appearance with the hearing officer.**

76 **(c) The rules of evidence shall not apply in the conduct of the administrative**
77 **hearing.**

78 **(d) No violation, other administrative action or imposition of a fee, charge or**
79 **penalty may be sustained by the administrative hearing officer except upon proof by a**
80 **preponderance of the evidence.**

81 **(e) The city and the person requesting the appeal shall each be permitted one**
82 **continuance and the hearing officer may, on showing of good cause, grant a**
83 **continuance to a date certain.**

84 **Section 4.** That The Code of the City of Topeka, Kansas, is hereby amended
85 by adding a section to be numbered 2-489, Hearing determination and petition, which
86 said section reads as follows:

87 **Hearing determination and petition.**

88 **(a) Upon conclusion of the hearing, the hearing officer shall issue a**
89 **determination of:**

90 **(1) Whether or not the administrative action was taken in accordance**
91 **with city ordinances, whether or not a violation occurred and the amount of the**
92 **administrative monetary penalty, if applicable, for the relevant violation. Upon**
93 **issuance, such decision shall constitute a final determination.**

(2) Upholding the administrative action and/or imposition of an administrative fee, charge or penalty, including the amount thereof. Upon issuance, such decision shall constitute a final determination.

(b) The hearing officer may, if factual circumstances dictate, take the matter under advisement for a period no longer than ten (10) business days. In such instances and in the case of a determination adverse to the person requesting the appeal, the date of hearing officer's determination shall govern for purposes of the assessment of an administrative monetary penalty.

(c) If a person fails to respond to a notice of violation, other administrative action, or imposition of a fee or charge either by correcting the violation, if applicable, by payment of administrative penalty, by payment of the fee or charge or by making a written request within the specified time for an administrative hearing, a determination of liability, if any, shall be entered against the person. Such determination shall constitute a final determination.

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

PASSED AND APPROVED by the City Council October 13, 2009.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

APPEAL FEE SCHEDULE

The amount of the appeal fee will be determined by either the amount of the fee, charge or penalty stated in the notice or, in the event no fee, charge or penalty is stated, then the appeal fee shall be determined by the amount of the maximum monetary penalty which can be imposed by the administrative hearing officer if a violation is found.

FEE/CHARGE/PENALTY AMOUNT	APPEAL FEE
Notice of Weed or Nuisance Violation	No Fee
\$20.00 or less	\$5.00
\$20.01 to \$149.99	\$25.00
\$150.00 or more	\$50.00