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ORDINANCE NO. 19370

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., correcting certain sections of the codebook in preparation for its revision and codification, amending City of Topeka Code §§ 2-118, 2-363 through 2-365, 2-401, 2-479, 18-154, 26-4, 26-67, 26-76, 26-138, 26-420, 26-422, 26-607, 30-286, 30-288, 30-398, 30-441, 30-457, 38-2, 42-2, 42-3, 42-10, 66-101, 66-153, 70-36, 70-57, 74-32, 82-295, 82-298, 86-54, 98-131, 98-133, 98-211, 102-158, 106-74, 106-170, 112-5, 114-156, 130-161, 130-163, 142-63, 142-266, 142-401 through 142-404, 142-748, 146-30, 146-303, 146-351, 146-352, 146-458, 48-36.02, 48-18.02, 48-19.02, 48-20.02, 48-24.00, 48-24.03, 48-30.00, 48-30.01 and Article XXXV of Chapter 48 and specifically repealing said original sections and repealing in their entirety §§ 2-330, 30-60, 30-74, 34-1 through 34-7, 34-36 through 34-62, 34-91 to 34-98, 78-1, 78-261, 78-363 and 130-2.

WHEREAS, the City pursuant to K.S.A. 12-3014, *et seq.* is in the process of revising and codifying of its general ordinances as presently codified; and

WHEREAS, during the review of the existing codebook it has been discovered that certain existing sections needed to be amended to correct existing problems including, but not limited to, cross references to non existent sections; conflicts with other code sections or state law provisions and references to non existent staff positions; and

WHEREAS, it is desirable to make these corrections prior to the revision and codification of the City's codebook.

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

Section 1. That section 2-118, Reimbursements for conferences, seminars, conventions and shortcourses, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Reimbursements for conferences, seminars, conventions and shortcourses.

(a) *Employees eligible; authorization; reimbursements generally.* Benefit-eligible non-elected employees, and, in some cases, individuals appointed to special commissions, may be reimbursed for official travel and related expenses while carrying out official duties attending professional conferences, or attending directly job-related training courses or seminars which will benefit the city. Generally, no individual or employee shall attend more than two national and two state conferences in one year except with the approval of the relevant department head. Authorization for attending conferences, training sessions or related activities shall be made in advance and pursuant to departmental policies authorizing such attendance. Approval shall be obtained from the appropriate department head and the department head shall obtain approval from the ~~chief administrative officer~~ city manager for such employee's travel. Attendance at hearings and special official presentations shall not be subject to the limitations set forth in this section. Employees who become or are officers of a governing body of a professional organization related to typically assigned duties may be authorized to attend a reasonable but limited number of business sessions of such organizations in addition to other authorized meetings. Provided, there shall be no duplication of reimbursement for any expenses by the city if the professional organization pays the expenses in full or in part. Persons authorized to travel shall be reimbursed for actual air, bus or train fare, or equivalent reimbursement for personal use of an automobile, not to exceed in any event the typical air coach fare for such travel. Reimbursements shall be made for actual room costs for overnight lodging, taxi

fares, auto rental, if specifically authorized, meals, tips and other travel-related expenses upon proper presentation of appropriate itemized receipts. Persons seeking travel reimbursement shall certify and swear to the accuracy and legitimacy of all receipts submitted.

(b) *Elected officials.* Council members and the mayor may be reimbursed for official travel and related expenses in accordance with the resolutions passed by the council relating to out-of-state travel and upon the submittal of documentation confirming relevant expenditures.

(c) The procedure for reimbursements for official travel shall be established by rule and regulation as authorized by Charter Ordinance No. 94.

Section 2. That section 2-330, Stormwater utility enterprise fund, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Stormwater utility enterprise fund.~~

~~(a) All stormwater drainage fees collected by the city shall be paid into an enterprise fund which is hereby created, to be known as the "stormwater utility fund."~~

~~The fund shall be used for the purpose of paying operation, administration, and maintenance costs of the city's stormwater drainage facilities and to carry out all other purposes of the utility. To the extent that the stormwater drainage fees collected are insufficient to the needed stormwater drainage facilities, the cost of the drainage facilities may be paid from such city fund as may be determined by the city council, but the city council may order the reimbursement of such fund if additional fees are thereafter collected. When the fund has surplus dollars on hand in excess of current needs, the surplus dollars will be invested to return the highest yield consistent with~~

proper safeguards. Any interest earned on invested surplus dollars shall be placed in the stormwater utility fund.

~~(b) The fees and charges paid and other income received shall not be used for general or other governmental or proprietary purposes of the city, except to pay for the equitable share of the cost of accounting, management, and government thereof. Other than as described above, the fees and charges shall be used solely for the purposes stated herein.~~

Section 3. That section 2-363, Transfer of funds upon settlement of claim, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Transfer of funds upon settlement of claim.

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured and the company, and the final settlement exceeds seventy-five (75) percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company shall execute a draft payable to the city treasurer in an amount not to exceed the sum of fifteen (15) percent of the covered claim payment unless the ~~director of development services division~~ enforcement official has issued a certificate to the insurance company that the insured has removed the damaged building or other structure, as well as all associated debris, or has repaired, rebuilt or otherwise made the premises safe and secure.

(b) Companies insuring the building or other structure shall transfer such funds based on each company's pro rata share of the settlement of the covered claim.

Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required in this section, the insurance company shall provide the city with the name and address of the named insured, or insureds, the total insurance coverage applicable to the building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the ~~director of development services division~~ enforcement official shall contact the named insured or insureds by certified mail, notifying them that the insurance proceeds have been received by the city and apprise them of the procedures to be followed under this division.

Section 4. That section 2-364, Procedure upon receipt of moneys; investigation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Procedure upon receipt of moneys; investigation.

(a) Upon receipt of moneys as provided for by this division, the city treasurer shall immediately notify the director of development services division of such receipt, and transmit all documentation received from the insurance company to the director of development services division.

(b) Within twenty (20) days of the receipt of the moneys as provided by this division, the director of development services division shall determine, based upon investigation, whether the city shall instigate proceedings under the provisions of K.S.A. §§ 12-1750-~~1750~~ through 12-1756, as amended, and chapter ~~26~~112, article ~~XIV~~ of

126 this Code. For purposes of this division, the director of development services division
127 shall ~~have~~be the enforcement official with responsibility for determining an immediate
128 hazard, pursuant to K.S.A. § 12-1750 et seq. and the administrator of the environmental
129 code services program shall ~~have~~be the enforcement official with responsibility for
130 enforcement of chapter ~~26~~112, article ~~XIV~~IV of this Code.

131 (c) Prior to the expiration of the twenty (20) day period established in this
132 section, the ~~director of development services division~~enforcement official shall notify the
133 city treasurer whether the city intends to initiate proceedings under K.S.A. §§ 12-1750
134 ~~[1750]~~ through 12-1756, as amended, and chapter ~~26~~112, article ~~XIV~~IV of this Code.

135 (d) If the ~~director of development services division~~enforcement official has
136 determined that proceedings under K.S.A. §§ 12-1750 ~~[1750]~~ through 12-1756, as
137 amended, or chapter ~~26~~112, article ~~XIV~~IV of this Code shall be initiated, he or she will do
138 so immediately, but no later than thirty (30) days after receipt of the moneys by the city
139 treasurer.

140 (e) Upon notification to the city treasurer by the ~~director of development~~
141 ~~services division~~enforcement official that no proceedings shall be initiated under K.S.A.
142 §§ 12-1750 ~~[1750]~~ through 12-1756, as amended, or chapter ~~26~~112, article ~~XIV~~IV of this
143 Code the city treasurer shall return all moneys received to the insured or insureds as
144 identified in the communication from the insurance company. Such return shall be
145 accomplished within thirty (30) days of the receipt of the moneys from the insurance
146 company or companies.

147 Section 5. That section 2-365, Removal of structure; excess moneys, of The
148 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Removal of structure; excess moneys.

(a) If the ~~director of development services division~~enforcement official has proceeded under the provisions of K.S.A. §§ 12-1750-~~1750~~ through 12-1756, as amended, or chapter ~~26~~112, article ~~XIV~~ of this Code, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

(b) If the ~~director of development services division~~enforcement official, with regard to a building or other structure damaged by fire or explosion, or windstorm determines that it is necessary to act under K.S.A. § 12-1756 or section ~~26-553~~112-291 et seq of the Code, any proceeds received by the city treasurer under the authority granted in this division relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. § 12-1756 or section ~~26-553~~112-291 et seq of the Code. Upon reimbursement from the insurance proceeds, the ~~director of development services division~~enforcement official shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city treasurer under section 2-363, the ~~administrator of the director of development services division~~enforcement official shall publish a new lien in an amount equal to such excess expenses incurred.

Section 6. That section 2-401, Competitive bids; public buildings and improvements, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Competitive bids; public buildings and improvements.

Improvements to public buildings and facilities shall be in accordance with ~~Article XII of the charter ordinances as compiled through February 1997 and subsequent amendments~~ section A12-1 et seq., as may be amended; provided, however, items of routine maintenance, and repair which are authorized in the annual operating budget shall not be deemed public improvements asset forth in Article XII.

Section 7. That section 2-479, Defenses; waiver, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Defenses; waiver.

All civil claims against the city shall be processed and defended by the legal department of the city. Nothing contained in this division shall prohibit the legal department from obtaining outside counsel for additional assistance whenever the need arises, subject to the approval of the city manager; provided, that if an employee elects to retain counsel outside that provided by the city, without the consent of the city attorney, such employee waives the right to payment by the city of such attorney fees. Provided further, the city may refuse to provide employee defense of an action if the city determines that:

- (1) The act or omission was not within the scope of the employee's employment;
- (2) The employee acted or failed to act because of actual fraud or actual malice;
- (3) The city's defending would create a conflict of interest between the city and the employee; or

(4) The employee fails to deliver written notice to the city clerk within fifteen
(15) days of service of summons as required by this article.

Section 8. That section 18-154, Confinement—Generally, of The Code of the
City of Topeka, Kansas, is hereby amended to read as follows:

Confinement--Generally.

All pit bull dogs shall be securely confined indoors or in a securely and locked
pen, ~~or~~ kennel, or structure, except when leashed and muzzled as provided in section
18-153. Such pen, kennel or structure must have secure sides and a secure top
attached to the sides. All structures used to confine registered pit bull dogs must be
locked with a key or combination lock when such animals are within the structure. Such
structure must have a secure bottom or floor attached to the sides of the pen or the
sides of the pen must be embedded in the ground no less than two feet. All structures
erected to house pit bull dogs must comply with all zoning and building regulations of
the city. All such structures must be adequately lighted and ventilated and kept in a
clean and sanitary condition.

Section 9. That section 26-4, Same—Failure to repair, of The Code of the City
of Topeka, Kansas, is hereby amended to read as follows:

Same--Failure to repair.

It shall be unlawful for any owner, agent or person having charge of any building
~~who shall~~to fail, refuse or neglect to make any changes or repairs to any such
basement, cellar or areaway adjacent to the building within ten days after notice of
condemnation and notice of the character or changes or repairs required to be made.

216 Section 10. That section 26-67, Members, of The Code of the City of Topeka,
217 Kansas, is hereby amended to read as follows:

218 **Members.**

219 The commission shall be comprised of seven (7) members. The commission
220 shall be appointed as follows:

221 (1) One member shall be appointed by the mayor of the city with the approval
222 of the city council. Such member shall serve at the pleasure of the mayor and shall be
223 the chairperson of the commission;

224 (2) Six (6) members shall be appointed by the mayor of the city with the
225 approval of the city council for terms of four (4) years. Members shall not serve beyond
226 the end of their appointed terms. Upon expiration of a term the position shall remain
227 vacant until a successor is appointed. Of the members appointed under this provision,
228 one shall be a representative of the secretary of administration of the State of Kansas,
229 one shall be a representative of the governing body of Shawnee County, and one shall
230 be a representative of the governing body of Unified School District No. 501. The
231 member who is the representative of the secretary of administration shall be appointed
232 from three (3) nominations submitted by the secretary of administration. The member
233 who is the representative of the governing body of Shawnee County shall be appointed
234 from three (3) nominations submitted by the governing body of Shawnee County. The
235 member who is the representative of Unified School District No. 501 shall be appointed
236 from three (3) nominations submitted by the governing body of Unified School District
237 No. 501. The four (4) members appointed directly by the mayor shall be residents of the
238 city. ~~The initial term of the members appointed pursuant to this division shall begin with~~

the expiration of the term of the members appointed pursuant to Topeka City Code section 22-67, which date is March 3, 2002. The initial term of the three (3) members appointed from the list of nominations shall expire on May 1, 2003. The initial term of the remaining three (3) members shall expire on May 1, 2005. In the case of the death, incapacity, resignation or disqualification of any member of the commission, the mayor of the city shall appoint with the approval of the city council a new member for the unexpired term of the deceased, incapacitated, resigned or disqualified member in accordance with the provisions of this section. The members of the commission shall serve without compensation.

Section 11. That section 26-76, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Industry means and includes any corporation, firm or partnership which carries on a business within the city limits which is:

- (1) A public utility operating under a franchise granted by the city;
- (2) A railroad operating under the control of the Interstate Commerce Commission; or
- (3) A business whose business activity is specifically permitted by the use regulations of I-1 light industrial, ~~I-P industrial park~~ or JL-2 heavy industrial district.

261 *New construction* means the erection of any new building or other facility, either
262 detached from existing buildings or facilities or attached but constituting a substantial
263 enlargement of ground surface area or cubical content of an existing building or facility.

264 *Qualified industry* means any industry which has applied for and received a class
265 B license pursuant to the provisions of this article.

266 *Technical activities* means the doing of any work by the industry itself or the use
267 or installation of any materials, parts or equipment which is subject to regulation by the
268 city under one or more of the technical codes.

269 *Technical codes* means the building code, plumbing code, electrical code,
270 mechanical code and solar energy code which are adopted by the city.

271 Section 12. That section 26-138, Board of building and fire appeals, of The
272 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

273 **Board of building and fire appeals.**

274 (1) There is hereby created a board of building and fire appeals consisting of
275 seven members appointed by the mayor and confirmed by the council. The members of
276 the board shall be currently licensed or engaged in or have substantial past experience
277 in the following fields or professions: licensed professional engineer, licensed architect,
278 licensed commercial contractor, or other experienced professional working in a field
279 related to building construction. The board shall always consist of at least two
280 engineers, two architects, and one contractor. Members shall serve a two-year term.
281 Members shall not serve beyond the end of their appointed terms. Upon expiration of a
282 term the position shall remain vacant until a successor is appointed. The city attorney,
283 city's fire ~~marshal~~chief and development services director or their designees shall serve

as nonvoting ex officio members of the board. The development services director or his or her designee shall serve also as secretary of the board. Copies of current adopted codes will be made available to board members.

(2) The board of building and fire appeals shall adopt reasonable rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the development services director and the fire chief with a duplicate copy to the appellant.

(3) The board of building and fire appeals shall determine the suitability of alternate materials, methods and type of construction and provide for reasonable interpretations of the provisions of the Commercial and Residential Building Codes, Building Conservation Code, the Fire Code and Life Safety Code, as adopted by the council. The board shall be empowered to hear and determine interpretations of the codes and to permit variances from the code provisions in certain cases or situations in accordance with the purposes and intents of the code. A variance shall not be granted except in those situations, as determined by the board, that will not endanger life or limb, health, property or public welfare. Where a variance is sought with respect to a structure registered, or eligible for registration, with either the National Register of Historic Places or the Register of Historic Kansas Places, or listed with the Kansas State Inventory of Historical Sites, the board shall specifically consider the structure's historic significance in reaching its decision, exerting an affirmative effort to preserve the structure's quality in effecting any necessary changes. Pursuant to this goal, the board shall request the opinion of the Director of the Historic Preservation Department of the State Historical Society.

(4) An exception or variance relating to the commercial and residential building codes and building conservation code, may be vetoed by the development services director. An exception or variance relating to the Fire Code and Life Safety Code may be vetoed by the fire chief. Requests for exceptions or variances which have been denied and matters vetoed may be appealed to the council by filing within ten days of the effective date of the denial or veto, in writing, with the city clerk, a request for a hearing before the council. Within five days of the receipt of this request for a hearing, the council shall give notice of a public hearing to be held in not less than five days nor more than ten days after service of the notice on the person requesting the hearing.

(5) The board of building and fire appeals may request other boards and commissions of the city, including the electrical, mechanical or plumbing boards to provide technical assistance and recommendations. In addition, the board of building and fire appeals shall require substantiating data or tests to determine the suitability and feasibility of allowing the variance requested by the applicant.

(6) The person requesting the variance relating to the Commercial or Residential Building Codes or the Building Conservation Code adopted by the council shall at such person's expense conduct tests and have these tests verified showing that the variance requested will not endanger life or limb, health, property or public welfare. Such tests shall have been conducted before the hearing unless the board asks for additional testing pertaining to relevant circumstances that may affect the decision made by the board.

(7) A filing fee of \$100.00 shall be paid in advance by any party appealing to the board.

Section 13. That section 26-420, 412.1 Fixture count, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

412.1 Fixture count.

412.1 Fixture Count is hereby deleted in its entirety and the following provisions shall be substituted therefore:

Fixture Count. Plumbing fixtures shall be provided for the type of building occupancy and in the minimum number shown in Table 2902.1 of the International Building Code, 2006 Edition ~~and the City of Topeka Code Section 26-160.~~

Section 14. That section 26-422, 508.4, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

508.4.

508.4 is hereby deleted in its entirety and the following provisions shall be substituted therefore:

When a water heater is located in an attic, attic-ceiling assembly, floor-ceiling assembly, or floor-subfloor assembly where damage may result from a leaking water heater, a watertight pan of plastic or non-corrosive materials having a minimum size of twenty-four (24) inches square or twenty-four (24) inches in diameter with a minimum two (2) inch lip shall be installed beneath the water heater with a minimum three-quarter (3/4) inch (20 mm) diameter drain to an approved location.

Section 15. That section 26-607, Application; fee, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Application; fee.

(a) A person desiring a moving permit shall file an application with the development coordination office on a form provided by such office. Along with the application the applicant shall:

(1) Submit a written document from any affected utility stating whether it will be necessary to cut and move, raise or in any way interfere with any wires, cables or other aerial equipment of any public or municipally-owned utility, and if so, the application shall state also the name of such public or municipally-owned utility, and the time and location that the applicant's moving operations shall necessitate the cutting, moving, raising or otherwise interfering with such aerial facilities.

(2) Submit a legal description of current and future locations of the structure.

(3) Submit a proposed map to be used in the moving of the structure.

(4) Submit the address of current and future locations of the structure.

(5) Submit the name of the moving company if applicable.

(6) Submit a fee for the moving permit in the amount of \$75.00.

(7) Submit proof of public liability insurance with limits of liability of not less than \$25,000.00 for bodily injury to any one person and \$50,000.00 for bodily injuries in any one accident to property in any one accident.

(8) Submit a schedule for moving of the structure as provided by the police department pursuant to section 26-583.

(b) If the structure is to be relocated within the city, the following additional requirements shall apply:

(1) Pay a relocation fee of \$125.00.

(2) Before the structure is removed, a footing and/or footing and foundation for the structure must be in place.

(3) Upon relocation of a one or two family dwelling, the structure must comply with the housing code, City of Topeka Code ~~section 82-31 et seq~~ Chapter 112, Article III.

(Inspections for compliance with such standards may require onsite testing at the applicant's expense.)

(c) Upon submission of all required information, payment of the applicable fee and approval by the city engineer and city forester, the development coordination office shall issue the moving permit.

Section 16. That section 30-60, Circuses, menageries, shows and other attractions, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Circuses, menageries, shows and other attractions.~~

~~(a) Each circus, menagerie, dog and pony show, wild west show or any similar organization or attraction shall pay the following fees:~~

~~(1) Using rail cars or coaches for its transportation by rail:~~

~~a. First day, per railroad car or coach . . . \$ 5.00~~

~~(Not to exceed \$300.00 for the first day.)~~

~~b. Each day thereafter, per railroad car or coach . . . 3.00~~

~~a. Per day . . . 50.00~~

b. ~~Per week . . . 150.00~~

~~(b) Any show, display and exhibit, except any circus, operating in the Sunflower State Expo, is hereby exempted from paying any license fee to the city during the dates of the Sunflower State Expo.~~

~~(c) Any circus operating in the Sunflower State Expo shall pay to the city clerk a license fee of \$300.00, the license fee to cover the exhibitions presented during the time of the Sunflower State Expo; provided, that no show, display or exhibit mentioned in this section which is exempt from a license shall be allowed to conduct any parade over the streets of the city.~~

~~(d) For every circus, menagerie, dog and pony show, wild west show or similar attraction held in the city and located outside the Sunflower State Expo during the days in which the Sunflower State Expo is in actual operation or on Labor Day, the license fee shall be \$1,500.00 per day.~~

~~(e) In all cases, the license fee levied by this section shall be due and payable when the circus, menagerie, dog and pony show, wild west show or similar attraction is unloaded from the cars or coaches.~~

Section 17. That section 30-74, Septic tank and vault cleaner, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Septic tank and vault cleaner.~~

~~The license fee on cleaners of privy vaults and septic tanks shall be \$35.00 per year.~~

Section 18. That section 30-286, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

For the purpose of this chapter, the following words as used herein shall be considered to have the meanings herein ascribed thereto:

Canvasser or *solicitor* means any individual, whether resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whosoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not.

Peddler means any person, whether or not a resident of the city or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, automotive vehicle, or conveyance, and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler.

Residence means and includes every separate living unit occupied for residential purpose by one or more persons contained within any type of building or structure.

443 *Soliciting* means and includes any one or more of the following activities:

444 (1) Seeking to obtain order for the purpose of selling goods, wares,
445 merchandise, foodstuffs, services, of any kind, character or description
446 whatsoever, for any kind of consideration whatsoever; or

447 (2) Seeking to obtain subscriptions to books, magazines, periodicals,
448 newspapers and every other type or kind of publication.

449 *Street salesman* means any person engaged in any manner in selling
450 merchandise of any kind from a wagon or stand temporarily located on the public
451 streets or sidewalks of this city as authorized by the governing body.

452 *Transient merchant or vendor, itinerant merchant or itinerant vender* means any
453 person, whether as an owner, agent, consignee or employee, whether a resident of the
454 city or not, who engages in a temporary business of selling and delivering goods, wares
455 and merchandise within such city, and who, in furtherance of such purpose, hires,
456 leases, uses or occupies any building, structure, motor vehicle, or public room in hotels,
457 lodging houses, apartments, shops or any street, alley or other place within the city, for
458 the exhibition and sale of such goods, wares and merchandise, either privately or at
459 public auction. Such definition shall not be construed to include any person who, while
460 occupying such temporary location, does not sell from stock, but exhibits samples only
461 for the purpose of securing orders for future delivery only. The person so engaged shall
462 not be relieved from complying with the provisions of this article merely by reason of
463 associating temporarily with any local dealer, trader, merchant or auctioneer, or by
464 conducting such transient business in connection with, as a part of, or in the name of
465 any local dealer trader, merchant or auctioneer.

Section 19. That section 30-288, Prohibited acts, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Prohibited acts.

It shall be unlawful for any transient merchant to:

(1) Sell, offer or expose for sale any goods, wares or merchandise within 500 feet from any property on which any public or private school building is located.

(2) Conduct business or carry on activities in violation of any zoning requirements of the city, including setback requirements.

(3) Conduct business or carry on activities except in areas zoned ~~F neighborhood shopping~~ C-2 commercial, ~~GC-4~~ commercial, ~~H business~~ C-5 commercial, ~~I-1~~ light industrial, ~~JL-2~~ heavy industrial, ~~I-P industrial park~~ PUD planned unit development or planned business centers.

(4) Conduct business or carry on activities until one-half hour before sunrise or after one-half hour past sunset or at any time that would cause the need for the use of artificial lighting other than existing lighting.

(5) Fail to provide adequate parking for customers or other such persons going to and from the activity conducted by the transient merchant, or to allow or encourage any traffic or parking congestion which interferes with traffic flow or the use of such parking facilities by permanent businesses entitled to use such parking areas. In no event shall the total floor area used by the transient merchant cause a reduction in the number of parking spaces to a number less than the number required by the zoning laws for adjacent buildings or other zoned land uses. Additionally, in calculating the number of parking spaces needed, the total floor area used outside existing structures

by the transient merchant shall be added to the floor area of those existing structures. For purposes of calculating total floor area, the areas where any part of the activity is physically located, including merchants' vehicles, mechanical devices, and open spaces used as accessways, aisles, or for purposes of promoting the activity or sales, shall be included.

(6) Use any electronic device for amplification in an outdoor area or to otherwise create, or gather people who create, noise sufficient so as to disturb the peace, quiet or repose of surrounding residential or commercial areas.

(7) Provide any false or misleading information in completing the license application or to fail to obtain permission of the property owner where such activity is being conducted.

(8) Fail to provide, at the request of the purchaser or customer, a written receipt for purchases exceeding \$5.00.

(9) Fail to provide any customer, or other such person, with his name, the name of the company or organization represented, the name of the product, or to make any representation as to identity which is false or misleading.

(10) Fail to allow authorized law enforcement officers or city employees to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business.

(11) Fail to remove any structure, device, trash or debris caused, created or associated with the transient merchant's activities in an outdoor area.

(12) Erect or display more than one sign or any sign greater than 16 square feet in total area. A separate sign permit shall not be required.

(13) Erect or construct any structure, tent or building greater than 120 square feet.

(14) Conduct business or carry on activities within 50 feet of any driveway entrance or access lane from a public street to an existing business.

(15) Conduct or carry on more than one transient merchant business or activity on the same property at any one time.

(16) Conduct business or carry on activities within the city right-of-way or other publicly owned property.

Section 20. That section 30-398, Vehicles, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Vehicles.

The vehicles used in the conduct of business of the private security firm within the city shall not be the same color nor sufficiently similar in appearance that a reasonable person could confuse them with vehicles used by the uniform patrol division of any law enforcement agency authorized by the State of Kansas to operate within the City of Topeka. Once determined, the color and appearance of such vehicles shall not be changed except by mutual agreement between the chief of police and the private security firm. In the event the private security firm and the chief of police cannot agree, the matter will be submitted to the ~~chief administrative officer~~city manager, whose decision shall be binding on the chief of police and private security firm. While such vehicles may be equipped with red and/or blue emergency lights or sirens, it shall be unlawful to operate such lights or sirens on the streets and highways inside the city limits while the vehicle is in motion. Additionally, no insignias shall be affixed to the

sides thereof which are similar in appearance to or which a reasonable person could confuse with that affixed to the sides of the vehicles used by the city.

Section 21. That section 30-441, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

As used in this article, the following words shall have the following meanings:

Adequate insurance shall mean insurance covering the alarm business and its agents and employees with coverage limits that meet or exceed the limits set forth in Topeka City Code section 30-422.

Alarm business means any business operated by a person who engages in the activity of selling, providing, altering, installing, leasing, maintaining, repairing, replacing, moving, or servicing an alarm system or which causes any of these activities to take place. Such term shall also include alarm servicing companies who engage in the activity of monitoring alarm systems.

Alarm system means an assembly of equipment or devices or a single device arranged to signal the presence of a hazard requiring urgent attention and to which law enforcement, fire or emergency medical personnel are expected to respond; provided, however, that this term includes externally audible and/or visual on-premises alarm systems but does not include smoke detectors and other alarms designated to merely give internal on-premises notification of an alarm condition.

~~*Chief administrative officer* means the chief administrative officer of the City of Topeka appointed pursuant to City of Topeka Code section A2-31.~~

557 *Chief of police* means the chief of police of the city or a designated
558 representative.

559 *City* means the City of Topeka, Kansas.

560 *Conviction* shall mean a guilty finding or adjudication as a juvenile offender of a
561 criminal offense prohibited by federal, state or local law, and shall include expunged
562 convictions, diversions or deferred prosecutions.

563 *External audible and/or visual on-premises alarm system* means an alarm
564 system designed to emit audible and/or visual signals at or on the premises upon which
565 the alarm system is installed and which causes notification of such alarm system
566 activation to be made to the Shawnee County Consolidated Emergency
567 Communications Center.

568 *Monitor* means the person or business who shall be responsible for determining
569 that an alarm system located within the city has been activated and who notifies the
570 Shawnee County Consolidated Emergency Communications Center of the alarm
571 activation.

572 *Person* means any person, firm, partnership, association, corporation, company
573 or organization of any kind.

574 *User* means any person who has a functioning alarm system on premises under
575 the person's control.

576 Section 22. That section 30-457, Revocation or suspension of license, of The
577 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

578 **Revocation or suspension of license.**

(a) The police chief, after notice and a hearing, may revoke or suspend an alarm business license issued hereunder if, after investigation, the police chief determines that the licensee, or if the licensee is an organization, any of its officers, directors, partners, associates or employees has:

(1) Made any false statement or given any false information in connection with an application for a license or a renewal or a reinstatement thereof;

(2) Violated any provision hereof;

(3) Committed any act which would be grounds for denial of an application for a license;

(4) Failed to report to the chief of police within five business days, any charge, arrest, judgment, conviction, sentencing or diversion for a criminal act set forth in division 2 that constitutes a reason for denial of a license.

(b) If the police chief revokes an alarm business license under the provisions of this section, the following procedure will apply:

(1) The police chief shall send to the licensee by certified mail, return receipt requested, written notice of the revocation, which shall include:

a. Reason for revocation;

b. Effective time and date of revocation;

c. A statement regarding any action which may be taken so the license may be reinstated;

d. The date by which the licensee must surrender the license to the police chief; and

e. A statement of the right to reconsideration of, and appeal from, the revocation and the procedure to be followed.

(2) The licensee may request reconsideration of the revocation by the police chief by filing a written request for a hearing within ten days after receipt of the notice of revocation. The filing of the request for hearing shall stay the action of the police chief in revoking the license until the ~~chief administrative officer~~city manager makes a final decision.

(3) If a request for hearing is not made within the ten days, the action of the police chief shall be final.

(4) The ~~chief administrative officer~~city manager shall serve as hearing officer on a reconsideration of a notice of revocation under this section and shall consider evidence presented by any interested person. The ~~chief administrative officer~~city manager shall make a decision on the basis of a preponderance of the credible evidence presented at the hearing, which shall be recorded.

(5) The ~~chief administrative officer~~city manager shall render a decision within ten days of the hearing and that decision shall affirm, reverse or modify the action of the police chief. The ~~chief administrative officer~~city manager shall send to the licensee by certified mail, return receipt requested, written notice of the decision with a copy to the police chief. This written notice shall include:

a. If the action of the police chief is affirmed--The reason for such and date by which the licensee must surrender the license to the police chief;

b. If the action of the police chief is reversed--The reason for the reversal;

c. If the action of the police chief is modified--The reason for the modification decision and the extent of the modification;

d. The right of the licensee to appeal the decision of the hearing officer to the governing body of the city.

(6) In the event a licensee desires to appeal the decision of the ~~chief administrative officer~~city manager to the governing body of the city, notice of such appeal shall be filed with the city clerk within ten days of the issuance of the ~~chief administrative officer~~city manager's opinion. Upon receipt of such notice, the city clerk shall notify the ~~chief administrative officer~~city manager who shall prepare the record of the hearing to include the transcript and exhibits and forward said record to the city clerk within ten days. The governing body of the city shall review the record so presented and either affirm or reverse the action of the ~~chief administrative officer~~city manager. All such appeals to the governing body shall be on the record.

(c) If a license is revoked under this section, the licensee may be issued a new license if the reason for revocation is removed, the police chief is notified in writing of such removal, and the former licensee follows the procedure set forth herein for applying for an original license.

Section 23. That section 34-1, Short title, of The Code of the City of Topeka, Kansas, is hereby repealed.

Short title.

647 ~~This chapter shall be known and may be cited as the "Topeka Cable Franchise~~
648 ~~Ordinance."~~

649 Section 24. That section 34-2, Definitions, of The Code of the City of Topeka,
650 Kansas, is hereby repealed.

651 **~~Definitions.~~**

652 ~~The following words, terms and phrases, when used in this chapter, shall have~~
653 ~~the meanings ascribed to them in this section, except where the context clearly~~
654 ~~indicates a different meaning. When not inconsistent with the context, words used in the~~
655 ~~present tense include the future, words in the plural number include the singular number~~
656 ~~and words in the singular number include the plural number. The words "shall" and "will"~~
657 ~~are mandatory, and "may" is permissive. Words not defined in this section shall be~~
658 ~~given the meaning set forth in the Cable Communications Policy Act of 1984, 47 U.S.C.~~
659 ~~section 521 et seq., as amended, and, if not defined therein, shall be given their~~
660 ~~common and ordinary meaning.~~

661 ~~*Affiliate*, when used in relation to any entity, means another person or other~~
662 ~~entity that owns or controls, is owned or controlled by, or is under common ownership or~~
663 ~~control with such entity.~~

664 ~~*Applicant* means any person or entity who shall have filed a written application~~
665 ~~for a franchise under this chapter as herein provided.~~

666 ~~*Basic service* means any service tier which includes the retransmission of local~~
667 ~~television broadcast signals, or such other definition as may be adopted by federal law.~~

668 ~~*Cable act* means the Cable Communications Policy Act of 1984, 47 U.S.C.~~
669 ~~section 521 et seq., as amended during the term of a franchise.~~

670 ~~Cable ordinance~~ means the city cable franchise ordinance.

671 ~~Cable system~~ means a facility consisting of a set of closed transmission paths
672 and associated signal generation, reception and control equipment that is designed to
673 provide cable service which includes video programming and other telecommunication
674 services and which is provided to multiple subscribers within the city, but the term "cable
675 system" does not include:-

676 (1) ~~A facility that serves only to retransmit the television signals of one or more~~
677 ~~television broadcast stations;~~

678 (2) ~~A facility that serves only subscribers in one or more multiple unit dwellings~~
679 ~~under common ownership, control or management, unless such facility uses any public~~
680 ~~right-of-way;~~

681 (3) ~~A facility or a common carrier which is subject, in whole or in part, to the~~
682 ~~provisions of title II of the Communications Act of 1934, except that such facility shall be~~
683 ~~considered a cable system except to the extent such facility is used in the transmission~~
684 ~~of video programming directly to subscribers; or~~

685 (4) ~~Any facilities of any electric utility used solely for operating its electric utilities~~
686 ~~system.~~

687 The foregoing definition of cable system is not intended to limit the authority of the city
688 to regulate the activities of any other communications system or provision of
689 communications services. Any reference to a grantee's cable system includes the cable
690 system or any part, facility, device or fixture which constitutes or is used as part of that
691 cable system, including converters.

~~City or Topeka means the City of Topeka, Kansas, and all departments, agencies and commissions thereof.~~

~~Construct, operate or repair (or maintain), when used in connection with any facility (including a grantee's cable system, and any part thereof), refers to any action taken by the owner or lessor of a facility related to the operation of that facility, including but not limited to construction, installation, maintenance, operational testing, operation, upgrades, expansion, locating and relocating the facility, maintaining, upgrading and rebuilding it, and taking any other action with respect to the facility as a whole or any part thereof.~~

~~Days. Unless otherwise specified, all references to a number of days in this chapter shall mean calendar days.~~

~~Franchise means the nonexclusive authorization granted pursuant to this chapter by the city to a grantee to construct, maintain and operate a cable system under, on and over streets within all or specified areas of the city. The terms and conditions of this chapter and any franchise agreement between the grantee and the city, collectively, constitute the franchise. The term "franchise" does not include any other license, permit or agreement that may be required for the privilege of transacting and carrying on a business within the city or for disturbing the surface of any street.~~

~~Franchise agreement means a contract between the city and a grantee, entered into in accordance with the terms of this chapter and which, together with this chapter, constitute the franchise.~~

~~Franchise area~~ means the geographic area for which a franchise is issued. The franchise area may be specified to authorize provision of service not only in areas within the existing city limits, but also other areas, as those areas are annexed in the future.

~~Grantee~~ means any person to whom a cable franchise is granted by the city council.

~~Gross revenues~~ means all cash, credits, property, or other consideration of any kind or nature received directly or indirectly by a grantee, its affiliates, or any other person which constitutes a cable operator under the cable act from any source whatsoever arising from, attributable to, or in any way derived from the operation of that grantee's cable system within the city. Gross revenues include, but are not limited to, fees charged subscribers for basic service; fees charged subscribers for any optional, premium, per-channel or per-program service; monthly fees charged subscribers for any tier of service other than basic service; installation, disconnection, reconnection and change-in-service fees; leased channel fees; fees or payments received from programmers for carriage of programming on the system; converter rentals or sales; studio rental, production equipment and personnel fees; advertising revenues, including a per capita share of advertising revenues for advertising carried on more than one cable system; revenues from home shopping channels; sales of programming guides; revenue from other telecommunication services; and such other revenue sources as may now exist or hereafter develop. Gross revenues also include, but are not limited to, any contributing agent or subsidy. This definition shall be interpreted in a manner which permits the city to collect the maximum franchise fee permitted by law. Gross revenues shall not include any taxes on services furnished a grantee and imposed directly upon

any subscriber or user by the state, city or other governmental unit and collected by a grantee on behalf of such governmental unit. The amount paid as a franchise fee cannot be deducted from gross revenues.

~~Law means all duly enacted federal, state, county or city laws, ordinances, resolutions, regulations or orders.~~

~~Public property means any real property owned by the city or any other governmental unit that is not otherwise defined herein as a street.~~

~~Street means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, right-of-way, easement or other public way existing within the city that, within its proper use and meaning and consistent with the terms, conditions and provisions pursuant to which the same was created, is properly used for the purpose of installing, maintaining and operating a cable system.~~

~~Subscriber means any person or entity lawfully receiving service from a grantee.~~

~~Transfer means the sale, lease, assignment, mortgage, consolidation, merger or any other disposition of the franchise, or any change in the ownership or control of the grantee or any person which owns, controls or manages grantee directly or through one or more intervening partnerships or corporations.~~

Section 25. That section 34-3, Intent and purpose, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Intent and purpose.~~

~~(a) The city finds that the existence of cable television systems within its environs has the potential of having great benefit and impact upon the residents of the city if properly regulated in accordance with law to protect the public interest. The city further finds that the public convenience, safety and general welfare can best be served through a franchising process that specifies certain of the conditions under which service is to be provided for a franchise term, yet also preserves the ability of the city to ensure that optimal use is made of the public streets and rights-of-way that are used by cable television systems, including by permitting the city to ensure that cable television systems meet the cable-related needs and interests of Topeka.~~

~~(b) It is the intent of the city and the purpose of this chapter to promote the public health, safety and general welfare by providing for the grant of one or more franchises for the construction, operation and repair of cable television systems within the city; to provide for the regulation, to the extent not prohibited by law, of each cable system within the city in the public interest; to provide for the payment of compensation by each grantee to the city for the use of streets by its cable system; to promote the widespread availability of quality cable service to city residents and businesses, the city, and other public institutions; to encourage the development of cable and other communications technologies and cable systems as a means of communication between and among members of the public, city businesses, the city, and other public institutions; to promote competitive cable rates and services; to promote the safe and efficient use of public streets and rights-of-way; to optimize the use of the valuable and scarce public property used by cable television systems; to promote the general development of Topeka; and to encourage the provision of a diversity of information~~

sources to city residents, businesses, the community, the city, and other public institutions by cable technology.

Section 26. That section 34-4, Amendments to cable ordinance and franchise agreement, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Amendments to cable ordinance and franchise agreement.~~

~~(a) This cable ordinance shall not constitute a contract between the grantee and the city. The city may amend any provision of this chapter and may adopt regulations consistent with this chapter that it finds necessary in the exercise of the police power. This includes, without limitation, the right to alter the insurance and security fund requirements herein, to account for inflation or changes in the risk to the city. Amendments to this chapter in direct conflict with specific provisions of a grantee's franchise agreement shall not be effective for that grantee, unless otherwise provided by this chapter or the franchise agreement, or the amendment involves an exercise of the city's lawful police power.~~

~~b) Franchise agreements may authorize a grantee to provide additional services, in addition to those authorized by section 34-41, subject to appropriate additional conditions to protect the public interest. The city shall amend any franchise agreement upon the application of the grantee when necessary to enable the grantee to take advantage of developments in the field of telecommunications that, in the opinion of the city, will afford the grantee an opportunity to serve its customers more efficiently, effectively and economically. Such amendments shall be subject to such conditions as the city determines are appropriate to protect the public interest.~~

803 Section 27. That section 34-5, No waiver, of The Code of the City of Topeka,
804 Kansas, is hereby repealed.

805 ~~**Sec. 34-5. No waiver.**~~

806 ~~(a) The failure of the city, upon one or more occasions, to exercise a right or to~~
807 ~~require compliance or performance under a franchise or any other applicable law shall~~
808 ~~not be deemed to constitute a waiver of such right or a waiver of compliance or~~
809 ~~performance, unless such right has been specifically waived in writing.~~

810 ~~(b) Waiver of a breach of a franchise agreement or this chapter is not a waiver~~
811 ~~of any similar or different breach. Neither the granting of a franchise or any provision in~~
812 ~~this chapter shall constitute a waiver or bar to the exercise of any governmental right or~~
813 ~~power of the city, including without limitation the right of eminent domain.~~

814 Section 28. That section 34-6, Effect of preemption; federal and state law, of
815 The Code of the City of Topeka, Kansas, is hereby repealed.

816 ~~**Effect of preemption; federal and state law.**~~

817 ~~Grantee must comply with all applicable provisions of federal and state law,~~
818 ~~except to the extent those provisions are lawfully superseded by a provision of this~~
819 ~~franchise. If the city's ability to enforce any franchise provision is finally and conclusively~~
820 ~~preempted, then the provision shall be deemed preempted but only to the extent and for~~
821 ~~the period the preemption is required by law. If, as a result of a change in law or~~
822 ~~otherwise, the provision would again be enforceable, it shall be enforceable and the~~
823 ~~grantee will comply with all obligations thereunder without the requirement of any action~~
824 ~~by the city.~~

825 Section 29. That section 34-7, Connections to grantee's system; use of
826 antennas, of The Code of the City of Topeka, Kansas, is hereby repealed.

827 **~~Connections to grantee's system; use of antennas.~~**

828 ~~It shall be unlawful for any person to make any unauthorized connection, whether~~
829 ~~physically, acoustically, inductably or otherwise, with any part of a grantee's cable~~
830 ~~system or facilities, for the purpose of enabling the reception of any television, radio,~~
831 ~~picture, program, sound or data signals, or other services, without payment to and~~
832 ~~authorization from grantee, except that subscribers shall have the right to attach devices~~
833 ~~to a grantee's system to allow them to transmit signals or services for which they have~~
834 ~~paid to VCR's, television sets or other terminal devices; and subscribers shall have the~~
835 ~~right to use their own remote control devices and converters, and other similar~~
836 ~~equipment; and grantee shall provide information to consumers which will allow them to~~
837 ~~adjust such devices so that they may be used with grantee's system. It shall also be~~
838 ~~unlawful for any person, without the consent of grantee, to willfully tamper with, remove~~
839 ~~or injure any cables, wires or equipment of a grantee used for the distribution of~~
840 ~~television, radio, picture, program, sound or data signals, or other services, unless a~~
841 ~~grantee fails to remove such devices from the property of such person if the person~~
842 ~~chooses not to take service, or if a grantee places such devices on any property where~~
843 ~~it has no right to place such devices. A grantee shall not, as a condition to providing~~
844 ~~service, require a subscriber or potential subscriber to remove any existing antenna or~~
845 ~~disconnect an antenna, except at the express direction of the subscriber or potential~~
846 ~~subscriber, or prohibit or discourage a subscriber from installing an antenna switch~~
847 ~~provided such equipment and installations are consistent with applicable codes.~~

Section 30. That section 34-36, Required, of The Code of the City of Topeka, Kansas, is hereby repealed.

Required.

~~No person shall use the streets of the city to construct, operate or repair a cable system, and no cable operator may provide cable service within the city, without a franchise. Any person may apply for a franchise. An independent contractor does not need a franchise to install a cable system for a grantee.~~

Section 31. That section 34-37, Application, of The Code of the City of Topeka, Kansas, is hereby repealed.

Application.

~~(a) An application for a new franchise or for a renewal franchise must be filed as provided in this section. New franchises and renewal franchises that are not subject to the formal renewal provisions of the Cable Act, 47 U.S.C. section 546(a) --(g) are to be reviewed as provided in section 34-38(a). Applicants that submit proposals subject to the formal renewal provisions of the cable act are to be reviewed as provided in section 34-38(b). Every applicant must submit a certified check for \$5,000.00 at the time it applies for an initial or renewal franchise.~~

~~(b) An application for a franchise should contain the following information:~~

~~(1) The name, address and form of business organization of the applicant. If the applicant is a partnership, the application shall show the name and address of each general partner. If the general partner is a corporation or partnership, the application shall show the name and address of such corporation or partnership, and provide the same information for that corporation or partnership that is required of an applicant~~

~~under this subsection (b)(1). If the partnership is scheduled to dissolve at a particular time, the time for dissolution should be stated. If the applicant is a corporation, the application shall show the names and addresses of its officers, and if the corporation is a subsidiary of another corporation or partnership, the application shall show the name and address of such corporation or partnership, and provide the same information for that corporation or partnership that is required of an applicant under this subsection (b)(1).~~

~~(2) A precise description of the franchise area for which a franchise is sought and a map specifically showing the proposed service area or areas within which the applicant proposes to provide cable service. An applicant who seeks a franchise for the entire city need not provide a map.~~

~~(3) A listing of all city employees, officials or appointees that have any interest, direct or indirect, in the applicant.~~

~~(4) A copy of each written agreement and a description of every oral agreement or understanding the applicant has with any other person relating to the proposed franchise that gives such person the right to manage, control or to obtain the right to manage or control the grantee or its Topeka Cable System. If a franchise is granted to a person posing as a front or as the representative of another person, and such information is not disclosed in the original application, such franchise shall be deemed void and of no force and effect whatsoever.~~

~~(5) A declaration by the applicant that the application is true and complete, and that no person not shown in the application has any interest in the application for a~~

franchise; and a declaration that the applicant has read this chapter and will abide by its provisions.

Section 32. That section 34-38, Review of application, of The Code of the City of Topeka, Kansas, is hereby repealed.

Review of application.

(a) In the case of an application for an initial franchise or for a renewal franchise that is not governed by the formal renewal provisions of the cable act:

(1) After receiving a complete application, along with the required application fee, the city will issue a request for proposal, unless (i) the applicant is not the true party in interest; (ii) the applicant does not intend to abide by the provisions of this chapter; or (iii) the applicant submits a proposal under subsection (a)(3) of this section, in which case the city need not issue a request for proposals.

(2) The request for proposals ("RFP") will require the applicant to provide information required under this section. The city promptly will conduct proceedings and commission any studies required to identify future cable-related needs and interests and to establish requirements that are to be included in a request for proposals, and promptly issue an RFP following the conclusion of those proceedings and studies.

(3) In the alternative, an applicant may submit a proposal containing the information required in section 34-39.

(4) The city may advertise for additional applicants to respond to an RFP or to any proposal submitted by an applicant under subsection (a)(3).

(5) The city will give prompt public notice when it receives a properly completed franchise proposal. After receiving a proposal that contains the required information, the

city will schedule a meeting or meetings to determine whether a franchise should be granted. In making this determination, the city will consider:

a. The extent to which an applicant for renewal has substantially complied with the applicable law and the material terms of any existing cable franchise for the city.

b. Whether the quality of an applicant for renewal's service under its existing franchise, including signal quality, response to customer complaints, billing practices and the like, has been reasonable in light of the needs of the community.

c. Where the applicant has not previously held a franchise for the city, whether the applicant's record in other communities indicates that it can be relied upon to provide high-quality service throughout any franchise term.

d. Whether the applicant has the financial, legal and technical ability to provide the services, facilities and equipment set forth in a proposal satisfying any minimum requirements established by the city.

e. Whether the applicant's proposal is reasonable to meet the future cable-related needs and interests of the city, taking into account the cost of meeting such needs and in light of the requirements established by the city.

f. Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on streets and private and public property that will be used by the applicant's cable system, including the extent to which installation or maintenance as planned would require replacement of property, or involve disruption of property, public services, or interfere with the use of public property or streets; the effect of granting the franchise on the ability of cable to meet the cable-related needs and

938 ~~interests of the community; and the comparative superiority or inferiority of competing~~
939 ~~proposals received by the city.~~

940 ~~(6) The city need not review any proposal that does not include information~~
941 ~~required by this chapter.~~

942 ~~(b) Applications for renewal governed by the formal renewal provisions of the~~
943 ~~cable act shall be submitted in accordance with this section. An operator that is entitled~~
944 ~~to exercise rights under 47 U.S.C. section 546(a)–(g) must submit a notice in writing to~~
945 ~~the city in a timely manner clearly stating that it is activating the formal renewal~~
946 ~~procedures of the cable act. At the same time it submits this notice, it must also submit~~
947 ~~the information and application fee required by section 34-37(b).~~

948 ~~(c) This chapter is not intended and shall not be interpreted to grant any~~
949 ~~applicant or grantee standing to challenge the issuance of a franchise to another, nor,~~
950 ~~unless otherwise provided by the franchise, shall it limit the legal rights of the applicant~~
951 ~~or grantee. Nothing in this section prohibits the city from relying on studies or~~
952 ~~proceedings previously conducted in drafting a request for proposals if the city manager~~
953 ~~or designee concludes that those studies or proceedings continue to reflect community~~
954 ~~needs and interests. Nothing in this section prohibits an applicant for renewal from~~
955 ~~submitting a proposal under 47 U.S.C. section 546(h). However, an applicant which~~
956 ~~submits a request for a renewal franchise, the review of which would be governed by 47~~
957 ~~U.S.C. section 546(a)–(g), may not, while that application is pending, also submit a~~
958 ~~proposal which would be governed by subsection (a) of this section, and vice versa.~~

959 ~~(d) If, considering the factors set forth in this section, the city determines that a~~
960 ~~franchise should issue to an applicant, the city manager or designee shall promptly~~

prepare a final franchise agreement for approval and signature by the applicant and the city. In addition to other matters that may or must be addressed therein consistent with the cable act, the franchise agreement shall specify:

(1) The franchise area for which the franchise is awarded, and the terms and conditions under which the grantee must extend service to persons within that franchise area;

(2) The term of the franchise;

(3) Requirements for cable system design and performance;

(4) Equipment and facilities requirements; and

(5) Requirements related to channels, facilities and equipment, and the use and support of channels, facilities and equipment for public, educational and governmental use (including institutional uses).

The franchise area may be larger, smaller or the same as the franchise area identified by an applicant. No franchise shall be effective or shall issue until an applicant has entered into a franchise agreement with the city, the franchise agreement has been approved by the city, and the grantee has filed an unconditional acceptance of the franchise, in a form acceptable to the city attorney.

Section 33. That section 34-39, Contents of proposal and review, of The Code of the City of Topeka, Kansas, is hereby repealed.

Contents of proposal and review.

(a) Every request for proposals ("RFP"), including a request for a renewal proposal issued pursuant to 47 U.S.C. section 546(b), shall specify minimum requirements that an applicant must satisfy for facilities and equipment, including

~~access facilities and equipment; channel capacity for public, educational and governmental use; and such other requirements as the city may establish in an RFP under the cable act. The RFP shall attach a draft franchise agreement, and shall invite comments on that draft franchise agreement. In addition, the RFP shall require each applicant to provide at least the information required to determine the degree to which granting the franchise is likely to result in damage to streets or public or private property; disrupt use of or require replacement of streets or public or private property; and information required in order to permit the city to determine whether the applicant has the financial, legal and technical qualifications to operate a cable system in the city. The RFP shall require each applicant to provide information required to assess its proposal. It may also contain or refer to other information that may assist an applicant in preparing a proposal. The information sought shall include at least the following:~~

~~(1) Changes to the information submitted with the application.~~

~~(2) The names and addresses of the ten largest holders of an ownership interest in the applicant, and all persons with two percent or more ownership interest, including the names and addresses of parents or subsidiaries holding such ownership interests, directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; any other business affiliation and cable system ownership interest of each named person; and a statement describing the applicant, its officers and directors, partners or major shareholders, indicating business experience and other pertinent information, including experience and performance in the cable television system and service field showing any interest in other franchises, the date such~~

franchises were granted and the status of installation and operation thereof, and the value, size and character of the operations under the other franchises.

~~(3) Information showing that the applicant, and any person controlling the applicant, and any other entity which will constitute a cable operator of the cable system under the cable act, are legally qualified to hold the franchise, applying the standards set forth in section 34-70.~~

~~(4) A demonstration of the applicant's technical and financial ability to construct and/or operate the proposed cable system, including identification of key personnel.~~

~~(5) A statement prepared by a certified public accountant regarding the applicant's financial ability to perform as proposed.~~

~~(6) A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities; such description should specify the model and make of the system components the applicant intends to use, or if the applicant has not selected a particular brand of equipment, the minimum manufacturer's specifications which the components used must meet.~~

~~(7) A detailed description of the procedures the applicant intends to follow in constructing, operating and maintaining the system. If the applicant plans to upgrade or rebuild an existing system, the description should explain the steps which will be taken to upgrade the system, describe the service disruptions which are expected to result, and describe the steps the applicant intends to take in order to minimize cable service disruptions and how it intends to compensate affected subscribers for those service disruptions.~~

~~(8) An estimate of plant mileage that will be installed and its location, the proposed construction schedule, and information on the availability of space in conduits and on poles in the areas to be served, including an estimate of the cost of any necessary rearrangement of existing facilities.~~

~~(9) A schedule of the maximum initial rates and charges to subscribers, including late fees, disconnect fees and fees for each cable service the operator intends to provide, and a description of the service that will be provided for those rates.~~

~~(10) A narrative description of the future cable-related needs and interests of the city, and a showing that the proposal will adequately meet those needs and interests, including, particularly, how the proposed system will be upgraded or rebuilt to take advantage of changes in technology during the franchise term; and a copy of any community needs assessment conducted or relied upon by the applicant.~~

~~(11) Pro forma financial projections for the proposed cable system for ten years, including a statement of projected revenue and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.~~

~~(12) An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the proposal meets all federal and state requirements.~~

~~(13) If an applicant proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, and the potential subscriber density in the area which would encompass the overbuild.~~

~~(14) The effect construction of the cable system is likely to have on the public streets, and public or private property in the streets that will be used by the applicant's cable system; and the extent to which construction, installation or maintenance as planned would require replacement of property, or involve disruption of property, public services (including cable service), or use of the streets; and the expected effect of granting the franchise on the ability of cable to meet the cable-related needs and interests of the community.~~

~~(15) A declaration by the applicant that the application is true and complete, and that no person not shown in the application has any interest in the application for a franchise.~~

~~(b) The city council shall authorize the issuance of any request for proposal by resolution.~~

~~(c) The city attorney shall prepare instructions and furnish the same to all interested parties stating how a proposal shall be submitted, and will answer questions concerning the requirements of this section.~~

~~(d) It is the obligation of an applicant to submit a proposal that shows that, if granted a franchise, the applicant will meet the reasonable cable-related needs and interests of the community. An applicant shall submit additional information it deems appropriate to the consideration of its proposal, whether the information is required or not.~~

~~(e) The city manager or designee shall establish a deadline for the receipt of proposals from any interested applicants. Each applicant shall submit 15 copies of its proposal. Each proposal shall be accompanied by a bid bond in the amount of~~

~~\$75,000.00. If a franchise is not awarded to an applicant, the applicant's bid bond will be returned. If the franchise is awarded, the bond will be used to pay all reasonable costs incurred by the city in evaluating the applicant's proposal, and the remainder shall be returned. The city manager or designee may waive or reduce the bid bond requirement if comparable alternative arrangements are made in the franchise agreement.~~

~~(f) The city may request additional information from any applicant as required to understand or evaluate the applicant's proposal.~~

Section 34. That section 34-40, Legal qualifications, of The Code of the City of Topeka, Kansas, is hereby repealed.

Legal qualifications.

~~(a) In determining whether any applicant for a franchise has the necessary legal ability to perform as promised and to assist it in evaluating the past performance of the applicant under 47 U.S.C. section 546 or section 34-39, the city shall evaluate the applicant's proposal in light of this section.~~

~~(1) The city shall not grant a franchise to any applicant which submitted a request for a franchise or for renewal of a franchise pursuant to section 34-38(a) or 34-38(b) where the request was denied, or any challenges to the franchising decision were finally resolved substantially in the city's favor on a date three years or less preceding the submission of the new request where the previous denial was on grounds that the applicant failed to propose a system which met the needs and interests of the community; or that the applicant did not meet the requirements of subsection (a)(5); or, in the case of a renewal request, that the applicant had failed to comply with the requirements of its franchise, or failed to provide adequate service to subscribers.~~

~~(2) Every applicant must have the necessary authority under state law to operate a cable system. An applicant must have or show that it is qualified to obtain the necessary federal licenses or waivers required to operate the cable system proposed.~~

~~(3) A franchise will not be issued to an applicant who may not hold the franchise as a matter of federal law.~~

~~(4) An applicant shall not be issued a franchise if, at any time during the five years prior to the issuance of the request for proposals to which applicant responds, the applicant engaged in acts or omissions of such character that the applicant cannot be relied upon to deal truthfully with the city and the subscribers of the cable system; or to substantially comply with its lawful obligations under the franchise or its obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering or other similar conduct.~~

~~(5) An applicant shall not be issued a franchise if it files materially misleading information in response to a request for proposals issued by the city, or intentionally withholds information which the applicant lawfully is required to provide.~~

~~(6) For purposes of subsections (a)(1) to (a)(5) of this section, the term "applicant" includes the applicant and any other entity that would constitute a cable operator of the applicant's proposed cable system under the cable act. In addition, for purposes of subsections (a)(1), (a)(4) and (a)(5) of this section, the term "applicant" includes any affiliate of the applicant.~~

~~(b) The city shall provide an opportunity to any applicant that has engaged in acts or omissions which may provide the basis for denying a request for a franchise under subsection (a)(4) of this section to show that it would be inappropriate to base a~~

~~decision on the act or omission, by virtue of the particular circumstances surrounding the act or omission and given the steps taken by the applicant to cure all harms flowing from the act or omission and to prevent its recurrence; the involvement of applicant's principals, owners or managers; or the remoteness of the act or omission from the operation of cable television systems.~~

~~(c) This section shall not be read to require the city to take any action that would be inconsistent with 47 U.S.C. section 546.~~

Section 35. That section 34-41, Authority granted, of The Code of the City of Topeka, Kansas, is hereby repealed.

Authority granted.

~~(a) A franchise confers on a grantee for a term specified in the franchise agreement, or until terminated, the nonexclusive right to construct, operate and repair a cable system within its franchise area in Topeka and to provide cable service. The term shall be established considering the investment required of the grantee and considering the pace of technological change in the industry. A franchise authorizes a grantee, for those purposes and in accordance with this chapter, to install its system in, on, over, under, upon, across and along any street. Provided that, in addition to this chapter, the construction, operation and repair of the cable system shall be subject to all existing and future ordinances and regulations of the city, including zoning ordinances and ordinances establishing construction standards or procedures for use of the streets. Further, the grant of a franchise is not in lieu of any license required for conducting business in the city. A franchise does not confer rights other than as provided by this chapter and the franchise agreement, or as mandated by federal or state law.~~

~~(b) The franchise does not authorize the grantee to construct, operate or repair any other type of system, or to provide service to, or install its cable system upon, private property without owner consent, or to use publicly or privately owned conduits or poles without a separate agreement with the owners, except that nothing in this section limits any rights the grantee may have to use compatible easements pursuant to section 621 of the cable act, 47 U.S.C. section 541(a)(2).~~

~~(c) Unless otherwise specifically stated in the franchise or required by law, all acts which a grantee is required to perform under a franchise or applicable law must be performed at a grantee's own expense.~~

Section 36. That section 34-42, Franchise nonexclusive; competition encouraged, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Franchise nonexclusive; competition encouraged.~~

~~(a) No cable television franchise shall be exclusive, and the city reserves the right to grant a franchise to another person at any time, or to construct, operate or repair a cable system itself. Competition among cable companies is encouraged.~~

~~(b) No person who holds a franchise may enter into an exclusive contract for the provision of cable service to any person or building, or demand the exclusive right to serve a person or building as a condition of extending service.~~

Section 37. That section 34-43, Franchise fee, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Franchise fee.~~

~~(a) In consideration of the rights, powers and privileges, permission and authority granted for use of city's streets, a franchise agreement may provide for the~~

grantee to pay to the city an amount equal to five percent of the gross revenues derived from the operation of its cable system in the city, or the maximum fee permitted by federal law, if larger.

~~(b) Payments due the city under this section shall be computed at the end of each calendar quarter and shall be due and payable for the preceding quarter on or before April 30 (for the first quarter), July 31 (for the second quarter), October 31 (for the third quarter) and January 31 (for the fourth quarter) of each year. Each payment shall be accompanied by a statement of revenue received for the quarter in connection with the operation of the grantee's system in the city and a brief report showing the basis for computation of fees. The reports shall list a line item for every source of revenue from the operation of the grantee's cable system received by grantee, any affiliate of grantee or any other entity that is a cable operator of the grantee's cable system, whether or not grantee believes the revenue source should be included in the franchise fee calculation; list the revenues received for each line item; and, if grantee omits any revenue from the franchise fee calculation, an explanation of the reason for the omission. Each statement shall be certified by a certified public accountant or the grantee's chief financial officer.~~

~~(c) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable under a franchise by a grantee.~~

~~(d) Interest shall be paid on any late payments at a rate equal to the judgement rate of interest established by the state.~~

1190 ~~(e) The franchise fee shall be paid in addition to fees, charges or assessments~~
1191 ~~of general applicability required by the city, including but not limited to business license~~
1192 ~~fees, unless such fee, charge or assessment must be treated as a franchise fee under~~
1193 ~~the cable act.~~

1194 ~~(f) The city shall have authority to arrange for and conduct an audit of the~~
1195 ~~financial records of a grantee, its contractors or subcontractors, affiliates or any cable~~
1196 ~~operator of the grantee's system for the purpose of verifying franchise fee payments.~~
1197 ~~The city will notify a grantee in writing at least seven days prior to the date of the audit~~
1198 ~~and the grantee shall make available for inspection and copying its books and records,~~
1199 ~~and those of any affiliate or other entity as may be relevant to the determination of gross~~
1200 ~~revenues and franchise fees due. The records shall be made available by a grantee at~~
1201 ~~grantee's expense at a location within the city, or such other location as the city and a~~
1202 ~~grantee may agree, or as may be specified in the franchise agreement. However, the~~
1203 ~~grantee shall retain its proprietary interest in these documents and the documents shall~~
1204 ~~therefore not be considered open records subject to public disclosure, pursuant to state~~
1205 ~~and federal law, except as necessary for the regulation of this chapter or the franchise~~
1206 ~~agreement.~~

1207 ~~(g) When a franchise terminates for any reason, including through the issuance~~
1208 ~~of a renewal or superseding franchise, a grantee shall file with the city within 90~~
1209 ~~calendar days of the date its operations in the city cease a financial statement, certified~~
1210 ~~by a certified public accountant or the grantee's chief financial officer, showing the gross~~
1211 ~~revenues received by that grantee since the end of the previous fiscal year.~~

~~Adjustments will be made at that time for franchise fees due to the date that the grantee's operations under the terminated franchise ceased.~~

Section 38. That section 34-44, Liability and other required insurance, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Liability and other required insurance.~~

~~(a) A grantee shall purchase and maintain during the term of its franchise such insurance as will protect it and the city, as an additional named insured, from claims set forth in this section which may arise out of or result from the grantee's construction, operation or repair of its cable system, whether the same is executed by itself or by any contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The city shall be listed as an additional insured or provided with an owner's protective policy written on an occurrence basis on the following coverage:~~

~~(1) Claims under workers compensation disability benefit and other similar employee benefits;~~

~~(2) Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;~~

~~(3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;~~

~~(4) Claims for damages insured by usual personal injury liability coverage which are sustained by any person as a result of an offense directly or indirectly related to the employment of such person by the grantee, or by any other person; and~~

~~(5) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.~~

~~(b) Certificates of insurance acceptable to the city shall be filed with the city on or before the effective date of a grantee's franchise. These certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least 30 days' prior written notice has been given to the city. At the discretion of the city, the grantee shall file copies of endorsed insurance policies with the city.~~

~~(c) A grantee shall procure and maintain general public liability and property damage insurance, with liability coverage for grantee's premises, operations, automobiles (owned, nonowned and hired), products, completed operations, elevators, independent contractors, broad form contractual liability and personal and property injury, protecting it and the city from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with the construction, operation or repair of the grantee's cable system, whether the same is executed by itself or by any contractor under it or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Insurance may be combined bodily injury and property damage liability but in no event shall the limit of liability be less than \$500,000.00 for all damages arising out of bodily injury, including death, and all property damage sustained by any one person in any one accident, and \$500,000.00 aggregate for such damage sustained by two or more persons in any one accident.~~

~~(d) A grantee shall procure and maintain at its own expense, in accordance with the provisions of the laws of the state, worker's compensation insurance, including~~

1257 ~~occupational disease provisions, for all of its employees, and in case any work is sublet,~~
1258 ~~it shall require such contractor similarly to provide worker's compensation insurance,~~
1259 ~~including occupational disease provisions, for all of the latter's employees unless such~~
1260 ~~employees are covered by the protection afforded by grantee. In case any class of~~
1261 ~~employees engaged in hazardous work under the franchise is not protected under~~
1262 ~~worker's compensation, a grantee shall provide, and shall cause each contractor to~~
1263 ~~provide, adequate and suitable insurance for the protection of its employees not~~
1264 ~~otherwise protected.~~

1265 ~~(e) A grantee, in addition to all other insurance requirements in this section,~~
1266 ~~shall procure and maintain insurance in the type and amount as may be required in any~~
1267 ~~license, permit or agreement obtained in connection with the construction, operation or~~
1268 ~~repair of its cable system and which is necessary to complete any construction,~~
1269 ~~operation or repair (i.e., highway permit, railroad crossing agreement, corps of engineer~~
1270 ~~permit), regardless of who secured the license, permit or agreement.~~

1271 Section 39. That section 34-45, Performance bond, of The Code of the City of
1272 Topeka, Kansas, is hereby repealed.

1273 **~~Performance bond.~~**

1274 ~~(a) Within 90 days of the effective date of a franchise, the grantee shall~~
1275 ~~establish in the city's favor a performance bond in an amount equal to ten percent of the~~
1276 ~~estimated cost of constructing, upgrading or rebuilding the cable system required by the~~
1277 ~~franchise agreement.~~

1278 ~~(b) If the grantee fails to complete the cable system construction, upgrade or~~
1279 ~~rebuild in a safe, timely and competent manner in accord with the provisions of its~~

franchise, applicable law and permits, or otherwise fails to comply with its obligations under the franchise, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the grantee, or the cost of completing or repairing the system, construction, upgrade, rebuilding or other work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. The city may also recover against the bond any amount recoverable against the letter of credit pursuant to section 34-46 where such amount exceeds that available under the letter of credit.

(c) The city shall eliminate the bond within 15 months of the satisfactory completion of the cable system construction, upgrade or rebuild required by the franchise agreement. It may reinstitute a performance bond required for any subsequent construction, upgrade or rebuild of the grantee's cable system with a cost in excess of \$100,000.00, but the amount of the bond shall not exceed ten percent of the total estimated cost of the work.

(d) The performance bond shall contain the following endorsement: "This bond may not be cancelled, or allowed to lapse, until 60 days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

Section 40. That section 34-46, Security fund, of The Code of the City of Topeka, Kansas, is hereby repealed.

Security fund.

~~(a) On the effective date of the franchise, a grantee shall post with the city an irrevocable letter of credit in the amount of \$250,000.00, or such other amount and/or irrevocable security as may be specified in the franchise agreement. The franchise agreement may allow for the reduction of this amount as grantee's obligations are satisfied. The city may draw on the letter of credit as a security fund to ensure the faithful performance of all provisions of the franchise, applicable law and permits, and the payment by the grantee of any penalties, liquidated damages, claims, liens, fees or taxes due the city which arise by reason of the construction, operation or maintenance of the system.~~

~~(b) Prior to drawing on a grantee's letter of credit, the city shall follow the procedures set forth in section 34-59(d).~~

~~(c) The irrevocable letter of credit shall be subject to approval as to content and form by the city attorney. The letter of credit shall in no event require the consent of the grantee prior to the collection by the city of any amounts covered by the letter of credit.~~

~~(d) Within three business days of the date it draws on a grantee's letter of credit, the city shall send written notice to a grantee notifying it that the city has drawn on the fund; the amount withdrawn; and the specific reasons for the withdrawal.~~

~~(e) Within 30 calendar days after notice to a grantee that an amount has been withdrawn by the city from the security fund, the grantee shall deposit a sum of money sufficient to restore the security fund to the total amount in the fund immediately prior to the withdrawal. If the grantee fails to restore the security fund to the original amount within 30 calendar days, the entire security fund remaining may be forfeited, and/or~~

1324 ~~such failure may be considered a material breach of the franchise and may be used as~~
1325 ~~grounds for revocation of the franchise.~~

1326 ~~(f) A grantee's security fund will become the property of the city in the event its~~
1327 ~~franchise is revoked. The grantee is entitled to the return of the balance of the security~~
1328 ~~fund that remains following expiration of the franchise, provided that there is no~~
1329 ~~outstanding default or unpaid amounts owed to the city by the grantee.~~

1330 Section 41. That section 34-47, Approval of sureties; relation to other remedies,
1331 of The Code of the City of Topeka, Kansas, is hereby repealed.

1332 **~~Approval of sureties; relation to other remedies.~~**

1333 ~~(a) The insurance, bonds and letter of credit required by sections 34-44 to 34-46~~
1334 ~~shall be issued by a company approved by the city and licensed or approved to do~~
1335 ~~business in the state. The city's approval will not be unreasonably withheld, provided~~
1336 ~~that the company is financially secure and can be expected to comply with its or their~~
1337 ~~obligations.~~

1338 ~~(b) Recovery by the city of any amounts under sections 34-44 to 34-46 shall not~~
1339 ~~in any respect limit a grantee's duty to indemnify the city under section 34-48; nor shall~~
1340 ~~recovery of any amounts in any respect prevent the city from imposing penalties under~~
1341 ~~state law, or exercising any other right or remedy it may have under the franchise or at~~
1342 ~~law or equity.~~

1343 Section 42. That section 34-48, Indemnification, of The Code of the City of
1344 Topeka, Kansas, is repealed.

1345 **~~Indemnification.~~**

~~A grantee shall, at its sole expense, fully indemnify and hold harmless the city, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits and actions, liability and judgment for damages or otherwise arising out of the construction, operation or repair of the cable system, or in any way arising out of that grantee's enjoyment or exercise of its franchise, whether the act or omission giving rise to the same is authorized, allowed or prohibited by such franchise or applicable law. This duty includes the duty to pay the reasonable expenses incurred by the city, its officers, agents and employees in defending themselves, including but not limited to all out-of-pocket expenses, and attorneys fees for outside counsel, if the grantee or the city determines that the interests of the grantee and the city conflict.~~

Section 43. That section 34-49, Limitations of franchise, of The Code of the City of Topeka, Kansas, is hereby repealed.

Limitations of franchise.

~~(a) Nothing in this chapter shall be read to create an expectancy of renewal or to in any respect entitle any grantee to renewal or extension of a franchise, except as may be expressly required by applicable law.~~

~~(b) No privilege or exemption shall be granted or conferred by any franchise agreement entered into under this chapter except as may be specifically prescribed in this chapter.~~

~~(c) Any privilege claimed under any franchise by a grantee in any street or other public property shall be subordinate to any prior lawful occupancy of the streets or other public property, subject to section 34-91.~~

~~(d) Any right or power in, or duty impressed upon, any officer, employee, department or board of the city shall be subject to transfer by the city to any other officer, employee, department or board of the city. The city council may delegate its authority as permitted by state law.~~

~~(e) A grantee shall have no recourse whatsoever against the city for any loss, cost, expense or damage arising out of any provision or requirement of this chapter or of any franchise issued under this chapter or because of its enforcement or nonenforcement thereof. This shall not preclude the grantee from exercising or enforcing rights granted to such grantee pursuant to this chapter or a franchise agreement.~~

~~(f) A grantee shall at all times be subject to the exercise of the police power of the city, including but not limited to the power of the city to adopt consumer protection laws regarding cable television.~~

~~(g) The provisions of every franchise will be liberally construed in favor of the city in order to promote the public interest.~~

Section 44. That section 34-50, Transfers, of The Code of the City of Topeka, Kansas, is hereby repealed.

Transfers.

~~(a) *Generally.* Prior approval of the city shall be required before a franchise granted is assigned or transferred, either in whole or in part, or leased, sublet or disposed of in any manner, directly or indirectly, either by forced or involuntary sale, voluntary sale, merger, consolidation or otherwise; and before title thereto, either legal or equitable, or any right, interest or property therein, passes to or vests in any person.~~

~~A change in control of the grantee or any person that manages, owns or controls a grantee is a transfer within the meaning of this section. The approval of the city shall not generally be required for a transfer by mortgage. However, grantee must notify the city at least 30 days after a part of the cable system is mortgaged. Further, a mortgage of the cable system which results in grantee no longer managing, owning or controlling the system will be considered a transfer requiring prior application to and the approval of the city. Any transfer resulting from the default and/or foreclosure of a mortgage will likewise be considered a transfer requiring prior application and approval by the city.~~

~~(b) Application. The proposed transferee shall make a written request to the city for approval of the transfer. The application shall provide complete information regarding the proposed transfer, including:~~

~~(1) All documents embodying the transaction;~~

~~(2) Financing documents;~~

~~(3) Documents identifying any person who will be responsible, through any arrangement, for managing or controlling the cable system;~~

~~(4) Documents showing that the proposed transferee has the financial, technical and legal ability to operate the cable system after the transfer so as to satisfy all its obligations under this franchise without adversely affecting subscribers;~~

~~(5) The information required by sections 34-37(b)(1), 34-37(b)(3)-(5), 34-39(a)(2) and (3), 34-39(a)(9) and 34-39(a)(11); and~~

~~(6) Any information the transferee or the transferor is required to produce to a franchising authority under applicable law.~~

~~The proposed transferee shall also pay all reasonable costs incurred by the city in reviewing and evaluating the application.~~

~~(c) *City response to application.* Upon receiving the transfer application, the city may seek additional information from the grantee or the proposed transferee as required to evaluate the proposed transaction, and both will cooperate to provide the information to the city. The city shall be under no obligation to transfer the franchise if grantee's acts or omissions make the franchise subject to revocation, nor shall the city be required to transfer unless it is fully satisfied that any interests it or the public has in the franchise will be fully preserved and protected; that past nonperformance will be corrected; and that the proposed transferee has the ability and is likely to comply with the franchise for the future. Under no circumstances will the franchise be transferred unless the proposed transferee agrees to accept all the terms and conditions of the franchise; agrees that the transfer does not constitute a waiver of any rights by the franchisor or indicate that the prior grantee is or has been in compliance with the franchise; and agrees to assume all the obligations and liabilities of the prior grantee. The city may conduct such public hearings as it deems appropriate to consider the transfer request. Approval of a transfer will not be unreasonably withheld. The decision to approve/disapprove, or condition a transfer shall be made within six months of the date grantee provides all information required by the city.~~

~~(d) *Other matters.*~~

~~(1) A "change in control," for purposes of this section, includes a change in actual working control in whatever manner exercised, and shall be deemed to have~~

occurred whenever there is a disposition of ten percent or more of any interest in grantee or any person that, through any arrangement, manages or controls the grantee.

~~(2) A grantee, upon transfer, shall within 60 days thereafter file with the city a copy of the deed, agreement, mortgage, lease or other written instrument evidencing transfer or ownership control or lease of the system, certified and sworn to as correct by the grantee.~~

~~(3) Any transfer made without the authorization required in this section renders the franchise null and void from the time of the transfer.~~

Section 45. That section 34-51, Time of essence, maintenance of records of essence, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Time of essence, maintenance of records of essence.~~

~~In determining whether a grantee has substantially complied with the franchise, the parties agree that time is of essence to the agreement. As a result, grantee's failure to complete construction, extend service, seek approval of transfers or provide information in a timely manner may constitute substantial breaches. The maintenance of records and provision of reports in accordance with the franchise is also of essence to the agreement.~~

Section 46. That section 34-52, Force majeure, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Force majeure.~~

~~A grantee shall not be deemed in default or noncompliance with provisions of its franchise where performance was rendered impossible by war or riots, civil disturbance, hurricanes, floods or other natural catastrophes or similar events beyond grantee's~~

~~control, and the franchise shall not be revoked or a grantee penalized for such noncompliance, provided the grantee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its franchise without unduly endangering the health, safety and integrity of grantee's employees or property, or the health, safety and integrity of the public, or public streets, public property or private property.~~

Section 47. That section 34-53, Conflicting provisions, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Conflicting provisions.~~

~~Every franchise agreement shall be subject to the provisions of this chapter, and in the event of a conflict between a franchise agreement and this chapter, unless the franchise agreement expressly states to the contrary, the provisions of this chapter, as amended, shall apply.~~

Section 48. That section 34-54, State laws applicable, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~State laws applicable.~~

~~Except as to matters which are governed solely by federal law, every franchise will be governed by and construed in accordance with the laws of the state.~~

Section 49. That section 34-55, Warranties and guarantees, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Warranties and guarantees.~~

~~The city may require an applicant to provide guarantees and warranties from any entity that manages, owns or controls it, as required to ensure compliance with any franchise issued to the applicant.~~

Section 50. That section 34-56, Written notice, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Written notice.~~

~~Every franchise agreement shall specify the persons to whom required written notices are to be given.~~

Section 51. That section 34-57, Settlement of disputes, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Settlement of disputes.~~

~~The city attorney is hereby authorized to settle any dispute arising from a grantee's operations under a franchise except those to which the city is a party; any person dissatisfied with the decision of the city attorney may appeal the decision to the city council. The city council may affirm, reverse or modify the decision of the city attorney, or may settle the dispute.~~

Section 52. That section 34-58, Intervention by city in construction or operation of system, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Intervention by city in construction or operation of system.~~

~~A grantee shall not oppose intervention by the city in any suit or proceeding regarding the construction, operation or repair of that grantee's cable system.~~

Section 53. That section 34-59, Interconnection of systems, of The Code of the City of Topeka, Kansas, is hereby repealed.

Interconnection of systems.

~~If interconnection of grantee's system with any other system is requested by the city, whether or not the requesting party is a competitor at the time of request, grantee shall in good faith evaluate the request in relation to both long and short term impacts to grantee within the parameters of sound business judgment. The evaluation and a decision concerning the request shall be completed within 90 days of the interconnection request. Grantee shall state in writing whether or not it is willing to interconnect and if so under what terms interconnection would be acceptable. If grantee refuses or agrees only upon terms not acceptable to the other party, both city and grantee shall be accorded whatever legal rights each may have at the time, including judicial review.~~

Section 54. That section 34-60, Remedies, of The Code of the City of Topeka, Kansas, is hereby repealed.

Remedies.

~~(a) *Revocation of franchise.* In addition to all other rights, powers and remedies reserved by the city, the city shall have the additional, separate and distinct rights to revoke the franchise if:-~~

~~(1) The grantee becomes fiscally unable or unwilling to pay its debts, or is judged to be bankrupt;~~

~~(2) The grantee attempts to or does practice any material fraud or deceit in its conduct in obtaining the franchise or operating under it;~~

~~(3) The grantee attempts to evade any material provision of its franchise or applicable law relating to the construction, operation or repair of its cable system;~~

~~(4) The grantee materially violates the terms of its franchise. Without limitation, the failure of a grantee to comply with the deadlines established in its franchise, or its failure to provide or maintain the required reports and records, shall be deemed a material violation of its franchise; or~~

~~(5) The grantee abandons its franchise. The grantee shall be deemed to have abandoned its franchise if it wilfully refuses to operate the cable system as required by its franchise, when there is no event beyond grantee's control that prevents the operation of the cable system and where operation would not endanger the health or safety of the public or property.~~

~~(b) *Liquidated damages.* A franchise agreement may specify liquidated damages, for the city or for third party beneficiaries of any franchise agreement.~~

~~(c) *Remedies cumulative.* All remedies provided under this chapter or a franchise agreement shall be cumulative, unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall it relieve the grantee of its obligations to comply with the franchise. Remedies may be used singly or in combination; in addition, the city may exercise any rights it has under law or at equity.~~

~~(d) *Procedures to be followed prior to exercise of certain remedies.*~~

~~(1) Notwithstanding the foregoing provisions of this section, before exercising its rights under section 34-45, 34-46 or subsection (a) of this section, or imposing any penalty as provided under state law, the city shall follow the procedures set forth in this subsection (d).~~

~~(2) Should the city believe that a grantee may have violated its franchise or applicable law, the city shall give written notice to the grantee informing it of such alleged violation ("violation notice"). Within 14 days of the date of the violation notice, the grantee must send a written notice to the city advising the city that the grantee either intends to contest the violation, or has completely corrected the violation, describing in detail the steps taken to correct it, or has begun to correct the violation, but that, with all due diligence the violation cannot be corrected in 14 days, and describing in detail steps already taken and the grantee's plan and precise schedule for correcting the violation. If the grantee intends to contest the violation, or the city finds that the grantee may have failed to cure or submit an acceptable plan for curing the default in performance, the city shall schedule a meeting where the operator shall be asked to show cause why it should not be found in violation of the franchise. At least 20 days' notice shall be given prior to such meeting. Notice shall be given to conform to any state law notice requirements. If, after the meeting, the city finds that the grantee is in violation of the franchise and has failed to correct the default in performance, or that the default cannot be cured, it may exercise any right it has under section 34-45, 34-46 or subsection (a) of this section. Correction is not complete until all penalties and damages, if any are owed, are paid.~~

Section 55. That section 34-61, Continuity of service, of The Code of the City of Topeka, Kansas, is hereby repealed.

Continuity of service.

~~(a) It is the right of all subscribers in a grantee's franchise area to receive all available services from a grantee as long as their financial and other obligations to the grantee are satisfied.~~

~~(b) In the event of the termination or transfer of a grantee's franchise, the grantee shall ensure that all subscribers receive continuous, uninterrupted service, regardless of the circumstances, in accordance with this section. At the city's request, a grantee shall cooperate with the city to operate its cable system for a temporary period (the "transition period") following termination or transfer of the franchise as necessary to maintain continuity of service to all subscribers, and shall cooperate in the development of plans required to ensure an orderly transition from one operator to another. The transition period will be no longer than the reasonable period, not to exceed 36 months (unless extended by the city for good cause), required to select another grantee and build a replacement system. During such transition period, the cable system shall be operated as if the terms and conditions of its franchise continued to apply.~~

~~(c) In the event a grantee fails to operate the system for 96 hours during any seven-day period without prior approval of the city, or if the system is abandoned as defined in section 34-59(a), the city may, at its option, operate the system, obtain an injunction requiring grantee to continue operations, or designate an operator until such time as the grantee restores service under conditions acceptable to the city or until the franchise is revoked and a permanent operator is providing service. If the city is required to fulfill this obligation for the grantee, the grantee shall reimburse the city for all costs or damages resulting from the grantee's failure to perform that are in excess of the revenues from the cable system received by the city. Additionally, the grantee will~~

1592 ~~cooperate with the city to allow city employees and/or city agents free access to the~~
1593 ~~grantees' facilities and premises for purposes of continuing system operation.~~

1594 Section 56. That section 34-62, Termination, of The Code of the City of Topeka,
1595 Kansas, is hereby repealed.

1596 **Termination.**

1597 ~~(a) Upon revocation or cancellation of a grantee's franchise, or upon any other~~
1598 ~~termination of its franchise by passage of time or otherwise, the city shall have the right~~
1599 ~~to require grantee to remove, at grantee's own expense, its cable system from public~~
1600 ~~streets and public property, and any private property occupied pursuant to the~~
1601 ~~terminated franchise. The city shall notify the grantee in writing that the cable system~~
1602 ~~should be removed, and identify any period during which the grantee will be required to~~
1603 ~~continue to operate the system as provided in section 34-60. In removing its cable~~
1604 ~~system, the grantee shall refill and compact, at its own expense, any excavation that~~
1605 ~~shall be made and shall leave all public streets, public property and private property in~~
1606 ~~as good a condition as that prevailing prior to grantee's removal of system. The~~
1607 ~~insurance, indemnity and damage provisions of the grantee's franchise shall remain in~~
1608 ~~full force and effect until the system is removed.~~

1609 ~~(b) Upon revocation or cancellation of a grantee's franchise, or upon any other~~
1610 ~~termination of its franchise by passage of time or otherwise, the city shall have the right~~
1611 ~~to buy the grantee's system, if the grantee has failed, within the transition period~~
1612 ~~provided for in section 34-60, to transfer or sell the system to an operator who has been~~
1613 ~~approved by the city subject to the transfer provisions of this chapter. If the franchise is~~
1614 ~~terminated for cause, the city may purchase the system at an equitable price, within the~~

1615 ~~meaning of the cable act; otherwise, the system may be purchased at fair market value,~~
1616 ~~less the value of the franchise, within the meaning of the cable act. The grantee shall~~
1617 ~~sell its system subject to such warranties and terms as a seller ordinarily gives a buyer.~~

1618 ~~(c) If the city does not purchase a grantee's cable system as provided in~~
1619 ~~subsection (b) of this section, and a grantee has failed to commence removal of its~~
1620 ~~system within 90 days after termination of the franchise, or such other date specified by~~
1621 ~~the city under section 34-60(b), or if the grantee has failed to complete such removal~~
1622 ~~within six months after removal is required to have begun, the city may:~~

1623 ~~(1) Declare all rights, title and interest to that grantee's cable system to be~~
1624 ~~vested in the city or its delegatee with all right of ownership, including, but not limited to,~~
1625 ~~the right to operate the cable system or transfer the cable system to another for~~
1626 ~~operation by it. Upon such declaration by the city, a grantee shall be entitled to receive~~
1627 ~~an equitable price from the city for the value of the system, less any costs and damages~~
1628 ~~suffered by the city as a result of the delay in removal.~~

1629 ~~(2) Declare the cable system abandoned and cause the cable system, or such~~
1630 ~~part thereof as the city shall designate, to be removed at no cost to the city. The cost of~~
1631 ~~such removal shall be recoverable from the insurance and indemnity sections provided~~
1632 ~~in this chapter, or from the grantee directly.~~

1633 Section 57. That section 34-91, Conditions of street occupancy, of The Code of
1634 the City of Topeka, Kansas, is hereby repealed.

1635 **~~Conditions of street occupancy.~~**

1636 ~~(a) *Location of installation.* A cable system shall only be installed on the~~
1637 ~~property of the grantee, on existing pole facilities that grantee may use under a valid~~

~~pole attachment agreement or order of the city, on the property of a subscriber, in compatible easements that the grantee is entitled to use, or under the streets of the city; installation of new poles in the street is forbidden without the prior written consent of the city. A grantee's placement of its cable system pursuant to its franchise shall not be deemed to give that grantee a property interest in any particular location within the public streets or upon public property. The city reserves the right to designate where a cable system is to be placed within the streets and upon public property.~~

~~(b) *Timing of installation.* A grantee shall begin the installation, upgrade or rebuild of its cable system within a reasonable length of time after the effective date of the franchise, which date shall be specified in the franchise agreement. A grantee shall be obligated to complete the construction of its cable system promptly and within a time specified in the franchise agreement, which time shall be reasonable in light of the nature of the construction required to build the cable system proposed by a grantee. The grantee is obligated to obtain all permits, licenses, approvals and contracts required in order for it begin and complete its system in accordance with its franchise agreement.~~

~~(c) *General construction and operational practices.*~~

~~(1) The construction, operation and repair of every cable system in the city and all parts thereof shall be performed in an orderly and workmanlike manner. To this end, each person who constructs, operates or repairs a cable system shall do so in accordance with all applicable federal, state and local codes in effect. Without limiting the foregoing, the installation of any cable system shall be in accordance with the applicable requirements of the National Electrical Code of the National Fire Protection~~

Association, as adopted by the city, and all applicable laws affecting electrical installations and buildings. A franchise agreement may identify specific construction codes that a grantee must satisfy in addition to this general requirement. In the event of a conflict among codes and standards, the most stringent code or standard shall apply. The city may adopt reasonable additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur over the term of a franchise, after consultation with each affected grantee. Amendments to existing standards or codes, or adoption of new standards or codes, shall be applicable to work performed after the effective date of the amendment or adoption, unless otherwise provided within the appropriate code or standard.

(2) The construction, operation and repair of the cable system shall be performed by experienced personnel who shall keep the cable system in a safe and suitable condition and in good order and repair. All installations shall be durable, and use equipment of good quality.

(3) Each grantee shall construct, operate and repair its cable system so as not to endanger or unduly interfere with the property of the city, any gas, electric or telephone fixture or other public utility property, including any water line, hydrant or main, or the lives or property of persons; or to unnecessarily hinder or obstruct use of public streets. It is the duty of a grantee to protect, at its expense, public and private property from damage caused by the construction, operation and repair of its cable system, and to promptly repair damage it causes, or to compensate the owner of the property for damage grantee causes. Property so damaged shall be repaired within ten

~~days of the damage and/or compensation paid no later than within 30 days of the date of the damage. Each grantee shall construct, operate and maintain its system with due care for the safety and integrity of persons and property, and shall use appropriate safety devices, warning signs, barricades and lights to prevent harm to persons or property.~~

~~(4) A grantee shall notify any person whose property is damaged by that grantee within four hours of the time the damage is discovered. At a minimum, this section requires a grantee to place a prominent notice in a prominent place on the damaged property, and to make diligent efforts to contact the property owner or resident directly.~~

~~(5) All excavation shall be performed so as to create the least inconvenience to the public, and in accordance with permits issued by the city. The city shall have the right to supervise all excavation.~~

~~(6) If a grantee disturbs any public street, public property or private property during the course of constructing, operating or repairing its cable system, that grantee shall, at its own expense, replace and restore the public street or property to as good condition as before such work was commenced as is possible to the reasonable satisfaction of the city, in the case of public streets or public property, or the owner in the case of private property. Each grantee shall at all times comply with the requirements of 47 U.S.C. 541(a)(2)(A)-(C). The public streets, public property or private property affected shall be replaced or restored promptly and no later than within 15 days of the date of the disturbance.~~

~~(7) In any area where any electric and telephone systems are underground, grantee shall install its cable system underground. If, after the grantee installs its system, electric or telephone systems are required by the city to relocate so that any electric or telephone systems in an area are required to be underground, the city may require the grantee to place its cable system in that area underground, in which case the grantee shall be compensated for its reasonable costs incurred in placing its cable system underground.~~

~~(d) *Relocation of facilities.*~~

~~(1) *For governmental bodies.* Each grantee is required to remove, relay and relocate its cable system at its own expense whenever the city or any authorized governmental body requires it to do so for reasons of traffic conditions, public health and safety and protection of property; or because the city or authorized governmental body elects to change or alter the grade, or to sell or vacate any public street or public property, or to move any building or structure, or to construct, operate or repair any water pipes, lines or mains, sanitary and storm sewers, watercourses, drainage ditches, conduits, playgrounds, power lines, tracks, traffic control devices or other public improvement, public utility, public structure or facility, which change, alteration, sale, vacation, movement, construction, operation or repair will be aided by removal, relaying or relocation of grantee's cable system. Each affected grantee shall be given written notice requesting the removal, relaying or relocation of its cable system at least 20 days in advance of the date removal, relaying or relocation of the cable system must be completed.~~

~~(2) For other authorized entities. If any removal, relaying or relocation is required to accommodate the construction, operation or repair of the facilities of another person that is authorized to use the public streets or public property, a grantee shall, after 20 days' advance written notice, take action to effect the necessary changes requested by the responsible entity. The expense of temporary removal, relaying or relocation as provided for in this section shall be paid by the person requesting such temporary removal, relaying or relocation.~~

~~(3) For third persons. Each grantee shall, upon the request of any person holding a building moving permit issued by the city, temporarily raise, lower, relay, relocate or remove its wires, cables and other facilities to accommodate the moving of the building, as grantee shall determine. The expense of such temporary raising or lowering, relaying, relocation or removal of a grantee's facilities shall be paid by the person requesting the same, and a grantee shall have the authority to establish the reasonable cost of such changes and require such payment in advance. A grantee shall temporarily move its system as required under this subsection (d)(3) if required payments are made and the grantee is given at least 48 hours' advance written notice to arrange for such temporary changes.~~

~~(e) Failure to move, replace or restore. If a grantee fails to remove, relay or relocate its cable system as required or within the time period specified in subsection (c) of this section, or if a grantee fails to restore, repair or replace public streets or public property as required and within the time period specified in subsection (d), the city may perform the work itself or hire someone to perform the work, and the grantee shall compensate the city for all reasonable expenses it incurs. If a grantee fails to restore,~~

replace or repair private property as required and within the time period specified by subsection (d) of this section, the owner may perform the work himself or hire someone to perform the work, and the grantee shall compensate the owner for all reasonable expenses incurred. If a grantee fails to protect public streets or public property as required by its franchise, the city may do so, and the grantee shall compensate the city for all reasonable expenses incurred thereby. The grantee shall pay expenses incurred by the city or property owner within 30 days of receipt of an itemized account of such expenses.

~~(f) Removal or relocation in event of emergency.~~ In the event of emergency, or where a cable system creates or is contributing to an imminent danger to health, safety or property, the city may remove, relocate or relay that cable system without prior notice.

~~(g) Authority to trim trees.~~ Each grantee shall have authority to trim trees and shrubbery upon and overhanging public streets and other public property so as to prevent the branches and foliage of such trees and shrubbery from coming in contact and interfering with the grantee's cable system. If the city requests it, trimming shall be done under the supervision and direction of the city.

~~(h) No guarantee of accuracy of maps.~~ The city does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing structures. In public streets, where necessary, the location shall be verified by excavation.

~~(i) Contractors.~~ All contractors or subcontractors shall be properly licensed, and each contractor or subcontractor shall have the same obligations with respect to its work as a grantee would have under its franchise and applicable laws if the work were

performed by the grantee. Each grantee shall be responsible for ensuring that the work of its contractors and subcontractors is performed consistent with the franchise and applicable law, shall be fully responsible for all acts or omissions of its contractors or subcontractors, and shall be responsible for promptly correcting acts or omissions by any of its contractors or subcontractors.

Section 58. That section 34-92, Operation and consumer protection—Generally, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Operation and consumer protection—Generally.~~

~~(a) Customer service.—~~

~~(1) Every grantee must meet or exceed requirements for customer protection established by the city, whether the franchise was issued before or after March 9, 1993. The standards initially applicable shall be attached to the ordinance from which this chapter derives. The city manager may from time to time propose amendments to the rules as necessary to ensure that high quality customer service is provided by each grantee. The city manager shall provide a copy of amendments to the standards to every person holding such a franchise, and every person which has a pending application for a cable franchise at the time the draft standards are developed. The city manager shall provide each such person the opportunity to submit at least written comments on the amendments to the standards. After reviewing the comments, the city manager shall submit the standards to the city council for approval.~~

~~(2) In the case of any franchise issued after March 9, 1993, the franchise agreement shall provide for enforcement of specified customer service standards of the grantee, which standards must meet or exceed the standards established by the city~~

~~under subsection (a)(1) of this section in effect at the time the franchise agreement is executed. The franchise agreement may provide for "reopeners" or clauses which require periodic discussion and negotiation concerning customer service standards and other matters.~~

~~(3) Nothing in this section shall be read to limit the city's right to adopt other consumer protection laws.~~

~~(4) The standards developed under subsection (a)(1) of this section shall be designed to ensure a uniform level of service to all cable customers within the city at a reasonable cost. In ensuring a uniform level of service, the standards against which service is measured may differ depending on the size of the system and the density of the area served by the system.~~

~~(5) Any grantee which fails to satisfy the standards adopted by the city under subsection (a)(1) of this section shall give notice that it may be found to have failed to provide adequate service within the meaning of 47 U.S.C. section 546(c)(1)(A) or (B), as appropriate.~~

~~(b) *Maintenance and complaints.*~~

~~(1) A grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.~~

~~(2) Complaints concerning billing, employee courtesy, programming, safety or a grantee's operational policies, as well as all other complaints, including complaints about outages, signal quality and service disruptions, shall be recorded. For purposes of this section, a customer request for information shall not be considered a complaint. A grantee will maintain records of complaints for five years. Copies of the complaint~~

records shall be provided to the city on request. A grantee may remove all information which identifies specific customers if required by federal law.

~~(3) Each grantee shall maintain a sufficient repair force of technicians to respond promptly to subscriber complaints, loss of service, or requests for service. Each grantee shall have in place at all times the equipment required to locate and correct system malfunctions.~~

~~(4) All subscribers and members of the general public in the city may direct complaints and inquiries regarding a grantee's service or performance to the city. Upon the request of the complaining party or the grantee concerning which the complaint was filed, the city's city manager or designee shall act as a board of review of a complaint or dispute, and recommend action for resolution. A grantee may not disconnect service to any subscriber until the complaint or dispute is resolved. A grantee may not levy or accrue late charges, administrative charges or other similar charges during the first 14 days the complaint or dispute is pending review or until the complaint or dispute is resolved, whichever occurs first. Any charges or fees thereafter levied or assessed shall be immediately refunded with interest if the complaint or dispute is resolved in the subscriber's favor. Interest shall be at the rate established for judgments in the state. A grantee's good faith or lack thereof in attempting to resolve complaints in a fair and equitable manner will be considered in connection with any renewal application filed by the grantee.~~

~~(5) If a complaint or dispute directed to it is determined by the city to be a potential violation of this chapter, and after written notification to the grantee of that~~

determination, the city may exercise any of its other rights and remedies under the franchise.

~~(c) *Nondiscrimination.*~~

~~(1) A grantee shall not, in its rates or charges, or in the availability of the services or facilities of its system, or in any other respect, make or grant undue preferences or advantages to any subscriber, potential subscriber, or group of subscribers or potential subscribers, nor shall a grantee subject any such persons or group of persons to any undue prejudice or any disadvantage; provided, however, a grantee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, provided that such discounts are offered on a nondiscriminatory basis to similar classes of subscribers throughout the city. A grantee shall not deny, delay, or otherwise burden service or discriminate against subscribers or users within its franchise area on the basis of age, race, creed, religion, color, sex, handicap, national origin, marital status or political affiliation, except for discounts for the elderly or handicapped that are applied in a uniform and consistent manner.~~

~~(2) A grantee shall not deny cable service to any group of potential subscribers because of the income of the residents of the area in which the group resides. No "redlining" will be tolerated.~~

~~(3) A grantee shall not refuse to employ, nor discharge from employment, nor discriminate against, any person in compensation or in terms, conditions or privileges of employment because of age, race, creed, religion, color, sex, handicap, national origin, marital status or political affiliation. The grantee shall comply with federal, state and local laws and regulations governing equal employment opportunities.~~

~~(4) A grantee shall not discriminate against minority-owned businesses in contracting for or otherwise procuring goods or services. A grantee shall use its best efforts to purchase goods and services from minority-owned businesses. Within 45 days of the effective date of its franchise, and before letting any contract for the construction, upgrade or rebuild of the cable system required under its franchise, grantee shall develop an affirmative action plan which shall include at least the following elements: Detailed plans for advising minority-owned businesses of opportunities for the provision of goods and services to grantee; and goals for use of goods and services provided by or through minority-owned businesses. The fact that the plan is to include these elements does not mean that the plan is to be restricted to these elements. The affirmative action plan shall be regularly reviewed for effectiveness.~~

~~Failure to meet any goal established in the affirmative action plan will not in itself be deemed proof that a grantee is discriminating against minority-owned businesses, but may be reviewed by the city as one factor, along with its hiring and procurement practices, in determining whether a grantee is in compliance with its obligation not to discriminate.~~

~~(d) *Parental control device.* Upon request, grantee shall provide parental control devices to any subscriber. Grantee shall charge no more than its cost for the parental control devices it provides. Grantee must provide subscribers an opportunity to obtain the device within 30 days of initial installation or subscription to the cable system. No additional installation charge may be made for this service if obtained within 30 days of initial installation or subscription. The grantee may charge a reasonable installation~~

1887 fee if the parental control device is obtained after 30 days of the initial installation or
1888 subscription.

1889 Section 59. That section 34-93, Same—Rate regulation, of The Code of the
1890 City of Topeka, Kansas, is hereby repealed.

1891 **~~Same--Rate regulation.~~**

1892 ~~(a) The city may regulate a grantee's rates and charges except to the extent it is~~
1893 ~~prohibited from doing so by federal law. The term "regulate" as used in this section shall~~
1894 ~~include, but is not limited to, the right to establish and conduct proceedings required by~~
1895 ~~federal law to establish any rate regulation authority, and the right to adopt and apply~~
1896 ~~regulations governing rates consistent with federal laws and regulations. In addition to~~
1897 ~~establishing rates through such proceedings, the city may specify maximum rates and~~
1898 ~~charges in a franchise agreement for services that are subject to regulation. The~~
1899 ~~franchise agreement may separately address regulation of a grantee's rates and~~
1900 ~~charges.~~

1901 ~~(b) Each grantee shall file a schedule of all its rates and charges with the city on~~
1902 ~~the effective date of its franchise.~~

1903 ~~(c) As a matter of consumer protection, at least 60 days prior to implementing~~
1904 ~~any changes in rate levels, services or service terms, a grantee shall provide the city~~
1905 ~~with written notice describing any changes it plans to make and the proposed effective~~
1906 ~~dates for the changes. At least 45 days prior to implementing any changes in rate level,~~
1907 ~~services or service terms and conditions, a grantee must provide each affected~~
1908 ~~subscriber with a notice describing the changes it plans to make and the proposed~~

effective dates for the changes. Any change made without the required notice shall be of no legal force or effect.

~~(d) A grantee shall be required to submit any change in rates or charges to the city for approval prior to implementing that change, to the extent a grantee may be required to do so consistent with federal laws and regulations. Nothing in this section shall be deemed to waive any rights a grantee may have under 47 U.S.C. section 543(e)(1).~~

Section 60. That section 34-94, Cable service rate regulation, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Cable service rate regulation.~~

~~(a) Authority; establishment. Pursuant to the cable act of 1992 and Federal Communications Commission (FCC) regulations, the city hereby establishes the following rate regulation procedures. These rate regulation procedures shall be interpreted consistently with FCC regulations and are intended to supplement, not replace, FCC regulations. All terms and phrases shall have the meanings ascribed to them by FCC regulations. FCC regulations or rules on any rate regulation matters not specifically addressed by this section are hereby incorporated by reference.~~

~~(b) Procedures.~~

~~(1) Pursuant to FCC rules, an operator must file its schedule of rates for the basic service tier and accompanying equipment with the city within 30 days after receiving notice that the city has been certified by the FCC to regulate rates or the effective date of this section, whichever occurs later. The operator shall also submit, with the rate schedule, any necessary supporting materials. Likewise, an operator~~

~~seeking an increase in basic service tier rates shall submit notice of the proposed rate increase to the city and subscribers at least 30 days prior to the proposed effective date of the rate increase. Notice to subscribers shall be made during the billing cycle which is at least 30 days prior to the date the proposed increase is to go into effect.~~

~~(2) If the city council, by resolution, determines that the current rate schedule or a proposed increase is reasonable under FCC rules, the rates, and the requested increase, if appropriate, will go into effect 30 days after filing with the city.~~

~~(3) If the city manager of the city determines that more time is needed to evaluate the proposed rates, the city is unable to determine whether the proposed rates for the basic service tier and accompanying equipment are reasonable, based on the material submitted with the rate schedule, or if the operator has submitted a cost-of-service showing seeking to justify a rate above the reasonable level, the city may toll the effective date of the proposed rates for an additional period of time to request additional information pursuant to subsection (b)(10) of this section and evaluate the information submitted by the operator in order to make a final determination. Specifically, the city may toll the effective date of the proposed rates for 90 additional days if it needs additional time to ensure that a proposed rate is within the FCC's reasonableness standard. Further, the city may toll the effective date of the proposed rates for 150 days to evaluate a cost-of-service showing seeking to justify a basic service rate or rate increase above the FCC's reasonable level. To toll the effective date of the proposed rates, the city manager must issue a brief order, within the initial 30-day period, explaining that the city needs additional time to review the proposed rates, the reason~~

for the tolling, and granting the operator the opportunity to cure any deficiencies in its original filing.

~~(4) If the operator submits a proposed rate increase for review that appears to exceed the presumptively reasonable level and does not include a cost-of-service showing to justify the rate, the city manager must inform the operator of this possibility and must permit the operator to cure this deficiency and submit a cost-of-service showing within the time periods established in subsection (b)(4) above. The burden of proof is on the operator to demonstrate that its initial rates for the basic service tier and accompanying equipment, or proposed increases in these rates is reasonable pursuant to FCC standards.~~

~~(5) If the city fails to take action within the time periods established above, the proposed rates will go into effect, subject to subsequent refund orders. The city council, by resolution, may issue a written decision after the additional 90 or 150 days have lapsed and order refunds for any portion of the proposed rates that are found to be unreasonable and are not sufficiently justified. In such situations, the city council, by resolution, may issue a brief written order at the end of the 90- or 150-day periods requesting the operator to keep accurate account of all amounts received by reason of the proposed rate and on whose behalf such amounts are paid.~~

~~(6) The city council shall issue a written decision by resolution to the public and give public notice of such decision whenever it disapproves, in whole or in part, either initial rates for the basic service tier and accompanying equipment, or a request for an increase in these rates, or approves a proposed rate over the objections of interested parties.~~

~~(7) If, after a review of basic service tier and equipment rates, the city determines that the rates for the basic service tier or equipment exceed permitted levels, the city council may, by resolution:~~

~~a. Order a prospective reduction of those rates to bring them into compliance with FCC rate standards. In addition, reductions below the permitted basic service tier rate may be ordered based upon a cost-of-service showing.~~

~~b. Prescribe a reasonable rate in place of the proposed unreasonable rate, including the establishment of a rate level to which the city would not object if the proposal were resubmitted. The prescribed rate may not be lower than the FCC's permitted rate. The city may prescribe a rate different from the proposed rate provided that, after giving the operator an opportunity to participate, it issues a written decision affirmatively demonstrating why the proposed rate is unreasonable and why the prescribed rate is reasonable.~~

~~c. Order refunds in the following situations:~~

~~1. An operator has failed to comply with a rate decision and continued to charge unreasonable rates. Refunds may be ordered back to the effective date of the city's rate order.~~

~~2. As part of its initial review of existing rates, the city may order refunds for unreasonable rates that exceed the permitted levels and are not supported by a persuasive cost-of-service showing by the operator. The permissible refund period commences on the date the operator implements a prospective rate reduction and goes back in time to the effective date of the FCC rules on this matter or one year, whichever is shorter.~~

2000 3. ~~If the city has tolled a proposed rate increase for 90 or 150 days, as provided~~
2001 ~~above, and has not completed its review by the end of these time periods, the proposed~~
2002 ~~rates may go into effect subject to a refund, if portions of the rates are later found to be~~
2003 ~~unreasonable. The permissible refund period commences on the date the city releases~~
2004 ~~its accounting order, as provided in subsection (b)(5) of this section, and ends on the~~
2005 ~~date the operator implements a prospective rate reduction ordered by the city or one~~
2006 ~~year, whichever is a shorter time period.~~

2007 d. ~~In ordering a refund, the city must afford the operator due process by giving it~~
2008 ~~notice and an opportunity to participate before refunds may be ordered. If a refund is~~
2009 ~~ordered and the operator can without undue burden identify actual subscribers who paid~~
2010 ~~the unreasonable charge, the operator must refund the overage specifically to those~~
2011 ~~subscribers. However, where such a refund process creates an undue burden, the~~
2012 ~~operator may implement the refund through a one-time credit issued to the class of~~
2013 ~~subscribers that was charged the unreasonable rate.~~

2014 (8) ~~The operator must provide the city 30 days of advance notice of any rate~~
2015 ~~change which it contends are automatic adjustments outside the city's regulatory~~
2016 ~~review. Likewise, the operator must provide subscribers with similar notice at least 30~~
2017 ~~days prior to the effective date, i.e. at the billing cycle that is at least 30 days before any~~
2018 ~~proposed increase is effective. The notice shall identify which rate changes the operator~~
2019 ~~proposes and the basis for that contention. This designation is not intended to resolve~~
2020 ~~disputes as to the scope of regulation, but will allow the city to identify areas of potential~~
2021 ~~dispute and to evaluate any claims the operator may have that a specific rate or rate~~
2022 ~~change is not subject to regulation. The notice should also identify any planned changes~~

~~in services or terms and conditions of service, even where the changes are not scheduled to become effective on the same date as the change in rate levels.~~

~~(9) Rate increases based on automatic adjustments items, as defined by the FCC are presumed reasonable. Therefore, the city shall, within 30 days of such a rate increase notice, inform the operator of its approval of the proposal or of its disapproval of the proposal as an automatic adjustment item. The failure of the city to act within this 30-day period shall be deemed an automatic approval. The operator may seek FCC review of a decision to disapprove.~~

~~(10) The city shall have the right to require the operator to provide additional information, including proprietary information, to make a rate determination in those cases where this information is reasonably necessary to allow the city to make its rate determination, where an operator has submitted initial rates, or where the operator has proposed increases that exceed the FCC's presumptively reasonable level. A party submitting material which it wishes to remain confidential, i.e. not subject to public disclosure, must request confidentiality with respect to specific portions of the material and make a showing, by a preponderance of the evidence, that nondisclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. section 552. A denial by the city of confidentiality may be reviewed by the FCC, with a release of the submitted information stayed pending review.~~

~~(11) Once the city has issued a rate decision, interested parties, including the operator, may appeal the decision as provided by FCC rules.~~

Section 61. That section 34-95, Book and records--Maintenance, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Books and records--Maintenance.~~

~~(a) In addition to public file records and complaint records required by this chapter, each grantee shall maintain records of the following in a form acceptable to city:~~

~~(1) Records of outages, indicating date, duration, area and the estimated number of subscribers affected, type of outage and cause.~~

~~(2) Records of service calls for repair and maintenance, indicating date and time service was requested, date of acknowledgement, and date and time service was scheduled (if it was scheduled), date and time service was provided and, if different, date and time the problem was solved.~~

~~(3) Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgement, and date and time service was extended.~~

~~(4) Maps showing the location of the cable system and as-built maps. As-built maps shall be considered proprietary to the grantee and shall not be copied or disclosed to members of the public or to grantee's competitors, except where necessary to comply with federal, state or local law, or pursuant to this chapter or a franchise agreement.~~

~~(b) The records required by this chapter shall be kept at the grantee's local office and shall be available for city review and copying during normal business hours. Records of any event recorded shall be kept for at least five years. A franchise agreement may identify specific documents or specific forms that may be used by a~~

grantee to comply with its obligations under this section, to impose the least burden on a grantee while providing for the information required under this section.

Section 62. That section 34-96, Same—Inspection, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Same--Inspection.~~

~~(a) The city may inspect and copy the books, records, maps, plans and other documents of a grantee, including financial documents in the control or possession of a grantee necessary for the enforcement of the franchise, its contractors, subcontractors and affiliates, or any person that constitutes a cable operator of a grantee's cable system:~~

~~(1) To enforce the city's rights or assess compliance with the grantee's franchise and applicable law;~~

~~(2) In the exercise of any lawful regulatory power; or~~

~~(3) As may be convenient in connection with any proceeding the city may or must conduct under applicable law with respect to that grantee's system.~~

~~The required material shall be produced at the grantee's business office located in the city unless the city agrees to or a franchise agreement provides for inspection and copying at some other place.~~

~~(b) Material that the city requires the grantee to produce under this section shall be produced upon reasonable notice and no later than 30 days after the request for production. Material obtained by the city pursuant to this section shall generally be considered proprietary to the grantee and not subject to public disclosure, unless necessary in the regulation of this chapter or the franchise agreement. A franchise~~

2091 ~~agreement may specify which documents shall be considered proprietary or~~
2092 ~~confidential, as well as procedures for handling such documents.~~

2093 Section 63. That section 34-97, Reports and responses to questions, of The
2094 Code of the City of Topeka, Kansas, is hereby repealed.

2095 **~~Reports and responses to questions.~~**

2096 ~~(a) A grantee shall provide the following reports quarterly, in a form acceptable~~
2097 ~~to the city, at the time it is scheduled to make its franchise fee payment:~~

2098 ~~(1) A report showing the number of service calls received by type during the~~
2099 ~~prior quarter; and the percentage of service calls compared to the subscriber base by~~
2100 ~~type of complaint.~~

2101 ~~(2) A report showing the number of outages for the prior quarter, and identifying~~
2102 ~~separately each planned outage, the time it occurred, its duration, and the estimated~~
2103 ~~area and number of subscribers affected; as well as each unplanned outage, the time it~~
2104 ~~occurred, its estimated duration and the estimated area and the number of subscribers~~
2105 ~~affected; and the total hours of outages as a percentage of total hours of cable system~~
2106 ~~operation.~~

2107 ~~(b) Within 90 days after the close of a grantee's fiscal year, that grantee shall~~
2108 ~~submit a written annual report, in a form approved by the city, including, but not limited~~
2109 ~~to, the following information:~~

2110 ~~(1) A summary of the previous year's activities in the development of its cable~~
2111 ~~system in the city, including, but not limited to, additions, deletions or improvements~~
2112 ~~begun or discontinued during the reporting year, services initiated or discontinued,~~
2113 ~~number of subscribers (including gains and losses), homes passed, and miles of cable~~

distribution plant in service. The summary shall also include a comparison of any construction, including system upgrades, during the year with any projections previously provided to the city, as well as rate and charge increases and/or decreases for the previous fiscal year.

(2) An audited financial statement, including a statement of income or revenue, balance sheet, and other reports as applicable and/or necessary for the enforcement of the franchise. A franchise agreement may identify specific documents or forms that may be used by grantee in lieu of these statements to comply with obligations under this section while providing for the information required under this chapter. The statement shall include notes that compare the current year with the prior year.

(3) A detailed copy of updated maps depicting the location of all cable plant, showing areas served and locations of all trunk lines and feeder lines in the city. As-built maps are not required to comply with this section. However, grantee must produce maps which accurately show the location of grantee's facilities.

(c) Unless otherwise specified, a grantee shall mail the following documents to the city at the same time they are filed, or within five days of their receipt. In the alternative, grantee may, upon the date the documents are filed or within five days of their receipt, provide the city with notice of the filing or receipt of the following documents. The notice shall indicate the date of filing or receipt, describe the type of document filed or received, and provide a summary description of its subject matter and content. The city may, upon request, obtain copies of all such documents. The documents shall be provided to the city without regard to whether the documents are filed or received by the grantee, an affiliate, or some other entity.

~~(1) Within ten days of the date mailed to shareholders or partners, the annual report, if any, of the grantee, or each affiliate of the grantee which controls, owns or manages grantee and issues an annual report;~~

~~(2) Copyright filings regarding the operations of the grantee's cable system;~~

~~(3) FCC forms 325 and 395, or their successor forms, for the grantee's system;~~

~~(4) Any filing made at the FCC or any state or federal agency regarding the grantee's cable system, its proof-of-performance tests, or its RF signal leakage tests;~~

~~(5) Any notice of deficiency; forfeiture; or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the cable system, its grantee, any affiliate that controls, owns or manages that grantee, or any cable operator of the system, to the extent the same may affect or bear on the operations of grantee's cable system; and~~

~~(6) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the grantee or any affiliate that controls or manages the grantee, or any cable operator of the system.~~

~~(d) A grantee shall provide the city with notice as provided in subsection (c) of this section and upon request provide copies of any other document filed with or received from any federal, state or local government entity regarding the operation of the grantee's cable system.~~

~~(e) A grantee, its contractors, subcontractors and affiliates, and any other entity that constitutes a cable operator of that grantee's system which is in control or possession of information respecting that grantee's cable system, shall respond to inquiries from the city concerning the construction, operation, installation or~~

~~maintenance of that cable system; plans for its expansion; cable system revenues; or the grantee, affiliate or cable operator's financial or legal status, including requests for other documents necessary and relevant for the enforcement of the franchise. The information requested shall be provided within 30 days of request. Requests for extensions of time to respond shall not be unreasonably denied.~~

Section 64. That section 34-98, Inspection of plant; tests, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Inspection of plant; tests.~~

~~The city may inspect a grantee's cable system during construction, and upon completion, shall have the right to inspect the cable system and the grantee's equipment used in the maintenance of that system during normal business hours. If based on subscriber complaints, or based on its own investigation, the city believes that the cable system may not be operating in compliance with the franchise, it may require a grantee to perform tests, and to prepare a report to the city on the results of those tests, including a report identifying any problem found and steps taken to correct the problem.~~

Section 65. That section 38-2, 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.

(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 any material 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.

Person means and includes any individual, corporation, association, partnership, firm, trustee, or legal representative.

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

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

- 2206 (2) Compensation of employees for the time and efforts devoted
2207 specifically to the emergency action.
- 2208 (3) Rental or leasing of equipment used for the emergency
2209 action (e.g., protective equipment or clothing, scientific and technical
2210 equipment).
- 2211 (4) Replacement, repair and/or cleaning costs for equipment
2212 utilized in the emergency action.
- 2213 (5) Special technical services utilized in the response (e.g.,
2214 costs associated with the time and efforts of technical experts or
2215 specialists not otherwise provided for by the governmental entity).
- 2216 (6) Other special services utilized in the emergency action.
- 2217 (7) Laboratory costs for purposes of analyzing samples taken
2218 during the emergency action.
- 2219 (8) Any costs of cleanup, storage or disposal of the released
2220 material.
- 2221 (9) Costs associated with the services, supplies and equipment
2222 procured for an evacuation.
- 2223 (10) Medical expenses incurred as a result of response activities.
- 2224 (11) Legal expenses that may be incurred as a result of the
2225 emergency action, including efforts to recover expenses pursuant to this
2226 section.

2227 *Release* means any spilling, leaking, pumping, pouring, emitting,
2228 emptying, discharging, injecting, escaping, leaching, dumping or disposing into or
2229 upon the environment.

2230 (c) *Liability.* Any and all persons responsible for a release or threatened
2231 release which results in an emergency action shall be liable to the governmental entities
2232 for the recoverable expenses resulting from the emergency action. "Persons
2233 responsible" shall include, but not be limited to, owners and/or those people or entities
2234 in control of any container from which a hazardous substance is released.

2235 (d) *Recovery of expense.* The staffs of the governmental entities involved in
2236 an emergency action shall keep a detailed record of their recoverable expenses
2237 resulting from the emergency action. Promptly after completion of the emergency
2238 action, the staffs shall certify those expenses to the appropriate legal counsel and shall
2239 request that legal counsel bring a civil action for recovery of the recoverable expenses
2240 against any and all persons responsible for the emergency action. Not less than 30
2241 days before filing a civil action, legal counsel shall submit a written, itemized claim for
2242 the total certified expenses incurred by the governmental entities in responding to the
2243 emergency action to the responsible party with a written notice that unless the amounts
2244 are paid in full to the respective governmental entities within 30 days after the date of
2245 the mailing of the claim and notice, legal counsel will file a civil action for the stated
2246 amount. Moneys recovered under this section shall be credited to the appropriate funds
2247 of the governmental entity from which moneys were expended in carrying out the
2248 emergency action.

(e) *Conflicting ordinances.* Any other resolution or ordinance in conflict with this section is hereby repealed.

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

(g) *Applicability.* This section is not to be construed as conflicting with the provisions of K.S.A. 19-101a(5), which confers home rule powers and shall be applicable to all incorporated areas of the county.

Section 66. That section 42-2, Department of housing and neighborhood development, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Department of housing and neighborhood development.

There is hereby created a department of housing and neighborhood development (HND). The functions of the department shall be as follows:

(1) To administer all programs undertaken by the city pursuant to the Community Development Act of 1974, as amended.

(2) To develop and prepare the consolidated action plan each year and a five (5) year consolidated plan and other reports and submissions as required by HUD.

(3) To mobilize resources for housing, neighborhood, community and economic development purposes, including but not limited to community development block grant, HOME Investment Partnership, American Dream Downpayment Initiative, Shelter + Care, emergency shelter grants and other public and private sources.

(4) To develop, negotiate and monitor all contracts made in furtherance of the city's housing, neighborhood, community and economic development program.

(5) To promulgate regulations, subject to all applicable city ordinances, federal legislative and administrative requirements and state statutes, with the approval of the mayor and ~~chief administrative officer~~city manager, who govern the activities of the program.

(6) To perform such other duties and functions related to housing, neighborhood, community and economic development as the mayor and ~~chief administrative officer~~city manager may, from time to time, assign to the department.

(7) To work closely with the U.S. Department of Housing and Urban Development in the administration of the City's housing and neighborhood development programs.

(8) To administer all social service and related programs funded and assigned by the city council.

Section 67. That section 42-3, Director of housing and neighborhood development, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Director of housing and neighborhood development.

(a) *Job classification established.* The job classification of director of housing and neighborhood development (HND) is hereby established, which position shall be considered a department head for all purposes.

(b) *Duties.* The director of HND shall, under the administrative direction of the mayor or ~~chief administrative officer~~city manager, perform work of considerable difficulty

in the direction and administration of the city's housing, neighborhood, community and economic development program, and perform related work as required.

(c) *Responsibilities.* The director of HND shall be responsible for supervision and direction of the department of HND. The director shall supervise the preparation of the annual application for assistance under the community development act; shall be responsible for developing a coordinated approach to housing, neighborhood, community and economic development in the city; shall maintain all required records; and shall represent the city in public and private meetings pertaining to housing, neighborhood, community and economic development. The director shall work under the administrative direction of the mayor and ~~chief administrative officer~~city manager.

(d) *Qualifications.* Desirable qualifications for the director of HND are as follows:

(1) Training and experience. Bachelor's degree in urban planning, public administration, or a related field; and at least three (3) years' experience in the field of planning, public administration or federal housing, housing and neighborhood development related programs, one (1) of which must have been in an administrative or supervisory capacity.

(2) Knowledge, abilities and skills. Comprehensive knowledge of housing, neighborhood, community and economic development programs and federal requirements; comprehensive knowledge of planning, research and physical program development; ability to supervise housing, neighborhood, community and economic development programs and staff; ability to analyze data and other information; ability to communicate both orally and in writing;

2317 ability to maintain an effective working relationship with city officials, private
2318 agencies and the community at large.

2319 Section 68. That section 42-10, Programs and targeting of resources, of The
2320 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

2321 **Programs and targeting of resources.**

2322 (a) The department of housing and neighborhood development (HND) is
2323 hereby authorized to operate programs, consistent with federal, state and local laws and
2324 ordinances, that are specifically set out in the five (5) year consolidated plan and the
2325 annual consolidated action plan; provided, however, that prior to the commencement of
2326 any such program, specifications which detail such programs, objectives, methodology
2327 and costs shall be approved by the city council through its adoption of the annual
2328 consolidated action plan and the HND budget. All actions taken by the city council
2329 relating to the five (5) year consolidated plan and the annual consolidated action plan
2330 are subject to approval by HUD.

2331 (b) The director of HND is hereby authorized to develop, negotiate and
2332 present for approval by the mayor and ~~chief administrative officer~~ city manager contracts
2333 or interagency agreements with other city agencies necessary for the implementation of
2334 programs specifically set out in the annual consolidated action plan and the HND
2335 budget which are consistent with all federal, state and local laws and ordinances.

2336 (c) Topeka's approved neighborhood plans establish the general framework
2337 for which funding decisions are considered. HND will establish written criteria for how a
2338 target area should be defined in order to be considered for funding. The criteria shall
2339 include, but not be limited to, neighborhood plans, the neighborhood health map as

published by the City Planning Department and the Topeka-Shawnee County Comprehensive Metropolitan Plan - 2025, and any amendments thereto. HND will concentrate resources geographically to maximize collaborative investment from public and private funding sources. The major emphasis of funding decisions will be to promote identifiable impacts and enhance neighborhood wealth. HND shall invest its resources in areas where other recent and ongoing financial investment is present to further enhance current and future success. To the extent allowable by funding sources, multiple year commitments may be made to address needs identified in the five (5) year consolidated plan or the annual consolidated action plan. The concentration of resources into areas that have a reasonable potential for positive change will be a major consideration for investment strategies that will be outlined in the annual consolidated action plan. In addition, resources will be concentrated in the "intensive care" and "at risk" areas as defined in the neighborhood health map published by the City Planning Department, as being the areas where the majority of HUD resources will be allocated.

Section 69. That section 66-101, Required; exceptions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Required; exceptions.

(a) A grading and excavation permit shall be required when:

(1) The removal, increase or stockpiling of any earthwork exceeds one foot in height and the amount of materials to be removed, increased or stockpiled exceeds 100 cubic yards.

(2) The extraction of any earth, rock or other natural materials occurs in conjunction with a special permit issued pursuant to applicable zoning ordinances.

(3) The grading, excavation or stockpiling of any earthwork significantly changes a recognized, established watercourse or results in a significant change in drainage or runoff conditions to an established drainage easement of record.

(4) The clearing, grading, excavation or construction exceeds five acres in area.

(b) The grading and excavation permit shall be obtained prior to clearing of land in preparation for any of the activities set out in subsection (a). When the area exceeds five acres, the permit must be applied for at least 90 days prior to beginning construction.

(c) Exceptions. A grading and excavation permit shall not be required for the following:

(1) The removal or increase of earthwork in conjunction with any construction project of less than five acres for which a building or construction permit has been issued, provided the removal or increase of earthwork is contained on the parcel of property for which a building permit or construction permit has been issued. Property adjoining the parcel of property for which a building permit or construction permit has been issued may be used for the temporary storage of fill material provided written permission has been obtained from the adjoining property owner and the storage of fill materials ends at the completion of the permitted work. However, the work will conform to the

standards and other requirements of this article and other applicable city ordinances.

(2) Cemetery graves.

(3) Sanitary landfills, where such landfills have been authorized by a special permit.

(4) Demolition landfills, where such landfills have been authorized by the health officer.

(5) Exploratory excavations, tests and sampling under the direction of a soils engineer or engineering geologist or as approved by the department of public works.

(6) Work of less than five acres conducted by governmental agency crews and contractors employed by the governmental agency, public utility crews and their contractors; however, the work will conform to the standards and other requirements of this article and any other applicable city ordinance.

Nothing contained in this subsection (c) shall be construed as exempting from regulation excavation work which is regulated by separate permit as set forth in section 130-231 (public place excavation) 156, Application and permit required or section 74-48 (floodplain).

Section 70. That section 66-153, Scope, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Scope.

(a) This article shall apply to all proposed development except for that development which meets waiver or variance criteria as outlined hereinafter.

(b) This article shall apply to activities that involve clearing, earthwork, and excavation within the buffer zone as defined herein.

(c) Except as provided elsewhere, this article shall apply to all tracts and parcels of land, structures, and activities that cause or contribute to:

(1) Pollution, including non-point source pollution, of the waters of the city.

(2) Erosion or sedimentation of stream channels.

(3) Degradation of aquatic or riparian habitat.

(d) This article shall not apply to development which prior to the effective date of this article:

(1) Is covered by a recorded plat ~~recorded of record~~ in accordance with subdivision regulations and no further development is anticipated.

(2) Is covered by a valid, unexpired building permit.

(3) Has applied for a building permit.

(e) This article shall apply to all development of existing platted parcels occurring after the effective date of this article where the impervious surface increases by 50 percent or more; or where the redevelopment of an existing platted parcel contains one-eighth of a mile or more of a type I, II, or III stream; or where the platted parcel is adjacent to one-eighth of a mile or greater of a type I, II, or III stream.

Section 71. That section 70-36, Records and reports, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Records and reports.

It shall be the duty of the chief of the fire department to keep an accurate account of all supplies or repairs connected with the fire department and of all department expenses. All bills and accounts for expenses incurred for the fire department shall be carefully examined and certified to by the fire chief as to their correctness before being presented for payment. The fire chief shall cooperate with the state fire marshal in maintaining records of fires and losses resulting therefrom and shall also keep suitable account books showing in a detailed and accurate manner the entire expenses and cost of the fire department and of each station separately, together with a record of all accounts certified by the fire chief for payment. The fire chief shall also keep a record of all personnel employed in the department with the time so employed; also an inventory book, showing at all times a list of the property belonging to the city in charge of the fire department, together with any other records that may be necessary to show at any time the condition of such department. At the close of each fiscal year, the fire chief shall make a report to the mayor and ~~chief administrative officer~~ city manager giving a summary of the work done by and the expenses and general condition of the fire department.

Section 72. That section 70-57, Fireworks, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Fireworks.

(a) *Definitions:*

(1) "*Consumer fireworks*" shall mean any small firework device designed to produce visible effects by combustion and are classified as consumer fireworks UN0336, and UN0337 by the U.S. Department of

Transportation at 49 C.F.R. 172.101, and 27 C.F.R. 555.11 as may be amended.
Metal sparklers are specifically excluded from this definition of consumer fireworks.

(2) *"Display fireworks"* shall mean large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and are classified as display fireworks ~~are classified as fireworks~~ UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 C.F.R. 172.101, and 27 C.F.R. 555.11.

(3) *"Fireworks"* shall mean any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation.

(4) *"Fire chief"* shall mean the duly appointed chief of the City of Topeka Fire Department or any person designated by said chief to enforce the provisions of this ordinance.

(b) *Possession/discharge of fireworks.* It shall be unlawful for any person to possess, transport, ignite, discharge or cause to be discharged any firework in the city except as specifically permitted in this section.

(1) Consumer fireworks may be discharged within the City of Topeka:

(i) Between the hours of 8:00 a.m. and 9:00 p.m. on June 27, 28, 29, 30, July 1 and July 5 of each year.

(ii) Between the hours of 8:00 a.m. and 11:00 p.m. on July 2, 3 and 4 of each year.

(2) It shall be unlawful for any person to recklessly or intentionally discharge, ignite or otherwise cause a firework:

2475 (i) To place another person in reasonable apprehension of
2476 immediate bodily harm; or

2477 (ii) To cause physical contact with another person; or

2478 (iii) To deface or damage real or personal property of another
2479 person without the consent of any such other person.

2480 (3) Further, it shall be unlawful for any person to, possess, ignite or
2481 otherwise cause the discharge of any firework that is not a consumer firework or
2482 any firework which is prohibited by federal or state statute or regulation.

2483 (c) *Sale of fireworks.*

2484 (1) It shall be unlawful for any person to sell, hold for sale, or offer for
2485 sale at retail, any consumer fireworks in the city unless such person has first
2486 obtained a permit from the city as a retailer.

2487 (2) Any person desiring to sell or offer for sale any permissible
2488 fireworks as a retailer shall make application to the city clerk for a permit
2489 authorizing the same. Such application shall include the following information and
2490 such additional information as the fire chief shall deem necessary:

2491 (i) The name and residence address of the applicant.

2492 (ii) The location of the premises for which the permit is sought. If
2493 ownership of premises is different from the applicant, written consent of
2494 the owner is required.

2495 (iii) When the permit is sought in a temporary structure or facility,
2496 the applicant shall provide a legal description of the premises, a
2497 description of the structure or facility to be used, and the location of such

structure or facility upon the premises. All temporary structures including tents, shall be posted with the approved NFPA 704 placards as described in the Uniform Fire Code. A copy of subsection (b) of this section shall also be posted on all premises where fireworks are sold. Such notice shall be at least eight and one-half inches by eleven inches (8 1/2" x 11") in size and printed in type no smaller than twelve (12) characters per inch. After an inspection of the premises including review by appropriate city agencies such as fire department, developmental services director and consideration of the information contained in the application for a permit, the fire chief may issue a permit therefore, conditioned upon reasonable safety measures to be specified in the permit and upon payment by the applicant of a fee of two hundred eighty dollars (\$280.00) to the city clerk. Any permit issued under the provisions of this section shall be valid only for the period of June 27 through and including July 5 of the year in which issued and shall be issued in accordance with the Uniform Fire Code article entitled "permits." Persons responsible for the operations of permissible firework stands in which fireworks are stored or handled shall be familiar with safety requirements for the materials being sold, and the appropriate actions necessary in the event of a fire.

(d) *Confiscation of fireworks.* Any fireworks in the immediate possession or control of a person violating any city ordinance controlling the use of fireworks may be confiscated by any sworn law enforcement official, the fire chief, or any member of the fire department who has been duly authorized by the fire chief. Confiscated fireworks

must be retained by the confiscating agency and may only be destroyed upon approval by the court.

(e) *Adult supervision required.* At all times that it is lawful for any person over the age of eighteen (18) years to possess and discharge permitted consumer fireworks, it shall also be lawful for a person under the age of eighteen (18) years to possess and discharge permitted consumer fireworks when such person does so under adult supervision and in the physical presence of the adult. It shall be unlawful for any person over the age of eighteen (18) years to permit a person under the age of eighteen (18) to discharge fireworks without adult supervision and in the physical presence of the adult.

(f) *[Rules and regulations.]* Display fireworks may be sold and ignited and/or discharged pursuant to rules and regulations established by the Chief of the Topeka Fire Department.

(g) *[Penalties.]* Any person convicted of violating any of the provisions in this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) to a maximum amount of four hundred ninety-nine dollars (\$499.00) per violation. In addition to any fine, the individual may be sentenced up to one hundred seventy-nine (179) days in jail. The fine shall not be paroled.

Section 73. That section 74-32, Lands to which article applies, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Lands to which article applies.

This article shall apply to all lands within the jurisdiction of the city identified on the flood insurance rate map (FIRM) as numbered and unnumbered A zones (including

AE, AO and AH zones) and within the zoning districts FW and FF established in section 74-67. In addition this article shall also apply to those lands which based on the most accurate information available to the public works director fall within the ultimate one hundred (100) year flood plain. In all areas covered by this article, no development shall be permitted except upon a permit to develop granted by the council or its duly designated representative under such safeguards and restriction as the council or the designated representative may reasonably impose for the promotion and maintenance of the general ~~welfare, health, safety and welfare~~ of the inhabitants of the community, and where specifically noted in sections 74-68, 74-69 and 74-70.

Section 74. That section 78-1, Occupations detrimental to public health, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Occupations detrimental to public health.~~

~~When the health officer shall find that any trade or occupation carried on within the city is detrimental to the public health, and such findings are approved by the city council, it shall be the duty of the person conducting the business, trade or occupation to discontinue the same, or put the same in a condition which will not be detrimental to the public health, within such reasonable time as the health officer may direct.~~

Section 75. That section 78-261, Unlawful to sell or expose for sale from unapproved plant, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Unlawful to sell or expose for sale from unapproved plant.~~

~~No beef, pork, veal, mutton or lamb nor any part of any animal from which any meat is obtained shall be sold for food purposes or exposed for sale or held in possession in any store in which meat is sold unless the animal from which such meat~~

~~is derived has been slaughtered and processed in a plant approved by and under the inspection of the United States government or the state board of health and carries the respective stamp of approval of such agency. The provisions of this article shall be construed to apply to all meats, sausage, edible viscera, or any product derived from any of them.~~

Section 76. That section 78-363, Parking restrictions, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Parking restrictions.~~

~~It shall be unlawful for any person to park any vehicle containing carcasses of any domestic animals, trimmings from meat markets, or packinghouse refuse, upon the streets or alleys of the city or on any private property except for the purpose of loading or unloading the vehicle or making emergency repairs upon such vehicles. Nothing in this section shall be construed to allow overnight parking of a loaded or partly loaded vehicle for any reason.~~

Section 77. That section 82-295, Unlawful housing practices, definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Unlawful housing practices; definitions.

It is the policy of the city to provide, within constitutional limitations, for fair housing throughout the corporate limits of the city. The following housing practices shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, to fail to transmit a bona fide offer or refuse to negotiate in good faith for the sale or rental of, or

otherwise make unavailable or deny, a dwelling to any person because of race, religion, color, sex, disability, familial status or national origin.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, religion, color, sex, disability, familial status or national origin.

(3) To make, print, publish, disseminate or use or cause to be made, printed, published, disseminated or used any notice, statement, advertisement or application, with respect to the sale or rental of a dwelling that indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, disability, familial status or national origin, or an intention to make any such preference, limitation, specification or discrimination.

(4) To represent to any person because of race, religion, color, sex, disability, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact available.

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, familial status or national origin.

(6) a. To discriminate in the sale or rental of or to otherwise make unavailable or deny a dwelling to any buyer or renter because of a disability of:

1. That buyer or renter;

2611 2. A person residing in or intending to reside in such dwelling
2612 after it is sold, rented or made available; or

2613 3. Any person associated with that buyer or renter.

2614 b. To discriminate against any person in the terms, conditions or
2615 privileges of sale or rental of a dwelling or in the provision of services or facilities
2616 in connection with such dwelling, because of a disability of:

2617 1. That person;

2618 2. A person residing in or intending to reside in that dwelling
2619 after it is sold, rented or made available; or

2620 3. Any person associated with that person.

2621 c. For purposes of this subsection, the term "discrimination" includes:

2622 1. A refusal to permit, at the expense of the person with a
2623 disability, reasonable modifications of existing premises occupied or to be
2624 occupied by such person if such modification may be necessary to afford
2625 such person full enjoyment of the premises; except that, in the case of a
2626 rental, the landlord may, where it is reasonable to do so, condition
2627 permission for a modification on the renter's agreeing to restore the
2628 interior of the premises to the condition that existed before the
2629 modification, reasonable wear and tear excepted;

2630 2. A refusal to make reasonable accommodations in rules,
2631 policies, practices or services, when such accommodations may be
2632 necessary to afford such person equal opportunity to use and enjoy a
2633 dwelling; or

2634 3. In connection with the design and construction of covered
2635 multifamily dwellings for first occupancy after March 13, 1991, a failure to
2636 design and construct those dwellings in a manner that:

2637 i. The dwelling has at least one building entrance on an
2638 accessible route, unless it is impractical to do so because of the
2639 terrain or unusual characteristics of the site.

2640 ii. With respect to dwellings with a building entrance on
2641 an accessible route:

2642 A. The public use and common use portions of
2643 such dwelling are readily accessible to and usable by
2644 persons with disabilities. This shall include at least one
2645 building entrance on an accessible route unless it is
2646 impracticable to do so because of the terrain or unusual
2647 characteristics of the site;

2648 B. All the doors designed to allow passage into
2649 and within all premises within such dwellings are sufficiently
2650 wide to allow passage by persons with disabilities who are in
2651 wheelchairs; and

2652 C. All premises within such dwellings contain the
2653 following features of adaptive design:

2654 1. An accessible route into and through the
2655 dwelling;

2656 2. Light switches, electrical outlets,
2657 thermostats and other environmental controls in
2658 accessible locations;

2659 3. Reinforcements in bathroom walls to
2660 allow later installation of grab bars; and

2661 4. Usable kitchens and bathrooms such
2662 that an individual in a wheelchair can maneuver about
2663 the space.

2664 d. ~~Compliance with the appropriate requirements of the American~~
2665 ~~National Standard for buildings and facilities providing accessibility and usability~~
2666 ~~for physically handicapped people, commonly cited as ANSI A 117.1, suffices to~~
2667 ~~satisfy the requirements of subsection 82-296(6)~~Accessibility and usability for
2668 persons with disabilities shall comply with the applicable laws and regulations as
2669 well as the codes adopted by the city.

2670 e. As used in this subsection, covered multifamily dwelling means:

2671 i. Buildings consisting of four or more units if such buildings
2672 have one or more elevators; and

2673 ii. Ground floor units in other buildings consisting of four or
2674 more units.

2675 f. Nothing in this article shall be construed to invalidate or limit any
2676 state law or ordinance that requires dwellings to be designed and constructed in
2677 a manner that affords persons with disabilities greater access than is required by
2678 this article.

g. Nothing in this subsection requires a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Section 78. That section 82-298, Limitations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Limitations.

(a) Nothing in this section shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin. Nor shall anything in this section prohibit a private club not in fact open to the public, which as an incident of its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.

(b) Nothing in this section, other than the prohibitions against discriminatory advertising as provided in subsection (3) of section 82-295 of this article, shall apply to:

(1) The sale or rental of any single family house by an owner, providing the following conditions are met:

a. The owner must not own or have an interest in more than three such single family houses at any one time; and

2702 b. The house is sold or rented without the use of a real estate
2703 broker, agent or salesperson or the services and facilities of any person in
2704 the business of selling and renting dwellings, and without publication,
2705 posting or mailing, after notice, of any advertisement or written notice in
2706 violation of section 82-295 of this article. But nothing in this provision shall
2707 prohibit the use of attorneys, escrow agents, abstractors, title companies
2708 and other such professional assistance as is necessary to perfect title or
2709 transfer of title. In the case of the sale of any such house by a private
2710 individual owner not residing in such house at the time of such sale or who
2711 was not the most recent resident of such house prior to such sale, the
2712 exemption granted in this subsection shall apply only with respect to one
2713 such sale in any 24-month period; or

2714 (2) Rooms or units in buildings containing living quarters occupied or
2715 intended to be occupied by no more than four families living independently of
2716 each other, if the owner actually maintains and occupies one of such living
2717 quarters as the owner's residence.

2718 (c) (1) Nothing in this section limits the applicability of any reasonable
2719 local, state or federal restrictions regarding the maximum number of occupants
2720 permitted to occupy a dwelling. Nor does any provision in this section regarding familial
2721 status apply with respect to housing for older persons.

2722 (2) Housing shall not fail to meet the requirements for housing for older
2723 person by reason of:

a. Persons residing in such house as of the date of enactment~~adoption~~ of this Act~~ordinance~~ who do not meet the age requirements of ~~sections 82-298(c)(2)b. or c.~~ set forth in the definition of Housing for older persons in section 82-291; provided, that new occupants of such housing meet the age requirements ~~of sections 82-298(c)(2)b. or c.~~; or

b. Unoccupied units; provided, that such units are reserved for occupancy by persons who meet the age requirement ~~of subsections 82-298(c)(2)b. or c.~~ set forth in the definition of Housing for older persons in section 82-291.

(3) A person shall not be held personally liable for monetary damages for a violation of this section if such person reasonably relied, in good faith, on the application of the exemptions under this subsection relating to housing for older persons.

(d) Nothing in this section prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Federal Controlled Substances Act (21 U.S.C. 802).

Section 79. That section 86-54, Intimidation or bias crimes, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Intimidation or bias crimes.

(a) Any person who violates or attempts to violate any of the following ordinances of the Code of the City of Topeka, Kansas, and any amendments thereto, by

reason of any motive or intent relating to, or any antipathy, animosity or hostility based upon, the race, religion, color, sex, sexual orientation, disability, national origin or ancestry, or age of another individual or group of individuals shall be guilty of a misdemeanor:

(1) Uniform Public Offense Code (hereinafter "UPOC") 3.1, Battery;

(2) UPOC 3.3, Assault;

(3) ~~Code section 54-121~~ UPOC 9.1, Disorderly conduct;

(4) UPOC 6.6, Criminal damage to property;

(5) ~~Code section 54-39~~ UPOC 6.7, Criminal trespass;

(6) UPOC 9.10, Telephone harassment;

~~(7) Code section 54-101, Carrying a deadly weapon;~~

~~(8)~~ Code section 54-102, Discharge of firearms;

~~(9)~~ Code section 54-103 UPOC 10.2, Drawing a weapon upon another.

(b) Any person who, by reason of any motive or intent relating to, or any antipathy, animosity or hostility based upon, the race, color, sex, religion, national origin, age, sexual orientation, ancestry, or disability of another individual or group of individuals knowingly assembles with two or more persons and agrees with such person or persons to violate any of the criminal laws of the state of Kansas or of the United States with force or violence shall be guilty of a misdemeanor.

(c) Penalty.

(1) Upon a first conviction of a violation of the provisions of this section a person shall be deemed guilty of a misdemeanor and shall be punished by a

fine of not less than \$250.00 nor more than \$2,500.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(2) On a second or subsequent conviction of a violation of the provisions of this section a person shall be deemed guilty of a misdemeanor and shall be sentenced to imprisonment of not less than five days nor more than one year and a fine of not less than \$500.00 nor more than \$2,500.00.

Section 80. That section 98-131, Roadways, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Roadways.

(a) All mobile homes shall abut upon a park street system, with no mobile home site having its direct access from a public street, alley or highway. All streets shall have unobstructed access to a public street or highway; and all dead-end streets shall include an adequate vehicular turning space or cul-de-sac.

(b) The approach connecting the mobile home park street system with the public street, alley or highway shall meet the requirements set forth in ~~chapter 130, article IV, division 4~~ the standard plans and specifications promulgated by the city engineer, relating to the construction of driveways, curbs and gutters.

(c) Surface roadways in mobile home parks shall be constructed and maintained in accordance with current street designs required by the city as related to subdivisions.

(d) Each street in mobile home parks shall be clearly identified with letters or numerals of a light reflecting material, and shall be provided by the developer and in accordance with city standards.

2792 Section 81. That section 98-133, Driveways, of The Code of the City of Topeka,
2793 Kansas, is hereby amended to read as follows:

2794 **Driveways.**

2795 All driveways located within the mobile home park shall meet the requirements
2796 set forth in ~~chapter 130, article IV, division 4,~~the standard plans and specifications
2797 promulgated by the city engineer, regulating private driveway approaches within a
2798 residential district.

2799 Section 82. That section 98-211, Mobile home craftsmen board of examiners,
2800 of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

2801 **Mobile home craftsmen board of examiners.**

2802 (a) There is hereby created a mobile home craftsmen board of examiners to
2803 consist of five persons, all of whom shall be appointed by the mayor. Three members so
2804 appointed shall be engaged in the business of the plumbing, electrical and mechanical
2805 trade, respectively. Two persons so appointed shall be engaged in the business of
2806 repair, installation or alteration of mobile homes or their components. Members shall be
2807 appointed for a term of one year.

2808 (b) The ex officio membership of the mobile home craftsmen board of
2809 examiners shall consist of the city plumbinginspector, mechanical inspector, and
2810 electrical inspector.

2811 (c) It shall be the duty of the members of the mobile home craftsmen board of
2812 examiners, under such rules and regulations as they shall prescribe, to hold meetings
2813 as necessary, on days to be announced by the mobile home craftsmen board of
2814 examiners, for the purpose of passing upon the qualifications of parties desiring

licenses to perform the duties of mobile home craftsmen. In addition, the board shall be empowered to hear and determine interpretations of applicable codes and to permit variances or waivers therefrom, provided such variances or waivers do not endanger life, limb, property or public welfare.

Section 83. That section 102-158, Westlake amphitheatre, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Westlake amphitheatre.

All persons or organizations desiring to rent Westlake Amphitheatre shall make application with the director of parks and recreation at least ten days prior to the date of intended usage. Fees for the use of Westlake Amphitheatre shall be established by the parks and recreation director which shall be reviewed and approved as part of the budget process.

Section 84. That section 106-74, Promotions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Promotions.

(a) *Fire department.* All promotions of fire department personnel covered by this article shall be in accordance with Charter Ordinance No. 10 (App. A, § A6-16 et seq.).

~~(b) *Police department.* All promotions of police department personnel covered by this article shall be in accordance with section 106-58.~~

Section 85. That section 106-170, Sources of city's contributions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Sources of city's contributions.

The city will pay its contributions from the same fund that the wages from which the contribution in section 106-470~~169~~(b) is made are paid or from any other funds available to it for the purpose or that it will annually or when necessary levy at the time of its levy for other purposes, a tax which may be in addition to all other taxes authorized or limited by law, for the purpose of making its contributions under subsection (c) of section 5 of the state act, which tax together with any other funds available to the city for such purpose shall be sufficient to enable it to make its contributions; provided, that in the year 1951, the city may, if current funds are not available, issue no-fund warrants for the purpose of providing funds to make such contributions for wages earned during the calendar year 1951, and provide for the redemption of such warrants as provided by K.S.A. 40-2305(e); provided further, that funds for the city's contributions will be properly and adequately budgeted for the year 1952, if this plan takes effect in time for such budgeting at budgeting time in 1951, and in subsequent years, and contributions will be made in 1951 and 1952 whether such expenditures are budgeted or not, as authorized by K.S.A. 40-2305(e). The city verily believes that with the current funds that may be available and the unlimited tax levy authorized by K.S.A. 40-2305(e), there is a reasonable assurance that sources will be adequate for the purposes of K.S.A. 40-2305(c)(1) and K.S.A. 40-2305(d).

Section 86. That section 112-5, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

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:

Meaning of certain words. Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming units," "premises" or "structures" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

Accessory structure means a detached structure which is not used or not intended to be used for living or sleeping by human occupants and which is located on or partially on any premises.

Agent means any person who has charge, care, control or management of a structure or premises which is let or offered for occupancy.

Appropriate authority means the department, division or person who has the responsibility to administer and enforce the applicable code.

Approved means approved by the local or state authority having such administrative authority.

Basement means the lower level of a building located substantially below grade.

Calendar year as used herein means that period of time beginning January 1 and ending December 31 of the same year.

Cellar means a portion of a building located partially or wholly underground, and having half or more than half of its clear floor to ceiling height below the average grade of the adjoining ground.

Chimney means a vertical masonry shaft of reinforced concrete or other approved noncombustible, heat resistant material enclosing one or more flues, for the purpose of removing products of combustion from solid, liquid or gaseous fuel.

Commercial structure means any structure or any part thereof, which is used for other than residential purposes and where applicable, the premises on which such structures are situated.

Dwelling means any enclosed space that is wholly or partly used or intended to be used for living or sleeping by human occupants; provided, that temporary housing as defined in this section shall not be regarded as a dwelling.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, sanitation and eating.

Egress means a place or means of going out.

Extermination means the control and elimination of insects, rodents and/or rats by eliminating their harborage places; by removing or making inaccessible materials that may serve as a food source; by poisoning, spraying, fumigating, trapping or by any other approved pest elimination methods.

Flush toilet (water closet). A water-flushed plumbing fixture designed to receive human waste. This fixture shall have a means of delivering a minimum of one point six (1.6) gallons of water after each use, to thoroughly clean and sanitize the fixture.

Garbage means the animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

2902 *Graffiti* means any unauthorized writing, inscription, word, figure or design which
2903 is marked, etched, scratched, drawn or painted on any structural component of any
2904 building, structure or other facility, regardless of the nature of the material used in its
2905 application or upon which it is applied.

2906 *Guest* means any person who shares a dwelling unit in a nonpermanent status
2907 for not more than thirty (30) days.

2908 *Habitable space* means space in a structure for living, sleeping, eating or
2909 cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar
2910 areas not considered habitable spaces.

2911 *Heated water* means water capable of being heated to a temperature of not less
2912 than one hundred twenty degrees (120) Fahrenheit at the outlet.

2913 *Household* means a family and/or one or more unrelated persons, including
2914 servants, who share the same dwelling and use some or all of its cooking and eating
2915 facilities.

2916 *Imminent danger* means a condition that could cause serious or life-threatening
2917 injury or death at any time.

2918 *Infestation* means the presence within or around a dwelling of any insects,
2919 rodents or rats.

2920 *Ingress* means a place or means of going in.

2921 *Inoperative vehicle* means any motor vehicle which cannot be moved under its
2922 own power, or cannot be operated lawfully on a public street or highway due to removal
2923 of, damage to, or deterioration of, or inoperative condition or absence of any component

part, or the lack of an engine, transmission, wheels, tires, doors, or windshield or windows necessary for such lawful operation.

Inspector means the designated staff member in the police department.

Kitchen means any room containing any or all of the following equipment, or any area of a room within three (3) feet of such equipment: sink and/or other device for dishwashing, stove or other device for cooking, refrigerator for cool storage of food (between thirty-two degrees (32°) and forty-five degrees (45°) Fahrenheit), cabinets and/or shelves for storage of equipment and utensils, and table or counter for food preparation.

Kitchenette means a small kitchen or an alcove containing cooking facilities.

Motor vehicle means a machine propelled by power other than human power and designed to travel along the ground by use of wheels, treads, runners or slides and which transports persons or property or pulls machinery, and shall include without limitation an automobile, truck, trailer, motorcycle, tractor, buggy and wagon.

Multiple dwelling means any dwelling containing more than two dwelling units or rooming units.

Nonresidential structures means any structure or any part thereof, which is used for other than residential purposes, and where applicable, the premises on which such structures are situated.

Notice means a written statement issued by the chief of police declaring a condition to be substandard.

Nuisance means any condition which injures or endangers the comfort, repose, health, safety or welfare of the public; offends decency; is offensive to the senses;

unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; in any way renders another person insecure in life or the use of property; or essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of another.

Occupancy means the purpose for which a building or portion thereof is utilized or occupied.

Occupant means any person over one (1) year of age, living, sleeping, cooking or eating in, or actually having possession of, a dwelling unit or a rooming unit, except that in dwelling units a guest will not be considered an occupant.

Owner means any person who, alone or jointly or severally with others, shall have:

1. Legal title to any premises, dwelling or dwelling unit, with or without accompanying actual possession thereof; or

2. Charge, care or control of any premises, dwelling or dwelling unit, as owner or agent of the owner, or as executor, administrator, purchaser under contract, taxpayer, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of any notice and order and of rules and regulations adopted pursuant thereto, to the same extent as if the person were the owner.

Permissible occupancy means the maximum number of persons permitted to reside in a dwelling unit or rooming unit.

2969 *Plumbing* means and includes all of the following supplied facilities and
2970 equipment: gas pipes, gas burning equipment, water pipes, garbage disposal units,
2971 waste pipes, toilets, sinks, installed dishwashers, lavatories, bathtubs, shower baths,
2972 installed clothes washing machines, catch basins, drains, vents and any other similar
2973 supplied fixtures, and the installation thereof, together with all connections to water,
2974 sewer or gas lines.

2975 *Premises* means a platted lot or part thereof or unplatted lot or parcel of land or
2976 plot of land, either occupied or unoccupied by any dwelling or non-dwelling structure,
2977 and includes any such dwelling, accessory structure or other structure thereon.

2978 *Privacy* means the existence of conditions which will permit a person to carry out
2979 an activity commenced without interruption or interference, either by sight or sound, by
2980 unwanted persons.

2981 *PUC* means a purchaser of real estate under an installment land contract.

2982 *Rat harborage* means any place where rats or rodents can live, nest or seek
2983 shelter.

2984 *Rat proofing* means construction, which will prevent the ingress or egress of rats
2985 or rodents to or from a given space in a building, or prevent access to food, water or
2986 harborage. It consists of the closing and keeping closed of every opening in
2987 foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs,
2988 sidewalk gratings, sidewalk openings, and other places that may be reached and
2989 entered by rats or rodents through by climbing, burrowing or other methods, by the use
2990 of materials impervious to rat or rodent gnawing, and other methods approved by the
2991 appropriate authority.

2992 *Refuse* includes garbage and trash, but is not limited to waste matter from the
2993 preparation of food, yard trimmings, paper, boxes, wood, glass, crockery and metals.

2994 *Refuse container* means a container that is impermeable by water or air and that
2995 is capable of being serviced without creating unsanitary conditions. Openings into the
2996 container such as covers and doors shall be tight-fitting.

2997 *Residential board and care facility* means a facility as defined by Topeka City
2998 Code ~~section 70-191~~Chapter 48, Article XXXV.

2999 *Residential structures* means any building, dwelling or structure, or part thereof,
3000 used and occupied or intended to be used and occupied for human habitation, and
3001 including any appurtenances belonging thereto or usually enjoyed therewith.

3002 *Rooming house* means any dwelling or that part of any dwelling containing one
3003 (1) or more rooming units.

3004 *Rooming unit* means any room or group of rooms forming a single habitable unit
3005 used or intended to be used for living or sleeping, but not for cooking purposes.

3006 *Safety* means the condition of being free from danger and hazards which may
3007 cause accidents or disease.

3008 *Space heater* means a self-contained heating appliance of either the circulating
3009 type or the radiant type and intended primarily to heat only one (1) room.

3010 *Structures* means anything constructed or erected which requires location on the
3011 ground or attached to something having a location on the ground including retaining
3012 walls.

3013 *Supplied* means paid for, furnished by, provided by, or under the control of the
3014 owner, occupant, PUC, or agent.

3015 *Temporary housing* means any tent, trailer, mobile home or any other structure
3016 used for human shelter which is designed to be transportable and which is not attached
3017 to the ground, to another structure or to any utility system on the same premises for
3018 more than thirty (30) consecutive days.

3019 *Tenant* means a person, corporation, partnership or group, whether or not the
3020 legal owner of record, occupying a building or portion thereof as a unit.

3021 *Trash* means solid wastes, excluding ashes, consisting of either:

3022 1. Combustible wastes such as paper, cardboard, plastic containers, yard
3023 clippings and wood; or

3024 2. Noncombustible wastes such as tin cans, glass and crockery.

3025 *Unsafe structure* means one that is unfit for human use or habitation due to
3026 dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of
3027 ventilation, light, sanitary facilities or other conditions which render such structures
3028 unsafe, unsanitary, or otherwise injurious to the welfare of the residents of the city.

3029 *Vegetation* means, but is not limited to, weeds, woody vines, brush, grass and
3030 uncultivated plants.

3031 *Weeds* means the existence of excessive accumulations or untended growth of
3032 weeds, grasses, undergrowth and uncultivated plants which threatens or endangers the
3033 public health, safety or welfare or may reasonably cause disease, harbor vermin and
3034 insects, or which adversely affects and impairs the economic welfare of the adjacent
3035 property ~~is hereby prohibited.~~

Section 87. That section 114-156, Periodic inspections of salvage yard locations; revocation of permit, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Periodic inspections of salvage yard locations; revocation of permit.

The fire chief or his/her designee shall make periodic inspections of licensed salvage yards to ensure that they are being operated and maintained in accordance with permit conditions and applicable Code provisions. If an inspection discloses that the owner/operator of a salvage yard is operating in violation of any Code provisions, the licensee shall be so informed in writing by registered mail of the violations and shall have ten days from receipt of such notice to come into compliance with the Code provisions. If the owner/operator fails to comply, the ~~director of environmental health~~ city may pursue enforcement under the appropriate code provisions. In addition, the fire chief may revoke the permit.

Section 88. That section 130-161, Repair by city; costs, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Repair by city; costs.

(a) If the construction of improvements or other work within the city's rights-of-way is not in conformance with city's technical specifications or the provisions of this article, the department of public works shall either order the work to be corrected or ~~perform~~ correct the work.

(b) The department of public works shall keep an accurate account of the cost of such operation required under subsection (a), and such cost, plus an administrative

fee of \$75.00 to reimburse the city for the administrative costs incurred by the city to oversee the correction to the nonconforming work, shall be charged to the person to whom the permit for such work was issued or in the case when no permit was issued, the owner of the property adjacent to the improvement shall be charged the cost of work and the administration fee. No further permits for work in the city's right-of-way shall be issued to such person until such charges have been paid in full.

Section 89. That section 130-163, Prohibited acts, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Prohibited acts.

(a) In addition to the ~~administrative actions~~ suspension or revocation of a license available to the city, under Topeka City Code section 130-164~~5~~, ~~prohibited acts~~, it shall be unlawful for any person or contractor licensed by the city, its employee, agent or subcontractor to cause, permit or allow the following:

- (1) Fail to obtain the proper permit;
- (2) Fail to complete all work within the specified permit limits;
- (3) Fail to restore the right-of-way or easement to the same condition that existed prior to commencement of the work authorized by the permit;
- (4) Fail to establish traffic control in accordance with the Manual of Uniform Traffic Control, current city approved edition, or such other rules, regulations, or restrictions promulgated by the city engineer;
- (5) Fail to notify the City of Topeka, Engineering Division Construction Management, of the commencement of work authorized by the permit; and

(6) Fail to execute work in accordance with City of Topeka Standard Technical Specifications and Detail Drawings, latest edition;

(7) To remove or interfere with any traffic control device in the right-of-way;

(8) To cut, damage or break any curb, gutter or sidewalk unless authorized under a permit issued by the city;

(9) To interfere with traffic in violation of City of Topeka Code section 130-160.

(10) To hinder or obstruct the repair or construction of any public improvement or other work in the city's right-of-way pursuant to any permit issued under this article;

(11) Fail to remove an existing obsolete driveway approach.

(b) Any person violating this section may be punished by:

(1) A fine of not more than \$499.00;

(2) Imprisonment in jail for not more than 179 days; or

(3) Both such fine and imprisonment not to exceed the limits set out in subsections (c)(1) and (c)(2).

(c) Provided however contractors holding a valid license with the city shall be given notice of a violation with opportunity to cure in accordance with the provisions of ~~subsection (10)~~ 130-164(b) prior to prosecution under this section.

(d) Provided however entities holding a valid franchise agreement with the city shall be given notice of a violation and an opportunity to cure in accordance with the franchise agreement prior to prosecution under this section.

3104 Section 90. That section 130-2, Trespass on parkings, of The Code of the City
3105 of Topeka, Kansas, is hereby repealed.

3106 **~~Trespass on parkings.~~**

3107 ~~It shall be unlawful for any person to walk or trespass upon any of the parkings of~~
3108 ~~the city, except upon the walk or pathway provided for by the property owners leading~~
3109 ~~from the sidewalk to the curb.~~

3110 Section 91. That section 142-63, Disposition of fines and forfeitures, of The
3111 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

3112 **Disposition of fines and forfeitures.**

3113 All fines or forfeitures collected upon conviction, or upon the forfeiture of bail, of
3114 any person charged with a violation of any of the provisions of this chapter shall be paid
3115 into the city treasury and deposited in the general fund; provided however; all fines or
3116 penalties collected upon issuance of a violation notice and/or through a final
3117 determination of a violation notice in violation of section 142-386 shall be paid into the
3118 city treasury and deposited in the parking fund for the proper regulation, control and
3119 inspection of parking upon the public streets and municipal offstreet parking facilities as
3120 provided for in section 142-382(b).

3121 Section 92. That section 142-266, Prohibitions, of The Code of the City of
3122 Topeka, Kansas, is hereby amended to read as follows:

3123 **Prohibitions.**

3124 (a) No person shall abandon any vehicle on any street or highway or on any
3125 other public property within the city and no person shall leave any vehicle at or on any

such place within the city for such times and under such circumstances as to cause such vehicles reasonably to appear to have been abandoned.

(b) No person shall abandon in any manner any vehicle, as defined in subsection (d) of this section, on any private property within the city which the person is not lawfully entitled to so use; and no person shall leave any vehicle at or on any such place within the city for such times and under such circumstances as to cause such vehicles reasonably to appear to have been abandoned.

(c) No person shall leave any partially dismantled, nonoperating, wrecked or junked vehicle on any street or highway or other public property within the city.

(d) An "*abandoned vehicle*" is a vehicle which:

(1) Remains on the streets or other public property for more than 48 hours;

(2) Has been impounded by the police department under authority of any vehicle traffic ordinance and which remains unclaimed after 48 hours;

(3) Remains on private property for more than 48 hours following notification to remove the vehicle to the owner or person in charge of such vehicle by the owner or person in possession of the private property;

(4) Remains on private property for more than 48 hours following the posting of a notice in a conspicuous place therein or thereon ordering immediate removal of the vehicle by the owner or person entitled to possession of the private property, regardless of whether the vehicle was lawfully placed on the private property initially;

3148 (5) Is parked or placed in the driveway or other regular place of ingress
3149 or egress of a particular private property, regardless of the length of time the
3150 vehicle is so situated; or

3151 (6) Is placed or parked on any private lot or parcel of ground which is
3152 posted or designated as a lot or parcel of ground for public automobile parking
3153 for hire, or as reserved space for the parking of automobiles of persons who have
3154 special permission for such use, and the vehicle is so parked or placed without
3155 payment of the required fee therefor or otherwise placed or parked in violation of
3156 or contrary to the posting or designation described in this section, regardless of
3157 the length of time the vehicle is so situated.

3158 (7) Is found stopped, standing, or parked in a tow away zone,
3159 regardless of the length of time the vehicle is so situated.

3160 (8) Is found stopped, standing, or parked in a tow away zone or fire
3161 lane on private property, regardless of the length of time the vehicle is so
3162 situated.

3163 (e) (1) The chief of police may designate tow away no parking zones
3164 subject to approval of the traffic engineer. Tow away no parking zones will be posted
3165 with signs containing the words "No Parking" and "Tow Away Zone" by the traffic
3166 engineer.

3167 The chief of police may designate a tow away zone on a temporary basis, not to
3168 exceed seven days. Such zone shall be posted with temporary signs containing the
3169 words "No Parking" and "Tow Away Zone" and "By Order of the Chief of Police."

(2) No person shall stop, stand or park an unoccupied vehicle in any place marked as a tow away zone or any parking area ~~or on any~~ of the street, alley or drive.

~~As used in this section "parking" shall be defined as the area of any street between the curblin and the property line, including that area authorized for ingress and egress to adjacent property~~ edge of the right-of-way or any street, alley or drive or any drive approach onto a public street or alley.

(f) (1) A legally parked vehicle may be towed from any location when a police or fire supervisor has reason to believe the removal of the vehicle is necessary to facilitate public safety.

(2) When a vehicle is towed pursuant to subsection (f)(1):

a. The city will bear the expense for such removal and storage.

b. The reason for the removal will be documented on the appropriate report filed at the police or fire department by the towing officer.

c. The police or fire department will take reasonable steps to locate the owner prior to towing only as time permits in the interest of public safety.

d. The police or fire department will take reasonable steps to notify the owner of a towed vehicle as to the location of the vehicle and the reason it was towed.

Section 93. That section 142-401, Handicapped person defined, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Handicapped person" defined.

As used in this division, "handicapped person" means any person who:

(1) ~~Has a temporary or permanent physical disability limiting such person's walking ability and results in the inability to travel unassisted more than 200 feet without the use of a wheelchair, walker, prosthetic, orthotic or other assistive device;~~

(2) ~~Has severe visual or physical impairment, including partial paralysis, lower limb amputation or any other temporary or permanent loss of the use of one or both legs; or~~

(3) ~~Has been determined and certified by a physician to be severely restricted in mobility, either temporarily or permanently, by a pulmonary or cardiovascular disability, arthritic condition, emphysema, rheumatism or orthopedic or neurologic impairment.~~

Section 94. That section 142-402, Traffic engineering survey, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Traffic engineering survey.

The traffic engineer and the transportation operations superintendent are hereby authorized to conduct surveys and studies to determine the necessity for and suitable locations where parking spaces may be set aside on public streets or property throughout the city and designated as being reserved only for use by ~~handicapped~~disabled persons with a state issued license plate or placard. Angular parking spaces so designated shall be a minimum width of 12 feet, and easy access to and from all spaces shall be provided for ~~handicapped~~disabled persons.

Section 95. That section 142-403, Designation of spaces by traffic engineer, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

3216 **Designation of disabled parking spaces ~~by traffic engineer~~.**

3217 ~~Upon the recommendation of the human relations commission, division for the~~
3218 ~~disabled and pursuant to accepted standards, t~~The transportation operations
3219 superintendent and city engineer may designate parking spaces on public streets or
3220 property throughout the city to be reserved only for use by ~~handicapped~~disabled
3221 persons, and the transportation operations superintendent shall mark and post such
3222 parking spaces as specified by this division.

3223 Section 96. That section 142-404, Vehicles with disable veteran tags, of The
3224 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

3225 **Vehicles with disabled ~~veteran~~ tags.**

3226 Motor vehicles displaying the ~~distinctive disabled veteran~~special license plate or
3227 placard authorized by K.S.A. ~~8-1618-1,125~~, as amended, shall be permitted to park in
3228 any parking space on public or private property which is clearly marked as being
3229 reserved for the use of ~~handicapped~~disabled persons or persons responsible for the
3230 transportation of a ~~handicapped~~disabled person, except a parking space on private
3231 property which is clearly marked as being reserved for the use of specified
3232 ~~handicapped~~disabled persons, or park without charge in any metered zone and shall be
3233 exempt from any time limitation imposed on parking in any zone designated for parking,
3234 during the hours in which parking is permitted by the city.

3235 Section 97. That section 142-748, Same—Multiple-axle, of The Code of the
3236 City of Topeka, Kansas, is hereby amended to read as follows:

3237 **~~Same--~~Multiple-axle.**

3238 (a) No vehicle or combination of vehicles shall be moved or operated on any
 3239 street or highway within the city when the gross weight on two or more consecutive
 3240 axles exceeds the limitations prescribed in the following table:

3241 TABLE INSET:
 3242

	Maximum load in pounds carried on any two or more consecutive axles						
Distance in feet between the extremes of any group of two or more consecutive axles	2 axles	3 axles	4 axles	5 axles	6 axles	7 axles	8 axles
4	34,000						
5	34,000						
6	34,000						
7	34,000						
8 and less	34,000	34,000					
more than 8	38,000	42,000					
9	39,000	42,500					
10	40,000	43,500					
11		44,000					
12		45,000					
13		45,500					

14		46,500	51,500				
15		47,000	52,000				
16		48,000	52,500	58,000			
17		48,500	53,500	58,500			
18		49,500	54,000	59,000			
19		50,000	54,500	60,000			
20		51,000	55,500	60,500	66,000		
21		51,500	56,000	61,000	66,500		
22		52,500	56,500	61,500	67,000		
23		53,000	57,500	62,500	68,000		
24		54,000	58,000	63,000	68,500	74,000	
25		54,500	58,500	64,500 <u>63,500</u>	69,000	74,500	
26		55,500	59,500	64,000	69,500	75,000	
27		56,000	60,000	65,000	70,000	75,500	
28		57,000	60,500	65,500	71,000	76,500	82,000
29		57,500	61,500	66,000	71,500	77,000	82,500
30		58,500	62,000	66,500	72,000	77,500	82,500 <u>83,000</u>
31		59,000	62,500	67,500	72,500	78,000	83,000 <u>83,500</u>

32		60,000	63,500	68,000	73,000	78,500	83,500 <u>84,500</u>
33			64,000	68,500	74,000	79,000	85,000
34			64,500	69,000	74,500	80,000	85,500
35			65,500	70,000	75,000	80,500	
36			66,000	70,500	75,500	81,000	
37			66,500	71,000	76,000	81,500	
38			67,500	72,000	77,000	82,000	
39			68,000	72,500	77,500	82,500	
40			68,500	73,000	78,000	83,500	
41			69,500	73,500	78,500	84,000	
42			70,000	74,000	79,000	84,500	
43			70,500	75,000	80,000	85,000	
44			71,500	75,500	80,500	85,500	
45			72,000	76,000	81,000		
46			72,500	76,500	81,500		
47			73,500	77,500	82,000		
48			74,000	78,000	83,000		
49			74,500	78,500	83,500		

50		75,500	79,000	84,000	
51		76,000	80,000	84,500	
52		76,500	80,500	85,000	
53		77,500	81,000	85,500	
54		78,000	81,500		
55		78,500	82,500		
56		79,500	83,000		
57		80,000	83,500		
58			84,000		
59			85,000		
60			85,500		

Section 98. That section 146-30, Service outside city, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows: (Addition)

Service outside city.

(a) Services to property outside of the city may be connected to mains belonging to the city in accordance with the provisions of City of Topeka Code § 146-37.

(b) The city may contract to furnish water to any distribution system outside the city limits and to operate and maintain such system. The negotiation of new water supply contracts or amendments to existing contracts shall be subject to the City's

policy for the sale of water to rural water districts set forth in City of Topeka Resolution No. ~~73398~~179, unless an exception thereto is specifically granted by the City Council.

Section 99. That section 146-303, Application, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Application.

Users seeking a wastewater discharge permit shall complete and file with the superintendent an application in the form prescribed by the superintendent and accompanied by the applicable fees. The applicant may be required to submit, in units and terms appropriate for evaluation, the following information:

(1) Name and address of applicant.

(2) Volume of wastewater to be discharged.

(3) Constituents and characteristics of strength of the wastewater, including but not limited to those contained in the sections 146-277 and 146-279 concerning unlawful waste discharge and ~~the section concerning~~ limitations on wastewater strength.

(4) Time and duration of discharge.

(5) Average and 30-minute peak wastewater flow rates, including daily, monthly and seasonal variations if any.

(6) A plat showing location and size of building sewers, sampling points, pretreatment facilities, public sewer and other pertinent details.

(7) General description of activities, facilities and plant processes on the premises, including either the principal product and the quantity per day produced or the principal raw material and the quantity per day consumed.

(8) The standard industrial classification rating describing the applicant's facilities.

(9) Number of employees and hours of work.

(10) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, state or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards.

(11) If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment; the completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:

a. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).

b. No increment referred to in subsection (11)a shall exceed nine months.

c. The user shall submit a progress report to the water pollution control division no later than 14 days following each date in a compliance schedule, and on the final date for compliance, the user shall submit a progress report to the superintendent including, as a minimum, whether or not the user complied with the increment of progress to be met on such date and, if not, the date on which the user expects to comply with the increment of progress, the reason(s) for the delay and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the superintendent.

(12) A certification statement by an authorized representative of the industrial user in accordance with 40 CFR 2403.12(l).

Section 100. That section 146-351, Failure to pay bill, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Failure to pay bill.

~~(a) If a sewage service charge bill remains unpaid for a period of ten days after such bill has been mailed or delivered, water service may be discontinued and shut off. Before the water service shall be discontinued for failure to pay any sewage service charge, the person so defaulting in the payment of his service charge shall be mailed a three-day written notice of the intention of the city to shut off the water service. The city may collect the bill in lieu of water being turned off and the person shall pay a collection fee as provided for in section 146-1498 for all trips to pick up payment of bills in lieu of water being turned off.~~

~~(b) If within the three day period the person receiving notice of intention to discontinue water service shall file with the department of public works a written notice stating that the person believes that he has a just and reasonable complaint against the assessment of the sewage service charge, then the department shall, within ten days from the receipt of the written notice, schedule a hearing at the next scheduled council meeting, notifying the aggrieved party in writing at least three days before the date on which the meeting is to be held, and the aggrieved party may appear at the meeting and present the grievance.~~

~~(c) If at the meeting called under subsection (b) the council feels that the complaint of the aggrieved party is just, the council may make such adjustments of the sewage service charge as it deems equitable and just in the premises. If the council at the meeting deems the complaint of the aggrieved party is without merit, it may affirm the sewage service charge of which the aggrieved party complained, and the finding of the council shall be final and binding upon all parties concerned.~~

If a sanitary sewer account becomes delinquent, water service may be discontinued and shut off pursuant to K.S.A. 12-860, as may be amended.

Section 101. That section 146-352, Charges for restoring service, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Charges for restoring service.

If water service shall be discontinued under authority of this division, the water service shall not be restored until all bills have been paid and a delinquent service fee, as provided for in section 146-149~~8~~8, has been paid by the person whose water service has been turned off. Such delinquent service fee is to be retained by the water division,

provided that the water pollution control division shall be responsible for remitting the appropriate fee to the water department if not collected from the person.

Section 102. That section 146-458, Construction sites of less than five acres but greater than one acre of total disturbed area, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Construction sites of less than five acres but greater than one acre of total disturbed area.

A city permit for construction activity shall be required for any clearing, grading, excavation or construction of less than five acres but greater than one acre in an area. It is a violation of municipal code to proceed with clearing, grading, excavation or construction of less than five acres but greater than one acre without a permit for construction activity. A permit shall be obtained 30 days prior to clearing of land in preparation for any construction except:

(1) The removal or increase of earthwork if in conjunction with any construction project of greater than five acres for which a building or construction permit has been issued. Property adjoining the parcel or property for which a building permit or construction permit has been issued may be used for the temporary storage of fill material provided written permission has been obtained from the adjoining property owner and the storage of fill materials ends at the completion of the permitted work. However, the work will conform to the standards and other requirements of this article and other applicable city ordinances.

(2) Cemetery graves.

(3) Sanitary landfill where authorized.

(4) Demolition landfills where the Shawnee County Health Officer has authorized the same.

(5) Exploratory excavations, tests, and/or sampling under the direction of a soil engineer or engineering geologist or as approved by the department of public works.

Nothing contained herein shall be construed as exempting from regulation excavation work which is regulated by separate permit as set forth in City Code section 130-231 ~~(public place excavation)~~ 156, Application and permit required or City Code section 74-48 (flood plain).

Section 103. That Chapter 48 (Appendix C), Article XXXV, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

For the purpose of this chapter, certain terms and words are hereby defined. The
Unless the context indicates to the contrary, words used in the present tense include the
future tense, words used in the singular include the plural, words used in the plural
include the singular, words importing the masculine gender include the feminine and
neuter, word "building" shall include the word "structure"; the word "lot" shall include the
word "plot, tract, or parcel" and the word "shall" is mandatory and not directory. Any
terms not herein defined shall be construed as defined elsewhere in this ordinance or in
any applicable building code or upon the interpretation of the ~~legal advisor of the~~
~~applicable governing body~~ City Attorney who may determine the context indicates that a
standard dictionary definition is more appropriate. Where a word or term is defined in
both this chapter and elsewhere in this ordinance, the definition in this chapter shall be

generally applicable except in the chapter or section of this ordinance where the word is elsewhere defined.

Abandonment: The relinquishment of property, or a cessation of the use of the property, for a period of one (1) year (three hundred sixty-five (365) calendar days) or longer by the owner with the intention neither of transferring rights to the property to another owner nor of resuming the use of the property.

Abutting: Having property or district lines in common; e.g., two (2) lots are abutting if they have at least one (1) property lines in common.

Accessory building or use: A building or use which: (1) is subordinate to and serves a principal building or principal use; (2) is subordinate in area, extent, or purpose to the principal building or principal use served; (3) contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use; and (4) is located on the same zoning lot as the principal building or principal use.

Addition: Any construction which increases the size of a building such as a porch, attached garage or carport or a new room or wing.

Adjacent: Nearby, but not necessarily touching.

~~*Adjoining lot or land:* A lot or parcel of land which shares all or part of a common lot line with another lot or parcel of land.~~

Adult motion picture theater: An enclosed building used for presenting filmed material distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” (as defined herein) for observation by patrons therein.

Agriculture: Land devoted to the production of plants, animals, fish, or

horticultural products, including but not limited to: forages, grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef, cattle, sheep, swine and horses; aquaculture; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes; suburban residential acreages, rural homesites or farm homesites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

~~*Aisle:* A paved surface which is connected directly to a parking space and designated to permit ingress or egress of a vehicle to or from the parking space. In no case can an aisle be a drive.~~

Alley: A public thoroughfare which affords only a secondary means of access to abutting property.

Alteration: Any change or rearrangement in the supporting members of an existing building, such as bearing walls, columns, beams, girders or interior partitions, as well as any change in doors or windows, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one (1) location to another.

Animal hospital (small): A building ~~or premises~~ for the medical or surgical treatment of only domestic animals ~~or pets, including dog, cat and veterinary hospitals.~~

Animal hospital (large): ~~An establishment,~~ A premises, where small and large animals are admitted principally for examination, treatment, board, or care, by a doctor of veterinary medicine.

3434 *Antenna:* An exterior apparatus designed for transmitting or receiving television,
3435 AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic
3436 communication.

3437 *Apartment hotel:* A building designed for or containing both apartments or suites
3438 of rooms, which caters primarily to tenants with flexible occupancy duration needs.
3439 Incidental businesses may be conducted only as a service for persons residing therein,
3440 provided there is no entrance to such place(s) of business except from the interior of the
3441 building.

3442 ~~*Apartment house:* A building or that portion thereof containing more than four (4)~~
3443 ~~dwelling units or efficiency apartments.~~

3444 ~~*Area:* Synonymous with the word "tract," which is "a piece of land capable of~~
3445 ~~being described with such definiteness that its location may be established and~~
3446 ~~boundaries definitely ascertained." See "Tract".~~

3447 *Automobile or vehicle car wash:* A facility for the washing of motor vehicles.

3448 ~~*Automobile sales lot:* A lot arranged, designed, or used for the storage and~~
3449 ~~display for sale of any motor vehicle or any type of trailer provided the trailer is~~
3450 ~~unoccupied, and where no repair work is done except minor incidental repair of~~
3451 ~~automobiles or trailers displayed and sold on the premises.~~

3452 *Automobile wrecking yard:* An area outside of a building where motor vehicles
3453 are disassembled, dismantled, junked or "wrecked," or where motor vehicles not in
3454 operable condition or used parts of motor vehicles are stored.

3455 *Automotive service station:*

3456 *Type 1:* A facility which dispenses automotive fuels and oil ~~only~~ together

with the retail sales of incidental merchandise such as packaged beer, nonalcoholic beverages, ice, candy, cigarettes, snacks and convenience packaged foods. (Also known as “convenience stores with gas pumps”).

Type 2: A facility which dispenses automotive fuels and oil together with replacement automotive parts such as fan belts, hoses, sparkplugs, tires and tubes, ignition parts, batteries, shock absorbers, fuses, etc., including incidental merchandise as defined above. Minor automotive services shall be permitted, which includes minor repair and replacement.

1. Lubrication.
2. Tire repair.
3. Brake repair and wheel balancing.
4. Muffler and exhaust system repair.
5. Shock absorber replacement.
6. Engine adjustment (tuneup).
7. Replacement of pumps, cooling systems, generators, alternators, wires, starters, air conditioners, bearings, and other similar devices.
8. Radio repair.
9. Glass replacement.
10. And other similar repair and replacement services normally deemed to be emergency and convenience services; however, the same shall not include drive train units such as the engine, transmission or drive components.

Type 3: A facility which may include those uses defined in types 1 and 2, and specifically includes repair, rebuilding and replacement of drive train units of automobiles, pickup trucks, street vans, motorcycles and racing vehicles.

Awning: A roof-like cover that is temporary in nature and ~~that~~ projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

Basement: A story partly or wholly underground. For purposes of height measurement, a basement shall be counted as a story where more than one-half (1/2) of its height is above the average finished grade.

Bed and breakfast home: A private, owner-occupied single-family dwelling where no more than four (4) guestrooms are provided for overnight paying guests for not more than seven (7) consecutive nights. The dwelling shall be the primary residence of the owner with no employees permitted, other than permanent residents of the dwelling. Food service may be provided for guests.

Bed and breakfast inn: A single-family structure or portion thereof, that provides not more than ten (10) guestrooms for overnight paying guests. Food service may be provided for guests and sometimes in conjunction with social events.

Block: A piece of land usually bounded on all sides by streets or other transportation routes such as railroad lines, or by physical barriers such as water bodies or public open space, and not traversed by a through street.

Boarding ~~home~~ house: Any dwelling where for compensation and by prearrangement lodging with or without food is provided for three (3) or more persons but not exceeding twenty (20) persons in contradiction to hotels. No personal care is provided.

3503 *Building:* Any roofed structure for the shelter, support or enclosure of persons,
3504 animals, chattels or property, of any kind; and when separated by dividing walls without
3505 openings, each portion of such building, so separated, shall be deemed a separate
3506 building.

3507 *Buildable area:* The space remaining on a zoning lot after the minimum open-
3508 space requirements (coverage, yards and setbacks) have been met.

3509 *Building code:* Regulations governing building design, construction and
3510 maintenance, to protect the health, safety and welfare of the public.

3511 *Building coverage:* ~~The proportion~~percent of the lot area, ~~expressed as a percent,~~
3512 ~~that is covered by the maximum horizontal cross sections of a building or all buildings on~~
3513 ~~the lot. Structures which are~~ Portions of buildings below the finished lot grade,
3514 ~~including such as storm shelters for nuclear fallout,~~ shall not be included in building
3515 coverage.

3516 *Building, detached:* A building having no party wall in common with another
3517 building.

3518 *Building line:* ~~A building limit fixed at a specific distance from the front, side or~~
3519 ~~rear boundaries of a lot beyond which a structure cannot lawfully extend. See building~~
3520 setback line.

3521 *Building, principal:* A building in which is conducted the principal use of the lot on
3522 which it is situated.

3523 *Building setback line:* ~~The line nearest the street and across a lot establishing the~~
3524 ~~minimum open space to be provided between buildings and specified structures and~~
3525 ~~street lines. The required distance of open space between a building and a lot line.~~

Bulk: The term used to describe the size of buildings or other structures, and their relationships to each other and to open areas and lot lines, and therefore includes: (a) the size of buildings or other structures, (b) the area of the zoning lot upon which a residential building is located, and the number of dwelling units or rooms within such building in relation to the area of the zoning lot, (c) the shape of buildings or other structures, (d) the location of exterior walls of buildings or other structures in relation to lot lines, to other walls of the same building, to legally require windows, or to other buildings or other structures, and (e) all open areas relating to buildings or other structures and their relationship thereto.

Bulk regulations: The combination of controls which established the maximum size of a building and its location on the lot. Components of bulk regulations include: size and height of building; location of exterior walls at all levels with respect to lot lines, streets, or other buildings; building coverage; gross floor area of buildings in relation to lot area (floor area ratio); open space (yard) requirements; and amount of lot area provided per dwelling unit.

Business; business use: Employment of one (1) or more persons for the purpose of earning a livelihood, activities of persons to improve their economic conditions and desires, and generally relate to commercial and industrial engagements.

Carport: ~~Space~~ A roofed structure intended for the housing or storage of motor vehicles and enclosed on not more than two (2) sides by walls.

~~*Caterer:* An individual, partnership or corporation which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary~~

3549 ~~permit selling alcoholic liquor in accordance with the terms of such permit.~~

3550 ~~*Cellar:* A space with less than one-half (1/2) of its floor-to-ceiling height above the~~
3551 ~~average finished grade of the adjoining ground or with a floor-to-ceiling height of less~~
3552 ~~than six and one-half (6 1/2) feet.~~

3553 *Cemetery:* Property used for the interring of the dead.

3554 *Certificate of occupancy:* Official certification that a premises conforms to
3555 provisions of the zoning ordinance (and building code) and may be used or occupied.

3556 *Class A club:* A premises which is owned or leased by a corporation, partnership,
3557 business trust or association and which is operated thereby as a bona fide nonprofit
3558 social, fraternal or war veteran's club, as determined by the State of Kansas, for the
3559 exclusive use of the corporate stockholders, partners, trust beneficiaries or associates
3560 (hereinafter referred to as members), and their families and guests accompanying them.

3561 *Class B club:* A premises operated for profit by a corporation, partnership or
3562 individual, to which members of such club may resort for the consumption of food or
3563 alcoholic beverages and for entertainment.

3564 *Classification:* (1) Division of uses or activities into groups or subgroups for
3565 regulatory purposes; (2) the process of deciding what uses should be permitted in what
3566 zoning districts; and (3) the zone requirements imposed on a particular piece of
3567 property. A subsequent change in a classification is called a reclassification.

3568 *Clinic:* An establishment where patients are admitted for examination and
3569 treatment by one (1) or more physicians, dentists, psychologists or social workers and
3570 where patients are not usually lodged overnight.

3571 *Club or lodge, private:* A building and facilities owned, leased or operated by a

corporation, association, person, or persons for a social, educational or recreational purpose; but not primarily for profit or to render a service which is customarily carried on as a business; and shall not include or be construed as a class A or class B club.

Commercial equipment: Any equipment or machinery used in a business trade or industry, including liquid storage tanks exceeding one hundred (100) gallons, earth-moving equipment, trenching or pipe-laying equipment, landscaping equipment, spools of wiring/cable, portable pumps, portable generators, portable air compressors, pipes, pool cleaning equipment and supplies, and any other equipment or machinery similar in design or function. However, equipment and machinery for business use kept within an enclosed pickup truck or van or equipment and machinery solely for personal residential use are not included.

Commercial vehicle: Any vehicle used for a business that has a height or width (excluding antennas and mirrors) of seven and one-half (7.5) feet or larger or has a length of twenty-five (25) feet or longer. Additionally, the following types of vehicles shall all be considered commercial vehicles: step vans, box vans, flatbed or stake-bed trucks, buses, semi-trailers or tractor-trailers, dump trucks, cement mixers, wreckers, trailers loaded with any commercial equipment or construction materials, and any other motor vehicle or trailer (except for recreational vehicles) having a manufacturer's rating exceeding 15,000 pounds of gross vehicle weight. Additionally, vehicles with any of the following exterior modifications shall be considered commercial vehicles: liquid storage tanks exceeding one hundred (100) gallons, aerial buckets or platforms, welding equipment, mechanical lifts or arms for loading and unloading materials/equipment, or any vehicles or trailers with over twenty-five (25) square feet of total sign area

advertising a business. Vehicles for transferring passengers and their personal luggage/cargo for churches, non-profit agencies, nursing homes, retirement communities, and other similar facilities shall not be considered commercial vehicles. Recreational vehicles are not considered commercial vehicles unless used for business purposes.

Common open space: A parcel of land, an area of water, or a combination of land and water within a development which is designed for, and designated as space for the use and enjoyment of residents of the development. Common open space may contain landscaping, and such recreational improvements as are necessary for the benefit and enjoyment of the residents, such as swimming pools, tennis courts, etc. Parking lots and storage areas shall not be considered as open space.

Communication antenna: An antenna or array of antennas at one (1) location intended to broadcast and receive signals as part of a wide-area, communication system such as cellular telephone systems, pager systems or wireless computer networks, but excluding short-wave radio antennas operated primarily as a hobby.

Communication tower: A ground-mounted guyed, monopole or self-supporting tower, constructed as a free-standing structure or in association with a building, other permanent structure or equipment, containing one (1) or more antennas intended for transmitting or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication. Not included in this definition are towers which are held, used or controlled exclusively for public purposes by any department or branch of government. Such towers are defined as a public use facility and regulated accordingly.

3618 *Community center:* A building together with lawful accessory buildings and uses,
3619 used for recreational and cultural activities and usually not operated for profit.
3620 Membership may be restricted to persons living in a specific geographical area.

3621 *Community facilities:* Public or privately owned facilities used by the public, such
3622 as streets, schools, libraries, parks and playgrounds; also facilities owned and operated
3623 by nonprofit private agencies such as churches, settlement houses and neighborhood
3624 associations.

3625 *Community living facility, type I:* A dwelling building or portion thereof, and
3626 premises other than a hospital, operated and licensed in accordance with any and all
3627 applicable state and local requirements, in which short term residential care for profit or
3628 not-for-profit is provided as well as supportive programs which assist or train the
3629 recipients to address or improve their living skills relative to chemical dependency,
3630 behavioral modification, domestic abuse, mental illness, economic recovery, job
3631 training, emergency shelter, and similar such physical, economic, or social reintegration
3632 programs. Although recipients do not require intensive treatment or secure environment,
3633 structured programs often include individual and group counseling, recreational and
3634 social activities, milieu therapy and individual work therapies designed to provide a
3635 transition and reentry into society, gainful employment, and sustained welfare upon
3636 leaving the facility. Residents are not in need of acute medical or psychiatric care and
3637 the facility is operated on a twenty-four (24)-hour basis. Community living facility, type I,
3638 does not include correctional placement residence or facility.

3639 *Community living facility, type II:* A dwelling building or portion thereof, and
3640 premises other than a hospital, operated and licensed in accordance with any and all

applicable state and local requirements, in which residential care for profit or not-for-profit is provided; intermediate treatment programs in a therapeutic setting for diagnostic and primary treatment environment relative to chemical dependency, behavioral modification, and mental illness and similar such physical and social treatment programs may be provided. Residents are not in need of acute medical or psychiatric care and the facility is operated on a twenty-four (24)-hour basis and may be operated as a secure facility. Community living facility, type II, does not include correctional placement residence or facility.

Community service organization: An organization, group or association formed for the single purpose of providing a philanthropic service for the community, but not to include any use which provides social or physical entertainment, except as a part of the philanthropic services.

Compatibility: The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict.

Comprehensive plan: A plan intended to guide the growth and development of a community or region and one (1) that includes analysis, recommendations and proposals for the community's population, economy, housing, transportation, community facilities and land use.

Conditional use: A use permitted in a particular zoning district only upon showing that such use in a specified location will comply with all the conditions and standards for the location or operation of such use as specified in a zoning ordinance and authorized by the governing body.

Condominium: The legal arrangement in which a dwelling unit in an apartment

building or residential development or a retail or office unit in a commercial building or commercial development is individually owned but in which the common areas are owned, controlled and maintained through an organization consisting of all the individual owners.

Construction and demolition waste: Means waste building materials and rubble resulting from construction, remodeling, repair or demolition operations on houses, commercial buildings, other structures and pavements.

Conversion: The ~~conversion~~ change of the use of an existing building into another use.

Correctional facility: A public use facility providing housing and care for individuals confined for violations of law. Typical uses include jails, prisons, and juvenile detention centers. A correctional facility does not include a correctional placement residence, ~~or facility general, or a~~ correctional placement residence, or facility limited.

Correctional placement residence or facility: A facility for individuals or offenders that provides residential and/or rehabilitation services for those who reside or have been placed in such facilities due to any one (1) of the following situations: (1) prior to, or instead of, being sent to prison; (2) received a conditional release prior to a hearing; (3) as a part of a local sentence of not more than one (1) year; (4) at or near the end of a prison sentence, such as a state operated or franchised work release program, or a privately operated facility housing parolees; or (5) received a deferred sentence and placed in a facilities operated by community corrections. Such facilities will comply with the regulatory requirements of a federal, state or local government agency; and if such facilities are not directly operated by a unit of government they will meet licensure

requirements that further specify minimum service standards.

Correctional placement residence or facility general: A facility occupied by more than fifteen (15) individuals, including staff members who may reside there.

Correctional placement residence or facility limited: A facility occupied by three (3) to fifteen (15) individuals, including staff members who may reside there.

Country club: A land use consisting of both a golf course and a clubhouse building for social assembly, food and beverage preparation/service, pro shop, club office, recreational and physical exercise facilities including fitness center, spa, swimming pool, court games, locker and shower facilities; and vehicle parking areas and drives. Country club facilities are open to members and their guests for a membership fee.

Court: An open space which may or may not have street access, and around which is arranged a single building or group of related buildings.

Court, inner: That portion of a lot unoccupied by any part of a building, surrounded on all sides by walls, or by walls and a lot line.

Court, outer: That portion of a lot unoccupied by any part of a building, opening onto a street, alley, or yard.

Crisis center, type I: A facility or portion thereof and premises, which is used for purposes of emergency shelter, crisis intervention, including counseling, referral, hotline response, and similar human social service functions. Said facility shall not include meal preparation, except for residents of the center, distribution, or service; merchandise distribution; or shelter, including boarding, lodging, or residential care.

Crisis center, type II: A facility or portion thereof and premises, which is used for

purposes of emergency shelter, crisis intervention, including counseling, referral, hotline response, and similar human social service functions; meal preparation, distribution, and service; merchandise distribution; and temporary and/or transient shelter, including boarding and lodging facilities.

Cultural facilities: Establishments such as museums, libraries, art galleries, botanical and zoological gardens of a historic, educational or cultural interest which are not operated commercially.

~~*Dancehall or ballroom:* An establishment used primarily for dancing and where serving of drinks, food or entertainment is secondary.~~

Day care: Providing various levels of some or all of the following care as well as those services generally so associated, to individuals for less than twenty-four (24) hours a day: food and dietetic services; transportation, social, recreational, educational and activity arrangements; watchful and protective oversight; and supervision.

Day care facility, type I: A structure inhabited as a dwelling unit or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements and conducted in the resident's dwelling unit in which care is provided for profit or not-for-profit, to children and/or adults on a regular schedule for less than twenty-four (24) hours a day to a maximum of twelve (12) persons.

Day care facility, type II: A structure or portion thereof, and premises, operated and licensed in accordance with any and all applicable state and local requirements, in which care is provided for profit or not-for-profit, to children and/or adults on a regular schedule for less than twenty-four (24) hours a day, and which may be operated as a secondary and/or ancillary use to a primary or principal use, such as, but not limited to a

place of worship, community center, library, or private business, and associated with that activity.

Demolition landfill: ~~The disposition of nonputrescible materials or debris such as concrete, asphalt, brick, wood, plastic, rubber, metal, and other similar materials.~~ See "Landfill, demolition".

Density: The average number of families, persons, or housing units per unit of land; usually density is expressed "per acre."

Developer: The legal or beneficial owner or owners of a lot or of any land included in a proposed development including the holder of an option or contract to purchase, or other persons having enforceable proprietary interests in such land.

Development: The division of a parcel of land into two (2) or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance and any use or extension of the use of land.

Disability (or Handicap): With respect to a person:

(a) A physical or mental impairment which substantially limits one (1) or more of such person's major life activities;

(b) A record of having such an impairment; or

(c) Being regarded as having such an impairment. Such term does not include current, illegal use or addiction to a controlled substance, as defined in section 102 of the Controlled Substance Act (21 USC 802).

District: Any section of the jurisdiction for which the regulation governing the use of buildings and premises or the height and area of building and premises or the height

and area of buildings are uniform.

District map: The boundaries of the zoning districts as they presently exist or as they may from time to time be amended are shown upon the "district map" on file in the office of the planning director, which boundaries shall have the same force and effect as though fully set forth or described herein.

Domestic animal: Small animals that are customarily kept for personal use or enjoyment such as, but not limited to, dogs, cats, tropical birds, rabbits and rodents.

Dormitory: A building or part of a building operated by an institution and containing a room or rooms forming one (1) or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

Drinking establishment: A premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

Driveway: A paved surface designed to provide vehicular access to a parking area.

Dwelling: A building or portion thereof, used exclusively for residential occupancy, including one-family, two-family and multiple-family dwellings, but not including hotels, motels, lodginghouses, boardinghouses, tourist homes, nor house trailers and mobile homes as defined by this article.

Dwelling, attached: A one-family dwelling attached to two (2) or more one-family dwellings by common vertical walls.

Dwelling, detached: A dwelling which is designed to be and is substantially separate from any other structure or structures except accessory buildings.

3779 ~~*Dwelling, farm:* A residence which is or intended to be occupied by a family or~~
3780 ~~persons engaged in agricultural pursuits; and the same is located on the premises~~
3781 ~~where the agricultural pursuits are being performed.~~

3782 *Dwelling, multiple-family:* A building or portion thereof used for occupancy by
3783 three (3) or more families living independently of each other, and doing their own
3784 cooking in the building, including apartments, group houses, and row houses.

3785 *Dwelling, row house or townhouse:* One (1) of a series of three (3) or more
3786 attached dwelling units separated from one another by continuous vertical party walls
3787 without openings from basement floor to roof.

3788 *Dwelling, ~~semidetached~~ single-family attached:* A one-family dwelling attached to
3789 one (1) other one-family dwelling by a common vertical wall that is un-pierced and
3790 located along its common property line, and each dwelling located on a separate lot.

3791 *Dwelling, single-family:* A building designed and/or used exclusively for
3792 residential purposes for one (1) family only and containing not more than one (1) unit,
3793 including site-built homes and residential-design manufactured homes, but not including
3794 house trailers and mobile homes as defined by this article.

3795 *Dwelling, single-family detached:* A dwelling which is designed for and occupied
3796 by not more than one (1) family and surrounded by open space or yards and which is
3797 not attached to any other dwelling by any means.

3798 *Dwelling, two-family (duplex):* A structure on a single lot containing two (2)
3799 dwellings units, each of which is totally separated from the other by an unpierced wall
3800 extending from ground to roof or an unpierced ceiling and floor extending from exterior
3801 wall to exterior wall, except for a common stairwell exterior to both dwelling units.

Dwelling unit: Consists of one (1) or more rooms, including a bathroom and complete kitchen facilities, which are arranged, designed or used as living quarters for one family or household.

Easement: A permanent or temporary grant of one (1) or more of the property rights by the property owner to ~~and/or for the use by the public, a corporation or another person or entity~~ for the use of a portion of a lot or tract of land for specified purposes where title to said lot or land remains with the property owner.

Eating place: A retail establishment primarily engaged in the sale of prepared food and/or beverages.

Educational institution: A college, university or incorporated academy providing general academic instruction equivalent to the standards prescribed by the state board of education.

Elderly housing: A dwelling especially designed for use and occupancy of persons who are aged or who are handicapped (disabled) within the meaning of section 202 of the Housing Act of 1959, section 102(5) of the Development Disabilities Services and Facilities Construction Amendments of 1970 or section 223 of the Ssocial Ssecurity Aact.

Enlargement, or to enlarge: An "~~enlargement~~" is an addition to the floor area of an existing building, an increase in the size of any other structure, or an increase in that portion of a tract of land occupied by an existing use.

Establishment: Shall mean all the physical facilities, land and buildings or portions thereof, which when considered as a whole comprise a specific use.

Exception: ~~An exception shall mean the~~ The allowance of an otherwise prohibited

use within a given district, such use and the conditions by which it may be permitted being clearly and specifically stated within these zoning regulations, and the allowance being by express permission of the board of zoning appeals.

Extension, or to extend: ~~An increase in the amount of existing floor area used for an existing use within an existing building. To "extend" is to make an extension. See~~ "Enlargement, or to enlarge".

Exterior wall surface: ~~The most exterior part~~ outside face of a wall, sunscreen or ~~any screening or material covering a building.~~

Fabrication: That part of manufacturing which relates to stamping, cutting or otherwise shaping processed materials into objects and may include the assembly of standard component parts, but does not include extracting, refining, or other initial processing of basic raw materials.

Family: An individual or two (2) or more persons related by blood, marriage, or legal adoption, or a group of not more than five (5) persons (excluding servants) not related by blood or marriage, living together as a single housekeeping unit with common kitchen facilities in a dwelling unit.

Fence: ~~Any construction of wood, metal, wire mesh, masonry, or other material, erected for the purpose of assuring privacy or protection.~~ An artificial barrier, constructed from normally used fencing materials, that is erected to enclose or screen areas of land.

Filling station: ~~Any building or premises used solely or principally for the storing, dispensing, sale or offering for sale at retail of any automotive fuels and lubricants and automotive accessories.~~

Floor area, net: The sum of the areas of the several floors of ~~the~~ a structure, as

measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding (a) garage space which is in the basement of a building or, in the case of garage space accessory to a dwelling, is at grade, (b) basement and cellar areas devoted exclusively to uses accessory to the operation of the structure, and (c) areas elsewhere in the structure devoted to housing mechanical equipment customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities, and storage facilities.

Floor area, gross: The sum of the gross horizontal areas of the several floors of a building, including interior balconies, mezzanines and accessory buildings. All horizontal dimensions are to be made between the exterior faces of the building walls or in the case of a common wall separating two buildings it shall be measured from the center of such common wall.

Floor area ratio: A mathematical expression determined by dividing the ~~total~~ gross floor area of a building by the area of the lot on which it is located, as Gross Floor area/Lot area = Floor area ratio

Fraternity or sorority house, collegiate: A building used by an association of students, meeting periodically, limited to members, normally having culinary and sleeping facilities.

Frontage: ~~The line(s) or portion of the bounding perimeter of a lot, tract, or parcel which abut, is coincident with and parallel to, the length segment of a public street right-of-way; or which abut and is coincident to the right-of-way line of a permanent public terminus or cul-de-sac.~~ Any lot line abutting a public street right-of-way.

3871 *Garage:* A ~~deck,~~ building or structure, or part thereof, used, or intended to be
3872 used for the parking and ~~temporary~~ storage of vehicles.

3873 *Garage, attached:* A private garage which has a roof or wall, or major portion of a
3874 roof or wall, in common with a dwelling. Where the garage is attached to a dwelling in
3875 this manner, it shall be subject to all yard requirements of the main building.

3876 ~~*Garage, automobile repair:* An establishment having facilities for the general~~
3877 ~~repair of motor vehicles such as maintenance, mechanical repair, wreck rebuilding,~~
3878 ~~body and fender repair, tire recapping, auto glass replacement, or for the hiring or~~
3879 ~~storage of motor vehicles.~~

3880 ~~*Garage, carwash:* A building or portion thereof, designed or used exclusively for~~
3881 ~~washing motor-driven vehicles, and matters incidental thereto.~~

3882 *Garage, private:* An accessory building designed or used for the storage of
3883 motor-driven vehicles owned and used by the occupants of the building to which it is an
3884 accessory use.

3885 *Garage, public:* A building, or portion thereof, other than a private customer and
3886 employee garage or private residential garage, used primarily for the parking and
3887 storage of vehicles and available to the general public.

3888 ~~*Garage, storage:* A building or portion thereof designed or used exclusively for~~
3889 ~~housing of motor-driven vehicles, not used by occupants of the lot on which the building~~
3890 ~~or portion thereof is situated.~~

3891 *Golf course:* A tract of land for playing golf, improved with tees, greens, fairways,
3892 hazards, and which may include drives, vehicle parking and shelters.

3893 *Governing body:* Means the Mayor and City Council of Topeka, Kansas, ~~or the~~

3894 ~~Board of Shawnee County Commissioners as applicable.~~

3895 *Grade:*

3896 (a) For buildings having walls adjoining one (1) street, the grade is the
3897 elevation of the sidewalk at the center of the building wall adjoining the street.

3898 (b) For buildings having walls adjoining more than one (1) street, the
3899 grade is the average of the elevation of the sidewalk, at the centers of the
3900 building walls adjoining the streets.

3901 (c) For buildings having no wall adjoining the street, the grade is the
3902 average level of the finished surface of the ground adjacent to the exterior
3903 building walls. Any wall approximately parallel to and not more than five (5) feet
3904 from a street line is to be considered as adjoining the street. Where no sidewalk
3905 exists the grade shall be established by the city engineer ~~or county engineer.~~

3906 *Ground floor:* The first (1st) floor of a building other than a cellar or basement.

3907 *Ground floor area:* The square foot area of a building within the largest outside
3908 dimensions, inclusive of the width of the outside walls but exclusive of open porches,
3909 breezeways, terraces, garages, exterior stairways, and secondary stairways.

3910 *Group home:* A dwelling occupied by not more than ten (10) persons, including
3911 eight (8) or fewer persons with a disability who need not be related by blood or marriage
3912 and not to exceed two (2) staff residents who need not be related by blood or marriage
3913 to each other or to the residents of the home, which dwelling is licensed by a regulatory
3914 agency of this state. Group Home does not include group residence general or group
3915 home limited.

3916 *Group residence general:* A residential dwelling that is occupied by nine (9) to

thirteen (13) persons, including more ~~than~~at least eight (8) persons each with a disability, none of whom needs to be related by blood or marriage, that is not a group home as defined herein.

Group residence limited: A residential dwelling that is occupied by not more than ten (10) persons, including a maximum of eight (8) persons each with a disability and a maximum of two (2) staff residents, none of whom needs to be related by blood or marriage, that is not a group home as defined herein.

Habitable room: A room in a dwelling unit designed to be used for living, sleeping, eating, or cooking, excluding bathrooms, ~~toilet compartments,~~ closets, halls, storage and similar space.

Handcrafts: Any occupation in which articles are fashioned totally or chiefly by hand with manual and often artistic skill involved, materials normally being leather, malleable metals, plastics, glass, fabrics or wood.

~~*Handicap:* With respect to a person:~~

~~(a) A physical or mental impairment which substantially limits one (1) or more of such person's major life activities;~~

~~(b) A record of having such an impairment; or~~

~~(c) Being regarded as having such an impairment. Such term does not include current, illegal use of or addition to a controlled substance, as defined in section 102 of the Controlled Substance Act (21 USC 802).~~

Health care facility: A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a

general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, boardinghome or other home for sheltered care, and bioanalytical laboratory or central services facility serving one (1) or more such institutions but excluding institutions that provide healing solely by prayer. ~~See Health services.~~

Health services: Establishments primarily engaged in furnishing medical, surgical or other services to individuals, including the offices of physicians, dentists and other health practitioners, medical and dental laboratories, outpatient care facilities, blood banks, and oxygen and miscellaneous types of medical supplies and services.

Height of building: The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whatever yields a greater height of building:

(a) The elevation of the highest adjoining sidewalk or ground surface within a five- (5) foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than ten (10) feet above lowest grade.

(b) An elevation ten (10) feet higher than the lowest grade when the sidewalk or ground surface described in item (a) above is more than ten (10) feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

Home occupation: Any activity carried out for gain by a resident conducted within the limitations and performance standards established by these regulations, as an accessory use in the resident's dwelling unit.

Hospital: An institution providing health services, primarily for inpatients, and medical or surgical care of the sick or injured, including as an integral part of the institution, such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

~~*Hotel:* A commercial establishment containing twenty (20) or more individual sleeping rooms or suites, having each a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation with or without meals, excluding accommodations for employees, and in which ingress and egress to and from all rooms is made through an inside office or lobby supervised by a person in charge at all hours. Where a hotel is permitted as a principal use, all uses customarily and historically accessory thereto for the comfort, accommodation and entertainment of the patrons, including the service of alcoholic beverages, shall be permitted.~~
A building or group of buildings offering transient lodging accommodations normally on a daily rate to the general public, where access to the rooms is made through a lobby, and with or without accessory uses, such as restaurants, meeting rooms, or recreational facilities.

~~*House trailer:* A vehicular portable dwelling unit designed especially for short term occupancy; such as travel trailers, campers, houseboats, converted buses and~~

~~other similar units whether self-propelled, pulled or hauled and are designed primarily for highway travel without a special permit; and/or does not comply with all the requirements of the minimum housing code as a dwelling unit. See *Manufactured home*.~~

Improvement: Any building, structure, place, work of art, or other object constituting a physical betterment of real property, or any part of such betterment.

Industrial park: Is a special or exclusive type of planned industrial area designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services in attractive surroundings among compatible neighbors.

~~*Infill:* Development or redevelopment of land that has been bypassed, remained vacant, and/or is under utilized as a result of the continuing urban development process. Generally, the areas and/or sites are not particularly of prime quality, however they are usually served by or are readily accessible to the infrastructure (services and facilities) provided by the applicable local governmental entity. Utilization of such lands for new housing and/or other urban development is considered a more desirable alternative than to continue to extend the outer development pattern laterally and horizontally thus necessitating a higher expenditure for capital improvements than would be required for infill development. The use of infill development, among others, promotes best the utilization of resources and also will tend to have a positive impact upon the tax and other fiscal policies.~~

Institution: A building occupied by a nonprofit corporation or nonprofit establishment dedicated for public useservice.

Intensity: The degree to which land is used.

4009 *Intersecting street:* Any street, public way or court, which joins another at an
4010 angle, whether or not it crosses the other.

4011 *Junk:* Any scrap, waste, reclaimable material or debris, whether or not stored or
4012 used in conjunction with dismantling, processing, salvage, storage, baling, disposal or
4013 other use or disposition.

4014 ~~*Junkyard:* A place where junk, waste, discarded, or salvaged materials are~~
4015 ~~bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including~~
4016 ~~automobile wrecking yards, house wrecking, and structural steel materials and~~
4017 ~~equipment, but not including the purchase or storage of used furniture, household~~
4018 ~~equipment and used cars in operable condition, used or salvaged materials as part of~~
4019 ~~manufacturing operations.~~

4020 *Kenel:* Any facility that is used for the boarding, breeding, raising and/or training
4021 of domestic animals for business or commercial purposes.

4022 *Kitchen:* Any room used, intended to be used or designed to be used either
4023 wholly or partly for cooking and/or the preparation of food.

4024 *Laboratory:* ~~An building or part of a building~~establishment devoted to the testing
4025 and analysis of any product or animal (including humans). No manufacturing is
4026 conducted on the premises except for experimental or testing purposes.

4027 *Laboratory, medical:* An establishment which provides bacteriological, biological,
4028 medical, X-ray, pathological and other similar analytical or diagnostic services.
4029 Fabrication is limited to the custom fabrication of dentures, optical lenses, braces or
4030 other orthopedic appliances.

4031 *Landfill, demolition:* ~~Means a method of disposing on land~~A facility for the

disposition of construction/demolition wastes which are transported to a permitted disposal area from an off-site source, and disposing of said wastes without creating nuisances or hazards to public health or safety of the environment.

Landfill, sanitary: Means a method of disposing of refuse/solid wastes on land without creating nuisances or hazards to the public health or safety of the environment at a permitted solid waste disposal area which meets the standards prescribed by the state or local unit of government.

Landscaped area: An area that is permanently devoted and maintained ~~to~~ for the growing of trees, shrubbery, grass and/or other plant material.

Landscaping: ~~Landscaping shall mean that an area is permanently devoted to and maintained for the growing of trees, shrubs, lawns and other plant materials. Landscaping may also include such features as pedestrian walks, fountains, statuary, and similar ornamental objects designed and arranged to produce an aesthetically pleasing effect. All landscaping shall conform to all applicable development standards adopted by the City of Topeka.~~ The improvement of land by planting or installing living materials such as trees, shrubs, and ground cover; non-living materials such as rocks, pebbles, bark, mulches, brick pavers, and earthen mounds (excluding pavement); and items of a decorative or embellishment nature such as fountains, pools, fencing, park benches, and sculptures. Landscaping provides screening between adjoining land uses, shade, softens building lines, and produces a visual pleasing effect of the premises.

Land-use plan: A basic element of a comprehensive plan, it designates the future use or reuse of the land within a given jurisdiction's planning area, and the policies and reasoning used in arriving at the decisions in the plan.

4055 *Lattice tower:* A guyed or self-supporting three- or four-sided, open, steel frame
4056 structure used to support telecommunications equipment.

4057 *Laundromat (self-service):* An establishment providing washing, drying and/or dry
4058 cleaning machines on the premises for rental use to the general public for family
4059 laundering or dry cleaning purposes.

4060 *Laundry (commercial):* An establishment where commercial laundry and/or dry-
4061 cleaning work is undertaken.

4062 *Library:* A place in which books, manuscripts, musical scores or other literary and
4063 artistic materials are kept for use and only incidentally for sale.

4064 ~~*Loading space:* An off-street space, at least ten (10) feet by fifty (50) feet, with a~~
4065 ~~minimum height clearance of fourteen (14) feet, for the temporary parking of a~~
4066 ~~commercial vehicle while loading or unloading merchandise or materials, and which~~
4067 ~~abuts on a street or other appropriate means of access.~~

4068 *Lodginghouse:* A building where lodging only is provided for compensation to
4069 three (3) or more, but not exceeding twenty (20) persons, in contradistinction to hotels
4070 open to transients.

4071 *Lot:* An area of land delineated on a subdivision plat as a separate and distinct
4072 parcel of land intended for the purpose of transfer of ownership, ~~or establishment of~~ and
4073 for individual building or use.

4074 ~~*Lot area:* The area of a horizontal plane bounded by the front, side, and rear lot~~
4075 ~~lines~~ The total horizontal area within the lot lines of a lot.

4076 ~~*Lot, building:* Land occupied or to be occupied by a building and its accessory~~
4077 ~~buildings, or by a dwelling group and its accessory buildings, together with such open~~

~~spaces as are required under the provisions of this ordinance, having not less than the minimum area and width required by this chapter for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit for a building on such land.~~

Lot-by-lot development: The conventional approach to development in which each lot is treated as a separate development unit conforming to all land-use, density, and bulk requirements.

Lot, corner: A lot abutting upon two (2) or more streets at their intersection.

Lot coverage: ~~That percentage of a lot which, when viewed directly from above, would be covered by a structure or structures, or any part thereof, excluding projecting roof eaves.~~ The percentage of a lot covered by parking lots, paved areas used for storing equipment or materials, loading/unloading areas, and buildings excluding their projecting roof eaves. Lot coverage does not include sidewalks, courtyards, landscaped areas, water bodies, and outdoor recreational areas such as pools and tennis courts.

Lot depth: The mean horizontal distance between the front and rear lot lines, measured in the general direction of the side lot lines.

Lot, double frontage: A lot having a frontage on two (2) nonintersecting streets, as distinguished from a corner lot.

Lot frontage: The length of the front lot line measured at the street right-of-way line.

Lot, interior: ~~Any lot bounded by a street on only one (1) side; any lot other than a corner lot~~ or a double-frontage lot.

4101 *Lot line, front:* The line separating the lot from the street.

4102 *Lot line, rear:* The line which most nearly qualifies as the line most distant and
4103 opposite from the front lot line; where the lot is irregularly shaped, a line perpendicular
4104 to the mean direction of the side lot lines.

4105 *Lot line, side:* Any lot line other than a front lot line or a rear lot line.

4106 *Lot lines:* The lines bounding a lot.

4107 *Lot of record:* A lot which is part of a recorded subdivision plat or a parcel of land
4108 which has been recorded in the office of the Shawnee County register of deeds in
4109 accordance with the City of Topeka Subdivision Regulations in effect at the time of the
4110 lot's creation.

4111 *Lot, reversed corner:* A corner lot, the rear of which abuts the side of another lot.

4112 *Lot width:* The distance between the side lot lines, measured along the setback
4113 line as established by this chapter, or if no setback line is established, the distance
4114 between the side lot lines measured along the street line.

4115 *Manufacture:* To engage in the mechanical or chemical transformation of
4116 materials or substances into new products including the assembling of component
4117 parts, the manufacturing of products, and the blending of materials such as lubricating
4118 oils, plastics, resins or liquors.

4119 *Manufactured home:* Means a structure which is subject to the federal
4120 manufactured home construction and safety standards established pursuant to 42 USC
4121 section 5403.

4122 ~~*Marquee or canopy:* A roof-like structure of a permanent nature which projects~~
4123 ~~from the wall of a building and overhangs the public way.~~

4124 *Medical care facility, type I:* A dwelling building or portion thereof, and premises,
4125 operated and licensed in accordance with any and all applicable state and local
4126 requirements, in which reception, accommodation, board, residential and personal care,
4127 nursing care (simple, supervised, or skilled) and treatment for profit or not_for_profit, is
4128 provided to a maximum of two (2) individuals who are not acutely ill and not in need of
4129 hospital care, but who may require nursing care and domiciliary care; and who are
4130 unrelated by blood, adoption, or marriage to the caregivers, administrator or owner.
4131 Said facility may be staffed with licensed nursing personnel and other staff as required,
4132 and operate on a twenty-four (24)-hour-a-day basis.

4133 *Medical care facility, type II:* A dwelling building or portion thereof, and premises,
4134 operated and licensed in accordance with any and all applicable state and local
4135 requirements, in which reception, accommodation, board, residential and personal care,
4136 nursing care (simple, supervised, or skilled) and treatment for profit or not_for_profit, is
4137 provided to three (3) or more individuals who are not acutely ill and not in need of
4138 hospital care, but who may require nursing care and domiciliary care; and who are
4139 unrelated by blood, adoption, or marriage to the caregivers, administrator or owner.
4140 Said facility may be staffed with licensed nursing personnel and other staff as required,
4141 and operated on a twenty-four (24-) hour-a-day basis.

4142 *Metes and bounds:* A system of describing and identifying land by measures
4143 (metes) and direction (bounds) from an identifiable point of reference.

4144 *Mobile home:* A manufactured structure ~~as~~ constructed for dwelling purposes and
4145 which is not subject to the Federal Manufactured Home Construction and Safety
4146 Standards as established pursuant to 42 U.S.C. section 5403. Mobile homes refer to

4147 manufactured units built before June 15, 1976.

4148 *Mobile home, ANSI certified:* A mobile home which has certification as being in
4149 compliance with parts B to E, inclusive, of the standard for mobile homes as developed
4150 by the American National Standards Committee on Mobile Homes and Recreational
4151 Vehicles and designated as ANSI no. A119.1 1975, all pursuant to the provisions of
4152 K.S.A. 75-1220.

4153 *Mobile home park:* A parcel or tract of land under single ownership which has
4154 been planned and improved for the placement of mobile homes for dwelling purposes.

4155 ~~*Mobile home stand:* That part of an individual mobile home space which has~~
4156 ~~been planned and improved for the placement of the mobile home and additions or~~
4157 ~~attachments thereto.~~

4158 *Monopole tower:* A communication tower consisting of a single pole, constructed
4159 without guy wires and ground anchors.

4160 *Mortuary:* A place for the storage of human bodies prior to burial or cremation.

4161 ~~*Motel:* A commercial establishment consisting of a group of attached living or~~
4162 ~~sleeping accommodations with bathrooms and closet space, located on a single zoning~~
4163 ~~lot, and designed for use by transient automobile tourists. A "motel" furnishes customary~~
4164 ~~hotel services such as maid service and laundering of linen, telephone and secretarial~~
4165 ~~or desk service, and the use and upkeep of furniture. In a "motel" less than fifty percent~~
4166 ~~(50%) of the living and sleeping accommodations are occupied or designed for~~
4167 ~~occupancy by persons other than transient automobile tourists.~~ A building or group of
4168 buildings offering transient lodging accommodations normally on a daily rate to the
4169 general public, where access to each room is provided directly by an exterior door, and

with or without accessory uses, such as restaurants, meeting rooms, or recreational facilities.

Museum: An establishment operated as a repository or a collection of nature, scientific, or literary curiosities or objects of interest or works of art, not including the regular sale or distribution of the objects collected.

Neighborhood: The smallest subarea in planning, defined as a residential area whose residents have public facilities and social institutions in common, generally within walking distance of their homes.

Nonconforming lot: A lot which was lawful prior to the adoption or amendment to a zoning ordinance but which fails by reason of such adoption or amendment to conform to the present requirements for lots of its zoning district.

Nonconforming structure or building: A structure or building, the size, dimension or location of which was lawful prior to the adoption, ~~revision~~ or amendment to a zoning ordinance ~~or resolution~~, but which fails by reason of such adoption, ~~revision~~ or amendment, to conform to the present requirements of the zoning district.

Nonconforming use: A use or activity which was lawful prior to the adoption, ~~revision~~ or amendment of a zoning ordinance ~~or resolution~~, but which fails, by reason of such adoption, ~~revision~~ or amendment, to conform to the present requirements of the zoning district.

Occupancy, change of: A discontinuance of an existing use and substitution of a use of a different kind.

Occupy: To take or enter upon maintain possession of, reside in, or utilize.

Office: A building or portion of a building wherein services are performed

involving predominantly administrative, professional, or clerical operations.

Open space: ~~That is~~ Ground area and the space above which is unimpeded from the ground to the sky by any main structure except that the with any building (excluding its projecting roof eaves) or structure (except for outdoor recreational facilities). Open space areas may be used for landscaping, water bodies, sidewalks, courtyards, and recreational purposes such as for swimming, shuffleboard, or tennis, etc. Parking lots and storage areas for vehicles, equipment, and material shall not be considered as open space. Open space is the area remaining on a lot or land after subtracting the area defined herein as "Lot coverage".

Owner: An individual, firm, association, syndicate, partnership, or corporation holding title to or having sufficient proprietary interest to seek permits for development of land.

Ownership certificate (certificate of ownership): A listing of properties within an identified area by legal description and address, together with corresponding ownership of those having proprietary ownership; ~~all as compiled by an abstract and/or title company~~ for purposes ~~for~~ of notification.

Parcel: A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development.

Park: A tract of land designated and used by the public for active and passive recreation.

Parking aisle: A paved surface which is connected directly to a parking space and designated to permit ingress or egress of a vehicle to or from the parking space. In no case can a parking aisle be a driveway.

4216 *Parking lot:* An off-street, ground-level area, ~~usually surfaced and improved, in~~
4217 ~~accordance with the standards and specifications of the City of Topeka~~ for the
4218 temporary storage of motor vehicles.

4219 *Parking space:* A paved surface, exclusive of an aisle, which is intended for off-
4220 street vehicular parking.

4221 *Performance standards:* Specific criteria limiting the operations of certain
4222 industries; land uses, and buildings to acceptable levels of noise, air pollution
4223 emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic generation
4224 and visual impact.

4225 *Permitted use:* Any use authorized in a particular zoning district.

4226 *Person:* A corporation, company, association, society, firm, partnership or joint
4227 stock company as well as an individual, a state and all political subdivisions of a state or
4228 any agency or instrumentally thereof.

4229 *Personal care:* Protective care with or without watchful oversight of a resident
4230 who does not have an illness or a condition which requires chronic or convalescent
4231 medical or nursing care with a twenty-four (24)-hour responsibility for the safety of the
4232 resident when in the building.

4233 *Personal services:* Establishments primarily engaged in providing services
4234 involving the care of a person and his or her apparel.

4235 *Pharmacy:* A place where drugs, prosthesis, rehabilitation equipment and
4236 medicines are prepared and dispensed.

4237 ~~*Place:* An open unoccupied space other than a street or alley permanently~~
4238 ~~reserved as the principal means of access to abutting property.~~

Planned unit development (PUD): A form of development characterized by a unified site design for a number of housing units, clustering buildings and providing common open space, density increases, and a mix of building types and land uses.

Planning commission: The Topeka Planning Commission.

~~*Plat of a subdivision:* A plan or map of a subdivision, showing the location, boundaries, and ownership of individual properties prepared in accordance with the provisions of applicable subdivision regulations.~~

Platting: Whenever the term platting or platted is used within these zoning regulations it shall refer to the process established by the subdivision regulations of the City of Topeka, Kansas.

~~*Plot:* An indefinite term usually referring to a piece of usable property, often used synonymously with parcel or site.~~

~~*Plot area:* The total area within the property line of a plot.~~

~~*Plot, corner:* A plot abutting upon two (2) or more streets at their intersection.~~

~~*Plot coverage:* The total area of building expressed as a percentage of the total plot area.~~

~~*Plot, depth:* The mean horizontal distance between the front and rear plot lines.~~

~~*Plot, double frontage:* A plot having a frontage of two (2) nonintersecting streets, as distinguished from a corner plot.~~

~~*Plot lines:* The lines bounding a plot as defined herein.~~

~~*Plot, width of:* The mean horizontal distance between the side plot lines.~~

Porch, open: A roof partially supported by columns or wall sections.

Preapplication conference: Discussions held between developers and public

officials, usually members of the planning staff, before formal submission of an application for a permit or for subdivision plat approval.

Premises: Any lot or tract, or combination of contiguous lots or tracts of land held in single ownership, together with the ~~development~~improvements thereon; a condominium complex constitutes one (1) premises.

Principal use: The main use of land or structures as distinguished from a secondary or accessory use.

Professional office: The office of a person engaged in any occupation, vocation, or calling, not purely commercial, mechanical, or agricultural in which a professed knowledge or skill in some department of science or learning is used by its practical application to the affairs of others, either advising or guiding them in serving their interest or welfare through the practice of an act found thereon.

Provisional use: A principal use which is allowed in the zone in which listed provided it complies with the additional regulations listed for the use and all other dimensional and special (if any) requirements of the zone in which listed.

Public or private educational facility: A public elementary, secondary, high school and private schools with curricular equivalent to that of public elementary, secondary or high school.

Public use facility: Any building, structure, utility, ~~facility or use of~~ land held, used, or controlled exclusively for public purposes by any department or branch of government: federal, state, county, municipal or subdivision thereof, ~~which [with]~~ reference to the ownership of the building or of the realty upon which it is situated.

Public utility: ~~A closely regulated private enterprise with an exclusive franchise for~~

4285 ~~providing a public service~~Any business or enterprise which furnishes the general public
4286 telephone, cable, electric, internet, natural gas, water, or sewer service, and is subject
4287 to supervision or regulation by an agency of the state or federal government.

4288 *Public utility facilities:* Telephone, electric and cable television lines, poles,
4289 equipment and structures; water or gas pipes, mains, valves or structures; sewer pipes,
4290 valves or structures; pumping stations; telephone exchanges and repeater stations; and
4291 all other facilities, equipment and structures necessary for ~~conducting a~~providing these
4292 services by a government or a public utility.

4293 *Public way:* Any sidewalk, street, alley, highway or other thoroughfare dedicated
4294 for public use.

4295 *Quarry:* A place where rock, ore, stone and similar materials are excavated for
4296 sale or for off-tract use.

4297 *Railroad right-of-way:* A strip of land with tracks and auxiliary facilities for track
4298 operation, but not including freight depots or stations, loading platforms, train sheds,
4299 warehouses, car or locomotive shops, or car yards.

4300 ~~*Rear lot lines:* Ordinarily that line of a lot which is opposite and farthest from the~~
4301 ~~front lot line.~~

4302 *Reclassification:* A form of rezoning in which the zone designation of an area or
4303 particular property is changed by changing the zoning map.

4304 *Recreational vehicle ~~park~~campground:* A plot of ground upon which twenty-four
4305 (24) or more campsites are located, established or maintained for occupancy by
4306 camping units of the general public as temporary living quarters for recreation,
4307 education or vacation purposes.

Refuse/solid waste: Garbage and other discarded materials including, but not limited to solid, semisolid, sludges, liquid and contained gaseous waste materials resulting from industrial, commercial, agricultural and domestic activities. Such term shall not include hazardous wastes.

Religious assembly: A structure or place in which worship, ceremonies, rituals, ~~interring~~interment of the human dead, and education pertaining to a particular system of beliefs are held.

Research laboratory: An establishment ~~or other facility for carrying on~~for investigation in the natural, physical or social sciences, or engineering and development as an extension of investigation with the objective of creating ~~and products~~[sic].

Residence: A home, ~~abode~~dwelling or place where an individual is actually living at a specific point in time.

Residential board and care ~~home~~facility: A building or part thereof that is used for the lodging and boarding of nine (9) or more residents not related by blood or marriage to the owners or operators to provide personal care and/or counseling services, but not to provide nursing care.

Residential care: Providing various levels of some or all of the following care and assistance as well as these services generally so associated to permit individuals to live and function as independently as possible all on a twenty-four (24)-hour-a-day basis: food and dietetic services; transportation, social, educational, recreational, and activity arrangements; personal services, personal care and domiciliary assistance; watchful and protective oversight; simple nursing care; and supervision.

Residential care facility, type I: A nonsecure dwelling building or portion thereof;

and premises, operated and licensed in accordance with any and all applicable state and local requirements, functioning as one dwelling unit in which residential care for profit or not-for-profit; is provided to children and/or adults unrelated by blood, adoption, or marriage to the caregivers, administrator or owner, on a twenty-four (24)-hour-a-day basis to a maximum of four (4) persons.

Residential care facility, type II: A nonsecure dwelling building or portion thereof; and premises, operated and licensed in accordance with any and all applicable state and local requirements; functioning as one dwelling unit in which residential care for profit or not-for-profit is provided to children and/or adults unrelated by blood, adoption, or marriage to the caregivers, administrator or owner, on a twenty-four (24)-hour-a-day basis to a maximum of ten (10) persons.

Residential care facility, type III: A nonsecure dwelling building or portion thereof; and premises, operated and licensed in accordance with any and all applicable state and local requirements, in which residential care for profit or not for profit; is provided to children and/or adults unrelated by blood, adoption or marriage to the caregivers, administrator or owner, on a twenty-four (24)-hour-a-day basis.

Residential-design manufactured home: A manufactured home,~~as defined elsewhere in this article,~~ on a permanent foundation which has: (a) minimum dimensions of twenty-two (22) body feet in width, (b) a pitched roof and (c) siding and roofing materials which are customarily used on site-built homes.

Restaurant: A public eating establishment in which the primary function is the preparation and serving of food and beverage; and which may be family dining, carry-out, drive-in or fast food type.

4354 *Restaurant, carry-out:* An establishment which by design of physical facilities or
4355 by service or packaging procedures permits or encourages the purchase of prepared
4356 ready-to-eat food and beverage intended primarily to be consumed off the premises,
4357 and where the consumption of food and beverage in motor vehicles on the premises is
4358 not permitted or not encouraged.

4359 *Restaurant, drive-in:* A building or portion thereof where food and/or beverages
4360 are sold in a form ready for consumption and where all or a significant portion of the
4361 consumption takes place or is designed to take place outside the confines of the
4362 building, often in a motor vehicle on the site.

4363 *Restaurant, family dining:* A public eating establishment in which the primary
4364 function is the preparation and serving of food and beverage for consumption on the
4365 premises.

4366 *Restaurant, fast-food:* An establishment whose principal business is the sale of
4367 pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume
4368 state for consumption either within the restaurant building or off premises.

4369 *Retail store:* Any building or structure in which one (1) or more articles of
4370 merchandise or commerce are sold at retail, including department stores.

4371 *Retail trade:* Establishments engaged in selling goods or merchandise to the
4372 general public for personal or household consumption and rendering services incidental
4373 to the sale of such goods.

4374 *Rezoning:* An amendment to or a change in the district map provided by an
4375 ordinance or resolution, as applicable to the subject jurisdiction.

4376 *Riding academy:* An establishment where horses are boarded and cared for and

where instruction in riding, jumping and showing is offered and the general public may, for a fee, hire horses for riding.

~~*Road system: (See Street and highway network)*~~

Room: Any enclosed division of a building containing over seventy (70) square feet of floor space and commonly used for living purposes, not including lobbies, halls, closets, storage space, bathrooms, utility rooms, and unfinished attics, cellars or basements. An enclosed division is an area in a structure bounded along more than seventy-five percent (75%) of its perimeter by vertical walls or partitions, or by other types of dividers which serve to define the boundaries of the division.

Roominghouse: Any dwelling where for compensation and by prearrangement lodging is provided for three (3) or more persons but not exceeding twenty (20) persons. A dormitory when not accessory to any institutional, educational, social or medical use, shall be deemed a roominghouse.

Rural home, suburban home: A residence located in the urban fringe or rural area that is occupied or intended to be occupied by a family or persons whom are not engaged in agricultural pursuits on the premises or zoning lot.

School: Any building or part thereof which is designed, constructed or used for education or instruction in any branch of knowledge.

School, elementary: Any school licensed by the state and which meets the state requirements for elementary education.

School, private: Any building or group of buildings the use of which meets state requirements for primary, secondary or higher education and which use does not secure the major part of its funding from any governmental agency.

4400 *School, secondary:* Any school licensed by the state and which is authorized to
4401 award diplomas for secondary education.

4402 *School, vocational:* A secondary or higher education facility primarily teaching
4403 usable skills that prepare students for jobs in a trade and meeting the state
4404 requirements as a vocational facility.

4405 *Setback:* The minimum required distance of ~~[sic]~~ between a building and the lot
4406 line or street right-of-way line, whichever is applicable ~~and the front building line of a~~
4407 ~~principal building or structure, projected to the side lines of the lot, and including~~
4408 ~~driveways and parking areas, except where otherwise restricted by this ordinance.~~

4409 *Setback line:* That line that is the required minimum distance from the street
4410 right-of-way line or any other lot line that establishes the area within which the principal
4411 structure must be erected or placed.

4412 *Setback regulations:* The requirements of building laws that a building be set
4413 back a certain distance from the street or lot line either on the street level or at a
4414 prescribed height.

4415 *Sewage system:* A facility designed for the collection, removal, treatment and
4416 disposal of waterborne sewage generated within a given service area.

4417 *Shop:* A use devoted primarily to the sale of a service or a product or products
4418 but the service is performed or the product to be sold is prepared in its finished form on
4419 the premises.

4420 *Shopping center:* A group of retail stores, originally planned and developed as a
4421 single unit, with immediate adjoining off-street parking facilities.

4422 *Sign:* Any device for visual communication that is used for the purpose of

bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or governmental agency.

Sign area: The total area of the space to be used for advertising purposes, including the spaces between open-type letters and figures, including the background structure or other decoration or addition which is an integral part of the sign. Sign supports shall be excluded in determining the area of a sign. A double-faced sign shall have twice the total area of a single-faced sign.

Sign, billboard or panel poster: Any sign or advertisement used as an outdoor display for the purpose of making anything known, the origin or point of sale which is remote from said display.

Sign, business: A sign which directs attention to a business, product, service or activity conducted or sold on the premises where the sign is displayed.

Sign, flashing: Any illuminated sign, whether stationary, revolving, or rotating, which exhibits changing light or color effects, provided that revolving or rotating signs which exhibit no changing light or color effects other than those produced by revolution or rotation, shall be deemed flashing signs only if they exhibit sudden or marked changes in such light or color effects.

Sign, illuminated: A sign designed to give forth any artificial light or reflect such light from an artificial source.

Sign, real estate: A sign pertaining to the sale or lease of the lot or tract of land on which the sign is located or to the sale or lease of one (1) or more structures or a portion thereof located on such lot or tract of land.

Site: ~~Same as "lot," plot or zoning lot~~ A specific location for the placement,

erection or construction of a building, facility or establishment.

Site-built home: A home on a permanent foundation erected by the process of assembling individual building materials or members on-site and subject to adopted construction codes and safety standards.

Site plan: A plan to scale, showing ~~uses and structures proposed for a parcel of land as required by the regulations involved~~ accurately and with complete dimensioning, the boundaries of a site and the location of all buildings, structures, uses, drives, parking, drainage, landscaping, and other principal site development improvements for a specific parcel of land.

Specified anatomical area: Less than completely or opaquely covered human genitals, pubic region, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities: Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; and fondling or other erotic touching of human genitals or pubic region.

Stacking space: A paved surface which is designed to accommodate a motor vehicle waiting for entry to any drive-in through facility or auto-oriented use, which is located in such a way that a parking space or access to a parking space is not obstructed, and which is at least nine (9) feet in width and nineteen (19) feet in length. Stacking spaces commence ten (10) feet behind the middle of the pickup window.

Standards: Site design regulations such as lot area, height limits, frontage, landscaping, yards, and floor area ratio--as distinguished from use restrictions.

~~*Start, commencement:* The doing of some act upon the ground on which the~~

building is to be erected, and in pursuance of a design to erect, the result of which act would make known to a person viewing the premises, from observation alone, that the erection of a building on that land had been commenced.

Storage: Holding or safekeeping goods in a warehouse or other depository to await the happening of some future event or contingency which will call for the removal of the goods.

~~*Store:* A use devoted exclusively to the retail sale of a commodity or commodities.~~

~~*Street:* Any vehicular way which: (1) is an existing state, county or municipal roadway, (2) is shown upon a plat approval pursuant to law, (3) is approved by other official action; or (4) is shown on a plat duly filed and recorded in the office of the county register of deeds prior to the appointment of the planning commission and the grant to such commission of the power to review plats, and includes the land between the street lines, whether improved or unimproved.~~ A right-of-way dedicated to the public use, or a private right-of-way serving more than one ownership, which provides principal vehicular and pedestrian access to adjacent properties.

~~*Street and highway network:* A network of vehicular travelways, such as public roads, streets, highways, etc., as may be defined and identified in the transportation plan element of the metropolitan comprehensive plan, and/or subdivision regulations.~~

Street line: A dividing line between a lot and a street right-of-way.

Structural alterations: Any change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or any substantial change in the roof or in the exterior walls.

4492 *Structurally altered:* The making of such a substantial change in the construction,
4493 identity, and use of the present building.

4494 *Structure:* Anything which is built or constructed, an edifice or building of any
4495 kind, or any place of work artificially built up or composed of parts joined together in
4496 some definite manner, ~~and affixed to the property~~which requires location on the ground
4497 or is attached to something having a location on the ground. ~~For the purpose of~~
4498 ~~construing this chapter, it~~ includes buildings, towers, cages for transformer substations,
4499 pergolas, and billboards, ~~steak ovens, trash burners, but not excluding other assemblies~~
4500 ~~of similar type which are permanently located on a lot, not including~~excludes poles,
4501 fences, retaining walls, air-conditioning units, posts, and such other minor incidental
4502 improvements.

4503 *Stub street:* A non-permanent dead-end street that is intended to be extended in
4504 conjunction with the subdivision and development of the adjacent unplatted land.
4505 Access from the stub street shall be permitted only along the frontage of such street to
4506 the lots in the subdivision containing the stub street.

4507 *Subdivision:* Division of a lot, tract or parcel of land into two (2) or more parts for
4508 the purpose, ~~whether immediate or future, of sale~~ ownership or building development,
4509 ~~including resubdivision.~~

4510 *Subdivision plat:* ~~A plan or map prepared in accordance with the provisions of~~
4511 ~~applicable subdivision regulations~~See "Plat of subdivision".

4512 ~~*Subdivision regulation:* Lawfully adopted subdivision ordinances of a city and the~~
4513 ~~lawfully adopted subdivision resolutions of a county.~~

4514 ~~*Temporary permit:* A permit, issued in accordance with the law of Kansas, which~~

~~allows the permit holder to offer the sale, sell and serve alcoholic liquor for consumption on unlicensed premises, open to the public.~~

Temporary use: A use of land, buildings or structures not intended to be of permanent duration.

Theater: A structure used for dramatic, operatic, motion pictures, or other performance, for admission to which entrance money is received and no audience participation or meal service allowed.

Tract: An area or parcel of land, other than a lot described and recorded in the office of the register of deeds of Shawnee County as a single parcel of land under individual ownership.

Traffic impact analysis (TIA): A specialized study of the impact a development will have on the surrounding transportation system. It is specifically concerned with the generation, distribution, and assignment of traffic to and from a proposed development. The purpose of a TIA is to determine what impact that traffic will have on the existing and proposed roadway network, and what impact the existing and projected traffic on the roadway system will have on the proposed development. It will provide a credible basis for estimating roadway and on-site improvement requirements attributable to a particular project, and assess the compatibility of local transportation plans. The specific content of a TIA may vary depending upon the site, prevailing conditions, and safety considerations as expressed by reviewing staff during the pre-application conference, and shall conform to the recommended practice methods of the Institute of Transportation Engineers.

Transmission tower: A structure principally intended to support a source of non-

ionizing electromagnetic radiation (NIEER) and accessory equipment related to telecommunications, other than the following uses which are exempt from this ordinance:

- (a) Portable, handheld and vehicular transmissions;
- (b) Industrial, scientific and medical equipment operating at frequencies designated for that purpose by the FCC;
- (c) A source of nonionizing electromagnetic radiation with an effective radiated power of seven watts or less;
- (d) A sole-source emitter with an average output of one kilowatt or less if used for amateur purposes;
- (e) Marketed consumer products, such as microwave ovens, citizens band radios, and remote control toys; and
- (f) Goods in storage or shipment or on display for sale, provided the goods are not operated, except for occasional testing or demonstration.

~~Unobstructed open space: Land not covered by buildings or structures.~~

Urban fringe: An area at the edge of an urban area usually made up of mixed agricultural and urban land uses.

~~Urban design: The attempt to give form, in terms of both beauty and function, to entire areas or to whole cities.~~
Building and/or development plans prepared in a manner as to be harmonious with existing quality development found in downtown and inner areas of cities.

~~Use: (a) Any purpose for which a building or other structure, or a tract of land may, be designed, arranged, intended, maintained, or occupied, or (b) any activity,~~

~~occupation, business, or operation carried on, or intended to be carried on, in a building~~
~~or other structure or on a tract of land~~The purpose or activity for which a piece of land or
its buildings is designed, arranged, or intended, or for which it is occupied or
maintained.

Utility services: Establishments engaged in the generation, transmission and/or
distribution of electricity, communications, gas or steam, including water and irrigation
systems and sanitary systems used for the collection and disposal of garbage, sewage
and other wastes by means of destroying or processing materials.

Variance: ~~The granting of permission by the board of zoning appeals to allow the~~
~~development of a plot for uses allowed within a given zoning district beyond one (1) or~~
~~more of the specific controls and limitations of these zoning regulations~~A device which
grants a property owner relief from certain provisions of a zoning ordinance when,
because of the particular physical surroundings, shape, or topographical condition of the
property, compliance would result in a particular hardship upon the owner.

Vehicle, motor: A self-propelled device used for transportation of people or goods
over land, ~~or water surfaces~~but not on rails, and licensed ~~as a motor vehicle~~through a
state agency as such.

Vehicle, motor bicycle. A device a person may ride upon which may be propelled
by either human power or helper motor or by both and has two (2) tandem or three (3)
wheels with a cylinder capacity of not more than one hundred thirty (130) cubic
centimeters and a maximum design speed of no more than thirty (30) miles per hour.

Vehicle, motor scooter. A self-propelled device a person may ride upon having
two (2) tandem or three (3) wheels each not greater than twelve (12) inches in diameter

and in contact with the ground, a saddle seat, handle bars, and an electric or gas motor no more than two hundred (200) cubic centimeters. A motor scooter may or may not require a State of Kansas Class M motorcycle license.

Vehicle, recreational: A vehicular-type portable structure without a permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and/or travel use and including but not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

Vehicular (motor) sales area: An open area, other than a right-of-way or public parking area, used for display, sale or rental of new or used vehicles in operable condition and where incidental minor vehicle repair work is may be done.

Vested right: A right is vested when it has become absolute and fixed and cannot be defeated or denied by subsequent conditions or change in regulations, unless it is taken and paid for.

~~*Warehouse:* A structure or part of a structure, for storing goods, wares, and merchandise, whether for the owner or for others, and whether it is a public or private warehouse~~
A building used primarily for the storage of goods and materials.

Width: A dimension measured from side to side at right angles to length.

~~*Yard:* A required area on a lot unoccupied by structures above grade except for projections and specific minor uses or structures as may be permitted under the provisions of this chapter. A yard extends from the grade upward~~
An open space on the same lot with a building or building group lying between the front, rear, or side wall of a building and the nearest lot line, unoccupied from the grade upward except for building

projections or for accessory buildings or structures permitted by this chapter.

Yard, front: ~~The required area across the frontage of a lot from one side lot line to another side lot line, parallel to the street, and as far back from the street right-of-way line as required in this chapter for the front yard~~A yard extending the full width of the lot on which a building is located and situated between the front lot line and line parallel thereto and passing through the nearest point of a building.

Yard, rear: ~~The required area from one side lot line to another side lot line, parallel to the rear lot line, and as far forward from the rear lot line as required by this chapter for the rear yard~~A yard extending the full width of the lot on which a principal building is located and situated between the rear lot line and a line parallel thereto and passing through the nearest point of the principal building. On corner lots, the rear yard shall be parallel to the front face of the principle structure and shall be indicated on the site plan as submitted by the property owner or general contractor.

Yard, required: The open space between a lot line and the buildable area within which no structure shall be located except as ~~provided in the zoning ordinance~~may be permitted under the provisions of this chapter.

Yard, side: ~~The required area from the front yard line to the rear yard line, parallel to the side lot line, and as far from the side lot line as required by this chapter for the side yard~~A yard on the same lot as a building situated between the side lot line and a line parallel thereto and passing through the nearest point of a building, and extending from the front yard to the rear yard.

Zone: An area within which certain uses of land and buildings are permitted and certain others are prohibited, yards and other open spaces are required, lot areas,

building height limits, and other requirements are established, all of the foregoing being identical for the zone in which they apply.

~~*Zoning:* The regulation or restriction of the location and uses of buildings and uses of land.~~

~~*Zoning district:* A specifically delineated area or district in the city or county~~section of the City of Topeka shown on the zoning map within which regulations and requirements uniformly govern the use, placement, spacing and size of land and buildings.

~~*Zoning lot:* A contiguous area of land within a district that is equal to or in excess of the prescribed minimum area (intensity of use) for any use permitted in the district~~A parcel of land under single ownership that is of sufficient size to meet minimum zoning requirements for area, coverage, and use, and that can provide such yards and other open spaces as required by this chapter.

~~*Zoning map:* The~~ official map or maps, which are a part of the zoning ordinance and delineate the boundaries of the ~~zone~~zoning districts.

~~*Zoning regulations:* The lawfully adopted zoning~~ map and zoning ordinances of a city and the lawfully adopted zoning resolutions of a countythe City of Topeka.

~~DEFINITIONS--SUPPLEMENTAL~~

~~For the purpose of this chapter the following terms shall be used in addition to those terms contained in definitions.~~

~~*Vehicle, motor bicycle.* A device a person may ride upon which may be propelled by either human power or helper motor or by both and has two (2) tandem or three (3)~~

wheels with a cylinder capacity of not more than one hundred thirty (130) cubic centimeters and a maximum design speed of no more than thirty (30) miles per hour.

~~Vehicle, motor scooter. A self-propelled device a person may ride upon having two (2) tandem or three (3) wheels each not greater than twelve (12) inches in diameter and in contact with the ground, a saddle seat, handle bars, and an electric or gas motor no more than two hundred (200) cubic centimeters. A motor scooter may or may not require a State of Kansas Class M motorcycle license.~~

Section 104. That section 48-36.02, Use regulations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Use regulations.

A building or premises shall be used only for the following purposes:

- (1) Any use permitted in section ~~48-91~~48-10.02 and 48-13.02.
- (2) Radio broadcasting studios.
- (3) Banks.
- (4) Savings and loan.
- (5) Business or commercial schools or dancing or music academies.
- (6) Office buildings.
- (7) Insurance offices either home offices or agency offices.
- (8) Clinics either psychiatric, surgical or diagnostic and laboratories for analytical research and testing; provided, however, that no animals be kept, sheltered or grazed on the premises outside of the principal building; provided further, that none of such uses shall contain or provide for retail business of whatsoever kind or nature; and provided further, that no advertising sign of any type except the name of the building

shall be permitted in this district, when used for purposes referred to in this section. Such signs may be either flat wall-type interior illuminated, limited to 40 square feet or nonilluminated, ground or monument type not to exceed four feet in height above grade.

Section 105. That section 48-18.02, Use regulations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Use regulations.

(a) *Permitted uses:*

(1) Permitted uses in the "C-3" commercial district; and store, shop or facility for the conduct of a retail business or service similar in use and nature to the types of uses listed herein and specifically excepting those types of activities provided for in less restricted districts.

(2) Agricultural machinery and equipment sales area and service facility.

(3) Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises.

(4) Animal hospitals, either large or small, veterinary clinics and enclosed kennels.

(5) Auction house.

(6) Automotive service station type[s] I, II and III.

(7) Bakery, commercial which may include wholesale distribution facilities.

4699 (8) Boat and boating equipment sales area and service; bait shop.

4700 (9) Building, construction, and mechanical contractor office, showroom,

4701 shop and sales area, including plumbing, heating and air conditioning, electrical,

4702 mechanical and sheet metal work, provided that on the premises there is no

4703 unenclosed storage of material, machinery, vehicles, or equipment; and no

4704 storage of any vehicle, machinery, or equipment with a net weight exceeding

4705 three (3) tons.

4706 ~~(10) Commercial and industrial products, photography studios, portrait~~

4707 ~~photographing being clearly accessory to the photographing of products.~~

4708 (4410) Commercial laundry, dry cleaning and dyeing facility.

4709 (4211) Flea market and swap meet.

4710 (4312) Grave monuments and marker sales area, display and engraving.

4711 (4413) Home improvement and building supply/material establishments,

4712 including sales and display areas, storage and yards. Outdoor display and

4713 storage yards shall be paved, hard surface and dust-free.

4714 (4514) Lawn/garden centers including the display and sales of landscape

4715 materials, lawn and garden equipment, and supplies; and holiday/seasonal

4716 ornamentations and decorating sales and service. Outdoor storage and supply

4717 yards shall be paved, hard surface and dust-free.

4718 (4615) Manufactured housing and accessory structure sales and display

4719 area.

(~~47~~16) Motor vehicle sales area and service facility, including the sale or lease of new or used automobiles, trucks, recreational vehicles, agricultural and heavy equipment.

(~~48~~17) Newspaper and magazine distribution agencies.

(~~49~~18) Publishing establishments.

(~~20~~19) Rental establishments for domestic and general equipment, lease area and display. Outdoor display, storage, loading and parking areas shall be paved; hard surface, and dust free.

(~~24~~20) Repair, restoration of vehicles, machinery and equipment.

(21) Studio for photography of commercial and industrial products in which photographing of people is clearly accessory to the photographing of products.

(22) Taxidermists.

(23) Theater; non-adult drive-in.

(24) Vehicle repair, restoration and towing service, not including automotive wrecking or long-term disabled vehicle outdoor storage.

(b) *Provisional uses:*

(1) Dwelling unit other than medical care and community living facilities located above the ground floor.

(2) Theater; adult motion picture, subject to the requirements of article XXVI.

(3) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(4) Automotive or vehicle car wash facility subject to the requirements of article XXVI.

(5) Day care facility, type II, subject to the provisions of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit provided by article XXV:

(1) Amusement parks, including: permanent carnival, kiddie parks and similar outdoor amusement facilities.

(2) Commercial radio, TV, broadcasting or receiving towers.

(3) Fairgrounds.

(4) Public use facility.

(5) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(6) Race track.

(7) Sports stadiums and arenas.

(8) Relocation, remodeling or rebuilding of legal non-conforming billboards presently located within the "C-4" Commercial District subject to the requirements of article XXVI.

(9) Correctional placement residence or facility general, subject to the requirements of article XXVI.

(10) Nonresidential small wind energy system, subject to Division 3 of Article XXVI.

Section 106. That section 48-19.02, Use regulations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Use regulations.

(a) *Permitted uses:*

(1) Permitted uses in the "C-3" commercial district.

(2) Parking lot and/or multistory garage.

(3) Television, radio and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition.

(4) Auction house.

(5) Studio for photography of ~~C~~commercial and industrial products, ~~photography studios, portrait~~in which ~~photographing of people is being~~ clearly accessory to the photographing of products.

(6) Newspaper and magazine distribution agencies.

(7) Publishing establishments.

(8) Billboards and panel posters not exceeding 300 square feet per single face area and which do not exceed a height of 55 feet above grade.

(9) Commercial laundry, dry cleaning and dyeing facility.

(10) Building, construction, and mechanical contractor office, showroom, shop and sales area, including plumbing, heating and air conditioning, electrical, mechanical and sheet metal work, provided that on the premises there is no unenclosed storage of material, machinery, vehicles, or equipment; and no storage of any vehicle, machinery, or equipment with a net weight exceeding three tons.

(11) Bus terminal or station.

(b) *Provisional uses:*

(1) Automotive service stations, type[s] I and II subject to the requirements of article XXVI.

(2) Automotive or vehicle carwash facility subject to the requirements of article XXVI.

(3) Small animal hospital and veterinary clinic for small domestic animals subject to the requirements of article XXVI.

(4) Dwelling unit other than medical care and community living facilities, located above or below the ground floor.

(5) Restaurants and establishments of the "drive-in" and/or "carry-out" type, except theaters, offering goods or services directly to customers in motor vehicles shall be permitted subject to the requirements of article XXVI.

(6) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(7) Day care facility, type II, subject to the provisions of article XXVI.

(8) Dwelling units on any floor where the structure was originally built for use as dwelling units and dwelling units in hospitals and hotels converted for residential occupancy.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body provided by article XXV:

(1) Amusement indoor establishments, including dance, pool, and billiard halls; archery ranges, shooting galleries, pinball, electronic and video games arcade; taverns and similar establishments licensed by the city to sell and dispense cereal malt beverages for drink on premises.

(2) Automotive service station, type III, subject to the requirements of article XXVI.

(3) Public use facility.

(4) Private or public utility structures facilitating the transmission, distribution and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(5) Nonresidential small wind energy system, subject to Division 3 of Article XXVI.

Section 107. That section 48-20.02, Use regulations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Use regulations.

(a) *Permitted uses:*

(1) Permitted uses in the "C-4" commercial district, except residential dwellings. The only residential dwellings permitted in this district are for onsite caretakers or watchmen or correctional placement residence or facility limited or general ~~only shall be permitted~~.

(2) Bottling works.

(3) Building materials sales and storage.

(4) Construction equipment storage.

(5) Dairy products processing.

(6) Demolition landfill.

(7) Express and shipment facilities.

(8) Laboratories--research and testing.

(9) Manufacturers' supply and wholesale trade establishments.

(10) Manufacture, processing storage and/or warehousing of any product, equipment, or material; except any activities involving the following:

a. Acetylene, gas manufacture or storage.

b. Acid; alcohol; ammonia, bleaching powder, chlorine, cement, lime, gypsum, plaster of Paris, disinfectant, dyestuff, glue, fertilizer, size, gelatin, oilcloth, linoleum, oiled rubber goods, paint, oil, shellac, turpentine, varnish, paper, pulp, shoe polish, soap (other than liquid), tallow grease, lard, refining of animal fat, tar distillation, tar roofing, waterproofing products, vinegar and yeast manufacture.

c. Arsenal; high explosives (other than armory).

- 4853 d. Asphalt; cement or other paving materials manufacture or
4854 central mixing plant.
- 4855 e. Vehicular wrecking or dismantling for salvage purposes.
- 4856 f. Blast furnace, coke oven, boiler works, forge plant, ore
4857 reduction, smelting of tin, copper, zinc or iron ores, iron, steel, brass or
4858 copper foundry or fabrication plant.
- 4859 g. Brick, tile, pottery or terracotta manufacture (other than the
4860 manufacture of handcraft products only).
- 4861 h. Creosote manufacture or treatment.
- 4862 i. Distillation of bones, coal or wood.
- 4863 j. Explosives or fireworks manufacture or storage.
- 4864 k. Fat rendering.
- 4865 l. Garbage, offal or dead animals reduction or disposal.
- 4866 m. Junk, iron or rags or paper storage or bailing except as
4867 provided elsewhere in these regulations.
- 4868 n. Petroleum or its products, refining or wholesale storage.
- 4869 o. Planing mills; rock crusher; rolling mill.
- 4870 p. Rubber or gutta-percha manufacture or treatment.
- 4871 q. Stockyard or slaughter of animals or fowls.
- 4872 r. Stone mill.
- 4873 s. Tanning, curing or storage of raw hides or skins.
- 4874 t. Wool pulling or scouring.

u. And in general, those uses which may be obnoxious or offensive by reason of emission of odor, dust, smoke, gas or noise.

(11) Railroad facilities.

(12) Private or public utility structures facilitating the transmission, distribution, and/or collection systems, including substations, distribution stations, pump stations, reservoirs, towers, transmission equipment buildings and similar such uses.

(13) Warehousing, storage, and distribution facilities, including wholesaling.

(14) Welding, tinsmithing and machine shop.

(15) Television, radio, and microwave transmission towers; telecommunication equipment; and accessory facilities other than those provided for elsewhere in this chapter as accessory to a permitted use or exempt as set forth by definition.

(16) Billboards and panel posters not exceeding six hundred seventy-two (672) square feet per single face area. Billboards and panel posters which exceed three hundred (300) square feet shall not exceed a height of thirty-five (35) feet above grade.

(b) *Provisional uses:*

(1) Theater; adult motion picture subject to the requirements of article XXVI.

(2) Recycling depot subject to the requirements of article XXVI.

(3) Communication towers, telecommunication equipment and accessory facilities other than those provided for elsewhere in this chapter as exempt as set forth by definition; and subject to the requirements of article XXVI.

(c) *Uses permitted by conditional use permit:* The following uses may be granted a conditional use permit by the governing body as provided by article XXV:

(1) Airport and landing field.

(2) Amusement parks, including: permanent carnivals, kiddie parks and similar outdoor amusement facilities.

(3) Commercial radio, TV, broadcasting or receiving towers.

(4) Fairgrounds.

(5) Public use facility.

(6) Racetrack.

(7) Sports stadiums and arenas.

(8) Day care facility, type II, subject to the provisions of article XXVI.

(9) Correctional placement residence or facility general, subject to the requirements of article XXVI.

(10) Nonresidential small wind energy system, subject to Division 3 of Article XXVI.

Section 108. That section 48-24.00, Purpose; intent, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Purpose; intent.

This district is established to permit greater flexibility and, more creative, innovative and imaginative design for the development of areas that are generally

possible under the strict application of the regulations of the other districts. It is further intended to promote more economical and efficient use of the land while providing for a pleasing and harmonious development and environment, including opportunities to provide for a high level of urban amenities, and the preservation of open spaces. The regulations of this district are intended to encourage the use of this district in order to integrate multiple uses into the development; to adapt the proposed use(s) to meet the conditions of the site; and to affect certain economics in public facilities. The requirements contained herein are set forth to provide for such development on other than a lot by lot basis.

Due to the nature and implications of a district zone which provides for such a broad spectrum of land use and a more challenging responsibility of the delivery of public services, considerations and quasijudicial deliberations relating to the compatibility of the district to a particular site shall permit greater discretionary review and broad latitude in applying conditions and limitations for a permitted development. The compliance with all standards set forth in the article and the submittal of all specified ~~data~~, documents and data shall not entitle an applicant this district classification.

Section 109. That section 48-24.03, Requirements and development standards for the planned unit development district, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Requirements and development standards for the planned unit development district.

The following performance criteria shall be required of all planned unit developments and shall be addressed by the master plan:

(a) Size of parcel:

(1) In order to encourage the efficient use of land and resources; promote greater efficiency in public and utility services; and, encourage innovation in the planning, design and building of all types of development, the minimum site size requested for a planned unit development district shall be one (1) acre.

(2) Parcels containing less than one (1) acre may be sought for reclassification to the planned unit development district where the planning director determines the proposed PUD to be a "transition area," defined as an area that separates a non-residential use group classification ("O&I", "C", or "I" districts alone or within a PUD) from another nonresidential use group classification or a residential use group classification ("R" or "m" districts alone or within a PUD). The determination of the planning director may be appealed to the planning commission.

(b) Additional standards and requirements for projects on less than one (1) acres.

(1) The use group category assignment of the planned unit development will be comparable to that of surrounding properties in the neighborhood.

(2) The density and design of the planned unit development shall be compatible in use, size and type of structure, relative amount of open space,

4965 traffic circulation and general layout with adjoining land use, and shall be
4966 integrated into the neighborhood.

4967 (3) The development shall not have any greater impact on existing
4968 streets and utilities than that anticipated for a conventional development of the
4969 site.

4970 (4) The development shall not adversely affect views, light and air, and
4971 use and enjoyment of neighboring properties any more than would a
4972 conventional development.

4973 (5) The master planned unit development plan shall also include
4974 building elevations for all structures and details of materials to be used for
4975 external construction, when determined necessary by the planning director. The
4976 determination of the planning director may be appealed to the planning
4977 commission.

4978 (c) Property owners association. Areas within the planned unit development
4979 which are designated as private streets, private utility services, common areas,
4980 recreation areas, or other open space set aside for the benefit of tenants and property
4981 owners, shall be maintained by the property owners association or, in the alternative,
4982 property owners within the planned unit development. In the event the property owners
4983 association or property owners within the planned unit development fail to maintain such
4984 areas, the governing body may proceed under applicable ordinances and/or resolutions
4985 to maintain such areas. All costs incurred by the governing body in maintaining such
4986 areas shall be assessed against the lots within the planned unit development as
4987 provided for by law. Nothing contained herein shall be construed as creating a duty on

4988 behalf of the governing body to enforce any of the duties, obligations, or responsibilities
4989 of the property owners' association or in the alternative, individual property owners.

4990 (d) Platting. Building or zoning permits shall not be issued nor any
4991 development initiated on any property designated as planned unit development until
4992 such time that the property has been platted as a subdivision; or replatted as a
4993 subdivision when determined by the planning director that conditions and circumstances
4994 relating to utility extension and service, street or alley right-of-way, topographic and
4995 drainage factors, easements, or vehicular access warrant said replat.

4996 (e) Access.

4997 (1) All drives, lanes, streets, culs-de-sac, and other accessways within
4998 the planned unit development shall be owned and maintained by the property
4999 owners' association or owners within the planned unit development unless it is
5000 determined by the planning commission that there is a public need for local
5001 streets and/or major trafficways to transverse the district. In such instances, the
5002 transversing streets and/or trafficway right-of-way shall be dedicated by the
5003 developer in accordance with the plat subdivision regulations.

5004 (2) All drives, lanes, streets, culs-de-sac and other privately owned
5005 accessways providing accessibility to individual structures, buildings, and uses
5006 within the planned unit development shall, by the nature and intent of the district,
5007 be considered and serve as mutual rights of access for owners, tenants, invited
5008 guests, clients, customers, support and utility service personnel and emergency
5009 service providers, including law enforcement, fire protection and ambulance

5010 services. No gates, structures or other barriers shall be constructed across said
5011 accessways which may impede, limit, or restrict the above rights of access.

5012 (3) The site will be accessible from public streets which are adequate
5013 to carry the traffic that will be imposed upon them by the proposed development.
5014 ~~s~~Streets, and driveways on the site of the proposed development will be
5015 adequate to serve the residents, occupants, or users of the proposed
5016 development. Traffic control signals will be provided without expense to the city
5017 when the governing body determines that such signals are required to prevent
5018 traffic hazards or congestion in adjacent streets.

5019 (4) All drives, lanes, streets, culs-de-sac, accessways, and parking lots
5020 shall comply with all applicable provisions of article XXX in respect to surfacing,
5021 design, screening, lighting, and drainage.

5022 (f) Other standards. Other developmental standards, requirements, and
5023 provisions of applicable jurisdictional units including but not limited to those of public
5024 works, fire and water district, law enforcement, utilities, and parks and recreation, and
5025 which may not be specifically set forth in this article, shall apply and the master and final
5026 planned unit development plans should account for such and reflect a development
5027 design accordingly provided that variances and waivers are not granted by the
5028 appropriate authority.

5029 Section 110. That section 48-30.00, Scope and application, of The Code of the
5030 City of Topeka, Kansas, is hereby amended to read as follows:

5031 **Scope and application.**

In any zoning district, all structures built and all uses established after the effective date of this article, and, when an existing structure is expanded, off-street parking shall be provided in accordance with the following regulations.

(a) *Scope of regulations:*

(1) *New construction and new uses:* For all buildings and structures erected, and all uses of land established after the effective date of this article, accessory off-street parking facilities shall be provided in accordance with the provisions contained herein. However, where a building permit has been issued prior to the effective date of this article, and provided that construction has commenced within six months of such effective date and diligently prosecuted to completion, parking facilities in the amounts required for the issuance of said building permit may be provided in lieu of any different amounts required by this article.

(2) *Expansion of a building or use:* When the intensity of use of any building, structure, or premises shall be increased, additional parking facilities shall be provided as follows:

a. Whenever a building, structure or use existing prior to the effective date of this article is enlarged to the extent of less than 50 percent in floor area, the addition or enlargement shall comply with the parking requirements set forth herein.

b. Whenever a building, structure or use existing prior to the effective date of this article is enlarged by one or more additions, the sum total of which increases the floor area to the extent of 50 percent or more,

the uses contained within the original building or structure and all enlargements shall thereafter comply with the parking requirements set forth herein.

c. Whenever an existing single-family dwelling with more than 950 square feet in floor area has less than two parking spaces, it shall be permitted to expand by not more than 25 percent in floor area without having to comply with the off-street parking requirements set forth herein.

(3) *Change of use:* Whenever a use existing prior to the effective date of this article shall be changed to a new use, parking facilities shall be provided as required for such new use.

(4) *Exempt district:* Notwithstanding any other provision of this article, no parking facilities shall be required for any building or use as permitted in the "C-5" commercial district.

(b) *Existing parking facilities:* Accessory off-street parking facilities in existence on the effective date of this article, and located on the same zoning lot as the building or use served, shall not hereafter be reduced below, or if already less than, shall not be further reduced below the requirements for a similar new building or use.

(c) *Permissive parking facilities:* Nothing in this article shall be deemed to prevent the establishment of additional off-street parking facilities to serve any existing building or use, provided that all regulations herein governing the location, design, and operation of such facilities are satisfied.

(d) *Damage or destruction:* Whenever a building or use existing prior to the effective date of this article, and for which the required number of parking spaces is not

provided, is damaged or destroyed by fire, tornado or other natural causes to the extent of 50 percent or more of its fair market value, ~~shall be required to meet the off-street parking requirements and standards for that portion proposed to be rebuilt~~the building structure or use shall only be rebuilt or restored in compliance with this article.

Section 111. That section 48-30.01, Off-street parking requirements, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Off-street parking requirements.

(a) *General requirements:* The following requirements shall govern in the design, location and number of off-street parking and stacking spaces.

(1) *Computation:* When determination of the number of off-street parking and stacking spaces results in a requirement of a fractional space, the fraction of one-half or less may be disregarded, and a fraction in excess of one-half shall be counted as one space.

(2) *Utilization:* Off-street parking and stacking facilities provided for the uses hereinafter listed shall be reserved exclusively for the parking of motor passenger vehicles, in operating condition, of patrons, occupants, visitors or employees of such uses.

(3) *Computing off-street parking:* In computing the floor area to determine the requirement for off-street parking, such computations for a structure shall exclude:

- a. The exterior wall width of the structure;
- b. Elevator shafts;
- c. Common courts or lobby areas;

- 5101 d. Mechanical equipment rooms;
- 5102 e. Stairways;
- 5103 f. Restrooms;
- 5104 g. Basements, except those portions not used exclusively for
- 5105 service to the structure;
- 5106 h. Balconies;
- 5107 i. Incidental storage areas including but not limited to janitorial
- 5108 rooms, supply rooms, etc.

5109 The appropriate city or county building official shall determine the
5110 net floor area of the structure and shall require off-street parking as
5111 specified for the use set forth in the applicable district regulations.

5112 (4) *Shared parking provisions:* In the case of mixed uses, the off-street
5113 parking and stacking spaces required shall equal the sum of the requirements of
5114 the various uses computed separately, provided all regulations governing the
5115 location of accessory off-street parking and stacking spaces in relation to the
5116 uses served are adhered to.

5117 (b) *Specific requirements:*

5118 (1) *Open and enclosed parking:* Accessory off-street parking and
5119 stacking spaces may be open to the sky or enclosed within a garage.

5120 (2) *Surfacing:* All off-street parking and stacking spaces, aisles and
5121 drives shall be surfaced in accordance with the standards and specifications of
5122 the city or county.

5123 (3) *Location:* Off-street parking and stacking spaces, aisles and drives
5124 shall be located as follows:

5125 a. General.

5126 1. All required off-street parking and stacking spaces,
5127 aisles and drives shall be located on the same zoning lot as the use
5128 served ~~except as provided in subsection 48-30-03.~~

5129 2. Protective curbs shall be required to be installed three
5130 feet from public sidewalks to protect pedestrians a minimum of two
5131 feet from adjacent property lines, and at other places on the parking
5132 lot as may be required by the code enforcement director or
5133 Shawnee County zoning administrator; or the applicable city or
5134 county engineer to protect the adjacent property.

5135 3. Aisles and drives shall not be considered in
5136 determining whether off-street parking and stacking requirements
5137 have been met except in the instance of single-family dwellings and
5138 duplexes.

5139 (4) *Design:* Except for single-family dwellings and duplexes, all off-
5140 street parking and stacking spaces, aisles and drives shall comply with the
5141 following prescribed standards:

5142 a. *Area:* Off-street parking and stacking spaces shall comply
5143 with the minimum dimensions illustrated in figure 1.

5144 b. *Access:* Each off-street parking space shall open directly
5145 upon an aisle of such width and design as illustrated in figure 1. The

greatest aisle width shown in figure 1 shall be provided when combining different parking space configurations on the same aisle. All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement; and all such points of access must be approved by the city or county public works department as appropriate. Aisles designed for two-way traffic shall have a minimum width of 24 feet.

c. *Exiting a parking facility:* No off-street parking facility shall be designed in such a manner that when exiting a parking facility it would require backing into a public street.

d. *Curbing:* Protective curbing shall be installed a minimum of three feet from a public sidewalk and two feet from adjacent property lines.

e. *Markings:* The parking spaces in all off-street parking areas shall be visibly delineated on the surface by painted or marked stripes.

(5) *Screening:* All open, off-street parking facilities containing eight or more parking spaces shall be effectively screened on each side adjoining residential property (including single-family, duplex and multiple-family) or institutional property with a continuous, view-reducing wood fence, masonry wall, compact evergreen hedge or other landscape screening material which, when planted, will constitute an immediate view-reducing barrier. Such view-reducing screen shall be at least four feet but, not more than eight feet in height. The requirement for screening may be waived with written approval from the adjacent property owner.

5169 (6) *Lighting:* Any lighting used to illuminate off-street parking facilities
5170 shall be directed away from residential properties and public streets in such a
5171 way as not to create a nuisance. However, in no case shall such lighting exceed
5172 three footcandles measured at the lot line.

5173 (7) *Drainage:* All stormwater runoff shall be collected, transported and
5174 disposed of in a manner as approved by the city or county engineer as
5175 appropriate.

5176 (8) *Accessible parking:* Where a use is required to provide
5177 accessibility for persons with disabilities, the required parking spaces shall be
5178 located and designed in accordance with standards as set by the Americans with
5179 Disabilities Act (ADA).

5180 (9) *Modification of parking requirements:* Where it can be
5181 demonstrated by the property owner that a specific use has such characteristics
5182 that the number of parking or stacking spaces required is too restrictive, the
5183 planning director, and appropriate city or county traffic engineer and building
5184 official may upon request grant up to a 25-percent reduction in the number of
5185 required spaces. Such request shall be filed with the city or county building
5186 official, as appropriate on forms as may be provided. Should a reduction greater
5187 than 25 percent be requested, a variance will need to be granted by the metro
5188 board of zoning appeals in accordance with the procedures set forth in article
5189 XXXIV. Where a reduction of 25 percent or less is requested, the applicant shall
5190 be required to reserve an area of land on the site of the use served equal in size
5191 to the area of land needed to provide the spaces for which a reduction is granted.

Such land reserved shall be suitable for development of a parking facility and conform with the parking requirements.

(10) *Condition of off-street parking facility:* Any parking facility which does not meet the standards of this chapter and which shall create a nuisance to the public from any cause shall meet the requirements as recommended by the city or county traffic engineer, city or county engineer, planning director and city or county building official, pertaining to screening, surfacing or entrances or exits.

Section 112. That original §§ 2-118, 2-363 through 2-365, 2-401, 2-479, 18-154, 26-4, 26-67, 26-76, 26-138, 26-420, 26-422, 26-607, 30-286, 30-288, 30-398, 30-441, 30-457, 38-2, 42-2, 42-3, 42-10, 66-101, 66-153, 70-36, 70-57, 74-32, 82-295, 82-298, 86-54, 98-131, 98-133, 98-211, 102-158, 106-74, 106-170, 112-5, 114-156, 130-161, 130-163, 142-63, 142-266, 142-401 through 142-404, 142-748, 146-30, 146-303, 146-351, 146-352, 146-458, 48-36.02, 48-18.02, 48-19.02, 48-20.02, 48-24.00, 48-24.03, 48-30.00, 48-30.01 and Article XXXV of Chapter 48 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 113. 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 Governing Body March 23, 2010.

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk