

(Published in the Topeka Metro News March 22, 2010)

ORDINANCE NO. 19394

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning accessory uses and requirements for zoning regulations, creating City of Topeka Code § 48-29.025 and amending § 48-29.00, § 48-29.01 and § 48-29.02 and specifically repealing said original sections.

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

Section 1. That Appendix C, Article XXIX, Accessory Uses and Requirements, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~ACCESSORY USES AND REQUIREMENTS~~

Section 2. That section 48-29.00, Authority, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Authority~~Accessory uses.~~

Accessory uses, buildings and land customarily associated with, and clearly incidental to a permitted use, provisional use or conditional use permit shall be permitted provided they are:

(a) ~~Subordinate to~~ Located on the same lot or parcel as a principal use and commonly associated with a principal building or use.

(b) Subordinate in area, extent and purpose to the principal building ~~or use.~~
The cumulative footprint of all accessory buildings shall not exceed ninety percent (90%) of the principal building's footprint.

(c) Operated and maintained under the same ownership and are contributory to the comfort, convenience or necessity of the occupants, business or industry in the principal building or use served.

(d) ~~Located on the same building site and/or zoning lot as the principal building or use.~~

Section 3. That section 48-29.01, Permitted accessory uses and buildings, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Permitted accessory uses and buildings.~~

The accessory uses, buildings and other structures permitted in each zone may include the following:

(a) *In the "RA-1" and the "RR-1" districts:*

(1) Open or enclosed storage of farm materials and equipment.

(2) Farm buildings, including barns, stables, sheds, toolrooms, shops, tanks, bins and silos.

(3) Fuel storage tanks and dispensing equipment for fuels used solely for farming operations. No wholesale/retail sales of such fuels shall be allowed as an accessory use.

(4) Wholesale and retail sales of agricultural products grown or raised upon the premises.

(5) Roadside stands for the sale of produce grown on the premises, provided, that such a stand shall not contain more than six hundred (600) square feet of floor area, the stand is located no closer than twenty (20) feet from the right-of-way, and access to the stand is from an entrance to the farm or residence.

(6) Private, noncommercial antenna and supporting structure when used for amateur radio service; citizens band radio; a telecommunication device

that receives only a radio frequency signal; a sole-source emitter with more than one kilowatt average output, and; satellite receiving devices provided they shall not be located in the area between the street and principal building nor within the required side yard.

(7) Fences as regulated by section 48-29.03.

(8) Gazebos, enclosed patios and similar buildings for passive recreational use.

(9) Home occupations as regulated by section 48-29.025, ~~provided the same does not detract from the residential character of a neighborhood and will not cause excessive traffic, nuisance or hazards to safety; provided further that each home occupation shall comply with the following standards and permit requirements:~~

~~a. Standards: The following shall apply to any home occupation:~~

~~1. The use or activity shall be carried on by a resident of the dwelling.~~

~~2. Not more than one employee not a resident of the dwelling is permitted.~~

~~3. The exterior of the dwelling shall not be changed or modified in any way, nor shall any exterior signs be erected that will indicate any accessory use of the property nor adversely effect the residential character of the neighborhood.~~

~~4. The sale of any commodity, goods or products on the premises is prohibited.~~

~~5. All equipment, materials and work in progress shall be confined to the principal dwelling exclusive of an attached garage.~~

76 6. ~~The projection of any obnoxious sound, odor, smoke, vibration, light or~~
77 ~~dust is prohibited.~~

78 7. ~~The home occupation shall not occupy more than 25 percent of the~~
79 ~~total floor area (including a basement) of the dwelling, exclusive of an attached~~
80 ~~garage.~~

81 8. ~~The home occupation shall not be available or open to the public~~
82 ~~except during the hours between 8:00 a.m. and 8:00 p.m.~~

83 9. ~~The home occupation shall not create a need for off-street parking,~~
84 ~~pedestrian and vehicular traffic, sanitary sewer and storm sewer usage, public~~
85 ~~water usage as well as other municipal services in excess of the normal and~~
86 ~~usual levels for other residential dwellings.~~

87 10. ~~Only one accessory use or activity shall be carried on in a dwelling~~
88 ~~during the period authorized by a home occupation permit.~~

89 b. ~~Permit required: Prior to the establishment of any accessory use or~~
90 ~~activity as defined herein as a home occupation, the owner(s) of the subject~~
91 ~~property shall make an application to the City of Topeka code enforcement~~
92 ~~director or Shawnee County zoning administrator as appropriate. At such time as~~
93 ~~the appropriate city or county official has determined that the proposed~~
94 ~~accessory use or activity meets the standards as set forth herein, a home~~
95 ~~occupation permit shall be issued. The governing official shall have the authority~~
96 ~~to specify conditions and requirements as deemed necessary to assure~~
97 ~~compliance with the standards as set forth herein. The home occupation permit~~
98 ~~shall specify the conditions and requirements and the duration of said permit.~~

99 ~~The permit shall be displayed within the interior of the dwelling and at the location~~
100 ~~of the proposed activity.~~

101 ~~A home occupation permit may be issued to a tenant or occupant of a~~
102 ~~dwelling who is to be engaged in the accessory use or activity, provided the~~
103 ~~owner(s) of record of the property have endorsed and/or certified the application.~~

104 ~~A home occupation permit shall not be transferable or assignable.~~
105 ~~Discontinuance or abandonment of the home occupation for a period of 60 days~~
106 ~~shall render the permit void.~~

107 ~~The enforcement and administration of this subsection shall rest with the~~
108 ~~appropriate city or county governmental official. Upon a finding that any of the~~
109 ~~foregoing provisions have not been complied with, the director shall direct the~~
110 ~~home occupation permit invalid and shall order the use therein to be vacated.~~
111 ~~The governmental official or designee shall have the right to inspect the premises~~
112 ~~at any reasonable time. Failure to allow periodic inspections by representatives~~
113 ~~of the city or county code enforcement division at any reasonable time shall~~
114 ~~result in the immediate revocation of the home occupation permit. In the event of~~
115 ~~a revocation, one year shall elapse prior to an application by the same owner of~~
116 ~~the same residential dwelling structure.~~

117 (10) Private garages and carports.

118 (11) Private greenhouses or conservatories.

119 (12) Private recreational uses and facilities including but not limited to
120 swimming pools and tennis courts, if the use of such facilities is restricted to
121 occupants of the principal use and guests for whom no admission or membership

fees are charged.

(13) Private or public utility transmission, distribution and/or collection systems; and not, however, including substations and distribution substations, pump stations, reservoirs, towers, transmission equipment buildings and similar facilitating structures.

(14) Residential accessory storage buildings for the storage of wood, lumber, lawn or gardening equipment and other materials and equipment, exclusively for the personal use of the residents of the premises but not including a storage building for commercial purposes.

(15) Signs as regulated by article XXXI.

(16) Statuary, arbors, trellises, flagpoles, and barbecue stoves.

(17) Structures for the shelter of household pets except kennels.

(18) Temporary construction buildings for on-site construction purposes for a period not to exceed the duration of the construction project.

(b) *In the "R-1," "R-2," "R-3," "R-4," "M-1" and "M-1a" districts:* In addition to the accessory uses included in subsection (a)(6) through (a)(18), the following shall be permitted:

(1) Storage buildings for the storage of wood, lumber, lawn or gardening equipment and other materials and equipment, exclusively for the personal use of the residents of the premises but not including a storage building for commercial purposes ~~and provided that only one such building shall be permitted on a lot.~~

(2) a. ~~No trucks with a net legal carrying capacity exceeding 1 1/2~~

145 ~~tons; no truck trailers; no truck tractors; no farming equipment or~~
146 ~~machinery; and no construction, repair or maintenance equipment,~~
147 ~~vehicles, machinery or materials~~ shall be parked or stored on a lot or tract
148 of land unless within an enclosed lawful structure, or screened from view
149 from any abutting property or street; No noncommercial truck, trailer,
150 boat, bus, tractor, or similar vehicle, machinery, or equipment with a curb
151 weight (unloaded vehicle weight) or manufacturer's gross vehicle weight
152 rating exceeding seven and one half (7 1/2) tons shall be parked or
153 stored any place on a lot or tract of land within an "R" or "M-1" or "M-1a"
154 district.

155 b. No commercial vehicles or commercial equipment,
156 machinery or materials of any kind shall be stored any place on a lot or
157 tract of land, except if such vehicles, equipment, machinery and/or
158 materials are in temporary usage to actively accomplish permitted
159 temporary activities on the premises such as construction, repair, moving,
160 and other similar activities. In such case they shall, ~~upon completion of~~
161 ~~said activity,~~ be removed from the lot or tract of land, ~~or placed in an~~
162 ~~enclosed structure thereon, or otherwise screened from view from any~~
163 ~~abutting property or street, except that no truck, trailer, bus, boat, tractor,~~
164 ~~or similar vehicle, machinery, or equipment with a gross vehicle weight, or~~
165 ~~gross carrying weight of five tons or more shall be parked or stored any~~
166 ~~place on a lot or tract of land within an "R" or "M-1" or "M-1a" districts~~
167 within forty-eight (48) hours of completion of said activity.

(3) Off-street parking as regulated by article XXXI.

(4) A child's playhouse, provided it shall not be more than one hundred twenty (120) square feet in area.

(c) *In the "M-2," "M-3" and "M-4" districts:* In addition to the accessory uses included in subsection (b), the following shall be permitted:

(1) A maintenance storage building incidental to a permitted use provided no such structure shall exceed one hundred sixty (160) square feet in gross floor area, and shall be in keeping with the principal structure.

(2) ~~Carpools.~~

~~(3)~~ A facility for leasing, managing and/or maintenance of a multiple-family dwelling or planned unit development, provided such facility is of such size and scale which is in keeping with, and is accessory in nature to, said multiple-family dwelling or planned unit development, all as determined by the planning director.

(d) *In the "O&I-1," "O&I-2" and "O&I-3" districts:*

(1) For residential uses, the accessory uses included in subsection (c) shall be permitted.

(2) Off-street parking as regulated by article XXX.

(3) A storage building incidental to a permitted use provided no such structure shall exceed two hundred (200) square feet in gross floor area, and shall be in keeping with the principal structure.

(4) Employee restaurants and cafeterias, when located in a principal structure.

(5) Signs as regulated by article XXXI.

(6) Fences as regulated by section 48-29.03.

(7) Flagpoles and statuary.

(8) Private garages and carports.

(e) *In the "C-1," "C-2," "C-3," "C-4" and "C-5" districts:* In addition to the accessory uses included in subsection (d), the following shall be permitted:

(1) Restaurants, drugstores, gift shops, clubs, lounges, newsstands, and travel agencies when located in a permitted hotel or motel.

(2) One independent, freestanding commercial structure of four hundred (400) square feet or less shall be permitted on a zoning lot. Such accessory structure shall not be required to provide off-street parking, but, shall be located as to not interfere with or reduce the amount of required parking for the principal use. The location of such accessory structure shall be reviewed and approved by the ~~city code enforcement director or county zoning administrator~~ and planning director at the time of building permit application, provided such location does not conflict or interfere with site access and interior vehicular circulation.

(f) *In the "I-1" and "I-2" districts:* There may be any accessory use including but not limited to printing, publishing, design, development, fabrication, assemblage, storage and warehousing, and child care facilities provided that:

(1) Fences as regulated by section 48-29.03.

(2) Off-street parking as regulated by article XXX.

(3) Signs as regulated by article XXXI.

- (4) Gatehouse and/or residence of a night watchman.
- (5) Employee recreational facilities.
- (6) Flagpoles and statuary.
- (7) Employee restaurants and cafeterias when located in the principal building of the use served.

(g) *In the "U-1" district:* The accessory uses included in subsection (c) of this article.

(h) *In the "M-S" district:* The accessory uses included in subsection (d) of this article.

(i) *In the "X-1, " "X-2" and "X-3" districts;* The accessory uses included in subsections (b),(c),(d) and (e) of this article.

Section 4. That section 48-29.02, Accessory use and building regulations, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

~~Accessory use and building regulations.~~

(a) *Detached accessory uses and buildings:* In all districts, except as otherwise provided, detached accessory uses and buildings shall be subject to the following requirements:

(1) *Time of construction.* No accessory building shall be constructed or established more than one hundred twenty (120) days prior to the time of completion of the construction or establishment of the principal building or use to which it is an accessory.

(2) *Setback from property lines.* Except as otherwise provided, an accessory building shall be separated from lot lines in compliance with the

237 following requirements:

238 a. Accessory structures shall not be located within a required
239 front yard as established by the comprehensive zoning regulations for
240 interior and corner lot street frontages; and further, except for roadside
241 stands, garages and carports, accessory structures shall observe interior
242 and corner lot street frontage front yard setbacks as established by the
243 principal structure. In all instances, a minimum setback of twenty (20) feet
244 from all street rights-of-way shall be provided for roadside stands, garages
245 and carports. If, in the judgment of the planning director, construction of an
246 accessory building is compatible with the neighborhood, in respect to
247 availability of public sidewalks, right-of-way needs, other nonconforming
248 structures within the block and the location of principal structures within
249 the block, then such construction may occur without regard to the setback.
250 If more restrictive than provided above, setbacks as set forth by plats of
251 subdivision shall apply to any and all accessory structures.

252 b. In residential districts an accessory building shall not be
253 located closer than three (3) feet from a side lot line and five (5) feet from
254 a rear lot line. An accessory building for a zero (0) lot line dwelling shall
255 comply with the above requirements and shall not be located in the
256 required ten-foot side yard.

257 c. Setback from alley. When a garage or carport is entered
258 directly from an alley, it shall not be located closer than ten (10) feet from
259 the alley right-of-way line.

(3) *Setback from principal building.* No portion of an accessory building shall be located closer than six (6) feet to the principal building or another accessory building on the same lot. ~~Provided that~~ However an unenclosed breezeway ~~that a roof section~~ may be extended between the principal structure and the accessory structure for the purpose of providing a covered walkway ~~between the structures. Provided further that such connecting structure (roof)~~ shall not be enclosed. In no event shall the construction of a covered walkway be deemed to join the principal and accessory structures into one principal structure.

(4) *Maximum rear yard coverage.* In residential districts, the cumulative footprint of accessory buildings shall not occupy more than thirty (30) percent of the rear yard area.

(5) *Maximum height.* Accessory buildings and structures in residential districts shall not exceed a height of ~~20 feet in residential districts nor~~ the greater of the height of the principal building or twelve and one half (12 1/2) feet but in no event shall the accessory structure exceed twenty (20) feet in height. In other districts, accessory buildings or structures shall not exceed the maximum height permitted for a principal building ~~in other districts.~~

(6) *Reverse corner lot.* On a reversed corner lot in a residential district, and within fifteen (15) feet of any adjacent property to the rear in a residential district, no detached accessory building or portion thereof located in a required rear yard shall be closer to the side lot line abutting the street than a distance equal to the least depth which would be required under this chapter for the front yard on such adjacent property to the rear. Further, in above instance, all such

accessory buildings shall meet the minimum side yard requirements of such adjacent property which coincides with the side lot line or portion thereof of property in any residential district.

(b) *Attached accessory buildings:* Attached accessory buildings shall be located pursuant to the requirements for principal buildings. Attached garages and carports shall be located on a lot so that a minimum twenty (20)-foot length "aisle" between the building and the street right-of-way line is provided.

Section 5. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 48-29.025 which said section reads as follows:

Home occupations.

Home occupations shall be permitted provided the same does not detract from the residential character of a neighborhood and will not cause excessive traffic, nuisance or hazards to safety; provided further that each home occupation shall comply with the following standards and permit requirements:

(a) Standards. The following shall apply to any home occupation:

1. The use or activity shall be carried on by a resident of the dwelling.
2. Not more than one employee not a resident of the dwelling is permitted at any one time.
3. The exterior of the dwelling shall not be changed or modified in any way, nor shall any exterior signs be erected that will indicate any accessory use of the property nor adversely effect the residential character of the neighborhood.
4. The sale of any commodity, goods or products on the premises is prohibited.

306 5. All equipment, materials, work in progress and work areas shall be
307 confined to the principal dwelling and not extend into an attached or detached
308 garage or storage building.

309 6. The projection of any obnoxious sound, odor, smoke, vibration, light
310 or dust is prohibited.

311 7. The home occupation shall not occupy more than twenty-five (25)
312 percent of the total floor area (including a basement) of the dwelling, excluding
313 any attached garage.

314 8. The home occupation shall not be available or open to the public
315 except during the hours between 8:00 a.m. and 8:00 p.m.

316 9. The home occupation shall not create a need for off-street parking,
317 pedestrian and vehicular traffic, sanitary sewer and storm sewer usage, public
318 water usage as well as other municipal services in excess of the normal and
319 usual levels for other residential dwellings.

320 10. Only one (1) such accessory use or activity shall be carried on in a
321 dwelling during the period authorized by a home occupation permit.

322 (b) Permit required. Prior to the establishment of any accessory use or activity
323 as defined herein as a home occupation, the owner(s) of the subject property shall
324 make an application to the planning department. At such time as the planning director
325 has determined that the proposed accessory use or activity meets the standards as set
326 forth herein, a home occupation permit shall be issued.

328 1. The planning director shall have the authority to specify conditions
329 and requirements as deemed necessary to assure compliance with the standards
330 as set forth herein.

331 2. The home occupation permit shall specify the conditions,
332 requirements and duration of said permit. The permit shall be displayed within
333 the interior of the dwelling and at the location of the proposed activity.

334 3. A home occupation permit may be issued to a tenant or occupant of
335 a dwelling who is to be engaged in the accessory use or activity, provided the
336 owner(s) of record of the property have endorsed and/or certified the application.

337 4. A home occupation permit shall not be transferable or assignable.
338 Discontinuance or abandonment of the home occupation for a period of sixty (60)
339 days or more shall render the permit void.

340 (c) Enforcement. The enforcement and administration of this subsection shall
341 rest with the planning director. Upon a finding that any of the foregoing provisions have
342 not been complied with, the planning director shall direct the home occupation permit
343 invalid and shall order the use therein to be vacated. The planning director shall have
344 the right to inspect the premises at any reasonable time. Failure to allow periodic
345 inspections by planning director at any reasonable time shall result in the immediate
346 revocation of the home occupation permit. In the event of a revocation, one (1) year
347 shall elapse prior to an application by the same owner of the same residential dwelling
348 structure for a new permit.

349 Section 6. That original § 48-29.00, § 48-29.01 and § 48-29.02 of The Code of
350 the City of Topeka, Kansas, are hereby specifically repealed.

Section 7. All ordinances, resolutions or rules, or portions thereof, inconsistent with the provisions of this ordinance are hereby rescinded or repealed.

Section 8. Should any section, clause or phrase of this ordinance be declared to be invalid, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

Section 9. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

PASSED AND APPROVED by the City Council March 16, 2010.

CITY OF TOPEKA, KANSAS

ATTEST: _____ William W. Bunten, Mayor

Brenda Younger, City Clerk