

(Published in the Topeka Metro News April 19, 2010)

ORDINANCE NO. 19407

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., concerning public traffic hazards amending City of Topeka Code § 130-551 through § 130-556 and specifically repealing said original sections.

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

Section 1. That section 130-551, 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:

Structure means fences, signs, monuments, benches, large stones and any other items of personalty or realty.

Traffic engineer shall mean the traffic engineer for the City of Topeka or designee.

Vegetation means and includes trees, shrubs, bushes, vines, grass or other vegetation.

Section 2. That section 130-552, Prohibitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Prohibitions.

All vegetation or structures growing or upon private or public property on corner lots or adjacent to the interior curbs of a curved street, or adjacent to streets, highways, alleys and public or commercial driveway approach intersections, which obstruct a

reasonable and safe view by motor vehicle drivers upon such streets, highways, alleys or public or commercial driveway approaches of oncoming and intersecting traffic; and any such vegetation or structure which extends more than 30 inches above the adjacent grade of any street, highway, alley or public or commercial driveway approach intersection and within a 40-foot by 56.57-foot sight distance triangle, the vertex being the intersection of the face of the nearest intersecting curblin of a street, highway, alley or public or commercial driveway approach intersection, is hereby declared to be a public traffic hazard nuisance; provided, that trees growing in such areas ~~on August 14, 1979,~~ may grow above such height if the limbs are trimmed to a minimum height of nine feet.

Section 3. That section 130-553, Notice of violation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Notice of violation.

~~(a) When the traffic engineer or a representative determines upon the basis of an engineering and traffic investigation that a traffic hazard as defined in section 130-552 exists, the traffic engineer or representative shall notify the owner of the real property upon which such hazard exists and order that the hazard be removed within ten days~~provide notice to the property owner. Said notice and service thereof shall meet the requirements set forth in K.S.A. 8-2011 et seq. and any amendments thereto.

~~(b) The failure of the owner to remove a traffic hazard within ten days after notice shall constitute an offense punishable by a penalty of \$10.00, and every day such owner shall fail to remove such hazard shall be a separate and distinct offense.~~

51 Section 4. That section 130-554, Service of order, of The Code of the City of
52 Topeka, Kansas, is hereby amended to read as follows:

53 ~~Service of order~~Abatement.

54 ~~The order required to be served upon the owner of record of real property upon~~
55 ~~which a traffic hazard is determined to exist shall be deemed properly served upon such~~
56 ~~owner if a copy thereof is served upon the owner personally, or if a copy thereof is sent~~
57 ~~by registered mail, return receipt requested, to such owner's last known address.~~
58 ~~Service of the order shall be deemed sufficient upon the mailing thereof when~~
59 ~~performed in compliance with this section. If the property is unoccupied or the owner of~~
60 ~~record is a nonresident, then the traffic engineer shall notify the owner by mailing by~~
61 ~~certified mail a notice to the last known address of such owner and shall further cause a~~
62 ~~copy of the notice to be published in the official city newspaper for five consecutive~~
63 ~~days.~~

64 In addition to enforcement as provided in this article, the traffic engineer may
65 abate such nuisance and assess the costs thereof in accordance with K.S.A. 12-1617e
66 and K.S.A. 12-1,115 and any amendments thereto.

67 Section 5. That section 130-555, Filing of complaint, of The Code of the City of
68 Topeka, Kansas, is hereby amended to read as follows:

69 ~~Filing of complaint~~Penalty.

70 ~~If removal of the public traffic hazard has not been completed within the time set~~
71 ~~forth in the order, the traffic engineer or representative shall be authorized to cause a~~
72 ~~complaint to be filed by the city attorney charging the owner of the real property upon~~
73 ~~which a traffic hazard is found to exist with a misdemeanor.~~The failure of the owner to

74 remove a traffic hazard within ten (10) days after notice shall constitute an offense
75 punishable by a penalty of \$10.00, and every day such owner shall fail to remove such
76 hazard shall be a separate and distinct offense.

77 Section 6. That section 130-556, Additional remedies to achieve abatement, of
78 The Code of the City of Topeka, Kansas, is hereby repealed.

79 **Additional remedies to achieve abatement.**

80 ~~(a) — In addition to the remedy of prosecution and enforcement as provided in~~
81 ~~this article, the traffic engineer or representative is hereby authorized, empowered and~~
82 ~~directed, on proper notice given as provided in this article, to abate or suppress a public~~
83 ~~traffic hazard nuisance.~~

84 ~~(b) — The traffic engineer may use the resources of his own department to~~
85 ~~abate or suppress a public traffic hazard nuisance. The traffic engineer may also~~
86 ~~request the division of forestry to use its resources to abate or suppress a public traffic~~
87 ~~hazard nuisance. Such actions shall include, but are not limited to, trimming and~~
88 ~~removing trees, hedges and shrubs where they endanger the safety or use of public~~
89 ~~streets, avenues, alleys or other public property.~~

90 ~~(c) — The cost of abatement under this section shall be certified to the city clerk~~
91 ~~after the nuisance has been abated or suppressed. The city council shall levy and~~
92 ~~assess the cost of abating the nuisance against each lot or piece of ground chargeable~~
93 ~~therewith as a special assessment, and the city clerk shall certify such assessment to~~
94 ~~the county clerk for collection as other special assessments are tax collected.~~

95 Section 7. That original § 130-551 through § 130-555 of The Code of the City
96 of Topeka, Kansas, are hereby specifically repealed.

Section 8. 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 April 13, 2010.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk