

(Published in the Topeka Metro News March 28, 2011)

ORDINANCE NO. 19535

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code § 18.55.030 and §18.55.160, concerning definitions for zoning regulations and specifically repealing said original sections. **(ACZR10/4)**

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

Section 1. That section 18.55.030, "C" definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

"C" definitions.

"Cargo container" means any portable, weather-resistant receptacle, container or other structure that is designed or used for the storage or shipment of household goods, commodities, building materials, furniture, or merchandise. A cargo container is typically rented for temporary use, and is delivered and removed from the property via truck.

"Carport" means a roofed structure intended for the storage of motor vehicles and enclosed on not more than two sides by walls.

"Cemetery" means property used for the interring of the dead.

"Certificate of occupancy" means official certification that a premises conforms to provisions of the zoning ordinance (and building code) and may be used or occupied.

"Class A club" means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veteran's club, as determined by the state of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or

29 associates (hereinafter referred to as members), and their families and guests
30 accompanying them.

31 “Class B club” means a premises operated for profit by a corporation, partnership
32 or individual, to which members of such club may resort for the consumption of food or
33 alcoholic beverages and for entertainment.

34 “Classification” means: (1) division of uses or activities into groups or subgroups
35 for regulatory purposes; (2) the process of deciding what uses should be permitted in
36 what zoning districts; and (3) the zone requirements imposed on a particular piece of
37 property. A subsequent change in a classification is called a reclassification.

38 “Clinic” means an establishment where patients are admitted for examination and
39 treatment by one or more physicians, dentists, psychologists or social workers and
40 where patients are not usually lodged overnight.

41 “Club or lodge, private” means a building and facilities owned, leased or operated
42 by a corporation, association, person, or persons for a social, educational or
43 recreational purpose; but not primarily for profit or to render a service which is
44 customarily carried on as a business; and shall not include or be construed as a class A
45 or class B club.

46 “Commercial equipment” means any equipment or machinery used in a business
47 trade or industry, including liquid storage tanks exceeding 100 gallons, earth-moving
48 equipment, trenching or pipe-laying equipment, landscaping equipment, spools of
49 wiring/cable, portable pumps, portable generators, portable air compressors, pipes, pool
50 cleaning equipment and supplies, and any other equipment or machinery similar in
51 design or function. However, equipment and machinery for business use kept within an

enclosed pickup truck or van; ladders, PVC pipe, or conduit attached to a truck or van via a rack; or equipment and machinery solely for personal residential use are not included.

“Commercial vehicle” means any vehicle, excluding pickup trucks, used for a business that has a height (including ladder racks and other items attached thereto) exceeding ten and one half (10 ½) feet or width (excluding ~~antennas and mirrors~~) ~~of exceeding seven and one-half (8) feet or larger or has a length of exceeding twenty-five (25) feet or longer~~ manufacturer’s rating exceeding 12,000 pounds of gross vehicle weight. Additionally, the following types of vehicles shall all be considered commercial vehicles: ~~step vans, box vans,~~ flatbed or stake-bed trucks except those that are pickup trucks, buses, semi-trailers or tractor-trailers, dump trucks, cement mixers, wreckers, and 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, any vehicles including pickup trucks, with any of the following exterior modifications shall be considered commercial vehicles: liquid storage tanks exceeding 100 gallons, aerial buckets or platforms, welding equipment, or mechanical lifts or arms for loading and unloading materials/equipment, ~~or any vehicles or trailers with over 25 square feet of total sign area advertising a business~~. Vehicles for transferring passengers and their personal luggage/cargo for churches, nonprofit 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.

75 “Common open space” means a parcel of land, an area of water, or a
76 combination of land and water within a development which is designed for, and
77 designated as space for the use and enjoyment of residents of the development.
78 Common open space may contain landscaping and such recreational improvements as
79 are necessary for the benefit and enjoyment of the residents, such as swimming pools,
80 tennis courts, etc. Parking lots and storage areas shall not be considered as open
81 space.

82 “Communication antenna” means an antenna or array of antennas at one
83 location intended to broadcast and receive signals as part of a wide-area
84 communication system such as cellular telephone systems, pager systems or wireless
85 computer networks, but excluding short-wave radio antennas operated primarily as a
86 hobby.

87 “Communication tower” means a ground-mounted guyed, monopole or self-
88 supporting tower, constructed as a freestanding structure or in association with a
89 building, other permanent structure or equipment, containing one or more antennas
90 intended for transmitting or receiving television, AM/FM radio, digital, microwave,
91 cellular, telephone, or similar forms of electronic communication. Not included in this
92 definition are towers which are held, used or controlled exclusively for public purposes
93 by any department or branch of government. Such towers are defined as a “public use
94 facility” and regulated accordingly.

95 “Community center” means a building, together with lawful accessory buildings
96 and uses, used for recreational and cultural activities and usually not operated for profit.
97 Membership may be restricted to persons living in a specific geographical area.

98 “Community facilities” means public or privately owned facilities used by the
99 public, such as streets, schools, libraries, parks and playgrounds; also facilities owned
100 and operated by nonprofit private agencies such as churches, settlement houses and
101 neighborhood associations.

102 “Community living facility, type I” means a dwelling building or portion thereof,
103 and premises other than a hospital, operated and licensed in accordance with any and
104 all applicable state and local requirements, in which short-term residential care for profit
105 or not-for-profit is provided as well as supportive programs which assist or train the
106 recipients to address or improve their living skills relative to chemical dependency,
107 behavioral modification, domestic abuse, mental illness, economic recovery, job
108 training, emergency shelter, and similar such physical, economic, or social reintegration
109 programs. Although recipients do not require intensive treatment or secure environment,
110 structured programs often include individual and group counseling, recreational and
111 social activities, milieu therapy and individual work therapies designed to provide a
112 transition and reentry into society, gainful employment, and sustained welfare upon
113 leaving the facility. Residents are not in need of acute medical or psychiatric care and
114 the facility is operated on a 24-hour basis. “Community living facility, type I” does not
115 include correctional placement residence or facility.

116 “Community living facility, type II” means a dwelling building or portion thereof,
117 and premises other than a hospital, operated and licensed in accordance with any and
118 all applicable state and local requirements, in which residential care for profit or not-for-
119 profit is provided; intermediate treatment programs in a therapeutic setting for diagnostic
120 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 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" means 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" means the characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict.

"Comprehensive plan" means a plan intended to guide the growth and development of a community or region and one that includes analysis, recommendations and proposals for the community's population, economy, housing, transportation, community facilities and land use.

"Conditional use" means 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" means 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

143 areas are owned, controlled and maintained through an organization consisting of all
144 the individual owners.

145 “Construction and demolition waste” means waste building materials and rubble
146 resulting from construction, remodeling, repair or demolition operations on houses,
147 commercial buildings, other structures and pavements.

148 “Conversion” means the change of the use of an existing building into another
149 use.

150 “Correctional facility” means a public use facility providing housing and care for
151 individuals confined for violations of law. Typical uses include jails, prisons, and juvenile
152 detention centers. A correctional facility does not include a correctional placement
153 residence or facility, general, or a correctional placement residence or facility, limited.

154 “Correctional placement residence or facility” means a facility for individuals or
155 offenders that provides residential and/or rehabilitation services for those who reside or
156 have been placed in such facilities due to any one of the following situations: (1) prior to,
157 or instead of, being sent to prison; (2) received a conditional release prior to a hearing;
158 (3) as a part of a local sentence of not more than one year; (4) at or near the end of a
159 prison sentence, such as a state-operated or franchised work release program, or a
160 privately operated facility housing parolees; or (5) received a deferred sentence and
161 placed in a facility operated by community corrections. Such facilities will comply with
162 the regulatory requirements of a federal, state or local government agency; and if such
163 facilities are not directly operated by a unit of government they will meet licensure
164 requirements that further specify minimum service standards.

165 “Correctional placement residence or facility, general” means a facility occupied
166 by more than 15 individuals, including staff members who may reside there.

167 “Correctional placement residence or facility, limited” means a facility occupied by three
168 to 15 individuals, including staff members who may reside there.

169 “Country club” means a land use consisting of both a golf course and a
170 clubhouse building for social assembly, food and beverage preparation/service, pro
171 shop, club office, recreational and physical exercise facilities including fitness center,
172 spa, swimming pool, court games, locker and shower facilities; and vehicle parking
173 areas and drives. Country club facilities are open to members and their guests for a
174 membership fee.

175 “Court” means an open space which may or may not have street access, and
176 around which is arranged a single building or group of related buildings.

177 “Court, inner” means that portion of a lot unoccupied by any part of a building,
178 surrounded on all sides by walls, or by walls and a lot line.

179 “Court, outer” means that portion of a lot unoccupied by any part of a building,
180 opening onto a street, alley, or yard.

181 “Crisis center, type I” means a facility or portion thereof and premises, which is
182 used for purposes of emergency shelter, crisis intervention, including counseling,
183 referral, hotline response, and similar human social service functions. Said facility shall
184 not include meal preparation, except for residents of the center, distribution, or service;
185 merchandise distribution; or shelter, including boarding, lodging, or residential care.

186 “Crisis center, type II” means a facility or portion thereof and premises, which is
187 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” means establishments such as museums, libraries, art galleries, botanical and zoological gardens of a historic, educational or cultural interest which are not operated commercially.

Section 3. That section 18.55.160, “P” definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

“P” definitions.

“Parcel” means a lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development.

“Park” means a tract of land designated and used by the public for active and passive recreation.

“Parking aisle” means 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.

“Parking lot” means an off-street, ground-level area, surfaced in accordance with the standards and specifications of the city of Topeka for the temporary storage of motor vehicles.

“Parking space” means a paved surface, exclusive of an aisle, which is intended for off-street vehicular parking.

“Performance standards” means specific criteria limiting the operations of certain industries, land uses, and buildings to acceptable levels of noise, air pollution

emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic generation and visual impact.

“Permitted use” means any use authorized in a particular zoning district.

“Person” means a corporation, company, association, society, firm, partnership or joint stock company as well as an individual, a state and all political subdivisions of a state or any agency or instrumentality thereof.

“Personal care” means protective care with or without watchful oversight of a resident who does not have an illness or a condition which requires chronic or convalescent medical or nursing care with a 24-hour responsibility for the safety of the resident when in the building.

“Personal services” means establishments primarily engaged in providing services involving the care of a person and his or her apparel.

“Pharmacy” means a place where drugs, prosthesis, rehabilitation equipment and medicines are prepared and dispensed.

“Pickup truck” means a motor vehicle not exceeding 15,000 pounds gross vehicle weight manufactured with a cab for passengers; and an open-top rear cargo area (bed) of four (4) to eight (8) feet in length, with low sides along the bed, and a rear tailgate or a flat or stake bed not exceeding seven and one-half (7 ½) feet in width and nine (9) feet in length.

“Planned unit development (PUD)” means 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” means the Topeka planning commission.

234 “Plat of a subdivision” means a plan or map prepared in accordance with the
235 provisions of applicable subdivision regulations.

236 Platting. Whenever the term “platting” or “platted” is used within these zoning
237 regulations it shall refer to the process established by the subdivision regulations of the
238 city of Topeka, Kansas (Division 3 of this title).

239 “Porch, open” means a roof partially supported by columns or wall sections.

240 “Preapplication conference” means discussions held between developers and
241 public officials, usually members of the planning staff, before formal submission of an
242 application for a permit or for subdivision plat approval.

243 “Premises” means any lot or tract, or combination of contiguous lots or tracts of
244 land held in single ownership, together with the improvements thereon; a condominium
245 complex constitutes one premises.

246 “Principal use” means the main use of land or structures as distinguished from a
247 secondary or accessory use.

248 “Professional office” means the office of a person engaged in any occupation,
249 vocation, or calling, not purely commercial, mechanical, or agricultural, in which a
250 professed knowledge or skill in some department of science or learning is used by its
251 practical application to the affairs of others, either advising or guiding them in serving
252 their interest or welfare through the practice of an act found thereon.

253 “Provisional use” means a principal use which is allowed in the zone in which
254 listed, provided it complies with the additional regulations listed for the use and all other
255 dimensional and special (if any) requirements of the zone in which listed.

256 “Public or private educational facility” means a public elementary, secondary,
257 high school and private schools with curricula equivalent to that of a public elementary,
258 secondary or high school.

259 “Public use facility” means any building, structure, utility, or land held, used, or
260 controlled exclusively for public purposes by any department or branch of government:
261 federal, state, county, municipal or subdivision thereof.

262 “Public utility” means any business or enterprise which furnishes the general
263 public telephone, cable, electric, Internet, natural gas, water, or sewer service, and is
264 subject to supervision or regulation by an agency of the state or federal government.

265 “Public utility facilities” means telephone, electric and cable television lines,
266 poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer
267 pipes, valves or structures; pumping stations; telephone exchanges and repeater
268 stations; and all other equipment and structures necessary for providing these services
269 by a government or a public utility.

270 “Public way” means any sidewalk, street, alley, highway or other thoroughfare
271 dedicated for public use.

272 Section 3. That original § 18.55.030 and § 18.55.160 of The Code of the City
273 of Topeka, Kansas, is hereby specifically repealed.

274 Section 4. This ordinance shall take effect and be in force from and after its
275 passage, approval and publication in the official City newspaper.

276 Section 5. This ordinance shall supersede any ordinances, resolutions or
277 rules, or portions thereof, in conflict with the provisions of this ordinance.

Section 6. Should any section, clause or phrase of this ordinance be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

PASSED AND APPROVED by the Governing Body March 22, 2011.

CITY OF TOPEKA, KANSAS

William W. Buntin, Mayor

ATTEST:

Brenda Younger, City Clerk