

(Published in the Topeka Metro News October 8, 2012)

ORDINANCE NO. 19765

AN ORDINANCE introduced by Jim Colson, City Manager, amending City of Topeka Code § 2.145.030, § 10.60.590, and § 10.60.650, concerning administrative hearing procedures and specifically repealing said original sections.

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

Section 1. That section 2.145.030, Administrative hearing procedure, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Administrative hearing procedure.

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

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

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

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

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

Section 2. That section 10.60.590, Administrative hearing – Procedure, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Administrative hearing – Procedure.

(a) Administrative hearings for the adjudication of parking violations shall be held before at the city's administrative hearing officer ~~appointed by the city traffic compliance administrator~~ and conducted in accordance with this section.

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

(c) The formal and technical rules of evidence shall not apply in the conduct of the administrative hearing.

(d) All testimony shall be given under oath or affirmation, which shall be administered by the hearing officer.

(e) No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a parking violation notice, or a copy thereof, shall be prima facie evidence of the correctness of the facts specified therein.

(f) The hearing officer may, on a showing of good cause, grant one continuance to a date certain.

(g) The hearing officer shall cause a record to be made of each hearing.

(h) The hearing officer may, if factual circumstances dictate, take the matter under advisement for a period no longer than five work days. In such instances and in the case of an adverse determination, the date of hearing officer's determination shall govern for purposes of the fine schedule.

Section 3. That section 10.60.650, Procedures following immobilization, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Procedures following immobilization.

(a) The registered owner or lessee may secure the release of the immobilization device, provided the person pays all parking fines and removal charges within 48 hours of the notice in TMC 10.60.640. This does not preclude the registered owner or lessee from subsequently contesting the immobilization pursuant to subsection (b) or (c) of this section. If successful, the person will be reimbursed the amount of the removal charge.

(b) After payment of all fines and removal charges, the registered owner or lessee may contest the immobilization only if the registered owner or lessee submits, within five business days of the date the immobilization device was affixed to the vehicle, written materials to obtain adjudication by mail. Compliance with this time limit shall be a jurisdictional prerequisite. Failure to comply shall bar any contest.

(1) The request shall include an affidavit, signed by the owner and made subject to the penalties of perjury, that the owner denies there are three or more unpaid parking violations outstanding against the license plate on the vehicle at the time of immobilization.

72 (2) The notice affixed to the vehicle or a copy thereof shall be prima
73 facie evidence of the correctness of the facts specified therein.

74 (3) The only issue for determination will be whether there were three or
75 more unpaid parking violations outstanding against the license plate on the
76 vehicle at the time of immobilization.

77 (4) ~~A~~The city's administrative hearing officer ~~appointed by the~~
78 ~~municipal court administrative judge~~ will determine whether there is proof by a
79 preponderance of the evidence that the immobilization was warranted.

80 (5) Upon review of the materials submitted, the hearing officer shall
81 determine whether the immobilization was warranted and shall notify, in writing,
82 the owner or lessee.

83 (c) After payment of all fines and removal charges, the registered owner or
84 lessee may contest the immobilization only if the registered owner or lessee submits,
85 within five business days of the date the immobilization device was affixed to the
86 vehicle, a request for an administrative hearing. Compliance with this time limit shall be
87 a jurisdictional prerequisite. Failure to comply shall bar any contest.

88 (1) Administrative hearings shall be held before at the city's
89 administrative hearing officer ~~appointed by the municipal court administrative~~
90 ~~judge~~. The registered owner or lessee may appear with or without an attorney.
91 An attorney who appears on behalf of such person shall file an entry of
92 appearance. If the registered owner or lessee or his or her attorney fails to
93 appear or request a continuance, the request for hearing shall be considered
94 withdrawn.

95 (2) The rules of evidence shall not apply in the conduct of the
96 administrative hearing.

97 (3) All testimony shall be given under oath or affirmation which shall be
98 administered by the hearing officer.

99 (4) The hearing officer shall cause a record to be made of the hearing.

100 (5) The only issue for determination will be whether there were three or
101 more unpaid parking violations outstanding against the license plate on the
102 vehicle at the time of immobilization.

103 (6) The notice affixed to the vehicle or a copy thereof shall be prima
104 facie evidence of the correctness of the facts specified therein.

105 (7) The hearing officer shall determine whether there is proof by a
106 preponderance of the evidence that the immobilization was warranted and shall
107 notify, in writing, the owner or lessee.

108 Section 4. That original § 2.145.030, § 10.60.590 and § 10.60.650 of The
109 Code of the City of Topeka, Kansas, are hereby specifically repealed.

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

112 Section 6. This ordinance shall supersede all ordinances, resolutions or rules,
113 or portions thereof, which are in conflict with the provisions of this ordinance.

114 Section 7. Should any section, clause or phrase of this ordinance be declared
115 invalid by a court of competent jurisdiction, the same shall not affect the validity of this
116 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.
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PASSED AND APPROVED by the City Council on October 2, 2012.

CITY OF TOPEKA, KANSAS

William W. Buntten, Mayor

ATTEST:

Brenda Younger, City Clerk