

(Published in the Topeka Metro News May 13, 2013)

ORDINANCE NO. 19815

AN ORDINANCE introduced by City Manager Jim Colson, creating Chapter 18.270 of the Topeka Municipal Code concerning Neighborhood Conservation Districts.

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

Section 1. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 18.270.010, which said section reads as follows:

Purpose.

The governing body recognizes that there are several unique and distinctive older residential neighborhoods which contribute significantly to the overall character and identity of the city, and are worthy of preservation, appropriate maintenance, and protection. As a matter of public policy, the city, in partnership with its distinctive neighborhood organizations, aims to preserve, protect, enhance, and sustain the value of these residential neighborhoods through the establishment of neighborhood conservation districts (NCD). The purpose of an NCD is to promote compatible new construction, alterations, and demolitions within the district's built environment in order to strengthen and build upon those desirable physical features already existing.

Section 2. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 18.270.020, which said section reads as follows:

Designation.

The governing body may designate certain residential neighborhoods, or portions thereof, as neighborhood conservation districts. Neighborhood conservation districts shall be overlays to existing zoning districts. Property within an NCD must also be

29 designated as being within one of the existing zoning district classifications. Such
30 property shall comply with all applicable use restrictions unless further restricted by the
31 NCD. Separate ordinances shall designate each NCD which shall be distinguished as
32 separate zoning districts. Ordinances designating each NCD shall identify the
33 designated district boundaries, and specify the individual purposes and design
34 standards for that district. Where any conflict exists between zoning districts, the
35 provisions of the NCD shall control.

36 Section 3. That The Code of the City of Topeka, Kansas, is hereby amended
37 by adding a section, to be numbered 18.270.030, which said section reads as follows:

38 **Criteria for designation.**

39 (a) Each NCD shall meet all of the following criteria:

40 (1) The area must contain at least one block face, and be primarily
41 residential;

42 (2) A minimum of 75% of the area must be presently developed;

43 (3) The area must possess a unique and distinctive physical
44 character/form that predominates from the time of its original or earliest
45 development.

46 (4) The area must have a distinctive atmosphere or character that can
47 be effectively protected by preserving or enhancing its architectural or
48 physical attributes;

49 (5) The area must be predominately platted for a minimum of 40 years
50 prior to the adoption of the district.

52 **(b) In determining whether to establish an NCD, the planning commission and**
53 **governing body shall also consider the following factors:**

54 **(1) Conformity with the city's comprehensive plan and planning**
55 **policies;**

56 **(2) Zoning and use of nearby property;**

57 **(3) Physical character of the area; and**

58 **(4) The extent to which designation of the NCD will either improve or**
59 **detrimentally affect nearby properties.**

60 **(c) Any designated historic landmark overlay district, or any district listed on**
61 **the Register of Historic Kansas Places, or the National Register of Historic Places, or**
62 **their environs, shall be deemed to satisfy the criteria in subsection (a).**

63 **Section 4.** That The Code of the City of Topeka, Kansas, is hereby amended
64 by adding a section, to be numbered 18.270.040, which said section reads as follows:

65 **Boundaries.**

66 **The boundaries of each NCD shall be drawn so as to include all platted lots**
67 **petitioned for inclusion in the district, and shall apply to all buildings, structures, sites,**
68 **objects or land areas within these established boundaries.**

69 **Section 5.** That The Code of the City of Topeka, Kansas, is hereby amended
70 by adding a section, to be numbered 18.270.050, which said section reads as follows:

71 **Design standards.**

72 **(a) An ordinance establishing an NCD shall incorporate by reference the**
73 **design standards applicable to the district.**

(b) Design standards shall apply at a minimum to any new construction, alteration, or demolition of structures but shall not apply to those activities which constitute ordinary repair and maintenance, including using the same material and design.

(c) Design standards for each NCD shall include at least five of the following elements governing the physical characteristics and features of property within the proposed district:

- (1) Primary buildings.
- (2) Accessory buildings.
- (3) Building height.
- (4) Building size/massing.
- (5) Building architectural style and details.
- (6) Building setbacks.
- (7) Building orientation and site planning.
- (8) Lot size.
- (9) Lot coverage.
- (10) Off-street parking requirements.
- (11) Roof line and pitch.
- (12) Paving, impervious, or hardscape coverage.
- (13) Window openings.
- (14) Fences and walls.
- (15) Driveways, curb cuts, alleys, and sidewalks.
- (16) Tree preservation.

97 (17) Private and public utility structures.

98 (18) Public art.

99 Section 6. That The Code of the City of Topeka, Kansas, is hereby amended
100 by adding a section, to be numbered 18.270.060, which said section reads as follows:

101 **Procedure.**

102 (a) Application. Upon approval by a neighborhood improvement association
103 or other neighborhood association demonstrating broad representation and
104 membership, the governing body or planning commission may initiate an application for
105 establishment of an NCD. Alternatively, owners of at least 51% of the property within
106 the proposed district may initiate an application. The application shall be submitted to
107 the planning director who shall determine whether the application meets the
108 requirements of this section.

109 (1) Statement of the neighborhood's goals and an explanation of how
110 design overlay district designation will meet these goals;

111 (2) A sample inventory of the neighborhood's unique characteristics
112 including architectural styles, building materials, distinct or significant details
113 unique to the overall neighborhood character, color photographs documenting
114 these characteristics, any demonstrable vulnerability to deterioration, dates of
115 construction, types of land uses, and property address to be included within the
116 proposed NCD.

117 (3) A map showing the proposed NCD boundaries, and an explanation
118 of why the boundaries are appropriate.

119 (4) A list of the names and mailing addresses of all property owners in
120 the proposed district as of the date of application.

121 (5) A list of all neighborhood associations, home owners associations,
122 or other organizations representing the interests of property owners in the
123 proposed district. Each list shall include the officers' names, mailing addresses,
124 email addresses, and telephone numbers.

125 (6) A draft of specific design standards for the proposed NCD detailing
126 how the standards relate to the inventory characteristics.

127 (7) Evidence that all property owners within the proposed district have
128 been notified, in writing, of at least two public information meetings concerning
129 creation of the NCD that have been conducted within six months prior to the date
130 of the application. Notifications shall be mailed to the property owners of record.
131 Written minutes of each meeting summarizing the testimony of attendees shall
132 be submitted with the application.

133 (8) Any additional information that the planning director determines is
134 necessary.

135 (9) Any City-adopted Neighborhood Plan that contains the criteria set
136 forth in section (a) shall be deemed to meet the requirements of this section.

137 (b) Planning Commission. Upon a determination that the application meets
138 the requirements of this section, the planning director shall submit the application,
139 including the design standards, to the planning commission for its consideration and
140 recommendation to the governing body.

141 (c) Notification/Public Hearing. The planning commission shall conduct a
142 public hearing. Notice of the hearing shall be published at least once in the official city
143 newspaper at least twenty days prior to the hearing. Such notice shall fix the time and
144 place for the hearing and shall describe the NCD in general terms, including the
145 proposed boundaries. In addition to the publication notice, written notice shall be
146 mailed at least twenty days before the hearing to all owners of record within the
147 proposed district . All notices shall contain a statement that the application is available
148 for inspection, including the proposed design standards. When the notice has been
149 properly addressed and deposited in the mail, failure of a party to receive such notice
150 shall not invalidate any subsequent action taken by the planning commission or
151 governing body.

152 (d) Planning Commission Recommendation. A majority of the members of
153 the planning commission present and voting at the hearing may take any of the
154 following actions: (1) recommend approval of the proposed district, including a zoning
155 overlay to the existing zoning district; (2) recommend approval with amendments to the
156 proposed district; (3) request additional information from the planning department or the
157 applicant; or (4) disapprove the application. If the planning commission fails to make
158 any recommendation, such failure shall be deemed a recommendation of disapproval.

159 (e) Governing Body. The governing body may take any of the following
160 actions: (1) adopt the recommendation by ordinance; (2) amend or reject the
161 recommendation by a 2/3 majority vote of the membership of the governing body; or (3)
162 return the recommendation to the planning commission with a statement specifying the
163 basis for the governing body's failure to approve or disapprove.

164 (f) Return of Recommendation to Planning Commission. If the governing
165 body returns the recommendation, the planning commission, after considering the
166 same, may resubmit its original recommendation giving the reasons therefore or submit
167 a new or amended recommendation.

168 (g) Reconsideration by the Governing Body. Upon the receipt of the
169 recommendation in subsection (f), the governing body, by a simple majority vote, may
170 adopt the recommendation or amend and adopt the recommendation. If the planning
171 commission fails to deliver its recommendation to the governing body following the
172 planning commission's next regular meeting after receipt of the governing body's report,
173 the governing body shall consider such course of action as a resubmission of the
174 original recommendation and proceed accordingly.

175 (h) Changes to design standards. Minor changes to the design standards of
176 an NCD may be approved at the discretion of the planning director if the following
177 requirements are satisfied: (1) the change is intended to clarify an adopted design
178 standard by including specific text or graphics to better illustrate the standard; and (2)
179 the change does not add another element identified in section 8.270.050(c). Any
180 change to the standards that are not minor as determined by the planning director shall
181 require a new application and compliance with section 18.270.060.

182 Section 7. That The Code of the City of Topeka, Kansas, is hereby amended
183 by adding a section, to be numbered 18.270.070, which said section reads as follows:

184 **Dissolution.**

185 (a) The governing body, upon recommendation of the planning commission,
186 may initiate the dissolution of an NCD and remove the overlay zoning. Alternatively,

187 owners of at least 51% of the property within the proposed district may request the
188 dissolution of such district.

189 (b) The planning commission shall conduct a public hearing. Notice of the
190 hearing shall be published at least once in the official city newspaper at least twenty
191 days prior to the hearing. Such notice shall fix the time and place for the hearing. In
192 addition to the publication notice, written notice shall be mailed at least twenty days
193 before the hearing to all owners of record within the district . When the notice has been
194 properly addressed and deposited in the mail, failure of a party to receive such notice
195 shall not invalidate any subsequent action taken by the planning commission or
196 governing body.

197 (c) A majority of the members of the planning commission present and voting
198 may take any of the following actions: (1) recommend dissolution of the district,
199 including removal of the zoning overlay to the existing zoning district; (2) request
200 additional information from the planning department; or (3) deny the dissolution. If the
201 planning commission fails to make any recommendation, such failure shall be deemed a
202 recommendation that the district not be dissolved.

203 (d) The governing body may take any of the following actions: (1) adopt the
204 recommendation by ordinance; (2) amend or reject the recommendation by a 2/3
205 majority vote of the membership of the governing body; or (3) return the
206 recommendation to the planning commission with a statement specifying the basis for
207 the governing body's failure to approve or disapprove.

208 (e) Return of Recommendation to Planning Commission. If the governing
209 body returns the recommendation, the planning commission, after considering the

210 same, may resubmit its original recommendation giving the reasons therefore or submit
211 a new or amended recommendation.

212 (f) Reconsideration by the Governing Body. Upon the receipt of the
213 recommendation in subsection (e), the governing body, by a simple majority vote, may
214 adopt the recommendation or amend and adopt the recommendation. If the planning
215 commission fails to deliver its recommendation to the governing body following the
216 planning commission's next regular meeting after receipt of the governing body's report,
217 the governing body shall consider such course of action as a resubmission of the
218 original recommendation and proceed accordingly.

219 Section 8. That The Code of the City of Topeka, Kansas, is hereby amended
220 by adding a section, to be numbered 18.270.080, which said section reads as follows:

221 **Administration.**

222 (a) All new construction or alterations within the NCD shall comply with
223 adopted design standards for that district. No building permit shall be issued within an
224 NCD without the submission and approval of design plans and the issuance of a zoning
225 compliance permit by the planning department.

226 (b) The planning director shall establish such administrative rules and
227 regulations as necessary to govern the procedure, submission requirements, and
228 contents necessary to determine compliance with the design standards of an NCD. The
229 planning director, or designee, shall review the design plans to determine compliance
230 with the design standards adopted for the district.

231 (c) If the planning director determines that the work and/or design plans are in
232 conformance with the design standards adopted for the district, the planning director

shall issue a zoning compliance permit and the department of development services may issue a building permit, consistent with all other requisite ordinances and requirements.

(d) If the planning director determines that the design plans are not in conformance with the design standards adopted for the district, the planning department shall not approve the plans, and, furthermore, shall identify the specific design standards violated.

(e) The applicant may appeal the planning director's determination to the Board of Zoning Appeals as provided in Chapter 2.45 TMC.

Section 9. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 18.270.090, which said section reads as follows:

Penalty

It is unlawful to construct, reconstruct, structurally alter, demolish, deface, or move any buildings, structures, sites, objects or land areas within an established NCD unless such action complies with the design standards for the district .

Section 10. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 18.270.100, which said section reads as follows:

Severability

If any part or parts of this chapter shall be held unconstitutional, invalid, or otherwise unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this chapter.

Section 11. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 12. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 13. 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 on May 7, 2013.

CITY OF TOPEKA, KANSAS

Larry E. Wolgast, Mayor

ATTEST:

Brenda Younger, City Clerk