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ORDINANCE NO. 19901

AN ORDINANCE introduced by City Manager Jim Colson, concerning Historic Preservation, amending City of Topeka Code Sections 2.60.010, 2.60.020, 18.255.020, 18.255.030, 18.255.040, 18.255.060, 18.255.070, 18.255.090, 18.255.110, 18.255.120, 18.255.160 and 18.255.170 and specifically repealing said original sections as well as repealing in their entireties 18.255.050, 18.255.080, 18.255.100, 18.255.130 and 18.255.140.

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

Section 1. That section 2.60.010, Topeka landmarks commission – Created, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Topeka landmarks commission – Created.

There is created and established a commission to be known as the “Topeka landmarks commission” ~~of the city of Topeka in place of and instead of the body heretofore known as the Topeka Shawnee County landmarks commission. The Topeka landmarks commission will hereafter be called the “Topeka landmarks commission.”~~

(a) Scope of Duties. ~~The duties of the Topeka landmarks commission are to~~ shall advise the city council on historic assets and ~~to~~ safeguard the architectural and cultural heritage of the community through the preservation of ~~historic resources,~~ local historic landmarks and local historic districts. The Topeka landmarks commission may carry out these duties through the identification, documentation and designation of local historic ~~assets~~ landmarks; development and implementation of a historic preservation plan; administration of ordinances governing the designation, alteration and removal of local historic ~~assets~~ landmarks; assistance with educational and incentive programs,

economic development and tourism, and coordination of public and private historic preservation activities.

(b) Members. The Topeka landmarks commission shall be composed of nine members. The nine members shall be appointed by the mayor with approval of the city council and will serve without compensation. The Topeka landmarks commission membership shall be comprised of people who have a demonstrated interest in historic preservation through their community and/or professional involvements. The members of the commission shall be drawn from such backgrounds as architecture, history, landscape architecture, architectural history, planning, archaeology, urban design, neighborhood and community development, geography, real estate, law, finance, building trades or related areas. A minimum of four members shall be preservation related professionals.

(c) Terms. ~~The initial terms of office shall be as follows:~~

One-year terms	Three members
Two-year terms	Three members
Three-year terms	Three members

~~Thereafter, all~~ terms shall be for a three-year period commencing on January 1st and terminating on December 31st, ~~three years hence~~. No member shall serve beyond the end of his or her appointed term. Upon expiration of a term, the position shall remain vacant until a successor is appointed.

(d) Officers. The Topeka landmarks commission shall elect a chairperson and one vice-chairperson from its members.

50 (e) Meetings. The Topeka landmarks commission shall meet at least once
51 each month, with additional meetings upon call by the chairperson or upon petition of a
52 majority of the members. All meetings shall be open to the public and notification shall
53 be ~~given~~provided in the official newspaper, and to those who request notification.
54 Unless otherwise required herein, five members present shall constitute a quorum for
55 the transaction of business.

56 (f) Ex Officio Members. The following may ~~sit~~serve on the Topeka landmarks
57 commission as ex officio members:

- 58 (1) The director or designee of the development services office;
59 (2) The director or designee of the city planning department.

60 (g) Jurisdiction. The chapter shall apply to the city of Topeka.

61 (h) Committees and Subcommittees. The Topeka landmarks commission may
62 establish through its bylaws ~~such~~ committees, including a design review committee, as
63 deemed necessary or convenient to carry out the various functions and duties of the
64 commission. Such committees or subcommittees ~~may be made up of part or all of the~~
65 ~~members of the commission and may include members outside the Topeka landmarks~~
66 ~~commission~~ any person appointed by the chairperson and may meet upon such
67 schedule and for such purposes as established by the commission.

68 (i) Staff of the Topeka Landmarks Commission. The Topeka landmarks
69 commission shall receive such staff support as directed by the city administration.

70 Section 2. That section 2.60.020, Topeka landmarks commission – Functions,
71 of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

72 **Topeka landmarks commission – Functions.**

73 The Topeka landmarks commission shall have the following functions:

74 (a) ~~The Topeka landmarks commission shall familiarize itself with the historic~~
75 ~~assets within the community and those which may be eligible for designation as historic~~
76 ~~resources, historic landmarks or historic districts and shall a~~Administer the identification,
77 documentation and designation of ~~such~~ local historic landmarks and local historic
78 districts, ~~and shall present verification of significance to the city planning department, or~~
79 ~~the city council.~~

80 (b) ~~The Topeka landmarks commission, using the criteria identified herein,~~
81 ~~shall d~~Determine whether certain buildings, structures, land areas, and interiors (only for
82 local historic landmarks and with owner consent) should be designated as local historic
83 landmarks or local historic districts.

84 (c) ~~The Topeka landmarks commission shall a~~Administer certificate of
85 appropriateness reviews ~~according to design criteria as defined~~review guidelines to
86 determine whether to grant or deny approval of proposed undertakings.

87 (d) ~~The Topeka landmarks commission shall r~~Review and comment on
88 projects which may ~~be determined to pose a threat to a~~recorded archaeological site
89 as designated by the city or the Kansas State Historical Office.

90 (e) ~~The Topeka landmarks commission m~~May apply for or suggest sources of
91 funds for preservation, acquisition, and restoration activities ~~for acquisition, to include~~
92 ~~federal, state, municipal, private and foundation sources.~~

93 (f) ~~The Topeka landmarks commission m~~May implement incentive programs
94 for preservation.

95 (g) ~~If the Topeka landmarks commission finds that certain historic assets~~
96 ~~cannot be preserved without acquisition, the Topeka landmarks commission may~~
97 ~~recommend to the city council that the fee or a lesser interest in the property be~~
98 ~~acquired by gift, or purchase, using funds or facilities available for preservation or~~
99 ~~restoration.~~May recommend acquisition of historic assets to the council.

100 (h) ~~The Topeka landmarks commission shall annually r~~Review annually the
101 ~~status of designated historic resources, local historic landmarks and local historic~~
102 ~~districts and include in the Topeka landmarks commission minutes a report of such~~
103 ~~review.~~

104 (i) ~~The Topeka landmarks commission shall make~~Prepare and adopt a
105 ~~historic preservation plan as an element for inclusion in the City's comprehensive plan~~
106 ~~and review and update the plan as needed. The plan may include~~reference a list of
107 ~~historic resources~~assets ~~which may not have attained the status of a historic landmark~~
108 ~~or as historic district. Twenty days prior to a historic resource listing determination by the~~
109 ~~Topeka landmarks commission, the following procedures shall be initiated and~~
110 ~~administered by the preservation staff:~~

111 (1) ~~Property owners of those sites and structures which are being~~
112 ~~considered for nomination as historic resources shall be notified of a pending~~
113 ~~decision to list their property as historic resources.~~

114 (2) ~~Property owners of nominated historic resources shall be provided~~
115 ~~the opportunity to "agree" or "not agree" with the inclusion of their property in the~~
116 ~~listing.~~

117 ~~(3) If the owner agrees to the historic resource listing, notice of the~~
118 ~~“historic resource” listing of a property shall be filed with the register of deeds and~~
119 ~~recorded as an official notice subject to subsequent property owners. If the owner~~
120 ~~does not agree to the “historic resource” listing, the property shall not be listed as~~
121 ~~a “historic resource.”~~

122 (j) ~~The Topeka landmarks commission may i~~Implement a receivership
123 program for conservation easement donations for the purpose of historic preservation.
124 Such easements shall be held by the city and monitored by the Topeka landmarks
125 commission.

126 (k) ~~The Topeka landmarks commission may r~~Recommend programs and
127 legislation to the city council to encourage historic preservation.

128 (l) ~~The Topeka landmarks commission, upon request of the property owner,~~
129 ~~may a~~Assist in the preparation of national and/or state register nominations, upon
130 request of the property owner.

131 (m) ~~The Topeka landmarks commission, u~~Upon request of the property owner,
132 ~~may~~render advice and provide guidance with respect to any proposed work on a
133 historic asset.

134 (n) Adopt and implement design review guidelines for local historic landmarks
135 and local historic districts.

136 (o) Review nominations of properties within the city proposed for inclusion in
137 the National Register of Historic Places.

(p) Create and maintain a list of individuals and organizations that request, in writing, to be advised of actions related to local historic landmarks and local historic districts.

(q) Provide a quarterly report to the council listing approved and rejected certificates of appropriateness for local historic landmarks and local historic districts.

(r) Provide design-review guidelines to owners of local historic landmarks and owners of property located within a local historic district.

Section 3. That section 18.255.020, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Definitions.

As used in this chapter, the following words, terms and phrases shall have the meanings set out below:

“Appurtenances and environmental setting” includes, but is not limited to walkways and driveways (whether paved or not) fences, gateways, open space and waterways. Interiors of structures are included only ~~when a historic resource is designated a~~ for local historic landmarks and the owner consents upon consent of the owner to the addition of the interior of the structure.

“Certificate of appropriateness” is the approval ~~given by the Topeka landmarks commission for projects impacting historic landmarks and assets within historic districts~~ of plans for the alteration, construction, removal or demolition of historic landmarks or contributing features.

“Contributing feature” is a significant building, site, structure, or object which adds to the architectural qualities, historic association, or archeological values of a local

161 historic district because (1) the item was present during the district's period of
162 significance and (2) possesses significant historic character or is capable of yielding
163 important information about the period of significance.

164 "Demolition" shall mean any and all activity that requires a demolition permit.

165 ~~"Demolition by neglect" is the failure to provide ordinary and necessary~~
166 ~~maintenance and repair to a structure resulting in the deterioration of the structure or~~
167 ~~resulting in permanent damage, injury or loss to exterior features.~~

168 "Design-review criteria" are standards identified in the Secretary of the Interior's
169 Standards for the Treatment of Historic Properties.

170 ~~"Design-review criteria" is the~~ are standards used in addition to the
171 design-review criteria for issuing a certificate of appropriateness for individual projects
172 or projects located within local historic districts. ~~The criteria shall be based upon the~~
173 ~~Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating~~
174 ~~Historic Buildings, or guidelines adopted by the historic district and based upon criteria~~
175 ~~of the Secretary of the Interior's Standards as recommended by the Topeka landmarks~~
176 ~~commission and approved by the respective jurisdiction. Examples illustrating said~~
177 ~~standards shall be made available by the preservation staff.~~

178 "Historic asset" is a site, land area, building, structure or object, which may also
179 include appurtenances and environmental setting, which ~~has~~ may have historical,
180 cultural, aesthetic, architectural and/or archaeological significance but has not been
181 designated as ~~a historic resource, a local~~ historic landmark, ~~or as contributing to a local~~
182 ~~historic district by the Topeka landmarks commission.~~

183 ~~“Historic district” is a group of residential historic resources, consisting of three or~~
184 ~~more principal use residential structures or a residentially zoned tract of ground five~~
185 ~~acres or larger which are significant as a cohesive unit and contribute to the historical,~~
186 ~~architectural, archaeological or cultural values of the city, county, state, or nation which~~
187 ~~is so designated by the city council. “Historic district” includes all state and national~~
188 ~~registered districts, provided the owner(s) of record consents in writing to the inclusion.~~
189 ~~The historic district may also include appurtenances and environmental setting with~~
190 ~~written consent from the owner(s) of record.~~

191 “Historic integrity” is the authenticity of a property’s historic identity, evidenced by
192 the survival of physical characteristics that existed during the property’s prehistoric or
193 historic period. It is a composite of original and historic characteristics, construction,
194 elements, qualities, design, architectural features, distinctive style, craftsmanship,
195 composition, color, texture, and other visual characteristics.

196 ~~“Historic landmark” is an historic asset that has been designated, with the written~~
197 ~~consent of the owner(s) of record, as having historical, architectural, archaeological, or~~
198 ~~cultural importance or value which the city council determines shall be protected,~~
199 ~~enhanced and preserved in the interest of the culture, prosperity, education and welfare~~
200 ~~of the public. “Historic landmark” may also include the interior of a structure~~
201 ~~appurtenances and environmental setting with written consent from the owner(s) of~~
202 ~~record. “Historic landmark” includes all state and national registered structures, provided~~
203 ~~the owner(s) of record consents in writing to the inclusion.~~

204 ~~“Historic resource” is a site, land area, building, structure or object, which may~~
205 ~~also include appurtenances and environmental setting, which has been determined as~~

206 ~~having historical, cultural, aesthetic, architectural and/or archaeological significance, or~~
207 ~~is a site, land area, building, structure, or object with potential importance or value.~~

208 “Local historic district” encompasses a group of historic assets, consisting of
209 three or more buildings, structures or objects which are significant as a cohesive unit
210 and contribute to the historical, architectural, archaeological or cultural values of the
211 city, county, state, or nation which is so designated by the city council. The district may
212 also include appurtenances and environmental setting with written consent from the
213 owner(s) of record.

214 “Local historic landmark” is an historic asset that has been designated, with the
215 written consent of the owner(s) of record, as having historical, architectural,
216 archaeological, or cultural importance or value which the city council determines shall
217 be protected, enhanced and preserved in the interest of the culture, prosperity,
218 education and welfare of the public. “Local historic landmark” may also include the
219 interior of a structure appurtenances and environmental setting with written consent
220 from the owner(s) of record. “Local historic landmark” includes all state and nationally
221 registered structures, provided the owner(s) of record consents in writing to the
222 inclusion.

223 “Mothballing” means controlling the long-term deterioration of a building while it is
224 unoccupied as well as finding methods to protect it from sudden loss by fire or
225 vandalism. Mothballing includes, but is not limited to, securing the building from
226 unwanted entry, providing adequate ventilation to the interior, shutting down or
227 modifying existing utilities, surveillance monitoring and periodic maintenance to
228 minimize deterioration.

229 “Overlay zoning” means any zoning that functions in addition to the existing land
230 use zoning, as in the case of local historic landmark or local historic district zoning.

231 “Period of significance” is the span of time in which a local historic landmark or
232 local historic district attained the significance for which it is designated.

233 “Permit” means authorization whether by administrative action or actions by the
234 city council and includes a building, demolition, moving, zoning, sign, fence, parking lot,
235 roofing, sidewalk, siding, or swimming pool permit ~~which is issued by the development~~
236 ~~services office.~~

237 “Preservation plan” means a document developed, adopted and implemented by
238 the Topeka landmarks commission that identifies trends affecting and impacting historic
239 assets and provides guidance for their preservation. The preservation plan will include a
240 list of all ~~historic resources,~~ local historic landmarks and local historic districts within
241 Topeka. The preservation plan will be a component of the comprehensive plan for the
242 city.

243 “Preservation program” means the ~~overall~~ program administered by the Topeka
244 landmarks commission ~~that involves the implementation of~~ implementing the historic
245 preservation ordinance, the historic preservation plan, and all activities relating to the
246 furtherance of historic preservation in Topeka.

247 “Preservation staff” means personnel assigned to provide staff services for the
248 Topeka landmarks commission.

249 Project Classification. For the purpose of the certificate of appropriateness review
250 procedure, proposed work involving a local historic landmark or property within a local
251 historic district shall be classified as major or minor.

(1) "Major projects" include:

(i) Any undertaking requiring a permit~~certificate~~ of appropriateness ~~on a~~ for a local historic landmark ~~unless determined minor by the preservation staff;~~ or a structure within a local historic district ~~unless determined minor by preservation staff;~~ or

(ii) Any demolition permit or moving permit for any structure listed as a local historic landmark or ~~historic asset within a historic district~~ contributing feature.

(2) Minor Project. ~~For the purpose of certificate of appropriateness review, a "minor project" is any project~~ Any undertaking requiring a permit~~certificate~~ of appropriateness ~~on a~~ for a local historic landmark or property within a local historic district that proposes repairing or restoring an existing exterior element, or replacing an element or material with identical material and design to that which is existing. A list of minor projects, which can be reviewed and approved by preservation staff, shall be adopted by the Topeka landmarks commission.

"Uniform Code for Building Conservation" means a national code adopted by the city that provides for more flexible code review for older and historic properties.

Section 4. That section 18.255.030, Historic landmark designation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Local historic landmark; local historic district designation.

The ~~city council~~ governing body may designate ~~certain historic assets as local~~ historic landmarks or local historic districts by adopting historic overlay zoning. ~~Such~~

275 ~~designation shall be in addition to any other zoning designation established in the~~
276 ~~comprehensive zoning regulations of the city and be known as historic overlay zoning.~~
277 An official register of all historic designations in the city shall be created, and maintained
278 ~~and filed for public information and use in the office of the city clerk~~by the planning
279 department.

280 Section 5. That section 18.255.040, Historic landmark designation criteria, of
281 The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

282 **Historic landmark or local historic district designation criteria.**

283 (a) Local historic landmark. ~~In the designation of buildings, structures and~~
284 ~~objects as historic landmarks or districts certain criteria must be met. These properties~~
285 ~~must be 50 years or older. In addition, the property must meet one or more of the~~
286 ~~following criteria~~The governing body may designate an historic asset as a local historic
287 landmark if the following requirements are met:

288 (1) The asset is at least 50 years old; and

289 (2) The asset possesses integrity of location, design, setting, materials
290 and workmanship.

291 (3) In addition to (a)(1) and (a)(2), at least one of the following
292 requirements shall be met:

293 (4*i*) Is associated with events that have made a significant
294 contribution to the broad pattern of history of the city, county, state or
295 nation;

296 (2*ii*) Is associated with a significant person or group of persons in
297 the history of the city, county, state or nation;

(3iii) Embodies distinctive characteristics of a type, period, or method of construction; represents the work of a master builder/architect; possesses high artistic values; or represents a distinguishable entity whose components may lack individual distinction; or

(4iv) Yields or is likely to yield information important in prehistory or history; ~~or~~

~~(5) Possesses integrity of location, design, setting, materials and workmanship.~~

(b) Local historic district. ~~Properties less than 50 years old may be eligible for designation, provided they are of extreme historical significance. All other criteria listed herein shall apply. The governing body may designate an area as a local historic district if at least seventy-five percent (75%) of the structures within the district boundaries are of architectural, historical, or cultural importance or value and are classified as contributing features.~~

Section 6. That section 18.255.050, Historic district designation criteria, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Historic district designation criteria.~~

~~(a) In the designation of buildings, structures and objects as historic districts certain criteria must be met. The historic assets within the historic district must be located on residentially zoned property and must be 50 or more years old. In addition, the historic assets must meet one or more of the following criteria:~~

~~(1) Are associated with events that have made a significant contribution to the broad pattern of history of the city, county, state or nation;~~

321 ~~(2) Are associated with a significant person or group of persons in the history of~~
322 ~~the city, county, state or nation;~~

323 ~~(3) Embody distinctive characteristics of a type, period, or method of~~
324 ~~construction; represent the work of a master builder/architect; possess high artistic~~
325 ~~values; or represent a distinguishable entity whose components may lack individual~~
326 ~~distinction;~~

327 ~~(4) Yield or are likely to yield information in prehistory or history; or~~

328 ~~(5) Possess integrity of location, design, settings, materials and workmanship.~~

329 ~~(b) The boundaries of historic districts shall be drawn so as to include all~~
330 ~~buildings, structures, sites, objects or land areas which meet one or more of the criteria~~
331 ~~set out herein or which directly affect or relate to such buildings, structures, sites,~~
332 ~~objects or land areas meeting one or more of the above criteria; provided, that at least~~
333 ~~75 percent of the total structures within the boundaries are of architectural, historical,~~
334 ~~archaeological, or cultural importance or value as determined by the Topeka landmarks~~
335 ~~commission.~~

336 Section 7. That section 18.255.060, Nomination, of The Code of the City of
337 Topeka, Kansas, is hereby amended to read as follows:

338 **Local historic landmark or local historic district Nnomination process.**

339 (a) Nomination. ~~The process is initiated when a historic landmark or historic~~
340 ~~district nomination form is accompanied by the following information and submitted to~~
341 ~~the Topeka landmarks commission. Copies of the nomination form shall be retained by~~
342 ~~the city clerk, and the city planning department.~~Any owner of an historic asset may
343 nominate such asset as a local historic landmark. Any person may nominate an area

344 within the city as a local historic district in accordance with this section. The nomination
345 form shall include The applicant shall supply the following information on a form provided
346 by the planning department:

347 (1) A description of the specific historic asset nominated as an historic
348 landmark or a list of specific historic assets located within the proposed district
349 boundaries and a description of the particular importance or value of each such
350 historic assets, such description to include the following:

351 (i) A brief property history, including Approximate date of
352 construction, and dates of major alterations, if known;

353 (ii) Builder and/or architect, if known;

354 (iii) Architectural style;

355 (iv) Primary building materials;

356 (v) Current owner(s) of record; and

357 (vi) Legal description of each property;

358 (2) A map showing the boundaries of the proposed local historic
359 landmark or local historic district and the location of each asset of importance or
360 value identified by a number or letter designation;

361 (3) Sufficient photographs of each historic asset proposed as a local
362 historic landmark or ~~historic assets~~ listed within the proposed local historic
363 district;

364 (4) Written consent to the nomination by all of the owners of record of
365 the proposed local historic landmark. In the event of a contract sale, both the

owner of record and the party or parties holding an equitable interest in the property must consent to the nomination; and

(5) For a local historic district, ~~65 percent of the owners of record within the proposed historic district must provide written consent~~ of at least sixty (60%) of the properties within the proposed district shall submit written consents to the nomination. In the event of a contract sale of real property, both the owner of record and party or parties holding an equitable interest in the property must consent to the nomination.

(6) For a local historic district, proposed design review guidelines pursuant to TMC 18.255.090.

(b) Increasing boundaries; local historic district. Applications to increase the boundaries of a local historic district may be ~~made~~ considered if one or more of the following conditions are met:

(1) ~~When~~ An additional historic assets which relates and is contiguous to the local historic district ~~are~~ is requested for inclusion by its property owner; or

(2) ~~When facts previously undisclosed to or unknown by the Topeka landmarks commission are revealed which indicate that a particular building or site is possessed of special architectural, archaeological, or cultural character, or economic viability to the district~~ Two or more historic assets or local historic landmarks would be included in the expanded local historic district and at least sixty (60%) of the owners of record of properties within the proposed expansion area submit written consents.

388 (c) Citizen participation. Applicants shall comply with the citizen participation
389 process adopted by the planning director and posted on the City's website. The
390 planning director shall provide a map of the notification area which shall be a 500 feet
391 radius.

392 (ed) ~~Consideration by Topeka landmarks commission. Applications to reduce~~
393 ~~the boundaries of a historic district may be made when one or more of the following~~
394 ~~conditions have been met;~~Upon determination by the planning director that the
395 application is sufficient, the director shall submit the application to the Topeka
396 landmarks commission.

397 (1) ~~When it can be shown that a particular building, structure, site,~~
398 ~~object or land area has no historic, architectural, archaeological, or cultural~~
399 ~~importance or value to the viability of the historic district;~~

400 (2) ~~When it can be shown that no physical, historical, architectural,~~
401 ~~archaeological or cultural degradation will result from exclusion of property from~~
402 ~~the district.~~

403 (e) Notification. Upon determination by the planning director that the
404 application is sufficient, the director shall submit the application to the Topeka
405 landmarks commission. The Topeka landmarks commission shall consider the
406 application at a meeting, provided that notice shall be mailed at least twenty (20) days
407 prior to the meeting to the owner(s) of record of any parcel upon which a proposed local
408 historic landmark is situated or which is part of a proposed or expanded local historic
409 district.

410 (f) Meeting; landmarks commission. The Topeka landmarks commission may
411 solicit expert testimony regarding the historic and architectural importance of the historic
412 assets(s) under consideration for designation. All interested persons may provide
413 written comments and/or appear in person or by representative. The commission shall
414 make a recommendation to the planning commission whether to adopt historic overlay
415 zoning.

416 (g) Historic overlay zoning. The governing body, upon the recommendation
417 of the planning commission, shall consider whether to adopt historic overlay zoning in
418 accordance with state law and chapter 18.245 of the code governing rezoning.

419 Section 8. That section 18.255.070, Historic district exemptions, of The Code
420 of the City of Topeka, Kansas, is hereby amended to read as follows:

421 **Local H~~Historic landmark or district exemptions~~denomination process.**

422 ~~Within 30 days of approval of a historic district by the city council, property~~
423 ~~owners located within the district may elect to exempt their property from the~~
424 ~~requirements of the historic district by providing written notice of the self-exemption to~~
425 ~~the preservation staff. In the event of a contract sale of real property, both the owner of~~
426 ~~record and party or parties holding an equitable interest in the property must consent to~~
427 ~~the exemption. The property shall automatically convert to the historic overlay zoning~~
428 ~~district upon sale of the property, including a contract sale.~~

429 (a) Applications to denominate a local historic landmark or local historic
430 district and/or reduce the district's perimeter may be made when one or more of the
431 following conditions have been met:

(1) A local historic landmark or building, structure, site, or object within a district has no historic, architectural, archaeological, cultural importance, or value to the viability of the historic district; or

(2) The owners of record of at least seventy-five percent (75%) of the properties within the local historic district provide written consent to the denomination of the local historic district.

(b) The applicant shall comply with the citizen participation process adopted by the planning director and posted on the City's website. The planning director shall provide a map of the notification area which shall be a 500 feet radius.

(c) Upon receipt of such application, the Topeka landmarks commission shall consider the application at a meeting, provided that notice shall be mailed at least twenty (20) days prior to the meeting to the owner(s) of record of any parcel upon which the local historic landmark is situated or which is part of the local historic district. All interested persons may provide written comments and/or appear in person or by representative. The commission shall make a recommendation to the planning commission whether to remove historic overlay zoning.

(d) Historic overlay zoning. The governing body, upon recommendation of the planning commission, shall consider whether to remove historic overlay zoning in accordance with state law and the ordinances governing rezoning.

Section 9. That section 18.255.080, Procedure for designation of historic landmark and historic district, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Procedure for designation of historic landmark and historic district~~

455 ~~An application for historic landmark and residential historic district designation requires~~
456 ~~the following procedures:~~

457 ~~(a) A historic landmark or historic district nomination form, accompanying~~
458 ~~material, and for historic districts, historic district preservation guidelines as defined~~
459 ~~herein, shall be submitted to the city planning department.~~

460 ~~(b) Upon receipt of such nomination, a hearing by the Topeka landmarks~~
461 ~~commission will be scheduled either at its regular meeting or at a special meeting;~~
462 ~~provided, that notice of the meeting shall be published 20 days prior to the date of such~~
463 ~~hearing. For purposes of holding a hearing to consider designation of a historic~~
464 ~~landmark or historic district, five members of the Topeka landmarks commission shall~~
465 ~~constitute a quorum. The owner or owners of record of any parcel on which a proposed~~
466 ~~historic landmark is situated or which is a part of a proposed historic district shall be~~
467 ~~mailed written notice at least 20 days prior to the hearing relating to the designation of~~
468 ~~such proposed historic landmark or historic district, the amendment to any designation~~
469 ~~thereof, or the proposed reduction of any designation or the amendment thereto.~~
470 ~~Owner(s) consent to the historic landmark or historic district designation is a~~
471 ~~requirement for such designation to occur. The Topeka landmarks commission shall~~
472 ~~afford a full and fair hearing to all interested persons. The Topeka landmarks~~
473 ~~commission may solicit expert testimony regarding the historic and architectural~~
474 ~~importance of the historic asset(s) under consideration for designation. All interested~~
475 ~~persons may appear in person or by representative and present evidence or comment.~~
476 ~~The Topeka landmarks commission shall make its decision regarding the designation~~
477 ~~within a reasonable time, no later than 15 days following the close of the hearing. In the~~

event a member of the Topeka landmarks commission shall make application, evidence shall be presented in the same manner as all other persons and the Topeka landmarks commission member shall not vote on the matter contained in the application. Five affirmative votes shall be required to constitute a recommendation of approval on any nomination application presented to the Topeka landmarks commission.

(c) After consideration and recommendation by the Topeka landmarks commission, the application shall be submitted to the city planning department. The following is required as part of the designation application:

- (1) The Topeka landmarks commission recommendation;
- (2) Legal description and map of the boundaries of the proposed designation;
- (3) Completed historic landmark or historic district nomination form and accompanying materials;
- (4) Applicable historic district preservation guidelines as defined herein; and
- (5) A list of property owner(s) of record.

(d) The designation shall be placed on the Topeka planning commission agenda for public hearing to consider historic landmark or historic district designation. The same public notices and public hearing as required by law in a zoning case shall be observed. The owner or owners of record of any parcel on which a proposed historic landmark is situated or within a proposed historic district as well as all property owners of record within a 200-foot radius in the city will be notified of the hearing. At the conclusion of its hearing, the Topeka planning commission shall set forth in writing its findings as to whether the designation is consistent with adopted plans and shall transmit such findings to the city council.

~~(e) After notice and public hearing as required by law in a zoning case, a historic landmark or historic district may be created by ordinance by the city council. Upon passage of such ordinance a certified copy shall be filed with the Shawnee County register of deeds.~~

~~(f) Upon approval of a historic landmark or historic district designation ordinance by the city council, the city planning department shall cause the official designation and delineation of the property or properties involved.~~

Section 10. That section 18.255.090, Historic district preservation guidelines, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Historic district preservation~~Design-review~~ guidelines.

~~Preservation guidelines for a proposed historic district shall be submitted with a nomination application. The district preservation guidelines shall not apply to the interior of commercial structures. Further, the district guidelines shall include, but not be limited to, the following:~~

~~(a) Guidelines for those seeking a certificate of appropriateness including, but not limited to, the following~~Design review guidelines for each local historic district shall address the following:

(1) Acceptable materials for any construction, additions, remodeling or rehabilitation activities to the exterior of the structures;

(2) Appropriate architectural character, scale, and detail for any construction, additions, remodeling or rehabilitation activities;

(3) Acceptable appurtenances to the structures;

(4) Acceptable textures and ornamentation to the exterior of the structures;

(5) Acceptable accessories on structures;

(6) Such other building regulations which would have impact on the buildings;

(7) Acceptable standards for changes to noncontributing resources within the district; and

(8) Acceptable signage.

~~(b) Guidelines for public improvements in the district, including street furniture, signs, design textures of sidewalks, streets and parks.~~ The Topeka landmarks commission shall make available the proposed design review guidelines to each owner of record in a proposed local historic district prior to consideration by the commission.

Section 11. That section 18.255.100, Historic district designation administrative requirements, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Historic district designation administrative requirements~~

~~The following shall apply:~~

~~(a) When the Topeka landmarks commission considers an area as a possible historic district, the Topeka landmarks commission shall, prior to rendering its final recommendation, submit the nomination package including district preservation guidelines to appropriate city departments and other public agencies directly affected.~~

~~(b) In addition, the Topeka landmarks commission shall, prior to rendering its final recommendation, make the historic district preservation guidelines available upon request to all landowners in the proposed historic district.~~

~~(c) The Topeka landmarks commission approved graphics for designated historic assets within a historic district may be made available to the owners of designated structures.~~

Section 12. That section 18.255.110, Certificate of appropriateness review, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Certificate of appropriateness review; minor and major projects; no demolition.

~~The following procedures and requirements shall apply to certificate of appropriateness review:~~

~~(a) A permit for any project as defined herein affecting a designated historic landmark or any property within a designated historic district shall not be issued to any applicant by the development services office unless an application for a certificate of appropriateness has first been reviewed and approved by the preservation staff, by the Topeka landmarks commission and, if a protest is filed, by the city council. Projects not requiring a permit but which propose to alter features which have been defined in a historic district's preservation guidelines as requiring protection shall require a certificate of appropriateness application. Projects which will or have the potential to damage or destroy historic features of a historic landmark or a historic asset which is located within a historic district shall be subject to a certificate of appropriateness review.~~

~~(b) When applying for a certificate of appropriateness, the applicant shall provide plans, specifications or other documentation pertaining to the work as required on the Topeka landmarks commission's adopted application forms. A complete certificate of appropriateness application and accompanying materials shall be submitted to the~~

569 preservation staff for review of the application and determination if the proposed work is
570 a major or minor project.

571 ~~(c) The Topeka landmarks commission shall review the application and recommend~~
572 ~~approval, approval with conditions, or denial within 30 days of the receipt of the~~
573 ~~application. A 15-day period for written comments regarding the project shall be~~
574 ~~provided prior to the Topeka landmarks commission's hearing. These written comments~~
575 ~~shall be directed to the Topeka landmarks commission. If approved, and provided that a~~
576 ~~protest is not filed within five business days, preservation staff shall issue a copy of the~~
577 ~~certificate of appropriateness to the applicant and provide a copy to the development~~
578 ~~services office and the applicant. If an appeal is filed by the applicant or any interested~~
579 ~~party with the preservation staff within five business days of the Topeka landmarks~~
580 ~~commission's action, the certificate of appropriateness shall not be issued until the city~~
581 ~~council holds a public hearing regarding the application. This public hearing shall be at~~
582 ~~the next available meeting of the city council. For the purpose of this section, interested~~
583 ~~party shall mean an individual or individuals with a legally recognized interest in the real~~
584 ~~property located within the subject historic district.~~

585 ~~(d) A certificate of appropriateness for a minor project shall be reviewed and approved~~
586 ~~or denied by the preservation staff. If approved, the preservation staff shall provide a~~
587 ~~certificate of appropriateness to the applicant and provide a copy of documented~~
588 ~~approval to the development services office. An appeal from a denial of an application~~
589 ~~for a minor project may be filed with the preservation staff within five business days. A~~
590 ~~public hearing on the appeal shall be at the next available meeting of the city council.~~

~~(e) Ordinary maintenance and repair not otherwise subject to a permit or restricted by the historic preservation guidelines may be carried out without a certificate of appropriateness.~~

~~(f) If no action has been taken by the preservation staff and/or the Topeka landmarks commission within 30 days for major projects and within 15 days for minor projects after date of receipt of the completed application, the permit may be applied for with the development services office.~~

~~(g) No significant change shall be made in the work defined in the certificate of appropriateness application after issuance of a certificate of appropriateness without resubmittal and approval thereof in the same manner provided herein.~~

~~(h) A certificate of appropriateness may be refiled, provided the request addresses the concerns stated by the city council in its denial.~~

(a) No local historic landmark, contributing feature, or a portion of either, shall be altered, removed, or moved unless a certificate of appropriateness is approved in accordance with this section. No certificate is required for maintenance and repair not requiring a permit or not restricted by design review guidelines. If an application proposes that a local historic landmark be removed or moved to a new site, the proposal shall be treated as an application for denomination or a nomination, as appropriate. If an application proposes that a contributing feature be removed or moved to a new site, the proposal may be treated as an application for denomination or a nomination, as appropriate.

(b) Preservation staff shall review the application and determine whether the project is a major or minor project, as defined in section 18.255.020.

614 (c) If the project is determined to be minor, preservation staff may approve or
615 deny the application, based on the Secretary of the Interior's Standards for the
616 Treatment of Historic Properties and any approved design review guidelines, within 30
617 days of receipt of a complete application. If the application is denied, the applicant may
618 request a review by the planning director, within five business days from the date of
619 denial. If the planning director affirms the denial, based on the Secretary of the
620 Interior's Standards for the Treatment of Historic Properties and any approved design
621 review guidelines, the applicant may request a review by the Topeka landmarks
622 commission which will determine, based on the Secretary of the Interior's Standards for
623 the Treatment of Historic Properties and any approved design review guidelines,
624 whether to affirm, reject, or modify the planning director's decision.

625 (d) If the project is determined to be major but does not involve demolition of
626 a local historic landmark or contributing feature in a local historic district, the following
627 procedure shall apply:

628 (1) The Topeka landmarks commission shall consider each application
629 at a meeting, provided that notice shall be mailed at least twenty (20) days prior
630 to the meeting to the owner(s) of record of the local historic landmark that is the
631 subject of the application and the owners of record of properties located within
632 any local historic district where the local historic landmark or contributing feature
633 is located.

634 (2) All interested persons may provide written comments and/or appear
635 in person or by representative.

636 (3) The Topeka landmarks commission may request additional
637 information, approve, approve with conditions, or deny the certificate based upon
638 the Secretary of the Interior's Standards for the Treatment of Historic Properties
639 and approved design review guidelines.

640 (4) The owner of the local historic landmark or a property owner within
641 the local historic district may appeal the commission's decision to the city council
642 by submitting a notice of appeal to the planning director within 10 calendar days
643 of the decision.

644 (5) The council shall affirm the commission's decision if there is
645 sufficient evidence to support the decision.

646 Section 13. That section 18.255.120, Historic landmark and historic
647 district demolition and moving permits, of The Code of the City of Topeka, Kansas, is
648 hereby amended as follows:

649 ~~Historic landmark and historic district demolition and moving~~
650 ~~permits~~Certificate of appropriateness review; demolition; historic landmark and
651 contributing feature.

652 ~~(a) If an application is received by the development services office for~~
653 ~~demolition or moving of any historic landmark or structure within a historic district the~~
654 ~~applicant shall be referred to the preservation staff for a certificate of appropriateness~~
655 ~~application. Review of such application for a certificate of appropriateness shall be as~~
656 ~~provided herein.~~No local historic landmark, contributing feature, or portion of either,
657 shall be demolished unless a certificate of appropriateness is approved by the city
658 council. Additionally, no permit to demolish a local historic landmark, contributing

659 feature, or portion of either, shall be issued prior to approval of a certificate of
660 appropriateness.

661 (b) ~~For a project which involves demolition of a historic landmark property or~~
662 ~~properties within a historic district the proponents of such project shall, before doing any~~
663 ~~of the demolition or work in furtherance of such project, whether or not a building or~~
664 ~~other permit is required to be obtained to do such demolition work, file an application for~~
665 ~~a certificate of appropriateness for review as provided herein.~~Citizen participation. The
666 applicant shall comply with the citizen participation process adopted by the planning
667 director and posted on the city's website. The planning director shall provide a map of
668 the notification area which shall be a 500 feet radius.

669 (c) ~~After review of certificate of appropriateness and, upon the~~
670 ~~recommendation of the Topeka landmarks commission and the Topeka planning~~
671 ~~commission, the city council shall hold a hearing within 30 days of the Topeka~~
672 ~~landmarks commission's recommendation. In addition to the recommendation of the~~
673 ~~Topeka landmarks commission, the city council shall consider the state of repair of the~~
674 ~~building, the reasonableness of the cost of restoration or repair, owner hardship, the~~
675 ~~purpose of preserving the designated historic landmark or structure within a historic~~
676 ~~district, alternatives presented by interested parties, the character of the neighborhood,~~
677 ~~the economic consequences to the city and the affected owner(s), and all other factors~~
678 ~~which it finds appropriate. The owner(s) of the historic landmark or owner(s) of the~~
679 ~~structure within the historic district shall bear the burden of proof demonstrating~~
680 ~~hardship.~~Notification. The Topeka landmarks commission shall consider each
681 application at a meeting, provided that notice shall be mailed at least twenty (20) days

prior to the meeting to the owner(s) of record of the local historic landmark that is the subject of the application and the owners of record of properties located within any local historic district where the local historic landmark or contributing feature is located.

(d) Meeting; landmarks commission. All interested persons may provide written comments and/or appear in person or by representative. The commission shall make its determination based upon the Secretary of the Interior's Standards for the Treatment of Historic Properties.

~~(de) After review and recommendation by the Topeka landmarks commission, the city council may approve or deny the certificate of appropriateness or deny the certificate of appropriateness if it determines that feasible alternatives to demolition or moving of the historic landmark or structure within the historic district exist and that in the interest of preserving historical values, the historic landmark or structure within the historic district should not be demolished or moved~~based on the following factors:

(1) Whether feasible alternatives to demolition exist, including mothballing the structure;

(2) The state of repair of the structure;

(3) The cost of restoration or repair;

(4) Hardship to the applicant if the certificate is denied;

(5) Economic consequences to affected property owners; and

(6) The interest in preserving historical values.

~~(ef) In the event of an "emergency" demolition of a historic landmark or a structure within a historic district, the development services office shall notify the preservation staff as soon as possible~~Notwithstanding subsection (e), if the Topeka

landmarks commission determines that the demolition will destroy historic property included in the National Register of Historic Places or the State Register of Historic Places, demolition shall not proceed until the governing body makes any determination, required by K.S.A. 75-2724 and amendments thereto.

(g) If a demolition is approved by the council, the planning commission shall make a recommendation to the governing body whether to remove historic overlay zoning in accordance with state law and the ordinances governing rezoning.

Section 14. That section 18.255.130, Review of demolition buildings and moving permits for historic resources, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Review of demolition buildings and moving permits historic resources.~~

~~An application to the development services office for a demolition or moving permit shall require notification to preservation staff if the permit is for a historic resource determined by preservation staff to have potential for landmark designation. These resources shall be 50 years or older and meet one or more of the criteria for landmark designation described herein. The following procedure applies:~~

~~(a) Demolition and moving permit applications for buildings or structures listed as historic resources will be reviewed by preservation staff.~~

~~(b) Preservation staff may make the determination that a building, site or structure threatened with demolition or removal meets the criteria for landmark designation.~~

~~(c) If a building, site or structure is determined by the preservation staff to meet criteria for historic landmark designation a written notice shall be sent by certified~~

mail to the owner or owners of such building, site or structure. Said notice shall describe the property which meets historic landmark criteria including its location and boundaries and justification of its historic or architectural significance. The notice shall also be delivered to the development services office with acknowledgment of receipt by the development services office.

(d) — Following application for a moving or demolition permit for a listed historic resource, a 90-day delay shall occur prior to the issuance of the requested moving or demolition permit in order for alternatives to be explored with the owner by the Topeka landmarks commission staff.

(e) — During such period, no permit shall be issued unless for emergency public safety reasons, or a certificate of appropriateness has been issued.

(f) After the delay, if demolition of the historic resource is the conclusive alternative of the Topeka landmarks commission, the Topeka landmarks commission shall direct staff to document the resource with photography, and/or measured drawings for record purposes.

Section 15. That section 18.255.140, Historic landmark and historic district demolition by neglect, of The Code of the City of Topeka, Kansas, is hereby repealed.

~~Historic landmark and historic district demolition by neglect.~~

~~In the event of demolition by neglect of a historic landmark or structure within a historic district on public or private property, the following provisions shall apply:~~

(a) — ~~If a historic landmark or a property within a historic district has been determined by the Topeka landmarks commission to be the subject of demolition by neglect, the Topeka landmarks commission or preservation staff shall provide the owner~~

of record with a written notice specifying the conditions of deterioration and the minimum items of repair or maintenance necessary to correct or prevent further deterioration

(b) Such notice shall be sent by certified mail, return receipt requested, addressed to the owner of the property, contract purchaser, if applicable, at his or her last known address, or the address shown on the real property tax records in the clerk's office of Shawnee County, Kansas. Such notice, when so addressed and deposited with the United States Postal Service with proper postage prepaid, shall be deemed complete and sufficient. In the event that notification cannot be accomplished, as aforesaid, after reasonable efforts, notice shall be accomplished by posting a public notice on the property. A copy shall also be provided to the development services office.

(c) The notice shall provide that corrective action shall commence no later than 30 days from the receipt or posting of said notice, unless an extension is granted by the Topeka landmarks commission. The owner or contract purchaser, if applicable, shall demonstrate continual progress and all repairs shall be completed within a reasonable period of time. The notice shall state that the owner(s) of record of the subject property may within 10 days request a hearing before the Topeka landmarks commission challenging the finding of demolition by neglect and/or the notice to repair. If such request for a hearing is received within this time period, a hearing will be at the next regular meeting of the Topeka landmarks commission. The Topeka landmarks commission shall review all evidence of demolition by neglect at the scheduled hearing.

(d) In the event that the Topeka landmarks commission finds that, notwithstanding the necessity for such improvements, corrective action would impose a

~~substantial hardship on the owner or any or all persons with any right or title in the subject property, then the commission shall establish a period of 45 days and direct preservation staff to seek alternative methods to preserve the historic landmark or property located within a historic district.~~

~~(e) If no alternative is found to preserve the structure without undue hardship to the owner, and any or all persons with any right or title in the subject property and the structure is determined a threat to human safety and is in violation of city code, a demolition permit may be issued.~~

Section 16. That section 18.255.160, Concurrent use of Topeka landmarks commission by the county commission, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows.

Concurrent use of Topeka landmarks commission by the county commission.

(a) The county commission, at its sole option, may seek the advice and assistance of the Topeka landmarks commission on designating and preserving historic assets, ~~historic resources~~ and historic districts located in Shawnee County.

(b) In the event the county commission seeks the advice and assistance of the Topeka landmarks commission, it shall receive such county staff support as directed and supplied by the county administration.

(c) The Topeka landmarks commission may be used by the county commission ~~for the~~ to recommend designation of local historic landmarks or districts located in the county ~~according to procedures and criteria established by the county commission.~~

(d) The county commission may rely upon the Topeka landmarks commission for assistance in establishing historic preservation guidelines ~~according to the criteria, standards, and factors specified by the county commission.~~

(e) The county commission may seek the recommendation of the Topeka landmarks commission on the demolition or issuance of a moving permit for a local historic landmark ~~or historic district located in the county according to such procedures and criteria established by the county commission.~~

Section 17. That section 18.255.170, Continuation of existing designation, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Continuation of existing designation.

Nothing contained in this section shall eliminate, change, or otherwise affect the existing designation of an local historic landmark or ~~an historic resource~~ local historic district in the city of Topeka or Shawnee County which was originally made by the Topeka-Shawnee County landmarks commission. Any such ~~historic landmark or resource~~ designation shall remain in force and effect.

Section 18. That original § 2.60.010, § 2.60.020, § 18.255.020, § 18.255.030, § 18.255.040, § 18.255.060, § 18.255.070, § 18.255.090, § 18.255.110, § 18.255.120, § 18.255.160 and § 18.255.170 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 19. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 20. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 21. 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 6, 2014.

CITY OF TOPEKA, KANSAS

ATTEST:

Larry E. Wolgast, Mayor

Brenda Younger, City Clerk