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3 **ORDINANCE NO. 19106**

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5 AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending  
6 City of Topeka Code §§ 112-3, 112-5, 112-21, 112-22, 112-23,  
7 112-42, 112-44, 112-61, 112-71, 112-72, 112-91, 112-93, 112-154,  
8 112-264, 112-291, and 112-294 through 112-299 concerning  
9 property maintenance enforcement authority and specifically  
10 repealing said original sections.

11  
12 BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TOPEKA, KANSAS:

13  
14 Section 1. That section 112-3, Findings, purpose and intent, of The Code of  
15 the City of Topeka, Kansas, is hereby amended to read as follows:

16 **Findings, purpose and intent.**

17 (a) This chapter shall be construed to secure its expressed intent, which is to  
18 ensure public health, safety and welfare.

19 (b) The Council of the City of Topeka finds that certain conditions as  
20 hereinafter defined cause annoyance, inconvenience or damage to the public with  
21 respect to the public's comfort, health, safety, welfare and enjoyment of property.  
22 Pursuant to the authority found in K.S.A. 12-1617e, K.S.A. 12-1617f, and K.S.A. 12-  
23 1617g, it is the purpose and intent of the city council to define and proscribe those  
24 conditions which are injurious to the public and which constitute a public nuisance. It is  
25 further the purpose and intent of the council, pursuant to K.S.A. 12-1617e and K.S.A.  
26 12-1617g to set forth and delegate responsibility to the ~~public works director~~chief of  
27 police for procedures regarding notice, abatement and prosecution of those individuals  
28 who allow property maintenance violations to exist.

29 (c) It is hereby further declared that the purpose of this chapter is to protect,  
30 preserve and promote the physical and mental health and social well-being of the

31 people of the city to prevent and control incidents of communicable diseases, to  
32 regulate privately and publicly owned structures for the purpose of maintaining  
33 adequate sanitation and public health, to protect the safety of the people and to promote  
34 the general welfare by legislation which shall be applicable to all structures now in  
35 existence or hereafter constructed.

36 (d) It is hereby further declared that the purpose of this chapter is to ensure  
37 that the quality of the interior of residential structures is adequate for the protection of  
38 public health, safety and general welfare, including establishment of minimum standards  
39 for basic equipment and facilities for light, ventilation and thermal conditions for safety  
40 from fire and accidents, for the use and location and amount of space for human  
41 occupancy, and for an adequate level of maintenance, including a determination of the  
42 responsibilities of owners, operators and occupants of residential structures; and  
43 provision for the administration and enforcement thereof.

44 Section 2. That section 112-5, Definitions, of The Code of the City of Topeka,  
45 Kansas, is hereby amended to read as follows:

46 **Definitions.**

47 The following words, terms and phrases, when used in this chapter, shall have  
48 the meanings ascribed to them in this section, except where the context clearly  
49 indicates a different meaning:

50 *Meaning of certain words.* Whenever the words "dwelling," "dwelling unit,"  
51 "rooming house," "rooming units," "premises" or "structures" are used in this chapter,  
52 they shall be construed as though they were followed by the words "or any part thereof."

53 *Accessory structure* means a detached structure which is not used or not

54 intended to be used for living or sleeping by human occupants and which is located on  
55 or partially on any premises.

56 *Agent* means any person who has charge, care, control or management of a  
57 structure or premises which is let or offered for occupancy.

58 *Appropriate authority* means the department, division or person who has the  
59 responsibility to administer and enforce the applicable code.

60 *Approved* means approved by the local or state authority having such  
61 administrative authority.

62 *Basement* means the lower level of a building located substantially below grade.

63 *Calendar year* as used herein means that period of time beginning January 1 and  
64 ending December 31 of the same year.

65 *Cellar* means a portion of a building located partially or wholly underground, and  
66 having half or more than half of its clear floor to ceiling height below the average grade  
67 of the adjoining ground.

68 *Chimney* means a vertical masonry shaft of reinforced concrete or other  
69 approved noncombustible, heat resistant material enclosing one or more flues, for the  
70 purpose of removing products of combustion from solid, liquid or gaseous fuel.

71 *Commercial structure* means any structure or any part thereof, which is used for  
72 other than residential purposes and where applicable, the premises on which such  
73 structures are situated.

74 *Dwelling* means any enclosed space that is wholly or partly used or intended to  
75 be used for living or sleeping by human occupants; provided, that temporary housing as  
76 defined in this section shall not be regarded as a dwelling.

77            *Dwelling unit* means any room or group of rooms located within a dwelling and  
78 forming a single habitable unit with facilities which are used or intended to be used for  
79 living, sleeping, cooking, sanitation and eating.

80            *Egress* means a place or means of going out.

81            *Extermination* means the control and elimination of insects, rodents and/or rats  
82 by eliminating their harborage places; by removing or making inaccessible materials  
83 that may serve as a food source; by poisoning, spraying, fumigating, trapping or by any  
84 other approved pest elimination methods.

85            *Flush toilet (water closet)*. A water-flushed plumbing fixture designed to receive  
86 human waste. This fixture shall have a means of delivering a minimum of one point six  
87 (1.6) gallons of water after each use, to thoroughly clean and sanitize the fixture.

88            *Garbage* means the animal or vegetable waste resulting from the handling,  
89 preparation, cooking and consumption of food.

90            *Graffiti* means any unauthorized writing, inscription, word, figure or design which  
91 is marked, etched, scratched, drawn or painted on any structural component of any  
92 building, structure or other facility, regardless of the nature of the material used in its  
93 application or upon which it is applied.

94            *Guest* means any person who shares a dwelling unit in a nonpermanent status  
95 for not more than thirty (30) days.

96            *Habitable space* means space in a structure for living, sleeping, eating or  
97 cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces, and similar  
98 areas not considered habitable spaces.

99            *Heated water* means water capable of being heated to a temperature of not less

100 than one hundred twenty degrees (120) Fahrenheit at the outlet.

101 *Household* means a family and/or one or more unrelated persons, including  
102 servants, who share the same dwelling and use some or all of its cooking and eating  
103 facilities.

104 *Imminent danger* means a condition that could cause serious or life-threatening  
105 injury or death at any time.

106 *Infestation* means the presence within or around a dwelling of any insects,  
107 rodents or rats.

108 *Ingress* means a place or means of going in.

109 *Inoperative vehicle* means any motor vehicle which cannot be moved under its  
110 own power, or cannot be operated lawfully on a public street or highway due to removal  
111 of, damage to, or deterioration of, or inoperative condition or absence of any component  
112 part, or the lack of an engine, transmission, wheels, tires, doors, or windshield or  
113 windows necessary for such lawful operation.

114 *Inspector* means the designated staff member in the ~~public works~~police  
115 department.

116 *Kitchen* means any room containing any or all of the following equipment, or any  
117 area of a room within three (3) feet of such equipment: sink and/or other device for  
118 dishwashing, stove or other device for cooking, refrigerator for cool storage of food  
119 (between thirty-two degrees (32°) and forty-five degrees (45°) Fahrenheit), cabinets  
120 and/or shelves for storage of equipment and utensils, and table or counter for food  
121 preparation.

122 *Kitchenette* means a small kitchen or an alcove containing cooking facilities.

123           *Motor vehicle* means a machine propelled by power other than human power and  
124 designed to travel along the ground by use of wheels, treads, runners or slides and  
125 which transports persons or property or pulls machinery, and shall include without  
126 limitation an automobile, truck, trailer, motorcycle, tractor, buggy and wagon.

127           *Multiple dwelling* means any dwelling containing more than two dwelling units or  
128 rooming units.

129           *Nonresidential structures* means any structure or any part thereof, which is used  
130 for other than residential purposes, and where applicable, the premises on which such  
131 structures are situated.

132           *Notice* means a written statement issued by the ~~public works director~~chief of  
133 police declaring a condition to be substandard.

134           *Nuisance* means any condition which injures or endangers the comfort, repose,  
135 health, safety or welfare of the public; offends decency; is offensive to the senses;  
136 unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for  
137 passage any public or private street, highway, sidewalk, stream, ditch or drainage; in  
138 any way renders another person insecure in life or the use of property; or essentially  
139 interferes with the comfortable enjoyment of life and property, or tends to depreciate the  
140 value of the property of another.

141           *Occupancy* means the purpose for which a building or portion thereof is utilized  
142 or occupied.

143           *Occupant* means any person over one (1) year of age, living, sleeping, cooking  
144 or eating in, or actually having possession of, a dwelling unit or a rooming unit, except  
145 that in dwelling units a guest will not be considered an occupant.

146            *Owner* means any person who, alone or jointly or severally with others, shall  
147 have:

148            1.     Legal title to any premises, dwelling or dwelling unit, with or without  
149 accompanying actual possession thereof; or

150            2.     Charge, care or control of any premises, dwelling or dwelling unit, as  
151 owner or agent of the owner, or as executor, administrator, purchaser under contract,  
152 taxpayer, trustee or guardian of the estate of the owner. Any such person thus  
153 representing the actual owner shall be bound to comply with the provisions of any notice  
154 and order and of rules and regulations adopted pursuant thereto, to the same extent as  
155 if the person were the owner.

156            *Permissible occupancy* means the maximum number of persons permitted to  
157 reside in a dwelling unit or rooming unit.

158            *Plumbing* means and includes all of the following supplied facilities and  
159 equipment: gas pipes, gas burning equipment, water pipes, garbage disposal units,  
160 waste pipes, toilets, sinks, installed dishwashers, lavatories, bathtubs, shower baths,  
161 installed clothes washing machines, catch basins, drains, vents and any other similar  
162 supplied fixtures, and the installation thereof, together with all connections to water,  
163 sewer or gas lines.

164            *Premises* means a platted lot or part thereof or unplatted lot or parcel of land or  
165 plot of land, either occupied or unoccupied by any dwelling or non-dwelling structure,  
166 and includes any such dwelling, accessory structure or other structure thereon.

167            *Privacy* means the existence of conditions which will permit a person to carry out  
168 an activity commenced without interruption or interference, either by sight or sound, by

169 unwanted persons.

170 *PUC* means a purchaser of real estate under an installment land contract.

171 *Rat harborage* means any place where rats or rodents can live, nest or seek  
172 shelter.

173 *Rat proofing* means construction, which will prevent the ingress or egress of rats  
174 or rodents to or from a given space in a building, or prevent access to food, water or  
175 harborage. It consists of the closing and keeping closed of every opening in  
176 foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs,  
177 sidewalk gratings, sidewalk openings, and other places that may be reached and  
178 entered by rats or rodents through by climbing, burrowing or other methods, by the use  
179 of materials impervious to rat or rodent gnawing, and other methods approved by the  
180 appropriate authority.

181 *Refuse* includes garbage and trash, but is not limited to waste matter from the  
182 preparation of food, yard trimmings, paper, boxes, wood, glass, crockery and metals.

183 *Refuse container* means a container that is impermeable by water or air and that  
184 is capable of being serviced without creating unsanitary conditions. Openings into the  
185 container such as covers and doors shall be tight-fitting.

186 *Residential board and care facility* means a facility as defined by Topeka City  
187 Code section 70-191.

188 *Residential structures* means any building, dwelling or structure, or part thereof,  
189 used and occupied or intended to be used and occupied for human habitation, and  
190 including any appurtenances belonging thereto or usually enjoyed therewith.

191 *Rooming house* means any dwelling or that part of any dwelling containing one

192 (1) or more rooming units.

193 *Rooming unit* means any room or group of rooms forming a single habitable unit  
194 used or intended to be used for living or sleeping, but not for cooking purposes.

195 *Safety* means the condition of being free from danger and hazards which may  
196 cause accidents or disease.

197 *Space heater* means a self-contained heating appliance of either the circulating  
198 type or the radiant type and intended primarily to heat only one (1) room.

199 *Structures* means anything constructed or erected which requires location on the  
200 ground or attached to something having a location on the ground including retaining  
201 walls.

202 *Supplied* means paid for, furnished by, provided by, or under the control of the  
203 owner, occupant, PUC, or agent.

204 *Temporary housing* means any tent, trailer, mobile home or any other structure  
205 used for human shelter which is designed to be transportable and which is not attached  
206 to the ground, to another structure or to any utility system on the same premises for  
207 more than thirty (30) consecutive days.

208 *Tenant* means a person, corporation, partnership or group, whether or not the  
209 legal owner of record, occupying a building or portion thereof as a unit.

210 *Trash* means solid wastes, excluding ashes, consisting of either:

211 1. Combustible wastes such as paper, cardboard, plastic containers, yard  
212 clippings and wood; or

213 2. Noncombustible wastes such as tin cans, glass and crockery.

214 *Unsafe structure* means one that is unfit for human use or habitation due to

215 dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of  
216 ventilation, light, sanitary facilities or other conditions which render such structures  
217 unsafe, unsanitary, or otherwise injurious to the welfare of the residents of the city.

218 *Vegetation* means, but is not limited to, weeds, woody vines, brush, grass and  
219 uncultivated plants.

220 *Weeds* means the existence of excessive accumulations or untended growth of  
221 weeds, grasses, undergrowth and uncultivated plants which threatens or endangers the  
222 public health, safety or welfare or may reasonably cause disease, harbor vermin and  
223 insects, or which adversely affects and impairs the economic welfare of the adjacent  
224 property is hereby prohibited.

225 Section 3. That section 112-21, Authority to enforce, of The Code of the City  
226 of Topeka, Kansas, is hereby amended to read as follows:

227 **Authority to enforce.**

228 The ~~public works director~~ chief of police and/or his or her designee, hereinafter  
229 referred to as the ~~public works director~~ chief of police, shall be charged with the  
230 administration and enforcement of this chapter.

231 Section 4. That section 112-22, Authorization to enter premises, of The Code  
232 of the City of Topeka, Kansas, is hereby amended to read as follows:

233 **Authorization to enter premises.**

234 To the extent authorized by law, the ~~public works director~~ chief of police may  
235 enter on such premises at reasonable times to make inspections and to determine  
236 whether a violation exists. If upon investigation the ~~public works director~~ chief of police  
237 determines that a violation exists, proper notice as provided in this chapter shall be

238 given to the owner and occupant, if applicable, of the premises on which the violation is  
239 located. The ~~Public Works Director~~chief of police shall proceed to cause the violation to  
240 be corrected, abated or suppressed.

241 Section 5. That section 112-23, Emergency measures—Notices of less than  
242 five (5) days, of The Code of the City of Topeka, Kansas, is hereby amended to read as  
243 follows:

244 **Emergency measures--Notices of less than five (5) days.**

245 Whenever in the judgment of the ~~public works director~~chief of police and/or fire  
246 chief or designee an emergency exists which poses an immediate hazard requiring  
247 immediate action to protect public health, safety or welfare, an order may be issued,  
248 without written notice, or hearing, directing the owner, occupant, PUC or agent to take  
249 such action as is appropriate to correct or abate the emergency. The ~~public works~~  
250 ~~director~~chief of police shall attempt to contact the owner, occupant, PUC or agent and  
251 seek their immediate action to abate the emergency. If such attempt is unsuccessful,  
252 the ~~public works director~~chief of police may act to correct or abate the emergency.

253 Section 6. That section 112-42, Nuisance violation, weeds/grasses contents,  
254 manner of service, of The Code of the City of Topeka, Kansas, is hereby amended to  
255 read as follows:

256 **Nuisance violation, weeds/grasses contents, manner of service.**

257 (a) Notice of a nuisance violation of the provisions contained in Article II of  
258 this chapter specifically relating to weeds and/or grasses shall comply with all notice  
259 and service requirements contained in K.S.A. 12-1617f, and any amendments thereto.

260 (b) As authorized by K.S.A. 12-1617f, the ~~public works director~~chief of police

261 is specifically authorized to provide a minimum one (1) time yearly written notice by mail  
262 or personal service to the owner, occupant, PUC or agent which will permit subsequent  
263 abatement mowings without any additional notice. The notice provided under this  
264 section shall also include a statement that no further notice shall be given prior to the  
265 cutting or removal of weeds.

266 Section 7. That section 112-44, Property maintenance violations, contents and  
267 manner of service, of The Code of the City of Topeka, Kansas, is hereby amended to  
268 read as follows:

269 **Property maintenance violations, contents and manner of service.**

270 Notice of a violation of the provisions contained in Article III Property  
271 Maintenance Standards of this chapter, specifically relating to property maintenance  
272 violations shall contain the following:

273 (1) *Content of notice.*

274 a. The street address and a legal description sufficient for  
275 identification of the premises upon which the structure is located.

276 b. A statement that the ~~public works director~~ chief of police has found  
277 the structure to be substandard with a brief and concise description of the  
278 conditions found to render the building in violation of the property maintenance  
279 code.

280 c. A statement of the corrective action required to be taken as  
281 determined by the ~~public works director~~ chief of police and reasonable time not to  
282 exceed sixty (60) days from the date of service or publication for corrective action  
283 to be completed. One (1) extension of time not to exceed sixty (60) days to

284 complete corrective action may be granted by the administrative hearing officer  
285 or the ~~public works director~~chief of police upon request of the owner of record if  
286 dictated by adverse weather conditions or other exigent circumstances. In the  
287 event corrective action requires exterior repairs which are weather sensitive such  
288 as but not limited to roofing, painting, foundation work, then additional  
289 extension(s) of time may be granted by the administrative hearing officer or  
290 ~~public works director~~chief of police.

291 d. Statement advising that if any required repair work (not including  
292 vacation of the building or structure) is not completed within the time specified,  
293 the ~~public works director~~chief of police may order the structure vacated and  
294 posted to prevent further occupancy until the work is completed. If the ~~public~~  
295 ~~works director~~chief of police determines that the building or structure must be  
296 vacated, the notice and order shall require that the building or structure shall be  
297 vacated within a certain time from the date of the order as determined by the  
298 ~~public works director~~chief of police to be reasonable. A statement that if the  
299 property maintenance code violation is not corrected within the time stated in the  
300 notice an administrative monetary penalty shall be imposed.

301 e. Statement advising that the owner may elect to demolish the  
302 building or structure after securing all necessary permits instead of performing  
303 the repair work. If the building or structure is demolished by the owner, the notice  
304 shall be canceled.

305 f. Statements advising (a) that any person having any record, title or  
306 legal interest in the building may appeal from the notice or any action of the

307 ~~public works director~~chief of police to the administrative hearing officer. The  
308 appeal request made shall be to the ~~public works director~~chief of police within ten  
309 (10) calendar days from the date of service of such notice and order, and (b) that  
310 failure to appeal will constitute a waiver of all right to an administrative hearing  
311 and determination of the matter.

312 g. Statement advising that failure to comply with the notice or failure to  
313 appeal or seek a variance from the same, may result in prosecution in Municipal  
314 Court.

315 h. Information on the availability of housing programs that assist  
316 owners in the rehabilitation of property.

317 (2) *Service of notice.* The notice and any amended or supplement notice  
318 shall be served upon the owner of record, and one (1) copy thereof shall be served on  
319 each of the following if known or disclosed from official public records; i) the holder of  
320 any mortgage or deed of trust or other lien or encumbrance of record; ii) the holder of  
321 any other estate or legal interest of record in or to the building or the land on which it is  
322 located. The failure of the ~~public works director~~chief of police to serve any person  
323 required herein to be served shall not invalidate any proceedings hereunder as to any  
324 other person duly served or relieve any such person from any duty or obligation  
325 imposed by the provisions of this section.

326 (3) *Method of service.* Service of the notice shall be made upon all persons  
327 entitled either personally or by mailing a copy of such notice by certified mail, postage  
328 prepaid, return receipt requested, to each such person at their address as it appears on  
329 the register of deeds, Shawnee County records. If the location of such person is

330 unknown or if no address of such person so appears after diligent effort, then a copy of  
331 the notice shall be posted, at the address of the building involved in the proceedings,  
332 and such notice shall be published once in the official city paper. The failure of any such  
333 person to receive such notice shall not affect the validity of any proceedings taken  
334 under this section. Service by certified mail in the manner herein provided shall be  
335 effective on the date of receipt.

336 (4) *Proof of service.* Proof of service of the notice shall be certified at the time  
337 of service by a written declaration under penalty of perjury executed by the person  
338 effecting service, declaring the time, date and manner in which service was made. The  
339 declaration, together with any receipt card returned in acknowledgment of receipt by  
340 certified mail, shall be affixed to the copy of the notice retained by the ~~public works~~  
341 ~~director~~chief of police.

342 Section 8. That section 112-61, Placarding and order to vacate, of The Code  
343 of the City of Topeka, Kansas, is hereby amended to read as follows:

344 **Placarding and order to vacate.**

345 (a) After notice and hearing as provided by this section, the administrative  
346 hearing officer shall issue an administrative placard order which shall be served in  
347 accordance with the applicable state statute. If the administrative hearing officer  
348 determines that a dwelling, dwelling unit or rooming unit is unfit for human habitation,  
349 the ~~public works director~~chief of police shall placard the dwelling, dwelling unit or  
350 rooming unit, indicating that it is unfit for human habitation, and, if occupied, shall order  
351 the dwelling, dwelling unit or rooming unit vacated within a reasonable time, such time  
352 to be not less than three (3) days nor more than thirty (30) days.

353 (b) Every administrative placard order shall in addition to being served as  
354 provided for shall also be posted conspicuously upon a structure and shall be in  
355 substantially the following form:

356 DO NOT ENTER  
357 UNSAFE TO OCCUPY

358 It is a misdemeanor to occupy this structure per § \_\_\_\_\_, Topeka City Code, or to  
359 deface this notice,  
360 Code Compliance Services  
361 City of Topeka

362 (c) No person shall remain in or enter any structure that has been so posted,  
363 except that entry may be made to repair or demolish such structure. If building or other  
364 permits are required, it shall be the responsibility of the owner, occupant, PUC, or agent  
365 to obtain and comply with such permits. No person shall remove or deface any such  
366 notice after it is posted until the required repairs or demolition have been completed and  
367 inspected. Any person violating this subsection shall be guilty of a misdemeanor.

368 (d) The ~~public works director~~chief of police shall rescind in writing, the  
369 designation as unfit for human habitation and remove the placard when the defect or  
370 condition upon which such designation and such placarding was based has been  
371 removed or eliminated so as to cause the structure to be safe, clean, and a fit place for  
372 human habitation.

373 Section 9. That section 112-71, Designation of hearing officer; procedure,  
374 penalty for failure to comply with administrative order, of The Code of the City of  
375 Topeka, Kansas, is hereby amended to read as follows:

376           **Designation of hearing officer; procedures, penalty for failure to comply**  
377 **with administrative order.**

378           (a) For purposes of this article, the city shall designate an administrative  
379 hearing officer who shall have the duty and authority to hear and enter such  
380 administrative orders as are necessary to the enforcement of this chapter.

381           (b) The owner, occupant, PUC or agent may request a hearing within the time  
382 specified in the notice of violation. The administrative hearing officer shall schedule a  
383 hearing within three (3) working days of receipt of the hearing request. Written notice of  
384 the hearing date and time shall be provided to the person requesting the hearing by first  
385 class mail. At the hearing, the owner, occupant, PUC or agent shall be given the  
386 opportunity to present information relevant to the violation notice. The ~~public works~~  
387 ~~director~~chief of police also shall be given the opportunity to present information relevant  
388 to the violation notice. The hearing may be continued to a later time in exceptional  
389 cases where additional information is needed, as determined by the hearing officer.

390           (c) The administrative hearing officer shall review the notice of violation and  
391 all relevant information. If the hearing officer determines after such review that: 1) a  
392 violation exists; 2) no request for a hearing has been made by the owner, occupant,  
393 PUC or taxpayer/agent; and 3) the condition remains unabated, then the hearing officer  
394 shall enter an administrative order. The administrative order shall contain: (1) a finding  
395 of whether the city properly sent notice to the owner, occupant, PUC or agent in  
396 accordance with provisions herein; (2) a finding of the violation conditions which exist;  
397 (3) the failure of the owner, occupant, PUC or agent to abate or otherwise remove the  
398 violated conditions and (4) an administrative monetary penalty for failure to correct the

399 violations.

400 (d) If, after any order of the administrative hearing officer has become final,  
401 the person to whom such order is directed shall fail, neglect, or refuse to obey such  
402 order, the ~~public works director~~chief of police may cause such person to be prosecuted  
403 in Municipal Court for violations of this chapter.

404 (e) The administrative hearing officer shall provide the option of daytime or  
405 telephone administrative hearing times.

406 (f) The administrative hearing officer may grant variances from the provisions  
407 of this chapter or from applicable rules and regulations issued by the ~~public works~~  
408 ~~director~~chief of police when not inconsistent with the intent of this chapter.

409 Section 10. That section 112-72, Criteria for granting variances, of The Code of  
410 the City of Topeka, Kansas, is hereby amended to read as follows:

411 **Criteria for granting variances.**

412 The administrative hearing officer may grant variances from the provisions of this  
413 chapter or from applicable rules and regulations issued by the ~~public works director~~chief  
414 of police-when the administrative hearing officer finds that:

415 (1) There is practical difficulty or unnecessary hardship connected with the  
416 performance of any act required by the Property Maintenance Code and applicable  
417 rules and regulations;

418 (2) Strict adherence to such provisions would be arbitrary in the case at hand;

419 (3) Extension of time to comply would not provide an appropriate remedy in  
420 the case at hand; and

421 (4) Such variance is in harmony with the general purpose of this chapter to

422 secure the public health, safety and welfare.

423 Section 11. That section 112-91, Abatements, of The Code of the City of  
424 Topeka, Kansas, is hereby amended to read as follows:

425 **Abatements.**

426 Upon the expiration of the voluntary compliance period stated in the notice of  
427 violation, the ~~public works director~~chief of police shall reinspect the property. In the  
428 event that the owner, occupant, PUC or agent in charge of the premises neglects or  
429 fails to comply with the notice requirements, the ~~public works director~~chief of police may  
430 proceed to abate such violation. If abated, the ~~public works director~~chief of police shall  
431 prepare a statement of costs incurred in the abatement along with any applicable  
432 administrative fees. The abatement of a violation of this chapter under the direction of  
433 the ~~public works director~~chief of police shall not be a defense or excuse to the owner of  
434 property not conforming to this article.

435 Section 12. That section 112-93, Assessment of costs, of The Code of the City  
436 of Topeka, Kansas, is hereby amended to read as follows:

437 **Assessment of costs.**

438 The ~~public works director~~chief of police shall give notice to the owner of the costs  
439 of abatement specifically including the administrative costs in the form and manner  
440 specified in K.S.A. 12-1617e or K.S.A. 12-1617f, and any amendments thereto. If the  
441 costs of removal or abatement remain unpaid after thirty (30) days following service of  
442 notice, the city may assess the costs against the property or pursue collection as  
443 provided in K.S.A. 12-1617e, 12-1617f, 12-1750, et seq. and K.S.A. 12-1, 115 and any  
444 amendments thereto.

445            Section 13. That section 112-154, Inoperative vehicles, of The Code of the City  
446 of Topeka, Kansas, is hereby amended to read as follows:

447            **Inoperative vehicles.**

448            (a) No junked, wrecked or inoperable vehicle(s) shall be stored or located at  
449 any business operating within fifty (50) feet of a school where, in the judgment of the  
450 ~~public works director~~chief of police such storage or location of the vehicle(s) will  
451 jeopardize the public safety, health and welfare.

452            (b) Any junked, wrecked or inoperable vehicle(s) or part thereof may only be  
453 stored or parked in conjunction with an otherwise licensed vehicle dealer, lawfully  
454 licensed auto repair related business, or lawfully licensed salvage yard, any and all of  
455 which must be operated in accordance with all applicable zoning requirements at the  
456 time of a violation notice in order for this exception to apply. The property owner shall  
457 have the burden of proof to show that they are operating a lawfully licensed business  
458 from the violation address and the property is zoned to allow this type of business use.  
459 This exception shall not be construed to authorize the use or maintenance of any  
460 premises contrary to any other provisions of any local, state, or federal law. If the  
461 property owner fails to produce affirmative evidence of licensing and zoning compliance  
462 as required by this section, the owner's defense under this section shall be stricken and  
463 an order shall be issued for abatement of the vehicle or part thereof.

464            Section 14. That section 112-264, Bedding, bed linen and towels, of The Code  
465 of the City of Topeka, Kansas, is hereby amended to read as follows:

466            **Bedding, bed linen and towels.**

467            Unless exempted by the ~~public works director~~chief of police in writing, the

468 operator of every residential board and care facility or rooming house shall change any  
469 supplied bed linen and towels therein at least once a week, and prior to the renting of  
470 any room to any occupant. The operator shall be responsible for the maintenance,  
471 cleanliness and good repair of any supplied bedding, bed linen and towels.

472 Section 15. That section 112-291, Petition; issuance of complaint, of The Code  
473 of the City of Topeka, Kansas, is hereby amended to read as follows:

474 **Petition; issuance of complaint.**

475 Whenever a petition is filed with the ~~public works director~~chief of police by at  
476 least five (5) residents of the city charging that any structure is unfit for human use or  
477 habitation, or whenever it reasonably appears to the ~~public works director~~chief of police  
478 that any structure is unfit for human use or habitation, the ~~public works director~~chief of  
479 police shall, if the preliminary investigation discloses a basis for such charges, issue  
480 and cause to be served upon the owner, every mortgagee of record, and all parties with  
481 a legal interest or an equitable interest filed of record with the Shawnee County Register  
482 of Deeds Office in such structure, including persons in possession, a complaint stating  
483 the charges in that respect. Such complaint shall contain a notice that a hearing will be  
484 held before the administrative hearing officer at a place therein fixed not less than ten  
485 (10) days nor more than thirty (30) days after the serving of the complaint; provided, that  
486 the owner, mortgagee and parties in interest shall be given the right to file an answer to  
487 the complaint and to appear in person, or otherwise, and give testimony at the place  
488 and time fixed in the complaint.

489 Section 16. That section 112-294, Order to repair or demolish, of The Code of  
490 the City of Topeka, Kansas, is hereby amended to read as follows:

491 **Order to repair or demolish.**

492 (a) After notice and hearing under this article, if the administrative hearing  
493 officer determines that the structure under consideration is unfit for human use or  
494 habitation or otherwise endangers the life, health, property or safety of its inhabitants or  
495 the public, the administrative hearing officer shall state in writing the findings of facts in  
496 support of such determination and shall issue and cause to be served upon the owner  
497 thereof an order which:

498 (1) If repair, alteration or improvement of the structure can be made at a  
499 reasonable cost in relation to the value of the structure, which cost shall not exceed  
500 thirty percent (30%) of the replacement value of such structure as established by the  
501 Shawnee County Appraiser, the owner of the structure shall, within the time specified in  
502 the order, repair, alter or improve such structure to render it fit for human use or  
503 habitation; or

504 (2) If the repair, alteration or improvement of the structure cannot be made at  
505 a reasonable cost in relation to the replacement value, that is to say, thirty percent  
506 (30%) or less of the replacement value of such structure, which percentage is hereby  
507 deemed to be a reasonable standard by which to require either repair, alteration or  
508 improvement, or removal or demolition, the owner shall within the time specified in the  
509 order remove or demolish such structure.

510 (3) If there is no replacement value of the structure established by the  
511 Shawnee County Appraiser then the ~~public works director~~ chief of police shall cause the  
512 structure to be valued for purposes of replacement by a state certified appraiser.

513 (b) The administrative hearing officer shall have the power to affirm, modify or

514 revoke the notice or order provided for in this section, and may grant an extension of  
515 time not to exceed ninety (90) days for the performance of any act required where the  
516 administrative hearing officer finds that there is practical difficulty or undue hardship  
517 connected with the performance of any act required by the provisions of this article or by  
518 applicable rules and regulations issued pursuant thereto and that such extension is in  
519 harmony with the general purpose of this article to secure public health, safety and  
520 welfare.

521 Section 17. That section 112-295, Service of complaints and orders, of The  
522 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

523 **Service of complaints and orders.**

524 Complaints or orders issued shall be served upon persons either personally or by  
525 registered or certified mail. If the whereabouts of such person are unknown and the  
526 same cannot be ascertained by the ~~public works director~~chief of police in the exercise of  
527 reasonable diligence, and the ~~public works director~~chief of police shall make an affidavit  
528 to that effect, then the serving of such complaint or order upon such persons may be  
529 made by publishing the complaint or order once each week for two (2) consecutive  
530 weeks in the official city newspaper. A copy of such complaint or order shall also be  
531 posted in a conspicuous place on the premises affected by the complaint or order, and  
532 copies of such complaint or order shall be filed with the Register of Deeds Office,  
533 Shawnee County, and the Clerk of the District Court of Shawnee County, and such  
534 filings of the complaint or order shall have the same force and effect as other lis  
535 pendens orders provided by law.

536 Section 18. That section 112-296, Failure to comply with order, of The Code of

537 the City of Topeka, Kansas, is hereby amended to read as follows:

538 **Failure to comply with order.**

539 (a) If the owner fails to comply with an order to repair, alter or improve or to  
540 vacate and close the structure, the ~~public works director~~chief of police may cause such  
541 structure to be repaired, altered or improved, or to be vacated and closed.

542 (b) If the owner fails to comply with an order to remove or demolish the  
543 structure, the ~~public works director~~chief of police may cause such structure to be  
544 removed or demolished.

545 Section 19. That section 112-297, Inspection before demolition, of The Code of  
546 the City of Topeka, Kansas, is hereby amended to read as follows:

547 **Inspection before demolition.**

548 All demolition to be undertaken by the city shall be preceded by an inspection of  
549 the premises by the ~~public works director~~chief of police to determine the need for  
550 extermination procedures and asbestos abatement procedures. If the premises are  
551 found to be infested, appropriate rodent extermination shall be instituted before, during  
552 and after demolition to prevent the spread of rodents to adjacent properties. If asbestos  
553 abatement procedures are necessary, appropriate procedures will be instituted for  
554 asbestos removal.

555 Section 20. That section 112-298, Filling in of excavations, of The Code of the  
556 City of Topeka, Kansas, is hereby amended to read as follows:

557 **Filling in of excavations.**

558 Whenever a structure is demolished, whether carried out by the owner or by the  
559 ~~public works director~~chief of police, such demolition shall include the filling in of the

560 excavation remaining on the property on which the demolished structure was located, in  
561 such manner as to eliminate all potential danger to the public health, safety or welfare  
562 arising from such excavation. The excavation must be filled with non-degradable  
563 materials. All foundation materials, if allowable as fill, must be lowered a minimum of  
564 two (2) feet below grade. Concrete basement floors must be holed to permit drainage  
565 from the site.

566 Section 21. That section 112-299, Costs may be assessed as a lien, of The  
567 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

568 **Costs may be assessed as a lien.**

569 (a) The amount of the cost of repairs, alterations or improvements, vacating  
570 and closing, or removal or demolition including the costs of extermination and/or  
571 asbestos abatement procedures by the ~~public works director~~chief of police shall be a  
572 lien against the real property upon which such cost was incurred and such lien,  
573 including as part thereof allowance of the ~~public works director~~chief of police's costs,  
574 may be foreclosed in judicial proceedings in the manner provided or authorized by law  
575 for loans secured by liens on real property, or shall be assessed as a special  
576 assessment against the lot or parcel of land on which the structure was located. The city  
577 clerk shall, at the time of certifying other city taxes, certify the unpaid portion of the  
578 aforesaid costs. The county clerk shall also extend the same on the tax rolls of the  
579 county against the lot or parcel of land. If the structure is removed or demolished by the  
580 ~~public works director~~chief of police, salvage value of the structure if any shall be  
581 credited against the costs of removal or demolition.

582 (b) Any taxes, assessments, fees or other charges imposed by this chapter,

583 including any assessments levied against private property owners for the purpose of  
584 recovering demolition costs incurred, shall be deposited in the city unsafe structure  
585 fund.

586 Section 22. That original §§ 112-3, 112-5, 112-21, 112-22, 112-23, 112-42,  
587 112-44, 112-61, 112-71, 112-72, 112-91, 112-93, 112-154, 112-264, 112-291, and 112-  
588 294 through 112-299 of The Code of the City of Topeka, Kansas, is hereby specifically  
589 repealed.

590 Section 23. This ordinance shall take effect and be in force from and after its  
591 passage, approval and publication in the official City newspaper.

592 PASSED AND APPROVED by the City Council June 17, 2008.

593  
594 CITY OF TOPEKA, KANSAS

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599 \_\_\_\_\_  
600 William W. Buntin, Mayor

601 ATTEST:  
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604 \_\_\_\_\_  
605 Brenda Younger, City Clerk