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ORDINANCE NO. 20183

AN ORDINANCE introduced by City Manager Brent Trout, regarding the filing and disposition of claims, amending, revising and repealing various sections in Chapter 3.35 of the Topeka Municipal Code.

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

Section 1. That section 3.35.010, Filing, investigation, disposition, and appeal of damage claims, of The Code of the City of Topeka, Kansas, is hereby renumbered as 3.35.030 and amended to read as follows:

Filing, investigation, disposition, and appeal of damage Disposition;

settlement of claims.

(a) Every claim for damages against the city shall be filed by depositing such claim with the city clerk.

(b) Whenever the city clerk receives a claim for damages, the clerk shall forthwith submit a copy of the claim to the city attorney.

(c) If the claim for damages is in an amount greater than $10,000, the city attorney shall make a recommendation to the council concerning disposition of the claim. If the claim is in an amount of $10,00 or less, the city attorney shall have the authority to negotiate settle or deny such any claim. If, in the judgment of the city attorney the city may be legally liable for a claim, the city attorney, with the concurrence of the city manager, shall have the authority to negotiate a settlement of the claim in an amount not to exceed $35,000.

(db) If the city attorney’s disposition of claims in an amount of $10,000 or less is unsatisfactory to the claimant, then the claimant is entitled to appeal in writing that
disposition to the council. Any such appeal must be filed within 30 days of the
disposition by the city attorney. No payment for a claim in an amount greater than
$35,000 shall be made unless the payment is recommended by the city attorney and
subsequently approved by the governing body.

(c) Notwithstanding the emotional merits of a claim, the city shall not, as a
general rule, settle any claim unless there is substantial evidence, in the opinion of the
city attorney, that the city may be legally liable.

Section 2. That section 3.35.020, Filing of claims for damages and
condemnation proceedings, of The Code of the City of Topeka, Kansas, is hereby
amended to read as follows:

Filing of claims for damages and condemnation proceedings.

(a) Appraisers’ reports in condemnation proceedings shall be filed with the
city clerk. Every claim against the city shall be submitted in writing to the city clerk.

(b) The city clerk, upon the filing of a claim for damages or an appraisers’
report in a condemnation proceeding, shall mark it filed and shall note the date of the
filing thereon. Whenever the city clerk receives a claim, the clerk shall submit a copy of
the claim to the city attorney. If the claim is a motor vehicle claim, the clerk shall submit
a copy of the claim to risk management.

(c) The city clerk shall keep a record of the filing of all claims for damages
against the city and all appraisers’ reports in condemnation proceedings, showing in the
record the date of the filing of the claim or the report and the name of the person filing
the claim or report.

Section 3. That section 3.35.030, Definitions, of The Code of the City of
Topeka, Kansas, is hereby renumbered as 3.35.010 and amended to read as follows:

Definitions.

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

“Claim” means a municipal tort or civil rights claim against the city or against an employee of the city that could give rise to an action brought under the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., as amended.

“Employee” means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of the city, including elected or appointed officials and persons acting on behalf or in service of the city in any official capacity, whether with or without compensation. Such term does not include an independent contractor under contract with the city. Such term does include former employees for acts and omissions within the scope of their employment during their former employment with the city.

“Motor vehicle claim” means a claim involving a motor vehicle owned by the city.

Section 4. That section 3.35.040, Defenses - Waiver, of The Code of the City of Topeka, Kansas, is hereby repealed.

Defenses – Waiver.

All civil claims against the city shall be processed and defended by the legal department of the city. Nothing contained in this chapter shall prohibit the legal department from obtaining outside counsel for additional assistance whenever the need arises, subject to the approval of the city manager; provided, that if an employee elects
to retain counsel outside that provided by the city, without the consent of the city attorney, such employee waives the right to payment by the city of such attorney fees. Provided further, the city may refuse to provide employee defense of an action if the city determines that:

(a) The act or omission was not within the scope of the employee's employment;

(b) The employee acted or failed to act because of actual fraud or actual malice;

(c) The city's defending would create a conflict of interest between the city and the employee; or

(d) The employee fails to deliver written notice to the city clerk within 15 days of service of summons as required by this chapter.

Section 5. That section 3.35.050, Funding, of The Code of the City of Topeka, Kansas, is hereby renumbered as 3.35.040 and amended to read as follows:

Funding.

(a) Each year at the time for preparation of the annual operating budget, the city council, governing body shall determine an amount which is deemed to be necessary and which they will authorize and provide in the subsequent year for the special liability expense fund. At the same time, the director of administrative and financial services and a city attorney shall agree on an estimated and probable amount, which will remain unexpended at the end of the year and which will be carried forward to the subsequent year in the special liability expense fund. The city council, governing body will then cause a general property tax to be levied in an amount which, together with the carryover
balance and any revenue from any other source, will provide for the amount determined to be necessary.

(b) If at any time during any year, the amount provided in the special liability expense fund shall be determined to be insufficient to pay the outstanding costs and expenditures necessary for which the fund is provided for that year, the city attorney shall formulate and recommend a plan to provide additional funds. The plan shall be within the guidelines of applicable law and shall be submitted to the city council governing body for action. Funds of the city which are properly classified as enterprise funds as defined by the National Council of Governmental Accounting, which shall include, but not be limited to, the water fund, water pollution control wastewater fund, golf course stormwater fund, and public parking stations operating fund, Quincy garage fund, and Townsite Plaza garage fund, shall reimburse the special liability expense fund for all costs and expenditures incurred by such fund for the benefit of the enterprise fund.

Section 6. That section 3.35.060, Settlement of Claims, of The Code of the City of Topeka, Kansas, is hereby repealed.

Settlement of claims.

(a) The city shall not, as a general rule, compromise or settle any tort claim unless there is substantial evidence that the city or its employees may be legally liable. The city attorney shall render an opinion as to each claim filed against the city regarding the extent of the city's liability.

(b) The city attorney shall have the power to settle claims and authorize payment of judgments up to $10,000. However, if the claim or judgment exceeds $10,000, the
city attorney and director of administrative and financial services shall meet and submit a proposal for action, under statutory guidelines, to the city council for approval.

Section 7. That section 3.35.070, Notice of service, of The Code of the City of Topeka, Kansas, is hereby renumbered as 3.35.050, and amended to read as follows:

**Employees; Duty to Notify—Notice and Defense.**

(a) Any employee sued in connection with a function performed for an act or omission that arose in the scope of the employee’s duty shall deliver written notice, including a copy of the summons, to the city clerk within 15 days of the employee being served with the summons. The clerk shall immediately deliver a copy of such notice and summons to the city attorney.

(b) An employee sued for an act or omission that arose in the scope of the employee’s duty shall submit a request to the city attorney, in writing, to provide for his/her defense. Such request shall be delivered within 15 days after service of process upon the employee. The employee shall reasonably cooperate in good faith in any defense provided by the city.

Section 8. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 3.35.060, which said section reads as follows:

**Motor vehicle claims.**

Motor vehicle claims may be processed through risk management. TMC §§ 3.35.030 and 3.35.040 shall not apply to motor vehicle claims.

Section 9. That original § 3.35.010, § 3.35.020, § 3.35.030 § 3.35.050; § 3.35.070 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.
Section 10. This ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper.

Section 11. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 12. 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 City Council on May 21, 2019.

CITY OF TOPEKA, KANSAS

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Michelle De La Isla, Mayor

ATTEST:

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Brenda Younger, City Clerk