ORDINANCE NO. 19319

AN ORDINANCE introduced by City Manager Norton N. Bonaparte, Jr., amending City of Topeka Code creating Article IX in Chapter 2 establishing an appeals and administrative hearings procedure for the City.

WHEREAS, the City Council desires to establish a uniform procedure for the appeal from a notice of violation or imposition of an administrative fee, charge or penalty; and

WHEREAS, appeals should be directed to the appropriate department director so that issues may be resolved, if possible, without the need for an administrative hearing; and

WHEREAS, all appeals of administrative action should be done in an expedient and fair manner and hearings scheduled as soon as possible to allow for a timely resolution of issues.

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

CHAPTER 2, ARTICLE IX
APPEALS AND ADMINISTRATIVE HEARINGS PROCEDURE.

Section 1. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 2-486, Scope, which said section reads as follows:

Scope.

Appeals of a violation of the City Code or the imposition of a fee, charge or penalty shall be governed by this article unless a different appeal procedure is specified under this code or by state or federal law.
Section 2. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 2-487, Administrative appeals, which said section reads as follows:

**Administrative appeals.**

(a) A person to whom a notice of a violation, other administrative action, or the imposition of a fee, charge or penalty has been issued shall within the time period stated in the notice:

(1) Correct the violation cited in the notice, if applicable; and/or

(2) Pay the indicated fee, charge or penalty

(b) Alternatively, a person to whom a notice of a violation, other administrative action, or the imposition of a fee, charge or penalty has been issued may within ten (10) business days from the date of the notice appeal all or part of the finding of the violation or imposition of a fee, charge or penalty.

(1) The request for appeal must be in writing, give the person’s full name, and mailing address, and at least one other method of contact such as telephone number or E-mail address, and must set forth the reasons for the appeal. The request for appeal must be made to the director of the applicable department. The director of the applicable department shall schedule an administrative hearing to be held as soon as practicable but no later than (15) fifteen business days of the request for appeal. Additionally, the director of the applicable department shall serve personally or by first class mail written notice to the person of the date and time of the hearing.
(2) The written request for an appeal hearing must be accompanied by an appeal fee in an amount to be determined by the city manager. Appeal fees will be refunded to the person appealing the finding of a violation or imposition of an administrative fee, charge or penalty including the amount thereof, if the administrative hearing officer does not find there was a violation.

(3) Compliance with this time limit within which an appeal must be filed shall be a jurisdictional prerequisite to any appeal brought under this article, and failure to comply shall bar any such appeal.

(4) The appeal shall be limited to the issues set forth in the request for appeal.

(5) Filing of a request for appeal shall stay the action by the director of the applicable department enforcing a finding of a violation or requiring payment of an administrative monetary penalty until the administrative hearing officer has made his or her decision.

Section 3. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 2-488, Administrative hearing procedure, which said section reads as follows:

**Administrative hearing procedure.**

(a) Administrative hearings for the adjudication of the finding of a violation, other administrative action, or the imposition of a fee, charge or penalty of this article shall be conducted by a hearing officer appointed by the city. The selection and contracting for the services of the administrative hearing officer shall be done in accordance with the city’s competitive bidding requirements.
(b) The person requesting the appeal may appear pro se or, at his or her own expense, by an attorney. An attorney who appears on behalf of any person shall file a written entry of appearance with the hearing officer.

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

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

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

Section 4. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section to be numbered 2-489, Hearing determination and petition, which said section reads as follows:

**Hearing determination and petition.**

(a) Upon conclusion of the hearing, the hearing officer shall issue a determination of:

(1) Whether or not the administrative action was taken in accordance with city ordinances, whether or not a violation occurred and the amount of the administrative monetary penalty, if applicable, for the relevant violation. Upon issuance, such decision shall constitute a final determination.
(2) Upholding the administrative action and/or imposition of an administrative fee, charge or penalty, including the amount thereof. Upon issuance, such decision shall constitute a final determination.

(b) The hearing officer may, if factual circumstances dictate, take the matter under advisement for a period no longer than ten (10) business days. In such instances and in the case of a determination adverse to the person requesting the appeal, the date of hearing officer’s determination shall govern for purposes of the assessment of an administrative monetary penalty.

(c) If a person fails to respond to a notice of violation, other administrative action, or imposition of a fee or charge either by correcting the violation, if applicable, by payment of administrative penalty, by payment of the fee or charge or by making a written request within the specified time for an administrative hearing, a determination of liability, if any, shall be entered against the person. Such determination shall constitute a final determination.

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

PASSED AND APPROVED by the City Council October 13, 2009.

CITY OF TOPEKA, KANSAS

__________________________________
William W. Bunten, Mayor

ATTEST:

_________________________________
Brenda Younger, City Clerk
**APPEAL FEE SCHEDULE**

The amount of the appeal fee will be determined by either the amount of the fee, charge or penalty stated in the notice or, in the event no fee, charge or penalty is stated, then the appeal fee shall be determined by the amount of the maximum monetary penalty which can be imposed by the administrative hearing officer if a violation is found.

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<tr>
<th>FEE/CHARGE/PENALTY AMOUNT</th>
<th>APPEAL FEE</th>
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<tr>
<td>Notice of Weed or Nuisance Violation</td>
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