

(Published in the Topeka Metro News October 8, 2018)

ORDINANCE NO. 20145

AN ORDINANCE introduced by City Manager Brent Trout, amending TMC 8.60.100; and creating a new Chapter 8.75 of the Topeka Municipal Code concerning Unsafe Structures.

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

Section 1. That section 8.60.100 of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

Section 110 – Demolition.

Section 110.1, General, is hereby deleted in its entirety and the following provisions shall be substituted therefor:

~~The code official shall~~ Pursuant to TMC 8.75.040, the administrative hearing officer may order the owner of any premises upon which is located any structure, which ~~in the code official's judgment after review is~~ determined to be so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, ~~and such that it is unreasonable to repair the structure, to:~~ (1) demolish and remove such structure; or (2) if such structure is capable of being made safe by repairs, to repair and make safe and sanitary; or (3) to board up and hold for future repair; or (4) to demolish and remove at the owner's option; ~~or where there has been a cessation of normal construction of any structure for a period of more than two years, the code official shall order the owner to demolish and remove such structure, or board up until future repair~~ demolition and removal or boarding up for future repair. Boarding the ~~building up~~ structure for future repair shall not extend beyond one year, unless approved by the ~~code official~~ the administrative hearing officer.

28 ~~In this section, “u~~Unreasonable to repair” means that the repair costs exceed 30% of the
29 replacement value of the structure as established by the Shawnee County Appraiser.

30 Section 110.2, Notices and orders, is deleted in its entirety and the following
31 provision shall be substituted therefor:

32 All notices and orders shall comply with TMC 8.75.020 and 8.75.040.

33 Section 2. That the Code of the City of Topeka, Kansas, is hereby amended
34 by adding a section, to be numbered 8.75.010, which said section reads as follows:

35 **Findings.**

36 The governing body has determined that structures exist within the city that are
37 so deteriorated, dilapidated, or so out of repair as to be dangerous, unsafe, unsanitary
38 or otherwise unfit for human habitation or occupancy such that it is unreasonable to
39 repair the structure. The code official identified in TMC 8.60.030 is designated to
40 exercise the powers prescribed in this chapter.

41 Section 3. That the Code of the City of Topeka, Kansas, is hereby amended
42 by adding a section, to be numbered 8.75.020, which said section reads as follows:

43 **Complaint; Notice of hearing.**

44 (a) Whenever a structure is determined by the code official to be so
45 deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe,
46 unsanitary or otherwise unfit for human habitation or occupancy such that it is
47 unreasonable to repair the structure, the code official will issue a complaint identifying
48 the violations with a notice that a hearing will be held before an administrative hearing
49 officer on a date specified in the notice not less than 10 days nor more than 30 days
50 after service of the complaint.

51 **(b)** The notice shall provide that the owner(s) of record, mortgagee, or any
52 party in interest of record, as well as any person in possession who can be ascertained,
53 shall have the right to file an answer to the complaint and to appear in person and give
54 testimony at the place and time identified in the notice and that failure to appear may
55 result in a determination of default.

56 Section 4. That the Code of the City of Topeka, Kansas, is hereby amended
57 by adding a section, to be numbered 8.75.030, which said section reads as follows:

58 **Service.**

59 **(a)** The code official will serve the complaint and notice on: (1) the owner(s) of
60 record; (2) any mortgagee(s) of record; (3) any party with a legal or equitable interest
61 filed of record with the Shawnee County register of deeds; and (4) any person in
62 possession who can be ascertained.

63 **(b)** Methods of service. The complaint and notice shall be served as follows:

64 **(1)** Personal service or certified mail pursuant to TMC 8.60.080,
65 Section 107.3.

66 **(2)** Publication once in the official city newspaper if the location of the
67 persons identified in subsection 8.75.030 are unknown and cannot be
68 ascertained by the code official in the exercise of reasonable diligence.

69 **(c)** In addition, a copy of the complaint will be posted in a conspicuous place
70 on the premises and filed with the register of deeds and the clerk of the district court in
71 which the property is located.

72 **(d)** In addition to the methods identified in subsection (b), but not in lieu of, the
73 code official may provide notice pursuant to TMC 8.60.080, Section 107.3 (a)(6).

74 Section 5. That the Code of the City of Topeka, Kansas, is hereby amended
75 by adding a section, to be numbered 8.75.040, which said section reads as follows:

76 **Hearing.**

77 (a) The administrative hearing officer may administer oaths and affirmations,
78 examine witnesses and receive evidence. The hearing officer may grant continuances
79 where the officer finds that there is practical difficulty or undue hardship and that such
80 extension is consonant with the general purpose to secure compliance with this chapter.

81 (b) If the hearing officer determines that: (1) the complaint was served in
82 accordance with 8.75.030; (2) the structure is so deteriorated or dilapidated or has
83 become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for
84 human habitation or occupancy, such that it is unreasonable to repair the structure, the
85 officer will provide findings to that effect, in writing, and shall issue an order which
86 requires the owner to:

87 (1) demolish and remove the structure within a prescribed period of
88 time;

89 (2) repair and/or make safe and sanitary the structure within a
90 prescribed period of time if the structure is capable of being made safe by
91 repairs;

92 (3) board up the structure for future repair, subject to conditions; or

93 (4) demolish or board up for future repair a structure under
94 construction where construction has ceased for more than two years. Boarding
95 the structure for future repair shall not extend beyond one year, unless approved
96 by the hearing officer.

(c) Any order shall be served on the property owner pursuant to TMC 8.75.030 and a copy served personally or by first class mail to the other persons identified in TMC 8.75.030. Additionally, except for continuances, the order shall be posted in a conspicuous place on the premises and filed with the register of deeds and the clerk of the district court in which the property is located.

(d) The order may be appealed to the district court in accordance with K.S.A. 60-2101 and amendments thereto.

Section 6. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 8.75.050, which said section reads as follows:

Failure to comply.

If the owner fails to comply with the order within the time specified, the code official may repair, vacate and close the structure, or demolish the structure and assess the costs against the owner.

Section 7. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 8.75.060, which said section reads as follows:

Costs; assessment.

The code official shall notify the owner of the cost incurred by the city to repair, vacate and close the structure, or demolish the structure. The notice shall state that the cost is due within 30 days of the date of the notice. If the cost is not paid within the 30-day time period, the city may impose a special assessment against the property on which the structure was located as authorized in K.S.A. 17-4759 and amendments thereto.

Section 8. That the Code of the City of Topeka, Kansas, is hereby amended

by adding a section, to be numbered 8.75.070, which said section reads as follows:

Criminal.

It is unlawful to fail to comply with an order issued pursuant to this chapter. A person who fails to comply shall be guilty of a misdemeanor and, if convicted, may be punished in accordance with TMC 1.10.070. A violation of this chapter shall be deemed a strict liability offense. Abatement by the code official shall not be a defense or excuse to a violation. The pendency of an administrative hearing shall not be a defense to a violation or prevent prosecution and adjudication in municipal court.

Section 9. That original § 8.60.100 of The Code of the City of Topeka, Kansas, is hereby specifically repealed.

Section 10. This ordinance shall take effect and be in force from November 1, 2018, 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 Governing Body on October 2, 2018.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk