

(Published in the Topeka Metro News \_\_\_\_\_)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE introduced by Councilmember Sandra Clear, concerning parking on nonpaved surfaces, amending City of Topeka Code § 2.40.130, § 2.40.210 and § 10.60.120 and repealing original sections.

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

Section 1. That section 2.40.130, Definitions, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Definitions.**

As used in this article:

(a) ~~“Appearance bond” means an undertaking, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions of the undertaking.~~ “Accused person” means a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance.

(b) ~~“Accused person” means a person, corporation or other legal entity accused by a complaint of the violation of a city ordinance.~~ “Appearance bond” means an undertaking, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions of the undertaking.

(c) “Arraignment” means the formal act of calling the person accused of violating an ordinance before the municipal court to inform the person of the offense with which the person is charged, to ask the person whether the person is guilty or not guilty and, if guilty, to impose sentence.

26 (d) "Arrest" means the taking of a person into custody in order that the person will  
27 appear to answer for the violation of an ordinance. The giving of a notice to appear is  
28 not an arrest.

29 (e) "Bail" is the security given for the purpose of insuring compliance with the  
30 terms of an appearance bond.

31 (f) "City attorney" means any attorney who represents the city in the prosecution  
32 of an accused person for the violation of a city ordinance.

33 (g) "Complaint" means a sworn written statement, or a written statement by a law  
34 enforcement officer, the city attorney or an assistant city attorney, an animal control  
35 officer, a parking control officer as specifically authorized by TMC 10.60.350, a property  
36 maintenance inspector as specifically authorized by TMC 10.60.120 or a fire department  
37 employee with authority to enforce the fire code ~~of~~ that recites the essential facts  
38 constituting a violation of an ordinance.

39 (h) "Custody" means the restraint of a person pursuant to an arrest.

40 (i) "Detention" means the temporary restraint of a person by a law enforcement  
41 officer.

42 (j) "Law enforcement officer" means any person who by virtue of office or public  
43 employment is vested by law with a duty to maintain public order and to make arrests  
44 for violation of the laws of the state of Kansas or ordinances of any municipality thereof.  
45 For the purposes of signing and serving a uniform complaint and notice to appear or a  
46 subpoena, the term shall also mean the city attorney or an assistant city attorney, an  
47 animal control officer, a parking control officer as specifically authorized by TMC

10.60.350, a property maintenance inspector as specifically authorized by TMC  
10.60.120 or a fire department employee with authority to enforce the fire code.

(k) "Notice to appear" is a written notice to a person accused by a complaint of  
having violated an ordinance of a city to appear at a stated time and place to answer to  
the charge of the complaint.

~~(l) "Subpoena" is a process issued by the court to cause a witness to appear and  
give testimony at a time and place therein specified.~~

(l) "Ordinance cigarette or tobacco infraction" is a violation of an ordinance that  
proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321  
and amendments thereto.

(m) "Ordinance traffic infraction" is a violation of an ordinance that proscribes or  
requires the same behavior as that proscribed or required by a statutory provision that is  
classified as a traffic infraction in K.S.A. 8-2118 (1998 Supp.) and amendments thereto.

~~(n) "Warrant" is a written order made by a municipal judge directed to any law  
enforcement officer commanding the officer to arrest the person named or described in  
it.~~

~~(o) "Ordinance cigarette or tobacco infraction" is a violation of an ordinance that  
proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321  
and amendments thereto.~~

(n) "Subpoena" is a process issued by the court to cause a witness to appear and  
give testimony at a time and place therein specified.

69           (o) "Warrant" is a written order made by a municipal judge directed to any law  
70           enforcement officer commanding the officer to arrest the person named or described in  
71           it.

72           Section 2.     That section 2.40.210, Notice to appear – Service – Return, of The  
73           Code of the City of Topeka, Kansas, is hereby amended to read as follows:

74           **Notice to appear – Service – Return.**

75           The notice to appear shall be served upon the accused person by delivering a  
76           copy to him or her personally, or by leaving it at the dwelling house of the accused  
77           person or usual place of abode with some person of suitable age and discretion then  
78           residing therein, or by mailing it to the last known address of said person. A notice to  
79           appear may be served by any law enforcement officer, the municipal judge, the clerk of  
80           the municipal court, the city attorney, an assistant city attorney, an animal control  
81           officer, a parking control officer as specifically authorized by TMC 10.60.350, a property  
82           maintenance inspector as specifically authorized by TMC 10.60.120 or a fire department  
83           employee with authority to enforce the ~~Uniform Fire Code~~, and, if mailed, shall be  
84           mailed by a law enforcement officer, the municipal judge, the clerk of the municipal  
85           court, the city attorney, any animal control officer, a parking control officer as specifically  
86           authorized by TMC 10.60.350, a property maintenance inspector as specifically  
87           authorized by TMC 10.60.120 or a fire department employee with authority to enforce  
88           the ~~Uniform Fire Code~~. Upon service by mail, the person serving the notice to appear  
89           shall execute a verification to be filed with a copy of the notice to appear. Said  
90           verification shall be deemed sufficient if in substantially the following form:

The undersigned hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, a copy of notice to appear was mailed to \_\_\_\_\_  
at \_\_\_\_\_

/s/ \_\_\_\_\_

Signature of Person Serving Notice to Appear

Section 3. That section 10.60.120, Parking of vehicles on nonpaved surfaces,  
of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Parking of vehicles on nonpaved surfacesresidential property.**

~~(a) It shall be unlawful for any person to park or allow to be parked any  
vehicle or machinery on the back yard of a residential lot for more than six months or on  
any other part of a residential lot for any period of time unless the area used for parking  
is improved with at least four inches of rock, gravel, paver brick, asphalt, or concrete.~~

~~(b) Subsection (a) of this section shall not apply to any motor vehicle or  
machinery which displays a special license plate or placard issued to a person with a  
disability by the Director of Vehicles, Kansas Department of Revenue in accordance  
with K.S.A. 8-1,125and amendments thereto. This section shall not apply to any vehicle  
or machinery which displays acceptable official identification devices issued to persons  
with a disability by any other state, district or territory recognized by the Kansas  
Department of Revenue.~~

~~(c) For purposes of this section the following definitions shall apply:~~

~~(1) "Park" shall mean to halt a vehicle, whether occupied or not,  
otherwise than temporarily for the purpose of and while actually engaged in  
receiving or discharging passengers or personal property.~~

~~(2) “Vehicle or machinery” shall mean a machine propelled by power other than human power and designed to travel along the ground by use of wheels, treads, runners or slides and which transports persons or property. And shall include, without limitation, an automobiles, trucks, trailers, recreational vehicles, motorcycles, boats, campers, or tractors.~~

~~(d) Police officers and property maintenance inspectors shall have the authority to issue a uniform complaint and notice to appear for violations of this section.~~

~~(e) The city council may, by resolution, waive the provisions of subsection (a) of this section at specific properties identified by address for community events or activities designated by the council for periods of time not to exceed two weeks.~~

(a) Definitions. For purposes of this section the following definitions shall apply:

(1) “Driveway” is a paved or graveled area that is intended for off-street vehicular parking.

(2) “Park” or “parking” shall mean the standing of a vehicle or machinery, whether occupied or not, other than temporarily for the purpose of loading or unloading property or passengers.

(3) “Paved or graveled area” shall mean (i) an area comprised of a solid, permanent sealed surface constructed of asphalt, concrete, stone, brick or other similar impermeable material of sufficient dimension to accommodate the entire vehicle or machinery; with no overhang onto dirt or grass; or (ii) an area comprised of a loose aggregation of rock fragments (e.g. gravel) thick enough to prevent grass, weeds and dirt from permeating or penetrating through (there can

139 be no visible vegetation or debris) and of sufficient dimension to accommodate  
140 the entire vehicle or machinery; with no overhang onto dirt or grass.

141 (4) "Vehicle or machinery" shall mean a machine propelled by power  
142 (other than human power) that is designed to travel along the ground by use of  
143 wheels, treads, runners or slides and transport persons or property. "Vehicle or  
144 machinery" shall include, without limitation, automobiles, trucks, trailers,  
145 recreational vehicles, motorcycles, boats, campers, or tractors.

146 (b) Prohibitions – Enforcement – Waiver.

147 (1) It shall be unlawful for an owner of real property to park, or allow to  
148 be parked, any vehicle or machinery on the back yard of a residential lot for more  
149 than six (6) months, or on any other part of a residential lot for any period of time,  
150 unless on a paved or graveled area or on a driveway as defined by TMC  
151 10.60.210(a)(1) and (3).

152 (2) Subsection (1) shall apply to any motor vehicle that displays a  
153 special license plate or placard issued to a Kansas resident who is a person with  
154 a disability or is responsible for the transportation of a person with a disability in  
155 accordance with K.S.A. 8-1,125 and K.S.A. 8-1,126 and amendments thereto.

156 (3) In addition to law enforcement officers, property maintenance  
157 inspectors shall also have the authority to issue a uniform complaint and notice to  
158 appear for violations of this section, as provided in TMC 2.110.130 and TMC  
159 2.110.210.

160 (4) The governing body may, by resolution, waive the provisions of  
161 subsection (1) for designated properties identified (by specific address) in the

resolution in order to accommodate a special event approved pursuant to TMC Chapter 12.70.

Section 4. That original § 2.40.130, § 2.40.210 and § 10.60.120 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 5. This ordinance shall take effect on March 1, 2020, and after its passage, approval and publication in the official City newspaper.

Section 6. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 7. 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 \_\_\_\_\_.

CITY OF TOPEKA, KANSAS

Michelle De La Isla, Mayor

ATTEST:

Brenda Younger, City Clerk