



# City Council Committee Meeting Notice

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CITY COUNCIL  
City Hall, 215 SE 7th Street, Suite 255  
Topeka, KS 66603-3914  
Tel: (785) 368-3710  
Fax: (785) 368-3958  
[www.topeka.org](http://www.topeka.org)

**Committee:** Public Health & Safety  
**Meeting Date:** June 21, 2023  
**Time:** 11:00am  
**Location:** **Classroom A; Law Enforcement Center 320 S. Kansas Ave** (virtual attendance option also available)

## Agenda:

1. Call to Order
2. Approve May 17, 2023 Meeting Minutes
3. Changing Our Culture of Property Maintenance
  - a. Action/Marketing/Mowing Team
    - i. Mowing Updates
  - b. Policy Teams
    - i. LLC Ordinance, Repeat Offenders - Brief Report
    - ii. Municipal Court SOP's, fees - Updates/Report
    - iii. Property Maintenance - Updates
    - iv. Retaliatory Eviction Ordinance - Report, Discuss Possible Action
  - c. Vacant Properties - Preliminary Calendaring, Staffing Discuss, possible referral to Acting City Manager
4. Other Reports
5. Adjourn; Next meeting July 19, 2023 @ 11:00am in Holliday 1<sup>st</sup> Floor Conference Room or Zoom.

STAFF REQUESTED: City Attorney Amanda Stanley, Judge Karan Thadani, Monique Glaude

COMMITTEE MEMBERS: Karen Hiller - District 1  
Christina Valdivia-Alcalá - District 2  
Brett Kell - District 5  
Spencer Duncan - District 8

Contact: Liz Toyne, City Council Assistant 785-368-3710

\*\*\*In person and virtual attendance options are available. Please contact the Council office by 5:00pm the day prior to meeting to request the Zoom link. \*\*\*



# CITY OF TOPEKA

Legal Department, Prosecution Division  
215 SE 7<sup>th</sup> Street, Room 170  
Topeka, KS 66603

Kelly Trussell, Chief of Prosecution  
Tel: (785) 368-3910  
[www.topeka.org](http://www.topeka.org)

## MEMORANDUM

To: Amanda Stanley  
From: Kelly Trussell  
Re: Update on Code Case Default Judgments  
Date: 5/26/2023

The following is an update to report the use of TMC 2.40.405(b) to address legal entities failing to appear at Code Arraignments.

The court process we are using to implement TMC 2.40.405(b) is as follows:

- (1) The legal entity's resident agent is mailed notice of the arraignment hearing date;
- (2) If no one appears on behalf of the entity at arraignment, the case is set on the show cause docket and the resident agent is mailed notice of that date;
- (3) If there is no appearance at the show cause hearing, the case is set for trial on the pro se trial docket and the resident agent is mailed notice of that date;
- (4) If there is no appearance at the trial, default judgment is entered and the case is set to the sentencing docket and the resident agent is mailed notice of that date;
- (5) At the sentencing docket, we recommend fines as set out in TMC 8.60.070;
- (6) After conviction and sentencing, we file new charges against the entity because the property is still in violation; and
- (7) Each additional default judgment conviction will increase the fine amounts at sentencing, as set out in TMC 8.60.070.

Using this process, there are plenty of opportunities for the entity to appear and address the charges filed. To date, we have completed default judgments (including sentencing) against three LLC entities, totaling four cases. One of the LLC's had two cases pending.

Currently, there are two entities set in early June for the pro se trial dockets; if no appearance, default judgment will be entered.

Currently there is one entity, with 13 cases, set on the 6/26/23 show cause docket; if no appearance, the cases will be placed on the pro se trial docket.

It is important to note that TMC 2.40.405(b) has also created a change in how some entities are responding to the charged cases. In one example, the entity was facing default judgment and

requested 30 days to demolish the structure as an alternative. This structure was partially collapsed and after demolition, the lot is empty and free of violations. That case was charged April 2022, and without the ability to enter default judgment, it is likely the entity would not have been inclined to remove the structure.

Additionally, there is an entity that owns over 30 Topeka properties. This entity had accrued 14 separate criminal cases alleging multiple violations at the entity's properties. Since implementing the default judgment process, that entity has corrected and closed 11 of those cases and is working towards correction on the remaining three cases. That same entity also recently corrected and closed two pending code cases prior to charging.

Please let me know if you need any further details on this matter.

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

2  
3 ORDINANCE NO. \_\_\_\_\_

4  
5 AN ORDINANCE introduced by City Manager Stephen Wade concerning procedures  
6 for prosecuting International Property Maintenance Code violations  
7 in Municipal Court, amending Topeka Municipal Code sections  
8 2.40.040, 2.40.130, 2.40.180, 2.40.210, 8.60.070, 8.60.110 and  
9 8.75.040 and repealing original sections and creating new sections  
10 2.40.405 and 2.45.050.

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

13 Section 1. That section 2.40.040, Intent-Construction-Procedure not provided,  
14 of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

15 **Intent – Construction – Procedure not provided; Liability for legal entities.**

16 (a) This Code is intended to provide for the just determination of every  
17 proceeding for violation of City ordinances. Its provisions shall be construed to secure  
18 simplicity in procedure, fairness in administration and the elimination of unjustifiable  
19 expense and delay. If no procedure is provided by this Code, the court shall proceed in  
20 any lawful manner consistent with any applicable law and not inconsistent with this  
21 Code.

22 (b) A legal entity is responsible for acts committed by its agents when acting  
23 within the scope of the agent's authority.

24 (c) A person who violates an ordinance, or causes such acts to be performed,  
25 in the name of or on behalf of a legal entity is legally responsible to the same extent as  
26 if such acts were performed in the person's own name or on the person's behalf.

27 Section 2. That section 2.40.130, Definitions, of The Code of the City of  
28 Topeka, Kansas, is hereby amended to read as follows:

29 **Definitions.**

30 As used in this article:

31 (a) "Accused person" means a person, corporation or other legal entity accused  
32 by a complaint of the violation of a City ordinance.

33 (b) "Agent" means any director, officer, partner, member, employee or other  
34 person who is authorized to act on behalf of a legal entity.

35 (bc) "Appearance bond" means an undertaking, with or without security, entered  
36 into by a person in custody by which the person is bound to comply with the conditions  
37 of the undertaking.

38 (ed) "Arraignment" means the formal act of calling the person accused of  
39 violating an ordinance before the Municipal Court to inform the person of the offense  
40 with which the person is charged, to ask the person whether the person is guilty or not  
41 guilty and, if guilty, to impose sentence.

42 (de) "Arrest" means the taking of a person into custody in order that the person  
43 will appear to answer for the violation of an ordinance. The giving of a notice to appear  
44 is not an arrest.

45 (ef) "Bail" is the security given for the purpose of insuring compliance with the  
46 terms of an appearance bond.

47 (fg) "City Attorney" means any attorney who represents the City in the  
48 prosecution of an accused person for the violation of a City ordinance.

49 (gh) "Complaint" means a sworn written statement, or a written statement by a  
50 law enforcement officer, the City Attorney or an Assistant City Attorney, an animal  
51 control officer, a parking control officer as specifically authorized by TMC 10.60.350, a  
52 property maintenance inspector as specifically authorized by TMC 10.60.120 or a Fire  
53 Department employee with authority to enforce the fire code that recites the essential  
54 facts constituting a violation of an ordinance.

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

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

(~~j~~k) "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the State of Kansas or ordinances of any municipality thereof. For the purposes of signing and serving a uniform complaint and notice to appear or a subpoena, the term shall also mean the City Attorney or an Assistant City Attorney, an 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.

(~~l~~l) "Legal entity" means a business trust, corporation, limited partnership, limited liability partnership, limited liability company and a foreign covered entity, as defined in K.S.A. 17-7902 and amendments thereto.

(~~k~~m) "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~~n) "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~~o) "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.

(~~p~~p) "Resident agent" is the representative of a legal entity appointed pursuant

79 to K.S.A. 17-7901 et seq. and amendments thereto.

80 (g) “Show cause order” is a process issued by the court to require a resident  
81 agent or other representative of a legal entity to appear and give testimony regarding  
82 whether the court should proceed to trial and judgment without further process.

83 (h) “Subpoena” is a process issued by the court to cause a witness to appear  
84 and give testimony at a time and place therein specified.

85 (i) “Warrant” is a written order made by a Municipal Judge directed to any law  
86 enforcement officer commanding the officer to arrest the person named or described in  
87 it.

88 Section 3. That section 2.40.180, Notice to appear – Contents - Form, of The  
89 Code of the City of Topeka, Kansas, is hereby amended to read as follows:

90 **Notice to appear – Contents – Form.**

91 (a) A notice to appear shall describe the offense charged, shall summon the  
92 accused person to appear, shall contain a space in which the accused person may  
93 agree, in writing, to appear at a time not less than five days after such notice to appear  
94 is given, unless the accused person shall demand an earlier hearing. A notice to appear  
95 may be signed by a Municipal Judge, the clerk of the Municipal Court, the City Attorney,  
96 an Assistant City Attorney, a law enforcement officer of the City, an animal control  
97 officer, or a Fire Department employee with authority to enforce the Uniform Fire Code.

98 (b) If the accused person is a legal entity, the notice to appear shall summon  
99 an agent.

100 (c) A notice to appear shall be deemed sufficient if in substantially the form of  
101 the notice to appear set out in K.S.A. 12-4204 and amendments thereto, or if in  
102 substantially the following form:

IN THE MUNICIPAL COURT  
OF TOPEKA, KANSAS

The City of Topeka, Kansas

vs.

\_\_\_\_\_  
(Accused person)

\_\_\_\_\_  
(Address)

NOTICE TO APPEAR

The City of Topeka, Kansas, To The Above Named Accused Person.

You are hereby summoned to appear before the Municipal Court of Topeka, Kansas, on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ .m., to answer a complaint charging you with

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

If you fail to appear a warrant will be issued for your arrest.

Dated \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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

Signature of Official

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

Title of Official

I agree to appear in said Court at said time and place.

\_\_\_\_\_

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

Signature of Accused Person or Agent

RETURN

The undersigned hereby certifies that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, the notice to appear was served, mailed or delivered.

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

Signature and Title of Official



Section 4. That section 2.40.210, Notice to appear – Service - Return, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

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

(a) The notice to appear shall be served upon the accused person by delivering a copy to him or her personally, or by leaving it at the dwelling house of the accused person or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the last known address of said person.

(b) If the accused person is a legal entity, the notice to appear shall be served by mailing it to the address of the legal entity identified in the records maintained by the Kansas Secretary of State and serving the notice to appear as follows:

(1) serving a copy on an officer, manager, partner or agent;

(2) leaving a copy at any of the business offices with the person having charge; or

(3) serving a copy on any resident agent by mailing the notice to the address of the resident agent identified in the records maintained by the Kansas Secretary of State.

(c) A notice to appear may be served by any law enforcement officer, the Municipal Judge, the clerk of the Municipal Court, the City Attorney, an Assistant City Attorney, an 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, and, if mailed, shall be mailed by a law enforcement officer, the Municipal Judge, the clerk of the Municipal Court, the City Attorney, any 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.

(d) Upon service by mail, the person serving the notice to appear shall execute a verification to be filed with a copy of the notice to appear. Said 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 5. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 2.40.405, which said section reads as follows:

**Failure to appear; show cause.**

(a) If the accused person fails to appear, the court shall declare the appearance bond to be forfeited and may issue a warrant for the arrest of the accused person.

(b) If the accused person is a legal entity and the resident agent or other agent of the legal entity fails to appear, the court shall issue a show cause order to the resident agent. Upon failure to appear at the show cause hearing, the court shall proceed to trial and judgment without further process.

Section 6. That The Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 2.45.050, which said section reads as follows:

**Appeal to district court.**

(a) Pursuant to K.S.A. 60-2101 and amendments thereto, any person

aggrieved by a determination issued by a hearing officer may appeal to the district court by doing all of the following:

(1) Submit a written notice of appeal to the City Clerk within 30 days of the determination. The notice shall include: (i) the person's name, mailing address, email address and telephone number; (ii) the date of the determination; (iii) case number; and (iv) type of case (i.e. parking, property maintenance costs). The City Clerk shall file-stamp or memorialize the date of receipt of the notice and return a copy to the person.

(2) Submit a written request to the City Clerk for one copy of all pertinent records relative to the proceeding including but not limited to any recording or transcript of the proceedings. The request shall be submitted to the City Clerk within 10 days of the date of receipt of the notice of appeal. Prepayment of all copying and other fees set forth in TMC 2.10.120 shall be required prior to production of the records.

(3) File with the Clerk of the Shawnee County District Court the pertinent records prepared by the City Clerk within 60 days from the date of receipt of the notice of appeal.

(b) Failure to file the records with the Clerk of the Shawnee County District Court within the 60 day period may result in the appeal being dismissed by the district court.

(c) Unless the person requests from the district court a stay of the determination of the hearing officer within 70 days from the date of receipt of the notice of appeal, the City may proceed with enforcement.

Section 7. That section 8.60.070, Section 106 – Violations, abatements, fees,

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

**Section 106 – Violations, abatements, fees.**

Section 106.3, Prosecution of violation, is deleted in its entirety and the following provisions shall be substituted therefor:

(a) A person who fails to comply with a notice of violation served in accordance with Section 107, shall be guilty of a misdemeanor and, if convicted, may be punished in accordance with subsection (b). A violation of this chapter shall be deemed a strict liability offense. Abatement of a violation by the Code Official shall not be a defense or excuse to a violation. The pendency of an administrative hearing pursuant to section 8.60.110 or section 8.75.040 shall not be a defense to a violation or prevent prosecution and adjudication in Municipal Court.

(b) Punishment for a violation of the International Property Maintenance Code (IPMC), adopted pursuant to TMC 8.60.010, shall be as follows:

(1) Upon a first conviction, a fine of not more than one thousand dollars;

(2) Upon a second conviction, a fine of not less than one hundred dollars nor more than one thousand dollars;

(3) Upon a third conviction, a fine of not less than five hundred dollars nor more than one thousand dollars;

(4) Upon a fourth or subsequent conviction, a fine of not less than one thousand dollars nor more than two thousand five hundred dollars;

(5) In addition to the preceding fines such person may be punished by a term of imprisonment which shall not exceed six (6) months, or by both such fines and imprisonment.

(c) For the purposes of determining whether a conviction is a first or subsequent conviction in sentencing under this section:

(1) conviction includes being convicted of a violation of the IPMC, and it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(2) conviction includes being convicted of a violation of the IPMC or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(3) any convictions occurring during the three years prior to the date of the occurrence shall be taken into account when determining the sentence to be imposed.

(d) Each day that any violation of this ordinance continues shall constitute a separate offense and be punishable hereunder as a separate violation.

(e) In addition to the penalties set forth above, the court may require that the owner register the property pursuant to Chapter 8.65 TMC.

Section 8. That section 8.60.110, Section 111 – Hearing, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Section 111 – Hearing.**

Sections 111.1 through 111.8 are deleted in their entireties and the following provisions shall be substituted therefor:

Section 111.1 Administrative Appeal Hearing

(a) An owner shall have the right to appeal the notice of violation to an Administrative Hearing Officer provided that a written application is submitted to the Code Official on or before the date designated in the notice.

(b) An application for an appeal hearing shall be based on a claim that (i) the provisions of Chapter 8.60 do not apply; (ii) the Code Official has incorrectly interpreted Chapter 8.60; and/or (iii) the requirements of Chapter 8.60 can be adequately satisfied by other means. The owner may not appeal a requirement imposed by Chapter 8.60. The intent of the appeal process is not to waive or set aside a requirement; it is to provide a means of reviewing a Code Official's decision on an interpretation or application of Chapter 8.60 or reviewing a Code Official's decision to approve or reject the equivalency of protection to a Chapter 8.60 requirement.

(c) Written notice of the hearing date and time shall be provided to the person requesting the hearing within 10 calendar days of the hearing request.

(d) The Administrative Hearing Officer shall affirm, modify or reverse the decision of the Code Official upon a determination that: (i) the notice of violation was served in accordance with TMC 8.60.080, subsection 107.3; (ii) the provisions of Chapter 8.60 apply; (iii) the Code Official has correctly interpreted Chapter 8.60; and/or (iv) the requirements of Chapter 8.60 cannot be adequately satisfied by other means. The Hearing Officer may order abatement of the violation, impose an administrative penalty, and assess the abatement costs against the owner.

(e) The Administrative Hearing Officer may administer oaths and affirmations, examine witnesses and receive evidence. The Hearing Officer may grant continuances where the officer finds that there is practical difficulty or undue hardship and that such extension is consonant with the general purpose to secure compliance with Chapter 8.60.

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

thereto, any person aggrieved by a determination issued by the administrative hearing officer may appeal to the district court by doing all of the following:

(1) Submit a written notice of appeal to the City Clerk within 30 days of the determination. The notice shall include: (i) the person's name, mailing address, email address and telephone number; (ii) the date of the order; and (iii) case number. The City Clerk shall memorialize the date of receipt of the notice by file-stamp or another method and return a copy to the person.

(2) Submit a written request to the City Clerk for one copy of all pertinent records relative to the proceeding including but not limited to any recording or transcript of the proceedings. The request shall be submitted to the City Clerk within 10 days of the date of receipt of the notice of appeal. Prepayment of all copying and other fees set forth in TMC 2.10.120 shall be required prior to production of the records.

(3) File with the Clerk of the Shawnee County District Court the pertinent records prepared by the City Clerk within 60 days from the date of receipt of the notice of appeal.

(4) Failure to file the records with the Clerk of the Shawnee County District Court within the 60 day period may result in the appeal being dismissed by the district court.

(5) Unless the person requests from the district court a stay of the hearing officer's order within 70 days from the date of receipt of the notice of appeal, the City may proceed with enforcement.

Section 9. That section 8.75.040, Hearing, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Hearing.**

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

(b) If the Hearing Officer determines that: (1) the complaint was served in accordance with TMC 8.75.030; (2) the structure is 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, such that it is unreasonable to repair the structure, the officer will provide findings to that effect, in writing, and shall issue an order which requires the owner to:

(1) Demolish and remove the structure within a prescribed period of time;

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

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

(4) Demolish or board up for future repair a structure under construction where construction has ceased for more than two years. Boarding the structure for future repair shall not extend beyond one year, unless approved 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



328 posted in a conspicuous place on the premises and filed with the Register of Deeds and  
329 the clerk of the district court in which the property is located.

330 (d) ~~The order may be appealed to the district court in accordance with K.S.A.~~  
331 ~~60-2101 and amendments thereto.~~Pursuant to K.S.A. 60-2101 and amendments  
332 thereto, any of the parties identified in TMC 8.75.030 may appeal to the Shawnee  
333 County District Court by doing all of the following:

334 (1) Submit a written notice of appeal to the City Clerk within 30 days of  
335 the determination. The notice shall include: (i) the person's name, mailing  
336 address, email address and telephone number; (ii) the date of the order; and (iii)  
337 case number. The City Clerk shall memorialize the date of receipt of the notice  
338 by file-stamp or another method and return a copy to the person.

339 (2) Submit a written request to the City Clerk for one copy of all  
340 pertinent records relative to the proceeding including but not limited to any  
341 recording or transcript of the proceedings. The request shall be submitted to the  
342 City Clerk within 10 days of the date of receipt of the notice of appeal.  
343 Prepayment of all copying and other fees set forth in TMC 2.10.120 shall be  
344 required prior to production of the records.

345 (3) File with the Clerk of the Shawnee County District Court the  
346 pertinent records prepared by the City Clerk within 60 days from the date of  
347 receipt of the notice of appeal.

348 (4) Failure to file the records with the Clerk of the Shawnee County  
349 District Court within the 60 day period may result in the appeal being dismissed  
350 by the district court.

(5) Unless the person requests from the district court a stay of the hearing officer's order within 70 days from the date of receipt of the notice of appeal, the City may proceed with demolition.

Section 10. That original § 2.40.040, § 2.40.130, § 2.40.180, § 2.40.210, § 8.60.070 § 8.60.110 and § 8.75.040 of The Code of the City of Topeka, Kansas, are hereby specifically repealed.

Section 11. This ordinance shall take effect on January 1, 2023, and be in force from and after its passage, approval and publication in the official City newspaper.

Section 12. This ordinance shall supersede all ordinances, resolutions or rules, or portions thereof, which are in conflict with the provisions of this ordinance.

Section 13. 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 \_\_\_\_\_.

CITY OF TOPEKA, KANSAS

Michael A. Padilla, Mayor

ATTEST:

Brenda Younger, City Clerk



CITY OF TOPEKA  
MUNICIPAL COURT

Karan M. Thadani, Administrative Judge  
Municipal Court, 214 SE 8<sup>th</sup> Street  
Topeka, KS 66603

Tel: 785-368-3776  
[www.topeka.org](http://www.topeka.org)

## MEMORANDUM

To: CoC Committee c/o Hannah Uhlig

From: Judge Thadani

Date: February 23, 2023

Re: Code Docket Continuance Procedure

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In 2015, environmental/structural blight, grass/weed complaints, and zoning/land use regulations were pressing issues before the Topeka City Council. To help combat some of those problems, the Council adopted the International Property Maintenance Code [IPMC]. The IPMC provides requirements for continued use and maintenance of building elements, site conditions, swimming pools, plumbing, mechanical, electrical, and fire protection systems in existing residential and nonresidential structures.

At the same time, the Code Docket was created at the Topeka Municipal Court. All Defendants that have been criminally charged with IPMC violations appear before the Court on the Code Docket where a Judge, Prosecutor, and Code Inspector are present. IPMC violations are considered unclassified misdemeanors under the Topeka Municipal Code, punishable by up to 179 days in jail and up to a \$499 fine.

Historically, the goal of the Code Docket has been to work with Defendants to correct the code violations on their property. To assist them, some of the things that we do are: direct them to services, grant continuances, get them in contact with their Code Inspector, and give them detailed pictures of the violations. The goal was reached once the violations are corrected by owner [CBO], a satisfactory re-inspection has been completed, and the code case was dismissed by the Prosecutor at no cost to the Defendant.

For all cases filed in 2023, and moving forward, we will still continue to work with Defendants, but CBO cases will no longer be dismissed without a cost to the Defendant. In November 2022, the City Council adopted an ordinance that mandates court costs to be imposed on all code case dismissals. Thus, if a code case is dismissed in 2023+, a \$76 court cost will be assessed to the Defendant.

Procedurally, when a Defendant appears before the Court for the first time in a code case, he/she can either contest the charges or tell us they are willing to work with the City to correct the violations. If they express a desire to contest the charges, we enter a not-guilty plea and set the case for trial. Alternatively, if they are willing to correct the violations and work towards the case being dismissed, we continue the case for 60 days to see what kind of progress can be made. In those 60 days, we advise Defendants that

we are looking for two primary things when determining whether or not a future continuance will be granted: one, has there been progress since the last time the Defendant appeared before the Court, and two, has the Defendant made contact with their Code Inspector to update him/her on the progress being made.

Although progress can be as simple as purchasing material or putting down a payment for a contractor, it can also be more complicated like waiting on the eviction process [to get the problem tenant out of the violation property] or finding someone who specializes in the areas of lead-paint or stucco remediation. Progress can be impacted by the weather [you cannot paint below 50 degrees], and more recently, it has also been impacted by supply-chain issues. Ultimately, progress is not an easy thing to measure because not all Defendants are created equally and some properties pose more immediate concerns than others. As such, it is imperative for us to consider each Defendant's individual situation, paying particular attention to their financial hardships and their ability to correct the violations themselves.

Ultimately, if a Defendant returns to Court and has made reasonable progress towards correcting the violations, we usually grant them another sixty 60 day continuance. We will continue to do this until the case is dismissed by the Prosecutor. However, in situations wherein progress begins to diminish and the efforts of the Defendant begin to dwindle, the length of time between continuances begins to shorten from 60 days to 45 days to 30 days. In those cases, once progress stops and the Court is unwilling to grant another continuance, the Defendant can set the case for trial or enter into a plea deal with the Prosecutor. Either way, the case will no longer remain on the weekly Code Docket.

Ideally, we do not like cases to remain on the Code Docket for more than a year but as noted above, we have to understand that each Defendant presents their own unique situation. But the fact of the matter is that once a case has been pending on the Code Docket for a year, it has really been in the system for at least 2 years (6 months to a year at code before it is sent to Prosecution for charging and filing with the Court which takes another 6 months) and some point, it no longer becomes prudent to keep "kicking the can down the road."

#### Plea Deal Example

The Defendant is criminally charged in Municipal Court with four code violations. The case has been pending on the Code Docket for a year, having been continued several times for various reasons. We reach a point where it becomes clear that the Defendant has no gumption to correct the violations on his/her property. The Prosecutor objects to another continuance and the Court agrees by not granting one. The Defendant can either ask for a plea offer or set the case for trial. The Defendant desires to enter into a plea agreement and agrees to plead guilty to two violations. In exchange for the guilty pleas, the Prosecutor dismisses the other two charges. The Defendant is assessed \$76 in court costs, and fined \$250 on each violation, totaling \$576. The Defendant is given 90 days to correct the violations that he/she was just convicted of. After 90 days, if the violations are corrected, the Court will suspend the \$250 fine. In this situation, the Defendant would be left with a balance of \$76. Six months go by and the Code Inspector revisits the property to do a re-inspection, finding that violations still remain. For the second time, the Defendant is sent a fix-it letter from Property Maintenance. The Defendant does not comply and the case is sent back to Prosecution to file criminal charges again. We go through the same process, except this time, if the Defendant still does not comply, we levy more severe fines or place the Defendant on probation with an underlying jail sentence.

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

AN ORDINANCE introduced by Acting City Manager Richard U. Nienstedt, concerning retaliatory eviction, amending § 9.25.010 through § 9.25.030 of the Topeka Municipal Code and repealing original sections and creating § 9.25.040 and § 9.25.050.

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

Section 1. That section 9.25.010, Policy, of The Code of the City of Topeka, Kansas, is hereby amended to read as follows:

**Policy.**

The ~~Council~~Governing Body recognizes the fact that many tenants hesitate to defend their right to a clean, safe and sanitary dwelling unit due to fear of eviction. It is hereby declared to be the public policy of the City that ~~no~~a tenant in good standing should not be evicted from their dwelling unit due to retaliatory or harassment motives where the eviction is motivated by the tenant's exercise of a legal right to complain, in good faith, to a landlord or government agency that the dwelling unit endangers or impairs the health and safety of the tenant.

Section 2. That the Code of the City of Topeka, Kansas, is hereby amended by adding a section, to be numbered 9.25.020, which said section reads as follows:

**Definitions.**

"Dwelling unit" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Good faith" means honesty in fact in the conduct of a transaction.

"Good standing" means that a tenant is not in arrears in the payment of rent and is in compliance with the duties of a tenant enumerated in K.S.A. 58-2555 and

amendments thereto.

“Landlord” means the owner or lessor of a dwelling unit or the building of which the unit is a part.

“Rental agreement” means all agreements, written or oral, embodying the terms and conditions concerning the use and occupancy of a dwelling unit.

“Tenant” means a person entitled under a rental agreement to occupy a dwelling unit.

“Retaliate” or “retaliatory action” shall include but not be limited to any of the following actions by a landlord when such actions penalize a tenant because of an action identified in TMC 9.25.030:

(1) Commencement of eviction;

(2) Increasing the rent; and

(3) Reduction of services required to be provided by the landlord pursuant to the rental agreement and/or K.S.A. 58-2553 and amendments thereto.

Section 3. That section 9.25.020, Unlawful actions by landlords, of The Code of the City of Topeka, Kansas, is hereby renumbered as 9.25.030 amended to read as follows:

**Unlawful actions by landlords.**

(a) It shall be unlawful for any owner or a landlord of any dwelling to commence any action or proceeding to recover possession of a dwelling unit from a tenant, demand an increase in rent from the tenant, decrease services to which the tenant has been entitled, or otherwise cause the tenant to involuntarily quit the dwelling unit within six months after any of the following acts have occurred to retaliate against a

tenant if the following conditions are met:

(a1) The tenant has organized or has become a member of a tenant's union or similar organization; or ~~the tenant has complained~~submitted a complaint, in writing and in good faith, either to the landlord or to a governmental agency charged with responsibility for enforcement of statutes, ordinances or regulations pertaining to the maintenance of safe and sanitary dwellings, of conditions in or affecting ~~his~~the tenant's dwelling unit which constitutes a violation of any statute, ordinance or regulation pertaining to the maintenance of safe and sanitary dwellings; ~~and a government official has filed a notice or complaint of such violation.~~

(2) The violation in subsection (a)(1) imposes responsibility on the landlord; and

(3) The landlord retaliated against the tenant within six (6) months of either (i) the date the tenant organized or joined a tenant's union or similar organization, or (ii) the date the tenant submitted the complaint.

~~(b) The tenant has organized or has become a member of a tenants' union or similar organization.~~If all of the conditions in subsection (a) are met, the tenant may submit an affidavit, the rental agreement and any other documentation to the City Attorney or designee.

Section 3. That section 9.25.030, Landlord rights, of The Code of the City of Topeka, Kansas, is hereby renumbered as 9.25.040 and amended to read as follows:

**Landlord rights**~~Actions deemed not retaliatory.~~

~~Notwithstanding the provisions in TMC 9.25.020, a landlord may bring an action~~

for possession if:

~~(a) — A violation of an applicable statute, ordinance or regulation was primarily caused by a lack of reasonable care by the tenant or other person in the tenant's household or persons upon the premises with the tenant's consent;~~

~~(b) — The tenant is not current with his rental payments; or~~

~~(c) — Compliance with an applicable statute, ordinance or regulation requires alteration, remodeling or demolition which would effectively deny the tenant the use of the dwelling unit.~~

(a) Notwithstanding TMC 9.25.030, a landlord may maintain an action to recover possession of the dwelling unit if:

(1) The tenant is using the dwelling unit for an illegal purpose or for a purpose which is in violation of the rental agreement or if tenant is not fulfilling a material term of their lease or for nonpayment of rent;

(2) The complaint was caused by the willful actions of the tenant, the tenant's invitee or another person in the tenant's household; or

(3) The landlord seeks to recover possession on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant before the tenant's complaint.

(b) Notwithstanding TMC 9.25.030, a landlord may increase the rent if:

(1) The rent increase does not conflict with the rental agreement; and

(2) the increase is made in good faith to compensate the landlord for expenses incurred as a result of acts of God, public utility service rate increases, property tax increases or other increases in costs of operation.



97           Section 4.   That the Code of the City of Topeka, Kansas, is hereby amended  
98 by adding a section, to be numbered 9.25.050, which said section reads as follows:

99           **Penalties; habitual violator.**

100           (a)   Notwithstanding TMC 1.10.070, punishment for a violation of TMC  
101 9.25.030 shall be as follows:

102                   (1)   Upon a first conviction, a fine of not more than one thousand dollars  
103 (\$1000).

104                   (2)   Upon a second conviction, a fine of not less than one hundred  
105 dollars (\$100) nor more than one thousand dollars (\$1000).

106                   (3)   Upon a third conviction, a fine of not less than five hundred dollars  
107 (\$500) nor more than one thousand dollars (\$1000).

108                   (4)   Upon a fourth or subsequent conviction, a fine of not less than one  
109 thousand dollars (\$1000) nor more than two thousand five hundred dollars  
110 (\$2500).

111           In addition to the preceding fines such person may be punished by a term of  
112 imprisonment which shall not exceed twelve months, or by both such fines and  
113 imprisonment.

114           (b)   For the purposes of determining whether a conviction is a first or  
115 subsequent conviction in sentencing under this section:

116                   (1)   Conviction includes being convicted of a violation of TMC 9.25.030  
117 and it is irrelevant whether an offense occurred before or after conviction for a  
118 previous offense.

119                   (2)   Conviction includes being convicted of a violation of TMC 9.25.030

120 or entering into a diversion agreement in lieu of further criminal proceedings on a  
121 complaint alleging a violation of this section.

122 (3) Any convictions occurring during the three years prior to the date of  
123 the occurrence shall be taken into account when determining the sentence to be  
124 imposed.

125 (c) Each day that any violation of this ordinance continues shall constitute a  
126 separate offense and may be punishable hereunder as a separate violation.

127 Section 5. That original § 9.25.010 through § 9.25.030 of the Code of the City  
128 of Topeka, Kansas, are hereby specifically repealed.

129 Section 6. This ordinance shall take effect and be in force on June 1, 2023  
130 after its passage, approval and publication in the official City newspaper.

131 Section 7. This ordinance shall supersede all ordinances, resolutions or rules,  
132 or portions thereof, which are in conflict with the provisions of this ordinance.

133 Section 8. Should any section, clause or phrase of this ordinance be declared  
134 invalid by a court of competent jurisdiction, the same shall not affect the validity of this  
135 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

136 PASSED AND APPROVED by the City Council on \_\_\_\_\_.

137  
138 CITY OF TOPEKA, KANSAS

139  
140  
141 \_\_\_\_\_  
142 Michael A. Padilla, Mayor

143 ATTEST:

144  
145  
146 \_\_\_\_\_  
147 Brenda Younger, City Clerk

Janice Watkins <ceo@topekahabitat.org>

Wed 6/7 12:03 PM

Karen A. Hiller

My comments are in alignment with the others. It is a good start. Not perfect, but it is a good starting point and I thank you and the City Attorney for compiling thoughts and responses.

Janice Watkins

(she/her/hers)

CEO

Topeka Habitat for Humanity

121 NE Gordon Street

Topeka, KS 66608

785.234.4322

Fax. 785.357.7050

We build strength, stability, self-reliance and shelter.

---

Teresa Baker <TBaker@HousingAndCredit.org>

Saturday 6/3, 1:17 AM

Karen A. Hiller;

Hello. Thank you for the significant efforts to all who have contributed to the Changing our Culture of Property Maintenance Initiative. Living in rental housing that meets minimum health and safety standards, regardless of the monthly rental rate, is a right that should be afforded to all. When counseling tenants and landlords, HCCI is a neutral third party. We believe renters and landlords should comply with their rights and obligations under rental housing laws, codes, and ordinances. We work to educate the parties to help tenants achieve housing stability.

After consideration, HCCI staff believes the ordinance is fair and reasonable. We agree with City Attorney Amanda Stanley's statement regarding issues that may arise with the ordinance - "re-evaluating if additions need to be made after we see how it works in practice." It can always be tweaked or amended if needed after it is adopted..."

We counsel hundreds of tenants and landlords each year. We also provide classroom education to both parties, respectively. When the topic of retaliation comes up, we ensure tenants understand the current retaliation ordinance. The same applies when we counsel landlords. We have found that once landlords learn the details of the ordinance, including the ramifications for noncompliance, the majority will comply with the requirements.

There are numerous excellent landlords and property managers in Topeka. Unfortunately, we also have noncompliant landlords. In our experience, often the landlords that do not comply with rental housing laws, codes and ordinances have tenants with few rental options due to low-income, credit issues, or past felonies. We believe efforts to communicate the existence of the current or future ordinance and, importantly, enforcement of the ordinance is essential to reducing retaliation.

Thank you for allowing us to provide feedback.

Teresa Baker

Executive Director  
Housing and Credit Counseling, Inc. – Celebrating 51 Years!  
800-383-0217 - [tbaker@housingandcredit.org](mailto:tbaker@housingandcredit.org)  
[www.housingandcredit.org](http://www.housingandcredit.org)  
License # CSO.00000003

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Johnathan Sublet <[jsublet@fellowshipicrest.com](mailto:jsublet@fellowshipicrest.com)>  
Thu 6/1, 6:48 AM  
Karen A. Hiller

Hello!  
I'm still on vacay but had time to read this. I believe that it works. We don't manage our properties so the education piece is going to be key for owners and rental management companies.

Love the people See the need Serve the will of God,

Johnathan Sublet  
Fellowship Hi-Crest Servant Pastor  
Office:(785)431-0404  
Mobile: (785)380-9039  
[jsublet@fellowshipicrest.com](mailto:jsublet@fellowshipicrest.com)  
[455 SE Golf Park Blvd., Topeka, KS 66605](http://455 SE Golf Park Blvd., Topeka, KS 66605)

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Carrie Higgins  
Wed 5/31, 4:29 PM

I am in agreement as well. I think the ordinance is good and there is no way to cover every possible scenario.

Thank you,

Carrie Higgins  
Interim Housing Services Division Director  
City of Topeka  
620 SE Madison, 1st Floor  
Topeka, KS 66607  
785-368-4456

---

Linda Jones-Giltner <[ljonesgiltner@petersoncompanies.com](mailto:ljonesgiltner@petersoncompanies.com)>  
Wed 5/31, 12:25 PM

Just finished reading it all today. Yes, we (Apartment Council of Topeka) agree as well and appreciate you keeping us informed.

Linda Jones-Giltner, CAM

Property Manager  
Cedar Ridge Apartments  
3216 SW Eveningside Drive  
Topeka, KS 66614  
785-272-0106  
Fax 785-272-0236  
[ljonesgiltner@petersoncompanies.com](mailto:ljonesgiltner@petersoncompanies.com)  
ACT Board of Directors/Association Executive

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Chris Palmer <Chris@Corner1.org>

Wed 5/31, 11:50 AM

We at Cornerstone of Topeka echo Steve's comments. Thank you for reaching out to the stakeholders!

Chris Palmer  
Executive Director  
Cornerstone of Topeka, Inc.  
[chris@corner1.org](mailto:chris@corner1.org)  
(785) 232-1650

---

Steve and Linda Vogel <spldvogel@yahoo.com>

Sun 5/28, 8:39 PM

Karen,

Thanks for soliciting our opinions. I think you know, my focus is looking out for the interest of landlords, particularly mom and pop landlords. I believe that keeping the business environment that landlords operate in as free as possible from unnecessary burdens is in the best interest of everyone. That being said, it doesn't appear to me that this proposed change to the regulation is a very big deal. As Amanda said, it is impossible to predict every possible scenario, but this change doesn't appear to impose any additional burdens on landlords.

Thank you,  
Steve Vogel  
President SCLA  
Karen A. Hiller  
Karen A. Hiller

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Sat 5/27/2023 1:31 PM

To:

Teresa Baker <TBaker@HousingAndCredit.org>;  
ceo@topekahabitat.org;  
Chris Palmer <Chris@Corner1.org>;  
jsublet@fellowshipicrest.com;  
Steve and Linda Vogel <spldvogel@yahoo.com>;

ljonesgiltner@petersoncompanies.com;  
Carrie Higgins  
Cc:  
Christina Valdivia-Alcala;  
Elizabeth Toyne

Retaliatory Eviction = Nonprofit  
and Landlord Feedback 5-7-  
23.docx18 KB

Retaliatory Eviction - City  
Attorney Comments 5-15-  
23.docx16 KB

Retaliatory Eviction  
Ordinance as of 5-1-  
23.docx17 KB

Show all 3 attachments (51 KB) Download all

Hi, HCCI, Habitat, Cornerstone, SENT, City of Topeka Housing, SCLA and Apt Council -

Thank you SO MUCH for your very detailed first-round feedback on the proposed updates to the City of Topeka's ordinance prohibiting retaliatory evictions! Can we ask for a second round?

Attached are the summary of all of your remarks that I prepared for the City Attorney, her response, and a copy, unchanged, of the proposed ordinance with updates.

Tried to keep this light...but if you want me to send you your comments again, I would be happy to do that.

If you think we should have a meeting and hash this out a bit more, that can be arranged, and we can get the City Attorney to join us.

The next Public Health and Safety Committee meeting, where we hope to be ready for the Committee to review and advance this proposal, is scheduled for June 21 at 11 AM.

So, I know it's the holiday weekend....(hopefully you are not even seeing this until Tuesday!!) If we could hear back from you by Friday June 2, that will give us plenty of time to process comments and/or set and hold a work session with you if needed.

Thank you SO much! Hope you have (or had, depending on when you read this!) a great weekend!!

Karen

Karen Hiller, Co-Lead, Changing our Culture of Property Maintenance Initiative  
Chair, Public Health and Safety Committee  
Councilwoman, City of Topeka District 1  
(785) 232-2917  
[khillier@topeka.org](mailto:khillier@topeka.org)

Agree to the facts....respect all....spend time on solutions!