

CHAPTER XIII. STREETS AND SIDEWALKS

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ARTICLE 1.

CONSTRUCTION, REPAIR OF STREETS AND SIDEWALKS

13-101. **UNIFORM CODE SETTING FORTH THE SPECIFICATIONS FOR DRIVEWAYS, SIDEWALKS, CURB AND GUTTER INCORPORATED.** There is hereby incorporated by reference for the purpose of establishing specifications for the construction of driveways, concrete sidewalks, curbs and gutters “Uniform Code Setting Forth the Specifications for Driveways, Sidewalks, Curb and Gutter, Edition 2003” prepared and published in book form by the city of Haysville. The standard code is hereby incorporated by reference as if set out fully in this section and shall apply to all driveways, private sidewalks, curb and gutter construction or reconstruction within the city. At least three (3) copies of the driveway, concrete sidewalk, curb and gutter specifications for the city shall be marked and stamped “Official Copy as Incorporated by the City of Haysville” and filed with the city clerk to be open for inspection and available to the public at all reasonable hours. The city inspector, the city engineer and all administrative departments of the city charged with enforcement of this article shall be supplied, at the cost to the city, such number of official copies of such specifications as may be expedient.

(Ord. 555, Sec. 1; Code 2003)

13-102. **CONCRETE CONSTRUCTION.** Any public sidewalks, curbs, or private driveways cutting through or passing over any public sidewalks or public parkways and all curbs or gutters constructed in the city shall be constructed of concrete unless otherwise ordered by governing body and shall be constructed according to specifications on file in the office of the city clerk for the purpose of giving the city, through its proper officers, supervision over the construction, reconstruction or repair of such public sidewalks, curbs, gutters or private driveways cutting through or passing over public sidewalks, public parkways, curbs or gutters.

(Ord. 115-A)

13-103. **LICENSE FOR CONSTRUCTION, RECONSTRUCTION.** Every person before constructing any public sidewalks, curbs, gutters, or private driveways cutting through or passing over any public sidewalks, curbs or gutters; or before removing any public sidewalks, curbs or gutters for the purpose of constructing, reconstructing or repairing a private driveway cutting through or passing over any public sidewalk, curbs or gutters in the city, shall be required to obtain a license from the city clerk, for which a license

fee as set out in Chapter 17, authorizing the licensee to engage in such work until January 1st, at which time said license must be renewed prior to any work taking place within the City.

(Code 1984, Sec. 14-103; Ord. 522; Ord. 644; Code 2003; Code 2007)

13-104. **REQUIREMENTS OF LICENSEE.** Before the license shall be granted by the city clerk under the provisions of section 13-103, the person applying for the license shall show, subject to the rules and regulations to be furnished by the city clerk, that he or she is skilled in the art of laying public sidewalks, curbs, gutters or private driveways cutting through or passing over public sidewalks, curbs or gutters.

(Code 1971, Sec. 10-104; Code 2003)

13-105. **PERMIT, FEE.** Before any person shall engage in the construction of any public sidewalks, curbs, gutters or private driveways cutting through or passing over any public sidewalks, curbs or gutters in the city he or she shall first obtain a permit from the city clerk for which he or she shall pay fees as set out in Chapter 17. Such permit shall state the location of the public sidewalks, curbs, gutters or private driveways cutting through or passing over any public sidewalks, curbs or gutters.

(Ord. 115-B, Sec. 2; Code 2003)

13-106. **INSURANCE REQUIREMENT.** It shall be unlawful for any contractor performing street or sidewalk work in the city to conduct business within the city unless such contractor first provides documentation in the nature of proof of insurance showing that such contractor is covered with liability insurance in the minimum amount of \$500,000 with the city named as an additional insured. All such documentation shall state that the city shall be given at least thirty (30) days advance written notice of any cancellation or material change in coverage of such insurance. If any person, firm, company, corporation or other entity shall conduct business within the city without first procuring and maintaining such insurance in accordance with this section, such person, firm, company, corporation or other entity shall be deemed guilty of a misdemeanor and punished by a fine and/or suspension or revocation of the contractor's license.

(Code 1971, Sec. 10-106; Code 2003)

13-107. **PERMIT DENIAL.** The city clerk shall refuse permits to any person who fails or refuses to obey all reasonable rules and regulations necessary in the enforcement of this article.

(Code 1971, Sec. 10-107)

13-108. **WIDTH OF SIDEWALK.** All public sidewalks, constructed under the provisions of this article, must be a minimum of six (6) feet in width unless otherwise ordered by the governing body.

(Code 1971, Sec. 10-108; Code 2003; Code 2013)

13-109. **INSPECTION.** Every person constructing, reconstructing or repairing any public sidewalks, curbs, gutters or private driveways cutting through or passing over any

public sidewalks, curbs or gutters in the city shall notify the city inspector when the work is ready for inspection so as to give the inspector sufficient time to accomplish the inspection prior to the placing of concrete in the forms. If the inspector finds that the public sidewalks, curbs, gutters or private driveways cutting through or passing over any public sidewalks, curbs or gutters are not in accordance with specifications provided, he or she may refuse to accept or approve the work and he or she may require that any errors in the construction, reconstruction or repair be corrected at once and before acceptance or approval of the work.

(Code 1971, Sec. 10-109)

- 13-110. **FAILURE TO CORRECT ERRORS.** The city clerk shall refuse to issue further permits as provided in section 13-103 to any person who fails, neglects or refuses to correct errors in the construction, reconstruction or repair of any public sidewalks, curbs, gutters as provided in section 13-113.

(Code 1971, Sec. 10-110)

- 13-111. **CONDEMNATION; RECONSTRUCTION.** The governing body may at any time by resolution condemn any portion of a public sidewalk, curb, gutter or private driveway cutting through or passing over any public sidewalks, curbs or gutters in the city whenever in its judgment it shall be deemed necessary to do so. Should the governing body condemn any portion of a public sidewalk, curb or gutters, it may provide for the reconstruction or repair of any such condemned portion of such public sidewalks, curb, gutter or private driveway cutting through or passing over any public sidewalks, curbs or gutters in accordance with the provisions of this article.

(Code 1971, Sec. 10-111)

- 13-112. **AUTHORITY OF PUBLIC WORKS DIRECTOR.** No formality shall be required to authorize the reconstruction or repair of any public sidewalk, curb, gutter or private driveway cutting through or passing over any public sidewalks, curbs or gutters in the city. The public works director after giving five (5) days' notice, as provided by law, may reconstruct or repair any public sidewalk, curb, gutter or private driveway cutting through or passing over any public sidewalks, curbs or gutters at any time, keeping account of the cost thereof and reporting the same to the governing body, which shall levy a special assessment against the lot or piece of land abutting on the portion of public sidewalk, curb, gutter or private driveway cutting through or passing over any public sidewalks, curbs or gutters for the cost of reconstruction or repair, together with a penalty of five percent (5%) of the cost of such reconstruction or repair.

(Code 1971, Sec. 10-112)

- 13-113. **RELEASE; PROCEDURE.** Any person, when desiring a release from the city after having constructed, reconstructed or repaired any public sidewalks, curbs, gutters or private driveways cutting through or passing over any public sidewalks, curbs or gutters, shall first notify the city clerk in writing, of such intent, and shall be responsible for any and all damages caused by said construction, reconstruction or repair and shall be responsible for the proper maintenance of barricades, safety guards and lights for the protection of the traveling public for a period of twenty-four (24) hours after 8:00

a.m., of the next working day for employees of the city, following such notice. When such notice is released to the city on Friday, the construction shall then be maintained through Sunday and/or any legal holiday or double holiday, plus a period of eight (8) hours after 8:00 a.m. on the next working day for city employees following such Sunday, legal holiday or double holiday. When a permit is released to the city a day that precedes a legal holiday or double holiday, the construction shall be maintained through such legal holiday or double holiday plus a period of twenty-four (24) hours after 8:00 a.m., on the next working day for city employees following such legal holiday or double holiday.

If during the period above provided, it is found that the work has not been properly done, then the person holding the license and permit shall, upon notice from the public works director, correct the defect at once, notify the city in writing of said correction, and after notification, shall be responsible for maintenance of proper barricades, safety guards and lights for the protection of the traveling public for an additional period of the same length of time as outlined in the preceding paragraph.

(Code 1971, Sec. 10-113; Code 2003)

- 13-114. **MONEYS COLLECTED; TO CITY TREASURY.** The moneys collected as license fees and permit fees under the provisions of this article shall be at once transmitted to the city treasury and the license and permit shall serve as the receipt. All sums collected under the provisions of this article shall be credited to the general operating fund of the city.

(Code 1971, Sec. 10-114; Code 2003)

ARTICLE 2. EXCAVATIONS

- 13-201. **EXCAVATIONS; PERMIT.** It shall be unlawful for any person, firm, corporation or other entity other than bonded contractors holding contracts to do construction work for the city, to cut any sidewalk or pavement, or make any excavation in any of the streets, alleys, or other public grounds in the city, for the purpose of laying, repairing, or removing any pipes, underground wires, or other conduits, or for any other purpose not specifically mentioned herein, unless such person, firm, corporation or other entity shall have first obtained a permit from the city. The permit fee shall be as established by Chapter 17.

(Code 1971, Sec. 10-201; Code 2003)

- 13-202. **PERSONS ELIGIBLE FOR PERMIT; INSURANCE.** The following persons, firms, corporations and other entities, shall be eligible to secure permits to cut sidewalks or pavement, and to make excavations in the streets, alleys, and other public grounds in the city:

(a) Any public utility corporation having a franchise to operate in any street, alley, or other public grounds of the city;

- (b) Licensed plumbers and master drain layers licensed by the city;
- (c) Any other person, firm, corporation or other entity: PROVIDED, that such other person, firm, corporation or other entity shall first file and maintain with the city clerk a certificate of insurance with a minimum of \$500,000 coverage with the city named as an additional insured.

(Code 1971, Sec. 10-202; Code 1984; Code 2003)

- 13-203. PERMITS. Permits hereunder shall be issued to public utility corporations having a franchise to operate in any street, alley, or other public grounds of the city, upon the filing with the city, an application for such permit by such public utility corporation: PROVIDED, That statements based on fees hereinafter provided will be rendered upon the first of each calendar month for the amount due the city on all permits issued to such public utility corporations prior to the 15th day of the preceding calendar month, which statements shall be due and payable on or before the last day of the calendar month in which same are rendered. The permit fees are as established by Chapter 17 of the fee schedule.

(Code 1971, Sec. 10-203)

- 13-204. REINSPECTION/NON-BUSINESS HOURS; FEES. The building inspector shall make a thorough reinspection of all excavations whenever deemed advisable upon any premises within the city. When the excavation is found to be in noncompliance with this article, the person, firm, corporation or other entity owning or conducting the same shall be notified in writing and shall make the necessary changes required to bring the excavation into compliance with this article within the specified time in the notice. Upon failure to comply with the written notice, the building inspector is hereby authorized to delay construction or excavation until instructed by the building inspector that any further construction or excavation may resume or begin. Fees for reinspection are as stated in Chapter 17.

(Code 1984; Code 2003)

- 13-205. ADDITIONAL FEE; DISCOUNTS. A sum in the amount of ten percent of the permit fee or fees shall be added to all permits for cutting sidewalk or pavement, for construction or repair of building foundations, to cover inspection of the excavation in preparation for backfilling as hereinafter provided.

(Code 1971, Sec. 10-205; Code 1984)

- 13-206. EXCAVATION OF UNPAVED STREETS AND ALLEYS; FEES. A fee shall be required for a permit to excavate in any unpaved street or portion of street, alley, or other public grounds, for the purpose of laying, repairing or removing any main pipes, underground wires, or other conduits, one such permit shall be required for each block or portion of block of street, alley, or other public grounds if the work is done with continuity. For the purpose of connecting, repairing or removing service pipes, underground wires or other conduits, or for any other purpose not specifically mentioned herein, one such permit shall be required for each connection unless such connection is made at the time of laying the main. Fees for Excavation Permits are as stated in Chapter 17.

(Code 1971, Sec. 10-206; Code 1984; Code 2003; Code 2007)

- 13-207. **BARRICADES, GUARDS, LIGHTS PROPERLY MAINTAINED.** Any person, firm, corporation or other entity making excavations in any of the streets, alleys, or other public grounds in the city shall at all times after such work is commenced, up to and including the time when said work is completed and the cut is released to and accepted by the city for replacement or repair as provided in sections 13-218:222 maintain proper barricades, safety guards, and lights for the protection of the traveling public.
(Code 1971, Sec. 10-208)
- 13-208. **SIDEWALK, PAVEMENT EXCAVATIONS; BACKFILLED.** All excavations where sidewalk or pavement has been cut, shall either be backfilled with sand which shall be flushed into place with water, or shall be backfilled with excavated material dampened and thoroughly tamped in six- (6) inch layers until its compaction is equal to one-hundred percent (100%) of that of the adjacent undisturbed soil. The sand shall be free of rock, dirt or trash and the excavation shall be filled to within six inches of the surface of the remainder of the sidewalk or pavement. The person, firm, corporation or other entity making the excavation shall replace the excavation in accordance with section 13-220. All surplus excavated material shall be removed from the location by the person, firm, corporation or other entity making the excavation.
(Code 1971, Sec. 10-209)
- 13-209. **CONSTRUCTION EXCAVATION PROPERLY CLEANED; INSPECTED.** All excavations for the construction or repair of building foundations, where adjacent to any street or alley lines, shall, as soon as practicable, be thoroughly cleaned of all building or casual debris of any kind, inspected by the city inspector, then backfilled with sand, free from rock, dirt or trash and flushed into place with water. The building contractor, or the owner where there is no contractor, shall notify the city at least eight (8) hours in advance of the time he or she expects to have any such excavation ready for inspection and backfill.
(Code 1971, Sec. 10-210)
- 13-210. **PROPERLY TAMPED AND COMPACTED.** Any excavation in any street or alley which is less than four (4) feet from any existing pavement, curb or sidewalk, or where such pavement, curb or sidewalk has been ordered to be constructed by action of the governing body but not yet constructed, shall be backfilled with the excavated material, dampened and thoroughly tamped in six (6) inch layers until its compaction is equal to one-hundred percent (100%) of that of the adjacent undisturbed soil, or it shall be backfilled with sand which shall be flushed into place with water to within six (6) inches of the surface of the remainder of the sidewalk or pavement and the rest of the backfill shall be made of excavated material securely tamped and left flush with the surface. In any sodded area, the sod shall be carefully removed, then reset as the work is completed.
(Code 1971, Sec. 10-211)
- 13-211. **PAVEMENT EXCAVATION ONE-FOOT BEYOND DIRT EXCAVATION.** The

pavement portion of all street pavement cuts shall be excavated for a minimum distance of one (1) foot beyond the edges of the dirt excavation except that when one side of the pavement cut touches a gutter, the gutter pavement shall not be excavated. The dimensions of the pavement cut as given on the permit shall include the extra excavation of pavement beyond the edges of the dirt excavation, all material and workmanship shall conform to specifications on file in the office of the city engineer.

(Code 1971, Sec. 10-212)

- 13-212. UNIMPROVED STREET, ALLEY; BACKFILLED, ROLLED. All excavations in any used or traveled portion of any unimproved street or alley, except as provided in the preceding section may be backfilled with the excavated material: PROVIDED, That after completion of the backfill, it shall be compacted by rolling with heavy equipment and all surplus material shall be trimmed and removed from the line of the ditch.

(Code 1971, Sec. 10-213)

- 13-213. UNIMPROVED STREETS, ALLEYS; BACKFILL DITCHES, TRENCHES. It shall be the duty of any person, firm, corporation or other entity making an excavation in any of the unimproved streets, alleys, or other public grounds in the city to backfill and maintain all trenches or ditches in a safe condition for the traveling public until the excavated material has reached final settlement.

(Code 1971, Sec. 10-214)

- 13-214. THROUGH OR RIGHT-OF-WAY STREETS; PROCEDURE. Any public utility company, contractor, public agency, plumber or other person, firm, corporation or other entity having a project which necessitates making an excavation in a paved street, which is classified and approved by ordinance or resolution as a through or right-of-way street, shall work continuously and diligently without interruption and without regard for regular hours of work on said project until the completion of the same, unless other arrangements are approved in writing by the public works director before commencement of the project.

(Code 1971, Sec. 10-215)

- 13-215. EXCAVATION DEFINED. Excavation for the purpose of sections 13-207:222 shall be defined as any cut made in the existing pavement of the street.

(Code 1971, Sec. 10-216; Code 1984; Code 2003)

- 13-216. ALL EXCAVATION WORK TO COMPLY WITH THIS ARTICLE; EXCEPTIONS. Work on an excavation made either as a result of obtaining a permit from the city to make such excavation or as a result of entering into a contract with the city shall be subject to the provisions of this article, except that contracts with the city for the complete repaving or resurfacing of an existing paved street shall be exempt from this provision.

(Code 1971, Sec. 10-217; Code 2003)

- 13-217. LIABILITY. Any person, firm, corporation or other entity making excavations in any of the streets, alleys, or other public grounds in the city, shall at all times be liable to

the city for damages arising by reason of any neglect or carelessness in any respect concerning said excavation prior to the time the cut is released to and accepted by the city for replacement and repair as provided in Sections 13-218:222 hereto, and shall indemnify, defend and hold the city harmless from all suits or claims or judgments for damages growing out of, arising from, or related to any negligent, intentional, wanton, reckless or other wrongful act or omission on the part of, or by, any person, firm, corporation, or other entity in making street cuts, excavations, erection or barricades, lights or other obstructions.

(Code 1971, Sec. 10-218; Code 2003)

- 13-218. **RELEASE TO CITY FOR REPLACEMENT; PROCEDURE.** Any person, firm, corporation or other entity when desiring to release to the city for replacement any sidewalk or curb or gutter or pavement cut, shall first notify the city, in writing, of such intent, but shall be responsible for any and all damages caused by the cut and shall be responsible for the maintenance of proper barricades, safety guards and lights for the protection of the traveling public for a period of twenty-four (24) hours after 8:00 a.m., of the next working day for city employees following such notice. When a notice is released to the city on Friday, the excavation shall be maintained through Sunday and/or any legal holiday or double holiday plus a period of eight (8) hours after 8:00 a.m. on the next working day for city employees following such Sunday, legal holiday or double holiday. When a permit is released to the city on the day before a legal holiday or double holiday, the excavation shall be maintained through Sunday and/or such legal holiday or double holiday plus a period of twenty-four (24) hours after 8:00 a.m., of the next working day for city employees following such Sunday, legal holiday or double holiday.

(Code 1971, Sec. 10-219; Code 2003)

- 13-219. **IMPROPER BACKFILLS AND CORRECTIONS THEREOF; PROCEDURE.** If, during the period above provided after the notice of release is given for the replacement of sidewalk, curb, gutter or pavement, it is found that the backfill has not been properly made, then the person, firm, corporation or other entity making said excavation shall, upon notice from the public works director, correct the defect at once, notify the city in writing of such correction, and after notification, shall be responsible for the maintenance of proper barricades, safety guards and lights for the protection of the traveling public for an additional period of the same length of time as outlined in section 13-218.

(Code 1971, Sec. 10-220; Code 2003)

- 13-220. **PAVING CONTRACTORS TO REPLACE PAVEMENT CUTS.** In replacement of all pavement, curb, gutter and sidewalk cuts, the person, firm, corporation or other entity making said cuts may, with the approval of the public works director or shall upon the order of the public works director contract with a paving contractor for the replacement, under inspection of the city inspector, of such cuts and shall be liable for the cost of replacing same, and for the maintenance of proper barricades, safety guards, and lights for the protection of the public during the operation. All material and workmanship shall conform to specifications on file in the office of the city engineer.

(Code 1971, Sec. 10-222; Code 1984; Code 2003)

- 13-221. DEPOSIT OF COLLECTIONS TO GENERAL OPERATING FUND. The fees collected pursuant to this article shall be immediately transmitted to the city treasury and the issued permits shall serve as receipts. All such fees shall be credited to the general operating fund of the city.

(Code 1971, Sec. 10-224; Code 2003)

- 13-222. PENALTY. Any person, firm, corporation or other entity making any excavation in the streets, alleys, or public grounds of the city without first complying with the provisions of this article, or who violates any of the provisions of this article, shall be deemed guilty of a violation of this code and fined in accordance with the general penalty provisions in section 1-121 of this code. Each day the violation is committed or continued shall constitute a separate offense.

(Code 1971, Sec. 10-225; Code 1984; Code 2003)

ARTICLE 3. HEDGES, TREES AND SHRUBS

- 13-301. DEFINITIONS. (a) Street Trees: Shall mean trees, shrubs, bushes and all other woody vegetation on land lying between the property lines on either side of all streets, avenues or ways within the city.

(b) Park Trees: Shall mean trees, shrubs, bushes and all other woody vegetation in public parks having individual names, and all areas owned by the city or which public has free access as a park.

(c) Community Forest: Shall mean all street and park trees as a total resource.

(d) Very Large Trees: Shall mean those attaining a height of over sixty (60) feet.

(e) Large Trees: Shall mean those attaining a height between forty (40) and sixty (60) feet.

(f) Medium Trees: Shall mean those attaining a height between twenty (20) and forty (40) feet.

(g) Small Trees shall mean those attaining a normal maximum height of twenty (20) feet.

(Ord. 765; Code 2003)

- 13-302. STREET TREE; SPECIES TO BE PLANTED. The city shall maintain a list of recommended trees for planting in public areas. This list shall be available to residents of the city upon request to aid in the selection of trees for private properties. The list of recommended trees will be those trees as listed in the publication Preferred Tree Species of South Central Kansas by the Kansas Urban Forestry Council, revision April 1999. Any request for variance of street tree plantings other than the species found on this list must be approved by the tree board.

(Ord. 765; Code 2003)

- 13-303. SPACING. Street trees may not be planted closer together than the following:
(a) Small Trees – fifteen (15) feet
(b) Medium Trees – twenty-five (25) feet
(c) Large Trees – thirty-five (35) feet
(d) Very large trees – forty (40) feet
Exceptions may be granted by the tree board.
(Ord. 765; Code 2003)
- 13-304. DISTANCES AND CLEARANCES FOR PLANTING. (a) Curbs and Sidewalks - Small and medium street trees may be planted in the tree lawn where there is six (6) feet to ten (10) feet between the edge of the sidewalk and the curb of the street. Street trees shall be planted no closer than three (3) feet from a sidewalk or street. Exceptions may be granted by the tree board.
(b) Street corners and fire hydrants – No street tree shall be planted within twenty (20) feet of any street corner along an arterial street or within fifteen (15) feet of any street corner along the adjoining collector street. Distance will be measured from the point of nearest intersecting curblines. No street tree shall be planted within ten (10) feet of any fire hydrant.
(c) Utility facilities – No street tree other than those species listed as small trees may be planted under or within ten (10) lateral feet of any overhead utility wire. No street tree may be planted within ten (10) lateral feet of any water meter or over or within five (5) lateral feet of any underground waterline, sewer line, transmission line or other utility.
(Ord. 765; Code 2003)
- 13-305. PUBLIC TREE CARE. The city shall have the right to plant, prune, maintain and move trees, plants and shrubs within the right-of-way or bounds of all streets, alleys, lanes, squares and public grounds as may be necessary to insure public safety or to preserve or enhance the beauty of such public grounds. The city may remove, or cause, or order to be removed, any tree or part thereof which is an unsafe condition or which by reason of its nature is injurious to sewers, electric power lines, gas lines, water lines or other public improvements, or is seriously affected with any injurious insect or disease.
(Ord. 765; Code 2003)
- 13-306. TREE TOPPING. It shall be unlawful as a normal practice for any person, firm or city department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three (3) inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempt from this section at the determination of the tree board.
(Ord. 765; Code 2003)
- 13-307. CLEARANCES OVER STREETS AND WALKWAYS. Maintaining clearances over streets and walkways shall be the responsibility of the abutting property owner.

A clearance of eight (8) feet must be maintained over walkways and a clearance of fourteen (14) feet must be maintained over streets. Property owners are responsible for trees on their own property as well as trees on the public way that abuts their property. The public works director or his/her designee will notify in writing the owner of such trees in violation of the above clearance requirements, and stated improvements shall be accomplished within thirty (30) days of notification. In the event of failure to comply by the owner, the city shall have authority to prune such trees and charge the cost of pruning on the property tax notice.

(Ord. 765; Code 2003; Code 2015)

13-308. **DEAD OR DISEASED TREE REMOVAL.** The city shall remove or cause to be removed any dead or diseased tree within the city limits. Diseased trees are defined as those trees that may constitute a hazard to life and property, or harbor insects or disease, which represent a potential threat to other trees within the city (i.e. dutch elm disease or pine wilt). The public works director or his/her designee will notify in writing the owner of such trees, and removal shall be accomplished within sixty (60) days of notification. In the event of failure to remove by the owner, the city shall have authority to remove such trees and charge the cost of removal on the property tax notice.

(Ord. 765; Code 2003)

13-309. **REMOVAL OF STUMPS.** All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

(Ord. 765; Code 2003)

13-310. **INTERFERENCE WITH THE TREE BOARD.** It shall be unlawful for any person to prevent, delay or interfere with the tree board or any of its representatives or agents while engaging in and about the planting, cultivating, mulching, pruning, spraying or removing of any tree within the community forest, as authorized by this article.

(Ord. 765; Code 2003)

13-311. **REVIEW BY GOVERNING BODY.** The governing body shall have the right to review the conduct, acts and decisions of the tree board. Any person may appeal from any ruling or order of the tree board to the governing body, who may hear the matter and make final decision.

(Ord. 765; Code 2003)

13-312. **HABITUAL VIOLATORS.** The term habitual violator is defined as any resident or non-resident person or entity who, within the immediately preceding five (5) years has been found guilty or pled guilty in the municipal court of the city three (3) or more times of violating this article.

(Ord. 765; Code 2003)

13-313. **FAILURE TO COMPLY; PENALTY.** Should the person, corporation, partnership, association or other entity fail to comply with the notice to abate the nuisance or request a hearing, the code enforcement officer may file a complaint in the

municipal court of the city against such person, corporation, partnership, association or other entity and upon conviction of any violation of provisions of this article, be fined any amount not to exceed \$300 or be imprisoned not to exceed thirty (30) days or both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. Upon the second conviction or plea to a violation of this article, such person, corporation, partnership, association or other entity shall be fined the sum of \$500. Upon conviction of a third violation of the article, such person, corporation, partnership, association or other entity shall be fined the sum of \$1,000. Any person or entity who is convicted as a habitual violator under this article shall be fined \$1,500 and shall be imprisoned for a term not to exceed five (5) days in jail.

(Ord. 765; Code 2003)

ARTICLE 4. RIGHT OF WAY MAINTENANCE

13-401. **POLICY.** It is the policy of the City of Haysville, Kansas, in discharge of the duties as trustee of the public right-of-way and for the overall public health, safety and welfare of the City, to establish rules and regulations concerning management of the public right-of-way.

The authority of an occupant to use and occupy the public right-of-way shall always be subject and subordinate to the public health, safety, and welfare requirements and regulations of the City. Every occupant shall comply with all laws, rules, and regulations governing the use of public right-of-way.

13-402 **REGISTRATION.**

A. Unless otherwise exempt by the terms of this Article, each occupant engaged in providing, transmitting, supplying or furnishing utility service originating, running through or terminating within the City of Haysville, Kansas, or owning or controlling facilities within the public right-of-way shall file an annual registration statement on a form provided by the City.

B. Prior to commencing any work, no occupant may construct, install, repair, remove, relocate, or perform any other work on any facilities or any part thereof in any City right-of-way without first being registered with the City of Haysville.

C. The registration requirement shall not apply to planting or maintaining landscaping in the right-of-way, construction or repair of sidewalks, installation of street signs, news-racks, temporary signs and public pay phones.

D. The registration requirement shall apply to any occupant having exempt facilities referenced above if that occupant also has nonexempt facilities elsewhere in the public right-of-way.

A. For purposes of complying with the annual registration requirement set forth above, every occupant shall provide the following information related to their use of the public right-of-way:

1. Identity and legal status of registrant, including related affiliates that are or may conduct activities listed in Section 2.
2. Name, address, telephone number, e-mail address and fax number of the contact person responsible for the accuracy of the registration statement. This person shall also serve as the registrant's agent and further be responsible for the distribution of any information pursuant to this Article to the appropriate person in the registrant's organization.
3. List of contact persons, including the name, address, telephone number, e-mail address and fax number for the following areas: right-of-way maintenance, right-of-way construction, and administration.
4. Name, address, telephone number, e-mail address and fax number of the local representative of registrant or operations center who shall be available at all times to act on behalf of registrant in the event of an emergency.
5. Description of registrant's existing or proposed facilities within the City of Haysville.
6. Description of utility service registrant intends to offer or provide or is currently offering or providing to any person or entity in the City of Haysville.
7. Information sufficient to determine whether the registrant is subject to franchising under State law.
8. Information sufficient to determine whether the registrant needs to/has applied for and received any certificate of authority required by the Kansas Corporation Commission to provide utility services in the City of Haysville.
9. Information sufficient to determine that the registrant needs to/has applied for and received any construction permit, operating license or other approvals required by the Federal Communications Commission to provide telecommunications services in the City of Haysville.
10. Such other information as may be required by the City of Haysville which is reasonably related to the use of the public right-of-way. Any material changes or modifications to the registration statement that affect the registrant's activities in

the public right-of-way shall be submitted to the City within 30-days of such change or modification.

B. The Annual Registration Fee shall be received by the City by February 15th of each calendar year. Such fee and late charges are outlined in Chapter 17.

13-404 PERMIT REQUIRED. Any person or entity desiring to conduct work on any facilities in, along, across, under, or over public rights-of-way must first apply for and obtain a permit from the City of Haysville in addition to any other permit or authorization to occupy public rights-of-way. If the facilities work must be done on an emergency basis, the person or entity conducting the work must notify the Director of Public Works of the City of Haysville at the first available opportunity and apply for any permits or authorizations from the City within two (2) business days. Emergency work must comply with all applicable laws, rules, and regulations.

A. All applications for permits shall be submitted to the Director of Public Works on a form provided by the City Clerk with such information as required to allow the City to evaluate the application consistent with and necessary to accomplish the provisions of this Article.

B. Each permit application shall be accompanied by the payment of the appropriate fee.

C. The Director of Public Works shall review and cause the permit to be issued within ten (10) business days upon a showing that the applicant has met all the requirements of this Article. The Director of Public Works shall review the applications and his decision shall be based upon, but not limited to, the following:

1. Submission of a complete application.
2. Submission of the appropriate permit fee and bond.
3. Designated project commencement and termination dates.
4. Sufficient scheduling and coordination information.
5. Location and route of all facilities in the right-of-way.
6. Description of work to be done in right-of-way.
7. Proper restoration or protection of the right-of-way.
8. Compliance with all applicable codes, rules and regulations.
9. Coordination plan with existing facilities for their removal or relation of affected facilities.

10. Applicant has properly registered pursuant to Section 2 of this Article.
11. Proof of liability insurance.
12. Other information as required to protect public health, safety and welfare.

D. The Director of Public Works may deny a permit request for any of the following reasons:

1. The applicant has failed to pay the permit fee for prior projects.
2. The applicant has failed to return the right-of-way to an acceptable condition under previous permits.
3. The work requested in the permit application will cause undue disruption to existing facilities.
4. The applicant has failed to provide all necessary permit application information.
5. The applicant is in violation of the provisions of this Article.
6. The specific portion of the public right of way for which the applicant seeks use and occupancy is environmentally sensitive as defined by state and federal law or lies within a previously designated historic district as defined by local, state, or federal law.
7. Any other reason for which granting of the permit would be detrimental to the public health, safety and welfare.

E. Subsequent to denial of a permit, the City shall provide the applicant with reasonable notice and opportunity to be heard and that said denial is in compliance with the provisions of this Article.

13-405 CONSTRUCTION STANDARDS.

- A. The construction, operation, maintenance, and repair of facilities in the right-of-way shall be in accordance with applicable health, safety and construction codes as well as those standards promulgated by the City.
- B. All facilities shall be installed and located with due regard for minimizing interference with the rights and convenience of property owners, including the City.
- C. No applicant shall place facilities where they will damage or interfere with the use or operation of previously installed facilities or obstruct or hinder other utilities serving the residents and businesses in the City.

D. If available, applicants shall make a good faith attempt to co-locate their facilities with as many other utilities as possible so as to maximize the efficient allocation of space in the right-of-way. In instances where the City has placed conduit or ducting in the right-of-way and made it available, applicants shall install their facilities within the City conduit or ducting system, unless applicants can show a substantial hardship preventing such placement.

E. Any and all public right-of-way damaged or disturbed during the facilities work shall be promptly repaired or replaced by the applicant to its functional equivalence prior to being damaged or disturbed.

F. Any contractor, agent, affiliate, employee, or subcontractor used for facilities work in the right-of-way must be properly licensed under the laws of the State and all applicable local ordinances. Each contractor, agent, affiliate, employee, or subcontractor shall be accountable for the obligations herein to the same extent as the applicant. The applicant shall be ultimately responsible to ensure the contractor, agent, affiliate, employee, or subcontractor fully complies with the provisions of these Policies and Procedures and likewise shall be responsible for all acts or omissions of the contractor, agent, affiliate, employee, or subcontractor. Furthermore, upon written notice by the City, the applicant shall be responsible for promptly correcting acts or omissions by any contractor, agent, affiliate, employee, or subcontractor.

G. Within 30-days of completion of any facilities work in the right-of-way, applicant shall provide City with a complete set of “as-built” drawings. Preliminary plans shall satisfy this requirement so long as those preliminary plans accurately reflect the facilities work done.

13-406 FEES.

Every applicant for facilities work in the right-of-way, at the time of filing of the permit application, shall pay to the City the applicable permit fees, except that any State or local government, governmental agency, public or private school, or water district organized under K.S.A. 19-3501 et seq., shall be exempt from the permit fees mandated exclusively by this Article.

Likewise, the permit fees mandated exclusively by this Article shall be waived for any facilities work in the right-of-way to extend utility service to a State, local or other governmental agency, public or private school facility.

Right-of-way permit fees may be established by Resolution of the Governing Body of the City of Haysville, Kansas.

Every occupant performing work in the right of way shall be required as a condition of their permit to post a performance bond, in a form acceptable to the City, from a surety licensed to conduct surety business in the State of Kansas, ensuring appropriate and timely performance in the construction and maintenance of facilities located in the right of

way. The amount and term of the performance/maintenance bond shall be determined by the City based upon the size and scope of the work sought to be performed under the permit.

13-407 FAILURE TO RESTORE RIGHT-OF-WAY.

If the occupant fails to restore the right of way in the manner and to the condition required by this Article, or any applicable City ordinance, rule or regulation, or fails to satisfactorily and timely complete all restoration required by the City, the City shall issue a written notice of violation giving the occupant ten (10) days to restore the right-of-way in the manner and to the condition required by this Article. If the occupant fails to make the repairs required by the City, the City may affect those repairs and charge the occupant the cost of those repairs. If the City incurs damages as a result of a violation of this Section, then the City shall have a cause of action against the occupant for violation of this Section, and may recover its damages, including reasonable attorney fees, if the occupant is found liable by a court of competent jurisdiction.

13-408 RELOCATION OF FACILITIES.

A. The City will attempt to provide affected utilities with as much notice as possible, prior to the need for relocation. In any event, no later than 90 days from written notice by the City, any occupant with facilities in the right-of-way shall, at its own expense, temporarily, or permanently remove or relocate, change or alter the position of any facilities within the right of way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for:

1. Construction, repair, maintenance or installation of any City or other publicly funded project or improvement in or upon the public ways; and/or
2. Operations of the City in and upon the right-of-way.

B. Whenever possible, the relocation, change or alteration of any facilities shall be underground unless waived by the City. The City may waive this underground requirement for technical reasons or if underground placement would cause severe hardship to the occupant.

C. Relocation of facilities must be completed no later than 90 days from the date written notice was provided to the occupant by the City. This time period may be extended by the City for good cause as demonstrated by the occupant.

D. Any relocation of facilities at the City's request must comply with all City ordinances except that the occupant shall not be required to pay any permit fees.

E. The City shall provide occupant written notice of the failure to properly remove or relocate facilities. After 14 days from said written notice and in the event an occupant fails to remove, relocate or otherwise rearrange any facilities, the City may, at its option and in

addition to the imposition of any penalties or any other remedies available, undertake or cause to be undertaken, such necessary removal or relocation. Any damages suffered by the City or its contractors as a result of such occupant's failure to timely remove or relocate its facilities shall be borne by such provider. Future permit applications may not be granted to the same or related occupant until such time as those facilities are removed or relocated. The City shall have no liability for any damage caused by such removal or relocation and the occupant shall be liable to the City for all reasonable costs incurred by the City in such removal or relocation.

13-409 ABANDONMENT/REMOVAL OF FACILITIES

A. An occupant who has determined to discontinue its operations in the City must either:

1. Provide satisfactory information to the City that the occupant's obligations for its facilities under this Article have been lawfully assumed by another occupant; or
2. Submit to the City a proposal and instruments for dedication of its facilities to the City. If an occupant proceeds under this clause, the City may at its option:
 - a. Accept the dedication for all or a portion of the facilities; or
 - b. Require the occupant, at its own expense, to remove the facilities in the right of way at ground or above ground level; or
 - c. Require the occupant to post a bond or provide payment sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the facilities.

B. Any occupant who has abandoned facilities in any City right-of-way shall remove them immediately unless such removal would cause unnecessary disruption and destruction to existing facilities or the right-of-way. For purposes of this Article, "abandoned facilities" includes any facilities that have not been used for the purpose for which they were constructed over a continuous period of 12 months. The City will notify occupants in writing of their intentions to proceed under this Section. The occupant shall have 60 days to remove or otherwise remedy the situation to the satisfaction of the City. In addition to any other remedy available in law or equity, where facilities are abandoned, the City may either, take possession of the facilities, abate the facilities or require the occupant or the successor in interest to the occupant to remove the facilities at their expense.

13-410. LIABILITY.

Every occupant of public rights-of-way shall assume all liability for any work which it performs in the right-of-way.

Occupants shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees

(including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the provider, any agent, officer, director, representative, employee, affiliate, or subcontractor of the occupant, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, removing or maintaining facilities in a public right-of-way. The indemnity provided by this Section does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors, or subcontractors. If an occupant and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Kansas without, however, waiving any governmental immunity available to the City under state or federal law and without waiving any defenses of the parties under state or federal law. This Section is solely for the benefit of the City and occupant and does not create or grant any rights, contractual or otherwise, to any other person or entity.

An occupant or the City shall promptly advise the other in writing of any known claim or demand against the occupant or the City related to or arising out of the occupant's activities in the public right-of-way.

13-411. DEFINITIONS. In this Article, the following terms will have the following meanings:

Applicant: Any person or entity seeking a permit from the City to conduct or, in the case of an emergency, recognize work in a public right-of-way. An applicant must be properly registered before submitting a permit application.

City: City of Haysville, Kansas.

Entity: A corporation, partnership, limited liability company, association, firm and any governmental agency, authority, board, agency or department.

Facilities: Including, but not limited to, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennas, poles, ducts, conductors, lines, mains, vaults, appliances, attachments, equipment, structures, manholes, and other like equipment, fixtures and appurtenances used in connection with transmitting, supplying or furnishing utility services, cable television, communications, signaling, electricity, water, natural gas, steam or other services or similar functions.

Liability Insurance: An amount not less than the minimums as set by the City, to protect the City and the Governing Body, officers, employees, and authorized agents thereof to the full extent indemnified hereunder from and against all claims by any person whatsoever for loss or damage from personal injury, death or property damage occasioned in any manner by the use of a public right-of-way. This provision may be satisfied by supplying the City a letter of self-insurance and appropriate documentation verifying the applicant's ability to provide no less than the minimum coverage required.

Occupant: Any person or entity that occupies, uses, or seeks to occupy or use public lands or a public right-of-way through the placement of facilities therein. If the owner of any facilities leases, subleases, assigns or licenses the control or responsibility of any of those facilities to another person or entity, then the lessee, sublessee, assignee or licensee shall be deemed an occupant for that portion of such facilities.

Person: An individual or natural person.

Right-of-Way: Only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below, or above the present and future streets, alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service.

Utility Service: The providing, transmitting, supplying or furnishing cable television, communications, signaling, electricity, water, natural gas, steam or other similar service.

13-412 **VIOLATION.** Any contractor, agent, affiliate, employee, individual, or subcontractor performing construction or maintenance of facilities within the City's right of way without complying with the terms of this Chapter, may be cited for violation of this Chapter, and may also be subject to citation for Criminal Damage to Property.

Additionally, it is unlawful for any individual, proprietorship, partnership, company, corporation, municipal corporation or other entity to construct, erect, lay or otherwise place any pipeline, transmission line, main, pole, tower, sign or other structure above, across, upon or within any public land or right-of-way within the corporate limits of the City of Haysville, Kansas in violation of the provisions of this Article. Any individual signing an application for permit shall be deemed the permittee and may be individually prosecuted for any violation of such permit.

13-413. **PENALTY.** Any person, proprietorship, partnership, company, corporation, municipal corporation or other entity violating any of the provisions of this Article shall, upon conviction thereof by the Municipal Court of the City of Haysville, Kansas, be fined in an amount not to exceed five hundred dollars plus court costs. Each day constitutes a separate violation.
(Code 2010)