# CODE

## OF THE

# CITY OF LEAWOOD

## KANSAS

Published Under the Authority and by the Direction of

The Governing Body of the City of Leawood,

Kansas, this 22nd day of August, 2000

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# CHAPTER I. ADMINISTRATION


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**1-101.** **CODE DESIGNATED.** The chapters, articles and sections herein shall constitute and be designated as "The Code of the City of Leawood, Kansas," and may be so cited. The code may also be cited as the "Leawood City Code."

(Code 1984)

**1-102.** **DEFINITIONS.** In the construction of this code and of all ordinances of the city, the following definitions and rules shall be observed unless such construction would be inconsistent with the manifest intent of the governing body or the context clearly requires otherwise:

(a) ***City*** shall mean the City of Leawood, Kansas.

(b) ***City Council (Council)*** shall mean the eight councilmembers elected as provided by Section 6-101.

(c) ***Code*** shall mean the Code of the City of Leawood, Kansas.

(d) ***Comprehensive Development Plan or Comprehensive Plan*** means the official adopted Comprehensive Development Plan for the City of Leawood, and amendments relating thereto.

(e) ***Computation of time*** within which an act is to be done shall exclude the first day and include the last day. If the last day is a Saturday, Sunday or legal holiday, that day shall be excluded.

(f) ***Councilmember*** shall mean a person duly elected to the city council, and shall not mean the mayor.

(g) ***County*** means the County of Johnson in the State of Kansas.

(h) ***Delegation of Authority***. Whenever a provision appears requiring or authorizing the head of a department or officer of the city to do some act or perform some duty, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty unless the terms of the provision designate otherwise.

(i) ***Employee*** shall mean an employee of the city and includes those persons who do not serve definite terms of office, do not exercise any of the sovereign functions of government, and are engaged primarily in the performance of ministerial service to the city.

(j) ***Gender***. Words importing the masculine gender include the feminine and neuter.

(k) ***Governing Body*** means the Mayor and the members of the City Council.

(l) ***In the City*** shall mean and include all territory over which the City now has or shall hereafter acquire jurisdiction for the exercise of its police or other regulatory powers.

(m) ***Joint authority***. All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

(n) ***Master Development Plan or Master Plan*** shall mean the Comprehensive Development Plan or the Comprehensive Plan as defined herein above.

(o) ***Month*** shall mean a calendar month.

(p) ***Number***. Words used in the singular include the plural and words used in the

plural include the singular.

(q) ***Oath*** includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the word swear is equivalent to the word affirm.

(r) ***Officer*** shall mean those appointive officers of the city, including but not limited to the city administrator, city clerk, city treasurer, city attorney, fire chief, chief of police, director of public works, director of community development and municipal judge, and any other officer who exercises some portion of the sovereign functions of government.

(s) ***Owner*** applied to a building or land shall include not only the owner of the whole but any part owner, joint owner, tenant in common or joint tenant of the whole or a part of such building or land.

(t) ***Person*** includes a firm, partnership, association of persons, corporations, organization or any other group acting as a unit, as well as an individual.

(u) ***Property*** includes real, personal and mixed property.

(v) ***Shall, may***. Shall is mandatory and may is permissive.

(w) ***Sidewalk*** means any portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

(x) ***Street*** means and includes public streets, avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the city.

(y) ***Tenant or occupant*** applied to a building or land shall include any person holding a written or oral lease of, or who occupies the whole or a part of such building or land, whether alone or with others.

(z) ***Tense***. Words used in the past or present tense include the future as well as the past and present.

(aa) ***Writing or written*** shall include printing, engraving, lithography and any other mode of representing words and letters, except those cases where the written signature or the mark of any person is required by law.

(bb) ***Year*** means a calendar year, except where otherwise provided.

(Ord. 1056C; 6-20-88)
(Ord. 1760C; 11-2-98)
(Ord. 2592C; 11-19-12)
(Ord. 2902C; 08-06-18)

**1-103.** **EXISTING ORDINANCES.** The provisions appearing in this code, so far as they are in substance the same as those ordinances existing at the time of the effective date of this code, shall be considered as continuations thereof and not as new enactments.

(Code 1984)

**1-104.** **EFFECT OF REPEAL.** The repeal of an ordinance shall not revive an ordinance previously repealed, nor shall such repeal affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced under or

by virtue of the ordinance repealed, except as shall be expressly stated therein.

(Code 1984)

**1-105.** **CATCHLINES OF SECTIONS.** The catchlines of the sections of this Code printed in capital letters are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titled, titles of such sections, nor as any part of any section, nor unless expressly so provided, shall they be so deemed when any section, including its catchline, is amended or reenacted.

(Code 1984)

**1-106.** **PARENTHETICAL AND REFERENCE MATTER.** The matter in parentheses at the end of sections is for information only and is not a part of the code. Citations indicate only the source and the text may or may not be changed by this code. All citations referencing "Code 1973" are to the Revised Ordinances of that date, as authorized by Ordinance No. 436, section 1-311. This code is a new enactment under the provisions of K.S.A. 12-3014 and 12-3015. Reference matter not in parentheses is for information only and is not a part of this code.

(Code 1984)

**1-107.** **AMENDMENTS; REPEAL.** Any portion of this code may be amended by specific reference to the section number as follows: "That section _____ of the Code of the City of Leawood is hereby amended to read as follows: (The new provisions shall then be set out in full.)"

A new section not existing in the code may be added as follows: "That the code of the City of Leawood is hereby amended by adding a section (or article or chapter) which reads as follows: (The new provisions shall then be setout in full.)"

All sections, or articles or chapters to be repealed shall be repealed by specific reference as follows: "Section (or article or chapter) _____ of the Code of the City of Leawood is hereby repealed."

(K.S.A. 12-3004; Code 1984)

***NOTE**:* *Whenever an existing section of this code is amended the original section must be repealed!*

**1-108.** **POWERS GENERALLY.** All powers exercised by cities of the first class or which shall hereafter be conferred upon them shall be exercised by the governing body, subject to such limitations as prescribed by law.

(Ord. 1761C; 11-2-98)

**1-109.** **ORDINANCES.** The governing body shall have the care, management and control of the city and its finances, and shall pass all ordinances needed for the welfare of the city. All ordinances shall be valid when a majority of all the members-elect of the city council shall vote in favor thereof; provided, that where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance.

(Ord. 1056C; 6-20-88)

**1-110.** **SUBJECT AND TITLE; AMENDMENT.** No ordinance shall contain more than one subject, which shall be clearly expressed in its title; and no section or sections of an ordinance shall be amended unless the amending ordinance contains the entire section or sections as amended and the section or sections amended shall be repealed.

(K.S.A. § 12-3004; Code 1984)

**1-111.** **SIGNING OR VETO.**

(a) The mayor shall have the power to sign or veto every ordinance passed by the council, with the exception of ordinances on which the mayor casts the deciding vote, and appropriation ordinances.

(b) If the mayor refuses or neglects to sign, or is not present at the meeting, the ordinance shall take effect without the mayor's signature.

(c) Any ordinance vetoed by the mayor may be passed over the veto by a vote of 3/4 of the whole number of council members-elect notwithstanding the veto.

(d) If the mayor does not sign the ordinance, or return it with a veto stating his or her objections in writing, on or before the next regular meeting of the council, the ordinance will take effect without the mayor's signature.

(e) The presiding officer of the council shall have no power to sign or veto any ordinance.

(Ord. 695; 05-04-81)

**1-112.** **PUBLICATION.** No ordinance, except those appropriating money, shall be in force until published in full or in summary form as allowed by K.S.A. § 12-3007 et seq., in the official city newspaper by the city clerk..

(Ord. 2565C; 08-20-12)
(Code 1973, 1-202)
(K.S.A. § 12-3007)

**1-113.** **ORDINANCE BOOK.**

(a) Following final passage and approval of each ordinance, the city clerk shall enter the same in the ordinance book of the city as provided by law. Each ordinance shall have appended thereto the manner in which the ordinance was passed, the date of passage, the page of the journal containing the record of the final vote on its passage, the name of the newspaper in which published and the date of publication.

(b) The city clerk shall prepare and maintain a compilation of, and index to, those city ordinances which are not made a part of the Code of the City of Leawood, 1984, so as to enable convenient access by the public to such ordinances. Neither the index nor the compilation shall become a part of this Code, nor shall any implication or presumption of legislation intent be drawn therefrom.

(Code 1973, 1-203)
(Code 1984; K.S.A. § 12-3008)

**1-114.** **RESOLUTIONS, MOTIONS.** Except where a state statute or city ordinance specifically requires otherwise, all resolutions and motions shall be passed if voted upon favorably by a majority of a quorum of the city council, or if the mayor casts a favorable vote when the city council is equally divided.

(Ord. 1056C; 06-20-88)

**1-115.** **QUORUM.** A majority of the members-elect of the city council being present in person or by telephone or other medium for interactive communication shall constitute a quorum.

(Ord. 1056C; 06-20-88)
(Code 2000)
(Ord.1953C; 09-03-02)
(Ord. 2997; 05-04-2020)

**1-116.** **COMMITTEES.** The Governing Body may provide such standing or special committees as may be needed, and unless it shall otherwise determine, such committees shall be appointed by the mayor with the consent of the council. Standing Committees shall be as designated. All other committees shall be ad hoc committees to be formed as needed and shall disband upon conclusion of their assigned task, unless otherwise directed by the city council. In 2016, standing committees shall be constituted at the second regular meeting in May. Effective in 2017, standing committees shall be constituted at the second regular meeting of the governing body in February each year with terms effective on March 1st. When a new member is appointed or elected to fill a vacancy on the governing body, he or she may be assigned to a standing committee. In such event the governing body may authorize the reappointment and reorganization of any or all committees.

Councilmembers appointed as liaisons shall not be voting members of the assigned committees and shall not be counted in determining the number required for a quorum or in determining whether or not a quorum is present.

(Ord. 1288C;04-06-92)
(Ord. 2752C; 10-05-15)
(Ord. 2766C; 12-21-15)

**1-117.** **PROCEDURES.** Each committee shall operate in accordance with the following general procedures:

(a) All committee meetings shall be open to the public. A meeting may be closed to the public only in accordance with the provisions of the Kansas Open Meetings Act governing the conduct of executive sessions.

(b) The city administrator shall maintain a calendar of all committee meetings and coordinate meeting places so as to avoid conflicts.

(c) Insofar as possible, a staff member will be assigned to assist a committee. The staff person assigned to the committee shall be responsible for assisting the chairperson in preparation of the agenda, arrangements, reports, minutes, and shall perform other staff research or support as required by the committee.

(d) The chairperson, with the assistance of the staff person assigned to the committee, shall be responsible for preparing the meeting agenda. Only those items referred to the committee by the city council should appear on the agenda.

(e) Minutes of a committee meeting shall be kept and shall be retained by the city clerk and made available for public inspection upon request.

(f) The chairperson of a committee shall report to the governing body all recommendations of the committee. Such a report should be submitted to the city administrator's office prior to the scheduled council meeting.

(g) Committees, including the Planning Commission, shall only conduct business when a quorum is present in person or by telephone or other medium for interactive communication.

(Code 1973, 1-603)
(Code 2000)
(Ord. 2140C; 11-14-05)
(Ord. 2997; 05-04-2020)

**1-118.** **EMERGENCY GOVERNMENT.** In the event of a catastrophe in which all or a majority of the members of the governing body are fatally injured, the interim governing body shall be composed of the surviving members, the city attorney, the city clerk and a sufficient number of the appointed officials selected in the order of the greatest seniority in office to make up a governing body of the prescribed number.

(Code 1973, 1-116)

**1-119.** **CITY RECORDS.** The city clerk or any other officer or employee having custody of city records and documents shall maintain such records and documents in accordance with K.S.A. 12-120 to 12-121, inclusive, which statutes are incorporated herein by reference as if set out in full.

(Code 1984)

**1-120.** **ALTERING CODE.** It shall be unlawful for any person to change or amend by additions or deletions any part or portion of this code, or to insert or delete pages or portions thereof, or to alter or tamper with such code in any manner whatsoever which will cause the law of the City of Leawood to be misrepresented thereby. This restriction shall not apply to amendments or revisions of this code authorized by ordinance passed by the governing body.

(Code 1984)

**1-121.** **SCOPE OF APPLICATION.** Any person convicted of doing any of the acts or things prohibited, made unlawful or misdemeanor, or the failing to do any of the things commanded to be done, as specified and set forth in this code, shall be deemed guilty of a violation of this code and punished in accordance with section 1-122. Each day any violation of this code continues shall constitute a separate offense.

(Code 1984)

**1-121A CERTAIN CODE PROVISIONS SUSPENDED DUE TO THE COVID-19 PANDEMIC.** Due to the COVID-19 pandemic, certain provisions of the Code of the City of Leawood, 2000 are temporarily suspended or modified as follows:

(a) Provisions of this Code requiring a business or occupational license are hereby suspended until July 1, 2021.

(b) The following provisions of the Leawood City Code, adopting new standards which became effective on May 1, 2020 [the New Building Codes], are suspended until June 1, 2020. As used herein, New Building Codes refers to each of the following:

1. Leawood Building Code, Section 4-101, et seq.
2. International Building Code, Section 4-201, et seq.
3. National Electrical Code, Section 4-301, et seq.
4. International Plumbing Code, Section 4-401, et seq.
5. International Mechanical Code, Section 4-501, et seq.
6. International Fuel Gas Code, Section 4-601, et seq.
7. International Existing Building Code, Section 4-701, et seq.
8. International Energy Conservation Code, Section 4-801, et seq.
9. International Residential Code, Section 4-901, et seq.
10. International Swimming Pool, Spa, and Hot Tub Code, Section 4-1001, et seq.
11. International Fire Code, Section 7-201, et seq.
12. International Property Maintenance Code, Section 8-501, et seq.

Persons filing building plans with the City prior to June 1, 2020, may utilize either the New Building Codes or the Building Code in effect on April 30, 2020.

(c) The imposition of any penalty for late pet license renewals, found in Section 2-201(g) and the City's Fee Resolution, is suspended through December 31, 2020. Persons licensing their pets or renewing pet licenses prior to December 31, 2020, shall not be subject to any such penalty.

(d) The City may approve a provisional Massage Therapist License under section 5-510 of the Code, without requiring fingerprints, provided the applicant meets all other requirements of Section 5-510. Provisional Massage Therapist Licenses issued without fingerprints shall be for a term not to exceed three months, renewable without additional application fees. This Subsection (d) shall remain in place until such time as the City Administrator determines that fingerprints can be obtained by the City without undue risk.

(e) The City may accept plans or an application under Section 4-904(A)(2) electronically, if the design professional preparing the plans consents in the electronic submission to the copying of such plans. When a requesting Homes Association has provided an email address, such plans or application may be submitted to the Homes Association by email. This subsection shall expire on July 1, 2021.

(f) The fees set forth in the Code for certain alcoholic liquor and cereal malt beverage licenses are temporarily reduced for applications made on or after March 1, 2020 and on or before June 30, 2021 as follows:

(1) The fee set forth in Section 3-211 for licenses for retail liquor stores will be $200 for a two year license.
(2) The fee set forth in Section 3-213 of the Code, for licenses for drinking establishments and Class A & B Clubs will be $200 for a two year license.
(3) The fee set forth in Section 3-215 for a caterer's license to sell liquor by the drink will be $50 for a two year license.
(4) The fee set forth in Section 3-107(a) for a cereal malt beverage license for consumption on premise will be $25 per year, in addition to the required state fee.
(5) The fee set forth in Section 3-107(b) for a cereal malt beverage license for off premise consumption will be $25 per year, in addition to the required state fee.

( Ord. 2995; 05-04-2020)

( Ord. 2995; 05-04-2020)

**1-122.** **GENERAL PENALTY.** The governing body shall have power to enact and make all necessary ordinances, rules and regulations for maintaining the peace, good government, and welfare of the city and its trade and commerce; and all ordinances may be enforced by prescribing and inflicting upon inhabitants or other persons violating the same, fine and/or imprisonment. Whenever any offense is declared by any provision of this code, absent a specific or unique punishment prescribed, the offender shall be punished in accordance with this section.

(a) A fine not less than one dollar or exceeding $500; or,

(b) Imprisonment in the city jail not exceeding 180 days; or,

(c) Both such fine and imprisonment not to exceed (a) and (b) above, as may be just for any one offense, recoverable with costs of suit.

(Ord. 1759C; 11-02-98)

**1-123.** **SEVERABILITY.** If for any reason any chapter, article, section, subsection, sentence, clause or phrase of this code or the application thereof to any person or circumstance, is declared to be unconstitutional or invalid or unenforceable, such decision shall not affect the validity of the remaining portions of this code.

(Code 1984)

# ARTICLE 2. GOVERNING BODY

## SECTIONS


1-201 GOVERNING BODY
1-202 MAYOR
1-203 MEETINGS; SPECIAL MEETINGS
1-204 COMPELLING ATTENDANCE OF ABSENTEES
1-205 ORDER OF BUSINESS
1-206 ORGANIZATION MEETING
1-207 ROBERT'S RULES REVISED
1-208 COMPENSATION
1-209 PRESIDING OFFICER; ROTATING TERMS
1-210 VACANCY IN OFFICE OF COUNCILMEMBER
1-211 VACANCY IN OFFICE OF MAYOR; PRESIDENT OF COUNCIL
1-212 REIMBURSEMENT OF EXPENSES OF CITY OFFICIALS AND EMPLOYEES
1-213 OFFICIAL INTEREST IN CONTRACTS
1-214 PENALTY
1-215 INTERFERENCE BY MEMBERS OF THE CITY COUNCIL


**1-201.** **GOVERNING BODY.** The governing body shall consist of a mayor and eight councilmembers to be elected as provided by section 6-101.

(Code 1984)

**1-202.** **MAYOR.** The mayor shall preside at all meetings of the city council. He or she shall have the tie-breaking vote on all questions when the members present are equally divided. The mayor shall:

(a) Have the superintending control of all the appointed officers and department heads in the operations of the city, which superintending control may be delegated to the city administrator as chief administrative assistant to the mayor in accordance with article 3 of this chapter;
(b) Take care that the laws of the city are complied with;
(c) Sign the commissions and appointments of all officers elected or appointed;
(d) Endorse the approval of the governing body on all official bonds;
(e) From time to time communicate to the city council such information and recommend such measures as he or she may deem advisable;
(f) Have the power to approve or veto any ordinance as the laws of the state shall prescribe;
(g) Sign all orders and drafts drawn upon the city treasurer for money;
(h) Cause all subordinate officers to be dealt with promptly for any neglect or violation of duty;
(I) Be vested with jurisdiction over those areas beyond the territorial limits thereof, but within five miles of the limits of the City of Leawood, for the enforcement of

any sewer ordinance.

(Ord. 1056C; 06-20-88)

**1-203.** **MEETINGS; SPECIAL MEETINGS**. The mayor and councilmembers shall have regular sessions on the first and third Mondays of each and every month, at 7:00 P.M., provided, however, if a governing body work session is scheduled prior to the regular session, then the regular session shall commence at 7:30 P.M., if notice is given on the meeting agenda and on the City's website. Regular sessions may be cancelled if notice is given on the City's website. In case a regular session falls on a holiday, the regular session shall be held on the next day thereafter which is not a holiday. Special sessions shall be called by the Mayor in accordance with statute, specifying the object and purpose of such meeting, which request shall be read at the meeting and entered at length on the journal. All sessions shall be held at the City Hall unless circumstances make that place impracticable for a particular session, in which case it may be held at any convenient place within the city. In all cases, it shall require a majority of the councilmembers-elect to constitute a quorum to do business, but a smaller number may adjourn from day to day.

(Ord. 1757C; 11-02-98)
(Ord. 2926C; 02-18-19)

**1-204.** **COMPELLING ATTENDANCE OF ABSENTEES.** In order to secure a quorum in the absence of any other reasonable means, the minority of councilmembers may compel the attendance of absentees by attachment issued in the name of the city and directed to the chief of police, commanding him or her to bring any such absentees forthwith before the council.

(Ord. 694; 05-04-81)

**1-205.** **ORDER OF BUSINESS.** At the hours appointed for the meeting, the members shall be called to order by the mayor, and the order of business proceed as specified by the mayor; except that by majority vote of the governing body, such order may be changed.

(Ord. 694; 05-04-81)

**1-206.** **ORGANIZATIONAL MEETING.** At the first regular meeting in January following certification of the results of the City election held as provided by Section 6-101 of this Code, the Governing Body, as constituted before said election, shall meet and proceed to any unfinished business, and thereafter seat the new Governing Body, and the new Governing Body shall proceed to the order of business.

(Ord. 1035C; 02-16-88)
(Ord. 2750C; 10-05-15)
(Ord. 2948C; 06-17-19)

**1-207.** **ROBERT'S RULES REVISED.** Robert's Rules of Order, Revised, are adopted for the conduct of the meetings of the governing body.

(Ord. 694; 05-04-81)

**1-208.** **COMPENSATION.**

(a) For the Office of Mayor, there is hereby established the following sums to be paid during the Mayor's term of office and to cease when the Mayor is removed from office or, for any reason, shall leave office:

(1) a salary of $12,800 per year, payable according to the City's regular pay schedule; and

(2) a car allowance of $4,800 per year, payable monthly on the first and second pay periods of each month; and

(3) a communication expense allowance of $200 per month, payable in equal portions on the first and second pay periods of each month. Such allowance is for all communication related technology and no further reimbursement for such expenses, as specified in § 1-212 of this Code or otherwise, shall be allowed.

(b) For the Office of Councilmember, there is hereby established the following sums to be paid during the Councilmember's term of office and to cease when such Councilmember is removed from office or, for any reason, shall leave office:

(1) a salary of $6,800 per year, payable according to the City's regular pay schedule; and

(2) a mileage expense allowance of $250.00 per month payable on the first and second pay periods of each month, for the office of Councilmember; and

(3) a communication expense allowance of $100 per month payable in equal portions on the first and second pay periods of each month. Such allowance is for all communication related technology and no further reimbursement for such expenses, as specified in § 1-212 of this Code or otherwise, shall be allowed.

(Ord. 1597C; 07-15-96)
(Ord. 1837C; 12-20-99)
(Code 2000)
(Ord. 1883C; 02-05-01)
(Ord. 2058C; 04-19-04)
(Ord. 2154C; 02-20-06)
(Ord. 2447C; 06-07-10)
(Ord. 2871C; 11-20-17)

**1-209.** **PRESIDING OFFICER; ROTATING TERMS.** The mayor shall at the second regular meeting of the governing body in May of 2016, appoint from the council membership a presiding officer for each three month period for the remaining months of 2016. Commencing in December of 2016, and each December thereafter, the mayor shall at the first regular meeting in December, appoint from the council membership a presiding officer for each three month period for the following calendar year. The presiding officer shall preside at any council meeting during such three month term at which the mayor is absent. The position shall rotate among councilmembers and no councilmember shall be presiding officer for more than one three month period during any year.

(Ord. 1042C; 03-07-88)
(Ord. 2765C; 12-21-15)

**1-210.** **VACANCY IN OFFICE OF COUNCILMEMBER.** If a vacancy should occur in the office of councilmember by reason of death, resignation, removal from the city, removal from office, disqualification, or otherwise, the existence of the same shall be published to the council and press within one week after receiving notification of the vacancy. If a councilmember moves out of the ward for which he or she was elected, or is deemed not to be a resident of the city, the office shall be deemed vacant. A nominating committee, to be composed of the mayor, the presiding officer and the councilmember remaining in the ward affected shall be established to seek out candidate(s) from the ward affected to fill such vacancy. Should the presiding officer be the remaining councilmember in the ward affected, then the councilmember appointed to serve as presiding officer for the following quarter shall serve on the nominating committee. The nominating committee will recommend the candidate(s) to the governing body. The candidate(s) shall be voted on by the governing body to serve in the vacated office until the next city election. If at such time, the term of the vacated office is not yet expired, the newly elected councilmember shall be elected only to serve out the balance of the original unexpired term.

(Ord. 1756C; 11-02-98)
(Ord. 2751C; 10-05-15)
(Ord. 2789C; 07-05-16)

**1-211.** **VACANCY IN OFFICE OF MAYOR; PRESIDENT OF COUNCIL.** If a vacancy shall occur in the office of the mayor by reason of death, disability, resignation, temporary absence from the city, removal from office, refusal to qualify, or otherwise, the governing body shall at its next meeting elect from its membership a president of the council who shall be acting mayor until such vacancy shall be filled at the next city election, such disability be removed, or, in case of temporary absence, the mayor returns. During such vacancy, other than temporary absence or disability, the president of the council shall become mayor and act as mayor and exercise the office of mayor with all rights, privileges, jurisdiction and compensation of the mayor. If at the next city election the term of the vacated office is not yet expired, the newly elected mayor shall be elected only to serve out the balance of the original unexpired term. For purposes of this Section, temporary absence shall be defined as being absent for more than one regularly scheduled consecutive council meeting.

(Ord. 1756C, 11-02-98)
(Ord. 2751C; 10-05-15)

**1-212. REIMBURSEMENT OF EXPENSES OF CITY OFFICIALS AND EMPLOYEES.**

(a) Whenever a city official, councilmember, committee member or employee shall be directed or ordered in connection with city affairs to attend any hearings or to represent the city in any matter or appear before any board, commission, or court, such person shall be reimbursed reasonable, necessary and proper travel expenses so advanced by said person; and shall be reimbursed for such other expenses actually advanced as are reasonable, necessary, and proper.

(b) Employees of the city, required to use their personal automobile in the conduct of official city affairs, shall be reimbursed for their actual mileage at a rate equal to the rate annually fixed by the Internal Revenue Service for business mileage. The Director of Finance shall publish the annual rate to all eligible recipients by separate correspondence. Said funds shall be paid upon direction of the appropriate department head from either a special mileage reimbursement fund or petty cash as the department head so directs.

(Ord. 1574C; 04-15-96)

**1-213. OFFICIAL INTEREST IN CONTRACTS.** No officer of the city, whether appointed or elected, nor any member of a standing committee or commission of the city overseeing and directing any of the public improvements of the city, and all officers, elected and appointed, holding and exercising any office of trust or profit under or by virtue of any ordinance of the city or any law of the state, shall:

(a) Take any contract with the city;

(b) Perform or do for their own profit any work for the city over which they have in whole or in part the supervision, direction, or control;

(c) Furnish any materials for their own profit for work over which they have in whole or in part the supervision, direction, or control;

(d) Have performed or done for them any work by city employees or equipment except in furtherance of their duties to or for the city: Provided, That such prohibition may be removed from any such contract or transaction by the vote of the majority of the councilmembers-elect when requested by the officer, committee member or commission member upon revealing the extent and nature of the interest therein.

(Code 1973, 1-505)

**1-214. PENALTY.** Any person who shall violate the provisions of section 1-213 shall upon conviction therefore be fined in a sum not less than $10, nor more than $100.

(Code 1973, 1-506)

**1-215.** **INTERFERENCE BY MEMBERS OF THE CITY COUNCIL.** No member of the city council shall directly interfere with the conduct of any department or duties of employees subordinate to the city administrator except at the express direction of the city council, or with the approval of the city administrator.

(Code 1973, 1-430)

## ARTICLE 3. CITY ADMINISTRATOR

**SECTIONS**


1-301 CODE DESIGNATED
1-302 APPOINTMENT
1-303 QUALIFICATIONS
1-304 BOND
1-305 REMOVAL
1-306 DUTIES
1-307 POWERS


**1-301. CITY ADMINISTRATOR; COMPENSATION.**

(a) There is hereby created and established the office of city administrator for the City of Leawood, Kansas.

(b) The city administrator shall receive such compensation as may be determined from time to time by the city council and such compensation shall be payable bi-weekly.

(Ord. 642; 08-06-79)

**1-302. APPOINTMENT.** The mayor, with the approval of a majority of the city council, shall appoint the city administrator to serve at the pleasure of the governing body.

(Code 1984)

**1-303. QUALIFICATIONS.**

(a) The person appointed to the office of City Administrator shall be a resident of Johnson County at the time of the effective date of such appointment, and shall be a graduate of an accredited university or college, qualifications and experience in financial and/or administrative fields.

(b) In the event the office of City Administrator is vacant and an Interim Administrator is appointed to carry out the duties and responsibilities of the City Administrator, all qualifications set forth in Section 1-303, subsection A, shall be waived and shall not be applicable.

(Ord. 642; 08-06-79)
(Ord. 1880C; 12-04-00)

**1-304. BOND.** Repealed by Ordinance No. 1758C, November 2, 1998.

**1-305.** **REMOVAL.** The mayor, with the consent of a majority of the members-elect of the city council, may remove the city administrator from office at any time. If requested by the city administrator, the mayor and city council shall grant the city administrator a public hearing within 30 days following notice of such removal. During the interim, the mayor, with the approval of a majority of the city council, may suspend the city administrator from duty, but shall continue his or her salary for two calendar months following the final removal date, provided, however, that if the city administrator shall be removed for acts of dishonesty or acts of moral turpitude, such salary shall not be continued.

(Ord. 642; 08-06-79)

**1-306.** **DUTIES.** The City Administrator shall:

(a) Be the chief administrative assistant to the mayor and as such shall be the administrative officer of the city government. Except as otherwise specified by ordinance or by law of the State of Kansas, the city administrator shall coordinate and generally supervise the operation of all departments of the city;

(b) Be the purchasing agent for the city, and all purchases or contracts for purchase amounting to less than $15,000 shall be made under his or her general direction and supervision. Purchases of $15,000 or more shall be approved by the Governing Body, except for emergency repair or maintenance to city-owned facilities or equipment; or any and all necessary expenditures to carry out the daily operations of the management of IRONHORSE Golf Club. Those emergency repairs or maintenance purchases shall be approved by the city administrator. All purchases made by the city administrator, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body;

(c) Be the budget officer of the city and with the assistance of all department heads shall assemble estimates of the financial needs and resources of the city for each ensuing year and shall prepare a program of activities within the financial power of the city, embodying in it a budget document with proper supporting schedules and an analysis to be proposed to the Governing Body for their final approval;

(d) Make quarterly reports to the Governing Body relative to the financial condition of the city. Such reports shall show the financial condition of the city in relation to the budget;

(e) Prepare and present to the Governing Body an annual report of the city's affairs, including in such a report a summary of reports of department heads and such other reports as the Governing Body may require;

(f) Act as the personnel officer of the city and shall administer the Personnel Rules and Regulations Administrative Policy including making appropriate changes to the Policy to facilitate the efficient and effective daily operations of the City. The City Administrator shall report any amendment of or changes to the Personnel Rules and Regulations Administrative Policy to the Governing Body as soon as is practical. The City Administrator shall recommend an appropriate pay plan to the Governing Body and, after consultation with department heads, shall approve advancement and appropriate pay increases within the approved pay plan and the position classification system. The City Administrator shall have the power to appoint and remove all subordinate employees of the City subject to the personnel system regulations and shall make recommendations to the Governing Body concerning the appointment and removal of department heads;

(g) Recommend to the Governing Body adoption of such measures as he or she may deem necessary or expedient for the health, safety, or welfare of the city or for the improvement of administrative services for the city;

(h) Submit to the Governing Body a proposed agenda for each council meeting at least 72 hours before the time of the regular council meeting;

(i) Work with all city commissions and committees to help coordinate the work of each;

(j) Attend all meetings of the Governing Body unless excused by the mayor;

(k) Supervise the preparation of all bid specifications for services and equipment, and receive sealed bids for presentation to the Governing Body;

(l) Coordinate federal and state programs which may have application to the city;

(m) Attend state and regional conferences and programs applicable to the office, and the business of the city, whenever such attendance is directed and approved by the Governing Body;

(n) Keep full and accurate records of all actions taken by him or her in the course of his or her duties, and he or she shall safely and properly keep all records and papers belonging to the city and entrusted to his or her care in accordance with federal and Kansas state statutes. All such records shall be and remain the property of the city and be open to inspection by the Governing Body at all times;

(o) Perform any and all other duties or functions prescribed by the Governing Body.

(Ord. 1230C; 07-15-91)
(Ord. 1877C; 11-06-00)
(Code 2000)
(Ord. 2027C; 10-06-03)

**1-307. POWERS.** The City Administrator shall:

(a) Have responsibility for all real and personal property of the city. He or she shall have responsibility for all inventories of such property and for the upkeep of all such property. He or she shall be responsible to see the city has adequate procedures to insure against major insurable risks;

(b) Have the power to prescribe such rules and regulations as he or she shall deem necessary or expedient for the conduct of administrative agencies subject to the authority, and he or she shall have the power to revoke, suspend, or amend any rule or regulation of the administrative service except those prescribed by the city council;

(c) Have the power to sign his or her name to any check issued by the city as a substitute for the signature of the city clerk when the city clerk is not available to provide his or her own signature;

(d) Have the power to coordinate the work of all the departments of the city, and, at times of an emergency, with the approval of the mayor and acting through the appropriate department heads, shall have authority to assign the employees of the city to any department where they are needed for the most effective discharge of the functions of city government;

(e) Report on any condition or fact concerning the city government requested by the mayor or city council;

(f) Have the power to overrule any administrative action taken by a department head, and may thereby supersede him or her in the functions of the office but only with the prior approval of the mayor and in accordance with Kansas statutes;

(g) Have the power to appear before and address the city council at any meeting;

(h) Have the authority to enter into and execute, on behalf of the City, all contracts and agreements for goods or services when consideration for each such contract or agreement is less than $15,000 and is otherwise authorized by the approved budget;

(i) At no time have the power to supersede any action by the mayor and city council.

(Ord. 642; 08-06-79)
(Code 1984)
(Code 2000)
(Ord. 2027C; 10-06-03)

## ARTICLE 4. OFFICERS AND EMPLOYEES

**SECTIONS**


1-401 OFFICERS APPOINTED; DATE
1-402 OATH OF OFFICE
1-403 BOND
1-404 OFFICERS APPOINTED
1-405 CITY CLERK
1-406 CITY TREASURER
1-407 CITY ATTORNEY
1-408 ASSISTANT CITY ATTORNEY
1-409 DIRECTOR OF PUBLIC WORKS
1-410 DIRECTOR OF PLANNING AND DEVELOPMENT
1-411 ASSISTANT CITY CLERK
1-412 DIRECTOR OF PARKS AND RECREATION


**1-401.** **OFFICERS APPOINTED; DATE.** All officers whose position has been established by ordinance including but not limited to: City Clerk, Police Chief, Fire Chief, Public Works Director, Planning/Development Director, Information Services Director, Director of Parks and Recreation, City Attorney, Human Resources Director, and City Treasurer shall be appointed by the City Administrator with the consent of the governing body. Any appointment recommended by the City Administrator shall become effective upon approval by a majority vote of the governing body. The City Clerk shall enter every appointment to office and the date thereof on the journal of proceedings.

(Ord. 1056C; 06-20-88)
(Code 2000)

**1-402.** **OATH OF OFFICE.** Officers appointed as herein provided shall qualify for office by taking and subscribing the following oath: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Kansas, and faithfully perform the duties of _____, so help me God," and securing any bond, certificate or security as may be required by the governing body, if required, to secure the faithful performance of his or her duties.

(Ord. 696; 05-04-81)

**1-403.** **BOND.** Repealed by Ordinance No. 1758C, November 2, 1998.

**1-404.** **OFFICERS APPOINTED.** The Mayor shall, by and with the consent of the City Council, appoint (a) Municipal Judge(s). Prior to appointment of the Municipal Judge(s), candidates for that position shall be screened in the manner provided by Section 9-106 of the Code.

Officers so appointed shall hold their office until their successors are appointed and qualified. The City Clerk shall enter every appointment to office and the date thereof in the journal of proceedings.

(Ord. 1547C; 12-04-95)

**1-405.** **CITY CLERK.** The City Clerk shall:

(a) Be custodian of all city records, books, files, papers, documents and other personal effects belonging to the city and not properly pertaining to any other office;

(b) Carry on all official correspondence of the city;

(c) Attend and keep a record of the proceedings of all regular and special meetings of the governing body;

(d) Enter every appointment of office and the date thereof in the journal;

(e) Enter or place each ordinance of the city in the ordinance books after its passage;

(f) Publish all ordinances, except those appropriating money, and such resolutions, notices and proclamations as may be required by law or ordinance;

(g) Have charge of the corporate seal of the city;

(h) Administer oaths for all purposes pertaining to the business and affairs of the city;

(i) Sign all warrant checks along with the mayor and treasurer;

(j) Perform such other duties as may be delegated by the governing body or the Kansas statutes.

(Ord. 696; 05-04-81)
(Code 2000)

**1-406.** **CITY TREASURER.** The City Treasurer shall:

(a) Keep a full and accurate financial record of and for the city;

(b) Publish a quarterly financial statement;

(c) Be responsible for the receipt of all moneys belonging to the city;

(d) Deposit all public moneys and sign all checks of the city;

(e) Pay out the funds of the city upon warrant and checks properly signed by the mayor and city clerk;

(f) Have the purchasing authority up to and including $14,999 or less. Purchases exceeding $14,999 shall be approved by the Governing Body, except for

emergency repair or maintenance to city-owned facilities or equipment. Purchases made by the City Treasurer, or his or her designee, shall be in accordance with the purchasing rules and procedures approved by the Governing Body; and

(g) Perform such other duties as may be delegated by the governing body or the Kansas statutes.

(K.S.A.§ 10-803; K.S.A. 12-1608)
(Ord 696; 05-04-81)
(Code 2000)
(Ord. 1879C; 12-04-00)
(Ord. 2028C; 10-06-03)

**1-407. CITY ATTORNEY.** The City Attorney shall:

(a) Attend, so far as reasonably possible, all meetings of the governing body;
(b) Advise the governing body and all officers of the city upon such legal questions affecting the city and its offices as may be submitted to him or her;
(c) When requested by the governing body, give opinions in writing upon any legal questions;
(d) Draft such ordinances, contracts, leases, easements, conveyances and other instruments in writing as may be submitted to him or her in the regular transaction of affairs of the city;
(e) Perform such other duties as may be delegated or appropriate.

(Ord. 696;05-04-81)
(Code 2000)

**1-408. ASSISTANT CITY ATTORNEY. – Repealed by Ordinance No. 1972C.**

(Ord. 1569C; 03-25-96)
(Code 2000)
(Ord. 1972C; 12-02-02)

**1-409.** **DIRECTOR OF PUBLIC WORKS.** The director of public works shall have the general supervisory control of the operations of the public works department and thereby, the construction, alteration, maintenance and repair of all streets, storm drainage structures, bridges, tunnels, sidewalks, curbs, gutters, public thoroughfares of the city and public property. The director shall review and approve all construction or installation and all plans and specifications relating thereto within public right-of-way, public property and easements dedicated to the city.

(Ord. 696; 05-04-81)
(Code 2000)

**1-410.** **DIRECTOR OF PLANNING AND DEVELOPMENT.** The Director of Planning and Development shall serve as administrative officer for enforcement of the City's zoning and subdivision regulations and advisor to the City Planning Commission. The Director shall also examine plans and specifications submitted for permits and certify that such plans comply with the zoning ordinances of the City.

(Code 2000)
(Ord. 1971C; 12-02-02)

**1-411.** **ASSISTANT CITY CLERK.**
Repealed by Ordinance No. 1928C; January 22, 2002

(Ord. 1928C; 01-22-02)
(Ord. 1162C; 05-07-90)
(Code 2000)

**1-412.** **DIRECTOR OF PARKS AND RECREATION.** The Director of Parks and Recreation shall have the general supervisory control of the operation of the parks and recreation department, including parks and facility maintenance, recreation programming, facility development, special events and pool administration. The Director shall also serve as advisor to the Parks and Recreation Advisory Board.

(Ord. 1214C; 04-01-91)
(Code 2000)

# ARTICLE 5. PERSONNEL REGULATIONS

## SECTIONS

1-501 PAYROLL DEDUCTIONS
1-502 DEFERRED COMPENSATION

**1-501. PAYROLL DEDUCTIONS.** Deductions, other than those required by statute, shall be made from the compensation of city officers and employees only in response to a written authorization therefor signed by the employee and filed with the city clerk.

(Ord. 397; 04-05-71)
(Code 2000)

**1-502. DEFERRED COMPENSATION.**

(a) To enable the city to attract to and retain in its employment persons of competence and to provide a means for supplementing the retirement benefits of city employees, the city adopts the 457 Deferred Compensation Plan, as amended and restated, effective January 1, 2002, known as Appendix 'A,' and it is hereby incorporated by reference, and appoints the ICMA Retirement Corporation to serve as administrator thereunder.

(b) The city hereby executes the ICMA Retirement Trust, known as Appendix 'B,' and it is hereby incorporated by reference.

(c) The city hereby adopts the trust agreement known as Appendix 'C,' and it is hereby incorporated by reference, and appoints the ICMA Retirement Corporation as Trustee, to invest all funds held under the deferred compensation plan through the ICMA Retirement Trust as soon as is practicable.

(d) The city hereby adopts the ICMA-RC § 401a, Profit Sharing Plan and Trust, as amended and restated, known as Appendix 'D,' and it is hereby incorporated by reference.

(e) The City hereby adopts the ICMA-RC § 401a, Money Purchase Plan and Trust, as amended and restated, known as Appendix 'E,' and it is hereby incorporated by reference.

(f) The City Administrator shall be the coordinator for this program and shall receive necessary reports, notices, etc., from the ICMA Retirement Corporation as administrator, and shall cast, on behalf of the employer, any required votes under the program. Administrative duties to carry out the plan may be assigned to the appropriate departments.

(Ord. 798; 01-03-84)
(Code 2000)
(Ord. 1925C; 12-17-01)
(Ord. 1927C; 01-22-02)

# ARTICLE 6. LEAWOOD ARTS COUNCIL

## SECTIONS

1-601 ESTABLISHMENT AND MEMBERSHIP
1-602 MEMBERSHIP TERMS AND QUALIFICATIONS
1-603 MEETINGS
1-604 STATEMENT OF PURPOSE

**1-601. ESTABLISHMENT AND MEMBERSHIP.** There is hereby established a Leawood Arts Council [LAC] consisting of nine members appointed by the Mayor with the consent of the City Council, as set out in Section 1-602. The Mayor shall appoint, with the consent of the City Council, two members of the City Council who shall serve as liaisons to the LAC.

(Ord. 1728C; 05-04-98)
(Ord. 2232C; 05-21-07)

**1-602. MEMBERSHIP TERMS AND QUALIFICATIONS.** All members of the LAC shall be residents of the City and shall serve without compensation. The Councilmembers who shall serve as liaisons shall be appointed annually, and the nine LAC members shall be appointed for a term of three years. Appointments will commence March 1st and end on the last day of February of the applicable term of appointment. Whenever a vacancy appears, for whatever reason, appointment to fill the vacancy shall be by the Mayor, with the consent of the City Council, with the appointee serving the remainder of the unexpired term. The LAC shall elect its own chairperson who shall serve for a term of three years, and who shall appoint a vice-chairperson who shall serve as chairperson in the absence of the chairperson.

(Ord. 1728C; 05-04-98)
(Ord. 2232C; 05-21-07)
(Ord. 2539C; 04-16-12)
(Ord. 2753C; 10-05-15)

**1-603. MEETINGS.** Meetings of the LAC shall be held at the call of the chairperson of the LAC and at such other times as the LAC may determine. Records of all official actions of the LAC shall be filed in the office of the City Clerk. Five members of the LAC membership shall constitute a quorum for the transaction of business.

(Ord. 1728C; 05-04-98)
(Ord. 2232C; 05-21-07)

**1-604. STATEMENT OF PURPOSE.**

(a) The purpose of the LAC shall be:

(1) To serve the Leawood community as its aesthetic conscience and to make recommendations to the governing body that shall enhance the culture of the City;

(2) To provide advice and counsel, if requested, to the Governing Body, committees, and department heads on matters relating to the arts and the aesthetics of all public improvements;

(3) To initiate and implement programs and proposals for the encouragement, promotion, acquisition, and development of cultural activities and amenities.

(4) To establish a public art program and maintain the pieces of art so acquired.

(b) The term “public art” as used herein, may include but not be limited to the visual and performing arts, creative production of music, drama, dance, creative writing, arts and crafts, film, photocopying or other suitable expression, including that of an artist as a member of the design team for a building, park land or infrastructure, sculptures, paintings, murals, manhole covers, paving pattern, lighting, seating, building façade, kiosk, gate, fountain, play equipment, engraving, carving, fresco, mobile, collage, mosaic, bas-relief, tapestry, photography, drawing, landscape item including artistic placement of natural material or arches, or other structures of a permanent or temporary character intended for ornament or commemoration.

(Ord. 1728C; 5-4-98)
(Ord. 2232C; 05-21-07)

# ARTICLE 7. FEES

## SECTIONS

1-701 FEE SCHEDULE ESTABLISHED

**1-701. FEE SCHEDULE ESTABLISHED.**

(a) A Fee Schedule setting the amounts for all fees imposed by the city and which are not specifically provided for in this code shall be established and maintained by the city administrator.

(b) The city administrator is hereby authorized to make such fee adjustments, including both increases and decreases, as are necessary from time to time. The city administrator shall report annually to the governing body the amounts at which such fees are established, and the governing body shall, by resolution, ratify or modify such fees.

(Code 1984)

# ARTICLE 8. MISCELLANEOUS FUNDS

## SECTIONS


1-801 MUNICIPAL EQUIPMENT RESERVE FUND ESTABLISHED
1-802 PURPOSES OF FUND
1-803 TRANSFERS OF MONEY TO THE MUNICIPAL EQUIPMENT FUND
1-804 EQUIPMENT DEFINED
1-805 BUDGET INFORMATION
1-806 INVESTMENT OF FUNDS
1-807 TRANSFERS OF UNNEEDED FUNDS FROM THE EQUIPMENT RESERVE FUND
1-808 CAPITAL IMPROVEMENTS FUND
1-809 TRANSFERS OF FUNDS TO THE CAPITAL IMPROVEMENTS FUND
1-810 CHARTER ORDINANCE REQUIRED FOR TAXES LEVIED FOR THE USE OF THE CAPITAL IMPROVEMENTS FUND
1-811 USE OF FUNDS
1-812 LIMITATION ON MONEYS CREDITED TO FUND
1-813 BUDGET INFORMATION
1-814 INVESTMENT OF FUNDS
1-815 TRANSFER OF UNNEEDED FUNDS FROM CAPITAL IMPROVEMENTS FUND
1-816 STREET CONSTRUCTION FUND- ORD. NO. 909C- NULL AND VOID BY MAIL BALLOT VOTE
1-817 STREET CONSTRUCTION FUND- ORD. NO. 909C- NULL AND VOID BY MAIL BALLOT VOTE
1-818 SPECIAL LAW ENFORCEMENT TRUST FUND; ESTABLISHMENT, PURPOSE AND INTENT
1-819 DEPOSITS
1-820 EXPENDITURES
1-821 QUARTERLY REPORT
1-822 LEVY AUTHORIZED
1-823 SPECIAL PUBLIC GOLF COURSE FUND – **REPEALED**
1-824 PURPOSE OF PUBLIC GOLF COURSE FUND- **REPEALED**
1-825 SOURCE OF PUBLIC GOLF COURSE FUND- **REPEALED**
1-826 LIMITATION OF PUBLIC GOLF COURSE FUND- **REPEALED**
1-827 SPECIAL HIGHWAY FUND
1-828 PURPOSE OF FUND
1-829 SOURCE OF FUND
1-830 LIMITATION OF FUND
1-831 SPECIAL PUBLIC SAFETY IMPROVEMENT FUND

1-832 PURPOSE OF FUND
1-833 SOURCE OF FUND
1-834 LIMITATION OF FUND
1-835 PARK PLACE TRANSPORTATION DEVELOPMENT DISTRICT [TDD] AGENCY FUND ESTABLISHED
1-836 PURPOSE OF FUND
1-837 SOURCE OF FUND
1-838 LIMITATION OF FUND
1-839 ONE NINETEEN TRANSPORTATION DEVELOPMENT DISTRICT [TDD] AGENCY FUND ESTABLISHED -**REPEALED**
1-840 PURPOSE OF FUND-**REPEALED**
1-841 SOURCE OF FUND-**REPEALED**
1-842 LIMITATION OF FUND-**REPEALED**
1-843 SPECIAL TRANSIENT GUEST TAX FUND ESTABLISHED
1-844 PURPOSE OF FUND
1-845 SOURCE OF FUND
1-846 LIMITATION OF FUND
1-847 AMERICAN RECOVERY & REINVESTMENT ACT OF 2009 FUND
1-848 PURPOSE OF FUND
1-849 SOURCE OF FUND
1-850 LIMITATION OF FUND
1-851 COLLEGE BOULEVARD UTILITY UNDERGROUND AGENCY FUND
1-852 PURPOSE OF FUND
1-853 SOURCE OF FUND
1-854 LIMITATION OF FUND
1-855 CAMELOT COURT COMMUNITY IMPROVEMENT DISTRICT AGENCY FUND
1-856 PURPOSE OF FUND
1-857 SOURCE OF FUND
1-858 LIMITATION OF FUND
1-859 ECONOMIC DEVELOPMENT FUND ESTABLISHED
1-860 PURPOSE OF FUND
1-861 SOURCE OF FUND
1-862 LIMITATION OF FUND
1-863 RANCH MART COMMUNITY IMPROVEMENT DISTRICT FUND ESTABLISHED
1-864 PURPOSES OF FUND
1-865 SOURCE OF FUNDS
1-866 LIMITATION OF FUND

**1-801.** **MUNICIPAL EQUIPMENT RESERVE FUND ESTABLISHED.** There is hereby created a Municipal Equipment Reserve Fund as authorized by the provisions of Chapter 65, 1985 Session Laws of Kansas.

(Ord. 862C;08-05-85)

**1-802.** **PURPOSES OF FUND.** The Municipal Equipment Reserve Fund is created to finance the acquisition of City equipment.

(Ord. 862C; 08-05-85)

**1-803.** **TRANSFERS OF MONEY TO THE MUNICIPAL EQUIPMENT FUND.** Moneys may be budgeted and transferred to the Municipal Equipment Reserve Fund from any source which may be lawfully utilized for such purposes, including equipment use charges on the various departments and agencies of the City to finance new and replacement equipment.

(Ord. 862C; 08-05-85)

**1-804.** **EQUIPMENT DEFINED.** For the purposes of this Ordinance, equipment shall include machinery, vehicles and any other equipment or personal property including, but not limited to, computer hardware and software, which the City is authorized to purchase for municipal purposes.

(Ord. 862C; 08-05-85)

**1-805.** **BUDGET INFORMATION.** In making the budgets of such City, the amounts credited to, and the amount on hand in such equipment reserve fund and the amount expended therefrom shall be shown thereon for the information of the taxpayers of the City.

(Ord. 862C; 08-05-85)

**1-806.** **INVESTMENT OF FUNDS.** Moneys in such fund may be invested in accordance with the provisions of K.S.A. 10-131 and amendments thereto with interest thereon credited to such fund.

(Ord. 862C; 08-05-85)

**1-807.** **TRANSFERS OF UNNEEDED FUNDS FROM THE EQUIPMENT RESERVE FUND.** If the Governing Body determines that money which has been credited to the equipment reserve fund or any part thereof is not needed for the purposes for which so budgeted or transferred, the Governing Body may transfer, by adoption of a resolution, such amount not needed to the fund from which it came and such retransfer and expenditure thereof shall be subject to the budget requirement provisions of K.S.A. 79-2925 to 79-2937, inclusive, and amendments thereto.

(Ord. 862C; 08-05-85)

**1-808.** **CAPITAL IMPROVEMENTS FUND.** There is hereby created a Capital

Improvements Fund as authorized by the provisions of Chapter 67, 1985 Session Laws of Kansas.

(Ord. 863C; 08-05-85)

**1-809.** **TRANSFERS OF FUNDS TO THE CAPITAL IMPROVEMENTS FUND.** The Governing Body is hereby authorized to provide for the budgeted transfer of moneys from other City funds lawfully available for improvement purposes to the Capital Improvements Fund, including moneys in the City's general fund.

(Ord. 863C; 08-05-85)
(Code 2000)

**1-810.** **CHARTER ORDINANCE REQUIRED FOR TAXES LEVIED FOR THE USE OF THE CAPITAL IMPROVEMENTS FUND.** Any general property tax specifically levied for the use of such fund shall be authorized by ordinance adopted under the provisions of Section 5 of Article 12 of the Kansas Constitution.

(Ord. 863C; 08-05-85)

**1-811.** **USE OF FUNDS.** Moneys in such Capital Improvements Fund may be used to finance, in whole or in part, any public improvement need set forth in the adopted capital improvement plan, including the repair, restoration and rehabilitation of existing public facilities. Disbursements from such fund may be made for engineering and other advance public improvement plans and studies. Reimbursements may be made to the fund from bond proceeds, special assessments or state of federal aid available for completed projects.

(Ord. 863C; 08-05-85)

**1-812.** **LIMITATION ON MONEYS CREDITED TO FUND.** Except for reimbursed expenses as provided by Section 4 of this Ordinance, no moneys shall be credited to such special fund except as may be budgeted annually or transferred by the annual budget from other funds.

(Ord. 863C; 08-05-85)

**1-813.** **BUDGET INFORMATION.** In making the budget of the City, the amounts credited to and the amount on hand in the Capital Improvements Fund and the amount expended from the Capital Improvements Fund shall be shown for the information of taxpayers.

(Ord. 863C; 8-5-85)

**1-814.** **INVESTMENT OF FUNDS.** Moneys in the Capital Improvements Fund may be invested in accordance with K.S.A. 10-131, and amendments thereto, with interest thereon credited to such fund.

(Ord. 863C; 08-05-85)

**1-815.** **TRANSFER OF UNNEEDED FUNDS FROM CAPITAL IMPROVEMENTS FUND.** If the Governing Body determines that money which has been transferred to such special fund or any part thereof is not needed for the purposes for which so transferred, the Governing Body, by adoption of a resolution, may transfer such amount not needed to the general or other fund from which it was derived and such transfer and expenditure thereof shall be subject to the budget requirement provisions of K.S.A. 79-2925 to 79-2937, inclusive, and amendments thereto.

(Ord. 863C; 08-05-85)

**1-816.**
**and**
**1-817.** Relating to creation of a street construction fund, Ordinance No. 909C, 3-24-86, null and void by 6-3-86 mail ballot vote.

**1-818.** **SPECIAL LAW ENFORCEMENT TRUST FUND; ESTABLISHMENT, PURPOSE, AND INTENT.** There is hereby established a fund of the City Treasury entitled "Special Law Enforcement Trust Fund". All deposits and expenditures from this account shall be in conformity with the provisions of this Article and state law. The purpose of this Fund is to provide a depository for monies forfeited to the City of Leawood Police Department pursuant to the provisions of the Kansas Standard Asset Seizure and Forfeiture Act, K.S.A. 60-4101 *et seq*. and the Kansas Drug Tax Act, K.S.A. 79-5201 *et seq*. Expenditures from this Fund shall be made only for law enforcement and criminal prosecution purposes as authorized by law. Monies in the Fund shall not be used for normal operating expenses of the City or its Police Department.

(Ord. 1081C; 12-05-88)
(Ord. 2714C; 01-20-15)

**1-819.** **DEPOSITS.** Any monies forfeited to the City of Leawood Police Department pursuant to the provisions of K.S.A., 1988 Supp. 65-4156, and any subsequent amendments thereto, shall be deposited in the "Special Law Enforcement Trust Fund".

(Ord. 1081C; 12-05-88)

**1-820. EXPENDITURES.**

(a) Monies in the Trust Fund shall be expended only upon approval of the Governing Body of Leawood and only for the following law enforcement purposes:

(1) To defray costs of protracted or complex investigations.

(2) Providing additional technical equipment or expertise.

(3) To provide matching funds to obtain federal grants.

(4) Other law enforcement purposes deemed appropriate by the Governing Body.

(b) No monies in the Trust Fund shall be used for payment of normal operating expenses of the Police Department or for any other expense or non-law enforcement expense of the City.

(Ord. 1081C; 12-05-88)

**1-821. QUARTERLY REPORT.** The Police Department shall submit a Quarterly Report to the Governing Body specifying the type and approximate value of any forfeited property received and the amount of any proceeds received. Neither the Police Department nor Governing Body shall anticipate future forfeitures or proceeds therefrom in the adoption and approval of its annual budgets.

(Ord. 1081C; 12-05-88)

**1-822. LEVY AUTHORIZED.** Whenever the Governing Body of the City shall determine that monies from other sources will be insufficient to pay costs incurred by the City for any costs resulting from the implementation of the Tort Claims Act the Governing Body may levy an annual tax upon all taxable tangible property within the municipality in an amount determined by the Governing Body to be necessary for such purpose.

(Ord. 1225C; 05-20-91)

**1-823. <u>REPEALED</u>. SPECIAL PUBLIC GOLF COURSE FUND ESTABLISHED.** There is hereby established a special fund of the City to be known as the Leawood Public Golf Course fund.

(Ord. 1367C; 8-16-93)
(Ord. 2212C; 02-05-07)

**1-824. <u>REPEALED</u>. PURPOSES OF FUND.** The Leawood Public Golf Course Fund is established to provide for the payment of costs associated with the acquisition, construction, operation, and maintenance of the Leawood Public Golf Course.

(Ord. 1367C; 08-16-93)
(Ord. 2212C; 02-05-07)

**1-825.** **REPEALED. SOURCE OF FUNDS.** Any monies received by the City from any source whatsoever which may be lawfully utilized for such purpose may be deposited to the fund established by this ordinance, which shall include, but is not limited to, all funds generated by the Leawood Golf Course Impact Fee and income from the operation of the Leawood Public Golf Course.

(Ord. 1367C; 08-16-93)
(Ord. 2212C; 02-05-07)

**1-826.** **REPEALED. LIMITATION OF FUND.** In making the budget of the City, the amounts credited to and the amount on hand in such Golf Course Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 1367C; 08-16-93)
(Ord. 2212C; 02-05-07)

**1-827.** **SPECIAL HIGHWAY FUND**. There is hereby established a Special Fund of the City to be known as the Leawood Special Highway Fund.

(Ord. 2101C; 05-02-05)

**1-828.** **PURPOSE OF FUND**. The Leawood Special Highway Fund is established to provide for the payment of costs associated with construction, reconstruction, alteration and repair and maintenance of the streets and highways located in the City.

Ord. 2101C; 05-02-05)

**1-829.** **SOURCE OF FUND**. Any monies received by the City from any source whatsoever which may be lawfully utilized for such purpose may be deposited to the fund established by this ordinance, which shall include, but is not limited to, all funds generated by gasoline tax.

(Ord. 2101C; 05-02-05)

**1-830.** **LIMITATION ON FUND**. In making the budget of the City, the amounts credited to and the amount on hand in such Special Highway Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2101C; 05-02-05)

**1-831.** **SPECIAL PUBLIC SAFETY IMPROVEMENT FUND.** There is hereby established a Capital Fund of the City to be known as the Leawood Public Safety Improvement Fund.

(Ord.2217C; 02-19-07)

**1-832.** **PURPOSE OF FUND**. The Leawood Public Safety Improvement Fund is established to provide for the payment of costs associated with construction of

public safety improvements, including a Justice Center and other necessary and related improvements, including infrastructure related thereto and other necessary and related costs.

(Ord. 2217C; 02-19-07)

**1-833.** **SOURCE OF FUND**. Any monies received by the City from any other source whatsoever which may be lawfully utilized for such purpose may be deposited to the fund established by this ordinance, which shall include, but not limited to, all funds generated by the .4% sales tax enacted and collected pursuant to Ordinance No. 2192.

(Ord. 2217C; 02-19-07)

**1-834.** **LIMITATION OF FUND**. In making the budget of the City, the amounts credited to and the amount on hand in such Public Safety Improvement Fund and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2217C; 02-19-07)

**1-835.** **PARK PLACE TRANSPORTATION DEVELOPMENT DISTRICT [TDD] FUND ESTABLISHED.** There is hereby established a Special Revenue Fund of the City to be known as the Leawood Park Place Transportation Development District Fund.

(Ord. 2965C; 11-04-19)
(Ord. 2434C; 01-19-10)
(Ord. 2288C; 12-17-07)

**1-836.** **PURPOSE OF FUND.** The Leawood Park Place Transportation Development District Fund is established to provide for the payment of costs associated with parking structures located within the Park Place Transportation District, as set forth in the Ordinance providing for such TDD taxes and assessments.

(Ord. 2965C; 11-04-19)
(Ord. 2434C; 01-19-10)
(Ord. 2288C; 12-17-07)

**1-837.** **SOURCE OF FUND.** Any monies received by the City from the implemented Park Place TDD sales and use tax or Park Place TDD special assessments shall be deposited to the fund established by this Ordinance.

(Ord. 2288C; 12-17-07)
(Ord. 2434C; 01-19-10)

**1-838.** **LIMITATION OF FUND.** In making the budget of the City, the amounts credited to and the amount on hand in such Park Place TDD Fund, and the amount expended therefrom, shall be included in the annual budget for the information of

the residents of the City.

(Ord. 2965C; 11-04-19)
(Ord. 2434C; 01-19-10)
(Ord. 2288C; 12-17-07)

**1-839.** **REPEALED. ONE NINETEEN TRANSPORTATION DEVELOPMENT DISTRICT [TDD] AGENCY FUND ESTABLISHED.** There is hereby established a Debt Service Fund of the City to be known as the Leawood One Nineteen Transportation Development District Agency Fund.

(Ord. 2388C; 04-20-09)
(Ord. 2433C; 01-04-10)
(Ord. 2877C; 02-05-18)

**1-840.** **REPEALED. PURPOSE OF FUND.** The Leawood One Nineteen Transportation Development District Agency Fund is established to provide for the payment of costs associated with improvements located within the One Nineteen Transportation District, as more further set forth in the Ordinance providing for such TDD taxes and assessments.

(Ord. 2388C; 04-20-09)
(Ord. 2433C; 01-04-10)
(Ord. 2877C; 02-05-18)

**1-841.** **REPEALED. SOURCE OF FUND.** Any monies received by the City from the implemented One Nineteen TDD sales and use tax or One Nineteen TDD special assessments shall be deposited to the fund established by this Ordinance.

(Ord. 2388C; 04-20-09)
(Ord. 2433C; 01-04-10)
(Ord. 2877C; 02-05-18)

**1-842.** **REPEALED. LIMITATION OF FUND.** In making the budget of the City, the amounts credited to and the amount on hand in such One Nineteen TDD Agency Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2388C; 04-20-09)
(Ord. 2433C; 01-04-10)
(Ord. 2877C; 02-05-18)

**1-843.** **SPECIAL TRANSIENT GUEST TAX FUND ESTABLISHED.** There is hereby established a special fund of the City to be known as the Transient Guest Tax fund.

(Ord. 2397C; 06-15-09)

**1-844.** **PURPOSES OF FUND.** The Transient Guest Tax Fund is established to provide for the payment costs set out under Charter Ordinance Number 38 as may be

amended from time to time.

(Ord. 2397C; 06-15-09)

**1-845.** **SOURCE OF FUNDS.** Any monies received by the City from any the Transient Guest Tax levied pursuant to the authority of Charter Ordinance Number 38 as may be amended from time to time, shall be deposited to the fund established by this ordinance.

(Ord. 2397C; 06-15-09)

**1-846.** **LIMITATION OF FUND.** In making the budget of the City, the amounts credited to and the amount on hand in such Transient Guest Tax Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2397C; 06-15-09)

**1-847.** **AMERICAN RECOVERY & REINVESTMENT ACT OF 2009 FUND**. There is hereby established an American Recovery & Reinvestment Act of 2009 Fund of the City to be known as the American Recovery & Reinvestment Act Fund.

(Ord. 2415C; 09-21-09)

**1-848.** **PURPOSE OF FUND**. The American Recovery & Reinvestment Act Fund is established to provide for the receipt of grant money awarded for qualified ARRA projects.

(Ord. 2415C; 09-21-09)

**1-849.** **SOURCE OF FUND**. Any monies received by the City from any source whatsoever which may be lawfully utilized for such purpose may be deposited to the fund established by this ordinance, which shall include, but is not limited to, all funds generated by ARRA grants.

(Ord. 2415C; 09-21-09)

**1-850.** **LIMITATION ON FUND**. In making the budget of the City, the amounts credited to and the amount on hand in such American Recovery & Reinvestment Act of 2009 Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2415C; 09-21-09)

**1-851.** **COLLEGE BOULEVARD UTILITY UNDERGROUNDING AGENCY FUND**. There is hereby established a College Boulevard Utility Undergrounding Agency Fund.

(Ord. 2566C; 09-04-12)

**1-852.** **PURPOSE OF FUND**. The College Boulevard Utility Undergrounding

Agency Fund is established to provide for the receipt of College money from developers of property abutting College Boulevard, East of Nall Avenue and West of Roe Avenue in Leawood, Kansas, such money being intended for the undergrounding of utility lines along College Boulevard in Leawood, Kansas.

(Ord. 2566C; 09-04-12)

**1-853.** **SOURCE OF FUND**. Any monies received by the City from any source whatsoever which may be lawfully utilized for such purpose may be deposited to the fund established by this ordinance, which shall include, but is not limited to, all funds received from developers of property abutting College Boulevard, East of Nall Avenue and West of Roe Avenue in Leawood, Kansas.

(Ord. 2566C; 09-04-12)

**1-854.** **LIMITATION ON FUND**. In making the budget of the City, the amounts credited to and the amount on hand in such College Boulevard Utility Undergrounding Agency Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2566C; 09-04-12)

**1-855.** **CAMELOT COURT COMMUNITY IMPROVEMENT DISTRICT FUND ESTABLISHED.** There is hereby established a Special Revenue Fund of the City to be known as the Camelot Court Community Improvement District Fund.

(Ord. 2965C; 11-04-19)
(Ord. 2678C; 07-21-14)

**1-856.** **PURPOSE OF FUND.** The Camelot Court Community Improvement District Fund is established to provide for the payment of costs associated with specific improvements located within the Camelot Court Community Improvement District, as set forth in the Ordinance providing for such Community Improvement District taxes.

(Ord. 2965C; 11-04-19)
(Ord. 2678C; 07-21-14)

**1-857.** **SOURCE OF FUND.** Any monies received by the City from the implemented Camelot Court Community Improvement District sales and use tax shall be deposited to the fund established by this Ordinance.

(Ord. 2678C; 07-21-14)

**1-858.** **LIMITATION OF FUND.** In making the budget of the City, the amounts credited to and the amount on hand in such Camelot Court Community Improvement

District Tax Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2678C; 07-21-14)

**1-859.** **ECONOMIC DEVELOPMENT FUND ESTABLISHED**. There is hereby established a Capital Fund of the City of Leawood to be known as the Leawood Economic Development Fund.

(Ord. 2840C; 06-05-17)

**1-860.** **PURPOSE OF FUND.** The Leawood Economic Development Fund is established to provide payment for economic development promotion as defined Charter Ordinance No. 38.

(Ord. 2840C; 06-05-17)

**1-861.** **SOURCE OF FUND**. Any monies received by the City from any source whatsoever which may be lawfully utilized for such purposes may be deposited to the fund established by this ordinance, which shall include, but is not limited to, all funds generated by the .25% retailers' sales tax enacted, collected, and distributed to the cities of Johnson County pursuant to County Ordinance No. 094-16, and funds which may be generated by the transient guest tax levied and collected pursuant to City Ordinance No. 2507, and deposited in the Transient Guest Tax Fund.

(Ord. 2840C; 06-05-17)

**1-862.** **LIMITATION OF FUND.** In making the budget of the City, the amounts credited to and the amount on hand in such Leawood Economic Development Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2840C; 06-05-17)

**1-863.** **RANCH MART COMMUNITY IMPROVEMENT DISTRICT FUND ESTABLISHED.** There is hereby established a Special Revenue Fund of the City to be known as the Ranch Mart Community Improvement District Fund.

(Ord. 2994; 03-02-20)

**1-864.** **PURPOSES OF FUND.** The Ranch Mart Community Improvement District Fund is established to provide for the payment of costs associated with specific improvements located within the Ranch Mart Community Improvement District, as further set forth in the Ordinance providing for such Community Improvement District taxes.

(Ord. 2994; 03-02-20)

**1-865.** **SOURCE OF FUNDS.** Any monies received by the City from the implemented

Ranch Mart Community Improvement District sales and use tax shall be deposited to the fund established by this Ordinance.

(Ord. 2994; 03-02-20)

**1-866.** **LIMITATION OF FUND.** In making the budget of the City, the amounts credited to and the amount on hand in such Ranch Mart Community Improvement District Tax Fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents of the City.

(Ord. 2994; 03-02-20)

## ARTICLE 9. PUBLIC BUILDING COMMISSION- REPEALED

**SECTIONS**

1-901 PUBLIC BUILDING COMMISSION ESTABLISHED; MEMBERSHIP- **REPEALED**
1-902 FUNCTIONS AND POWERS- **REPEALED**

**1-901. PUBLIC BUILDING COMMISSION ESTABLISHED; MEMBERSHIP. - REPEALED**

***SECTION 1-901. IS HEREBY REPEALED.***

(Ord. 1049C; 04-18-88)
(Ord. 2675C; 07-07-14)

**1-902. FUNCTIONS AND POWERS. - REPEALED**

***SECTION 1-902. IS HEREBY REPEALED.***

(Ord. 1049C; 04-18-88)
(Ord. 2675C; 07-07-14)

# ARTICLE 10. RECORDS MANAGEMENT PROGRAM OF THE CITY OF LEAWOOD

## SECTIONS

1-1001 SHORT TITLE
1-1002 PURPOSE
1-1003 DEFINITIONS
1-1004 RESPONSIBILITIES
1-1005 PROGRAM ADMINISTRATION
1-1006 INVENTORY ESTABLISHED
1-1007 RETENTION AND DISPOSAL PROCEDURES ESTABLISHED
1-1008 OWNERSHIP OF RECORDS

**1-1001. SHORT TITLE.** This ordinance shall be known and may be cited as the "Records Management Program of the City of Leawood".

(Ord. 1634C; 12-02-96)

**1-1002. PURPOSE.** The City of Leawood's records management program is intended to provide for the proper and efficient management of government records.

(Ord. 1634C; 12-02-96)

**1-1003. DEFINITIONS.**

***Active Records***. Records in current use; often retained in offices because frequent reference is needed.

***Archives***. Official records possessing permanent value.

***Essential records***. Any record of the city necessary to the resumption or continuation of operations of the city in an emergency or disaster, including but not limited to the re-creation of the legal or financial status of the city or to the protection and fulfillment of obligations to the residents of the city.

***Inactive Records***. Records which are seldom referred to, but which must be retained temporarily or permanently because of administrative, fiscal, legal, historical and/or research value.

***Municipal records***. All records created, maintained, received by the City of Leawood, Kansas, its officers or employees.

***Nonrecords.*** All material not usually included within the definition of records, including, but not limited to, unofficial copies, reference publications, processed documents, etc.

***Records***. All documents, papers, letters, reports, drawings, plans, ledgers, maps, disks, microfilm, sound or video recordings, photographs and/or other material, regardless of physical form or characteristics, created, maintained or received by the City of Leawood, its officers or employees.

***Records Management***. A system of efficient and effective techniques used in the creation, storage, retrieval and disposition of recorded information.

(Ord. 1634C; 12-02-96)

**1-1004.** **RESPONSIBILITIES.** It shall be the responsibility of each officer and employee of the City to maintain, preserve and dispose of records in accordance with applicable federal or state law and with such rules as may be instituted by the City.

It shall be the responsibility of the City Clerk to oversee administration of the Records Management Program of the City of Leawood. Each department shall cooperate with the City Clerk in applying standards, procedures and techniques designed to improve the management of the City's records.

Each City department shall be the legal custodian of its active and inactive records. The City Clerk shall be the legal and physical custodian of all records transferred to the archives.

(Ord. 1634C; 12-02-96)

**1-1005.** **PROGRAM ADMINISTRATION.** The Records Management Program shall be administered in such a way as to assure that the records of the City of Leawood are professionally managed, including proper and effective maintenance, preservation and disposition.

The City shall develop rules and regulations as may be necessary and proper to implement and maintain the City's Records Management Program. Once approved, such rules and regulations shall be binding on all employees and officers as well as on all commissions, boards, committees or similar entities of the City.

(Ord. 1634C; 12-02-96)

**1-1006.** **INVENTORY ESTABLISHED.** Each department and/or division of the City shall create and maintain an inventory of records adequate and proper to document functions, policies, decisions, procedures, and essential transactions of the City.

(Ord. 1634C; 12-02-96)

**1-1007.** **RETENTION AND DISPOSAL PROCEDURES ESTABLISHED.** City staff shall prepare retention and disposition schedules for all inventoried records. Said schedules shall:

(a) indicate any state retention requirements as well as establish City retention requirements;

(b) establish which municipal records are essential records of the City;

(c) provide for permanent preservation of municipal records with administrative, fiscal, legal, historical and/or research value; and

(d) document any destruction requirements for records approved for disposal.

(Ord. 1634C; 12-02-96)

**1-1008.** **OWNERSHIP OF RECORDS.** All municipal records shall be the property of the City. No City official or employee has, by virtue of position, any personal or property right to municipal records and the unauthorized destruction, removal or use of such records is prohibited.

(Ord. 1634C; 12-02-96)

# CHAPTER II. ANIMAL CONTROL

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## ARTICLE 1. GENERAL PROVISIONS

**SECTIONS**

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**2-101.** **PURPOSE.** It is the intent of this Chapter to promote harmonious relationships in the interaction between humans and animals by:

(a) Protecting animals from improper use, abuse, neglect, exploitation, inhumane treatment and health hazards;

(b) Delineating the responsibilities of an animal owner, harborer or keeper for the acts and behavior of such animal;

(c) Providing security to citizens from annoyance, intimidation, injury, and health hazards by an animal;

(d) Encouraging responsible pet ownership; and

(e) Providing standards for any and all persons and agencies, public or private, engaged in confinement, buying, selling, harboring, or dealing in animals in any manner whatsoever.

(Ord. 2685C; 09-02-14)
(Ord. 1796C; 05-17-99)

**2-102. DEFINITIONS.**

The following words, terms and phrases, when used in this Chapter, shall have the meanings described to them as follows, except where the context clearly indicates a different meaning:

(a) ***Abandon*** includes the following acts by an owner, harborer or keeper of an animal:

(1) leaving an animal on private or public property without providing responsible animal care for the animal or such actions indicating an intent to no longer possess the animal.

(2) refusing to pay for the care of an animal when an animal becomes lost or escapes and another person cares for the animal;

(3) refusing to claim responsibility for the actions of an animal; or

(4) refusing to pay for an animal which has been impounded pursuant to this Chapter.

(b) ***Adequate Feeding*** is providing to an animal at suitable intervals (not to exceed 24 hours) a quantity of wholesome foodstuff, suitable for the animal according to the species and age of the animal that is sufficient to maintain a reasonable level of nutrition for the animal.

(c) ***Adequate Grooming*** is providing timely grooming appropriate and necessary for the species, breed and/or size of the animal.

(d) ***Adequate Watering*** is providing to an animal clean fresh, potable water, supplied in a sanitary manner either continuously or at intervals suitable for the species of the animal, but not to exceed intervals of 10 hours.

(e) ***Animal*** means any living, vertebrate except humans.

(f) ***Animal Control Officer*** hereinafter ACO, is a person employed by, contracted with or appointed by the state, or any political subdivision thereof, for the purpose of aiding in the enforcement of this article, or any other law or ordinance relating to the licensing or permitting of animals, control of animals or seizure and impoundment of animals, and includes any state, county or municipal law enforcement officer, whose duties in whole or in part include the assignments which involve the seizure or taking into custody of any animal.

(g) ***Animal Licensing Specialist*** means the person designated by the City to issue licenses pursuant to this Chapter.

(h) ***Animal Shelter*** is any premises designated by the city for the purpose of impounding and/or quarantining and/or caring for animals.

(i) ***Bite*** means any contact between the teeth of an animal and the skin of another animal or person which causes visible trauma, such as a puncture wound,

laceration, abrasion, or other opening of the skin.

(j) ***Cat*** means a felis domesticus

(k) ***Dangerous Animal*** means any mammal, reptile or bird which because of its size, vicious nature or other characteristics would constitute a danger to human life or property if it is not kept in a safe manner in secured quarters. “Dangerous Animal” also includes any wild/domestic animal hybrid and any pit bull dog, Staffordshire Bull Terrier, American Staffordshire Terrier, American Pit Bull Terrier, or any animal having the appearance or characteristics of being predominantly of the breeds known as Pit Bull, Staffordshire Bull Terrier, American Staffordshire Terrier, or American Pit Bull Terrier.

(l) ***Dog*** means a *canis familarias* only (this term does not include hybrids such as *familiaris/lupus or familiaris/latrans)*.

(m) ***Domestic Animal*** means any animal tamed by humans.

(n) ***Euthanasia*** is the humane killing of an animal by a method which produces instantaneous unconsciousness and immediate death without visible evidence of pain or suffering.

(o) ***Harborer*** means any person who provides food and/or shelter to an animal for three consecutive days or more.

(p) ***Inoculation for Rabies or Vaccination for Rabies*** means the inoculation of an animal by a licensed veterinarian with a vaccine approved by the State of Kansas for use in the prevention of rabies.

(q) ***Keeper*** shall mean any person temporarily entrusted with the care and custody of an animal by another.

(r) ***Kennel*** means any person engaged in the business of breeding, buying, selling, or boarding dogs and cats.

(s) ***Owner*** means any person who owns, or has charge, custody or control of an animal. It shall be prima facie evidence that the person listed as owner on any animal licensing records is the owner of the animal(s) listed. A parent or legal guardian shall be deemed to be an owner of animals owned or maintained by children upon the parent or guardian’s premises.

(t) ***Person*** means any individual, association, partnership, corporation or any other group.

(u) ***Pet Shop*** means any person engaged in the business of breeding, buying, selling, or boarding animals in any species.

(v) ***Primary Enclosure*** means any physical structure used or designed to restrict any animal to a limited space, such as a room, pen, cage, compartment, hutch, vehicle or trailer.

(w) ***Responsible Animal Care*** means any owner, harborer, or keeper of any animal is providing:

(1) adequate feeding;
(2) adequate watering;
(3) proper and adequate shelter;
(4) veterinary care as necessary to prevent the animal from suffering and or provide for the health and well-being of the animal, including customary inoculations to maintain good health;
(5) humane treatment and socialization for the needs of the animal;
(6) sanitary conditions, including making physically clean and the reasonably prompt removal and sanitary disposal of all excreta; or
(7) appropriate exercise as required to promote the good health of the animal.
(8) adequate grooming for the type of animal.

(x) ***Secured Animal*** means any animal other than a cat that is:
(1) attached to a hand-held lead and prevented from making uninvited contact with humans or other animals;
(2) safely tethered to a chain or leash provided the animal is under the direct and constant observation of and control of the owner, keeper or harborer and prevented from making uninvited contact with humans or other animals;
(3) confined to a cage, pen, vehicle, or trailer; or
(4) on the premises of the owner, harborer or keeper and under control of a responsible person and obedient to the command of that person.

(y) ***Secured Enclosure*** means a locked structure enclosing an area suitable to confine a vicious dog or a dangerous animal and suitable to prevent young children from coming in physical contact with the animal. The structure shall be comprised of a top, sides and bottom and shall be designed to prevent the animal from escaping. If the bottom of the structure is not attached to the sides, the sides must be embedded in the ground by no less than one foot.

(z) ***Sell and/or Sold*** means transfers by sale or exchange. Maintaining animals for sale is presumed whenever 20 or more animals are maintained by any person.

(aa) ***Shelter*** means a structurally sound, properly ventilated, sanitary and weatherproof shelter suitable for the species, age and condition of the animal which provides shade from direct sunlight and regress from exposure to inclement weather conditions. The shelter shall contain proper bedding material as appropriate for the species. The shelter shall be reasonably comfortable for the animal.

(bb) ***Swine*** means any of various stout-bodied, short-legged omnivorous mammals of the family Suidea with a thick bristly skin and a long mobile snout.

(cc) ***Trap*** means any mechanical device or snare which seeks to hold, capture or kill an animal.

(dd) ***Veterinary Hospital*** means any establishment maintained and operated by a licensed veterinarian for the diagnosis and treatment of diseases and injuries of animals.

(ee) ***Vicious*** means having a disposition or propensity to attack or bite any person or animal without provocation.

(ff) ***Wild Animal*** means an animal as defined herein that is not of a species customarily used as an ordinary household pet, but one which would ordinarily be confined to a zoo or one which would ordinarily be found in the wilderness of this or any other country, or one which otherwise causes a reasonable person to be fearful of bodily harm or property damage. Fish in an aquarium are not included in this definition.

(Ord. 1796C; 05-17-99)
(Code 2000)
(Ord. 1997C; 06-16-03)
(Ord. 2685C; 09-02-14)
(Ord. 2860C; 09-18-17)

**2-103. ANIMAL WELFARE.**

(a) **CRUELTY TO ANIMALS:** Cruelty to animals is:

(1) knowingly abandoning any animal in any place without making provisions for its proper care;

(2) having physical custody of any animal and knowingly and intentionally failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such animal;

(3) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;

(4) knowingly but not maliciously killing or injuring any animal;

(5) permitting or attending any dogfight, cockfight, bullfight or other combat between animals or between animals and humans;

(6) cropping animal ears or docking animal tails except by a licensed veterinarian;

(7) offering to give or giving a live animal as a prize or as a business inducement; or

(8) failing to stop and to immediately render proper assistance after striking a domestic animal with a motor vehicle, and/or failure to immediately report any injury or death of the animal to the owner, unless the owner cannot be ascertained and located, in which case the operator shall immediately report the incident to the Leawood Police Department;

(b) **EXCEPTIONS**: Nothing in the Section shall be deemed to prohibit any of the following activities:

(1) Normal or accepted veterinary practices.
(2) Bona fide experiments carried on by commonly recognized research facilities.
(3) Any act done in self-defense or defense of another person.
(4) The humane killing of an animal that is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by a licensed veterinarian at the request of the owner or by any officer or agent of an animal shelter.
(5) An ACO trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods.

(c) **CUSTODY OF ANIMAL; DISPOSITION; COSTS OF CARE.**

(1) Custody of Animal; Authority to Euthanize: Any ACO, law enforcement officer, licensed veterinarian or officer or agent of any animal shelter or other appropriate facility, may take into custody any animal, upon either private or public property, that clearly shows evidence of cruelty to animals. Such Officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of an animal shelter or licensed veterinarian for treatment, boarding or other care; or, if it appears that the animal is diseased or disabled beyond recovery for any useful purpose, for euthanasia. The owner, harborer or keeper of an animal euthanized pursuant to this Subsection shall not be entitled to recover damages for the euthanasia of such animal unless the owner proves that euthanasia was unwarranted.
(2) Costs of Care Assessed: Any necessary and reasonable expenses incurred for the care, treatment, euthanasia, or boarding of any animal taken into custody pursuant to this Subsection (c), pending prosecution of the owner, harborer or keeper of such animal for cruelty to animals, shall be assessed to the owner, harborer or keeper as a cost of the case if the owner, harborer or keeper is adjudicated guilty of such crime.

(3) Disposition of Animals:

(a) If the owner of any animal which comes into the custody of the City pursuant to the provisions of this Section shall fail to make arrangements to care for such animal within twenty (20) days of the time the City takes possession of the animal for impoundment, the animal may be turned over to an animal shelter or licensed veterinarian for sale, adoption or other disposition or destroyed as an abandoned animal, in accordance with applicable City ordinances, unless the owner, harborer or keeper files a cash or other accepted form of bond equal to 30 days of care and treatment. The City shall make reasonable attempt to locate and notify the owner, harborer or keeper of the animal during the twenty (20) days.

(b) If a person is adjudicated guilty of the crime of cruelty to animals, in addition to any other penalty provided by law, the Court may order that such animal not be returned to or remain with such person. Such animal may be ordered turned over to an animal shelter or licensed veterinarian for sale, adoption or other disposition.

(d) **RESPONSIBLE ANIMAL CARE REQUIRED**.

(1) It shall be unlawful for any owner, keeper or harborer to fail to provide responsible animal care, as that term is defined in Section 2-102.

(2) It shall be unlawful for any owner, keeper or harborer to fail to provide an animal in his or her care with living space sufficient for the species and/or the opportunity for adequate daily exercise, requiring some freedom from continuous tethering and/or stabling. Any restraint placed on an animal must be such that it prevents the animal from being tangled or injured by the restraint and that it does not impede the animal's access to food, water and shelter.

(3) It shall be unlawful for any owner, keeper or harborer to leave an animal in a vehicle when weather conditions exist that could endanger the animal's life. Animal control, with assistance from law enforcement, is hereby authorized to enter such vehicle and rescue such animal and thereafter seek veterinary treatment for the animal, if needed, and/or impound the animal. A written notice shall be left on the vehicle whenever an animal has been impounded or removed for treatment under the authority of this Section.

(4) It shall be unlawful to transport an animal in the open bed of a truck unless properly restrained so as to prevent the animal from leaving or being thrown from the vehicle and/or to transport any animal in any vehicle in a manner that inflicts pain, or results in inhumane treatment, to the animal.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)
(Ord. 2860C; 09-18-17)

**2-104. TRAPPING.**

(a) No person shall do any trapping anywhere in the city except by means of cage-type live traps, provided, however, that the Governing Body or the City Administrator may, by duly issued permit, approve the use of other traps and methods by area homes associations in certain limited circumstances and for a limited amount of time, when another method is shown to be humane and necessary to protect health, safety and welfare of the public.

(b) A permit may be issued to a homes' association for the use of traps other than cage-type live traps upon application by a homes' association showing that another method is both humane and necessary to protect the health, safety and welfare of the public and demonstrating the following:

1. The Governing Body has found that the animal or species of animal poses a specific and imminent threat to the public or property and there is reason to believe that cage-type live traps will not be adequate to trap the animal or species.
2. The proposed trapping will comply with Kansas law and City of Leawood ordinances including the remaining portions of this section.
3. The proposed trapper has a valid Nuisance Wildlife Control Permit issued by the State of Kansas.
4. The proposed trapping will be targeted to the specific animal or animal species and will be restricted to areas shown on a map provided to the City prior to approval and will be limited to property owned by the homes association or by owners of property within the Association who have consented to such trapping.
5. The number and type of trapping devices must be specifically identified and provided to the City prior to approval.
6. The exact proposed time frame for the trapping shall be stated and shall not exceed 30 days.
7. The trapping devices shall be designed to be as non-lethal as practicable yet still remain effective in capturing the targeted animal or species. In no circumstances may conibear type, body gripping or steel jaw leghold traps be used.

8. The application for permit shall state the proposed disposition of the trapped animals. If it is proposed that the animal shall be euthanized, the method of euthanization shall be stated.
9. The application shall state the proposed disposition of the animal once captured. The perimeter of the trapping area shall be posted at reasonable intervals with notice of the trapping operation. The notice shall be posted seven days in advance of the commencement of the operation and shall contain the name and telephone number of the trapper, and the name of the company, if applicable, and the Homes Association contact for the area where the operation is to occur.

(c) The Governing Body may authorize agreement between the City of Leawood and an authorized trapper to provide for trapping on lands owned by the City, provided that the contract meets the elements stated in paragraphs (b)1 through (b)4, (b)6 and (b)7 of this section.

(d) All traps shall be clearly marked with the owner's name, address and telephone number of the owner of the trap or the trap shall be confiscated by the Police Department and destroyed if not claimed within twelve hours.

(e) All traps will be kept in good condition and working order and will be checked every twelve to eighteen hours while set to insure that no animal is unreasonably suffering and to remove and properly dispose of the animal.

(f) This section does not apply to the use of traps specifically designed to kill rats, mice, gophers, squirrels or moles with the consent of the owner or occupant of the property where the trap is set.

(Ord. 1796C; 05-17-99)
(Ord. 2320; 05-19-08)
(Ord. 2685C; 09-02-14)

**2-105. FENCES.**

(a) Fences to contain any animal shall be securely constructed; adequate for the purpose; kept in good repair; and in compliance with the regulations provided in Section 16-4-9 of the Leawood Development Ordinance.

(b) Invisible fences shall be maintained in accordance with the specifications of the manufacturer. An animal placed within an invisible fence shall be trained in accordance with the specifications of the manufacturer.

(c) Invisible fences shall be no closer than 10 feet from a public walkway or street, and it shall be unlawful to allow an animal, other than a domestic cat, to have an invisible fence as the sole means of confinement

(Ord.1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-106.** **COMPLIANCE WITH FEDERAL REGULATIONS.** It shall be unlawful for any person to buy, sell or offer to sell a native or foreign species or subspecies of mammal, bird, amphibian or reptile, or the dead body or parts thereof, which appears on the endangered species list designated by the United States Secretary of the Interior and published in the Code of Federal Regulations pursuant to the Endangered Species Act of 1969.

(Ord. 1796C, 05-17-99)
(Ord. 2685C; 09-02-14)

**2-107.** **DEAD ANIMAL REMOVAL AND DISPOSAL.** The property owner or occupant of the lot or tract of land where any animal has died and/or the owner, keeper or harborer of the animal shall remove and properly dispose of the remains of the animal within 24 hours after the death of the animal or discovering the remains of the dead animal. In the event of a failure to properly dispose of the remains of an animal, the ACO or law enforcement officer may remove and dispose of the remains of the animal; and the property owner and/or owner, keeper or harborer of the animal will be responsible for any expenses involved in the removal and disposal of said animal.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-108.** **INJURED OR ILL ANIMALS.**

(a) If the owner of an injured or ill animal cannot immediately be contacted, the ACO or law enforcement officer may seek aid for the animal. The owner of the animal will be responsible for any expenses for the treatment and board of the animal and subject to all other laws including Section 2-103(c) of this Code.

(b) In the event that a domestic animal is severely injured or ill and an owner cannot be contacted, the ACO or law enforcement officer and his or her supervisor will decide if the animal will be euthanized.

(c) The ACO or law enforcement officer may obtain care for any injured or ill wild animal found within the city limits and/or euthanize such animal.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-109. KEEPING OF A DANGEROUS AND/OR WILD ANIMAL.**

(a) It shall be unlawful for any person to own, keep or harbor any dangerous or wild animal within the city limits except as herein provided.

(b) No person, other than the following entities having a valid dangerous animal permit, may keep a dangerous or wild animal for display or for exhibition purposes whether gratuitously or for a fee in the City of Leawood.

(1) a zoological park;
(2) circus;
(3) bona fide licensed veterinary hospital;
(4) bona fide educational institution;
(5) bona fide medical institution;
(6) bona fide museum.

Such persons or entities may receive a permit for keeping a dangerous animal if the subject animal or animals are considered wild animals such as lions, tigers, bobcats, all other members of the feline family, bears, wolves, coyotes, monkeys, apes, gorillas, poisonous or dangerous snakes or other reptiles, poisonous or dangerous insects, eagles, hawks, owls, other wild or dangerous members of the bird family, and any bird that is not captive bred domestically.

Any such person or entity must have a permit to keep a dangerous animal in the city, and shall execute the following agreement, which shall be attached to the permit as Exhibit A:

***EXHIBIT A***
***Agreement Permitting Inspections***

I, _____ have applied for a permit to keep a dangerous animal in the city, at premises known as _____. I understand that keeping a dangerous animal can pose special problems for the city. I agree that a city animal control officer may enter the premises described as _____ at any time with or without previous notice of the purpose of making an inspection. Such entry for inspection shall not include entry into any building or part of a building except locations where such animal is customarily kept or permitted to roam, and a way to get into such location.

Dated:_____
Applicant:_____

(c) The Federal Animal Welfare Act must be strictly followed if any dangerous animal is to be kept by a zoological park, circus, bona fide licensed veterinary hospital, bona fide educational or medical institution or museum.

(d) No person shall keep or permit to be kept any dangerous animal as a pet.

(e) Upon the written complaint of any person that a person owns or is keeping or harboring a dangerous animal within the city, the city shall conduct an

investigation and if the investigation reveals evidence that indicates that such person named in the complaint is in fact the owner, keeper or harborer of any such dangerous animal in the city, the city shall mail written notice to the property owner where the animal is located requiring the owner to safely remove the animal from the city within five days. Notice shall not be required where a dangerous animal has caused serious physical harm or death to any person or has escaped and is at large, in which case the city shall cause the animal to be immediately seized and impounded or killed, if seizure and impoundment are not possible without the risk of serious physical harm or death to any person.

(f) The city shall forthwith cause to be seized and impounded any dangerous animal where the person owning, keeping or harboring such animal has failed to comply with the notice sent. Upon seizure and impoundment, the animal shall be delivered to a place of confinement which may be with any organization which is authorized by law to accept, own, keep or harbor such animals. If, during the seizing and impounding of any such animal, the animal poses a risk of serious physical harm or death to any person, such person or persons authorized by the city may render the animal immobile by means of tranquilizers or other safe drugs or if that is not safely possible, then the animal may be killed.

(g) Any reasonable expenses incurred by the city in seizing, impounding and confining any dangerous animal shall be charged against the owner, keeper or harborer of such animal. Such charges shall be in addition to any fine or penalty provided for violating this section.

(h) Any such dangerous animal shall be confined to a secured enclosure as defined in Section 2-102 of this Code.

(Ord. 1796C; 05-17-99)
(Code 2000)
(Ord. 1997C; 06-16-03)
(Ord. 2685C; 09-02-14)

**2-110. VICIOUS ANIMAL.**

(a) It shall be unlawful to own, harbor or keep a vicious animal within the City of Leawood except as provided in this Chapter.

(b) The owner of an animal that has been found and/or declared to be vicious in any jurisdiction, must within 10 days of the conviction and/or declaration have a microchip implanted in the animal and provide to the ACO or law enforcement officer two color photographs of the animal clearly showing the color, approximate size and any distinguishing markings on the animal and the microchip number of such animal.

(c) All vicious animals shall be confined in a secured enclosure as defined in this Chapter. It shall be unlawful for any owner, keeper or harborer to allow a vicious animal to be outside of the dwelling of the owner or outside of the enclosure unless it is necessary to obtain veterinary care for the vicious animal or to sell or give away the vicious animal or to comply with commands or directions of the ACO or law enforcement officer with respect to the vicious animal. In such event, the vicious animal shall be securely muzzled and restrained with a chain having a minimum tensile strength capable of keeping said animal attached to said chain and not exceeding three feet in length, and shall be under the direct control and supervision of the owner, keeper or harborer of the vicious animal. Any muzzle shall be made in a manner that will not cause injury to the animal or interfere with its vision or respiration, but shall prevent it from biting any human or animal.

(d) The owner of a vicious animal shall display in a prominent place on the premises a clearly visible warning sign indicating that there is a vicious animal on the premises and state whether it is a dog or cat. A similar sign is required to be posted on the secured enclosure, pen or the kennel of the animal.

(e) No vicious animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition. In addition, no such animal may be kept in a house or structure when the windows are open or when screen windows or screen doors are the only obstacle preventing the animal from exiting the structure.

(f) Unless otherwise ordered by the Judge after being convicted of owning, keeping or harboring a vicious animal, the owner, harborer or keeper shall present satisfactory evidence to the City Clerk that the owner has procured liability insurance in the amount of at least $500,000 covering any damage or injury which may be caused by such vicious animal during any 12 month period for which a license is sought. The policy shall contain a provision requiring the City to be named as additional insured for the sole purpose of the City to be notified by the insurance company of any cancellation, termination or expiration of the liability insurance policy. The owner shall maintain and not voluntarily cancel the liability insurance required by this section during the 12 month period for which the license is being sought, unless the owner shall cease to own the vicious animal prior to the expiration of the license.

(g) Trained police dogs utilized by properly certified law enforcement officers in the course of official duty shall be exempt from the provisions of this section.

(h) A vicious cat must be declawed by a licensed veterinarian.

(i) Upon conviction of a first offense, the general penalty for this Chapter shall apply.

(j) Upon conviction of a second offense, the Court shall order the animal permanently removed from the City within three days or euthanized. Should the order of the Court be appealed, the animal must be removed from the City pending disposition of the appeal. Failure to comply with the removal order shall result in the animal being impounded and shall be punishable by a fine of $500 per day that the vicious animal remains in the City and/or one year confinement in the county jail.

(k) A permit for the keeping of a vicious animal shall be issued for one year upon payment of a fee of $150 to the Police Department and will be deemed to have expired one year from date of issuance. The person to whom a permit is issued shall sign a written agreement permitting the ACO or a law enforcement officer to inspect the permittee's premises quarterly. Failure to comply with any of the foregoing requirements in this Section 2-111 shall be grounds to revoke such permit.

(Ord.1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-111. BITE AND SCRATCH PROCEDURES.**

(a) When any animal has bitten or attacked any person within the City limits of Leawood, and/or when an animal is suspected of having rabies, it shall be the duty of any person having knowledge of such to report the same immediately to the Police Department.

(b) Any animal alleged to have bitten or otherwise so injured a person causing an abrasion of the skin, shall immediately be confined for a period of not less than 10 days for observation, at the expense of the owner, keeper, or harborer, at an approved animal shelter, with a licensed veterinarian, or home confinement as provided in subsection (f).

(c) If the owner, keeper or harborer of the animal alleged to have bitten or injured a person cannot be immediately contacted, the Leawood Police Department shall immediately impound such an animal at the expense of the owner for not less than 10 days. If the owner can be determined, the Leawood Police Department shall notify the owner by the quickest means possible that the animal has been impounded under the provisions of this section. The owner has the right to redeem the animal if that animal is determined to be free of rabies at the expiration of confinement upon payment of all expenses including the boarding, any veterinarian fees and any license and penalty fees due and owing the City.

(d) In the event the original place of confinement is not the choice of the owner, the owner may request a change of place of confinement to a licensed veterinarian of the owner's choice, or request home confinement. The ACO shall insure that the place of confinement complies with all provisions of this article. The total period of confinement of the animal is a period of not less than 10 days. No credit shall be given for any period of time the animal remained at large.

(e) The veterinarian or animal shelter with whom the animal is confined shall provide a written report to the Police Department as to the health of the animal immediately after receiving any information concerning rabies.

(f) The ACO may authorize home confinement with the owner if the animal has a current rabies vaccination certificate and the facts and circumstances of the bite warrant a home confinement, provided that the owner or keeper signs a written agreement to keep the animal confined for the specified period and allows the animal to be periodically examined by an ACO to determine its physical condition during the confinement period. If the owner or keeper is unwilling to sign such an agreement, the animal shall be immediately impounded in accordance with this chapter.

(g) The owner, harborer or keeper of any animal that bites or otherwise so injures a person causing an abrasion of the skin, shall be punished by a fine of not less than $100 but not more than $1,000, or by imprisonment of not more than 180 days, or by both such fine and imprisonment. The Judge may also order that the animal be euthanized taking into consideration the nature and severity of the incident and whether the animal has displayed dangerously aggressive behavior and is likely to inflict injury on another person or animal.

(Ord. 2922C; 01-07-19)
(Ord. 2685C; 09-02-14)
(Ord. 1796C, 05-17-99)

**2-112. UNSECURED ANIMAL.**

(a) It shall be unlawful for the owner, keeper or harborer of any animal to allow such animal to be unsecured anywhere in the city. This section shall not apply to dogs in the City's off-leash dog park, or to cats.

(b) Unsecured or abandoned animals may be immediately euthanized if the ACO or any other agent designated by the city believes that seizure and impoundment are not possible without the risk of serious physical harm or death to any person.

(c) If an animal is unsecured within the city limits, such animal may be seized by the ACO or by any other agent designated by the city, and the animal shall be held five days as provided by the animal shelter or agent, and if within that five days the owner, harborer or keeper of the animal is identified and pays the expenses of seizing, boarding, and caring for the animal, the animal may be released to the owner, harborer or keeper provided that the animal is not vicious or dangerous, that the owner, harborer or keeper can provide a current rabies vaccine inoculation certificate issued by a licensed veterinarian, and that the animal is eligible to be released pursuant to all other provisions of this Chapter.

(d) If an animal is impounded, the Police Department will attempt to contact the owner, harborer or keeper of the animal. If the owner of the animal is known and does not claim the animal within five days, then the animal will be deemed to be abandoned and the owner may be charged with a violation of Section 2-103 of this Code and any other applicable local, state and/or federal laws. The disposition of the impounded abandoned animal shall be handled in accordance with Section 2-103 of this Code.

(e) If the owner of an impounded animal cannot be determined, or if the owner abandons or fails to claim the animal, then the animal may be sold, adopted or other disposition as decided by the designated agent and/or the animal shelter.

(Ord. 2922C; 01-07-19)
(Ord. 2685C; 09-02-14)
(Ord. 1796C, 05-17-99)

**2-113. ANIMAL NUISANCE.**

(a) ***Nuisance*** means an animal that:

(1) is unsecured; or

(2) acts in a manner that would disturb a reasonable person other than the owner, harborer or keeper of the animal by growling or biting at a person;

(3) chases, molests, or acts in a manner toward a person other than the owner, harborer or keeper that reasonably disturbs a person;

(4) attacks animals other than wild animals;

(5) damages the property of a person other than the owner, keeper or harborer;

(6) barks, bays, howls, or makes any other noise that reasonably tends to disturb a person that has signed a statement (which can be recorded by the A.C.O.) setting forth facts concerning the volume, time, and length of barking. The person making such statement must agree in writing to testify in court if requested;

(7) creates odors that would offend a reasonable person other than the owner, keeper or harborer of the animal;

(8) defecates on private property without the permission of the owner of the property;

(9) becomes or creates an insect breeding site;

(10) threatens or endangers public health;

(11) impedes refuse collections; or

(12) acts in any other manner that interferes with the enjoyment of property by a person other than the owner, harborer or keeper of the animal.

(b) It shall be unlawful for any person to fail to immediately remove any excrement deposited by his or her animal on any public or private property, other than the property of the owner of the animal. This section does not apply to a blind person while walking his or her work dog.

(c) It shall be unlawful for the owner, harborer or keeper of an animal to allow the animal to be exposed in any public place in the city, or to ship or remove such animal from the property of the owner, harborer or keeper, when the animal is afflicted with a contagious or infectious disease unless under the supervision of the ACO or a licensed veterinarian.

(d) All female animals in heat shall be confined in an enclosure or building in such a manner that the animal cannot come in contact with a male animal except for planned breeding.

(e) It shall be unlawful for the owner, keeper or harborer of any animal to allow that animal to create any type of nuisance as defined in this Chapter.

(f) Nuisance-Injunction: Any violation of Section 2-113 of this Code is hereby declared to be a nuisance. In addition to any other relief provided by this section, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this section. Such application for relief may include seeking a temporary restraining order, temporary injunction, and permanent injunction.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-114. SALE OF ANIMALS. SPECIAL PERMIT AND BUSINESS LICENSE REQUIRED.** It shall be unlawful to attempt to sell and/or maintain for sale, and/or sell an animal without obtaining a special permit and business license from the Animal Licensing Specialist. It shall be an exemption for City of Leawood residents to sell up to two litters per year.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-115. CHAPTER ADMINISTRATION.** The City Administrator is authorized to develop administrative regulations necessary to implement the provisions of this Chapter, including procedures for animal enumerations, animal shelter operation and such other fees required by this Chapter but not specified herein.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

# ARTICLE 2. DOGS AND CATS

## SECTIONS

2-201 LICENSING AND VACCINATIONS
2-202 LIMITATIONS ON OWNERSHIP

**2-201. LICENSING AND VACCINATIONS.**

(a) It shall be unlawful for any person to own, keep or harbor any dog or cat over six months old unless such dog or cat is licensed as provided herein. Any person bringing a dog or cat over six months old into the city for purposes of residing shall have 30 days from the day the animal is brought into the City to license the animal through the city's Animal Licensing Specialist. If the animal is not licensed within the time required, the owner shall be subject to a penalty as set forth in the fee schedule established and maintained by the City Administrator and ratified or modified by the Governing Body, as prescribed in Section 1-701 of the Code of the City of Leawood.

(b) It shall be unlawful for any owner to own, keep or harbor any dog or cat over six months old unless such dog or cat is currently vaccinated against rabies. If a licensed veterinarian recommends that a dog or cat not be inoculated with a rabies vaccine for health purposes the owner, harborer or keeper shall obtain a statement from a licensed veterinarian on official letterhead specifying the reason that the animal shall not be vaccinated should be provided as set forth in this Article.

(c) An application provided by the Animal Licensing Specialist must be completed and submitted annually by any person owning, keeping or harboring a dog or cat. The application must include the following information:

(1) the name, address and telephone numbers of the person; and the dog or cat shall be identified by sex, age, breed, color, and call name; and

(2) the date of most recent inoculation of the rabies vaccine, the name of the inoculating veterinarian and the rabies vaccine inoculation certificate number; or

(3) If a licensed veterinarian recommends that a dog or cat not be inoculated with a rabies vaccine for health purposes, a statement from a licensed veterinarian on official letterhead specifying the reason that the animal should not be vaccinated.

(d) The owner or harborer of a dog or cat shall carefully preserve the current Certificate of rabies Vaccination that was issued by a veterinarian at the time of the inoculation or the statement from a licensed veterinarian on official letterhead specifying the reason that the animal should not be vaccinated, and shall promptly present the certificate or the statement for inspection when requested to do so by an ACO, law enforcement officer or Animal Licensing Specialist.

(e) A license fee and submission of the Certificate of Vaccination or a statement from a licensed veterinarian on official letterhead specifying the reason that the

animal should not be vaccinated are required for a license. The license fees for sexually altered and unaltered dogs and cats are set forth in the fee schedule established and maintained by the City Administrator and ratified or modified by the Governing Body, as prescribed in Section 1-701 of the Code of the City of Leawood. Written proof by a licensed veterinarian that an animal has been neutered or spayed must be presented.

(f) Any person owning, keeping or harboring a work dog, as described below, shall be exempt from the license fee payment upon submittal of adequate proof that the dog has received a rabies vaccine inoculation or a statement from a licensed veterinarian on official letterhead specifying the reason that the animal should not be vaccinated and is fully trained as a work dog and is used regularly as a work dog.

(1) Dogs providing services for persons with disabilities; or

(2) Dogs utilized by law enforcement personnel.

(g) The license year shall be from January 1 through December 31 of each year. The fee shall be due and payable before March 1 of each year. A penalty as set forth in the fee schedule established and maintained by the city administrator and ratified or modified by the Governing Body, as prescribed in Section 1-701 of the Code of the City of Leawood, shall be assessed on March 1 and every 30 days thereafter.

(h) Licenses shall be issued in the form of a durable tag which shall be worn at all times fastened to the collar or harness of the dog or cat. License tags shall not be transferable. If a tag is lost, a replacement tag will be issued upon sufficient evidence of prior licensing and payment of the charge as set forth in the fee schedule established and maintained by the city administrator and ratified or modified by the Governing Body, as prescribed in Section 1-701 of the Code of the City of Leawood.

(i) Proof of rabies vaccination shall be obtained from a licensed veterinarian in the form of a durable tag which shall be worn at all times fastened to the collar or harness of the dog

(j) It shall be unlawful for any person to remove or cause to be removed, the collar, harness or the license tag from any licensed dog or cat without the consent of the owner, keeper or harborer of the dog or cat.

(k) Persons that do not reside in Leawood may keep no more than two dogs and/or cats within the city for less than 30 days before licensing the dogs and cats.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-202. LIMITATIONS ON OWNERSHIP.**

(a) It shall be unlawful for any person to own, harbor or keep more than two dogs and/or two cats over six months of age in the City of Leawood unless the person has properly obtained a permit allowing the person to keep a greater number of dogs and/or cats.

(b) Any person who desires to own, keep or harbor more than two dogs and/or two cats may apply to the City Clerk for a "Special Animal Permit," that shall, upon issuance, allow the applicant to own, keep or harbor the animals specifically allowed in that permit.

1. All applicants must adequately show that special circumstances exist that justify the keeping of the subject animals, and that the keeping of additional animals will not create a nuisance in the surrounding neighborhood, that reasonable animal care will be provided and that the premises where the animals are kept is suitable for the keeping of multiple animals and is in conformity with all City zoning requirements. The criteria to be evaluated include, without being limited to the following:
   a. That the animals will be kept or maintained at all times in a safe and sanitary manner.
   b. That the quarters in which such animals are kept or confined will be adequately lighted and ventilated and are so constructed and maintained that they can be kept in a clean and sanitary condition.
   c. That the health and well-being of the animals will not in any way be endangered by the manner of keeping or confinement.
   d. That the keeping of such animals will not harm the surrounding neighborhood or disturb the peace and quiet of the surrounding neighborhood.
   e. That the keeping of such animals will not cause fouling of the air by offensive odors and thereby create or cause unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animals are kept or harbored.
   f. That the animals will not unreasonably annoy humans, endanger the life, health or safety or citizens to the enjoyment of life or property.
   g. That the animals will not repeatedly run or be found at large, will not damage or deposit excretory matter upon the property of anyone other than their owner, and will not chase vehicles or molest or intimidate pedestrians or passersby.

h. That the animals will not make disturbing noises, including but not limited to, continued and repeated or untimely howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors and others in close proximity to the premises where the animals are kept or harbored, or otherwise be offensive or dangerous to the public health, safety or welfare, by virtue of their behavior, number, type or manner of keeping.

i. That the applicant or any person who will share in the care, custody and control of the animals, is not currently in violation of, or has not previously violated any applicable City, state or federal laws, codes, rules or regulations, including but not limited to, those pertaining to the reasonable animal care and control of animals and the maintenance of their property, which would reflect adversely on their ability to fully comply with the conditions of the subject permit.

(c) The City Clerk shall deny any application where the applicant fails to show proof of the aforementioned requirements by review of an examination of the documentation submitted by the applicant, or an investigation by the Police Department, reveals that, in the opinion of the Police Department, the applicant has failed to meet the requirements of this Section. Any such applicant shall be required to show proof of meeting the required standards by clear and convincing evidence. The Police Department shall submit a written report of its investigation stating the factual basis for its recommendation to grant or deny any application. The Police Department shall consider the comments of neighbors, past violations by applicant, the size, condition and location of the area where the animals will be kept, the size of the animals to be kept, past complaints concerning the applicant and the criteria set forth in this Section and any other factors relevant to the issue of keeping additional animals.

(d) The City Clerk shall establish an application process to be followed by all individuals seeking a "special animal permit." The permit shall be issued for the period from January 1st through December 31st of each year. The special animal permit shall be for no more than eight [8] animals and shall be issued for the individual animals listed in the application and shall not be transferable to other animals except for a circus, bona fide educational institution, bona fide medical institution, or bona fide museum, kennel, pet shop, bona fide licensed veterinary hospital, livery or riding stable, commercial zoo, zoological park, animal act, or similar place of exhibition of animals, which may substitute animals up to a certain number as approved in the special animal permit. The fact an individual has previously been issued a special animal permit may be considered but shall not be controlling in the City Clerk's decision to issue a special animal permit for a different animal.

(e) The City Clerk may revoke any permit if the person holding the permit refuses or fails to comply with this Chapter, the regulations promulgated by the City Council, or any state or local law such as those governing cruelty to animals, or the keeping of animals, or if the animals' place of keeping otherwise constitutes a nuisance to the surrounding neighbors or that the permittee had provided false information in the application. Any person whose permit is revoked shall, within 30 days thereafter, sell or otherwise humanely remove the animals from the premises and no part of the permit fee shall be refunded.

(f) As used in this Section, "special circumstances" is defined as any unusual, extraordinary and exceptional situation or condition whereby the strict application of the numerical limits set forth in this Section would be contrary to the intent, purposes and objectives of such limitations and would be contrary to the public interest and welfare.

(g) The provisions of this Section do not apply to service animals otherwise governed under K.S.A. 39-1101 et seq.

(h) Any person who is denied a special animal permit or who has had an existing permit revoked may, within 10 days thereafter, file a written notice or statement of appeal from said decision, ruling, action or finding to the Leawood Municipal Court including the administrative fee, for an administrative hearing thereon.

1. An administrative fee of $10.00 shall be paid to the Municipal Court Clerk and is required for each appeal to the Municipal Court, and no appeal shall be set for hearing until such fee has been paid.
2. The filing of an appeal under this Subsection shall stay any action taken pursuant to this chapter for sixty (60) days, provided, however, that the Judge of the Municipal Court may grant an additional stay up to a total of 120 days from the day of the original denial of the special animal permit.

3. The hearing on the appeal shall be conducted by a Leawood Municipal Court judge who will sit as an administrative judge for purposes of this chapter. The sole issue for determination shall be whether decisions, rulings, actions or findings of the Police Department and/or City Clerk were within the scope of their authority, supported by substantial evidence, and not arbitrary nor capricious in nature. The Court shall make specific findings of fact and conclusions of law in each case. If the Court denies the application, then the Court shall set a reasonable time, not to exceed an additional 120 days for the applicant to remove the animals from the applicant's premises.

(i) An initial permit fee in the amount of $100.00 shall be paid by the owner, keeper or harborer of the animal identified in the permit. The permit may be renewed each year upon re-inspection of the premises and verification by an ACO that the premises and animals meet the requirements set forth above. A permit renewal fee in the amount of $50.00 shall be paid by the owner, keeper or harborer, for each year thereafter. All fees shall be nonrefundable and nontransferable.

(Ord. 1796C; 05-17-99)
(Ord. 1912C; 09-04-01)
(Ord. 2609C; 01-22-13)
(Ord. 2685C; 09-02-14)
(Ord. 2692C; 10-06-14)

# ARTICLE 3. LIVESTOCK AND FOWL

## SECTIONS

2-301 KEEPING OF LIVESTOCK PROHIBITED
2-302 KEEPING OF PIGEONS PROHIBITED

**2-301. KEEPING OF LIVESTOCK PROHIBITED.**

(a) It shall be unlawful for any person to own, keep, harbor or maintain a cow, a pig, a horse, a mule, a sheep, a goat, a chicken, a duck, a goose, or any other animal on any premises not zoned for agricultural purposes within the corporate limits of the city. The following exemption's shall apply:

1. Any domesticated cat;
2. Any domesticated dog;
3. Any small domesticated rodent such as a gerbil, guinea pig, hamster, rat or mouse;
4. Any small bird including but not limited to a canary, parakeet, finch, parrot, cockatoo or myna; or

(b) Any amphibian, fish or non-venomous reptile. Nuisance-Injunction: Any violation of this Section 2-301 is hereby declared to be a nuisance. In addition to any other relief provided by this article, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this section. Such application for relief may include seeking a temporary restraining order, temporary injunction, and permanent injunction.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-302. KEEPING OF PIGEONS PROHIBITED.**

(a) It shall be unlawful to own, keep or harbor any pigeon including, but not limited to the following: any member of the family Columbidae, including racing pigeons, fancy pigeons and sporting pigeons.

(b) Nuisance-Injunction: Any violation of this Section 2-302 is hereby declared to be a nuisance. In addition to any other relief provided by this article, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this section. Such application for relief may include seeking a temporary restraining order, temporary injunction, and permanent injunction.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

# ARTICLE 4. ANIMAL CONTROL OFFICER

## SECTIONS

2-401 DUTIES
2-402 POWERS

**2-401. DUTIES.**

ACOs are hereby charged with the duties of enforcing this article and no person shall interfere with, hinder, molest or abuse such officers or other designated agents in the exercise of their powers or in the enforcement of this Chapter.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

**2-402. POWERS.**

Whenever necessary to make an inspection to enforce any of the provisions of this Code, or whenever the ACO has probable cause to believe that there exists in any building or upon any property any violation of this Chapter, or whenever necessary to impound an animal, the Officer may enter such building or property at all reasonable times to inspect the same or to perform any duty imposed upon the Officer by this Chapter; provided, that if such building or property is occupied, the Officer shall first present proper credentials and demand entry, and if such building or property is unoccupied, the Officer shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or property and demand entry. If the owner or occupant denies entry, the Officer shall obtain a proper inspection warrant or other remedy provided by law to secure entry. No owner or occupant or any other persons having charge, care or control of any building or property shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Officer for the purpose of inspection and examination pursuant to this Code. Such refusal shall constitute a violation of this Chapter and is punishable as set forth in Article 5 herein.

Nothing in this Section shall be deemed to prevent the ACO from entering upon property without consent when the condition or animal is found in plain sight, not within a private structure, or under conditions constituting an emergency.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)

# ARTICLE 5. GENERAL PENALTIES

## SECTIONS

2-501 PENALTIES

**2-501. PENALTIES.**

(a) It is unlawful for any person to violate any of the provisions of this Chapter.

(b) Each day that a person is in violation of any section of this Chapter, constitutes a separate offense.

(c) Each section and subsection of the Chapter constitutes a separate violation for sentencing purposes.

(d) Any person convicted of a violation of this Chapter, where no other penalty is stated for the violation, shall be punished for that violation by a fine of not less than $50 but not more than $1,000, or by imprisonment of not more than 180 days, or by both such fine and imprisonment. These fines shall be in accordance with the minimum fine schedule set out in subsection (e) of this section.

(e) Whenever the penalty is to be a fine or a fine and imprisonment, the fine shall be no less than the minimum amount set out in the following:

| | | |
|---|---|---|
| (1) | First Offense | $50 |
| (2) | Second Offense | $100 |
| (3) | Third Offense | $300 |
| (4) | Fourth and subsequent offense | $500 |

In determining the applicable minimum fine, an offense shall be considered a subsequent offense only if the defendant has previously pleaded guilty or been found guilty of the same offense.

(Ord. 1796C; 05-17-99)
(Ord. 2685C; 09-02-14)
(Ord. 2962C; 09-16-19)

# CHAPTER III. BEVERAGES

**ARTICLE 1. CEREAL MALT BEVERAGES**
**ARTICLE 2. ALCOHOLIC LIQUOR**

## ARTICLE 1. CEREAL MALT BEVERAGES

**SECTIONS**

3-101 DEFINITIONS
3-102 RETAILER'S LICENSE REQUIRED
3-103 LICENSE APPLICATION
3-104 DISQUALIFICATION
3-105 GRANTING OF LICENSE
3-106 LICENSE POSTING
3-107 LICENSE FEE
3-108 NON-TRANSFERABLE AND NONREFUNDABLE
3-109 REVOCATION OF LICENSE
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3-112 OPEN CONTAINER- **REPEALED**
3-113 CONSUMPTION WHILE DRIVING- **REPEALED**
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3-115 EXEMPTIONS
3-116 WHOLESALERS AND/OR DISTRIBUTORS
3-117 SANITARY CONDITIONS
3-118 PREMISES, ILLUMINATION
3-119 PENALTY

**3-101. DEFINITIONS.** For the purpose of this Chapter the following definitions shall apply unless the context clearly requires otherwise:

(a) ***Cereal malt beverage (CMB)***. Any fermented but undistilled liquor brewed or made from a malt or a mixture of malt or malt substitute, but shall not include any such liquor which contains more than 3.2% of alcohol by weight.

(b) ***Enhanced cereal malt beverage.*** Cereal malt beverage and/or beer containing not more than 6% alcohol by volume when such beer is sold by a retailer licensed under the Kansas cereal malt beverage act.

(c) ***General retailer***. A person who has a license to sell enhanced cereal malt beverages at retail for consumption on the premises.

(d) ***Limited retailer***. A person who has a license to sell enhanced cereal malt beverages at retail only in original and unopened containers and not for consumption on the licensed premises.

(e) ***Person***. Individuals, firms, partnerships, corporation, and associations.

(f) ***Place of business***. Any place at which enhanced cereal malt beverages are sold.

(g) ***Sale at retail*** *and* ***retail sales***. Sales for use or consumption and not for resale in any form.

(h) ***Wholesaler or distributor***. Any individuals, firms, partnerships, corporations and associations which sell or offer for sale any beverage referred to in this Article, to persons, partnerships, corporations and associations authorized by this Article to sell enhanced cereal malt beverages at retail.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-102. RETAILER'S LICENSE REQUIRED.**

(a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverage in any other manner.

(K.S.A. §41-2702)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-103.** **LICENSE APPLICATION.** An application for a license to sell enhanced cereal malt beverages at retail shall be made to the Governing Body in accordance with the provisions of K.S.A. § 41-2702.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-104.** **DISQUALIFICATION.** No license shall be issued to:

(a) A person under 21 years of age.

(b) A person who has not been a resident in good faith of the state of Kansas for at least one year and a resident of Johnson county for at least six months prior to filing of such application.

(c) A person who is not a citizen of the United States.

(d) A person who is not of good character and reputation in the community in which he or she resides.

(e) A person who, within two years immediately preceding the date of application approval, has been convicted of, released from incarceration for or released from probation or parole for a felony or any crime involving moral turpitude, drunkenness, driving a motor vehicle while under the influence of intoxicating liquor or violation of any other intoxicating liquor law of any state or of the United States.

(f) A partnership, unless all the members of the partnership are otherwise qualified to obtain a license.

(g) A corporation or limited liability company if any manager, officer or director thereof or any stockholder or any limited liability company member owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than citizenship and residency requirements.

(h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of a licensee.

(i) A person whose spouse would be ineligible to receive a license for any reason other than citizenship, residence requirements or age, except this shall not apply in determining eligibility for a renewal license.

(j) A person whose spouse has been convicted of a felony or other crime which would disqualify a person from licensure and such felony or other crime was committed during the time the spouse held a cereal malt beverage license.

(K.S.A. §41-2703)
(Code 1973, 3-204)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

**3-105. GRANTING OF LICENSE.**

(a) If the license is granted, the City Clerk shall issue the license which shall display the name of the licensee and the year for which issued.

(b) No license shall be transferred to another licensee.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

**3-106. LICENSE POSTING.** Each license shall be posted in a conspicuous place in the place of business for which the license is issued.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

**3-107. LICENSE FEE.** Each Licensee shall pay the following fees:

(a) ***General Retailer*** -- for each place of business selling enhanced cereal malt beverages at retail for consumption on the premises, Two Hundred Dollars ($200) per year and a Twenty-Five Dollar ($25) state fee.

(b) ***Limited Retailer*** -- for each place of business selling only at retail enhanced cereal malt beverages in original and unopened containers and not for consumption on the licensed premises, Fifty Dollars ($50) per year and a Twenty-Five Dollar ($25) state fee.

(Ord. 446 11-19-73)
(Ord. 500; 10-06-75)
(K.S.A. §41-2702)
(Code 1984)
(Code 2000)
(Ord. 1913C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-108 NON-TRANSFERABLE AND NONREFUNDABLE.**

All license fees issued under this Article shall be nonrefundable and nontransferable. Licenses shall be issued on an annual basis, with the license effective for one year from the date of issuance.

(Ord. 1913C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

**3-109. REVOCATION OF LICENSE.**

(a) The Governing Body of the City, upon five (5) days notice to any person licensed under this Article, may revoke or suspend such license for any of the following reasons:
   (1) The drunkenness of the licensee or permitting any intoxicated person to remain at any business licensed under this Article;
   (2) The sale of enhanced cereal malt beverages to any person under the legal age for consumption of enhanced cereal malt beverage;
   (3) Permitting any person to mix drinks with materials purchased in any premises licensed under this Article or brought into the premises for this purpose;
   (4) The sale or possession of, or permitting any person to use or consume, alcoholic liquor, as defined in K.S.A. 41-102, within or upon any premises licensed under this Article; or
   (5) The licensee has violated any of the provisions of the Kansas Cereal Malt Beverage Act, this Article, or any rules or regulations made by the City.

(b) The provisions of Subsections (a)(3) and (4) shall not apply if such place of business is also currently licensed as a private club or drinking establishment.

(c) The Governing Body of the City, upon five (5) days notice to any person licensed under this Article, shall revoke or suspend the license for any one of the following reasons:

(1) The licensee has fraudulently obtained the license by giving false information in the application for the license;

(2) The licensee has become ineligible to obtain a license under this Article;

(3) Permitting any gambling in or upon any premises licensed under this Article except as specifically made lawful by the laws of the State of Kansas;

(4) The employment of any person under the age of 18 years in dispensing or selling enhanced cereal malt beverages;

(5) The employment or continuation in employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor within the preceding two years;

(6) The nonpayment of any license fees; or

(7) Maintaining or permitting a public nuisance to exist in or upon the licensee's place of business.

(Ord. 996C; 08-17-87)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2663C; 05-19-14)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-110.** **APPEAL.** The licensee, within 20 days after the order of the Governing Body revoking or suspending any license, may appeal to the District Court of Johnson County, and the District Court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken under this Section shall not suspend the order of revocation or suspension of the license of any licensee during the pendency of any appeal, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

(K.S.A. § 41-2708)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

**3-111. REGULATIONS.**

(a) Except as provided by Subsection (i) no enhanced cereal malt beverages may be sold:

(1) between the hours of 12 midnight and 6 a.m., or

(2) on Sunday, except between the hours of 12 noon and 8 p.m. and except in a place of business which is licensed to sell enhanced cereal malt beverage for consumption on the premises, which derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises, or

(3) on Easter Sunday.

(b) No private rooms or closed booths shall be operated in a place of business, but this provision shall not apply if the premises are also currently licensed as a club pursuant to the provisions of the Club and Drinking Establishment Act of the State of Kansas, as amended.

(c) Each place of business shall be open to the public and to law enforcement officers at all times during business hours or when patrons are on the premises, except that a premise licensed as a club pursuant to the Club and Drinking Establishment Act of the State of Kansas shall be open to law enforcement officers and not to the general public.

(d) No licensee shall permit a person under the legal age for consumption of enhanced cereal malt beverage to possess, consume, or purchase any enhanced cereal malt beverage in or about a place of business, except that a licensee's employee who is not less than 18 years of age may dispense or sell enhanced cereal malt beverage, if

(1) the licensee's place of business is licensed only to sell enhanced cereal malt beverage at retail in original and unopened containers and not for consumption on the premises; or

(2) the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.

(e) The legal age for consumption of enhanced cereal malt beverage shall mean 21 years of age.

(f) No person shall have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the Club and Drinking Establishment Act.

(g) Enhanced cereal malt beverages may be sold on premises which are licensed pursuant to both the acts contained in Article 27 of Chapter 41 of the Kansas Statutes Annotated and the Club and Drinking Establishment Act at any time when alcoholic liquor is allowed by law to be served on the premises.

(h) The licensee of each premises licensed under this Article shall at all times comply with sanitary health regulations.

(i) No retailer, or employee or agent of a retailer, licensed to sell enhanced cereal malt beverage for consumption on the licensed premises shall:

(1) Offer or serve any free drink to any person;

(2) Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public;

(3) Sell, offer to sell or serve any drink to any person at a price that is less than the acquisition cost of the drink to the licensee;

(4) Encourage or permit, on the licensed premises, any game or contest which involves drinking enhanced cereal malt beverages or the awarding of drinks as prizes; or

(5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under Subsections (i) (1) through (i) (4) of this Section.

(j) As used in this Section "drink" means an individual serving of enhanced cereal malt beverages.

(k) As used in this Section the Club and Drinking Establishment Act shall mean Kansas Statutes Annotated, Chapter 41, Article 26, as amended.

(l) Violation of this Section is punishable by a fine of not more than Five Hundred Dollars ($500.00), or imprisonment not exceeding one (1) year, or both.

(K.S.A. § 41-2719)
(Code 1984)
(Ord 1476C; 03-20-95)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2138C; 11-07-05)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-112. OPEN CONTAINER. – REPEALED**

***SECTION 3-112 IS HEREBY REPEALED***

***See Standard Traffic Ordinance, incorporated by Section 14-101 of this Code.***

(K.S.A. § 41-2719)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2663C; 05-19-14)
(Ord. 2719C; 02-16-15)

**3-113. CONSUMPTION WHILE DRIVING. . – REPEALED**

***SECTION 3-112 IS HEREBY REPEALED***

***See Standard Traffic Ordinance, incorporated by Section 14-101 of this Code.***

(K.S.A. § 41-2720)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2663C; 05-19-14)
(Ord. 2719C; 02-16-15)

**3-114. CONSUMPTION, POSSESSION ON PUBLIC PROPERTY.**

(a) Except as provided in Section 3-115, it shall be unlawful for any person to possess an open container of or to consume any enhanced cereal malt beverage upon any sidewalk, public street, alley or in or upon any other public property within the City, or while inside a vehicle on such public property.

(Ord. 1666C; 03-10-97)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-115 EXEMPTIONS**

(a) The provisions of Section 3-114, shall not apply to the possession or consumption of enhanced cereal malt beverage upon the following property owned or leased by the City subject to the following conditions:

1. The property known and operated as the Ironhorse Golf Club, including the clubhouse and eighteen-hole golf course; provided further, that no person shall possess or consume any enhanced cereal malt beverage at the Ironhorse Golf Club without the approval of the manager or person in charge of said Ironhorse Golf Club. The manager or person in charge of said Ironhorse Golf Club may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverages at Ironhorse Golf Club.
2. The property owned by the City and known and operated as the Leawood Community Center, including the lower level and courtyard areas of City Hall; provided further, that no person shall possess or consume any enhanced cereal malt beverage at the Leawood Community Center without the approval of the Parks & Recreation Director or person in charge of said Leawood Community Center. The Director or person in charge of said Leawood Community Center may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverage at Leawood Community Center.
3. The property known and operated as City Park, Ironwoods Park, I-Lan Park or Gezer Park, provided that no person shall possess or consume any enhanced cereal malt beverage at City Park, Ironwoods Park, I-Lan Park or Gezer Park, without the approval of the Parks and Recreation Director or other person in charge of Ironwoods Park. The Director or person in charge of said City Park, Ironwoods Park, I-Lan Park or Gezer Park may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverage at City Park, Ironwoods Park, I-Lan Park or Gezer Park.

4. The property known and operated as the Leawood Justice Center, provided that no person shall possess or consume any enhanced cereal malt beverage at the Leawood Justice Center without the approval of the Chief of Police or other person in charge of the Leawood Justice Center. The Chief or other person in charge of the Justice Center may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of enhanced cereal malt beverage at the Leawood Justice Center.

(Ord. 1666C; 03-10-97)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2485C; 03-07-11)
(Ord. 2643C; 11-04-13)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-116.** **WHOLESALERS AND/OR DISTRIBUTORS.** It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver enhanced cereal malt beverages within the city, to persons authorized under this article to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales.

(K.S.A. § 79-3847)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)
(Ord. 2933C; 03-18-19)

**3-117.** **SANITARY CONDITIONS.** It shall be unlawful for any licensee to violate any of the statutes of Kansas, or ordinances of the city or rules or orders of the state board of health relating to sanitary or health conditions of the places licensed to sell such cereal malt beverages.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

**3-118.** **PREMISES, ILLUMINATION.** It shall be unlawful for any owner, operator, or licensee to operate any place of business licensed for the sale and consumption of cereal malt beverages on the premises without sufficient illumination to measure not less than five foot candles of light in all portions of said place of business measured at a height of 36" above the floor.

(K.S.A. § 41-2704)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

**3-119.** **PENALTY.**

(a) It shall be unlawful for any person to do any of the things or acts forbidden in this Article. It shall be unlawful for any person to fail or refuse to do any of the things or acts commanded to be done by this Article.

(b) Any person violating any of the provisions of this Article for which another penalty is not specifically provided shall, upon conviction thereof, be fined in any amount not to exceed Five Hundred Dollars ($500.00), or be imprisoned not to exceed one (1) year, or be both so fined and imprisoned.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2719C; 02-16-15)

# CHAPTER III. BEVERAGES

## ARTICLE 2. ALCOHOLIC LIQUOR

**SECTIONS**


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**3-201.** **DEFINITIONS**. For the purpose of this Chapter, the following definitions shall apply unless the context clearly requires otherwise:

(a) **Alcoholic Beverage** or Alcoholic Liquor includes the varieties of liquor as defined in K.S.A. 41-102, namely alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being, and includes any cereal malt beverage as defined in Section 3-101 of this Code.

(b) **Caterer** means an individual, partnership or corporation that possesses a drinking establishment or club license, which sells alcoholic liquor by the individual drink, and provides services related to the serving thereof, on unlicensed premises which may be open to the public, but does not include a holder of a temporary permit, selling alcoholic liquor in accordance with the terms of such permit.

(c) **Club** means a class A or class B club.

(1) **Class A Club** means a premises which is owned or leased by a corporation, partnership, business trust or association and which is separated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the director of alcoholic beverage control of the State of Kansas Department of Revenue, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

(2) **Class B Club** means a premises operated for profit by a corporation, partnership or individual to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(d) **Common Consumption Area** shall mean a defined indoor or outdoor area not otherwise subject to a license issued pursuant to the Kansas Liquor Control Act or the Club and Drinking Establishment Act where the possession and consumption of alcoholic liquor is allowed pursuant to a Common Consumption Area Permit. The boundaries of any Common Consumption Area must be clearly marked using a physical barrier or any apparent line of demarcation.

(e) **Common Consumption Area Permit** shall mean a permit, issued by the Director, allowing the possession and consumption of alcoholic liquor in the area described by such permit.

(f) **Director** shall mean the Director of the Kansas Division of Alcoholic Beverage Control.

(g) **Drinking establishment** means premises which may be open to the general public, where alcoholic liquor by the individual drink is sold.

(h) **Retail Liquor Store** shall mean premises licensed by the State of Kansas to sell and offer for sale at retail and delivery in the original package, alcoholic liquor for use or consumption off and away from the premises specified in such license.

(i) **Temporary Permit** shall mean a permit which allows the holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of such permit.

(Ord. 996C; 08-17-87)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)
(Ord. 2878C; 02-19-18)
(Ord. 2934C; 03-18-19)

**3-202. CURRENT STATE LICENSE.**

(a) It shall be unlawful for any person to keep for sale, offer for sale, or expose for sale or sell any alcoholic liquor as defined in Section 3-201 without first having procured a license as required by state and local law to sell the same. Any person violating the provisions of this Section shall upon conviction be punished by a fine of not to exceed Five Hundred Dollars ($500) or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment.

(b) The holder of a retail liquor store, drinking establishment or club license issued by the Director shall present such license to the City Clerk when applying to pay the occupational/license fee and the fee shall be received and a receipt shall be issued for the period covered by the state license.

(Code 1973, 3-303)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)

**3-203. POSTING OF RECEIPT.** Every licensee under this Article shall cause the City alcoholic retailer's occupational/license fee receipt to be prominently displayed next to or below the state license in a conspicuous place on the licensed premises. Any person violating this section, upon conviction, shall be fined not more than Five Hundred Dollars ($500).

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2720C; 02-16-15)

**3-204. HOURS OF OPERATION FOR RETAIL LIQUOR STORES.**

(a) No person shall sell at retail any alcoholic liquor:

(1) on Thanksgiving Day or Christmas Day or Easter Sunday; or

(2) before 9:00 a.m. or after 11:00 p.m. Monday through Saturday; or

(3) before 12 noon or after 8 p.m. on Sunday.

(b) Alcoholic liquor may be sold on Memorial Day, Independence Day and Labor Day.

(c) Any person who shall violate the provisions of this Section shall upon conviction of any such violation be subject to a fine not to exceed Five Hundred Dollars ($500) or by imprisonment not to exceed six (6) months, or by both fine and imprisonment.

(Ord. 1476C; 03-20-95)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 1994C; 06-16-03)
(Ord. 2139C; 11-07-05)
(Ord. 2720C; 02-16-15)

**3-205. PENALTY.** Any person, partnership or association having a state license to sell alcoholic liquor by the package who shall violate any provisions of Sections 3-202, 3-203, or 3-204 shall, upon conviction, be fined as stated in the Section. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues: Provided that nothing herein shall be construed to prohibit the City from collecting the occupational/license fee by any procedure authorized by law.

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2720C; 02-16-15)

**3-206. UNLAWFUL ACTS; MINORS, INCAPACITATED PERSONS.** –

***SECTION 3-206 IS HEREBY REPEALED.***

*See Uniform Public Offense Code, incorporated by Section 11-101 of this Code.*

(Ord. 996C; 08-17-87)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)

**3-207. CONSUMPTION OF ALCOHOLIC LIQUOR PROHIBITED IN CERTAIN PLACES.**

(a) It shall be unlawful for any person to drink or consume or possess an open container of alcoholic liquor upon any public street, alley, road, highway or thoroughfare, except when such areas are located within an established Common Consumption Area; or inside vehicles while on the public streets, alleys, roads, highways or thoroughfares.

(b) It shall be unlawful for any person to drink or consume alcoholic liquor on private property except:

1. On premises where the sale of liquor by the individual drink is authorized by the Club and Drinking Establishment Act;
2. In an area located within an established Common Consumption Area and subject to a Common Consumption Area Permit;
3. Upon private property by a person occupying such property as an owner or lessee of an owner and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor or for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. § 41-803, and amendments thereto, takes place;
4. In a lodging room of any hotel, motel or boarding house by the person occupying such room and by the guests of such person, if no charge is made for the serving or mixing of any drink or drinks of alcoholic liquor of for any substance mixed with any alcoholic liquor and if no sale of alcoholic liquor in violation of K.S.A. § 41-803, and amendments thereto, takes place;
5. In a private dining room of a hotel, motel or restaurant, if the dining room is rented or made available on a special occasion to an individual or organization for a private party and if no sale of alcoholic liquor in violation of K.S.A. § 41-803, and amendments thereto, takes place; or
6. On the premises of a manufacturer, microbrewery, microdistillery or farm winery, if authorized by state law.

(c) Except as provided in Section 3-208, no person shall drink or consume alcoholic liquor on public property owned or leased by the state or any governmental subdivision thereof.

(Ord. 1666C; 03-10-97)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)
(Ord. 2878C; 02-19-18)

**3-208 EXEMPTIONS**

(a) The provisions of Section 3-207, subsections (a) and (c), shall not apply to the possession or consumption of alcoholic liquor upon the following property owned or leased by the City:

1. The property known and operated as the Ironhorse Golf Club, including the clubhouse and eighteen-hole golf course; provided further, that no person shall possess or consume any alcoholic liquor at the Ironhorse Golf Club without the approval of the manager or person in charge of said Ironhorse Golf Club. The manager or person in charge of said Ironhorse Golf Club may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of alcoholic liquor at Ironhorse Golf Club.
2. The property known and operated as the Leawood Community Center, including the lower level and courtyard areas of City Hall; provided further, that no person shall possess or consume any alcoholic liquor at the Leawood Community Center without the approval of the Parks & Recreation Director or person in charge of said Leawood Community Center. The Director or person in charge of said Leawood Community Center may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating, or prohibiting the possession and consumption of alcoholic liquor at Leawood Community Center.
3. The properties known and operated as Ironwoods Park, I-Lan Park or Gezer Park, provided that no person shall possess or consume any alcoholic liquor at City Park, Ironwoods Park, I-Lan Park or Gezer Park without the approval of the Parks and Recreation Director or other person in charge of City Park, Ironwoods Park, I-Lan Park or Gezer Park. The Director or person in charge of said Parks may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating or prohibiting the possession and consumption of alcoholic liquor at said Parks.

4. The property known and operated as the Leawood Justice Center. Provided that no person shall possess or consume any alcoholic liquor at the Leawood Justice Center without the approval of the Chief of Police or other person in charge of the Leawood Justice Center. The Chief or other person in charge of the Leawood Justice Center may, with the approval of the City Administrator, issue rules and regulations not inconsistent with the ordinances of the City and the laws of the State of Kansas further restricting, regulating or prohibiting the possession and consumption of alcoholic liquor at said Leawood Justice Center.

(Ord. 1666C; 03-10-97)
(Code 2000)
(Charter Ord. 35)
(Ord. 1992C; 05-19-03)
(Ord. 2410C; 09-08-09)
(Ord. 2484C; 03-07-11)
(Ord. 2644C; 11-04-13)
(Ord. 2720C; 02-16-15)

**3-209. OPEN CONTAINER. – REPEALED**

***SECTION 3-209 IS HEREBY REPEALED.***

*See Standard Traffic Ordinance, as incorporated by section 14-101 of this Code.*

(K.S.A. § 41-804)
(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)

**3-210. CONSUMPTION WHILE DRIVING. – REPEALED**

***SECTION 3-210 IS HEREBY REPEALED.***

*See Standard Traffic Ordinance, as incorporated by section 14-101 of this Code.*

(Code 1984)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)

**3-211. OCCUPATIONAL LICENSE FEE FOR RETAIL LIQUOR STORES.**

(a) Any person holding a valid Kansas retailer's license to sell and offer for sale at retail and delivery in the original package, alcoholic liquor for use or consumption off and away from the premises specified in such license, must obtain an occupational license for operation in the City of Leawood by filing an application for a retail liquor store occupational license with the City Clerk.

(b) The application for a retail liquor store occupational license shall be on a form provided by the City Clerk and shall be accompanied by a fee of Six Hundred Dollars ($600). Upon receipt of the fee and application in correct form, accompanied by a copy of a valid Kansas retailer's license for the applicant and premises listed in the application, the City Clerk shall issue a retail liquor store occupational license to the applicant for a two (2) year term commencing on the date the Kansas Liquor Retailer's license is issued by the Director. The receipt shall be displayed in a conspicuous place on the licensed premises.

(c) Occupational licenses and license fees for retail liquor stores are nontransferable.

(d) One-half of the occupational license fee may be refunded to the applicant if the retail liquor store occupational license is surrendered within one (1) year after the date the Kansas Liquor Retailer's license was issued by the Director. Otherwise, license fees shall be nonrefundable.

(K.S.A.§ 41-208, §41-310, §41-325, §4l-2622)
(Code 1973, 3-302)
(Code 1984)
(Code 2000)
(Ord. 1914C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2568C; 09-04-12)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)

**3-212. ADDITIONAL REGULATIONS.**

(a) No club, drinking establishment, caterer or holder of a temporary permit, nor any person acting as an employee or agent thereof, shall:

(1) Offer or serve any free cereal malt beverage or alcoholic liquor in any form to any person;

(2) Sell, offer to sell or serve to any person an unlimited number of individual drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;

(3) Sell, offer to sell or serve an individual drink at a price that is less than the acquisition cost of the individual drink to the licensee or permit holder;

(4) Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the

awarding of drinks as prizes; or

(5) Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under Subsections (a)(1) through (4).

(b) A club, drinking establishment, caterer or holder of a temporary permit may:

(1) Offer free food or entertainment at any time;

(2) Sell or deliver wine by the bottle or carafe;

(3) Sell, offer to sell and serve individual drinks at different prices throughout any day;

(4) Sell or serve beer or cereal malt beverage in a pitcher capable of containing not more than 64 fluid ounces;

(5) Offer samples of alcoholic liquor free of charge as authorized by the Club and Drinking Establishment Act; or

(6) Sell or serve margarita, sangria, daiquiri, mojito or other mixed alcoholic beverages as approved by the Director in a pitcher containing not more than 64 fluid ounces.

(c) Except as provided in subsection (b), no club, drinking establishment, caterer or holder of a temporary permit may serve alcoholic beverages in pitchers or carafes.

(d) No club, drinking establishment, caterer or holder of a temporary permit, nor any person acting as an officer, employee or agent thereof, shall knowingly or unknowingly permit the possession or consumption of alcoholic liquor or cereal malt beverage by a minor on premises where alcoholic beverages are sold by such licensee or permit holder, except that a licensee's or permit holder's employee who is not less than 18 years of age may serve alcoholic liquor or cereal malt beverage under the supervision of the on-premises licensee or permit holder or employee who is 21 years of age or older.

(e) The issuance of a license to a club, drinking establishment, or caterer, or temporary permit shall conclusively be deemed to be the consent of the licensee or permit holder to the immediate entry to and inspection of any premises licensed as a club, or drinking establishment or any premises where alcoholic liquor is sold by a holder of a temporary permit, by any law enforcement officer or agent of the Director. Such right of immediate entry and inspection shall be at any time when the premises are occupied and is not limited to hours when the club or drinking establishment is open for business. Such consent shall not be revocable during the term of the license or temporary permit. In addition to the penalties in Subsection (f), refusal of such entry shall be grounds for the revocation of the license or temporary permit.

(f) Violation of any provision of this Section except Subsection (d) is punishable by a fine of not less than Five Hundred Dollars ($500.00), or imprisonment not exceeding six (6) months , or both. Violation of Subsection (d) is punishable by a fine of not less than $100 and not more than $250 or imprisonment not exceeding 30 days or both.

(Ord. 899C; 02-03-86)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2720C; 02-16-15)

**3-213. LICENSE FEE FOR DRINKING ESTABLISHMENTS AND CLUBS.**

(a) It shall be unlawful for any person granted a license by the State of Kansas to sell or serve any alcoholic liquor authorized by such license within the City of Leawood without first obtaining a City license from the City Clerk.

(b) No City license to sell or serve any alcoholic liquor shall be issued until the applicant has made application and made payment in the amount of Five Hundred Dollars ($500) to the City. Upon receipt of payment and application in correct form and in compliance with all other requirements of the City of Leawood, the City Clerk shall issue a City license to the applicant. The license shall be for a term of two (2) years commencing on the date the Kansas Liquor Retailer's license is issued by the Director. The City license shall be displayed in a conspicuous place on the licensed premises.

(c) Drinking establishment and club licenses and license fees are nontransferable.

(d) One-half of the drinking establishment or club license fee may be refunded to the applicant if the drinking establishment or club license is surrendered within one (1) year after the date the Kansas Liquor Retailer's license was issued by the Director. Otherwise, license fees shall be nonrefundable.

(Ord. 1028C; 01-04-88)
(Code 2000)
(Ord. 1914C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2568C; 09-04-12)
(Ord. 2720C; 02-16-15)

**3-214. HOURS OF OPERATION FOR DRINKING ESTABLISHMENTS AND CLUBS.** No club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day unless otherwise allowed by state law.

(Ord. 996C; 08-17-87)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2720C; 02-16-15)

**3-215. CATERERS.**

(a) **License Required**. It shall be unlawful for any person licensed by the State of Kansas as a caterer to sell alcoholic liquor by the drink, to sell or serve any alcohol by the drink within the City without obtaining a local caterer's license from the City Clerk.

(b) **License Fee**.

(1) There is hereby levied a license fee in the amount of Two Hundred Dollars ($200) on each caterer doing business in the City who has a caterer's license issued by the Director , which fee shall be paid before business is begun under original state license and within five (5) days after any renewal of the state license.

(2) All applications for new or renewal City licenses shall be submitted to the City Clerk. Upon presentation of the state license, payment of the City license fee and the license application, the City Clerk shall issue a City license for the period covered by the state license.

(3) The term of the caterer's license shall be for two years commencing on the date the license was issued by the Director.

(4) Caterer's licenses and license fees are nontransferable.

(5) One-half of the caterer's license fee may be refunded to the applicant if the license is surrendered within one year after the date the Kansas

Liquor Retailer's license was issued by the . Otherwise, license fees shall be nonrefundable.

(6) Every licensee shall cause the caterer license to be placed in plain view on any premises within the City where the caterer is serving or mixing alcoholic liquor for consumption on the premises.

(c) **Business Regulations**. Caterers licensed hereunder shall not allow the serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day at an event catered by such caterer.

(Ord. 996C; 08-17-87)
(Code 2000)
(Ord. 1914C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2568C; 09-04-12)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)

**3-216. TEMPORARY PERMITS.**

(a) **Permit Required**. It shall be unlawful for any person granted a temporary permit by the State of Kansas to sell or serve any alcoholic liquor within the City without first obtaining a local temporary liquor permit from the City Clerk.

(b) An application for a local temporary liquor permit shall be submitted to the City Clerk at least 14 days prior to the event.

(c) The City Clerk shall provide a form for the application for the local temporary liquor permit and each application shall clearly require:

(1) The name of the applicant;
(2) The group for which the event is planned;
(3) The location of the event;
(4) The date and time of the event;
(5) Any anticipated need for police, fire, or other municipal services.

(d) Upon presentation of a State Temporary Permit, a written application and necessary accompanying documents meeting the requirements of this section, payment of the fee set forth herein, and, if additional City services are required, approval of the City Administrator, the City Clerk shall issue the local temporary liquor permit.

(e) **Permit Fee**.

(1) There is hereby levied a temporary liquor permit fee in the amount of Fifty Dollars ($50.00) per day on each group or individual holding a temporary permit issued by the Director authorizing sales within the City, which fee shall be paid before the event is begun under the state permit.

(2) Every temporary liquor permit holder shall cause the temporary permit receipt to be placed in plain view on any premises within the City where the holder of the temporary permit is selling and serving or mixing alcoholic liquor for consumption on the premises.

(f) The City Clerk shall notify the Chief of Police whenever a temporary liquor permit has been issued and forward a copy of the permit and application to the Chief of Police.

(g) No temporary liquor permit holder shall allow the selling, serving, mixing or consumption of alcoholic liquor between the hours of 2:00 a.m. and 9:00 a.m. at any event for which a temporary permit has been issued.

(h) A temporary liquor permit shall be issued for a period of time not to exceed three (3) consecutive days, the dates and hours of which shall be specified in the permit. Not more than four (4) temporary permits may be issued to any one applicant in a calendar year.

(i) All temporary permit fees shall be nonreturnable and nontransferable.

(Ord. 996C; 08-17-87)
(Code 2000)
(Ord. 1914C; 09-04-01)
(Ord. 1992C; 05-19-03)
(Ord. 2662C; 05-19-14)
(Ord. 2720C; 02-16-15)

**3-216a. COMMON CONSUMPTION AREAS.**

(a) The definitions in Section 3-201 shall apply to Section 3-216a.

(b) Notwithstanding any other provisions prohibiting public consumption under this Chapter, the City may establish by ordinance, a Common Consumption Area within the City limits. The ordinance shall designate the boundaries of any Common Consumption Area and prescribe the times at which alcoholic liquor may be possessed and consumed. The ordinance shall require all public streets or roadways lying within a Common Consumption Area to be closed to vehicular traffic during the times when the possession and consumption of alcoholic liquor is permitted. Only a Kansas resident or organization with its principal place of business in Kansas may apply for the establishment of a Common Consumption Area, and, if approved, the applicant may pursue a Common Consumption Area permit from the Kansas Division of Alcholic Beverage Control.

(c) Applications for establishment of a Common Consumption Area shall be submitted to the City Clerk:

(1) Each application must include a description of proposed boundaries of the Common Consumption Area and the proposed times during which alcoholic liquor may be possessed and consumed and be signed by the Owner of the property;

(2) Each application will be subject to a non-refundable Application Fee of $100;

(3) Each application shall be accompanied by an acknowledgement that each Common Consumption Area permit holder shall be liable for violations that occur off the premises of licensee's premises, but within the Common Consumption Area identified in the ordinance and that no permit holder shall permit any person to remove any open container of alcoholic liquor from the Common Consumption Area.

(d) Upon approval by the Governing Body, the City Clerk shall notify the Director of the establishment of a Common Consumption Area and submit a copy of the ordinance with such notice.

(e) Common Consumption Areas designated by such ordinance shall expire after five years.

(Ord. 2878C; 02-19-18)

**3-217.** **REVOCATION OF ALCOHOLIC BEVERAGE LICENSES.** The Governing Body of the City, upon five (5) days notice to any person licensed under this Article, may revoke or suspend such license for any of the following reasons:

**Basis for Revocation**:

(a) If the licensee has fraudulently obtained the license by giving false information in the application for the license;

(b) If the licensee has violated any of the provisions of the Kansas Club and Drinking Establishment Act, Liquor Control Act or this Article or has violated the provisions of this Chapter; or has become ineligible to obtain a license under this Article or state law;

(c) The drunkenness of the licensee, manager, or employee while on duty, or for permitting any disorderly person to remain on the premises where such licensee is serving alcoholic liquor;

(d) Sale of alcoholic liquor to any person under the legal age for the consumption of alcoholic liquor;

(e) For permitting any gambling in or upon any premises licensed under this Article except as specifically made lawful by the laws of the State of Kansas;

(f) For the employment of any person under the age of 21 years in connection with the mixing or dispensing of alcoholic liquors except as allowed by state law;

(g) For the employment or continuation in employment of persons adjudged guilty of a felony or of a violation of any law which would make them ineligible to be licensed under state law;

(h) Maintaining or permitting a public nuisance to exist in or upon the licensee's place of business.

(Ord. 996C; 08-17-87)
(Code 2000)
(Ord. 1992C; 05-19-03)
(Ord. 2720C; 02-16-15)
(Ord. 2934C; 03-18-19)

# CHAPTER IV. BUILDINGS AND CONSTRUCTION


**Article 1. Administration**
**Article 2. Building Code**
**Article 3. Electrical Code**
**Article 4. Plumbing Code**
**Article 5. Mechanical Code**
**Article 6. Fuel Gas Code**
**Article 7. Existing Building Code**
**Article 8. Energy Conservation Code**
**Article 9. Residential Code**
**Article 10. Swimming Pool, Spa, and Hot Tub Code**
**Article 11. Abatement of Dangerous Buildings Code-REPEALED**
**Article 12. Insurance Proceeds Fund**

# • ARTICLE 1. ADMINISTRATION

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• **SECTIONS**


• 4-101 TITLE
• 4-102 SCOPE
• 4-103 ISSUANCE OF PERMITS TO LICENSED OR REGISTERED CRAFTSMEN
• 4-104 SANITARY SEWER CONSTRUCTION AND CONNECTION, PERMIT/APPROVALS REQUIRED
• 4-105 BUILDING AND FIRE CODE BOARD OF APPEALS
• 4-106 LIMITATIONS ON AUTHORITY
• 4-107 QUALIFICATIONS
• 4-108 CIVIL ACTIONS
• 4-109 VIOLATION, PENALTIES


**4-101.** **TITLE.** These regulations, found in Chapter IV, shall be known as the Building Code of the City of Leawood, Kansas, hereinafter ["Leawood Building Code"].

(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-102.** **SCOPE.** Article 1 of the Leawood Building Code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures, as regulated by Articles 2 through 12 of the Leawood Building Code and shall be used to administer each such article.

(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-103.** **ISSUANCE OF PERMITS TO LICENSED OR REGISTERED CRAFTSMEN.** Permits shall be issued only to individuals or persons responsible to a company or organization that possesses a valid contractor's license issued by Johnson County, Kansas and a valid occupation license in the City of Leawood. Sub-contractor permits will normally be issued as part of general contractor permits provided that such sub-contractors are also appropriately licensed. All licenses must remain current throughout the period of construction. Questionable certification documents or licensing questions shall be referred to the Codes Administrator for review and resolution. All permit holders must maintain general liability insurance coverage as required by Johnson County, Kansas.

**EXCEPTIONS:**

(a) Permits may be issued to a homeowner who will occupy or who is personally occupying and undertaking construction, alteration, repair or maintenance of such homeowner's single-family residence or an accessory structure thereto who does not possess a valid contractor's license and required insurance. Homeowners, however, must certify that they are capable and will personally participate in the permitted work. Further, any contractor or sub-contractor hired by the homeowner must meet all requirements and maintain all licenses required by this section prior to commencing any permitted work. Notwithstanding the foregoing, any homeowner who undertakes the construction of a new residence for his/her personal occupancy more than three times in any five (5) year period must have the required licenses for the third residential construction project and for any future construction projects.

For purposes of this exception, the terms "contractor" and "sub-contractor" shall be defined to mean "one who performs for and takes from the homeowner a specific part of the labor or material requirements of the permitted work."

(b) Permits may be issued for fence construction to persons who do not possess a valid contractor's license or the required insurance.

(c) Employees or agents working for and under the supervision of a licensed contractor firm as set forth in the Johnson County Contractor Licensing Regulations need not be individually licensed or insured to participate in the permitted work.

(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-104. SANITARY SEWER CONSTRUCTION AND CONNECTION, PERMIT/ APPROVALS REQUIRED.** No building permit for any building to be located within a legally created sewer district in the City of Leawood, in which sanitary sewage will, or may originate, shall be issued until and unless the applicant, or his or her agent, has previously applied for and received from the sewer district an outside sanitary sewer construction and connection permit or a waiver letter as required by the rules and regulations of the Wastewater District. The building official may waive this requirement when the project is (a) a residential remodel not including the addition of new plumbing fixtures; (b) a tenant finish project that does not include alterations to existing plumbing; (c) a residential remodel not encroaching on a platted sewer easement and not impacting the capacity of sewage lines; or (d) footing or foundation work as a part of a phased approval process otherwise authorized under the Leawood Building Code. Provided, however, all private sewage disposal systems shall be approved by the Johnson

County Wastewater District and the Governing Body of the City of Leawood, Kansas.

(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-105.** **BUILDING AND FIRE CODE BOARD OF APPEALS.** In order to hear and decide appeals of orders, decisions or determinations made by the building or fire code official relative to the application and interpretation of the Leawood Building Code and Chapter VII, Article 2 Fire Prevention, there shall be and is hereby created a Building and Fire Board of Code Appeals. The Building and Fire Board of Code Appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

(Ord. 2977; 01-21-20)
(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-106.** **LIMITATIONS ON AUTHORITY.** An application for appeal shall be based on a claim that the true intent of the Leawood Building Code or the rules legally adopted thereunder has been incorrectly interpreted, the provisions of the Leawood Building Code do not fully apply, or an equally good or better form of construction is proposed. The Building and Fire Board of Code Appeals shall have no authority to waive requirements of the Leawood Building Code.

(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-107.** **QUALIFICATIONS.** The board of appeals shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.

(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-108.** **CIVIL ACTIONS.** Notwithstanding any other provisions of this chapter, decisions of the building official, or such assistant or assistants as he or she may appoint, or decisions by the board of appeals reviewing decisions of the building official or his or her assistants shall be enforceable in the District Court of Johnson County,

Kansas or any other court of competent territorial jurisdiction upon action brought by the city attorney, assistant city attorney, special attorney, or other legal counsel authorized to maintain such action for the enforcement of the provisions of the code of the City of Leawood, Kansas.

(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

**4-109.** **VIOLATION, PENALTIES.** Any person who violates a provision of this Chapter or fails to comply with any of the requirements thereof is guilty of a public offense, punishable by a fine of not more than $500 or by imprisonment not exceeding 30 days or both such fine and imprisonment. Each day that the violation continues shall be deemed a separate offense.

(Ord. 2977; 01-21-20)
(Ord. 2290C; 02-04-08)
(Ord. 1282C; 03-02-92)
(Ord. 1929C; 01-22-02)

# ARTICLE 2. BUILDING CODE

**SECTIONS**

4-201 INTERNATIONAL BUILDING CODE ADOPTED.
4-202 INTERNATIONAL BUILDING CODE, SECTION 101.1. TITLE.
4-203 INTERNATIONAL BUILDING CODE, SECTION 101.4.1. SCOPE.
4-204 INTERNATIONAL BUILDING CODE, SECTION 102.6, APPLICABILITY, EXISTING STRUCTURES.
4-205 INTERNATIONAL BUILDING CODE, SECTION 104.1. DUTIES AND POWERS OF THE BUILDING OFFICIAL, GENERAL.
4-206 INTERNATIONAL BUILDING CODE, SECTION 104.10 MODIFICATIONS.
4-207 INTERNATIONAL BUILDING CODE, SECTION 104.11. ALTERNATIVE MATERIALS, DESIGN AND METHOD OF CONSTRUCTION AND EQUIPMENT.
4-208 INTERNATIONAL BUILDING CODE, SECTION 105.2. WORK EXEMPTED FROM PERMIT.
4-209 INTERNATIONAL BUILDING CODE, SECTION 105.3. APPLICATION FOR PERMIT.
4-210 INTERNATIONAL BUILDING CODE, SECTION 105.5. EXPIRATION.
4-211 INTERNATIONAL BUILDING CODE, SECTION 107.1. SUBMITTAL DOCUMENTS, GENERAL.
4-212 INTERNATIONAL BUILDING CODE, SECTION 107.2.2. FIRE PROTECTION SYSTEM SHOP DRAWINGS.
4-213 INTERNATIONAL BUILDING CODE, SECTION 107.2.5. SITE PLAN.
4-214 INTERNATIONAL BUILDING CODE, SECTION 108.1. GENERAL.
4-215 INTERNATIONAL BUILDING CODE, SECTION 108.2. CONFORMANCE. *REPEALED*.
4-216 INTERNATIONAL BUILDING CODE, SECTION 108.3. TEMPORARY POWER. *REPEALED*.
4-217 INTERNATIONAL BUILDING CODE, SECTION 109.2. SCHEDULE OF PERMIT FEES.
4-218 INTERNATIONAL BUILDING CODE, SECTION 109.6. REFUNDS.
4-219 INTERNATIONAL BUILDING CODE, SECTION 109.3. REQUIRED INSPECTIONS.
4-220 INTERNATIONAL BUILDING CODE, SECTION 111.1. USE AND OCCUPANCY.
4-221 INTERNATIONAL BUILDING CODE, SECTION 111.2. CERTIFICATE ISSUED.
4-222 INTERNATIONAL BUILDING CODE, SECTION 111.3. TEMPORARY OCCUPANCY.
4-223 INTERNATIONAL BUILDING CODE, SECTION 112.3. AUTHORITY TO DISCONNECT SERVICE UTILITIES.
4-224 INTERNATIONAL BUILDING CODE, SECTION 113. BOARD OF APPEALS.
4-225 INTERNATIONAL BUILDING CODE, SECTION 114.4. VIOLATION PENALTIES.
4-226 INTERNATIONAL BUILDING CODE, SECTION 116. UNSAFE STRUCTURES AND EQUIPMENT. *REPEALED*.
4-226A INTERNATIONAL BUILDING CODE, SECTION 305.2.3. SIX OR FEWER CHILDREN IN A DWELLING UNIT.4-226B INTERNATIONAL BUILDING CODE, SECTION 423.2. STORM SHELTERS, GENERAL.
4-226C INTERNATIONAL BUILDING CODE, SECTION 423.4. GROUP E, R-1, R-2, R-3, R-4, I-1, OR I-2 OCCUPANCIES.
4-226D INTERNATIONAL BUILDING CODE, SECTION 423.4.1. REQUIRED OCCUPANT CAPACITY.
4-226E INTERNATIONAL BUILDING CODE, SECTION 429. BASEMENT REQUIRED.
4-227 INTERNATIONAL BUILDING CODE, SECTION 903.2. WHERE REQUIRED AUTOMATIC SPRINKLER

SYSTEMS.
4-227A INTERNATIONAL BUILDING CODE, SECTION 903.3. INSTALLATION REQUIREMENTS.
4-228 INTERNATIONAL BUILDING CODE, SECTION 905.3. GENERAL.
4228A INTERNATIONAL BUILDING CODE, TABLE 1004.1.2. MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT. *REPEALED*.
4-229 INTERNATIONAL BUILDING CODE, SECTION 1010.4. PHYSICAL SECURITY.
4-230 INTERNATIONAL BUILDING CODE, SECTION 1010.4.1. SCOPE.
4-231 INTERNATIONAL BUILDING CODE, SECTION 1010.4.2. DOORS.
4-232 INTERNATIONAL BUILDING CODE, SECTION 1010.4.3. DOOR FRAMES.
4-233 INTERNATIONAL BUILDING CODE, SECTION 1010.4.4. DOOR HARDWARE.
4-234 INTERNATIONAL BUILDING CODE, SECTION 1010.4.5. STREET NUMBERS.
4-235 INTERNATIONAL BUILDING CODE, SECTION 1010.4.6. EXTERIOR LIGHTING.
4-236 INTERNATIONAL BUILDING CODE, SECTION 1016.2. EGRESS THROUGH INTERVENING SPACES.
4-236A INTERNATIONAL BUILDING CODE, SECTION 1202.1. VENTILATION GENERAL.
4-237 INTERNATIONAL BUILDING CODE, SECTION 1501.1. SCOPE.
4-237A INTERNATIONAL BUILDING CODE, SECTION 1511.1. GENERAL.
4-237B INTERNATIONAL BUILDING CODE, SECTION 1612.3. ESTABLISHMENT OF FLOOD HAZARD AREAS.
4-238 INTERNATIONAL BUILDING CODE, TABLE 2902.1. MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES.
4-239 INTERNATIONAL BUILDING CODE, SECTION 3001.6. ACCEPTANCE INSPECTIONS.
4-240 INTERNATIONAL BUILDING CODE, SECTION 3001.7. PERIODIC INSPECTIONS.
4-240A INTERNATIONAL BUILDING CODE, SECTION 3001.8. CERTIFICATION OF INSPECTION REQUIRED.
4-240B INTERNATIONAL BUILDING CODE, SECTION 3001.9. EXISTING ELEVATORS.
4-241 INTERNATIONAL BUILDING CODE, SECTION 3403.6. ELEVATORS. *REPEALED*.
4-241A INTERNATIONAL BUILDING CODE, SECTION 3404.7. ELEVATORS. *REPEALED*.
4-242 INTERNATIONAL BUILDING CODE, SECTION 3410.2. LEAWOOD DEVELOPMENT ORDINANCE CONFORMANCE. *REPEALED*.
4-243 INTERNATIONAL BUILDING CODE, SECTION 3410.3. DUTIES OF STRUCTURE MOVING PERMITTEE. *REPEALED*.

**4-201. INTERNATIONAL BUILDING CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Building Code, 2018 edition, ["IBC"] prepared and published in book form by the International Code Council, Inc., including appendices C, G and I save and except such articles, sections, parts or portions as are hereafter omitted, deleted, amended, modified or changed or added thereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2978," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available

to the public at all reasonable hours.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-202.** **INTERNATIONAL BUILDING CODE, SECTION 101.1. TITLE**. Section 101.1 of the IBC is hereby amended to read as follows: **Title.** These regulations shall be known and referred to as this code, the IBC or the Building Code of the City of Leawood, Kansas.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-203.** **INTERNATIONAL BUILDING CODE, SECTION 101.2. SCOPE.** Section 101.2 of the IBC is hereby amended to read as follows: **Scope.** The provisions of this code and the Leawood Development Ordinance shall apply to the construction, alteration, relocation, enlargement, replacement, repair, equipment use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

**EXCEPTION:** Detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code and the Leawood Development Ordinance.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-204.** **INTERNATIONAL BUILDING CODE, SECTION 102.6. APPLICABILITY, EXISTING STRUCTURES.** Section 102.6 of the IBC is hereby amended to read as follows: **Existing structures.** The legal occupancy of any structure existing on the date of adoption of this Building Code shall be permitted to continue without change, except as is specifically covered in the Leawood Development Ordinance, the Code of the City of Leawood, this Building Code, the *Property*

*Maintenance Code (Chapter VIII)* or the *Leawood Fire Protection Code (Chapter VII)*, or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-205.** **INTERNATIONAL BUILDING CODE, SECTION 104.1. DUTIES AND POWERS OF THE BUILDING OFFICIAL, GENERAL**. Section 104.1 of the IBC is hereby amended to read as follows: **General**. The Building Official is hereby authorized and directed to enforce the provisions of this Building Code. The Building Official shall have the authority to render interpretations of this Building Code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall comply with the intent and purpose of this Building Code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this Building Code. The Building Official shall be known as the codes administrator, and such term shall include his/her authorized representatives. Further, whenever the term or title "administrative authority," "code enforcement officer," "responsible official," “codes administrator,” or other similar designation is used in any of the codes adopted by reference by this Building Code, it shall be construed to mean the Building Official, except in matters rightfully under the jurisdiction of the *Fire Protection Code (Chapter VII).* In addition, the fire official shall have the above-mentioned duties and powers where fire apparatus emergency access drives, fire suppression and fire alarm systems are concerned. Except as expressly set forth herein, the Building Official does not have the authority to waive any requirement of law.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-206.** **INTERNATIONAL BUILDING CODE, SECTION 104.10. MODIFICATIONS.** Section 104.10 of the IBC is hereby amended to read as follows: **Modifications.** Wherever there are practical difficulties involved in carrying out the provisions of this Building Code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or owner’s representative, provided the building official shall first find that special individual reason makes the strict letter of this Building Code impractical and the

modification is in compliance with the intent and purpose of this Building Code and that such modification does not lessen health, accessibility, life and fire safety, or structural requirements. If such requested modification involves fire apparatus emergency access drives, fire suppression and/or fire alarm systems then the modification must also be approved by the fire official. The details of action granting modifications shall be recorded and entered in the files of codes administration.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-207. INTERNATIONAL BUILDING CODE, SECTION 104.11. ALTERNATIVE MATERIALS, DESIGN AND METHOD OF CONSTRUCTION AND EQUIPMENT.** Section 104.11 of the IBC is hereby amended to read as follows: **Alternative materials, design and method of construction and equipment.** The provisions of this Building Code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this Building Code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this Building Code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this Building Code in quality, strength, effectiveness, fire resistance, durability and safety. If such requested alternative material, design and/or method or equipment involves fire apparatus emergency access drives, fire suppression and/or fire alarm systems then the alternative must also be approved by the fire official.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-208. INTERNATIONAL BUILDING CODE, SECTION 105.2. WORK EXEMPTED FROM PERMIT.** Section 105.2 of the IBC is hereby amended to read as follows: **Work exempted from permit.** Exemptions from permit requirements of this Building Code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this Building Code or any other

laws or ordinances of this jurisdiction. Permits shall not be required for the following:

**Building:**

1. Retaining walls that are not over four (4) feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
2. Sidewalks and driveways not more than thirty (30) inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route and are not located in the public right-of-way.
3. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
4. Temporary motion picture, television and theater stage sets and scenery.
5. Swings and other playground equipment accessory to detached one- and two-family dwellings.
6. Window awnings supported by an exterior wall that do not project more than thirty six (36) inches (914 mm) from the exterior wall and do not require additional support of Group R-3 and U occupancies. 7. Nonfixed and movable fixtures, cases, racks, counters and partitions not over five (5) feet nine (9) inches (1753 mm) in height.

**Electrical:**

1. Repairs and maintenance: Minor repair work, including the replacement of lamps and the replacement of smoke or carbon monoxide alarms, or the connection of approved portable electrical equipment to approved permanently installed receptacles.
2. Radio and television transmitting stations: The provisions of this Building Code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.
3. Temporary testing systems: A permit shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

**Gas:**

1. Portable heating appliance.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

**Mechanical:**

1. Portable heating appliance.
2. Portable ventilation equipment.
3. Portable cooling unit.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this Building Code.
5. Replacement of any part that does not alter its approval or make it unsafe.

6. Portable evaporative cooler.
7. Self-contained refrigeration system containing ten (10) pounds or less of refrigerant and actuated by motors of one (1) horsepower or less.
8. Portable fuel cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid. **Plumbing:**
1. The stopping of leaks in drains, water, soil, waste or vent pipe, provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this Building Code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-209. INTERNATIONAL BUILDING CODE, SECTION 105.3. APPLICATION FOR PERMIT.** Section 105.3 of the IBC is hereby amended to read as follows:

**(a) Application for permit.**

To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the building official for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section 107.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

**(b) Application for complete structure demolition permit.**

To obtain a fifteen (15)-day complete structure demolition permit, the applicant shall first file an application therefore in writing on a form furnished by the building official for that purpose. Such application shall provide:

1. A site plan showing the location of the building or structure to be demolished and of all existing buildings on the property. The plan shall additionally show any necessary means of pedestrian protection as required by the Leawood Building Code.
2. The location where the demolition debris will be deposited.
3. The height and the total square footage of the building.
4. Evidence of required street closure permit.
5. The name and address of the owner of the building.
6. The type of equipment or method used to demolish the building.
7. Evidence that all public utilities have been disconnected.
8. Proof of rat-abating of any building at least ten days before the demolition may be required.
9. Proof of permission from the owner to demolish the building.
10. Evidence that proper erosion control will be provided for the site during demolition as well as during seeding and final grading of site.
11. Evidence that the structure has been inspected for asbestos. If asbestos is found, evidence shall be provided to indicate how the asbestos is to be removed and where it will be disposed.
11. Site plan, which shall indicate proposed grading and seeding.
12. Said permit will be issued in conjunction with permit for proposed new construction where applicable.

**(c) Application for partial structure or interior demolition permit.**

To obtain a thirty (30)-day partial structure or interior demolition permit, the applicant shall first file an application therefore in writing on a form furnished by the building official for that purpose. Such application shall provide:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required by building official.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.
8. Said permit will be issued in conjunction with permit for proposed new construction.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)

(Code 2000)
(Ord. 1711C; 03-23-98)

**4-210.** **INTERNATIONAL BUILDING CODE, SECTION 105.5. EXPIRATION**. Section 105.5 of the IBC is hereby amended to read as follows:

**Expiration.** Permits shall expire under the following circumstances:

(a) Permits for new construction will expire in three hundred sixty five (365) days unless the work authorized by the permit is not commenced within one hundred eighty (180) days after issuance, in which case, the permit will expire in one hundred eighty (180) days. If the work is at any time during the permitting period, suspended or abandoned, then the permit shall expire on the earlier of its one year term, or one hundred eighty (180) days after the suspension or abandonment.

(b) Moving permits shall expire five days after issuance.

(c) Complete structure demolition permits shall expire fifteen (15) days after issuance.

(d) Partial structure and interior demolition permits shall expire thirty (30) days after issuance.

(e) Re-roof, fence, and general miscellaneous permits shall expire sixty (60) days after issuance.

(f) Permits for decks, hot tubs, outdoor kitchens, patios, grading, and footing/foundations shall expire ninety (90) days after issuance.

(g) Every other type of permit, not otherwise listed above, shall expire one hundred eighty (180) days after issuance.

(h) For all permits other than moving or demolition permits, the building official is authorized to grant, in writing, one extension of time, for a period not exceeding the original length of the permit issued, but in no event longer than one hundred eighty (180) days. The extension shall be requested in writing prior to expiration of the term of the permit and justifiable cause demonstrated. The building official may only grant an extension upon finding that substantial progress has been made toward completion. Substantial progress means that the project is over fifty (50) percent complete and, in the opinion of the building official, the project applicant has the capability to finish the work permitted within the time period extension. If substantial progress has not been provided, the permit will expire. After a permit has expired a permit can be reissued, upon payment of reinstatement fees, for one extension of time for a period not exceeding the original length of the permit issued, but in no event longer than one hundred eighty (180) days.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)

(Ord. 1711C; 03-23-98)

**4-211.** **NTERNATIONAL BUILDING CODE, SECTION 107.1. SUBMITTAL DOCUMENTS, GENERAL.** Section 107.1 of the IBC is hereby amended to read as follows: **General.** Construction documents, statement of special inspections, geotechnical report and other data shall be submitted in one or more sets with each permit application. At least five (5) hard copies and one (1) digital copy of plans shall be submitted for all new construction with at least three (3) hard copies and one (1) digital copy being submitted for all alteration projects. The construction documents shall be prepared by a registered design professional licensed by the State of Kansas. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

**EXCEPTION:** The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this Building Code.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-212.** **INTERNATIONAL BUILDING CODE, SECTION 107.2.2. FIRE PROTECTION SYSTEM SHOP DRAWINGS.** Section 107.2.2 of the IBC is hereby amended to read as follows: **Fire protection system shop drawings.** Shop drawings and supporting documentation for the fire protection system(s), which shall include but not be limited to provisions for fire alarm systems and sprinkler systems, shall be submitted to the fire official and shall indicate conformance with this Building Code, the *Fire Protection Code (Chapter VII)*, and the construction documents. The shop drawings shall be approved prior to the start of system installation. Shop drawings shall contain all information as required by the referenced installation standards in this Building Code.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-213.** **INTERNATIONAL BUILDING CODE, SECTION 107.2.6. SITE PLAN**. Section 107.2.6 of the IBC is hereby amended to read as follows: **Site Plan.** There shall be a site plan showing, to scale, the size and location of all the new construction and all existing structures on the site including easements, sewers, drains, utilities, etc., distances from lot lines, established street grades, and the proposed finished grades, and it shall be drawn in accordance with an accurate boundary line survey. All decks, balconies, overhangs, or other building protrusions shall be indicated and dimensioned. In the case of demolition, the plot plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site of the plot. Fire apparatus access roads provided and fire hydrant coverage as approved by the fire official shall be indicated as such on the site plan. The property owner or his or her agent shall certify to the building official that the top of the foundation for a building will be in conformance with the approved site plan, including building elevations, site grading, erosion control devices, and building setbacks. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair and does not affect the exterior features of the building.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-214.** **INTERNATIONAL BUILDING CODE, SECTION 108.1. GENERAL.** Section 108.1 of the IBC is hereby amended to read as follows: **Temporary Structures and Uses, General.** The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service and are only allowed if authorized under the Leawood Development Ordinance and the provisions of this Building Code, the building official may grant extensions for these uses for demonstrated cause.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-215** **INTERNATIONAL BUILDING CODE, SECTION 108.2. CONFORMANCE.** ***Repealed.***

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

(Ord. 1930C; 01-22-02)
(Code 2000)
(Ord. 1711C; 03-23-98)

**4-216 INTERNATIONAL BUILDING CODE, SECTION 108.3. TEMPORARY POWER.** ***Repealed.***

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)
(Ord. 1930C; 01-22-02)

**4-217. INTERNATIONAL BUILDING CODE, SECTION 109.2. SCHEDULE OF PERMIT FEES.** Section 109.2 of the IBC is hereby amended to read as follows: **Schedule of permit fees.** On buildings, structures, electrical, gas, mechanical, elevator equipment, and plumbing systems or alterations or repairs requiring a permit, a fee for each permit shall be paid as required, in accordance with the City of Leawood Fee Schedule, adopted by Resolution of the Governing Body.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-218. INTERNATIONAL BUILDING CODE, SECTION 109.6. REFUNDS.** Section 109.6 of the IBC is hereby amended to read as follows: **Refunds.** Unless specifically set forth herein, all fees paid are non-refundable. The building official may authorize refunding of any fee paid hereunder, which was erroneously paid or collected. The building official shall upon request authorize refunding of not more than eighty (80) percent of the permit fee paid when no work has been done under a permit issued in accordance with the Leawood Building Code. The building official shall upon request authorize refunding of not more than eighty (80) percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The building official shall not authorize refunding of any fee paid except on written application filed by the original permit holder not later than one hundred eighty (180) days after the date of fee payment.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-219. INTERNATIONAL BUILDING CODE, SECTION 110.3. REQUIRED INSPECTIONS.** Section 110.3 through 110.3.13.1 of the IBC is hereby amended to read as follows: **Required inspections.** The building official, upon

notification, shall make the inspections set forth in Sections 110.3.1 through 110.3.13.

**110.3.1 Footing and foundation inspection.** Footing and foundation inspections shall be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with ASTM C 94, the concrete need not be on the job.

**110.3.2 Concrete slab and under-floor inspection.** Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

**110.3.3 Lowest floor elevation.** In flood hazard areas, upon placement of the lowest floor, including the basement, and prior to further vertical construction, the elevation certification required in Section 1612.5 shall be submitted to the building official.

**110.3.4 Frame inspection.** Framing inspections shall be made after the roof deck or sheathing, all framing, fireblocking and bracing are in place and pipes, chimneys and vents to be concealed are complete and the rough electrical, plumbing, heating wires, pipes and ducts are approved.

**110.3.5 Lath and gypsum board inspection and gypsum panel product inspection.** Lath and gypsum board and gypsum panel product inspections shall be made after lathing, gypsum board and gypsum panel products, interior and exterior, are in place, but before any plastering is applied or gypsum board and gypsum panel product joints and fasteners are taped and finished.

> **EXCEPTION:** Gypsum board and gypsum panel products that are not part of a fire-resistance-rated assembly or a shear assembly.

**110.3.6 Weather-exposed balcony and walking surface waterproofing.** Where balconies or other elevated walking surfaces are exposed to water from direct or blowing rain, snow or irrigation, and the structural framing is protected by an impervious moisture barrier, all elements of the impervious moisture barrier system shall not be concealed until inspected and approved.

> **EXCEPTION:** Where special inspections are provided in accordance with Section 1705.1.1, Item 3.

**110.3.7 Fire- and smoke-resistant penetrations.** Protection of joints and penetrations in fire-resistance-rated assemblies, smoke barriers and smoke partitions shall not be concealed from view until inspected and approved.

**110.3.8 Energy efficiency inspections.** Inspections shall be made to determine compliance with Chapter 13 and shall include, but not be limited to, inspections for: envelope insulation *R* and *U* values, fenestration *U* value, duct system *R* value, and HVAC and water-heating equipment efficiency.

**110.3.9 Roofing inspections.** Roofing inspections shall be made at the mid-point of roofing installation and after roofing installation is complete.

**110.3.10 Other inspections.** In addition to the inspections specified above, the building official is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this Building Code and other laws that are enforced by the department of building safety.
**110.3.11 Special inspections.** For special inspections, see Chapter 17.
**110.3.12 Fire protection inspections.** Inspection of all fire protection systems. The fire official or his or her designee shall make this inspection.
**110.3.13 Final inspection.** The final inspection shall be made after all work required by the building permit is completed.
**110.3.13.1 Flood hazard documentation.** If located in a flood hazard area, documentation of the elevation of the lowest floor as required in Section 1612.4 shall be submitted to the building official prior to the final inspection.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-220. INTERNATIONAL BUILDING CODE, SECTION 111.1. USE AND OCCUPANCY.** Section 111.1 of the IBC is hereby amended to read as follows: **Use and occupancy.** No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a certificate of occupancy therefore as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the *Leawood Building Code* or of other ordinances of the City of Leawood.

**Exception:** Certificates of occupancy are not required for work exempt from permits under Section 105.2.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-221. INTERNATIONAL BUILDING CODE, SECTION 111.2. CERTIFICATE ISSUED.** Section 111.2 of the IBC is hereby amended to read as follows: **Certificate Issued.** After the building official inspects the building or structure and finds no violations of the provisions of this Building Code, *Leawood Development Ordinance, Fire Protection Code (Chapter VII), Property Maintenance Code (Chapter VIII)* or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy that contains the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner or the owner's authorized agent.
4. A description of that portion of the structure for which the certificate is

issued.

5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this Building Code for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.
6. The name of the building official.
7. The name of the fire official.
8. The edition of the code under which the permit was issued.
9. The use and occupancy, in accordance with the provisions of Chapter 3.
10. The type of construction as defined in Chapter 6.
11. The design occupant load.
12. If an automatic sprinkler system is provided, whether the sprinkler system is required.
13. Any special stipulations and conditions of the building permit.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-222.** **INTERNATIONAL BUILDING CODE, SECTION 111.3. TEMPORARY OCCUPANCY.** Section 111.3 of the IBC is hereby amended to read as follows: **Temporary occupancy.** The building official is authorized to issue a Temporary Certificate of Occupancy (TCO) before the completion of the entire work covered by the permit, provided that such portion or portions shall be occupied safely. The Building Official shall set a time period during which the temporary certificate of occupancy is valid, provided, however that such time period shall not exceed sixty (60) days. The Building Official is authorized to renew the Temporary Certificate of Occupancy for two (2) additional periods not exceeding sixty (60) days for each renewal.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-223.** **INTERNATIONAL BUILDING CODE, SECTION 112.3. AUTHORITY TO DISCONNECT SERVICE UTILITIES.** Section 112.3 of the IBC is hereby amended to read as follows: **Authority to Disconnect Service Utilities.** The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this *Building Code, Fire Protection Code, or Property Maintenance Code,* or otherwise in violation of the Code of the City of Leawood, 2000, or in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without the approval required by Section 112.1 or 112.2. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to

disconnect before taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-224.** **INTERNATIONAL BUILDING CODE, SECTION 113. BOARD OF APPEALS.** Sections 113.1 through 113.3 of the IBC are hereby omitted and deleted in their entirety. [See Section 4-105 et seq.]

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-225.** **INTERNATIONAL BUILDING CODE, SECTION 114.4. VIOLATION PENALTIES.** Section 114.4 of the IBC is hereby amended to read as follows: **Violation Penalties.** Any person who violates a provision of this code or this Article or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official or of a permit or certificate issued under the provisions of this code is guilty of a public offense, punishable by a fine of not more than five hundred dollars ($500) or by imprisonment not exceeding thirty (30) days or both such fine and imprisonment. Each day that the violation continues shall be deemed a separate offense.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-226** **INTERNATIONAL BUILDING CODE, SECTION 116. UNSAFE STRUCTURES AND EQUIPMENT.** ***Repealed.***

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-226A** **INTERNATIONAL BUILDING CODE, SECTION 305.2.3. SIX OR FEWER CHILDREN IN A DWELLING UNIT.** Section 305.2.3 of the IBC is hereby amended to read as follows: **Six or fewer children in a dwelling unit.** A facility such as the above within a dwelling unit and having six or fewer children receiving such day care shall comply with the Johnson County Home Daycare Handbook and shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. No sprinkler system shall be required.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)

**4-226B.** **INTERNATIONAL BUILDING CODE, SECTION 423.2. STORM SHELTERS, GENERAL.** Section 423.2 of the IBC is hereby amended to read as follows: **Construction.** In addition to other applicable requirements in this code, storm shelters shall be constructed in accordance with ICC-500. Buildings or structures that are also designated as emergency shelters shall also comply with Table 1604.5 as Risk Category IV structures.

The following are exceptions and additions to ICC-500 requirements.

1. Sanitation facilities shall only be required for Community Shelters as defined by the ICC-500. Community Shelters with a design occupant load of 100 or less shall be permitted to provide only 1 toilet facility.
2. Community Shelters shall be provided with fixed seating for 1/3 of the design occupant load.
3. Community Shelters shall be provided with an approved first aid kit.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)

**4-226C.** **INTERNATIONAL BUILDING CODE, SECTION 423.4. GROUP E, R-1, R-2, R-3, R-4, I-1, OR I-2 OCCUPANCIES.** Section 423.4 of the IBC is hereby amended to read as follows: **Section 423.4. Group E, R-1, R-2, R-3, R-4, I-1, or I-2 Occupancies.** In areas where the shelter design wind speed for tornados is 250 mph in accordance with Figure 304.2(1) of ICC 500, all Group E occupancies with an occupant load of 50 or more, and all R-1, R-2, R-3, R-4, I-1, or I-2 occupancies of any occupant load shall have a storm shelter constructed in accordance with ICC 500 as modified and adopted by the City.

**EXCEPTIONS:**

1. Group E occupancies accessory to places of religious worship.
2. Buildings meeting the requirements for shelter design in ICC 500.

(Ord. 2978; 01-21-20)

**4-226D** **INTERNATIONAL BUILDING CODE, SECTION 423.4.1. REQUIRED OCCUPANT CAPACITY.** Section 423.4.1 of the IBC is hereby amended to read as follows: **Section 423.4.1. Required Occupant Capacity.** The required occupant capacity of the storm shelter shall include all buildings on the site. For an E occupancy, the shelter capacity shall be the greater of the following:

1. The total occupant load of the classrooms, vocational rooms and offices in the Group E occupancy.
2. The occupant load of any indoor assembly space that is associated with the Group E occupancy.

**EXCEPTIONS:**

1. Where a new building is being added on an existing site, and where the new building is not of sufficient size to accommodate the required occupant capacity of the storm shelter for all of the buildings on the site, the storm shelter shall at a minimum accommodate the required occupant capacity for the new building.
2. Where approved by the code official, the required occupant capacity of the shelter shall be permitted to be reduced by the occupant capacity of any existing storm shelters on site.

(Ord. 2978; 01-21-20)

**4-226E. INTERNATIONAL BUILDING CODE, SECTION 429. BASEMENT REQUIRED.** A new Section 429 is hereby added to read as follows: **Basement Required.** Buildings classified as apartment houses under Group R-2 occupancies as defined in the Building Code shall be constructed with a basement.

**EXCEPTIONS:**

(a) The provisions of this section shall not apply to Group R-2 occupancy buildings which are designed and constructed specifically for the use of disabled individuals and which contain a storm shelter or safe room constructed in accordance with IBC Section 423.

(b) The provisions of this section shall not apply to Group R-2 occupancy buildings when it would be impractical to construct a basement in light of subsurface conditions verified by an engineer and when such dwellings contain a storm shelter or safe room constructed in accordance with IBC Section 423.

(c) The provisions of this section shall not apply to the repair or reconstruction of any existing Group R-2 occupancy building, unless such building is being 100% reconstructed.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)

**4-227. INTERNATIONAL BUILDING CODE, SECTION 903.2. WHERE REQUIRED.** Section 903.2 of the IBC is hereby amended to read as follows: An approved automatic sprinkler system shall be provided in all buildings regulated by the *Leawood Building Code.*

**EXCEPTIONS:**

(a) Any occupancy specifically exempted from automatic sprinkler requirements by Kansas Statute or Administrative Regulation.

(b) New or existing buildings regulated by the International Residential Code that are within 500 feet of an approved fire hydrant.

(c) Group S-2 Open Parking Garages, and all Group U occupancies.

(d) All new buildings for occupancy Groups other than H, I, and R with a total area less than one thousand (1,000) square feet.

(e) Rooms or areas protected with an approved automatic fire detection system in accordance with Section 907.2 of the International Building Code that will respond to visible or invisible particles of combustion if: (1) application of water, or flame and water, to such room would constitute a serious life or fire hazard; or (2) such rooms or area are of noncombustible construction with wholly noncombustible contents.

(f) Temporary buildings allowed under the Leawood Development Ordinance for a period not to exceed two years.

(g) Renovations or improvements to existing buildings where no occupancy Group classification change occurs and/or no additional building area is being created, and the cost of the sprinkler system installation downstream of the riser would exceed twenty percent (20) of the total cost of renovation. In such cases, an approved sprinkler or other life safety improvement to the building may be required, provided that the cost of such requirement will not exceed twenty percent (20) of the cost of the renovation.

(h) In home day care facilities for the care of 6 or fewer children for less than 12 hours per day.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-227A.** **INTERNATIONAL BUILDING CODE, SECTION 903.3. INSTALLATION REQUIREMENTS.** Section 903.3 of the IBC is hereby amended to read as follows: **903.3 Installation requirements.** Automatic sprinkler systems shall be designed and installed in accordance with Sections 903.3.1 through 903.3.8 of this code. In addition, automatic sprinkler systems shall be protected in accordance with the adopted International Plumbing Code.

(Ord. 2978; 01-21-20)

**4-228.** **INTERNATIONAL BUILDING CODE, SECTION 905.3. GENERAL.** Section 905.3 of the IBC is hereby amended to read as follows: An approved Class I standpipe system shall be required in all occupancies where the travel distance from the nearest point of approved fire department access to any point within the building exceeds 200 feet. All Class I standpipe systems may be combined with sprinkler system piping.

**EXCEPTION:** Standpipe systems are not required in Group R-3, R-4 and U occupancies as applicable in 101.2.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-228A** **INTERNATIONAL BUILDING CODE, TABLE 1004.1.2. MAXIMUM FLOOR AREA ALLOWANCES PER OCCUPANT.** ***Repealed.***

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)

**4-229** **INTERNATIONAL BUILDING CODE, SECTION 1010.4. PHYSICAL SECURITY.** A new Section 1010.4 of the IBC is hereby added to read as follows:
**1010.4. Purpose.** The purpose of this Section 1010.4 is to establish minimum standards that incorporate physical security to make dwelling units resistant to unlawful entry.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-230.** **INTERNATIONAL BUILDING CODE, SECTION 1010.4.1. SCOPE.** A new Section 1010.4.1 of the IBC is hereby added to read as follows:
**1010.4.1 Scope.** The provisions of Section 1010.4.1 shall apply to all new structures and to alterations, additions, and repairs as set forth in the International Existing Building Code adopted in Section 4-701 of this Code.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-231.** **INTERNATIONAL BUILDING CODE, SECTION 1010.4.2. DOORS.** A new Section 1010.4.2 of the IBC is hereby added to read as follows:
**1010.4.2 Doors.** Except for vehicular access doors, all exterior swinging doors of residential buildings and attached garages, including the doors leading from the garage area into the dwelling unit, shall comply with following for the type of door installed.

**(a)** **Wood doors.** Where installed, exterior wood doors shall be of solid core construction such as high-density particleboard, solid wood, or wood block core with a minimum thickness of one and three-fourths inches (1 ¾”) at any point. Doors with panel inserts shall be solid wood. The panels shall be a minimum of one inch (1”) thick. The tapered portion of the panel that inserts into the groove of the door shall be a minimum of one-quarter inch (1/4”) thick. The groove shall be a dado groove or applied molding construction. The groove shall be a minimum of one-half inch (1/2”) in depth.

**(b)** **Steel doors.** Where installed, exterior steel doors shall be a minimum thickness of 24 gauge.

**(c)** **Fiberglass doors.** Fiberglass doors shall have a minimum skin thickness of one-sixteenth inch (1/16") and have reinforcement material at the location of the deadbolt.

**(d)** **Double doors.** Where installed, the inactive leaf of an exterior double door shall be provided with flush bolts having an engagement of not less than one inch into the head and threshold of the doorframe.

**(e)** **Sliding doors.** Where installed, exterior sliding doors shall comply with all of the following requirements:

1. Sliding door assemblies shall be installed to prevent the removal of the panels and the glazing from the exterior with the installation of shims or screws in the upper track.
2. All sliding glass doors shall be equipped with a secondary locking device consisting of a metal pin or a surface mounted bolt assembly. Metal pins shall be installed at the intersection of the inner and outer panels of the inside door and shall not penetrate the frame's exterior surface. The surface mounted bolt assembly shall be installed at the base of the door.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-232.** **INTERNATIONAL BUILDING CODE, SECTION 1010.4.3. DOOR FRAMES.** A new Section 1010.4.3 of the IBC is hereby added to read as follows:

**1010.4.3 Door frames.** The exterior door frames shall be installed prior to a rough-in inspection. Door frames shall comply with the following for the type of assembly installed:

**(a)** **Wood frames.** Wood door frames shall comply with all of the following requirements:

1. All exterior door frames shall be set in frame openings constructed of double studding or equivalent construction, including garage doors, but excluding overhead doors. Door frames, including those with sidelights, shall be reinforced in accordance with ASTM F476-84 Grade 40.
2. In wood framing horizontal blocking shall be placed between studs at the door lock height for three (3) stud spaces or equivalent bracing on each side of the door opening.

**(b)** **Steel frames.** All exterior door frames shall be constructed of eighteen (18) gauge or heavier steel, and reinforced at the hinges and strikes. All steel frames shall be anchored to the wall in accordance with manufacturer specifications. Supporting wall structures shall consist of double studding or framing of equivalent strength. Frames shall be installed to eliminate tolerances inside the rough opening.

**(c)** **Door jambs:**

1. Door jambs shall be installed with solid backing in a manner so

that no void exists between the strike side of the jamb and the frame opening for a vertical distance of twelve inches (12") each side of the strike. Filler material shall consist of a solid wood block.

2. Door stops on wooden jambs for in-swinging doors shall be of one-piece construction. Jambs for all doors shall be constructed or protected so as to prevent violation of the strike.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-233. INTERNATIONAL BUILDING CODE, SECTION 1010.4.4. DOOR HARDWARE.** A new Section 1010.4.4 of the IBC is hereby added to read as follows:

**1010.4.4 Door hardware.** Exterior door hardware shall comply with the following:

**(a) Hinges.** Hinges for exterior door hardware shall comply with the following:

1. At least two (2) screws, three inches (3") in length, penetrating at least one inch (1") into wall structure shall be used. Solid wood fillers or shims shall be used to eliminate any space between the wall structure and door frame behind each hinge.
2. Hinges for out-swinging doors shall be equipped with mechanical interlock to preclude the removal of the door from the exterior.

**(b) Strike plates.** Exterior door strike plates shall be a minimum of eighteen (18) gauge metal with four (4) offset screw holes. Strike plates shall be attached to wood with not less than three inch (3") screws, which shall have a minimum of one inch (1") penetration into the nearest stud. Note: For side lighted units, refer to Section (f) below.

**(c) Escutcheon plates.** All exterior doors shall have escutcheon plates or wraparound door channels installed around the lock protecting the door's edge.

**(d) Locks.** Exterior doors shall be provided with a locking device complying with one of the following:

Single Cylinder Deadbolt shall have a minimum projection of one inch (1"). The deadbolt shall penetrate at least three-fourths inch (3/4") into the strike receiving the projected bolt. The cylinder shall have a twist-resistant, tapered hardened steel cylinder guard. The cylinder shall have a minimum of five (5) pin tumblers, shall be connected to the inner portion of the lock by solid metal connecting screws at least one-fourth (¼) inch in diameter and two and one-fourth (2¼) inches in length. Bolt assembly (bolt housing) unit shall be of single piece construction. All deadbolts shall meet ANSI grade 2 specifications.

**(e) Entry vision and glazing.** All main or front entry doors to dwelling units shall be arranged so that the occupant has a view of the area immediately outside the door without opening the door. The view may be provided by a door viewer having a field of view of not less than one hundred eighty

degrees (180º) through windows or through view ports.

**(f)** **Side lighted entry doors.** Side light door units shall have framing of double stud construction or equivalent construction complying with Sections 1008.4.3.(a), (b) and (c). The doorframe that separates the door opening from the side light, whether on the latch side or the hinge side, shall be double stud construction or equivalent construction complying with Sections 1008.4.3. (a) and (b). Double stud construction or construction of equivalent strength shall exist between the glazing unit of the side light and wall structure of the dwelling.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-234.** **INTERNATIONAL BUILDING CODE, SECTION 1010.4.5. STREET NUMBERS.** A new Section 1010.4.5 of the IBC is hereby added to read as follows:

**1010.4.5 Street numbers.** Street numbers shall be as approved by the Fire Official so as to provide legible property identification at the distance of approach of emergency vehicles under conditions which can be normally anticipated but shall be 6" minimum and not exceed 12" in height and be of starkly contrasting color to background. Street names shall not be required and all numbers shall be characters and not written words and shall be horizontal in orientation.

**EXCEPTION:** All occupancies governed by the International Residential Code.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-235.** **INTERNATIONAL BUILDING CODE, SECTION 1010.4.6. EXTERIOR LIGHTING.** A new Section 1010.4.6 of the IBC is hereby added to read as follows:

**1010.4.6 Exterior lighting.** Exterior lighting shall comply with NFPA National Electric Code, 2017, Section 210.70.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-236.** **INTERNATIONAL BUILDING CODE, SECTION 1016.2. EGRESS THROUGH INTERVENING SPACES.** Section 1016.2 of the IBC is hereby amended to read as follows:

**1016.2 Egress through intervening spaces.** Egress through intervening spaces shall comply with this section.

**1.** Exit access through an enclosed elevator lobby is permitted. Access to not less than one of the required exits shall be provided without travel

through the enclosed elevator lobbies required by Section 3006. Where the path of exit access travel passes through an enclosed elevator lobby, the level of protection required for the enclosed elevator lobby is not required to be extended to the exit unless direct access to an exit is required by other sections of this code.

2. Egress from a room or space shall not pass through adjoining or intervening rooms or areas, except where such adjoining rooms or areas and the area served are accessory to one or the other, are not a Group H occupancy and provide a discernible path of egress travel to an exit.

   **EXCEPTION:** Means of egress are not prohibited through adjoining or intervening rooms or spaces in a Group H, S or F occupancy where the adjoining or intervening rooms or spaces are the same or a lesser hazard occupancy group.

3. Egress shall not pass through kitchens, storage rooms, closets or spaces used for similar purposes.

   **EXCEPTIONS:**
   1. Means of egress are not prohibited through a kitchen area serving adjoining rooms constituting part of the same dwelling unit or sleeping unit.
   2. Means of egress are not prohibited through stockrooms in Group M occupancies when all of the following are met:
      - 2.1 The stock is of the same hazard classification as that found in the main retail area;
      - 2.2 Not more than 50 percent of the exit access is through the stockroom;
      - 2.3 The stockroom is not subject to locking from the egress side; and
      - 2.4 There is a demarcated, minimum 44-inch wide (1118 mm) aisle defined by full or partial height fixed walls or similar construction that will maintain the required width and lead directly from the retail area to the exit without obstructions.

4. An exit access shall not pass through a room that can be locked to prevent egress.
5. Means of egress from dwelling units or sleeping areas shall not lead through other sleeping areas, toilet rooms or bathrooms.
6. Means of egress from the showroom floor in Type M occupancies shall not include any space which also serves as a point of delivery for stock, or for the staging of stock awaiting placement, or for trash awaiting removal from the occupancy, unless such area is designed to remain open to the showroom floor from which exiting is required.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-236A.** **INTERNATIONAL BUILDING CODE, SECTION 1202.1. VENTILATION GENERAL.** Section 1202.1 of the IBC is hereby amended to read as follows: **1203.1 General.** Buildings shall be provided with natural ventilation in accordance with Section 1202.5, or mechanical ventilation in accordance with the International Mechanical Code.

Where the air infiltration rate in a dwelling unit is less than 3 air changes per hour where tested with a blower door at a pressure 0.2 inch w.c. (50 Pa) in accordance with Section 402.4.1.2 of the International Energy Conservation Code – Residential Provisions, the dwelling unit shall be ventilated by mechanical means in accordance with Section 403 of the International Mechanical Code. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407 of the International Mechanical Code.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)

**4-237.** **INTERNATIONAL BUILDING CODE, SECTION 1501.1. SCOPE**. Section 1501.1 of the IBC is hereby amended to read as follows: **1501.1 Scope.** The provisions of this chapter shall govern the design, materials, construction and quality of roof assemblies, and rooftop structures. All roof covering assemblies shall comply with the *Leawood Development Ordinance*.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-237A.** **INTERNATIONAL BUILDING CODE, SECTION 1511.1. GENERAL.** Section 1511.1 of the IBC is hereby amended to read as follows: **General.** Materials and methods of application used for recovering or replacing an existing roof covering shall comply with the Leawood Development Ordinance. Such materials and methods of application shall also comply with the requirements of Chapter 15 of the International Building Code incorporated herein.

**EXCEPTIONS:**

1. Roof replacement or roof recover of existing low-slope roof coverings shall not be required to meet the minimum design slope requirement of one-quarter unit vertical in 12 units horizontal (2-percent slope) in Section 1507 for roofs that provide positive roof drainage.
2. Recovering or replacing an existing roof covering shall not be required to meet the requirement for secondary (emergency overflow) drains or scuppers in Section 1502 for roofs that provide for positive roof drainage. For the

purposes of this exception, existing secondary drainage or scupper systems required in accordance with this code shall not be removed unless they are replaced by secondary drains or scuppers designed and installed in accordance with Section 1502.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)

**4-237B** **INTERNATIONAL BUILDING CODE, SECTION 1612.3. ESTABLISHMENT OF FLOOD HAZARD AREAS.** Section 1612.3 of the IBC is hereby amended to read as follows: **1612.3 Establishment of Flood Hazard Areas.** The flood hazard map shall include areas of special flood hazard as identified by the Federal Emergency Management Agency. The flood hazard map shall include the most current Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM). These maps and supporting data are hereby adopted by reference and declared to be part of this section. Additional flood hazard maps can be adopted at the discretion of the Governing Body of the City of Leawood.

(Ord. 2978; 01-21-20)

**4-238.** **INTERNATIONAL BUILDING CODE, TABLE 2902.1. MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES.** Table 2902.1 of the IBC is hereby amended to provide the following footnotes:

(a) The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the *International Building Code*.

(b) Toilet facilities for employees shall be separate from facilities for inmates or patients.

(c) A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient room and with provisions for privacy.

(d) The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.

(e) The minimum number of required drinking fountains shall comply with Table 2902.1 and Chapter 11.

(f) Drinking fountains are not required for an occupant load of 15 or fewer.

(g) Service sinks are not required for business occupancies with an occupant load of 15 or fewer.

(h) A drinking fountain is not required in M occupancies with an occupant load less than 50.

(i) A service sink is not required in M occupancies with an occupant load

less than 50.

(j) The required number and type of plumbing fixtures for outdoor swimming pools shall be in accordance with Section 609 of the International Swimming Pool and Spa Code as adopted in Section 4-1001 of this Code.

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(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-239. INTERNATIONAL BUILDING CODE, SECTION 3001.6. ACCEPTANCE INSPECTIONS.** A new Section 3001.6 of the IBC is hereby added to read as follows: **Acceptance Inspections.** All elevator equipment shall have an acceptance inspection and test performed and approved in accordance with ASME A17.1/ CSA B44 requirements. Prior to the issuance of a Certificate of Occupancy, a copy of this inspection shall be forwarded to the City of Leawood.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-240. INTERNATIONAL BUILDING CODE, SECTION 3001.7, PERIODIC INSPECTIONS.** A new Section 3001.7 of the IBC is hereby added to read as follows: **Periodic Inspections.** All existing elevator equipment shall have a periodic inspections and testing performed and approved in accordance with ASME A17.3/ CSA B44 requirements. A copy of these tests shall be forwarded to the City of Leawood.

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-240A. INTERNATIONAL BUILDING CODE, SECTION 3001.8. CERTIFICATION OF INSPECTION REQUIRED.** A new Section 3001.8 of the IBC is hereby added to read as follows: **Certification of Inspection Required.** It shall be unlawful to operate any elevator, dumbwaiter, escalator, or moving walk without a current certificate of inspection provided by a Qualified Elevator Inspector who is certified by the National Association of Elevator Safety Authorities or other similar certification from another nationally recognized organization.

(Ord. 2978; 01-21-20)

**4-240B. INTERNATIONAL BUILDING CODE, SECTION 3001.9. EXISTING ELEVATORS.** A new Section 3001.9 of the IBC is hereby added to read as

follows: **Existing Elevators.** In addition to all other applicable Existing Building Code requirements, existing elevators shall comply with ASME A17.3/ CSA B44.

(Ord. 2978; 01-21-20)

**4-241. INTERNATIONAL BUILDING CODE, SECTION 3403.6. ELEVATORS.** ***Repealed.***

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-241A. INTERNATIONAL BUILDING CODE, SECTION 3404.7. ELEVATORS.** ***Repealed*.**

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)

**4-242. INTERNATIONAL BUILDING CODE, SECTION 3410.2. LEAWOOD DEVELOPMENT ORDINANCE CONFORMANCE.** ***Repealed*.**

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

**4-243. INTERNATIONAL BUILDING CODE, SECTION 3410.3. DUTIES OF STRUCTURE MOVING PERMITTEE.** ***Repealed*.**

(Ord. 2978; 01-21-20)
(Ord. 2593C; 12-03-12)
(Ord. 2291C; 02-04-08)

# ARTICLE 3. ELECTRICAL CODE

**SECTIONS**

4-301 NATIONAL ELECTRICAL CODE ADOPTED.
4-302 NATIONAL ELECTRICAL CODE, DELETED SECTIONS.
4-303 NATIONAL ELECTRICAL CODE, SECTION 90.2. SCOPE.
4-304 NATIONAL ELECTRICAL CODE, ARTICLE 110.5. CONDUCTORS.
4-305 NATIONAL ELECTRICAL CODE, ARTICLE 210.12. ARC-FAULT CIRCUIT-INTERRUPTER PROTECTION.
4-306 NATIONAL ELECTRICAL CODE, ARTICLE 111. PERMITS.
4-307 NATIONAL ELECTRICAL CODE, APPLICATION FOR PERMIT. *REPEALED*.
4-308 NATIONAL ELECTRICAL CODE, EXPIRATION. *REPEALED*.
4-309 NATIONAL ELECTRICAL CODE, EXTENSIONS. *REPEALED*.
4-310 NATIONAL ELECTRICAL CODE, WORK COMMENCING BEFORE PERMIT ISSUANCE. *REPEALED*.
4-311 NATIONAL ELECTRICAL CODE, FEE SCHEDULE. *REPEALED*.
4-312 NATIONAL ELECTRICAL CODE, FEE REFUNDS. *REPEALED*.
4-313 NATIONAL ELECTRICAL CODE, PLACEMENT OF PERMIT. *REPEALED*.
4-314 NATIONAL ELECTRICAL CODE, PENALTIES.

**4-301.** **NATIONAL ELECTRICAL CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the National Electrical Code, 2017 edition, ["NEC"] prepared and published in book form by the National Fire Protection Association (NFPA No. 70-2017), including annexes A, B, C, D, F, G and I, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed or added hereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2979" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)
(Ord. 1931C; 01-22-02)
(Code 2000)
(Ord. 1630C; 11-04-96)

**4-302.** **NATIONAL ELECTRICAL CODE, DELETED SECTIONS.** The following sections of the NEC are hereby deleted and omitted:

(a) Section 90.1 Purpose
(b) Section 90.3 Code Arrangement

(c) Section 90.4 Enforcement
(d) Section 90.5 Mandatory Rules, Permissive Rules, and Explanatory Material
(e) Section 90.6 Formal Interpretations
(f) Section 90.7 Examination of Equipment for Safety
(g) Section 90.8 Wiring Planning
(h) Section 90.9 Units of Measurement

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)
(Ord. 1931C; 01-22-02)
(Code 2000)
(Ord. 1630C; 11-04-96)

**4-303. NATIONAL ELECTRICAL CODE, SECTION 90.2. SCOPE.** Section 90.2 of the NEC is amended to read as follows:

(a) Covered. This Electrical Code covers the following:
1. Installations of electric conductors and equipment within or on public and private buildings or other structures, including mobile homes, recreational vehicles, and floating buildings, and other premises such as yards, carnivals, parking, and other lots, and industrial substations.
2. Installations of conductors and equipment that connect to the supply of electricity.
3. Installations of other outside conductors and equipment on the premises.
4. Installations of optical fiber cables and raceways.
5. Installations in building used by the electric utility, such as office buildings, warehouses, garages, machine shops, and recreational buildings, that are not an integral part of a generating plant, substation, or control center.

(b) Not Covered. The NEC does not cover the following:
1. Installations in ships, watercraft other than floating buildings, railway rolling stock, aircraft, or automotive vehicles other than mobile homes and recreational vehicles.
2. Installations underground in mines and self-propelled mobile surface mining machinery and its attendant electrical trailing cable.
3. Installations of railways for generation, transformation, transmission, or distribution of power used exclusively for operation of rolling stock or installations used exclusively for signaling and communications purposes.
4. Installations of communications equipment under the exclusive control of communications utilities located outdoors or in building spaces used exclusively for such installations.
5. Installations, including associated lighting, under the exclusive control of electric utilities for the purpose of communications, metering, generation, control, transformation, transmission, or distribution of electric energy. Such installations shall be located in buildings used exclusively by utilities

for such purposes; outdoors on property owned or leased by the utility; on or along public highways, streets, roads, etc.; or outdoors on private property by established rights such as easements provided that any such installation is otherwise in accordance law with appropriate consent.

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)
(Ord. 1931C; 01-22-02)

**4-304. NATIONAL ELECTRICAL CODE, ARTICLE 110.5. CONDUCTORS.** Article 110.5 of the NEC is hereby amended to read as follows: **Conductors.** Conductors normally used to carry current shall be of copper.

**EXCEPTIONS:**

(a) Service lateral conductors, service entrance conductors, and feeder conductors two AWG and larger in all Group R occupancies (as defined by the most currently adopted Building Code) are allowed to be of any type as allowed by this code.

(b) Conductors four AWG and larger in all commercial and industrial occupancies other than Group R are allowed to be of any type as allowed by this code.

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2560C; 08-06-12)
(Ord. 2292C; 02-04-08)
(Ord. 2166; 05-01-06)
(Ord. 1931C; 01-22-02)
(Code 2000)
(Ord. 1630C; 11-04-96)

**4-305. NATIONAL ELECTRICAL CODE, ARTICLE 210.12. ARC-FAULT CIRCUIT-INTERRUPTER PROTECTION.** Article 210.12 of the NEC is hereby amended to read as follows: **Arc-Fault Circuit-Interrupter Protection.** Arc-fault circuit-interrupter protection shall be provided as required in 210.12(a), (b), (c), and (d). The arc-fault circuit interrupter shall be installed in a readily accessible location.

(a) **Dwelling Units.** All 120-volt, single phase, 15- and 20- ampere branch circuits supplying outlets or devices installed in dwelling unit kitchens, family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreation rooms, closets, hallways, laundry areas, or similar rooms or areas shall be protected by any of the means described in 210.12(a)(1) through (6) For these purposes, a smoke alarm or carbon monoxide alarm shall not be considered an outlet and is not required to be on an arc-fault circuit.

(1) A listed combination-type arc-fault circuit interrupter installed to provide protection of the entire branch circuit.

(2) A listed branch/feeder-type AFCI installed at the origin of the branch-circuit in combination with a listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet box on the branch circuit. The first outlet box in the branch circuit shall be marked to indicate that it is the first outlet of the circuit.

(3) A listed supplemental arc protection circuit breaker installed at the origin of the branch-circuit type arc-fault circuit interrupter installed at the first outlet box on the branch circuit where all of the following conditions are met:

a. The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit interrupter.

b. The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 ft for a 14 AWG conductor or 70 ft for a 12 AWG conductor.

c. The first outlet box in the branch circuit shall be marked to indicate that it is the first outlet of the circuit.

(4) A listed outlet branch-circuit type arc-fault circuit interrupter installed at the first outlet on the branch circuit in combination with a listed branch-circuit overcurrent protective device where all of the following conditions are met:

a. The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit interrupter.

b. The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 ft for a 14 AWG conductor or 70 ft for a 12 AWG conductor.

c. The first outlet box in the branch circuit shall be marked to indicate that it is the first outlet of the circuit.

d. The combination of the branch-circuit overcurrent device and outlet branch-circuit AFCI shall be identified as meeting the requirements for a system combination-type AFCI and shall be listed as such.

(5) If RMC, IMC, EMT, Type MC, or steel armored Type AC cables meeting the requirements of 250.118, metal wireways, metal auxiliary gutters, and metal outlet and junction boxes are installed for the portion of the branch-circuit between the branch-circuit overcurrent device and the first outlet, it shall be permitted to install an outlet branch-circuit type AFCI at the first outlet to provide protection for the remaining portion of the branch-circuit.

(6) Where a listed metal or nonmetallic conduit or tubing is encased in not less than 2 in. of concrete for the portion of the branch circuit between the branch-circuit overcurrent device and the first outlet, it shall be permitted

to install an outlet branch-circuit type AFCI at the first outlet to provide protection for the remaining portion of the branch circuit.

**EXCEPTION:** Where an individual branch-circuit to a fire alarm system installed in accordance with 760.41(B) or 760.121(B) is installed in RMC, IMC, EMT, or steel-sheathed cable, Type AC or Type MC, meeting the requirements of 250.118, with metal outlet and junction boxes, AFCI protection shall be permitted to be omitted.

(b) **Dormitory Units.** All 120-volt, single-phase, 15- and 20-ampere branch circuits supplying outlets and devices installed in dormitory unit bedrooms, living rooms, hallways, closets, bathrooms, and similar rooms shall be protected by any of the means described in 210.12 (a) (1) through (6).

(c) **Guest Rooms and Guest Suites.** All 120-volt, single-phase, 15- and 20-ampere branch circuits supplying outlets and devices installed in guest rooms and guest suites of hotels and motels shall be protected by any of the means described in 210.12 (a) (1) through (6).

(d) **Branch Circuit Extensions or Modifications – Dwelling Units.** In any of the areas specified in 210.12(a) or (b), where branch-circuit wiring is modified, replaced, or extended, the branch-circuit shall be protected by one of the following:

1. A listed combination-type AFCI located at the origin of the branch circuit.
2. A listed outlet branch-circuit type AFCI located at the first receptacle outlet of the existing branch circuit.

**EXCEPTION:** AFCI protection shall not be required where the extension of the existing conductors is not more than 6 ft and does not include any additional outlets or devices.

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)
(Ord. 1931C; 01-22-02)

**4-306. NATIONAL ELECTRICAL CODE, ARTICLE 111. PERMITS.** A new Article 111 of the NEC is hereby added to read as follows: **PERMITS.**

**111.1 Work Exempt from Permit**. Work shall be exempt from permit requirements as provided in Article 2 of this Chapter.

**111.2 Expiration.** Permits shall expire as provided in Article 2 of this Chapter.

**111.3 Extensions.** The code official is authorized to grant extensions as provided in Article 2 of this Chapter.

**111.4 Work commencing before permit issuance.** Any person who commences work on an installation before obtaining the necessary

permits shall be subject to an additional fee established by the City of Leawood Fee Schedule that shall be in addition to the required permit fees.

**111.5** **Fee Schedule.** The fees for electrical work shall be as indicated in the City of Leawood Fee Schedule.

**111.6** **Fee Refunds.** Unless specifically set forth herein, all fees paid are non-refundable. The code official may authorize refunding of any fee paid hereunder, which was erroneously paid or collected. The code official shall upon request authorize refunding of not more than eighty (80) percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The code official shall upon request authorize refunding of not more than eighty (80) percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The code official shall not authorize refunding of any fee paid except on written application filed by the original permit holder not later than one hundred eighty (180) days after the date of fee payment.

**111.7** **Placement of Permit.** All permits shall be posted to be visible from the street and kept on the site of the work until the completion of the project.

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-307. NATIONAL ELECTRICAL CODE, APPLICATION FOR PERMIT.** ***Repealed.***

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-308. NATIONAL ELECTRICAL CODE, EXPIRATION.** ***Repealed.***

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-309. NATIONAL ELECTRICAL CODE, EXTENSIONS.** ***Repealed.***

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-310. NATIONAL ELECTRICAL CODE, WORK COMMENCING BEFORE PERMIT ISSUANCE.** ***Repealed.***

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-311. NATIONAL ELECTRICAL CODE, FEE SCHEDULE.** ***Repealed.***

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-312. NATIONAL ELECTRICAL CODE, FEE REFUNDS.** ***Repealed.***

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-313. NATIONAL ELECTRICAL CODE, PLACEMENT OF PERMIT.** ***Repealed.***

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

**4-314. NATIONAL ELECTRICAL CODE, PENALTIES.** Any person who violates a provision of this Article or fails to comply with any of the requirements thereof is guilty of a public offense, punishable by a fine of not more than five hundred dollars ($500) or by imprisonment not exceeding thirty (30) days or both such fine and imprisonment. Each day that the violation continues shall be deemed a separate offense.

(Ord. 2979; 01-21-20)
(Ord. 2594C; 12-03-12)
(Ord. 2292C; 02-04-08)

# ARTICLE 4. PLUMBING CODE

**SECTIONS**

4-401 INTERNATIONAL PLUMBING CODE ADOPTED.
4-402 INTERNATIONAL PLUMBING CODE, SECTION 101.1. TITLE.
4-403 INTERNATIONAL PLUMBING CODE, SECTION 106.3. APPLICATION FOR PERMIT.
4-404 INTERNATIONAL PLUMBING CODE, SECTION 106.5.3. EXPIRATION.
4-405 INTERNATIONAL PLUMBING CODE, SECTION 106.5.4. EXTENSIONS.
4-406 INTERNATIONAL PLUMBING CODE, SECTION 106.6.1. WORK COMMENCING BEFORE PERMIT ISSUANCE.
4-407 INTERNATIONAL PLUMBING CODE, SECTION 106.6.2. FEE SCHEDULE.
4-408 INTERNATIONAL PLUMBING CODE, SECTION 106.6.3. FEE REFUNDS.
4-409 INTERNATIONAL PLUMBING CODE, SECTION 106.7. PLACEMENT OF PERMIT.
4-410 INTERNATIONAL PLUMBING CODE, SECTION 108.4. VIOLATION, PENALTIES.
4-411 INTERNATIONAL PLUMBING CODE, SECTION 108.5. STOP WORK NOTICES.
4-412 INTERNATIONAL PLUMBING CODE, SECTION 109. MEANS OF APPEAL.
4-413 INTERNATIONAL PLUMBING CODE, SECTION 305.4.1. SEWER DEPTH.
4-413A INTERNATIONAL PLUMBING CODE, SECTION 312.10.3. MAINTENANCE.
4-414 INTERNATIONAL PLUMBING CODE, TABLE 403.1. MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES.
4-415 INTERNATIONAL PLUMBING CODE, SECTION 502.1. *REPEALED*.
4-416 INTERNATIONAL PLUMBING CODE, SECTION 504.3. *REPEALED*.
4-417 INTERNATIONAL PLUMBING CODE, SECTION 701.2. CONNECTION TO SEWER REQUIRED.
4-418 INTERNATIONAL PLUMBING CODE, SECTION 715.1. *REPEALED*.
4-419 INTERNATIONAL PLUMBING CODE, SECTION 903.1. ROOF EXTENSIONS.
4-420 INTERNATIONAL PLUMBING CODE, SECTION 113.1.3. *REPEALED*.
4-421 INTERNATIONAL PLUMBING CODE, SECTION 1202.1.1 QUALIFICATIONS.

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**4-401.** **INTERNATIONAL PLUMBING CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Plumbing Code, 2018 edition, ["IPC"] prepared and published in book form by the International Code Council, Inc., including appendices B, D and E, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed or added thereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2980," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)

(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)
(Code 2000)
(Ord. 1713C; 03-23-98)

**4-402.** **INTERNATIONAL PLUMBING CODE, SECTION 101.1. TITLE.** Section 101.1 of the IPC is hereby amended to read as follows: **Title.** These regulations shall be known and referred to as this code, the IPC, or the Plumbing Code of the City of Leawood.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)
(Code 2000)
(Ord. 1713C; 03-23-98)

**4-403.** **INTERNATIONAL PLUMBING CODE, SECTION 106.3. APPLICATION FOR PERMIT.** Section 106.3 of the IPC is hereby amended to read as follows: **Application for Permit.** Each application for a permit, with the required fee, shall be filed with the code official on a form furnished for that purpose and shall contain a general description of the proposed work and its location. The application shall be signed by the owner or an authorized agent. The permit application shall indicate the proposed occupancy of all parts of the building and of that portion of the site or lot, if any, not covered by the building or structure and shall contain such other information required by the code official. An application for a permit for any proposed work shall be deemed to have been abandoned one hundred eighty (180) days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding ninety (90) days each. The extension shall be requested in writing and justifiable cause demonstrated.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)

**4-404.** **INTERNATIONAL PLUMBING CODE, SECTION 106.5.3. EXPIRATION.** Section 106.5.3 of the IPC is hereby amended to read as follows: **Expiration.** Permits shall expire as provided in Article 2 of this Chapter.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)

(Code 2000)
(Ord. 1713C; 03-23-98)

**4-405.** **INTERNATIONAL PLUMBING CODE, SECTION 106.5.4. EXTENSIONS.** Section 106.5.4 of the IPC is hereby amended to read as follows: **Extensions.** The code official is authorized to grant extensions as provided in Article 2 of this Chapter.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)
(Code 2000)
(Ord. 1713C; 03-23-98)

**4-406.** **INTERNATIONAL PLUMBING CODE, SECTION 106.6.1. WORK COMMENCING BEFORE PERMIT ISSUANCE.** Section 106.6.1 of the IPC is hereby amended to read as follows: **Work commencing before permit issuance.** Any person who commences work on an installation before obtaining the necessary permits shall be subject to an additional fee established by the City of Leawood Fee Schedule that shall be in addition to the required permit fees.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)
(Code 2000)
(Ord. 1713C; 03-23-98)

**4-407.** **INTERNATIONAL PLUMBING CODE, SECTION 106.6.2. FEE SCHEDULE.** Section 106.6.2 of the IPC is hereby amended to read as follows: **Fee schedule.** The fees for work shall be as indicated in the City of Leawood Fee Schedule.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)
(Code 2000)
(Ord. 1713C; 03-23-98)

**4-408.** **INTERNATIONAL PLUMBING CODE, SECTION 106.6.3. FEE REFUNDS.** Section 106.6.3 of the IPC is hereby amended to read as follows: **Fee Refunds.** Unless specifically set forth herein, all fees paid are non-refundable. The code official may authorize refunding of any fee paid hereunder, which was

erroneously paid or collected. The code official shall upon request authorize refunding of not more than eighty percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with this code. The code official shall upon request authorize refunding of not more than eighty percent (80%) of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The code official shall not authorize refunding of any fee paid except on written application filed by the original permit holder not later than one hundred eighty (180) days after the date of fee payment.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)
(Code 2000)
(Ord. 1713C; 03-23-98)

**4-409.** **INTERNATIONAL PLUMBING CODE, SECTION 106.7. PLACEMENT OF PERMIT.** A new Section 106.7 of the IPC is hereby added to read as follows: **Placement of Permit.** All permits shall be posted to be visible from the street and kept on the site of the work until the completion of the project.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)
(Ord. 1932C; 01-22-02)

**4-410.** **INTERNATIONAL PLUMBING CODE, SECTION 108.4. VIOLATION, PENALTIES.** Section 108.4 of the IPC is hereby amended to read as follows: **Violation, Penalties.** Any person who violates a provision of this Article or this code or fails to comply with any of the requirements thereof is guilty of a public offense, punishable by a fine of not more than five hundred dollars ($500) or by imprisonment not exceeding thirty (30) days or both such fine and imprisonment. Each day that the violation continues shall be deemed a separate offense.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-411.** **INTERNATIONAL PLUMBING CODE, SECTION 108.5. STOP WORK NOTICES.** Section 108.5 of the IPC is hereby amended to read as follows: **Stop Work Notices.** Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, the owner's agent, or the person doing the work.

The notice shall state the conditions under which work is authorized to resume. Any violation of a stop work order will constitute a violation of this code.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-412. INTERNATIONAL PLUMBING CODE, SECTION 109. MEANS OF APPEAL.** Section 109 of the IPC is hereby deleted in its entirety.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
See Section 4-105
(Ord. 2293C; 02-04-08)

**4-413. INTERNATIONAL PLUMBING CODE, SECTION 305.4.1. SEWER DEPTH.** Section 305.4.1 of the IPC is hereby amended to read as follows: Building sewers connected to public and private sewage disposal systems shall be installed in accordance with Johnson County Wastewater District regulations.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-413A. INTERNATIONAL PLUMBING CODE, SECTION 312.10.3. MAINTENANCE.** A new Section 312.10.3 of the IPC is hereby added to read as follows: **Maintenance.** Inspections and testing of backflow prevention assemblies performed after a Certificate of Occupancy or a Certificate of Compliance has been issued by the City of Leawood, are to be reported to and in accordance with the requirements of Water District No. 1 of Johnson County.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)

**4-414. INTERNATIONAL PLUMBING CODE, TABLE 403.1. MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES.** The footnotes for Table 403.1 of the IPC are hereby amended to read as follows:

(a) The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the *International Building Code*.

(b) Toilet facilities for employees shall be separate from facilities for inmates or patients.

(c) A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient room and with provisions for privacy.

(d) The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.

(e) The minimum number of required drinking fountains in any occupancy shall comply with table 403.1 and Chapter 11 of the International Building Code.

(f) Drinking fountains are not required for an occupant load of 15 or fewer in any occupancy.

(g) Service sinks shall not be required for business occupancies with an occupant load of 15 or fewer.

(h) A drinking fountain is not required in mercantile occupancies with an occupant load less than 50.

(i) A service sink is not required in mercantile occupancies with an occupant load less than 50.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-415. INTERNATIONAL PLUMBING CODE, SECTION 502.1. WATER HEATERS, GENERAL.** ***Repealed.***

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-416. INTERNATIONAL PLUMBING CODE, SECTION 504.3. SHUTDOWN.** ***Repealed.***

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-417. INTERNATIONAL PLUMBING CODE, SECTION 701.2. CONNECTION TO SEWER REQUIRED.** Section 701.2 of the IPC is hereby amended to read as follows: **Connection to Sewer Required**. Every building in which plumbing fixtures are installed and all premises having drainage piping shall be connected to a public sewer.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-418. INTERNATIONAL PLUMBING CODE, SECTION 715.1. SEWAGE BACKFLOW.** ***Repealed***.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-419. INTERNATIONAL PLUMBING CODE, SECTION 903.1. ROOF EXTENSION.** Section 903.1 of the IPC is hereby amended to read as follows: **Roof extension.** Open vent pipes that extend through a roof shall be terminated at least six (6) inches above the roof. Where a roof is to be used for assembly or as a promenade, observation deck, sunbathing deck or similar purposes, open vent pipes shall terminate not less than (7) feet above the roof.

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

**4-420. INTERNATIONAL PLUMBING CODE, SECTION 1113.1.3. ELECTRICAL.** ***Repealed*.**

(Ord. 2980; 01-21-20)
(Ord. 2595C; 12-03-12)
(Ord. 2293C; 02-04-08)

# ARTICLE 5. MECHANICAL CODE

**SECTIONS**

4-501 INTERNATIONAL MECHANICAL CODE ADOPTED
4-502 INTERNATIONAL MECHANICAL CODE, SECTION 101.1. TITLE
4-503 INTERNATIONAL MECHANICAL CODE, SECTION 106.2. PERMITS NOT REQUIRED. *REPEALED*.
4-504 INTERNATIONAL MECHANICAL CODE, SECTION 106.3. APPLICATION FOR PERMIT
4-505 INTERNATIONAL MECHANICAL CODE, SECTION 106.4.3. EXPIRATION
4-506 INTERNATIONAL MECHANICAL CODE, SECTION 106.4.4. EXTENSIONS
4-507 INTERNATIONAL MECHANICAL CODE, SECTION 106.5.1. WORK COMMENCING BEFORE PERMIT ISSUANCE
4-508 INTERNATIONAL MECHANICAL CODE, SECTION 106.5.2. FEE SCHEDULE
4-509 INTERNATIONAL MECHANICAL CODE, SECTION 106.5.3. FEE REFUNDS
4-510 INTERNATIONAL MECHANICAL CODE SECTION 106.6. PLACEMENT OF PERMIT
4-511 INTERNATIONAL MECHANICAL CODE, SECTION 108.4. VIOLATION PENALTIES
4-512 INTERNATIONAL MECHANICAL CODE, SECTION 108.5. STOP WORK NOTICES
4-513 INTERNATIONAL MECHANICAL CODE, SECTION 109. MEANS OF APPEAL.
4-514 INTERNATIONAL MECHANICAL CODE, SECTION 301.7. ELECTRICAL. *REPEALED*.
4-515 INTERNATIONAL MECHANICAL CODE, SECTION 306.3.1. ELECTRICAL REQUIREMENTS. *REPEALED*.
4-516 INTERNATIONAL MECHANICAL CODE, SECTION 3.6.4.1. ELECTRICAL REQUIREMENTS. *REPEALED*.
4-517 INTERNATIONAL MECHANICAL CODE, SECTION 3.6.5.2. ELECTRICAL REQUIREMENTS. *REPEALED*.
4-518 INTERNATIONAL MECHANICAL CODE, SECTION 401.2. VENTILATION REQUIRED.
4-519 INTERNATIONAL MECHANICAL CODE, SECTION 513.11. POWER SYSTEMS. *REPEALED*.
4-520 INTERNATIONAL MECHANICAL CODE, SECTION 513.12.1. WIRING. *REPEALED*.
4-521 INTERNATIONAL MECHANICAL CODE, SECTION 606.2.1. RETURN AIR SYSTEMS.
4-522 INTERNATIONAL MECHANICAL CODE, SECTION 606.2.2. COMMON SUPPLY AND RETURN AIR SYSTEMS.
4-523 INTERNATIONAL MECHANICAL CODE, SECTION 1106.3. AMMONIA ROOM VENTILATION. *REPEALED*.
4-524 INTERNATIONAL MECHANICAL CODE, SECTION 1106.4. FLAMMABLE REFRIGERANTS. *REPEALED*.

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**4-501.** **INTERNATIONAL MECHANICAL CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Mechanical Code, 2018 edition, ["IMC"] prepared and published in book form by the International Code Council, Inc., including appendix A save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed or added thereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be

marked or stamped "Official copy as incorporated by Ordinance No. 2981," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)
(Ord. 1933C; 01-22-02)
(Code 2000)
(Ord. 1629C; 11-04-96)

**4-502.** **INTERNATIONAL MECHANICAL CODE, SECTION 101.1. TITLE.** Section 101.1 is hereby amended to read as follows: **Title.** These regulations shall be known and referred to as this code, the IMC, or the Mechanical Code of the City of Leawood, Kansas.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)
(Ord. 1933C; 01-22-02)
(Code 2000)
(Ord. 1629C; 11-04-96)

**4-503.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.2. PERMITS NOT REQUIRED.** ***Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)
(Ord. 1933C; 01-22-02)

**4-504.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.3. APPLICATION FOR PERMIT.** Section 106.3 of the IMC is hereby amended to read as follows: **Application for Permit.** Each application for a permit, with the required fee, shall be filed with the code official on a form furnished for that purpose and shall contain a general description of the proposed work and its location. The application shall be signed by the owner or an authorized agent. The permit application shall indicate the proposed occupancy of all parts of the building and of that portion of the site or lot, if any, not covered by the building or structure and shall contain such other information required by the code official. An application for a permit for any proposed work shall be deemed to have been abandoned one hundred eighty (180) days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional

periods not exceeding ninety (90) days each. The extension shall be requested in writing and justifiable cause demonstrated.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)
(Ord. 1933C; 01-22-02)

**4-505.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.4.3. EXPIRATION.** Section 106.4.3 of the IMC is hereby amended to read as follows: **Expiration.** Permits shall expire as provided in Article 2 of this Chapter.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)
(Ord. 1933C; 01-22-02)

**4-506.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.4.4. EXTENSIONS.** Section 106.4.4 of the IMC is hereby amended to read as follows: **Extensions.** The code official is authorized to grant extensions as provided in Article 2 of this Chapter.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-507.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.5.1. WORK COMMENCING BEFORE PERMIT ISSUANCE.** Section 106.5.1 of the IMC is hereby amended to read as follows: **Work commencing before permit issuance.** Any person who commences work on an installation before obtaining the necessary permits shall be subject to an additional fee established by the City of Leawood Fee Schedule that shall be in addition to the required permit fees.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-508.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.5.2. FEE SCHEDULE.** Section 106.5.2 of the IMC is hereby amended to read as follows: **Fee schedule.** The fees for mechanical work shall be as indicated in the City of Leawood Fee Schedule.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-509.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.5.3. FEE REFUNDS.** Section 106.5.3 of the IMC is hereby amended to read as follows: **Fee Refunds.**

Unless specifically set forth herein, all fees paid are non-refundable. The code official may authorize refunding of any fee paid hereunder, which was erroneously paid or collected. The code official shall upon request authorize refunding of not more than eighty (80) percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The code official shall upon request authorize refunding of not more than eighty (80) percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The code official shall not authorize refunding of any fee paid except on written application filed by the original permit holder not later than one hundred eighty (180) days after the date of fee payment.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-510.** **INTERNATIONAL MECHANICAL CODE, SECTION 106.6. PLACEMENT OF PERMIT.** A new Section 106.6 of the IMC is hereby added to read as follows: **Placement of Permit.** All permits shall be posted to be visible from the street and kept on the site of the work until the completion of the project.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-511.** **INTERNATIONAL MECHANICAL CODE, SECTION 108.4. VIOLATION PENALTIES.** Section 108.4 of the IMC is hereby amended to read as follows: **Violation Penalties.** Any person who violates a provision of this Article or this code, or fails to comply with any of the requirements thereof, or who erects, installs, alters, or repairs mechanical work in violation of the approved construction documents or approved permit is guilty of a public offense, punishable by a fine of not more than five hundred dollars ($500) or by imprisonment not exceeding thirty (30) days or both such fine and imprisonment. Each day that the violation continues shall be deemed a separate offense.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-512.** **INTERNATIONAL MECHANICAL CODE, SECTION 108.5. STOP WORK ORDERS.** Section 108.5 of the IMC is hereby amended to read as follows: **Stop Work Orders.** Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, the owner's agent, or the person doing the work. The notice shall state the conditions under which work is authorized to resume. Any violation of a stop work order will constitute a violation of this code. Where an

emergency exists, the code official shall not be required to give a written notice prior to stopping the work.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-513. INTERNATIONAL MECHANICAL CODE, SECTION 109. MEANS OF APPEAL.** Section 109 of the IMC is hereby omitted and deleted in its entirety.

(Ord. 2981; 01-21-20)
See Section 4-105
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-514. INTERNATIONAL MECHANICAL CODE, SECTION 301.7. ELECTRICAL.** ***Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-515. INTERNATIONAL MECHANICAL CODE, SECTION 306.3.1. ELECTRICAL REQUIREMENTS.** ***Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-516. INTERNATIONAL MECHANICAL CODE, SECTION 306.4.1. ELECTRICAL REQUIREMENTS.** ***Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-517. INTERNATIONAL MECHANICAL CODE, SECTION 306.5.2. ELECTRICAL REQUIREMENTS.** ***Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-518. INTERNATIONAL MECHANICAL CODE, SECTION 401.2. VENTILATION REQUIRED.** Section 401.2 of the IMC is hereby amended to read as follows: **Ventilation required.** Every occupied space shall be ventilated by natural means in accordance with Section 402 or by mechanical means in accordance with Section 403. Where the air infiltration rate in a dwelling unit is less than 3 air changes per hour when tested with a blower door at a pressure of 0.2 –inch water column (50 Pa) in accordance with Section R402.4.1.2 of the International

Energy Conservation Code, the dwelling unit shall be ventilated by mechanical means in accordance with Section 403. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-519. INTERNATIONAL MECHANICAL CODE, SECTION 513.11. POWER SYSTEMS. *Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-520. INTERNATIONAL MECHANICAL CODE, SECTION 513.12.1. WIRING. *Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-521. INTERNATIONAL MECHANICAL CODE, SECTION 606.2.1. RETURN AIR SYSTEMS.** Section 606.2.1 of the IMC is hereby amended to read as follows: **Return air systems.** Smoke detectors shall be installed in return air systems with a design capacity greater than 4,000 cfm (1.88 $m^3/s$), in the return air duct or plenum upstream of any filters, exhaust air connections, outdoor air connections, or decontamination equipment and appliances.

> **EXCEPTION:** Smoke detectors are not required in the return air system where all portions of the building served by the air distribution system are protected by area smoke detectors connected to a fire alarm system in accordance with the International Fire Code. The area smoke detection system shall comply with Section 606.4.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-522. INTERNATIONAL MECHANICAL CODE, SECTION 606.2.2. COMMON SUPPLY AND RETURN AIR SYSTEMS.** Section 606.2.2 of the IMC is hereby amended to read as follows: **Common supply and return air systems.** Where multiple air-handling systems share common supply or return air ducts or plenums with a combined design capacity greater than 4,000 cfm (1.88 m3/s), the return air system shall be provided with smoke detectors in accordance with Section 606.2.1.

**EXCEPTION:** Individual smoke detectors shall not be required for each fan-powered terminal unit, provided that such units do not have an individual design capacity greater than 2,000 cfm (0.9 m3/s) and will be shut down by activation of one of the following:

1. Smoke detectors required by Sections 606.2.1 and 606.2.3.
2. An approved area smoke detector system located in the return air plenum serving such units.
3. An area smoke detector system as prescribed in the exception to Section 606.2.1.

In all cases, the smoke detectors shall comply with Sections 606.4 and 606.4.1.

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-523. INTERNATIONAL MECHANICAL CODE, SECTION 1106.3. AMMONIA ROOM VENTILATION. *Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

**4-524. INTERNATIONAL MECHANICAL CODE, SECTION 1106.4. FLAMMABLE REFRIGERANTS. *Repealed*.**

(Ord. 2981; 01-21-20)
(Ord. 2596C; 12-03-12)
(Ord. 2294C; 02-04-08)

# ARTICLE 6. FUEL GAS CODE

**SECTIONS**

4-601 INTERNATIONAL FUEL GAS CODE ADOPTED.
4-602 INTERNATIONAL FUEL GAS CODE, SECTION 101.1. TITLE.
4-603 INTERNATIONAL FUEL GAS CODE, SECTION 106.3. APPLICATION FOR PERMIT.
4-604 INTERNATIONAL FUEL GAS CODE, SECTION 106.5.3. EXPIRATION.
4-605 INTERNATIONAL FUEL GAS CODE, SECTION 106.5.4. EXTENSIONS.
4-606 INTERNATIONAL FUEL GAS CODE, SECTION 106.6.1. WORK COMMENCING BEFORE PERMIT ISSUANCE.
4-607 INTERNATIONAL FUEL GAS CODE, SECTION 106.6.2. FEE SCHEDULE.
4-608 INTERNATIONAL FUEL GAS CODE, SECTION 106.6.3. FEE REFUNDS.
4-609 INTERNATIONAL FUEL GAS CODE, SECTION 106.7. PLACEMENT OF PERMIT.
4-610 INTERNATIONAL FUEL GAS CODE, SECTION 108.4. VIOLATION PENALTIES.
4-611 INTERNATIONAL FUEL GAS CODE, SECTION 108.5. STOP WORK ORDERS.
4-612 INTERNATIONAL FUEL GAS CODE, SECTION 109. MEANS OF APPEAL.
4-613 INTERNATIONAL FUEL GAS CODE, SECTION 201.3. TERMS DEFINED IN OTHER CODES. *REPEALED*.
4-614 INTERNATIONAL FUEL GAS CODE, SECTION 306.3.1. ELECTRICAL REQUIREMENTS. *REPEALED*.
4-615 INTERNATIONAL FUEL GAS CODE, SECTION 306.4.1. ELECTRICAL REQUIREMENTS. *REPEALED*.
4-616 INTERNATIONAL FUEL GAS CODE, SECTION 306.5.2. ELECTRICAL REQUIREMENTS. *REPEALED*.
4-617 INTERNATIONAL FUEL GAS CODE, SECTION 309.2. CONNECTIONS. *REPEALED*.
4-618 INTERNATIONAL FUEL GAS CODE, SECTION 413.9.2.4. GROUNDING AND BONDING. *REPEALED*.
4-619 INTERNATIONAL FUEL GAS CODE, SECTION 703.6. ELECTRICAL WIRING AND EQUIPMENT. *REPEALED*.

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**4-601.** **INTERNATIONAL FUEL GAS CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Fuel Gas Code, 2018 edition, ["IFGC"] prepared and published in book form by the International Code Council, Inc., including appendices A, B and C, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed or added thereto, such incorporation being authorized by K.S.A. §12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2982," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)
(Ord. 1934C; 01-22-02)

**4-602.** **INTERNATIONAL FUEL GAS CODE, SECTION 101.1. TITLE.** Section 101.1 of the IFGC is hereby amended to read as follows: **Title:** This code shall be known and referred to this code, the IFGC, or the International Fuel Gas Code of the City of Leawood, Kansas.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)
(Ord. 1934C; 01-22-02)

**4-603.** **INTERNATIONAL FUEL GAS CODE, SECTION 106.3. APPLICATION FOR PERMIT.** Section 106.3 of the IFGC is hereby amended to read as follows: **Application for Permit.** Each application for a permit, with the required fee, shall be filed with the code official on a form furnished for that purpose and shall contain a general description of the proposed work and its location. The application shall be signed by the owner or an authorized agent. The permit application shall indicate the proposed occupancy of all parts of the building and of that portion of the site or lot, if any, not covered by the building or structure and shall contain such other information required by the code official. An application for a permit for any proposed work shall be deemed to have been abandoned one hundred eighty (180) days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding ninety (90) days each. The extension shall be requested in writing and justifiable cause demonstrated.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)
(Ord. 1934C; 01-22-02)

**4-604.** **INTERNATIONAL FUEL GAS CODE, SECTION 106.5.3. EXPIRATION.** Section 106.5.3 of the IFGC is hereby amended to read as follows: **Expiration.** Permits shall expire as provided in Article 2 of this Chapter.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)
(Ord. 1934C; 01-22-02)

**4-605.** **INTERNATIONAL FUEL GAS CODE, SECTION 106.5.4. EXTENSIONS.** Section 106.5.4 of the IFGC is hereby amended to read as follows: **Extensions.** The code official is authorized to grant extensions as provided in Article 2 of this Chapter.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)
(Ord. 1934C; 01-22-02)

**4-606.** **INTERNATIONAL FUEL GAS CODE, SECTION 106.6.1. WORK COMMENCING BEFORE PERMIT ISSUANCE.** Section 106.6.1 of the IFGC is hereby amended to read as follows: **Work commencing before permit issuance.** Any person who commences work on an installation before obtaining the necessary permits shall be subject to an additional fee established by the City of Leawood Fee Schedule that shall be in addition to the required permit fees.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-607.** **INTERNATIONAL FUEL GAS CODE, SECTION 106.6.2. FEE SCHEDULE.** Section 106.6.2 of the IFGC is hereby amended to read as follows: **Fee schedule.** The fees for work shall be as indicated in the City of Leawood Fee Schedule.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-608.** **INTERNATIONAL FUEL GAS CODE, SECTION 106.6.3. FEE REFUNDS.** Section 106.6.3 of the IFGC is hereby amended to read as follows: **Fee Refunds.** Unless specifically set forth herein, all fees paid are non-refundable. The code official may authorize refunding of any fee paid hereunder, which was erroneously paid or collected. The code official shall upon request authorize refunding of not more than eighty (80) percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The code official shall upon request authorize refunding of not more than eighty (80) percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The code official shall not authorize refunding of any fee paid except on written application filed by the original permit holder not later than one hundred eighty (180) days after the date of fee payment.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-609.** **INTERNATIONAL FUEL GAS CODE, SECTION 106.7. PLACEMENT OF PERMIT.** A new Section 106.7 of the IFGC is hereby added to read as follows: **Placement of Permit.** All permits shall be posted to be visible from the street and kept on the site of the work until the completion of the project.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-610.** **INTERNATIONAL FUEL GAS CODE, SECTION 108.4. VIOLATION, PENALTIES.** Section 108.4 of the IFGC is hereby amended to read as follows: **Violation, Penalties.** Any person who violates a provision of this Article or this code or fails to comply with any of the requirements thereof is guilty of a public offense, punishable by a fine of not more than five hundred dollars ($500) or by imprisonment not exceeding thirty (30) days or both such fine and imprisonment. Each day that the violation continues shall be deemed a separate offense.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-611.** **INTERNATIONAL FUEL GAS CODE, SECTION 108.5. STOP WORK ORDERS.** Section 108.5 of the IFGC is hereby amended to read as follows: **Stop Work Orders.** Upon notice from the code official that work is being done contrary to the provisions of this code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, the owner's agent, or the person doing the work. The notice shall state the conditions under which work is authorized to resume. Any violation of a stop work order will constitute a violation of this code.

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-612.** **INTERNATIONAL FUEL GAS CODE, SECTION 109. MEANS OF APPEAL.** Section 109 of the IFGC is hereby omitted and deleted in its entirety.

(Ord. 2982; 01-21-20)
See Section 4-105
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-613.** **INTERNATIONAL FUEL GAS CODE, SECTION 201.3. TERMS DEFINED IN OTHER CODES.** ***Repealed.***

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-614. INTERNATIONAL FUEL GAS CODE, SECTION 306.3.1. ELECTRICAL REQUIREMENTS.** ***Repealed.***

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-615. INTERNATIONAL FUEL GAS CODE, SECTION 306.4.1. ELECTRICAL REQUIREMENTS.** ***Repealed.***

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-616. INTERNATIONAL FUEL GAS CODE, SECTION 306.5.2. ELECTRICAL REQUIREMENTS.** ***Repealed.***

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-617. INTERNATIONAL FUEL GAS CODE, SECTION 309.2. CONNECTIONS.** ***Repealed.***

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-618. INTERNATIONAL FUEL GAS CODE, SECTION 413.9.2.4. GROUNDING AND BONDING.** ***Repealed.***

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

**4-619. INTERNATIONAL FUEL GAS CODE, SECTION 703.6. ELECTRICAL WIRING AND EQUIPMENT.** ***Repealed.***

(Ord. 2982; 01-21-20)
(Ord. 2597C; 12-03-12)
(Ord. 2295C; 02-04-08)

# ARTICLE 7. EXISTING BUILDING CODE

**SECTIONS**

4-701 INTERNATIONAL EXISTING BUILDING CODE ADOPTED
4-702 INTERNATIONAL EXISTING BUILDING CODE, SECTION 101.1. TITLE.
4-703 INTERNATIONAL EXISTING BUILDING CODE, SECTION 101.2. SCOPE.
4-704 INTERNATIONAL EXISTING BUILDING CODE, DELETIONS.
4-705 INTERNATIONAL EXISTING BUILDING CODE, SECTION 1106.1. ADDITION TO A GROUP E, R-1, R-2, R-3, R-4, I-1, OR I-2 OCCUPANCY.
4-706 INTERNATIONAL EXISTING BUILDING CODE, SECTION 1106.1.1. REQUIRED OCCUPANT CAPACITY FOR GROUP E OCCUPANCIES.
4-707 INTERNATIONAL EXISTING BUILDING CODE, SECTION 1403. DUTIES OF STRUCTURE MOVING PERMITTEE.

**4-701.** **INTERNATIONAL EXISTING BUILDING CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Existing Building Code, 2018 edition, ["IEBC"] prepared and published in book form by the International Code Council, Inc., including appendix B save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed or added thereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2983," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2983; 01-21-20)

**4-702.** **INTERNATIONAL EXISTING BUILDING CODE, SECTION 101.1. TITLE.** Section 101.1 of the IEBC is hereby amended to read as follows: **Title.** These regulations shall be known and referred to as this code, the IEBC, or the Existing Building Code of the City of Leawood, Kansas.

(Ord. 2983; 01-21-20)

**4-703.** **INTERNATIONAL EXISTING BUILDING CODE, SECTION 101.2. SCOPE.** Section 101.2 of the IEBC is hereby amended to read as follows: **Scope.** The provisions of this code and the Leawood Development Ordinance shall apply to the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

**Exception:** Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height

with a separate means of egress, and their accessory structures not more than three stories above grade plane in height, shall comply with this code or the International Residential Code.

(Ord. 2983; 01-21-20)

**4-704.** **INTERNATIONAL EXISTING BUILDING CODE, DELETIONS.** The following provisions of the 2018 International Existing Building Code, as adopted, shall be deleted and omitted.

(a) Section 105 Permits
(b) Section 107 Temporary Structures and Uses
(c) Section 108 Fees
(d) Section 109 Inspections
(e) Section 110 Certificate of Occupancy
(f) Section 111 Service Utilities
(g) Section 112 Board of Appeals
(h) Section 113 Violations
(i) Section 114 Stop Work Order
(j) Section 115 Unsafe Buildings and Equipment
(k) Section 116 Emergency Measures
(l) Section 117 Demolition

See 4-201 et seq.
(Ord. 2983; 01-21-20)

**4-705** **INTERNATIONAL EXISTING BUILDING CODE, SECTION 1106.1. ADDITION TO A GROUP E, R-1, R-2, R-3, R-4, I-1, OR I-2 OCCUPANCY.** Section 1106.1 of the IEBC is hereby amended to read as follows: **Section 1106.1. Addition to a Group E, R-1, R-2, R-3, R-4, I-1, or I-2 Occupancy.** Where an addition is added to a Group E occupancy with an occupant load of 50 or more, or a Group R-1, R-2, R-3, R-4, I-1, or I-2 occupancy of any occupant load, the addition shall have a storm shelter constructed in accordance with ICC 500 as amended in Chapter 2 of this Code.

**Exceptions:**

1. Group E occupancies accessory to places of religious worship.
2. Additions meeting the requirements for shelter design in ICC-500 as amended in Chapter 2 of this Code.
3. Group R-1, R-2, R-3, R-4, I-1, or I-2 additions where no dwelling, dwelling unit, multistory unit or sleeping unit is proposed with the addition.

(Ord. 2983; 01-21-20)

**4-706** **INTERNATIONAL EXISTING BUILDING CODE, SECTION 1106.1.1.**

**REQUIRED OCCUPANT CAPACITY FOR GROUP E OCCUPANCIES.** Section 1106.1.1 of the IEBC is hereby amended to read as follows: **Section 1106.1.1. Required occupant capacity for Group E occupancies.** The required occupant capacity for Group E occupancy storm shelters shall include all buildings on the site, and shall be the greater of the following:

1. The total occupant load of the classrooms, vocational rooms and offices in the Group E occupancy.
2. The occupant load of any indoor assembly space that is associated with the Group E occupancy.

**Exceptions:**

1. Where an addition is being added on an existing site, and where the addition is not of sufficient size to accommodate the required occupant capacity of the storm shelter for all of the buildings on-site, the storm shelter shall at a minimum accommodate the required capacity for the addition.
2. Where approved by the code official, the required occupant capacity of the shelter shall be permitted to be reduced by the occupant capacity of any existing storm shelters on the site.

(Ord. 2983; 01-21-20)

- **4-707 INTERNATIONAL EXISTING BUILDING CODE, SECTION 1403. DUTIES OF STRUCTURE MOVING PERMITTEE.** A new Section 1403 of the IEBC is hereby added to read as follows: **Duties of Structure Moving Permittee.** Every structure moving permit holder shall abide by the all of the following:

(a) Move a building or structure only over streets designated for such use in the written permit.

(b) Notify the building official within forty eight (48) hours of move, in writing, of a desired change in moving date and hour and route of move as proposed in the application and such change must be approved by the building official.

(c) Notify the building official in writing of any and all damages done to property belonging to the public and private property within twenty four (24) hours after the damage or injury has occurred.

(d) During the move, display red lanterns or other warning devices used in compliance with city traffic ordinances or state statutes thereon in such a manner as to show the extreme height and width thereof from thirty (30) minutes after sunset to thirty (30) minutes before sunrise.

(e) At all times erect and maintain barricades across the street in such manner as to protect the public from damage or injury by reason of removal of the building or structure, and shall have sufficient escort as provided by city ordinance, state statutes, or as determined as necessary for the public safety by the chief of police.

(f) Not allow any building or structure or part thereof to be left in the

parkway, street, or on the dedicated right-of-way between the curb and the front property line of any lot.

(g) Comply with the building code, fire zone, zoning ordinances and all other applicable traffic ordinances and laws upon relocating the building or structure in the city or move the same through the city.

(h) Remove all rubbish and materials and fill in excavations to existing grade at the original building or structure site so that the premises are left in a safe and sanitary condition within thirty (30) days from the date of the move.

(i) Notify all utilities having service connections within the building or structure and otherwise located within the city limit whose facilities and services to the public may be affected by the movement of the building or structure and provide copies of such notification to the building official.

(j) Comply with the regulations and specifications contained in such permit granted by the building official to such permit holder.

(k) The permit holder shall be liable for any expenses, damages, costs in excess of deposited amounts of securities, and the city attorney shall prosecute an action against the permit holder in a court of competent jurisdiction for the recovery of such excessive amounts.

(Ord. 2983; 01-21-20)

# ARTICLE 8. ENERGY CONSERVATION CODE

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**SECTIONS**

4-801 INTERNATIONAL ENERGY CONSERVATION CODE ADOPTED.
4-802 INTERNATIONAL ENERGY CONSERVATION CODE, SECTION 101.1. TITLE.
4-803 INTERNATIONAL ENERGY CONSERVATION CODE, DELETED SECTIONS.
4-804 INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R401.2. COMPLIANCE. *REPEALED*.
4-805 INTERNATIONAL ENERGY CONSERVATION CODE, TABLE R402.1.1. *REPEALED*.
4-806 INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R402.4.1.2. TESTING. *REPEALED*.
4-807 INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R403.2.2. SEALING [MANDATORY]. *REPEALED*.
4-808 INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R403.2.3. BUILDING CAVITIES [MANDATORY]. *REPEALED*.
4-809 INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R403.4.2. HOT WATER PIPE INSULATION [PRESCRIPTIVE]. *REPEALED*.
4-810 INTERNATIONAL ENERGY CONSERVATION CODE, SECTION 4.401. LIGHTING EQUIPMENT [MANDATORY]. *REPEALED*.
4-811 INTERNATIONAL ENERGY CONSERVATION CODE, PENALTIES. *REPEALED*.

**4-801.** **INTERNATIONAL ENERGY CONSERVATION CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Energy Conservation Code, 2018 edition, ["IECC"] prepared and published in book form by the International Code Council, Inc., excluding appendices and IECC Residential Provisions, Sections R101 through R505 and RA101-103, and any other articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, or added thereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2984" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2984; 01-21-20)
(Ord. 2296C; 02-04-08)
(Ord. 1935C; 01-22-02)

**4-802.** **INTERNATIONAL ENERGY CONSERVATION CODE, SECTION 101.1. TITLE.** Section 101.1 of the IECC is hereby amended to read as follows: **Title.** This code shall be known and referred to as this code, the IECC, or the Energy Conservation Code of the City of Leawood, Kansas.

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)
(Ord. 2296C; 02-04-08)

(Ord. 1935C; 01-22-02)

**4-803. INTERNATIONAL ENERGY CONSERVATION CODE, DELETED SECTIONS.** The following sections of the IECC are hereby deleted and omitted. The administration of the following provisions shall be governed as provided in Article 2 of this Chapter.

(a) Section C104 Fees
(b) Section C108 Stop Work Order
(c) Section C109 Board of Appeals

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)
(Ord. 2296C; 02-04-08)
(Ord. 1935C; 01-22-02)

**4-804. INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R401.2. COMPLIANCE. *Repealed*.**

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)
(Ord. 2296C; 02-04-08)
(Ord. 1935C; 01-22-02)

**4-805. INTERNATIONAL ENERGY CONSERVATION CODE, TABLE R402.1.1. *Repealed*.**

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)

**4-806. INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R402.4.1.2. TESTING. *Repealed*.**

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)

**4-807. INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R403.2.2. SEALING (MANDATORY). *Repealed*.**

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)

**4-808. INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R403.2.3. BUILDING CAVITIES (MANDATORY). *Repealed*.**

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)

**4-809. INTERNATIONAL ENERGY CONSERVATION CODE, SECTION R403.4.2. HOT WATER PIPE INSULATION (PRESCRIPTIVE). *Repealed*.**

(Ord. 2984; 01-21-20)

(Ord. 2598C; 12-03-12)

**4-810. INTERNATIONAL ENERGY CONSERVATION CODE, SECTION 404.1. LIGHTING EQUIPMENT (MANDATORY).** ***Repealed*****.**

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)

**4-811. INTERNATIONAL ENERGY CONSERVATION CODE, PENALTIES.** ***Repealed*****.**

(Ord. 2984; 01-21-20)
(Ord. 2598C; 12-03-12)

# ARTICLE 9. RESIDENTIAL CODE

**SECTIONS**


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4-955C INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO- FAMILY DWELLINGS, SECTION N1102.4.1.2. TESTING.
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4-955G INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO- FAMILY DWELLINGS, SECTION N1103.5.3. HOT WATER PIPE INSULATION [PRESCRIPTIVE].
4-955H INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO- FAMILY DWELLINGS, SECTION N1104.1. LIGHTING EQUIPMENT [MANDATORY].
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4-959 INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO- FAMILY DWELLINGS, SECTION E3608.1. GROUNDING ELECTRODE SYSTEM. *REPEALED*.
4-960 INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO- FAMILY DWELLINGS, SECTION E3902.2. GARAGE AND ACCESSORY BUILDING RECEPTACLES.

4-961 INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO- FAMILY DWELLINGS, SECTION E3902.5. UNFINISHED BASEMENT RECEPTACLES.
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4-964 INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO- FAMILY DWELLINGS, SECTION AG105.5. BARRIER EXCEPTIONS. *REPEALED*.

**4-901. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, ADOPTED.** There is hereby incorporated by reference that certain code known as the International Residential Code for One- and Two-Family Dwellings, 2018 edition, prepared and published in book form by the International Code Council, Inc., including appendices A, B, C, E, H, I and J, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, or added hereto, such incorporation being authorized by K.S.A. §12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2985," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-902. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R101.1. TITLE.** Section R101.1 of the IRC is hereby amended to read as follows: **Title.** These provisions shall be known as the *Residential Code for One- and Two-family Dwellings* of the City of Leawood, Kansas, and will be referred to as this code, the IRC, or the *Residential Code* of the City of Leawood Kansas.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-902A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R101.2. SCOPE.** Section R101.2 of the IRC is hereby amended to read as follows: **Scope.** The provisions of the International Residential Code for One- and Two-family Dwellings (as amended), and the provisions of the Leawood Development Ordinance shall apply to the construction, alteration,

movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures.

**EXCEPTIONS:** The following shall be permitted to be constructed in accordance with this code where provided with a residential fire sprinkler system complying with Section P2904.

1. Live/work units complying with the requirements of Section 419 of the International Building Code shall be permitted to be built as one- and two-family dwellings or townhouses.
2. Owner-occupied lodging houses with five or fewer guestrooms.
3. A care facility with five or fewer persons receiving custodial care within a dwelling unit.
4. A care facility with five or fewer persons receiving medical care within a dwelling unit.
5. A care facility for five or fewer persons receiving care that are within a single-family dwelling.

Any occupancy where fire sprinkler system requirements are specifically exempted by Kansas Statute or Administrative Regulation shall be exempt from the fire sprinkler requirements above.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-903. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R102.7. EXISTING STRUCTURES.** Section R102.7 of the IRC is hereby amended to read as follows: **Existing structures.** The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the *International Fire Code* or the *Leawood Property Maintenance Code (Chapter VIII),* or as is deemed necessary by the building official for the general safety and welfare of the occupants and the public.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-904. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.1. PERMITS, REQUIRED.** Section R105.1 of the IRC is hereby amended to read as follows: **Permits, Required.** Any owner or authorized agent who intends to do work subject to this code or to otherwise construct, enlarge, alter, repair, move, shore, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical, plumbing, or elevator system, the installation of which is

regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

(A) Any such permit that will result in a new structure or exterior alteration resulting in a change in square footage of an existing structure of ten percent or more or for demolition of an existing structure shall not be issued on residential projects unless and until copies of preliminary or final plans have been submitted to any requesting Homes Association in the City of Leawood as follows:

1. Any legally constituted and existing Homes Association [including any Homeowners Association or residential Condominium Owners Association] may file a written request with the City of Leawood Building Official to receive notice of any application for permit, including applications for permits for moving buildings or changes, additions, constructions or reconstructions to the exterior of any residential home resulting in a change in square footage of ten (10) percent or more of the existing structure in their Association area or applications for demolition of an existing residential structure in the Association area. In such request, the Homes Association shall confirm that it understands any plans received by it from the City may be subject to copyright laws and actions and will be used solely for review in accordance with the applicable declarations and restrictions and will, thereafter, be destroyed. Any mailings to such Association shall be to the designated address. By so submitting the request, the Homes Association acknowledges that it has the duty to review such plans and respond to the owner or authorized agent and also acknowledges that a failure of response within 10 working days of the date of mailing of the preliminary plans, will be presumed to mean acceptance by the Homes Association.
2. Any owner or authorized agent who intends to do work subject to the Leawood Building Code and requiring a permit hereunder in an Association area may:
   (a) Submit two (2) copies of preliminary plans for the project, to include elevations, materials and footprint, to the City Building Official. If so submitted, the Building Official shall forward one (1) copy by regular mail to the requesting Homes Association at the address shown on the written request. In such case, the owner or authorized agent may submit a permit application ten (10) working days after the preliminary plans have been mailed to the requesting Association; or
   (b) Submit a permit application without first submitting the preliminary plans in accordance with subsection (b)(1) above. In such case, the Owner or Agent must submit one additional set of plans and those plans shall be submitted to the requesting Association by regular mail and the Building official shall not take any action on

the permit application until twenty five (25) days have elapsed since the mailing of the permit plans to the requesting Association.

(B) Applications for a re-roofing permit on a residential structure shall meet the following additional requirements:

1. Any legally constituted and existing Homes Association [including any Homeowners Association or residential Condominium Owners Association] may file a written request with the City of Leawood Building Official to receive e-mail notice of any application for a re-roofing permit for a residential structure within its jurisdiction.
2. When an application is received for a re-roofing permit to be issued within an area governed by a requesting association, then the Building Official shall immediately notify the requesting association by e-mail of the receipt of the application and the address for the proposed permit and no permit shall be issued until two full business days after the receipt of the application.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2394C; 05-18-09)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-905. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.2. WORK EXEMPT FROM PERMIT.** Section R105.2 of the IRC is hereby amended to read as follows: **Work exempt from permit.** Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following.

**Building:**

1. Retaining walls that are not over four (4) feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.
2. Sidewalks and driveways not more than thirty (30) inches (762 mm) above grade and not over any basement or story below and which are not part of an accessible route and are not located in the public right-of-way.
3. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
4. Swings and other playground equipment accessory to one-and two-family dwellings.
5. Window awnings supported by an exterior wall that do not project more than 36 inches from the exterior wall and do not require additional support of Group R-3 and Group U occupancies.
6. Window replacement where no structural modifications are made.

**Electrical:**

1. Listed cord-and-plug connected temporary decorative lighting.
2. Reinstallation of attachment plug receptacles but not the outlets therefor.
3. Replacement of branch circuit overcurrent devices of the required capacity in the same location.
4. Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

**Gas:**

1. Portable heating, cooking or clothes drying appliances.
2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

**Mechanical:**

1. Portable heating appliances.
2. Portable ventilation appliances.
3. Portable cooling units.
4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.
5. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.
6. Portable evaporative coolers.
7. Self-contained refrigeration systems containing ten (10) pounds (4.54 kg) or less of refrigerant or that are actuated by motors of one (1) horsepower (746 W) or less.
8. Portable-fuel-cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

**Plumbing:**

1. The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.
2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-906. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.3. APPLICATION FOR PERMIT.** Section R105.3 of the IRC is hereby amended to read as follows:

**(a) Application for permit.**

To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the building official for that purpose. Such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required in Section R106.1.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

**(b) Application for complete structure demolition permit.**

To obtain a fifteen (15) day complete structure demolition permit, the applicant shall first file an application therefor in writing on a form furnished by the building official for that purpose. Such application shall provide:

1. A site plan showing the location of the building or structure to be demolished and of all existing buildings on the property. The plan shall additionally show any necessary means of pedestrian protection as required by the Leawood Building Code.
2. The location where the demolition debris will be deposited.
3. The height and the total square footage of the building.
4. Evidence of required street closure permit.
5. The name and address of the owner of the building.
6. The type of equipment or method used to demolish the building.
7. Evidence that all public utilities have been disconnected.
8. Proof of rat-abating of any building at least ten days before the demolition may be required.
9. Proof of permission from the owner to demolish the building.
10. Evidence that proper erosion control will be provided for the site during demolition as well as during seeding and final grading of site.
11. Evidence that the structure has been inspected for asbestos. If asbestos is found, evidence shall be provided to indicate how the asbestos is to be removed and where it will be disposed.
12. Site plan, which shall indicate proposed grading and seeding.

Said permit may be issued in conjunction with permit for proposed new construction.

**(c) Application for partial structure or interior demolition permit.**
To obtain a thirty (30) day partial structure or interior demolition permit, the applicant shall first file an application therefor in writing on a form furnished by the building official for that purpose. Such application shall provide:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use and occupancy for which the proposed work is intended.
4. Be accompanied by construction documents and other information as required by building official.
5. State the valuation of the proposed work.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as required by the building official.

Said permit may be issued in conjunction with permit for proposed new construction.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-907. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.3.1. ACTION ON APPLICATION.** Section R105.3.1 of the IRC is hereby amended to read as follows: **Action on Application**. The building official shall examine or cause to be examined applications for permits and amendments thereto within a reasonable time after filing. If the application or the construction documents do not conform to the requirements of pertinent laws, the building official shall reject such application in writing, stating the reasons therefore. If the building official is satisfied that the proposed work conforms to the requirements of this code and laws and ordinances applicable thereto, the building official shall issue a permit therefore as soon as practicable.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-908. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.3.1.1 DETERMINATION OF SUBSTANTIALLY IMPROVED OR SUBSTANTIALLY DAMAGED EXISTING BUILDINGS IN FLOOD HAZARD AREAS. *Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-909. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.3.1.1. DETERMINATION OF SUBSTANTIALLY IMPROVED OR SUBSTANTIALLY DAMAGED EXISTING BUILDINGS IN FLOOD HAZARD AREAS.** Section R105.3.1.1 of the IRC is hereby amended to read as follows: **Determination of Substantially Improved or Substantially Damaged Existing Buildings in Flood Hazard Areas**. For applications for reconstruction, rehabilitation, addition, alteration, repair or other improvement of existing buildings or structures located in an area prone to flooding as established by the most current Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) established by the Federal Emergency Management Agency. The building official shall examine or cause to be examined the construction documents and shall prepare a finding with regard to the value of the proposed work. For buildings that have sustained damage of any origin, the value of the proposed work shall include the cost to repair the building or structure to its predamaged condition. If the building official finds that the value of proposed work equals or exceeds 50 percent of the market value of the building or structure before the damage has occurred or the improvement is started, the proposed work shall be deemed a substantial improvement and the building official shall require existing portions of the entire building or structure to meet the requirements of Section R322.

For the purpose of this determination, a substantial improvement shall mean any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. Where the building or structure has sustained substantial damage, repairs necessary to restore the building or structure to its predamaged condition shall be considered substantial improvements regardless of the actual repair work performed. The term substantial improvement shall not include either of the following:

1. Improvements to a building or structure that are required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to ensure safe living conditions.
2. Any alteration of a historic building or structure, provided that the alteration will not preclude the continued designation as a historic building or structure. For the purposes of this exclusion, a historic building shall be any of the following:
   - 2.1 Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places.
   - 2.2 Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic

district or a district preliminarily determined to qualify as an historic district.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-910. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.3.2. TIME LIMITATION OF APPLICATION.** Section R105.3.2 of the IRC is hereby amended to read as follows: **Time limitation of application.** An application for a permit for any proposed work shall be deemed to have been abandoned one hundred eighty (180) days after the date of filing, unless such application has been pursued in good faith or a permit has been issued; except that the building official is authorized to grant one or more extensions of time for additional periods not exceeding ninety (90) days each. The extension shall be requested in writing and justifiable cause demonstrated.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-911. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R105.5. EXPIRATION.** Section R105.5 of the IRC is hereby amended to read as follows: **Expiration.** Permits shall expire as provided in Article 2 of this Chapter.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-912. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R106.1. SUBMITTAL DOCUMENTS.** Section R106.1 of the IRC is hereby amended to read as follows: **Submittal Documents.**

(a) At least two (2) sets of construction documents, special inspection and structural observation programs and other data shall be submitted with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the laws of the jurisdiction in which the project is to be constructed. Where special conditions exist, the building official is authorized to require additional construction documents to be prepared by a registered design professional.

**EXCEPTION**: The building official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that

reviewing of construction documents is not necessary to obtain compliance with this code.

(b) Additional Plans and Studies Necessary. In the case of a rebuild, reconstruction or remodel of an existing residential structure, the building official shall ensure that the following requirements have been met prior to issuance of a building permit:

If the reconstruction or remodeling is adding 400 or more square feet of impervious surface to the lot, then the applicant shall provide a drainage study and/or grading plan to be reviewed and approved by the City Engineer in accordance with the following:

1. If the reconstruction or remodeling will add impervious surfaces to the lot in an amount less than or equal to 50% of the existing impervious surface on the lot, then the applicant shall provide a grading plan prepared by a licensed engineer or land surveyor depicting the grading on the subject lot and extending into adjacent lots at least 25 feet.
2. If the reconstruction or remodeling will add impervious surfaces to the lot in an amount greater than 50% of the existing impervious surface on the lot, then the applicant shall provide a grading plan as referenced above and will also submit a storm water study addressing the increase of impervious area and the potential for drainage problems or flooding of adjacent properties. The storm water study should include solutions to contain water on the subject property or by some other means to eliminate water problems on adjacent lots.

   **EXCEPTION**. The requirement for the study may be waived if, in the opinion of the City Engineer, the grading plan shows that an increase of water or the velocity of water is directed to the City's right-of-way in accordance with other City ordinances and policies.

3. If the application pertains to a new structure being constructed after a complete demolition ["tear down"], then the applicant shall provide the drainage study and grading plan referenced above.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2334C; 08-18-08)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-913. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R106.2. SITE PLAN OR PLOT PLAN.** Section R106.2 of the IRC is hereby amended to read as follows: **Site Plan or Plot Plan.** There shall be a site plan showing, to scale, the size and location of all the new construction and

all existing structures on the site including easements, sewers, drains, utilities, etc., distances from lot lines, established street grades, and the proposed finished grades, and it shall be drawn in accordance with an accurate boundary line survey. All decks, balconies, overhangs, or other building protrusions shall be indicated and dimensioned. In the case of demolition, the plot plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site of the plot. Fire apparatus access roads provided and fire hydrant coverage as approved by the fire official shall be indicated as such on the site plan. The property owner or his or her agent shall certify to the building official that the top of the foundation for a building will be in conformance with the approved site plan, including building elevations, site grading, erosion control devices, and building setbacks. The building official is authorized to waive or modify the requirement for a site plan when the application for permit is for alteration or repair and does not affect the exterior features of the building.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-914. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R107.1. TEMPORARY STRUCTURES AND USES, GENERAL.** Section R107.1 of the IRC is hereby amended to read as follows: **General.** The building official is authorized to issue a permit for temporary structures and temporary uses if otherwise authorized under the Code of the City of Leawood and the Leawood Development Ordinance. Such permits shall be limited in time. The building official may grant extensions for demonstrated cause.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-915. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R107.2. CONFORMANCE.** ***Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-916. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R107.3. TEMPORARY POWER.** ***Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-917. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R108.2. SCHEDULE OF PERMIT FEES.** Section R108.2 of the IRC is hereby amended to read as follows: **Schedule of permit fees.** The fees for work requiring a permit shall be as indicated in the City of Leawood Fee Schedule.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-918. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R108.5. REFUNDS.** Section R108.5 of the IRC is hereby amended to read as follows: **Refunds.** Unless specifically set forth herein, all fees paid are non-refundable. The code official may authorize refunding of any fee paid hereunder, which was erroneously paid or collected. The code official shall upon request authorize refunding of not more than eighty (80) percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. The code official shall upon request authorize refunding of not more than eighty (80) percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done. The code official shall not authorize refunding of any fee paid except on written application filed by the original permit holder not later than one hundred eighty (180) days after the date of fee payment.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-919. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1. TYPES OF INSPECTIONS.** Section R109.1 of the IRC is hereby amended to read as follows: **Types of inspections.** For onsite construction, from time to time the building official, upon notification from the permit holder or his agent, shall make or cause to be made any necessary inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his or her agent wherein the same fails to comply with this code.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 1936C; 01-22-02)

**4-920. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.1. FOUNDATION INSPECTION.** Section R109.1.1 of the IRC is hereby amended to read as follows: **Foundation inspection.**

Inspection of the foundation shall be made after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, or equipment and special requirements for wood foundations.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)
(Ord. 2141C; 11-21-05)
(Ord. 2416C; 10-05-09)

**4-921. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.2. CONCRETE SLAB OR UNDER-FLOOR INSPECTION.** Section R109.1.2 of the IRC is hereby amended to read as follows**: Concrete slab or under-floor inspection.** Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel and building service equipment, conduit, piping accessories and other ancillary equipment items are in place, but before any concrete is placed or floor sheathing installed, including the subfloor.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-922. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.3. PLUMBING, MECHANICAL, GAS AND ELECTRICAL SYSTEMS INSPECTION.** Section R109.1.3 of the IRC is hereby amended to read as follows**: Plumbing, mechanical, gas and electrical systems inspection.** Rough inspection of plumbing, mechanical, gas and electrical systems shall be made prior to covering or concealment, before fixtures or appliances are set or installed, and prior to framing inspection.

**EXCEPTION:** Back-filling of ground-source heat pump loop systems tested in accordance with Section M2105.28 prior to inspection shall be permitted.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-923. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.4. FLOODPLAIN INSPECTIONS.** Section R109.1.4 of the IRC is hereby amended to read as follows**: Floodplain inspections.** For construction in areas prone to flooding as established by the most current Flood Insurance Rate Map (FIRM) and Flood Boundary and Floodway Map (FBFM) established by the Federal Emergency Management Agency, upon placement of the

lowest floor, including basement, and prior to further vertical construction, the building official shall require submission of documentation, prepared and sealed by a registered design professional, of the elevation of the lowest floor, including basement, required in Section R322.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-924. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.5. FRAME AND MASONRY INSPECTION.** Section R109.1.5 of the IRC is hereby amended to read as follows**: Frame and masonry inspection.** Inspection of framing and masonry construction shall be made after the roof, masonry, all framing, firestopping, draftstopping and bracing are in place and after the plumbing, mechanical and electrical rough inspections are approved.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-925. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.6. ROOFING INSPECTIONS.** Section R109.1.6 of the IRC is hereby amended to read as follows**: Roofing inspections.** Roofing inspections shall be made at the mid-point of roofing installation and after roofing installation is complete.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-926. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.7. OTHER INSPECTIONS.** A new Section R109.1.7 of the IRC is hereby added to read as follows**: Other inspections.** In addition to the called inspections above, the building official may make or require any other inspections to ascertain compliance with this code and other laws enforced by the building official.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-927. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.7.1. FIRE-RESISTANCE-RATED CONSTRUCTION INSPECTION.** A new Section R109.1.7.1 of the IRC is hereby added to read as follows**: Fire-resistance-rated construction inspection.** Where fire-resistance-rated construction is required between dwelling units or due to location on property, the building official shall require an inspection of such

construction after all lathing and/or wallboard is in place, but before any plaster is applied, or before wallboard joints and fasteners are taped and finished.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-928. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.7.2. REINFORCED MASONRY, INSULATING CONCRETE FORM (ICF) AND CONVENTIONALLY FORMED CONCRETE WALL INSPECTION.** A new Section R109.1.7.2 of the IRC is hereby added to read as follows**: Reinforced masonry, insulating concrete form (ICF) and conventionally formed concrete wall inspection.** Reinforced masonry walls, insulating concrete form (ICF) walls and conventionally formed concrete walls located in Seismic Design Categories D0, D1, D2, and E shall be inspected after plumbing, mechanical, and electrical systems embedded within the walls, and reinforcing steel are in place and prior to placement of grout or concrete. Inspection shall verify the correct size, location, spacing, and lapping of reinforcing. For masonry walls, inspection shall also verify that the location of grout cleanouts and size of grout spaces comply with the requirements of this code.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-929. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.8. FINAL INSPECTION.** A new Section R109.1.8 of the IRC is hereby added to read as follows**: Final inspection.** Final inspection shall be made after the permitted work is complete and prior to occupancy.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-929A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R109.1.8.1. ELEVATION DOCUMENTATION.** A new Section R109.1.8.1 of the IRC is hereby added to read as follows: **Elevation Documentation.** If located in a flood hazard area, the documentation of elevations required in Section R322.1.10 shall be submitted to the building official prior to the final inspection.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-930. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R110.1. USE AND OCCUPANCY.** Section R110.1 of the IRC is hereby amended to read as follows: **Use and Occupancy.** A building or structure shall not be used or occupied, and a change of occupancy or change of

use of a building or structure or portion thereof shall not be made, until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of the Leawood Building Code or of other ordinances of the City of Leawood. Certificates presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-931. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R110.3. CERTIFICATE ISSUED.** Section R110.3 of the IRC is hereby amended to read as follows: **Certificate issued.** After the building official inspects the building or structure and finds no violations of the provisions of this code, *Leawood Development Ordinance, Fire Protection Code (Chapter VII), Leawood Property Maintenance Code (Chapter VIII)* or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy which shall contain the following:

1. The building permit number.
2. The address of the structure.
3. The name and address of the owner or the owner's authorized agent.
4. A description of that portion of the structure for which the certificate is issued.
5. A statement that the described portion of the structure has been inspected for compliance with the requirements of this code.
6. The name of the building official.
7. The name of the fire official, if applicable.
8. The edition of the code under which the permit was issued.
9. If an automatic sprinkler system is provided and whether the sprinkler system is required.
10. Any special stipulations and conditions of the building permit.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-932. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R110.4. TEMPORARY OCCUPANCY.** Section R110.4 of the IRC is hereby amended to read as follows: **Temporary Occupancy.** The building official is authorized to issue a Temporary Certificate of Occupancy (TCO) before the completion of the entire work covered by the permit, provide that such portion or portions shall be occupied safely. The Building Official shall set a time period during which the temporary certificate of occupancy is valid, provided, however that such time period shall not exceed sixty (60) days. The Building Official

is authorized to renew the Temporary Certificate of Occupancy for two (2) additional periods not exceeding sixty (60) days for each renewal.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-933. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R111.3. AUTHORITY TO DISCONNECT SERVICE UTILITIES.** Section R111.3 of the IRC is hereby amended to read as follows: **Authority to Disconnect Service Utilities.** The building official shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by the *Leawood Building Code, Fire Protection Code (Chapter VII), or Leawood Property Maintenance Code (Chapter VIII),* in case of emergency where necessary to eliminate an immediate hazard to life or property, or where such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the serving utility, and wherever possible the owner and occupant of the building, structure or service system of the decision to disconnect before taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-934. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R112. BOARD OF APPEALS.** Section R112 of the IRC and each and every part thereof is hereby omitted and deleted in its entirety.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
See Section 4-105
(Ord. 2297C; 02-04-08)

**4-935. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R113.4. VIOLATION, PENALTIES.** Section R113.4 of the IRC is hereby amended to read as follows: **Violation, Penalties.** Any person who violates a provision of this Article or this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official is guilty of a public offense, punishable by a fine of not more than five hundred dollars ($500) or by imprisonment not exceeding thirty (30) days or both such fine and imprisonment. Each day that the violation continues shall be deemed a separate offense.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

(Ord. 2297C; 02-04-08)

**4-936. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R114.1. NOTICE TO OWNER.** Section R114.1 of the IRC is hereby amended to read as follows: **Notice to Owner.** Upon notice from the building official that work on any building or structure is being executed contrary to the provisions of this code or any other City of Leawood Ordinances or in an unsafe and dangerous manner, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent or to the person doing the work and shall state the conditions under which work will be permitted to resume.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-937. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, TABLE R301.2(1). CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA.** Table R301.2(1) of the IRC shall be amended to include the following information as if fully set out within the table as indicated:

(a) Ground Snow Load: 20 pounds per square foot
(b) Wind Design - Speed: 115 miles per hour
(c) Wind Design - Topographic effects: No
(d) Wind Design - Special Wind Region: No
(e) Wind Design - Windborne Debris Zone: No
(f) Seismic Design Category: A
(g) Subject to Damage From - Weathering: Severe
(h) Subject to Damage From - Frost Line Depth: 36 inches
(i) Subject to Damage From - Termite: Moderate to Heavy
(j) Decay: Slight to Moderate
(k) Winter Design Temperature: Six degrees Fahrenheit
(l) Ice Barrier Underlayment Required: Yes
(m) Flood Hazards: Latest adopted FIRM and FBFM documents.
(n) Air Freezing Index: 1000
(o) Mean Annual Temperature: 55 degrees Fahrenheit

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2558C; 08-06-12)
(Ord. 2297C; 02-04-08)

**4-938. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R301.4. DEAD LOAD.** Section R301.4 of the IRC is hereby amended to read as follows: **Dead Load.** The actual weights of materials and construction shall be used for determining dead load with consideration for the dead

load of fixed service equipment, provided, however, that the following minimum dead loads shall be used in the design of building:

(a) Floors, ceilings, decks, and balconies: 10 pounds per square foot.

(b) Roofs: 20 pounds per square foot.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-939. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R301.9. BASEMENT REQUIRED.** A new Section R301.9 of the IRC is hereby added to read as follows: **Basement Required**: All single-family detached dwellings shall be constructed with a basement.

**EXCEPTIONS:**

(a) The provisions of this section shall not apply to single-family detached dwellings which are designed and constructed specifically for the use of a disabled individual and which contain a storm shelter or safe room constructed in accordance with IRC Section R323.

(b) The provisions of this section shall not apply to single-family detached dwellings when it would be impractical to construct a basement in light of subsurface conditions verified by an engineer and when such dwellings contain a storm shelter or safe room constructed in accordance with IRC Section R323. .

(c) The provisions of this section shall not apply to the repair or reconstruction of any single-family detached dwelling, unless such dwelling is being one hundred (100) percent reconstructed.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-939A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R302.2. TOWNHOUSES. *Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-939B. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R302.2.4. STRUCTURAL INDEPENDENCE. *Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-939C. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R303.4. MECHANICAL VENTILATION.** Section R303.4 of the IRC is hereby amended to read as follows: **Mechanical Ventilation.** Where the air infiltration rate of a dwelling unit is less than three (3) air changes per hour when tested with a blower door at a pressure of 0.2 inch w.c. (50 Pa) in accordance with

Section N1102.4.1.2 , the dwelling unit shall be provided with whole-house mechanical ventilation in accordance with Section M1505.4.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-939D. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R306.5. TOILET FACILITIES DURING CONSTRUCTION.** A new Section R306.5 of the IRC is hereby added to read as follows: **Toilet Facilities During Construction.** Toilet facilities shall be provided during construction, starting from the time of the first inspection until facilities are available in the dwelling. If the facilities are not located on the job site, the location of the required facilities shall be posted at the job site and the facilities must be within 500 feet as measured from any property line of the job site or other certification provided to the Building Official to verify the availability of toilet facilities. Toilet facilities shall be placed on private property out of the right-of way, and a minimum of 10 feet from neighboring properties. The facilities on the site shall be removed prior to issuance of a Temporary Certificate of Occupancy.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-940. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R310.2.4. EMERGENCY ESCAPE AND RESCUE OPENINGS UNDER DECKS AND PORCHES.** Section R310.2.4 of the IRC is hereby amended to read as follows: **Emergency escape and rescue openings under decks and porches.** Emergency escape and rescue openings installed under decks and porches shall be fully openable and provide a path not less than forty-eight (48) inches (1219 mm) in height to a yard or court.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-941. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R310.7. MAXIMUM HEIGHT OF GROUP R-3 BUILDINGS.** A new Section R310.7 of the IRC is hereby added to read as follows: **Maximum Height of Group R-3 Buildings**. The maximum height for Group R-3 buildings is to be determined by the Leawood Development Ordinance.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-941A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R312.3. WINDOW SILLS.** A new Section R312.3 of the IRC is hereby added to read as follows: **Window Sills.** No window from a sleeping area shall have a sill height in excess of twenty five (25) feet from grade level.

**EXCEPTIONS:**

1. The building is equipped with an approved automatic sprinkler system.
2. In sleeping rooms, which have two separate and distinct exits, which do not share a common interior atmosphere at any point from the sleeping room to an approved exterior exit.
3. The sleeping rooms' emergency egress windows are facing the nearest approved point of fire department vehicle access and are within thirty five (35) horizontal feet of the approved point of fire department access. Note: Residential driveways are not approved fire department access points.
4. The sleeping rooms' emergency egress windows with balconies meet the following requirements:
   (a) Balcony floor located not more than forty four (44) inches below window sill.
   (b) Balcony shall be designed to support a sixty (60) psf live load.
   (c) Balcony shall extend a minimum of thirty six (36) inches perpendicular to the exterior wall.
   (d) Balcony shall extend a minimum of twelve (12) inches beyond each side of the emergency egress windows width.
   (e) Balcony is equipped with a guard in accordance with R312.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-942. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R313. AUTOMATIC FIRE SPRINKLER SYSTEMS.** The entirety of Section R313 of the IRC and all sub-sections are hereby amended to read as follows: **Automatic Fire Sprinkler Systems**. Where automatic residential fire sprinkler systems for one- and two-family dwellings and townhouses are provided, they shall be designed and installed in accordance with Section P2904 or NFPA 13D Refer to Article 2 of this Chapter for fire sprinkler requirements.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-942A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R315.3. CARBON MONOXIDE ALARMS, WHERE REQUIRED IN EXISTING DWELLINGS. *Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-943. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R321.1. PREMISES IDENTIFICATION. *Repealed*.**

(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-944. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R321.4. ACCEPTANCE INSPECTIONS.** A new Section R321.4 of the IRC is hereby added to read as follows: **Acceptance Inspections.** All elevator equipment shall have an acceptance inspection and test performed and approved in accordance with ASME A17.1 requirements. Prior to the issuance of a Certificate of Occupancy, a copy of this inspection shall be forwarded to the City of Leawood.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-945. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R335.1. PHYSICAL SECURITY, PURPOSE.** A new Section R335.1 of the IRC is hereby added to read as follows: **SECTION R335, PHYSICAL SECURITY; R335.1 Purpose.** The purpose of this Section is to establish minimum standards that incorporate physical security to make dwelling units resistant to unlawful entry.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-946. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R335.1.1. SCOPE.** A new Section R335.1.1 of the IRC is hereby added to read as follows: **Scope.** The provisions of this Section shall apply to all new structures and to additions and alterations made to existing buildings.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-947. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R335.2. DOORS.** A new Section R335.2 of the IRC is hereby added to read as follows: **Doors.** Except for vehicular access doors, all exterior swinging doors of residential buildings and attached garages, including the doors leading from the garage area into the dwelling unit, shall comply with the following for the type of door installed.

**(a)** **Wood doors.** Where installed, exterior wood doors shall be of solid core construction such as high-density particleboard, solid wood, or wood block core with a minimum thickness of one and three-fourths inches (1 3/4") at any point. Doors with panel inserts shall be solid wood. The panels shall be a minimum of one inch (1”) thick. The tapered portion of the panel that inserts into the groove of the door shall be a minimum of one-quarter inch (¼”) thick. The groove shall be a dado groove or applied molding construction. The groove shall be a minimum of one-half inch (½”) in depth.

**(b)** **Steel doors.** Where installed, exterior steel doors shall be a minimum thickness of 24 gauge.

**(c)** **Fiberglass doors.** Fiberglass doors shall have a minimum skin thickness of one-sixteenth inch (1/16") and have reinforcement material at the location of the deadbolt.

**(d)** **Double doors.** Where installed, the inactive leaf of an exterior double door shall be provided with flush bolts having an engagement of not less than one inch into the head and threshold of the doorframe.

**(e)** **Sliding doors.** Where installed, exterior sliding doors shall comply with all of the following requirements:

(1) Sliding door assemblies shall be installed to prevent the removal of the panels and the glazing from the exterior with the installation of shims or screws in the upper track.

(2) All sliding glass doors shall be equipped with a secondary locking device consisting of a metal pin or a surface mounted bolt assembly. Metal pins shall be installed at the intersection of the inner and outer panels of the inside door and shall not penetrate the frame's exterior surface. The surface mounted bolt assembly shall be installed at the base of the door.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-948. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R335.3. DOOR FRAMES.** A new Section R335.3 of the IRC is hereby added to read as follows: **Door frames.** The exterior door frames shall be installed prior to a rough-in inspection. Door frames shall comply with the following for the type of assembly installed:

**(a)** **Wood frames.** Wood door frames shall comply with all of the following requirements:

1. All exterior door frames shall be set in frame openings constructed of double studding or equivalent construction, including garage doors, but excluding overhead doors. Door frames, including those with sidelights shall be reinforced in accordance with ASTM F476-84 Grade 40.

2. In wood framing, horizontal blocking shall be placed between studs at the door lock height for three (3) stud spaces or equivalent bracing on each side of the door opening.

**(b)** **Steel frames.** All exterior door frames shall be constructed of 18 gauge or heavier steel, and reinforced at the hinges and strikes. All steel frames shall be anchored to the wall in accordance with manufacturer specifications. Supporting wall structures shall consist of double studding or framing of equivalent strength. Frames shall be installed to eliminate tolerances inside the rough opening.

**(c)** **Door jambs.**

1. Door jambs shall be installed with solid backing in a manner so no void exists between the strike side of the jamb and the frame opening for a

vertical distance of twelve inches (12") each side of the strike. Filler material shall consist of a solid wood block.

2. Door stops on wooden jambs for in-swinging doors shall be of one-piece construction. Jambs for all doors shall be constructed or protected so as to prevent violation of the strike.

**(d)** **Door hardware.** Exterior door hardware shall comply with the following:

**1.** **Hinges.** Hinges for exterior swinging doors shall comply with the following:

A. At least two (2) screws, three inches (3”) in length, penetrating at least one inch (1”) into wall structure shall be used. Solid wood fillers or shims shall be used to eliminate any space between the wall structure and door frame behind each hinge.

B. Hinges for out-swinging doors shall be equipped with mechanical interlock to preclude the removal of the door from the exterior.

**2.** **Strike plates.** Exterior door strike plates shall be a minimum of 18 gauge metal with four offset screw holes. Strike plates shall be attached to wood with not less than three inch (3") screws, which shall have a minimum of one inch (1") penetration into the nearest stud. Note: For side lighted units, refer to subsection 6 below.

**3.** **Escutcheon plates.** All exterior doors shall have escutcheon plates or wraparound door channels installed around the lock protecting the door’s edge.

**4.** **Locks.** Exterior doors shall be provided with a locking device complying with one of the following:

Single Cylinder Deadbolt shall have a minimum projection of one inch (1"). The deadbolt shall penetrate at least three-fourths inch (3/4") into the strike receiving the projected bolt. The cylinder shall have a twist-resistant, tapered hardened steel cylinder guard. The cylinder shall have a minimum of five (5) pin tumblers, shall be connected to the inner portion of the lock by solid metal connecting screws at least one-fourth inch (1/4") in diameter and two and one-fourth inches (2-1/4") in length. Bolt assembly (bolt housing) unit shall be of single piece construction. All deadbolts shall meet ANSI grade 2 specifications.

**5.** **Entry vision and glazing.** All main or front entry doors to dwelling units shall be arranged so that the occupant has a view of the area immediately outside the door without opening the door. The view may be provided by a door viewer having a field of view of not less than one hundred eighty (180) degrees through windows or through view ports.

**6.** **Side lighted entry doors.** Side light door units shall have framing of double stud construction or equivalent construction complying with Sections R335.3(a), (b) and (c). The doorframe that separates the door opening from the side light, whether on the latch side or the hinge side, shall be double stud construction or equivalent construction complying with Sections R335.3(a) and (b). Double stud construction or construction

of equivalent strength shall exist between the glazing unit of the side light and wall structure of the dwelling.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-949. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R335.4. STREET NUMBERS.** A new Section R335.4 of the IRC is hereby added to read as follows: **Street numbers.** Street numbers shall comply with Section R319.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-950. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R335.5. EXTERIOR LIGHTING.** A new Section R335.5 of the IRC is hereby added to read as follows: **Exterior Lighting.** Exterior lighting shall comply with the following:

**(a) Front and street side exterior lighting.** All front and street side door entrances should be protected with a minimum of one light outlet having a minimum of sixty (60) watts of lighting (or energy efficient equivalent), installed so that the light source is not readily accessible.

**(b) Rear exterior lighting.** Homes with windows or doors near ground level below eight feet (8') on the rear side of the house shall be equipped with a minimum of one light outlet having 100 watt lighting (or energy efficient equivalent) and shall be of the flood light type. Those fixtures placed below eight feet (8') shall be fixtures manufactured such that the light source is not readily accessible.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-951. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R335.6. ALTERNATE MATERIALS AND METHODS OF CONSTRUCTION.** A new Section R335.6 of the IRC is hereby added as follows: **Alternate materials and methods of construction.** The provisions of this Section are not intended to prevent the use of any material or method of construction not specifically prescribed by this Section, provided any such alternate has been approved by the enforcing authority, nor is it the intention of this Section to exclude any sound method of structural design or analysis not specifically provided for in this Section. The materials, methods of construction, and structural design limitations provided for in this Section shall be used, unless the enforcing authority grants an exception. The enforcing authority is authorized to approve any such alternate provided they find the proposed design, materials, and methods of work to be at

least equivalent to those prescribed in this Section in quality, strength, effectiveness, burglary resistance, durability, and safety.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-951A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R401.3. DRAINAGE.** Section R401.3 of the IRC is hereby amended to read as follows: **Drainage.** Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection so as to not create a hazard. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall a minimum of 6 inches (152 mm) within the first 10 feet (3048 mm). Gutter discharge shall not extend to a point closer than 10 feet to either adjacent property lines or the public right-of-way. Sump pump discharge shall not extend to a point closer than 15 feet to either adjacent property lines or the public right-of-way.

**EXCEPTION:** Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152 mm) of fall within 10 feet (3048 mm), the final grade shall slope away from the foundation at a minimum slope of 5 percent and the water shall be directed to drains or swales to ensure drainage away from the structure. Swales shall be sloped a minimum of 2 percent when located within 10 feet (3048 mm) of the building foundation. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped not less than 2 percent away from the building.

**EXCEPTION:** Property owners may discharge water directly into the right-of-way if such owner or owners secures a right-of-way permit and otherwise complies with the requirements of Article 3 of Chapter 13 of the Code of the City of Leawood, 2000.

**EXCEPTION:** Gutter Discharge may be placed closer than 10 feet to the adjoining property line in cases where the side yard setback is less than 10 feet, provided that the placement is the best possible placement.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2335C; 08-18-08)

**4-952. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R602.6.1. DRILLING AND NOTCHING OF TOP PLATE.** Section R602.6.1 of the IRC is hereby amended to read as follows: **Drilling and notching of top plate.** When piping or ductwork is placed in or partly in an exterior wall or interior load-bearing wall, necessitating cutting, drilling or notching of the top plate by more than 50 percent of its width, a galvanized metal tie not less than 0.054 inch thick (16 ga) and one and one-half inches (1.5") wide shall be fastened across and to the plate at each side of the opening with not less than four 10d (0.148 inch diameter) nails at each side or equivalent. The metal tie must extend a minimum of

six inches (6") past the opening. See Figure R602.6.1.

**EXCEPTION:** When the entire side of the wall with the notch or cut is covered by wood structural panel sheathing.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-952A INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R801.3. ROOF DRAINAGE.** Section R801.3 of the IRC is hereby amended to read as follows: **Roof Drainage.** All dwellings shall have a controlled method of water disposal from roofs that will collect and discharge roof drainage to the ground surface not less than 3 feet from foundation walls or to an approved drainage system.

(Ord. 2985; 01-21-20)

**4-952B. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R901.1. SCOPE.** Section R901.1 is hereby amended to read as follows: **Scope.** The provisions of this chapter and the Leawood Development Ordinance shall govern the design, materials, construction and quality of roof assemblies.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-953. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R902.1. ROOFING COVERING MATERIALS.** Section R902.1 of the IRC is hereby amended to read as follows: **Roofing Covering Materials.** Roofs shall be covered with materials authorized under the provisions of Sections R904 and R905, and the Leawood Development Ordinance, as amended. Class A roofing shall be installed in areas designated by law as requiring their use or when the edge of the roof is less than three (3) feet (914 mm) from a property line or when less than twenty (20)-feet separation exists between structures. Classes A, B and C roofing required to be listed by this section shall be tested in accordance with UL 790 or ASTM E 108.

**EXCEPTIONS:**

1. Class A roof assemblies include those with coverings of brick, masonry and exposed concrete roof deck.
2. Class A roof assemblies include ferrous or copper shingles or sheets, metal sheets and shingles, clay or concrete roof tile, or slate installed on noncombustible decks.
3. Class A roof assemblies include minimum 16 ounces per square foot copper sheets installed over combustible decks.

4. Class A roof assemblies include slate installed over underlayment over combustible decks.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-953A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R908.1. GENERAL.** Section R908.1 of the IRC is hereby amended to read as follows: **General.** Materials and methods of application used for re-covering or replacing an existing roof covering shall comply with the requirements of Chapter 9, and the Leawood Development Ordinance.

**EXCEPTIONS:**

1. Reroofing shall not be required to meet the minimum design slope requirement of one-quarter unit vertical in 12 units horizontal (2-percent slope) in Section R905 for roofs that provide positive roof drainage.
2. For roofs that provide positive drainage, re-covering or replacing an existing roof covering shall not require the secondary (emergency overflow) drains or scuppers of Section R903.4.1 to be added to an existing roof.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-954. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R908.3. ROOF REPLACEMENT.** Section R908.3 of the IRC is hereby amended to read as follows: **Roof Replacement.** New roof coverings shall be installed as provided for in the Leawood Development Ordinance.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-954A. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION R908.7. PARTIAL REPLACEMENT.** A new Section R908.7 of the IRC is hereby added to read as follows: **Partial Replacement.** Where only a portion of the existing roof coverings are being replaced, the replacement roof coverings shall be the exact brand and type, shall be of a material from the City of Leawood's approved roofing list, and shall exactly match the color of the existing roof coverings. Where over 50 % of the roof coverings are being replaced, complete replacement of all roof coverings is required. Replacement roof coverings for two-family dwellings and townhouses shall be the exact brand and type, shall be of a material from the City of Leawood's approved roofing list, and shall match the color of the roof coverings for the entire building.

**EXCEPTION:** Wood shakes and wood shingles installed in compliance with this code, and the Leawood Development Ordinance that are the exact brand, type, and original color of the existing wood shakes or wood shingles are permitted to be replaced in amounts less than 50%.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-955. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION N1101.13. COMPLIANCE.** Section N1101.13 of the IRC is hereby amended to read as follows: **Compliance.** Projects shall comply with one of the following:

1. Sections N1101.14 through N1104.
2. Section N1105 and the provisions of Sections N1101.14 through N1104 indicated as "Mandatory".
3. The energy rating index (ERI) approach in Section N1106.
4. The Home Energy Rating System approach in Section N1101.13.1.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-955A INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION N1101.13.1. HOME ENERGY RATING SYSTEM.** Section N1101.13.1 of the IRC is hereby amended to read as follows: **Home Energy Rating System**. The ERI Index rating option can be met by constructing a residence that scores 80 or less on the HERS Index. All HERS ratings shall be performed by a third-party rater accredited by the Residential Energy Services Network (RESNET/ICC). The permit applicant of record shall elect which compliance path will be followed at the time permit application is made. The Final HERS Index score must be submitted to the City before issuance of a Certificate of Occupancy. The Final HERS certificate shall identify the project address, and include the HERS raters name and contact information.

(Ord. 2985; 01-21-20)

**4-955B. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, TABLE N1102.1.2.** Table N1102.1.2 of the IRC is hereby amended to read as follows:

**Table N1102.1.2**

**Insulation and Fenestration Requirements by Component [a]**

| Climate Zone | Fenestration U-factor[b] | Skylight U-factor[b] | Glazed Fenestration SHGC[b] | Ceiling R-Value | Wood Frame Wall R- | Mass Wall R- | Floor R-Value | Basement Wall R-Value[c] | Slab R-Value | Crawl Space Wall R- |
|---|---|---|---|---|---|---|---|---|---|---|

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Value | Value[e] | | | & Depth[d] | Value[c] |
| 4 | 0.32 | 0.55 | 0.4 | 49 | 13[f] | 8/13 | 19 | 10/13 | NR | 10/13 |

a. R-values are minimums. U-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the installed R-value of the insulation shall not be less than the R-value specified in the table.

b. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

c. "10/13" means R-10 continuous insulation on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement walls or crawl spaces.

d. R-5 insulation shall be provided under the full slab area of a heated slab. R-10 slab edge insulation shall be provided for heated slabs and shall extend the depth of the slab.

e. The second R-value applies when more than half the insulation is on the interior of the mass wall.

f. Where 2 x 6 framing is used, a minimum R-19 insulation is required.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-955C. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION N1102.4.1.2. TESTING.** Section N1102.4.1.2 of the IRC is hereby amended to read as follows: **Testing.** The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding 5 air changes per hour. Testing shall be conducted in accordance with RESNET/ICC 380, ASTM E779 or ASTM E1827 and reported at a pressure of 0.2 inches w.g. (50 Pascals). Testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the Code Official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

**During testing**:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed, beyond the intended weather-stripping or other infiltration control measures;
2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of the test, shall be open;

4. Exterior or interior terminations for continuous ventilation systems shall be sealed;
5. Heating and cooling systems, where installed at the time of the test, shall be turned off; and
6. Supply and return registers, where installed at the time of the test, shall be fully open.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-955D. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION N1103.3.3. DUCT TESTING (MANDATORY).** Section N1103.3.3 of the IRC is hereby amended to read as follows: **Duct Testing (Mandatory).** Where required by the Building Official, duct tightness shall be verified by either of the following:

1. Postconstruction test: Total leakage shall be less than or equal to 4 cfm per 100 square feet of conditioned floor area when tested at a pressure differential of 0.1 inches w.g.(25 Pa) across the entire system, including the manufacturer's air handler enclosure. Registers shall be taped or otherwise sealed during the test.
2. Rough-in test: Total leakage shall be less than or equal to 4 cfm per 100 square feet of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure. Registers shall be taped or otherwise sealed during the test. Where the air handler is not installed at the time of the test, the total leakage shall be less than or equal to 3 cfm per 100 square feet of conditioned floor area.

**EXCEPTIONS:**

1. The duct air-leakage test shall not be required where ducts and air handlers are located entirely within the building thermal envelope.
2. On the postconstruction test, it is permissible to test for "leakage to the outdoors" versus a "total leakage." Leakage to the outdoors shall be less than or equal to 8 cfm per 100 square feet of conditioned floor area.
3. A duct air-leakage test shall not be required for ducts serving heat or energy recovery ventilators that are not integrated with ducts serving heating or cooling systems.

A written report of the results of the test shall be signed by the party conducting the test and provided to the building official.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-955E INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY**

**DWELLINGS, SECTION N1103.3.4. DUCT LEAKAGE (PRESCRIPTIVE).** Section N1103.3.4 of the IRC is hereby omitted and deleted.

(Ord. 2985; 01-21-20)

**4-955F. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION N1103.3.5. BUILDING CAVITIES (MANDATORY).** Section N1103.3.5 of the IRC is hereby omitted and deleted.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-955G. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION N1103.5.3. HOT WATER PIPE INSULATION (PRESCRIPTIVE).** Section N1103.5.3 of the IRC is hereby amended to read as follows: **Hot water pipe insulation (Prescriptive).** Insulation for hot water pipe with a minimum thermal resistance (R-value) of R-3 shall be applied to the following:

1. Piping located under a floor slab.
2. Buried piping.
3. Supply and return piping in recirculation systems other than demand recirculation systems.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-955H. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION N1104.1. LIGHTING EQUIPMENT (MANDATORY).** Section N1104.1 of the IRC is hereby amended to read as follows: **Lighting Equipment (Mandatory).** Fuel gas lighting systems shall not have continuously burning pilot lights.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-956. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION M1507.2. RECIRCULATION OF AIR. *Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-957. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION G2402.3. TERMS DEFINED IN OTHER CODES.** Section G2402.3 of the IRC is hereby amended to read as follows: **Terms defined in other codes.** Where terms are not defined in this code and are defined in the *NFPA 70 National Electrical Code, 2017, International Building Code, International Fire Code,*

*International Mechanical Code* or *International Plumbing Code*, such terms shall have meanings ascribed to them as in those codes.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-957A INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION G2417.4.1. TEST PRESSURE.** Section G2417.4.1 of the IRC is hereby amended to read as follows: **Test Pressure.** The test pressure to be used shall not be less than 1½ times the proposed maximum working pressure, but not less than 10 psig irrespective of design pressure. For welded piping and for piping carrying gas at pressure in excess of 14 inches water column, the test pressure shall not be less than 60 psig. Where the test pressure exceeds 125 psig, the test pressure shall not exceed a value that produces a hoop stress in the piping greater than 50 percent of the specified minimum yield strength of the pipe.

(Ord. 2985; 01-21-20)

**4-957B INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION P2503.3. RESPONSIBILITY OF PERMITTEE.** Section P2503.3 of the IRC is hereby amended to read as follows: **Responsibility of Permittee.** The permit holder shall make the applicable tests prescribed in Section 2503.4 through Section 2503.8 to determine compliance with the provisions of this Code.

(Ord. 2985; 01-21-20)

**4-957C INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION P2708.1.1. ACCESS.** Section P2708.1.1 of the IRC is hereby omitted and deleted.

(Ord. 2985; 01-21-20)

**4-958. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION E3406.2. CONDUCTOR MATERIAL.** Section E3406.2 of the IRC is hereby amended to read as follows: **Conductor Material.** Conductors normally used to carry current shall be of copper.

**EXCEPTION:** Service lateral conductors, service entrance conductors, and feeder conductors two AWG and larger are allowed to be of any type as allowed by this code.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2559C; 08-06-12)
(Ord. 2297C; 02-04-08)

**4-959. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION E3608.1. GROUNDING ELECTRODE SYSTEM.** ***Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-960. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION E3902.2. GARAGE AND ACCESSORY BUILDING RECEPTACLES.** Section E3902.2 of the IRC is hereby amended to read as follows: **Garage and accessory building receptacles.** 125-volt, single-phase, 15- or 20-ampere receptacles installed in garages and grade-level portions of unfinished accessory buildings used for storage or work areas shall have ground-fault circuit-interrupter protection for personnel.

**EXCEPTIONS:**

1. Dedicated receptacles supplying garage door openers.
2. Dedicated receptacles supplying a permanently installed fire alarm or security alarm system.
3. (Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-961. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION E3902.5. UNFINISHED BASEMENT RECEPTACLES.** Section E3902.5 of the IRC is hereby amended to read as follows: **Unfinished basement receptacles.** All 125-volt single-phase, 15- and 20-ampere receptacles installed in unfinished basements shall have ground-fault circuit-interrupter protection for personnel. For purposes of this section, unfinished basements are defined as portions or areas of the basement not intended as habitable rooms and limited to storage areas, work areas, and the like.

**EXCEPTIONS:**

1. Dedicated receptacles supplying a permanently installed fire alarm or security alarm system.
2. Dedicated receptacles supplying sump pumps.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

**4-962. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION E3902.16. ARC-FAULT CIRCUIT-INTERRUPTER PROTECTION.** Section E3902.16 of the IRC is hereby amended to read as follows: **Arc-fault circuit-interrupter protection.** All branch circuits that supply 120-volt,

single-phase, 15- and 20-ampere outlets installed in kitchens, family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sunrooms, recreations rooms, closets, hallways, laundry areas and similar rooms or areas shall be protected by any of the following:

1. A listed combination-type arc-fault circuit-interrupter, installed to provide protection of the entire branch circuit.
2. A listed branch/feeder-type AFCI installed at the origin of the branch-circuit in combination with a listed outlet branch-circuit-type arc-fault circuit-interrupter installed at the first outlet box on the branch circuit. The first outlet box in the branch circuit shall be marked to indicate that it is the first outlet of the circuit.
3. A listed supplemental arc-protection circuit breaker installed at the origin of the branch circuit in combination with a listed outlet branch-circuit-type arc-fault circuit interrupter installed at the first outlet box on the branch circuit where all of the following conditions are met:
   3.1 The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit-interrupter.
   3.2 The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet for 14 AWG conductors and 70 feet for 12 AWG conductors.
   3.3 The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit.
4. A listed outlet branch-circuit type arc-fault circuit-interrupter installed at the first outlet on the branch circuit in combination with a listed branch-circuit overcurrent protective device where all of the following conditions are met:
   4.1 The branch-circuit wiring shall be continuous from the branch-circuit overcurrent device to the outlet branch-circuit arc-fault circuit-interrupter.
   4.2 The maximum length of the branch-circuit wiring from the branch-circuit overcurrent device to the first outlet shall not exceed 50 feet for 14 AWG conductors and 70 feet for 12 AWG conductors.
   4.3 The first outlet box on the branch circuit shall be marked to indicate that it is the first outlet on the circuit.
   4.4 The combination of the branch-circuit overcurrent device and outlet branch-circuit AFCI shall be identified as meeting the requirements for a system combination-type AFCI and shall be listed as such.
5. Where metal outlet boxes and junction boxes and RMC, IMC, EMT, Type MC or steel-armored Type AC cables meeting the requirements of Section E3908.8, metal wireways or metal auxiliary gutters are installed for the portion of the branch circuit between the branch-circuit overcurrent device and the first outlet, a listed outlet branch-circuit type AFCI installed at the first outlet shall be considered as providing protection for the remaining portion of the branch circuit.
6. Where a listed metal or nonmetallic conduit or tubing or Type MC cable is encased in not less than 2 inches of concrete for the portion of the branch

circuit between the branch-circuit overcurrent device and the first outlet, a listed outlet branch-circuit-type AFCI installed at the first outlet shall be considered as providing protection for the remaining portion of the branch circuit.

**EXCEPTIONS:**

1. AFCI protection is not required for an individual branch circuit supplying only a fire alarm system where the branch circuit is wired with metal outlet and junction boxes and RMC, IMC, EMT or steel-sheathed armored cable Type AC or Type MC meeting the requirements of Section E3908.8.
2. For these purposes, a smoke alarm or carbon monoxide alarm shall not be considered an outlet and is not required to have arc-fault protection.

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-963. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION E3902.13. ARC-FAULT CIRCUIT INTERRUPTER PROTECTION FOR BRANCH CIRCUIT EXTENSIONS OR MODIFICATIONS. *Repealed*.**

(Ord. 2985; 01-21-20)
(Ord. 2599C; 12-03-12)

**4-964. INTERNATIONAL RESIDENTIAL CODE FOR ONE- AND TWO-FAMILY DWELLINGS, SECTION AG105.5. BARRIER EXCEPTIONS. *Repealed*.**

(Ord. 2985; 01-21-20)
*Formerly 4-961*
(Ord. 2599C; 12-03-12)
(Ord. 2297C; 02-04-08)

# ARTICLE 10. SWIMMING POOL AND SPA CODE

**SECTIONS**

4-1001 INTERNATIONAL SWIMMING POOL AND SPA CODE ADOPTED.
4-1002 INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 101.1. TITLE.
4-1003 INTERNATIONAL SWIMMING POOL AND SPA CODE, DELETIONS.
4-1004 INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.1. GENERAL.
4-1005 INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.2.5. CLOSELY SPACED HORIZONTAL MEMBERS.
4-1006 INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.2.6. WIDELY SPACED HORIZONTAL MEMBERS.
4-1007 INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.4. STRUCTURE WALL AS A BARRIER.

**4-1001. INTERNATIONAL SWIMMING POOL AND SPA CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Swimming Pool and Spa Code, 2018 edition, [hereafter "ISPSC"] prepared and published in book form by the International Code Council, Inc., except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed or added thereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2986," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2986; 01-21-20)
(Ord. 2298C; 02-04-08)

**4-1002 INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 101.1. TITLE.** Section 101.1 of the ISPSC is hereby amended to read as follows: **Title.** These regulations shall be known and referred to as this code, the ISPSC, or the Swimming Pool and Spa Code of the City of Leawood, Kansas.

(Ord. 2986; 01-21-20)

**4-1003 INTERNATIONAL SWIMMING POOL AND SPA CODE, DELETIONS.** The following provisions of the ISPSC are hereby deleted and omitted:

(a) All of Section 105 Permits
(b) All of Section 106 Inspections
(c) All of Section 107 Violations
(d) All of Section 108 Means of Appeal

(Ord. 2986; 01-21-20)

*See 4-201 et seq.*

**4-1004** **INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.1. GENERAL.** Section 305.1 of the ISPSC is hereby amended to read as follows: **General.** The provisions of this section shall apply to the design of barriers for restricting entry into areas having pools or spas.

(Ord. 2986; 01-21-20)

**4-1005** **INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.2.5. CLOSELY SPACED HORIZONTAL MEMBERS.** Section 305.2.5 of the ISPSC is hereby amended to read as follows: **Closely spaced horizontal members.** Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is less than 44 inches, the horizontal members shall be located on the pool or spa side of the fence. Spacing between vertical members shall not exceed 1 ¾ inches in width. Where there are decorative cutouts within vertical members, spacing within the cutouts shall not exceed 1 ¾ inches in width.

(Ord. 2986; 01-21-20)

**4-1006** **INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.2.6. WIDELY SPACED HORIZONTAL MEMBERS.** Section 305.2.6 of the ISPSC is hereby amended to read as follows: **Widely spaced horizontal members.** Where the barrier is composed of horizontal and vertical members and the distance between the tops of the horizontal members is 44 inches or more, spacing between vertical members shall not exceed 4 inches. Where there are decorative cutouts within vertical members, the interior width of the cutouts shall not exceed 1 ¾ inches.

**EXCEPTIONS:**

1. Where a lockable safety cover is provided for the spa in accordance with ASTM F 1346, the distance between the tops of the horizontal members is permitted to be no less than 32 inches.
2. Where the swimming pool is equipped with a powered safety cover that complies with ASTM F1346, the distance between the tops of the horizontal members is permitted to be no less than 32 inches.

(Ord. 2986; 01-21-20)

**4-1007** **INTERNATIONAL SWIMMING POOL AND SPA CODE, SECTION 305.4. STRUCTURE WALL AS A BARRIER.** Section 305.4 is hereby amended to read as follows: **Structure wall as a barrier.** Where a wall of a dwelling or structure serves as part of the barrier, doors that provide direct access to the aquatic vessel through the wall, shall be equipped with one or more of the following:

1. An alarm that produces an audible warning when the door is opened.

2. A safety cover that is listed and labeled in accordance with ASTM F 1346 is provided for pools and spas.
3. Another approved means of protection, such as self-closing doors with self-latching devices, provided that the degree of protection afforded is not less than the protection afforded by Items 1 or 2.

(Ord. 2986; 01-21-20)

## ARTICLE 11. ABATEMENT OF DANGEROUS BUILDINGS CODE-ARTICLE REPEALED

**(Ord. 2299C; 02-04-08)**

# ARTICLE 12. INSURANCE PROCEEDS FUND

**SECTIONS**

4-1201 SCOPE AND APPLICATION
4-1202 LIEN CREATED
4-1203 ENCUMBRANCES
4-1204 PRO RATA BASIS
4-1205 PROCEDURE
4-1206 FUND CREATED; DEPOSIT OF MONEYS
4-1207 BUILDING OFFICIAL; INVESTIGATION, REMOVAL OF STRUCTURE
4-1208 REMOVAL OF STRUCTURE; EXCESS MONEYS
4-1209 DISPOSITION OF FUNDS'
4-1210 EFFECT UPON INSURANCE POLICIES
4-1211 INSURERS; LIABILITY

**4-1201. SCOPE AND APPLICATION**

The City is hereby authorized to utilize the procedures established by K.S.A. § 40-3901 et seq., whereby no insurance company shall pay a claim of a named insured for loss or damage to any building or other structure located within the city, where the amount recoverable for the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy covering such building or other insured structure, unless there is compliance with the procedures set out in this ordinance.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)
(Ord. 2790C; 07-05-16)

**4-1202. LIEN CREATED**

The Governing Body of the City hereby creates a lien in favor of the city on the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure located within the city, where the amount recoverable for all the loss or damage to the building or other structure under all policies is in excess of 75 percent of the face value of the policy(s) covering such building or other insured structure. The lien arises upon any unpaid tax, special ad valorem levy, or any other charge imposed upon real property by or on behalf of the city which is an encumbrance on real property, whether or not evidenced by written instrument, or such tax, levy, assessment, expense or other charge that has remained undischarged for at least one year prior to the filing of a proof of loss.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)
(Ord. 2790C; 07-05-16)

**‘4-1203. ENCUMBRANCES**

Prior to final settlement on any claim covered by Section 2, the insurer or insurers shall contact the county treasurer, Johnson County, Kansas, to determine whether any such encumbrances are presently in existence. If the same are found to exist, the insurer or insurers shall execute and transmit in an amount equal to that owing under the encumbrances a draft payable to the county treasurer, Johnson County, Kansas.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)

**4-1204. PRO RATA BASIS**

Such transfer of proceeds shall be on a pro rata basis by all insurance companies insuring the building or other structure.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)

**4-1205. PROCEDURE**

(a) When final settlement on a covered claim has been agreed to or arrived at between the named insured or insureds and the company or companies, and the final settlement exceeds 75 percent of the face value of the policy covering any building or other insured structure, and when all amounts due the holder of a first real estate mortgage against the building or other structure, pursuant to the terms of the policy and endorsements thereto, shall have been paid, the insurance company or companies shall execute a draft payable to the city in an amount equal to the sum of 15 percent of the covered claim payment unless the Building Official of the city has issued a certificate to the insurance company or companies that the insured has removed the damaged building or other structure, as well as all associated debris, or repaired, rebuilt, or otherwise made the premises safe and secure.

(b) Such transfer of funds shall be on a pro rata basis by all companies insuring the building or other structure. Policy proceeds remaining after the transfer to the city shall be disbursed in accordance with the policy terms.

(c) Upon the transfer of the funds as required by subsection (a) of this section, the insurance company shall provide the city with the name and address of the named insured or insureds, the total insurance coverage applicable to said building or other structure, and the amount of the final settlement agreed to or arrived at between the insurance company or companies and the insured or insureds, whereupon the Building Official shall contact the named insured or insureds by registered mail, notifying them that said insurance proceeds have been received by the city and apprise them of the procedures to be followed under this ordinance.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)

**4-1206. FUND CREATED; DEPOSIT OF MONEYS**

The city finance director is hereby authorized and shall create a fund to be known as the "Insurance Proceeds Fund." All moneys received by the city finance department as provided for by this ordinance shall be placed in said fund and deposited in an interest-bearing account.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)

**4-1207. BUILDING OFFICIAL; INVESTIGATION, REMOVAL OF STRUCTURE**

(a) Upon receipt of moneys as provided for by this ordinance, the city Finance Director shall immediately notify the Building Official of said receipt, and transmit all documentation received from the insurance company or companies to the Building Official.

(b) Within 20 days of the receipt of said moneys, the Building Official shall determine, after prior investigation, whether the city shall instigate proceedings under the provisions of K.S.A. § 12-1750 et seq., as amended.

(c) Prior to the expiration of the 20 days established by subsection (b) of this section, the Building Official shall notify the city finance director whether he or she intends to initiate proceedings under K.S.A. § 12-1750 et seq., as amended.

(d) If the Building Official has determined that proceedings under K.S.A. § 12-1750 et seq., as amended shall be initiated, he or she will do so immediately but no later than 45 days after receipt of the moneys by the city finance department.

(e) Upon notification to the city finance department by the Building Official that no proceedings shall be initiated under K.S.A. § 12-1750 et seq., as amended, the city finance director shall return all such moneys received, plus accrued interest, to the insured or insureds as identified in the communication from the insurance company or companies. Such return shall be accomplished within 45 days of the receipt of the moneys from the insurance company or companies.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)
(Ord. 2790C; 07-05-16)

**4-1208. REMOVAL OF STRUCTURE; EXCESS MONEYS**

If the Building Official has proceeded under the provisions of K.S.A. § 12-1750 et seq., as amended, all moneys in excess of that which is ultimately necessary to comply with the provisions for the removal of the building or structure, less salvage value, if any, shall be paid to the insured.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)

**4-1209. DISPOSITION OF FUNDS**

If the Building Official, with regard to a building or other structure determines that it is necessary to act under K.S.A. § 12-1756, any proceeds received by the city finance department under the authority of Section 5(a) relating to that building or other structure shall be used to reimburse the city for any expenses incurred by the city in proceeding under K.S.A. § 12-1756. Upon reimbursement from the insurance proceeds, the Building Official shall immediately effect the release of the lien resulting therefrom. Should the expenses incurred by the city exceed the insurance proceeds paid over to the city under Section 5(a), the Building Official shall publish a new lien as authorized by K.S.A. § 12-1756, in an amount equal to such excess expenses incurred.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)
(Ord. 2790C; 07-05-16)

**4-1210. EFFECT UPON INSURANCE POLICIES**

This ordinance shall not make the city a party to any insurance contract, nor is the insurer liable to any party for any amount in excess of the proceeds otherwise payable under its insurance policy.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)

**4-1211. INSURERS; LIABILITY**

Insurers complying with this ordinance or attempting in good faith to comply with this ordinance shall be immune from civil and criminal liability and such action shall not be deemed in violation of K.S.A. 40-2404 and any amendments thereto, including withholding payment of any insurance proceeds pursuant to this ordinance, or releasing or disclosing any information pursuant to this ordinance.

(Ord. 1882C; 01-16-01)
(Ord. 1939C; 01-22-02)

# CHAPTER V. BUSINESS LICENSES AND REGULATIONS

**Article 1. General Regulations and Licenses**
**Article 1A. Adult Employee Permits**
**Article 1B. Pawnbrokers and Precious Metals Dealers**
**Article 2. Solicitors, Canvassers, Peddlers, Transient Merchants**
**Article 3. Repealed**
**Article 4. Commercial Use of Streets**
**Article 5. Massage Establishments and Massage Therapists**

## ARTICLE 1. GENERAL REGULATIONS AND LICENSES

**5-101.** **DEFINITIONS.** For the purposes of this chapter, the following words shall mean:

(a) ***Business*** means and includes businesses, trades, occupations, professions, and also callings and rendering or furnishing a service for profit; provided, that the name of a business, trade, occupation, profession or calling may be used, and when so used, shall refer to the particular business, trade, occupation, profession or calling.

(b) ***Domiciled*** means having a fixed location for a business or a place of business in the City of Leawood, Kansas.

(c) ***Employee*** means and includes any and all persons engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, agent, manager, solicitor, and any and all other persons employed or working in said business.

(d) ***Fee*** means a business or license fee assessed through the City's police power for the costs incurred for regulation of such business.

(e) ***Finance Director*** shall mean the Finance Director or his or her designee.

(f) ***License*** means the document issued by the City and duly executed and signed by the proper City officials, which acknowledges payment of the required occupation or license tax and states the name of the licensee, the nature, type and location of the business, and the period for which the license is valid.

(g) ***Person*** means and includes any individual, partnership, corporation, firm, organization, association, joint stock company or syndicate who or which is engaged in any business, trade, occupation or profession, or rendering or furnishing any service for profit or livelihood and subject to the provisions of this Chapter; provided, that any individual in the direct employ of any person licensed under the provisions of this Chapter shall be exempt unless such individual operates as a subcontractor or practices his or her skill or performs services for compensation for any person other than his or her licensed employer, in which cases, such individual is subject to the full provisions of this Chapter.

(h) ***Tax*** means the occupation or license tax assessed by the City for the purpose of providing revenue without regulations upon and for the privilege of engaging in

business within the City.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Charter Ord. No. 37)
(Ord. 2043C; 02-02-04)

**5-102.** **LICENSE REQUIRED.** No person, either as principal officer, agent, servant or employee, except as may be exempted by state statute or provisions of this article, shall conduct, pursue, carry on, or operate within the City, any business, trade, occupation or profession or render or furnish any service specified in this Chapter, as hereinafter defined and specified, without first making application to the Finance Director for a license therefore and paying to the office of the Finance Director the required occupation or license tax, as hereinafter prescribed, and obtaining an occupation license from the City.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-103.** **APPLICATION.** Each person shall, before engaging in any business to which this Article applies or before continuing any such business after a license has expired, make application for a license and pay the occupation or license tax. Application shall be made to the Finance Director on a form approved by the Finance Director for such purposes and shall state the name and title, if any, of the applicant, the name and address of the business, the type and nature of the business, and shall provide proof of all other necessary permits, licenses, or approvals required by the City, and such other information as may be necessary to determine the amount of tax to be paid. The Finance Director may, in his or her discretion, cause an investigation to be made to verify the accuracy of the information.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-104. ISSUANCE.**

(a) Upon proper application for license and upon payment of the occupation tax or license fee as provided in this Article, the Finance Director shall issue a valid license to the applicant. The license shall be signed by the Mayor and the Finance Director. The City Clerk shall affix the official seal of the City to each license.

(b) The signatures of the Mayor and the Finance Director and the official seal of the City may be affixed by a printed, stamped, engraved or otherwise produced facsimile in accordance with the provisions of K.S.A. § 75-4001 *et seq.*

(c) No license shall be issued for any business conducted in violation of or contrary to any state or federal law or any ordinance of the City.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-105. TERM OF LICENSE**

Each license issued pursuant to this Article shall be for a term commencing on the first day of July and expiring on the 30th day of June in each year, unless a different time is specifically stated. [See Section 5-106]

(Ord. No. 638; 07-02-79)
( Code 2000)
(Ord. 2043C; 02-02-04)

**5-106. NEW BUSINESSES**

Every person or firm commencing business shall first secure an occupation license covering the period from the date from which the business is to be started until the next succeeding July 1st. The tax which would be payable on an annual basis shall be determined as provided by this Article and the tax for this initial period shall be determined by dividing the annual tax by 12 and multiplying by the number of months or fraction thereof remaining to the next July 1st, unless a different time is specifically stated.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-107. REFUND OF FEES.**

(a) Every person making application for or receiving a license, as provided in this Article, shall pay to the Finance Director, at the time of such application, the full amount of the occupation tax or license fee as determined by this Article. No license shall be issued to any person without payment in full of the occupation tax or license fee.

(b) No refunds will be made for any business ceasing during the year or for any tax collected under the provisions of this Article.

(Ord. No. 638; 07-02-79)

(Code 2000)
(Ord. 2043C; 02-02-04)

**5-108.** **DISPLAY OF LICENSE.** Any and all persons doing business in a permanent location within the City are hereby required to have their licenses conspicuously displayed in their places of business, and all persons to whom licenses are issued who do not have permanent places of business within the City are hereby required to carry their licenses, or copies thereof, with them and to present the licenses or copies for inspection when requested to do so by any citizen or officer of the City, when conducting a business in the City.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-109.** **PAYMENT OF LICENSE FEE: DELINQUENT.**

(a) Each license issued under this Article shall expire on the 30th day of June next following the date of issuance of such license.

(b) Any license which expires under the provisions of this Section may be renewed for the next license term by making application for renewal to the Finance Director and by making payment in full of the annual occupation tax or license fee for the next current license term. The application for renewal shall comply with the requirements of Section 5-103 and in addition shall state the serial number of the license to be renewed and the date such license was issued shall be recorded.

(c) A penalty of five percent (5%) of the required tax per month shall be added in case of failure to pay the required fees or tax when due for each month or fraction thereof that the fees or tax have remained unpaid.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-110.** **LICENSE NONTRANSFERABLE.** No license shall be transferred from one person to another except that a license shall continue until expiration for any business which is purchased in bulk, including stock and inventory, and which is operated by the new owner under the same name and in the same location, in which event, the buyer of said business shall notify the Finance Department change in ownership.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-111.** **REVOCATION OR DENIAL OF LICENSE.**

Permits and licenses issued under the provisions of this Article may be revoked or denied by the Governing Body of the City after notice and hearing, for any of the following causes:

(1) Fraud, misrepresentation or false statement contained in the application for license;
(2) Fraud, misrepresentation or false statement made in the course of carrying on the business;
(3) Any violation of this Article;
(4) Conviction of any crime or misdemeanor involving moral turpitude;
(5) Conducting the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(Ord. No. 707;07-06-81)
(Code 1984)
(Code 2000)
(Ord. 2043C; 05-01-04)

**5-112 APPEAL OF REVOCATION**

(a) Any person aggrieved by the denial of an application or revocation of a license as provided in this Article, shall have, and be notified of, the right of appeal to the Governing Body. Such appeal shall set forth the grounds for appeal and shall be filed with the City Clerk within 14 days after notice of revocation or denial of the license has been mailed to such applicant's last known address setting forth the grounds for appeal. The Governing Body shall set a time and place for a hearing on such appeal and written notice of such hearing shall be given to the applicant. The decision and order of the Governing Body on such appeal shall be final and conclusive.

(Ord. No. 707; 07-06-81)
(Code 1984)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-113. CHANGE IN BUSINESS LOCATION; SUBSTITUTE LICENSE.** The holder of a license shall immediately notify the Finance Director of any change in location of any business for which a license has been issued under this Article and shall return the license to the Finance Director and secure a substitute license, showing the new business location. The holder of the license shall pay a fee of $10 for the substitute license and shall pay any additional prorated tax or fee required by this Article for the new location or business operation.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-114. CHANGE IN BUSINESS TYPE OR OPERATION; SUBSTITUTE LICENSE**. The

holder of a license shall immediately notify the Finance Director of any change in the nature or type of business conducted by such person or any change in operation of such business including, but not limited to, an increase or decrease in square footage, which would affect the amount of tax or fee provided for in this Article. Thereafter, the Finance Director shall immediately notify the holder of the license of any prorated additional tax or fee required by this Article for any such change, and the holder of the license shall pay such additional amount of tax or fee within 10 days of such notification. Upon receipt of payment of the additional amount of taxor fee, the Finance Director shall issue to the license holder a substitute license, showing the necessary changes.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-115. RECORD OF LICENSES.**

(a) The Finance Director, upon payment of the amounts specified in this Article for any trade, profession, occupation, or business, shall give a receipt therefor stating the amount paid and the person to whom such license is issued.

(b) The Finance Director shall keep records of all licenses issued by the City showing the names of each and every person or firm licensed, his or her address, the nature of the business or occupation, the location of the business, the date such license was issued, the amount of tax or license fee paid, and the expiration date of such license.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-116. RIGHT OF ENTRY; INSPECTIONS.** Any employee of the City shall have a right to enter upon the premises upon giving reasonable notice to determine the type of business conducted, the square footage and otherwise to verify compliance with the provisions of the Code of the City of Leawood.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-117. NONCOMPLIANCE.** When any person engages in any business herein required to be licensed without first having obtained a license as required, the manager, local agent, or party in charge of the business, or any member of a partnership, may be arrested and fined as provided by Section 5-122, and shall be subject to the penalty provided in Section 5-122.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-118.** **CIVIL ACTION.** The payment of a fine or the serving of a jail sentence for failure to pay occupational tax or license fee and secure a license as required in this Article shall not constitute payment of the occupational tax or license fee nor excuse the person from making payment, and the City may proceed by civil action to collect the occupational tax or license fee.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-119.** **EXEMPTIONS.**

(a) Nothing in this Article shall be construed as applying an occupation tax or license fee against;

(1) The interstate portion of any business; for the purpose of this subparagraph, the interstate portion of any business shall be construed to mean that portion, and only that portion, which is wholly within interstate commerce and which does not have a local situs or event within the City of Leawood, Kansas;

(2) Any instrumentality of the government of the United States, unless authorized by the laws of the United States;

(3) Any organization, or employees thereof, which is created and operated for charitable, religious, benevolent, fraternal, civic, educational, military, municipal, or similar purposes, and from which profit is not derived, either directly or indirectly, by any individual or any other business, person or organization and which is exempt from taxation by state or federal law.

(b) The Finance Director may require any business, instrumentality, organization, or person claiming to be exempt under this Section to file with the Finance Director a verified statement stating the facts upon which the exemption is claimed.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-120.** **OCCUPATION FEE LEVIED**

**1.** **<u>BUSINESS ACTIVITY DEFINED</u>**

(a) The occupation fee hereby levied shall be in the following amounts on the following businesses, trades, professions, and occupations conducted, pursued, carried on, or operated within the limits of the City for a 12-month period, unless a different license period is indicated.

(b) The provisions of this Section shall apply to any person as herein defined who conducts, carries on, or pursues any business, trade, profession, or occupation in the City, whether or not such person leases or owns property within the City, if

such person carries on the principal elements of any such business, trade, profession, or occupation as defined in Section 5-101.

(c) Any business, occupation or profession that is required to secure a license under the terms of this Section may also be required to present to the City a certified copy of any federal, state, municipal, labor or trade union or association certification or license which is issued as a condition precedent to the conduct of such business, occupation or profession.

(d) In lieu of the fee stated in this Article, a person may choose to pay a fee of $6.00 per day when he or she transacts business within the City; provided, that any person who has previously purchased 5 one-day occupation permits within any one year, shall, on the next occasion when he or she transacts business within the City be required to purchase an annual permit.

| Type of Business | Occupational Tax | Additional |
|---|---|---|
| Amusement Device | $60.00 per day | |
| Auditoriums [Privately owned for public use] | $170.00 | |
| Bank | $250.00 per location | |
| Barber Shops, Beauty Salons, Tanning & Nail Salons | $75.00 | Plus $10.00 for each operator over one |
| Car Washes | $75.00 | If not taxed as part of gasoline service station operation |
| Circuses, carnivals, or tent shows, which transacts business in the City | $60.00 per day | |
| Contractors operating from a Leawood domicile, including but not limited to building, remodeling, curbing, grading, street paving, sewer, electrical, plumbing, landscaping | $60.00 | |
| Developer or Builder operating from a Leawood domicile | $60.00 | |
| Credit Unions, Finance, Investment & Mortgage Companies | $150.00 | |
| Estate Sales | $6.00 per day | |
| Food/catering services operating from a Leawood domicile | $100.00 | |
| Funeral Homes | $375.00 | |
| *Greenhouses, and nurseries, having retail sales outlets on premises | $60.00 | |
| Permitted Accessory Use, as specified in § 16-4-1.3 of the Leawood Development Ordinance [LDO] | $30.00 | |
| Hotels/Motels | $5.00 @ rental room per year | Provided, shops & restaurants which are a part of operation will be considered individual businesses, & all banquet & ballroom facilities will be taxed individually on a square footage basis per year |

| Type of Business | Occupational Tax | Additional |
|---|---|---|

| | | |
|---|---|---|
| Laundry and/or Dry-cleaning establishments, includes all coin-operated laundries and/or dry-cleaning establishments, including those located in apartments or like complexes that are not the property of the lessor | $50.00 | |
| Lumber yards and building supply business | $625.00 | |
| Motor Vehicle Dealers selling new or used motor vehicles | | |
| a. 2-wheel vehicles | $375.00 | |
| b. 4-wheel vehicles | $750.00 | |
| Motor Vehicle rental or leasing agencies | $625.00 | |
| Nursing Homes, hospitals, and retirement homes | $5.00 per bed | |
| Private Airport | $450.00 | |
| Private Ambulance service | $150.00 | |
| Private Clubs | $250.00 | |
| **Recreational Facilities:** | | |
| Bowling alleys | $375.00 | |
| Drive-in theaters | $170.00 | |
| Golf Driving Ranges | $100.00 | |
| Indoor Theaters | $100.00 | Plus $50.00 for each viewing screen |
| Miniature Golf | $100.00 | |
| Pool Rooms | $10.00 @ Table | |
| Racquetball, handball and/or squash facilities-**Indoor** | $25.00 @ Court | |
| Racquetball, handball and/or squash facilities-**Outdoor** | $15.00 @ Court | |
| Riding Stables | $60.00 | |
| Shooting Ranges | $250.00 per location | |
| Skating rinks | $170.00 | |
| Tennis facilities-Indoor | $50.00 @ court | |
| Tennis facilities-Outdoor | $25.00 @ court | |
| Other recreational facilities not specifically listed | $100.00 | |

| Type of Business | Occupational Tax | Additional |
|---|---|---|
| Restaurants, taverns, drive-in and other eating establishments | | |
| a. Less than 15 employees | $125.00 | |
| b. 15 or more employees | $315.00 | |
| c. Walk-up operated entirely within a van or truck | $6.00 per day | |
| Savings & Loan Association | $250.00 | |
| Service Stations selling gasoline, oils, supplies, motor vehicle accessories | $125.00 | |
| Seasonal businesses and services of any kind or nature which operates for a period of no more than 180 days in any one year | $25.00 for a 30 day permit | |
| Service Providers not specifically cited herein | $30.00 | |

*Those businesses not conducting a related retail operation on property will be considered tree and shrub farms and will not be subject to license under the occupation license article

**2. RETAIL BUSINESSES / OFFICE BUILDINGS**

(a) All retail businesses domiciled in the City engaged in the sale of groceries, clothing, hardware, notions, furniture, home furnishings, services, paint, drugs, and any other retail product not herein enumerated, or any office building, shall pay an occupation tax computed on the basis of the table set forth below of interior square footage occupied by said business without regard to use; except that stores which have a second floor or basement in addition to the main floor (the one with the largest interior square footage) and which is open in whole or in part to the general public and/or have an exterior area, shall, upon the additional floor or floors, add one-half of the interior square footage of such additional floor or floors without regard to use, to the square footage of the main floor, and the total square footage as thus computed shall determine the tax in accordance with the following schedule:

(b) Retail businesses which hold themselves out to the public as a single business entity, but which, in fact, are partly or wholly operated on the basis of leased departments therein, shall pay an occupation tax based on the table set forth below; provided, that leased departments which have a private, individual exterior entrance and which have no entrance into such retail stores even though under a common roof with such retail stores, shall pay an occupation tax as a separate business according to the schedule contained in this Article.

(c) Further, any other domiciled person transacting business under the terms of this Article, which business is not specifically enumerated under this Section, shall likewise be liable for the tax herein levied on the basis of the number of square feet occupied, all as set out in the table set forth below.

(d)

| Minimum Square Feet | Maximum Square Feet | Occupation Tax | Additional |
|---|---|---|---|
| 0 | 500 | $65.00 | |
| 501 | 1,000 | $80.00 | |
| 1,001 | 1,500 | $100.00 | |
| 1,501 | 2,000 | $120.00 | |
| 2,001 | 2,500 | $140.00 | |
| 2,501 | 3,000 | $160.00 | |
| 3,001 | 50,000 | $165.00 | Plus $75.00 for each 1,000 sq. ft., or any part thereof in excess of 3,000 sq. ft. |
| 50,001 | 70,000 | $3,750.00 | Plus $40.00 for each 1,000 sq. ft., or any part thereof in excess of 50,000 sq. ft. |
| 70,001 | 100,000 | $4,500.00 | Plus $25,00 for each 1,000 sq. ft., or any part thereof in excess of 70,000 sq ft. |
| Over 100,000 | | $5,250.00 | Plus $15.00 for each 1,000 sq. ft., or any part thereof in excess of 100,000 sq. ft. |

3. **MANUFACTURING, PRINTING, WHOLESALE**

(a) Businesses domiciled in the City engaged primarily in manufacturing, printing, wholesaling, shall pay an occupation tax based upon square footage occupied by said business without regard to use as follows:

(b)

| Minimum Square Feet | Maximum Square Feet | Occupation Tax | Additional |
|---|---|---|---|
| 0 | 1,000 | $65.00 | |
| 1,001 | 5,000 | $65.00 | Plus $30.00 per 1,000 sq. ft., or any part thereof in excess of 1,000 sq. ft. |
| 5,001 | 10,000 | $250.00 | Plus $25.00 per 1,000 sq. ft., or any part thereof in excess of 5,000 sq. ft. |
| 10,001 | 25,000 | $375.00 | Plus $20.00 per 1,000 sq. ft., or any part thereof in excess of 10,000 sq. ft. |
| 25,001 | and over | $650.00 | Plus $10.00 per 1,000 sq. ft., or any part thereof in excess of 25,000 sq. ft. |

**4. NON-DOMICILED**

(a) Any person meeting the below description as a non-domiciled business or service shall pay an occupation fee as set out herein.

(b)

| Type of Business | Occupational Tax | Additional |
|---|---|---|
| Non-domiciled builders and/or developers | $60.00 | |
| Non-domiciled contractors, including but not limited to, building, remodeling, curbing, grading, street paving, sewer, electrical, plumbing, landscaping | $60.00 | |
| Non-domiciled coin-operated machine vendors | $3.00 @ coin operated machine | |
| Non-domiciled exterminators | $60.00 | |
| Non-domiciled lawn, garden, tree services | $60.00 | |
| Non-domiciled mobile veterinarians | $100.00 | |
| Non-domiciled sellers or peddlers of goods or services, having a permanently established house-to-house wholesale business | $20.00 per agent | |
| Non-domiciled service professionals, including, but not limited to, consultants, engineers, architects, accountants, photographers | $75.00 | Plus $10.00 for each professional over one |
| Non-domiciled solid waste disposal companies of any type | $65.00 | |
| Non-domiciled watchman, guard or security services; detective agents; merchant patrolman | $50.00 | Plus $10.00 additional for each agent |
| Non-domiciled businesses, including, but not limited to, any person, firm, partnership or corporation delivering any product, goods or service whatsoever in nature | $50.00 | |

(Ord. No. 638; 07-02-79)
(Ord. No. 975C; 04-20-87)

(Code 2000)
(Ord. 2043C; 02-02-04)
(Ord. 2819C; 02-20-17)

**5-121.** **CLASSIFICATION APPLICABLE.** Whenever several classifications shall be applicable to a business, then said business, firm or calling shall pay the highest tax classification thereon.

(Ord. No. 638; 07-02-79)
(Code 2000)
(Ord. 2043C; 02-02-04)

**5-122.** **PENALTY.** Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by (a) a fine of not less than $1, nor more than $500 and costs, and/or (b) confinement in jail for a period not to exceed 30 days. Each and every day that such violation occurs or continues shall constitute a separate offense.

(Code 1984)
(Code 2000)
(Ord. 2043C; 02-02-04)

# ARTICLE 1A. ADULT EMPLOYEE PERMITS

**5-1A01. ADULT PERMITS.**

(a) No person shall be an entertainer or employee in an adult business or an adult use, as defined in 4-9 of the Leawood Development Ordinance, without a valid permit issued by the City Clerk.

(b) *Application for Permit.*

(1) Any person desiring to secure a permit shall make application to the City Clerk. The application shall be filed in triplicate with and dated by the City Clerk.

(2) The application for a permit shall be upon a form provided by the City Clerk. An applicant for a permit shall furnish the following information under oath:

(a) Name.

(b) Home address and telephone number.

(c) Date and place of birth.

(d) All aliases, stage names or nicknames.

(e) Written proof that the individual is at least 18 years of age.

(f) All residential addresses of the applicant for the past three years.

(g) The applicant's height, weight, color of eyes and hair.

(h) The business, occupation or employment of the applicant for five years immediately preceding the date of the application.

(i) The adult use or adult business permit history of the applicant; whether such person, in previously operating in this or any other city or state under permit, has had such permit revoked or suspended, the reason therefor, and the business activity or occupation subject to such action of suspension or revocation.

(j) All criminal, city ordinance, or county resolution violation convictions, forfeiture of bonds and pleadings of nolo contendere on all charges, except minor traffic violations.

(k) Fingerprints and two portrait photographs at least two inches by two inches of the applicant taken within six months prior to submission of the application.

(l) The name and address of each business at which the applicant intends to work.

(m) A statement by the applicant that he or she is familiar with the provisions of this Section and is in compliance with them.

(c) No permit shall be issued until the Police Department has investigated the applicant's qualifications to receive a permit. The permit application shall be forwarded by the City Clerk to the Police Department within one business day after receipt of a complete application. The results of that investigation shall be filed in writing with the City Clerk not later than five days after the date of receipt of the application by the City Clerk. The City Clerk shall maintain the report of the Police Department as a confidential record and shall not disclose it to any person except members of the City Council, the applicant, and such other persons as the City Council may designate. Within five days of receiving the results of the investigation conducted by the Police Department, the City Clerk shall notify the applicant that his or her application is granted or denied. Written notice of the City Clerk's decision shall be hand delivered or mailed to the applicant within 24 hours after the decision has been rendered. The failure of the City Clerk to render such a decision within the time frames set forth above shall be deemed to constitute an approval.

(d) The City Clerk shall grant, conditionally grant or deny an application for a permit in accordance with the standards set forth in subsection (h) of this section. Any conditions imposed upon the permit shall be in keeping with the objective development standards of subsection (h) of this section.

(e) If the applicant requests a hearing within 10 days of receipt of notification of denial, a public hearing shall be held before the City Council at which time the applicant may present evidence bearing upon the question.

(f) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding the application or his or her refusal to submit to or cooperate with any investigation required by this Section shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the City Clerk.

(g) The City hereby recognizes the requirement for prompt judicial review of a decision relating to the issuance of an adult employee permit as set forth in *Freedman v. Maryland*, 380 U.S. 51 (1965). In accordance with the requirements, if the adult employee permit is denied and an appeal or other legal challenge to the action is filed with the District Court of Johnson County or a federal District Court, the City Attorney shall submit the record or file any responsive pleading not more than 10 days after the service of process upon the City notwithstanding any provision of the Kansas Code of Civil Procedure or the Rules of the Kansas Supreme Court which may permit a longer period of time for the filing of the administrative record or a responsive pleading.

(h) *Standards for Issuance of Permit.* To receive a permit as an entertainer or employee, an applicant shall meet the following standards:

(1) The applicant shall be at least 18 years of age.

(2) The applicant shall not have been convicted of or pleaded no contest to a felony or misdemeanor classified by the State as a sex or sex related

offense pursuant to Article 35 of Chapter 21 of the Kansas Statutes Annotated.

(3) The applicant shall not have been convicted of or pleaded nolo contendere to any violation of this Section.

(Ord. 1731C; 5-18-98)

## ARTICLE 1B. PAWNBROKERS AND PRECIOUS METALS DEALERS

SECTIONS


5-1B01 LICENSE REQUIRED
5-1B02 APPLICATION FOR LICENSE
5-1B03 RESTRICTIONS ON ISSUANCE OF LICENSE
5-1B04 CONTENTS OF LICENSE; POSTING, NON-TRANSFERABILITY
5-1B05 RECORDS AND ACCOUNTS
5-1B06 RECORD BOOKS
5-1B07 REPORTS REQUIRED
5-1B08 HOLDING PERIOD
5-1B09 PROHIBITED PURCHASES
5-1B10 PROOF OF IDENTIFICATION AND OWNERSHIP
5-1B11 PENALTY AND REVOCATION
5-1B12 DEFINITIONS


**5-1B01. LICENSE REQUIRED.** No person shall engage or continue in business as a pawnbroker or precious metals dealer without first obtaining a license therefor. The person shall obtain such license from the City Clerk.

(Ord. 2458C; 08-16-10)

**5-1B02. APPLICATION FOR LICENSE.**

(a) An application for a license shall be in writing and shall state the full name and place of residence of the applicant. If the applicant is a partnership, the application shall contain the name and place of residence of each member thereof, or if a corporation or association, of each officer, shareholder or member thereof. The application shall include the addresses of the places where the business is to be conducted, the hours and days of the week during which the applicant proposes to engage in the business of pawnbroking or dealing in precious metals at each such place and such other information as may be necessary to determine the applicant's qualifications for a license in accordance with the provisions of this Chapter. Each applicant shall also submit with the application:

1.. A statement that the applicant is the holder of a valid registration certificate issued by the State Director of Taxation pursuant to K.S.A. 79-3608, as amended, for each place of business for which an application for a license is made.

2. A detailed inventory and description of all goods, wares, merchandise, precious metals or other property held in pledge or for sale at the time of the application at each place of business stated therein, indicating whether the same was received in pledge, purchased as secondhand merchandise or precious metal purchased for resale.

(b) Each application shall be accompanied by a fee as set forth by resolution or ordinance or as otherwise permitted which shall be paid annually upon renewal of the license. All such fees received by the City Clerk shall be deposited in the City General Fund.

(c) The license application shall be in the form approved by the Attorney General.

(Ord. 2458C; 08-16-10)

**5-1B03. RESTRICTIONS ON ISSUANCE OF LICENSE.**

(a) No license shall be granted to the following persons:

1. Any person who is not a citizen of the United States.
2. Any person who has not been an actual resident of the State for at least two (2) years immediately preceding the date of his application.
3. Any person who has been convicted of or has pleaded guilty to a felony under the laws of this State or any other state of the United States or shall have forfeited his bond to appear in court to answer charges for any such offense within the ten (10) years immediately prior to such person's application for the license.
4. Any person who has had his license revoked for cause under the provisions of this Chapter or any provision of State law relating to pawnbrokers.
5. Any person who is not at least twenty one (21) years of age.
6. Any person who, at the time of application for renewal of any license issued hereunder, would not be eligible for such a license upon a first application.
7. Any person who does not own the premises for which a license is sought, unless he has a written lease therefor for at least three-fourths (3/4) of the period for which the license should be issued.
8. Any person whose spouse would be ineligible to receive a license hereunder for any reason other than age, citizenship and residence requirements.
9. Any partnership, unless all the partners shall be eligible to receive a license as an individual.
10. A corporation, if any officer, manager, director or stockholder would be ineligible to receive a license as an individual.

(Ord. 2458C; 08-16-10)

**5-1B04. CONTENTS OF LICENSE; POSTING; NONTRANSFERABILITY.**

The document or other instrument evidencing the license of a pawnbroker or precious metals dealer shall state the address at which the business is to be conducted and shall state fully the name of the licensee. If the licensee is a partnership, the license shall state the names of the members thereof and if a corporation, the date and place of the incorporation and the names of all the shareholders thereof. Such license shall be kept conspicuously posted in the place of business of the licensee, and it is not transferable or assignable.

(Ord. 2458C; 08-16-10)

**5-1B05. RECORDS AND ACCOUNTS.**

(a) Each licensee shall keep and use in the licensee's business such books, accounts, records and files as will enable the City to determine whether such licensee is complying with the provisions of this Chapter. During the licensee's regular business hours, the Police Chief or his/her designee may examine or cause to be examined such books, accounts, records and files used by any licensee or by any other person engaged in the business of pawnbroking or dealing in precious metals, irrespective of whether such person acts or claims to act as principal, agent or broker or under or without authority of this Chapter.

(b) The Police Chief or his/her designee shall have and be given free access, during the licensee's regular business hours, to all such books, accounts, records and files. Further, the Police Chief or his/her designee shall have and be given free access to all safes and vaults on the licensee's place of business which are used to store such books, accounts, records and files.

(Ord. 2458C; 08-16-10)

**5-1B06. RECORD BOOKS.**

(a) Pawnbrokers: At the time of making a loan, a pawnbroker shall enter in a book kept for that purpose:

1. The date, duration, amount and charges of every loan made by the pawnbroker.
2. A full and accurate description of the property pledged.
3. The name, date of birth, residence and driver's license or other personal identification number of the pledgor.

(b) Precious Metals Dealers: At the time of purchasing precious metal, a precious metals dealer shall enter in a book kept for that purpose:

1. The date of the purchase.
2. A fully detailed and accurate description of each item purchased, including any identifying letters, numbers or marks on the item.
3. The name, date of birth, residence and driver's license number of the seller.

(c) Time Period for Keeping Books: The records required by this Section shall be maintained in a clearly legible manner by the pawnbroker or precious metals dealer at the pawnbroker's or dealer's place of business for not less than one year following the date of the transaction.

(Ord. 2458C; 08-16-10)

**5-1B07. REPORTS REQUIRED.**

On or before Tuesday of each week, every pawnbroker or precious metals dealer shall report, in detail, the description of all properties received in pledge or purchased as a pawnbroker or precious metals dealer during the preceding calendar week and whatever quantity received. Such report shall include all property purchased as secondhand merchandise at wholesale, secondhand merchandise taken in for sale or possessed on consignment for sale and secondhand merchandise taken in trade. No such report need be made concerning property or merchandise acquired from another pawnbroker or precious metals dealer licensed in this State in a transaction involving the purchase or other acquisition from the other pawnbroker or precious metals dealer of the other pawnbroker's or dealer's stock in trade or a substantial part thereof in bulk, where the other pawnbroker or dealer has made the reports required by this Section with respect to such property or merchandise. Such report shall be submitted with an electronic copy in a form acceptable to the Police Department, to the Police Chief or his/her designee. All reports required to be submitted pursuant to this Section shall contain the following information:

1. Date of purchase.
2. Name, date of birth, residence and driver's license number of the seller.
3. A clearly legible, detailed and accurate description of each item purchased. Such description shall include, but not be limited to, the following information:
   - (i) Type of precious metal purchased.
   - (ii) Weight of the metal, in either pennyweight, grams or ounces.
   - (iii) A description of any precious stones contained within the item purchased, including type of stone, carat size and color.
   - (iv) Any identifying letters, numbers, marks or writing on the item.
   - (v) ize of any ring purchased.

(vi) Any brand names or pattern names.

Reports made pursuant to this Section shall be available for inspection only by law enforcement officers, District and City Attorneys and their employees for law enforcement purposes.

(Ord. 2458C; 08-16-10)

**5-1B08. HOLDING PERIOD.**

Every precious metals dealer shall retain in the dealer's possession for a period of ten (10) days all precious metals purchased as a precious metals dealer, and such metals shall remain in the condition in which they were purchased. The ten (10) day period shall commence on the date the Police Chief or his/her designee receives the report of their acquisition in compliance with this Article. If the Police Chief or his/her designee has probable cause to believe that any precious metal reported by a dealer has been stolen, the Police Chief or designee may give written notice to the dealer to retain such metal for an additional period of fifteen (15) days. Upon such notice, the dealer shall retain such metal in an unaltered condition for the additional fifteen (15) day period, unless the Police Chief or designee notifies the dealer, in writing, that the waiting period is terminated at an earlier time.

(Ord. 2458C; 08-16-10)

**5-1B09. PROHIBITED PURCHASES.**

(a) Purchases From Intoxicated Persons; Stolen Property: No pawnbroker or precious metals dealer or any person employed by or acting for him shall purchase, take or receive any article of property of or from any intoxicated person or any stolen property or property which, from any cause, he may have reason to believe or suspect cannot be lawfully sold by the person offering it. If purchases are made, and at a later date, the pawnbroker or precious metals dealer discovers that the purchased merchandise has been stolen, it shall be unlawful for the pawnbroker or precious metals dealer not to report this immediately to the Police Department.

(b) Purchases From Minors:

1. Pawnbrokers: No pawnbroker shall receive in pledge or as security for any loan, transfer, service, undertaking or advantage anything of value from any person under the age of eighteen (18) years.
2. Precious Metals Dealers: No precious metals dealer shall purchase any precious metal from any person under the age of eighteen (18) years.

(Ord. 2458C; 08-16-10)

**5-1B10. PROOF OF IDENTIFICATION AND OWNERSHIP.**

(a) A precious metals dealer shall require of every person from whom the dealer purchases metals for resale:

1. Proof of identification

(b) A signed statement saying that the seller is the legal owner of the precious metal or is an agent of the legal owner who is authorized to sell such metal, stating when, where and in what manner such metal was acquired by the seller.

(Ord. 2458C; 08-16-10)

**5-1B11. PENALTY AND REVOCATION.**

(a) Violation of any of the provisions of this Chapter shall be a public offense and shall be subject to the penalties and fines set forth in Section 1-122 of this Code.

(b) Any permit issued pursuant to this Chapter shall be revoked for the violation of any provision of this Chapter or any applicable local, state or federal law, statute, ordinance, rule or regulation. If the underlying zoning approval upon which a license is based is revoked or otherwise terminated, the license shall also be simultaneously revoked.

(c) The City Clerk before revoking any license shall give the licensee at least ten (10) days written notice of the basis for the revocation and the opportunity for a hearing before the City Administrator at which time the licensee may present evidence bearing upon the question. The City Administrator may uphold the revocation; rescind the revocation; and if applicable, specify certain conditions and stipulations associated therewith. All revocations affirmed by the City Administrator may be appealed to the Governing Body upon written notice of appeal, filed with the City Clerk, within ten (10) days of receipt of the notice of revocation.

(Ord. 2458C; 08-16-10)

**5-1B12. DEFINITIONS.** When used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

(a) **PAWNBROKER:** Any person who loans money on deposit or pledge of personal property or other valuable thing other than intangible personal property or who deals in the purchase of personal property on the condition of selling the same back again at a stipulated price, but such term shall not include any person operating under the supervision of the State Banking Commissioner, Credit Union Administrator or the Consumer Credit Commissioner of the State.

(b) **PRECIOUS METALS:** Gold, silver or platinum group metals or any used articles or other used personal property containing such metals, but shall not include coins purchased for their numismatic value rather than their metal content or ingots or other industrial residue or by-products composed of such metals purchased from manufacturing firms.

(c) **PRECIOUS METALS DEALER:** Any person who engages in the business of purchasing precious metals for the purpose of reselling such metals in any form.

(Ord. 2458C; 08-16-10)

# CHAPTER V. BUSINESS LICENSES AND REGULATIONS

## ARTICLE 2. SOLICITORS, CANVASSERS, PEDDLERS, TRANSIENT MERCHANTS

SECTIONS


5-201 STATEMENT OF PURPOSE
5-202 DEFINITIONS
5-203 SOLICITATION PERMITS REQUIRED
5-204 INFORMATION REQUIRED ON APPLICATION FOR SOLICITATION PERMIT
5-205 STANDARDS FOR ISSUANCE
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5-209 TERM OF PERMIT
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**5-201.** **STATEMENT OF PURPOSE**. It is the purpose of this Article to protect the general public against:

(a) Crimes, frauds and misrepresentation committed by persons posing as solicitors;

(b) The continuing danger of fraud, robbery, and other crimes to the residents of the City; and

(c) Undue annoyances caused by solicitors.

(Ord. 1002C;10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-202. DEFINITIONS.**

(a) "***Canvass***" as used in this Article means opinion sampling, poll-taking, or other similar activity, either by foot, wagon, automobile, motor truck, or any other type of conveyance, from house to house, door to door, street to street, or from place to place.

(b) "***Canvasser***" as used in this Article means any person who engages in canvassing in person for himself or any other person.

(c) "***Charitable***" as used in this Article means any activity represented as carried on from unselfish, civic, or humanitarian motives, or for the benefit of others, and not for private gain, and may include, without limitation, patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural, scientific, historical, athletic, medical, or religious activities, either actual or implied.

(d) "***City***" as used in this Article means the City of Leawood, Kansas.

(e) "***Peddle***" as used in this article means to operate from a temporary stand, display or similar facility, or to travel from house to house, door to door, street to street or from place to place, carrying, conveying, or transporting goods, wares, or merchandise for the purpose of offering and exposing the same for sale.

(f) "***Peddler***" as used in this Article means a person who peddles for himself or for any other person.

(g) "***Person***" as used in this Article means any individual, firm, partnership, corporation, company, religious sect or denomination, society, organization or league, and includes any trustee, director, member, partner, officer, receiver, assignee, employee, agent or other similar representative thereof.

(h) "***Solicit***" and "*solicitation*" as used in this Article mean and include any one or more of the following:

(1) Selling or taking orders for or offering to sell or take orders for goods, services, merchandise, wares, or other items of value for commercial purposes, regardless of whether the goods or services are to be delivered or performed in the future; or

(2) Requesting donations or contribution of funds, property, or anything of value, or the pledge of any type of future donation, or selling or offering for sale any type of property, including but not limited to goods, tickets, books, and pamphlets, for political, charitable, religious, or other non-commercial purposes; or

(3) Canvassing or peddling as defined in this section; or

(4) Throwing, depositing or distributing any commercial handbill in or upon any premises within the City of Leawood.

A "solicitation" as defined herein shall be deemed completed when made, whether or not the person making the solicitation receives any contribution or makes any sale.

(i) "***Solicitor***" as used in this Article means a person who solicits for himself or any other person.

(j) "***Commercial handbill***" is any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper booklet, or any other printed or otherwise reproduced original or copies of any matter of literature:

(1) Which advertises for sale any merchandise, product, commodity or thing; or

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purpose of private gain or profit.

For purposes of this ordinance the term "commercial handbill" shall not be construed to include mail delivered by the United States Postal Service or newspapers duly entered with the Post Office Department of the United States and newspapers filed and recorded with any recording officer as provided by general law or any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.

(Ord. 1446C; 10-17-94)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-203.** **SOLICITATION PERMITS REQUIRED.** Every solicitor, of whatsoever form or nature must obtain a permit from the City before soliciting within the City. In order to obtain a permit to solicit, the applicant must furnish the information required under this Article to the Chief of Police or his/her designee.

(Ord. 1002C; 10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-204. INFORMATION REQUIRED ON APPLICATION FOR SOLICITATION PERMIT.** An applicant for a solicitation permit shall furnish to the Chief of Police or his/her designee an application containing the following information:

(a) The name and address of the principal office of the person applying for the permit (including both local and non-local principal officer where such exist);

(b) If the applicant is not an individual, the names, addresses and other identifying information of the applicant's principal officers and executives;

(c) The purpose for which the solicitation is to be made;

(d) The name, address and other information necessary to conduct a background check of the person or persons who will be making the solicitations;

(e) The time when the solicitations will be made, giving the expected dates for the commencement and termination of the solicitations, subject to the limitations on time for solicitations contained in this Article;

(f) A statement acknowledging that if a permit is granted:

(1) It will not be used or represented in any way as an endorsement by the City of Leawood or by any City department or officer; and

(2) That during the period specified in the permit, if there is any change in fact, policy or method that would alter the information given in the application, the applicant will notify the Chief of Police or his/her designee in writing as soon as possible, but no later than forty-eight (48) hours after such change; and

(3) That at no time during the period of solicitation will the applicant or his or her agents solicit at any residence within the City where there is clearly and visibly posted any sign requesting "No Solicitation," or "No Trespassing" or words of similar import; and

(4) That all solicitors will carry on their person a copy of the solicitation permit issued by the City.

(g) A sample of the identification badge or card that each solicitor shall wear or carry, indicating that person's name and the name of the organization for which he or she is soliciting. Such badge or card shall be furnished by the organization and be approved by the Chief of Police or his/her designee.

(h) A statement acknowledging that no person or entity who will be soliciting under the permit for which application is made has, within the five years preceding the date of filing of an application for solicitation permit, been convicted of a felony, misdemeanor or other violation of the laws of the United States or of any state or city of the United States where such conviction was for an offense involving force or threat of force, theft, dishonesty, fraud, or sexual misconduct; or is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., or pursuant to an offender registration act of any other state; or has, within 24 months preceding the date of filing of an application for solicitation permit, been convicted of a violation of this ordinance or the solicitation ordinance of any other city.

(Ord. 1446C; 10-17-94)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-205. STANDARDS FOR ISSUANCE.**

(a) The Chief of Police or his/her designee shall, except as provided by this ordinance, issue a solicitation permit provided for by this Article upon receiving a completed application form from the applicant or their representative, and any applicable fees.

(b) The Chief of Police or his/her designee shall not issue a solicitation permit to any person or entity that has, within the five years preceding the date of filing of an application for solicitation permit, been convicted of a felony, misdemeanor or other violation of the laws of the United States or of any state or city of the United States where such conviction was for an offense involving force or threat of force, theft, dishonesty, fraud, or sexual misconduct; or is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., or pursuant to an offender registration act of any other state; or to any person or entity that has, within 24 months preceding the date of filing of an application for solicitation permit, been convicted of violating this ordinance or the solicitation ordinance of any other city.

(c) On refusal, the Chief of Police or his/her designee shall notify the applicant by personal service or regular mail at the address provided on the application. The notice shall advise the applicant of the reason for refusal, and that he or she may appeal said refusal to the Governing Body in accordance with Section 5-206 of this ordinance.

(Ord. 1446C; 10-17-94)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-206. APPEAL FROM REFUSAL TO ISSUE PERMIT.**

(a) Any person who is aggrieved by the refusal of the Chief of Police or his/her designee to issue a solicitation permit may appeal said refusal to the Governing Body. The appeal must be in writing and state the basis for appeal, and shall be served upon the City Clerk no later than fourteen (14) days following the date of the notice of refusal. Upon receipt of an appeal, the City Clerk shall schedule the matter to be heard before the next available Governing Body meeting, unless the applicant requests a later date. For purposes of this section, "next available Governing Body meeting" includes only regularly scheduled meetings that are more than seven (7) days from the receipt of the appeal. At the hearing, the applicant has the burden of proof to show the information relied upon by the Chief of Police or his/her designee to support refusal is incorrect or unreliable. The Governing Body may uphold or reverse the refusal to issue a permit, and its decision shall be final. Nothing in this section shall be construed to preclude the applicant from asking the Chief of Police to reconsider and providing information in support, but such request shall not toll the time period for appeal.

(b) Any person who has been refused a solicitation permit, or whose privilege to solicit has been refused, may not reapply for a solicitation permit for a period of 24 months.

(Ord. 2759C; 11-02-15)

**5-207. FEES.** There shall be a non-refundable processing fee for each individual who desires to be listed on a permit pursuant to this Article. Said fees shall be assessed as set forth in the City's fee schedule.

(Ord. 1002C; 10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-208.** **CONTENTS OF PERMIT.** Permits issued under the provisions of this Article should bear the name and address of the person to whom the permit is issued, the number of the permit, the names of all person approved to solicit on behalf of the permit holder, the dates and times within which the persons may solicit, a statement that the permit does not constitute an endorsement by the City or by any of its departments, officers or employees, of the purpose or the person conducting the solicitation, and the signature of the Chief of Police or his/her designee.

(Ord. 1002C; 10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-209.** **TERM OF PERMIT.** Permits issued pursuant to this Article shall authorize the holder thereof to solicit for the number of days requested in the application, not to exceed ninety (90) consecutive days. Applications for renewal of permits may be made and shall be granted if the requirements of this Article are still being met and no violations of the permit or this Article have been found to exist.

(Ord. 1002C; 10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-210.** **PERMITS NONTRANSFERABLE.** No permit issued under the provisions of this Article shall be transferable or assignable.

(Ord. 1002C; 10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-211. REVOCATION OF PERMITS; APPEALS.**

(a) Any determination by the Chief of Police or his/her designee that the holder of a city solicitation permit or any person listed on the permit has violated any provision of this Article or of the permit, or that the holder of the permit has made false representations in the application for the permit, shall be grounds for revocation of the permit. The Chief of Police or his/her designee shall give written notice to the permit holder that the permit is immediately revoked. The notice of revocation may served in person or by regular mail upon the permit holder at the address provided on the application. The notice of revocation shall advise the permit holder that he or she may appeal the revocation to the Governing Body by filing a notice of appeal with the City Clerk no later than fourteen (14) days following the date of the notice of revocation. Upon timely receipt of an appeal, the City Clerk shall schedule the matter to be heard before the next available Governing Body meeting, unless the permit holder requests a later date. For purposes of this section, "next available Governing Body meeting" includes only regularly scheduled meetings that are more than seven (7) days from the receipt of the appeal. At the hearing, the applicant has the burden of proof to show the revocation was unreasonable. The Governing Body may uphold or reverse the revocation, and its decision shall be final.

(b) Any person whose permit or privilege to solicit has been revoked may not reapply for a solicitation permit for a period of 24 months. This shall include any entity directly or indirectly owned, managed or operated by the person revoked.

(Ord. 1446C; 10-17-94)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-212. UNIFORMITY OF ADMINISTRATION OF ARTICLE.** The Chief of Police or his/her designee is directed to administer this Article uniformly, and is to require all applicants to submit the application and supporting data required by this Article before issuing a permit. All applicants are to be treated alike.

(Ord. 1002C; 10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-213. PROHIBITED ACTS.**

(a) It shall be unlawful for any solicitor to ring the bell, or knock on the door, or otherwise attempt to gain admittance for the purpose of soliciting at a residence, dwelling or apartment at which a sign bearing the words "No Solicitors," "No Trespassers," or words of similar import indicating that such persons are not wanted on the premises, is painted, affixed or otherwise exposed to public view; provided that this paragraph shall not apply to any solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof. For purposes of this section, the No Solicitors decal issued by the Chief of Police or his/her designee prominently displayed on the door shall constitute sufficient notice to all solicitors. However, other similar signs, as defined above, are also sufficient.

(b) It shall be unlawful for any solicitor to solicit prior to 10:00 a.m. or after 8:00 p.m. local time, of any day.

(c) It shall be unlawful for any solicitor to engage in soliciting upon any premises or in any dwelling house, apartment or other residence after having been asked by the owner or occupant thereof to leave the premises or residence.

(d) It shall be unlawful for any solicitor to make more than one solicitation call at the same residential premises for identical goods, services, or contributions within any consecutive sixty (60) day period, without receiving a prior invitation therefor from the occupants of the premises. This provision shall be construed to include solicitation upon the same premises by employees, agents, or other persons acting on behalf of the same person more than once during the aforesaid period without a prior invitation as herein provided.

(e) It shall be unlawful for any solicitor to fail at the outset to disclose to the prospective buyer, prospective donor, or canvassee his/her name and the name of the company, product or organization he/she represents.

(f) It shall be unlawful for any solicitor to make any assertion, representation or statement which misrepresents the purpose of his/her call, or use any plan, scheme, or ruse which misrepresents such purpose.

(g) It shall be unlawful for any solicitor to conduct his/her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.

(h) It shall be unlawful for any person to solicit within the City of Leawood who has been convicted of a felony, misdemeanor, or ordinance violation involving force or threat of force, theft, dishonesty, fraud, or sexual misconduct within the past five (5) years; or who is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., or pursuant to an offender registration act of any other state; or who has, within the past 24 months, been convicted of violating this ordinance or the solicitation ordinance of any other city.

(i) It shall be unlawful for any person to solicit or attempt to solicit at a place of residence at any entrance other than the main entrance of the residence.

(j) It shall be unlawful for any person to solicit or attempt to solicit without carrying upon their person a copy of the permit issued by the City of Leawood authorizing solicitation and an identification badge or card reviewed and approved by the Chief of Police as described in Section 5-204(g) of this ordinance.

(Ord. 1446C; 10-17-94)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2759C; 11-02-15)

**5-214. PENALTIES.**

Any person who violates or causes to be violated any provision of this Article shall be guilty of a municipal offense and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) or more than One Thousand Dollars ($1,000.00) or by imprisonment not exceeding 30 days, or both such fine and imprisonment. For a second or subsequent violation, in addition to any jail penalty imposed, the minimum fine shall be not less than Five Hundred Dollars ($500.00). Each day that the violation continues shall be deemed a separate offense.

(Ord. 1002C; 10-06-87)
(Code 2000)
(Ord. 2040C; 02-02-04)
(Ord. 2172C; 07-17-06)
(Ord. 2759C; 11-02-15)

## ARTICLE 3. REPEALED

## ARTICLE 4. COMMERCIAL USE OF STREETS

SECTIONS


| | |
|---|---|
| 5-401 | LOUDSPEAKERS, SOUND TRUCKS; LICENSE REQUIRED |
| 5-402 | LOUDSPEAKERS, SOUND TRUCKS; LICENSE FEE |
| 5-403 | LOUDSPEAKERS, SOUND TRUCKS; PROHIBITED HOURS |
| 5-404 | PROHIBITIONS |
| 5-405 | REVOCATION OR DENIAL OF LICENSES |


**5-401. LOUDSPEAKERS, SOUND TRUCKS; LICENSE REQUIRED.**
**[This Section is hereby repealed, by Ordinance No. 2041C.**
**See Code Section 5-101; Business License.]**

(Ord. 712; 08-17-71)
(Code 2000)
(Ord. 2041C; 02-02-04)

**5-402. LOUDSPEAKERS, SOUND TRUCKS; LICENSE FEE.**
**[This Section is hereby repealed, by Ordinance No. 2041C.**
**See Code Section 5-120; Business License Fee.]**

(Ord. 712; 08-17-71)
(Code 2000)
(Ord. 2041C; 02-02-04)

**5-403. LOUDSPEAKERS, SOUND TRUCKS; PROHIBITED HOURS.**
**[This Section is hereby repealed, by Ordinance No. 2041C.**
**See Code Section 11-205; Disturbing the Peace.]**

(Ord. 712; 08-17-71)
(Code 2000)
(Ord. 2041C; 02-02-04)

**5-404. PROHIBITIONS.**
**[This Section is hereby repealed, by Ordinance No. 2041C.**
**See Code Section 13-107; Commercial Use of Public Right-of-Way.]**

(Ord. 712; 08-17-71)
(Code 2000)
(Ord. 2041C; 02-02-04)

**5-405. REVOCATION OR DENIAL OF LICENSES.**
**[This Section is hereby repealed, by Ordinance No. 2041C.**
**See Code Section 5-109; Payment of License Fee: Delinquent.]**

(Ord. 712; 08-17-71)
(Code 1984)
(Code 2000)
(Ord. 2041C; 02-02-04)

# ARTICLE 5. MASSAGE

**SECTIONS**

5-501 DEFINITIONS
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5-503 MASSAGE LICENSES IN GENERAL: MULTIPLE LICENSES
5-504 MASSAGE LICENSES IN GENERAL: LICENSE FEES
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5-506 MASSAGE LICENSES IN GENERAL: ADVERTISING
5-507 MASSAGE LICENSES IN GENERAL: OTHER PROVISIONS. *REPEALED*.
5-508 STUDENT MASSAGE THERAPY
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5-510 MASSAGE THERAPY: LICENSE
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5-512 MASSAGE THERAPY: EDUCATIONAL REQUIREMENTS
5-513 MASSAGE THERAPY: IDENTIFICATION CARDS
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5-515 MASSAGE THERAPY: APPLICABILITY OF EXISTING MASSAGE PROVIDERS
5-516 MASSAGE THERAPY: REVOCATION OR SUSPENSION OF LICENSE
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5-526 MASSAGE ESTABLISHMENT: RESTRICTIONS ON PLACE OF BUSINESS. *REPEALED*.
5-527 MASSAGE ESTABLISHMENT: REVOCATION OR SUSPENSION OF LICENSE
5-528 PENALTY

**5-501. DEFINITIONS.**

(a) ***Applicant.*** A person who has applied to the City for a Massage Establishment License or a Massage Therapy License as authorized by this Article. A Massage Establishment Applicant also includes each stockholder holding more than 10% of the stock, and each director, officer, partner, limited partner, member, and any manager or other person principally in charge of the business operations of the proposed establishment.

(b) ***Approved School***. Any school or institute of higher learning which is accredited by a state board of education or equivalent and approved by any state massage-specific licensing organization(s) or approved by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB).

(c) **Establishment Representative**. An employee, manager, independent contractor, unpaid volunteer, or anyone else holding themselves out as working at, or on behalf of, a massage establishment.

(d) ***License.*** An authorization as provided for in this Article for a person to:
   (1) Operate and conduct a Massage Establishment; or
   (2) Perform and provide Massage Therapy

(e) ***Licensee.*** A person who has been granted a Massage Therapist and/or Massage Establishment License as provided for by this Article.

(f) ***Massage.*** Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

(g) ***Massage Establishment.*** A fixed place of business within the City where Massage Therapy is administered for compensation, including, massage salons, sauna baths, steam baths, and health clubs. Such place of business shall be only upon authorized commercial premises as specifically provided for hereafter. For the provisions and requirements of this Article, this definition shall not be construed to include hospitals, nursing homes, medical clinics or the commercial offices of: (1) a licensed physician, surgeon, chiropractor, osteopath or physical therapist when such duly licensed person is directly supervising or administering Massage to his or her patient; (2) a licensed operator of electrolysis equipment (only with regards to the provision of electrolysis treatment); or (3) barbershops or beauty salon which perform Massage only to the scalp, the face, the neck, or shoulders.

(i) ***Massage Therapist.*** A person who, for consideration, engages in the practice of Massage as defined herein.

(j) ***Out Call.*** Massage Therapy that is conducted upon the business or residential premises of a Patron as specifically provided for hereafter.

(k) ***Patron.*** A person who utilizes or receives the services of Massage Therapy.

(l) ***Person.*** Any natural or corporate person, business association or business entity including, but not limited to, a firm, a partnership, an association, a sole proprietorship a successor or assign of any of the foregoing, or any other legal entity.

(m) ***Specified Anatomical Areas.*** The human genitals, pubic region, buttocks, or female breast.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-502 Massage Licenses in General: License Required.**

(a) No person shall perform and provide Massage Therapy within the City without a valid Massage Therapist License issued by the City.

(b) No person, firm, partnership, association, or corporation shall operate a Massage Establishment within the City without a valid Massage Establishment License issued by the City.
(c) Such Licenses shall be issued by the City pursuant to the provisions of this Article, and must be current, unrevoked and not suspended.
(d) Licenses granted pursuant to this Article shall be valid for a period of twelve months from the date of issuance.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-503 Massage Licenses in General: Multiple Licenses.**
Applicants seeking to operate and conduct multiple Massage Establishments must obtain a separate Massage Establishment License for each location.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-504 Massage Licenses in General: License Fees.**
(a) The annual filing fee for a Massage Establishment License and a Massage Therapy License shall set by the City's annual fee schedule, and shall be nonrefundable and nontransferable.
(b) Any applications made, fees paid, and Licenses obtained under the provisions of this Article shall be in addition to, and not in lieu of any other fees, taxes, permits, or licenses required to be paid or obtained under any other Articles of this City.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-505 Massage Licenses in General: Transfer of Licenses.**
No Massage Establishment License or Massage Therapy License is transferable or assignable.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-506 Massage Licenses in General: Advertising.**
No Licensee shall place, publish or distribute or cause to be placed, published or distributed any advertisement that would reasonably suggest to prospective Patrons that any service is available other than those services lawfully permitted by this Article, or that employees or Massage Therapists may be dressed in any manner other than allowed for herein.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-507 Massage Licenses in General: Other Provisions. (Repealed)**

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-508 Student Massage Therapy**

An individual actively enrolled in and currently attending classes in a courses of instruction, consisting of not less than 500 hours, in the theory, method, or practice of massage, may conduct massage therapy as a practicum component of the training program under the direct supervision of the massage school instructor, provided the following conditions are met:

(a) All advertisements for massage therapy that will be performed by a student will clearly inform the customer that the massage therapy will be performed by a student under the supervision of the massage school instructor.

(b) Prior to conducting any massage therapy, the student massage therapist will require the Patron sign and acknowledge he/she has been informed the massage therapy will be conducted by a student under the supervision of the massage school instructor. These acknowledgement documents will be maintained by the school for a period of one year and will be produced at the request of any law enforcement officer or City official.

(Ord. 2989; 03-02-20)

**5-509 Reserved.**

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-510 Massage Therapy: License.**

(a) **Generally.** No person shall perform and provide Massage Therapy within the City without first obtaining a valid Massage Therapist License issued by the City pursuant to the provisions of this Article. To receive a License and to perform and provide Massage Therapy, the applicant must operate or be currently employed by a licensed Massage Establishment, and meet the requirements of a Massage Therapist as provided for hereafter.

(b) **Application.** Applicants for a License to perform and provide Massage Therapy within the City shall file a written application with the City Clerk and pay a nonrefundable annual fee. This fee shall cover the cost of processing the application, not including the current FBI and KBI fingerprint fees. The application for a Massage Therapist License shall contain the following:

(1) The name, address and telephone number of the applicant;

(2) Written evidence that the applicant is at least 18 years old by providing a copy of a current state or federally issued form of identification;

(3) The applicant's weight, height, color of hair and eyes, and fingerprints (applicant will not be required to resubmit fingerprints on subsequent renewal applications);

(4) Two portrait photographs of the applicant (at least two inches by two inches);

(5) The position or function the applicant is being hired to perform within such establishment, and the exact nature of the services to be provided under the requested License;

(6) The business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(7) Disclosure of any adult or juvenile criminal charges, including the jurisdiction in which charged, the offense date, the final disposition date, and the final disposition (i.e. convicted, diverted, dismissed);

(8) The Massage Therapy license history of the applicant, including any other similar license or permit issued by any licensing jurisdiction, and whether the applicant has had any such license or similar authorization revoked or suspended or voluntarily surrendered in lieu of revocation or suspension. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension, revocation, or surrender;

(9) The proposed Massage Establishment for which they will work, and whether it has a current or pending Massage Establishment License with the City;

(10) Proof of the education and experience requirements as provided by this Article;

(11) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(12) Any other information deemed necessary by the City to review and process the application.

(c) **Renewals.** An applicant seeking the renewal of an existing License shall submit a renewal application and provide the City with that information or documentation necessary to update the applicants' former application.

(d) **Application Process.** Applications for a Massage Therapy License shall be submitted to the City Clerk, who shall transmit copies of completed applications to the Chief of Police and the Community Development Director for review. With the aid and input of the Chief of Police, the Community Development Directors, or their designees, the City shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within twenty-one (21) days from receipt of the completed application is submitted, unless good cause exists to extend this period of time.

(e) **Issuance of License.** The City Clerk shall approve the issuance of a Massage Therapist License, unless it is found that:

(1) The applicant has been convicted of or diverted on (or any similar disposition) any of the following:

(i) a felony;

(ii) an offense involving sexual misconduct;

(iii) an offense involving obscenity;

(iv) promoting prostitution;
(v) an offense involving a lewd or lascivious act;
(vi) prostitution;
(vii) patronizing a prostitute;
(viii) an offense involving a breach of privacy;
(vix) any sex offense as described in the Kansas Statutes Chapter 21, Article 55 (Sex Offenses) or comparable offense; or
(ix) any offense involving massage or Massage Therapy, or arising out of the individual's prior massage establishment(s) or individual therapist license(s) in the ten (10) years immediately preceding the date of the application;

(2) The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the city in conjunction therewith;

(3) The applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency, or has voluntarily surrendered the permit or license in lieu of revocation or suspension, within ten (10) years prior to the date of the application;

(4) The applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment;

(5) The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;

(6) That the applicant has not successfully completed the education standards required under the provisions of this Article;

(7) The application is for work to be performed at a Massage Establishment that is unlicensed, or whose License has been suspended or revoked; or

(8) Any other application requirement has not been met.

(f) Upon approval of the application, the License Clerk shall issue the Massage Therapy License that shall be nontransferable and nonrefundable. If the application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant. The notice shall state the basis for the denial and the opportunity for review by the City Administrator or their designee. The determination of the City Administrator, or their designee, is final.

(g) Upon denial, the applicant shall be ineligible to reapply for any license under this Article for a period of one year from the date of denial. A denied applicant can seek waiver of the one year ineligibility from the City Clerk, in writing, upon a showing of good cause.

(Ord. 2989; 03-02-20)
(Ord. 2758C; 11-02-15)

(Ord. 1867C; 06-19-00)

**5-511** **Massage Therapy: Out Calls.** Outcalls on residential or business premises of a Patron within the City are prohibited, unless performed or provided pursuant to this section. In no event is a massage therapist allowed to conduct Massage Therapy in a hotel or motel room, or similar setting.

(a) **Residential Premises**. Out Calls may only be conducted at a private residence at the direction of a licensed healing arts practitioner. In such event, the Massage Therapist shall provide to the License Clerk the name and address of the Patron, a copy of the licensed healing arts practitioner's authorization, the date and time of the service, a description of the service, and the fees charged. Prior to any service being done at a private residence, the Massage Therapist must clearly state that he or she is a Licensed Massage Therapist, and the Patron must sign a form requesting the service. All such written requests shall be kept by the Massage Therapist for a period of one year, and shall be produced for inspection when requested by any city officer.

(b) **Business Premises.** Out calls may only be conducted at a business when the following criteria are met.

1. The business hosting the Massage Therapist is currently licensed in the City of Leawood, or is exempt from licensure;
2. The massage is conducted by a Therapist currently licensed by the City of Leawood;
3. The massage is performed in a public setting (i.e. not in an office with a door capable of being locked), and the Patron is fully clothed; and
4. A sign-in log or register must be kept by the Licensed Massage Therapist and Massage Establishment for a period of one (1) year.

(Ord. 2989; 03-02-20)
(Ord. 2561C; 08-06-12)
(Ord. 1867C; 06-19-00)

**5-512** **Massage Therapy: Educational Requirements.**

(a) To qualify for a Massage Therapist license, an applicant must demonstrate that they have satisfied one of the following educational requirements:

(1) Successful completion of a course of instruction, consisting of not less than 500 hours, in the theory, method, or practice of massage, from one or more approved schools (as defined in 5-501). All practical and/or modality instruction must be completed as in-classroom/hands-on instruction, while theory instruction can be completed online. Proof of completion must be made by certified transcript(s) signed by the school registrar, either presented with a raised seal or faxed or emailed directly to the City Clerk by the school; or

(2) Proof of successful passage of the Board Certification exam administered by the National Certification Board for Therapeutic Massage & Bodywork (NCBTMB).

(b) In addition to meeting the requirements of either subsection (a)(1) or subsection (a)(2), the applicant must have successfully completed certification in American Red Cross first aid and American Heart Association CPR or the equivalent, and provide current certification.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-513 Massage Therapy: Identification Cards.**

(a) Upon approval and issuance of a Massage Therapist License, the City shall issue the therapist an identification card.

(b) Such Identification Card shall bear the Massage Therapist's name, license number, classification, physical description, and a photograph, and shall be laminated to prevent alteration.

(c) All Massage Therapists shall at all times have the City-issued Identification Card in their possession when working in a Massage Establishment or providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall of the massage room in a conspicuous location.

(d) All Massage Therapists shall keep their License available for inspection at all times upon request of any person who by law may inspect the same.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-514 Massage Therapy: Patron Registers.**

All Massage Therapists issued a License pursuant to the provisions of this ordinance shall keep a daily register of all Patrons in a form approved by the License Clerk. Such register shall list the Patrons' names, addresses, hours of arrival, and, if applicable, the rooms or cubicles assigned. Said register shall at all times during business hours be subject to inspection by City inspectors and police officers, and shall be kept on file for one year. Such register may be kept and supervised by the Massage Establishment as provided for hereafter.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-515 Massage Therapy: Applicability to Existing Massage Providers.**

(a) An individual licensed to perform Massage Therapy within the City at the time this ordinance is enacted, and who does not meet the education requirements described above, may be exempted by the City from such education requirements for thirty-six (36) months past the date of enactment as long as such individual meets the following conditions:

(1) At the time of their license renewal, such individual is currently practicing and has practiced Massage Therapy within the City during the previous twenty-four (24) months pursuant to a valid Leawood Massage Therapist license; and

(2) Such individual will provide all future Massage Therapy in conjunction with a Licensed Massage Establishment, and has applied for and meets all other licensing requirements for a Massage Therapist; and

(3) Such individual is actively enrolled in and currently attending classes in a course of instruction in the theory, method or practice of Massage, in order to meet the City's educational requirements, or is signed up to take the National Certification Examination for Therapeutic Massage and Bodywork, as authorized above.

(b) Individuals licensed with the City as a Massage Therapist for at least five (5) consecutive years immediately preceding the effective date of this ordinance may renew that license notwithstanding their inability or failure to satisfy the minimum education requirements set forth in this Article, and may continue to renew such license so long as there are no lapses in active licensure and the individual continues to satisfy all other requirements of this Article.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-516 Massage Therapy: Revocation or Suspension of License.**

(a) A Massage Therapist License issued by the City may be revoked by the City Clerk where it is found that:

(1) The Massage Therapist refused to permit, or hindered, a duly authorized police officer or City representative from conducting any lawful investigation or inspection pursuant to this Article;

(2) The Massage Therapist has been convicted of or entered diversion on any offense listed in Section 5-510(e); or

(3) Any of the provisions of this Article have been violated, including, but not limited to providing false information on the application or failure to meet application standards.

(b) A Massage Therapist License issued by the City may be suspended by the City where it is found that the Massage Therapist has been charged with any offense listed in Section 5-510(e). The suspension shall remain in effect until a court of competent jurisdiction rules on the criminal offense, unless the massage therapist files an appeal in accordance with Section 5-516(c).

(c) Before revoking or suspending the Massage Therapist License, the City shall give the Massage Therapist at least ten (10) days written notice and the opportunity for review by the City Administrator or their designee. If the Therapist requests review, the revocation or suspension will be stayed pending the review, but in no event more than fourteen (14) days from the original effective date of the suspension or revocation. The City Administrator, or their designee, may uphold the revocation or suspension or may rescind the revocation or suspension, and if applicable, specify certain conditions and stipulations therewith. The decision of the City Administrator, or their designee, is final.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-517** **Massage Therapy: Change of Employment.**

A Massage Therapist shall notify the City of any change in employment within ten (10) days of the change. This shall include a change in the therapist's employer, or the addition or reduction of location types. The therapist will be required to get a new identification card from the City and pay any applicable fees.

(Ord. 2989; 03-02-20)

***5-518-519*** ***Reserved.***

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-520** **Massage Establishment: License.**

(a) **Generally.** No person shall operate a Massage Establishment within the City without first obtaining a valid Massage Establishment License issued by the City pursuant to the provisions of this Article. To receive a License for operating and conducting a Massage Establishment, the applicant must meet the requirements as provided for hereafter. A Massage Establishment License does not authorize the Licensee to perform and provide Massage Therapy. A Massage Establishment License shall be required to operate a business to provide Out Calls.

(b) **Application.** Applicants for a License to operate a Massage Establishment within the City shall file a written application with the City Clerk and pay a nonrefundable annual fee. The application shall provide the following information for each stockholder holding more than 10% of the stock, each director, officer, partner, limited partner, member, and any manager or other person principally in charge of the business operations of the proposed establishment, hereinafter referred to as "applicant":

(1) The full legal name, address and telephone number of the applicant or entity applying for licensure. If the applicant is an entity, proof it is properly registered with the Kansas Secretary of State;

(2) Written evidence that the applicant is at least 18 years old by providing a copy of a current state or federally issued form of identification;

(3) The exact nature of the services to be provided under the requested License and the proposed place of business and facilities therefor;

(i) Operation of an establishment in a private residence or noncommercial business establishment is prohibited.

(ii) Operation of an establishment in a hotel or motel is prohibited.

(4) The business, occupation, or employment history of each applicant for the three years immediately preceding the date of application;

(5) Disclosure of any adult or juvenile criminal charges for each applicant, fully disclosing the jurisdiction in which charged, the offense date, the final disposition date, and the final disposition (i.e. convicted, diverted, dismissed);

(6) The Massage Therapy and Massage Establishment License history of each applicant, including any other similar license or permit issued by any licensing jurisdiction, including whether any applicant has ever had any license, permit, or similar authorization revoked or suspended by the City or any other state, city, or local agency, or has voluntarily surrendered a permit or license in lieu of revocation or suspension. In such event, the applicant will provide the reason therefor, and the business activity or occupation subsequent to such action of suspension, revocation, or surrender;

(7) A list of all Massage Therapists working in the Massage Establishment (if known at the time of application) and proof that such Massage Therapists are properly licensed (to be updated as necessary);

(8) Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the License; and

(9) Any other information deemed necessary by the City to review and process the application.

(c) **Renewals.** An applicant seeking the renewal of an existing License shall submit a renewal application and provide the City with that information or documentation necessary to update the applicants' former application.

(d) **Application Process.** Applications for a Massage Establishment License shall be submitted to the City Clerk, who shall transmit copies of completed applications to the Chief of Police and the Community Development Director for review, With the aid and input of the Chief of Police, the Community Development Director, the Building Official, or their designees, the City shall determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued (or reissued) the requested License. Such determination shall be made within twenty-one (21) days from receipt of the completed application, unless good cause exists to extend this period of time.

(e) **Inspections.** As part of the application process, the Massage Establishment shall be subject to inspections as provided by Section 5-522.

(f) **Issuance of License.** The City Clerk shall approve the issuance of a License for a Massage Establishment, unless it is found that:

(1) Any applicant has been convicted of, or diverted on (or any similar disposition) any of the following:

(i) a felony;

(ii) an offense involving sexual misconduct;

(iii) an offense involving obscenity;

(iv) promoting prostitution;

(v) an offense involving a lewd or lascivious act;

(vi) prostitution;

(vii) patronizing a prostitute;

(viii) an offense involving breach of privacy;

(vix) any sex offense as described in the Kansas Statutes Chapter 21, Article 55 (Sex Offenses) or comparable offense; or
(ix) any offense involving massage or Massage Therapy, or arising out of the applicant's prior massage establishment(s) or individual therapist license(s) in the ten (10) years immediately preceding the date of the application;

(2) Any applicant has knowingly made any false, misleading, or fraudulent statement of fact in the application or in any document required by the City in conjunction therewith;

(3) Any applicant has had a Massage Establishment License, a Massage Therapy License or any other similar license, permit or other authorization denied, revoked, or suspended by the City or any other state, city or local agency, or has voluntarily surrendered the permit or license in lieu of revocation or suspension, within ten (10) years prior to the date of the application;

(4) Any applicant has previously been issued a license, permit or other authorization for an adult entertainment business (as defined by the Leawood Development Ordinance) or escort service, or has been employed by any such establishment;

(5) The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation;

(6) The operation as proposed by the applicant would not comply with all applicable laws including, but not limited to, the City's code or building, zoning, and health ordinances and regulations;

(7) Any applicant would be ineligible to receive a License under the provisions of this Article;

(8) The applicant has failed to successfully complete any applicable health, safety, building, and/or fire inspections; or

(9) There are facts present related to a familial, personal, or professional relationship between any applicant or Establishment Representative and any individual who has previously been denied a license or had a license revoked, suspended, non-renewed, or voluntarily surrendered in lieu of suspension or revocation, and is unable to maintain an establishment license under this Article, which reasonably indicate that the establishment's operations would be influenced by that/those individual(s); or

(10) Any other application requirement has not been met.

(g) Upon approval of the application, the City shall issue the Massage Establishment License that shall be nontransferable. If the application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to address as provided on the application. The notice shall state the basis for the denial and the opportunity for review by the City Administrator or their designee. The determination of the City Administrator, or their designee, is final.

(h) Upon denial, the applicant shall be ineligible to reapply for any license under this Article for a period of one year from the date of denial. A denied applicant can seek waiver of the one year ineligibility from the City Clerk, in writing, upon a showing of good cause.

(Ord. 2989; 03-02-20)
(Ord. 2758C; 11-02-15)
(Ord. 1867C; 06-19-00)

**5-521 Massage Establishment: Display of Licenses.**
A Massage Establishment shall at all times display in an open and conspicuous place its Massage Establishment License.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-522 Massage Establishment: Inspection.**

(a) **Inspection of Proposed Massage Establishment.** No business shall be operated or conducted at any proposed Massage Establishment, nor shall any Massage Establishment License be issued until an inspection by the Community Development Director, Building Official, or their designees, has been completed. The Community Development Director, Building Official, or their designees, shall certify that the proposed Massage Establishment complies with all of the requirements of the Leawood City Code, the Leawood Development Ordinance, and this Article and shall give such certification to the City Clerk; provided, however, that nothing contained herein shall be construed to eliminate other requirements of law concerning the maintenance of the premises, nor to preclude authorized inspections thereof.

(b) **Supplemental Inspections.** The Police Department, the Community Development Director, the Building Official, or their designees, may from time to time make an inspection of each Licensed Massage Establishment in this City for the purposes of determining that the provisions of this Article are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any Licensee or Establishment Representative to fail to allow such inspector immediate access to the premises or to hinder such inspector in any manner. Any failure on the part of a Licensee or Establishment Representative to grant immediate access to such inspector shall be grounds for the revocation of the Massage Establishment License and Massage Therapist License, as applicable.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-523 Massage Establishment: Facilities.** The operation of a Massage Establishment and the provision and performance of Massage Therapy shall be subject to the following regulations:

(a) **Massage Rooms.** Rooms in which Massage Therapy is to be practiced or administered shall:
   (1) Have at least fifty (50) square feet of clear floor area;
   (2) Maintain a light level of not less than two (2) foot-candles as measured three (3) feet above the floor;
   (3) Contain a door incapable of being locked from the exterior or interior; and
   (4) Be equipped with approved receptacles for the storage of soiled linen.

(b) **Dressing Rooms**. Provisions for a separate dressing room for each sex must be available within all Massage Establishments. Doors to such dressing rooms shall open inward and shall be self-closing. The dressing room can be the therapy room, provided that no Establishment Representative is present during dress or undressing.

(c) **Toilet Facilities**. Toilet facilities shall be provided in convenient locations. When five or more employees and Patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. The separate toilet facilities shall be designated as to the sex accommodated therein.

(d) **Lavatories or Wash Basins**. Lavatories or wash basins shall be provided in either the toilet room or a vestibule with both hot and cold running water. Soap in a dispenser and sanitary towels shall also be provided. Table showers and bathtubs are prohibited.

(e) **Cleanliness of Establishment**. Every portion of a Massage Establishment, including appliances, shall be kept clean and operated in a sanitary condition.
   (1) The walls shall be clean, and the walls shall be painted with washable, mold-resistant paint in all rooms where steam is used.
   (2) Floors shall be free from any accumulation of dust, dirt, or refuse.
   (3) All equipment used in the business's operation shall be maintained in a clean and sanitary condition.
   (4) Wet and dry heat rooms, showers and toilet rooms shall be thoroughly cleaned each day the business is in operation.

(f) **Towels and Linen**. Clean, laundered sheets and towels shall be provided to Patrons for use. Such items shall be laundered after each use and stored in a sanitary manner. Towels, cloths and sheets shall not be used for or by more than one Patron.

(Ord. 2989; 03-02-20)
(Ord. 2548C; 07-02-12)
(Ord. 1867C; 06-19-00)

**5-524 Massage Establishment: Operation Regulations.**

(a) **Hours**. Such business shall be closed and operations shall cease between the hours of 10:00 p.m. and 6:00 a.m. each day. Out Calls are not permitted between the hours of 9:00 p.m. and 8:00 a.m. each day.

(b) **Supervision**. The Massage Establishment Licensee or a manager shall personally supervise the premises all times when open for business and shall not

violate or permit others to violate any applicable provision of this Article. Any violation of any provision of this Article by any Establishment Representative shall constitute a violation by the Licensee.

(c) **Conduct of Business.** The Massage Establishment Licensee shall at all times be responsible for the conduct of business at their Massage Establishment and for any act or conduct of their Establishment Representatives which constitutes a violation of the provisions of this Article, regardless of whether or not the Licensee is physically present at the time of violation. Any violation of city, state, or federal laws committed on the premises by any licensee or Establishment Representative affecting the eligibility or suitability of such person or entity to hold a License may be grounds for suspension or revocation of same.

(d) **Patron Attire**. No Establishment Representative shall be present in any room or area with a Patron, or allow any other person to be present in a room or area with a Patron (except as may be required under the provisions of the Americans with Disabilities Act) unless the Patron's Specified Anatomical Areas are fully covered by opaque towels, cloths, or undergarments.

(e) **Illegal Contact**. Any contact by a Licensee or Establishment Representative with a Patron's pubic region, genital area, perineum, anal region, or the area of the female breast that includes the areola and nipple is strictly prohibited.

(f) **Employee Attire**. All Establishment Representatives shall be fully clothed and covered, modestly attired, clean, and wearing clean outer garments. For purposes of this subsection, fully clothed and covered means a state of dress in which the covering shall be of an opaque material that covers the chest, buttocks, and genital area at all times. Diaphanous or transparent clothing is prohibited.

(g) **Identification Card**. All Massage Therapists shall at all times have the City-issued Identification Card in their possession when working in a Massage Establishment or performing and providing Out Calls. Such Identification Card shall be conspicuously worn on the Massage Therapist's clothing, or be posted on the wall of the massage room in a conspicuous location.

(h) **Danger to Safety or Health**. No service shall be given which is clearly dangerous or harmful to the safety or health of any person.

(i) **Alcoholic Beverages.** No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed in or upon any Licensed Massage Establishment, or during any Out Call; provided this restriction shall not apply to businesses where the Licensed Massage Therapy is accessory to the predominant business purpose of the establishment; provided further that no alcohol is permitted on that portion of the premises where the Massage Therapy occurs.

(j) **Overnight Sleeping Prohibited.** No individual shall sleep, reside, or inhabit a Massage Establishment between the hours of 10:00 p.m. and 6:00 a.m. Prima facie evidence of violating this provision includes, but is not limited to, the presence of a cot, sleeping bag, air mattress, bed mat, or bed.

(k) **Minors.** No Massage Therapist or Employee Representative shall perform or permit any Massage Therapy to be provided to a person under the age of 18, unless that person is accompanied to the establishment by a parent or legal guardian, the parent or legal guardian remains at the establishment during the massage, and the parent or legal guardian has authorized such therapy in writing.

(Ord. 2989; 03-02-20)
(Ord. 2391C; 04-20-09)
(Ord. 1867C; 06-19-00)

**5-525 Massage Establishment: Employee and Patron Registers.**

(a) **Employees**. A Massage Establishment shall keep and maintain on the premises a current register of all Establishment Representatives showing such individual's full name, home address, position, and will include a copy of a government-issued photo identification and a copy of each Massage Therapy License (if applicable). Such register shall be open to inspection at all reasonable times by any city representative or police officer, and shall be kept on file for one year.

(b) **Patrons**. A Massage Establishment shall keep and maintain on the premises a daily register of all Patrons in a form approved by the City. Such register shall list each Patron's first and last name, home address, phone number, and time of arrival. The Massage Establishment shall make every effort to verify the Patron's name by viewing a government issued photo ID. If no photo ID is produced, the log shall so indicate. The Patron register shall also include the service(s) received, and the full name of the Establishment Representative who performed the service(s). Said register shall be subject to inspection by City inspectors and police officers at all times during business hours, and shall be kept on file for one year.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-526 Massage Establishment: Restrictions on Place of Business. (Repealed)**

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-527 Massage Establishment: Revocation or Suspension of License.**

(a) A Massage Establishment License may be revoked by the City where it is found that:

(1) Any Establishment Representative refused to permit, or hindered, a duly authorized police officer or City representative from conducting any lawful investigation or inspection pursuant to this Article;

(2) The Licensee, or any applicant required to be disclosed per Section 5-520, has been convicted of or entered diversion on any offense listed in Section 5-520(f); or

(3) Any of the provisions of this Article have been violated, including, but not limited to providing false information on the license application, or failure to meet application standards.

(b) A Massage Establishment License issued by the City may be suspended by the City where it is found that the Licensee, or any applicant required to be disclosed per Section 5-520, has been charged with any offense listed in Section 5-520(f). The suspension shall remain in effect until a court of competent jurisdiction rules on the criminal offense, unless the massage therapist files an appeal in accordance with Section 5-516(c).

(c) Before revoking or suspending the Massage Establishment License, the City shall give the Massage Establishment at least ten (10) days written notice of the charges and the opportunity for review by the City Administrator or their designee. If the Establishment requests review, the revocation or suspension will be stayed pending the review, but in no event more than fourteen (14) days from the original effective date of the suspension or revocation. The City Administrator, or their designee, may uphold the revocation or suspension or may rescind the revocation or suspension, and if applicable, specify certain conditions and stipulations therewith. The decision of the City Administrator, or their designee, is final.

(Ord. 2989; 03-02-20)
(Ord. 1867C; 06-19-00)

**5-528 Penalty**

Any person convicted of violating any of the provisions of this Article shall, upon conviction thereof, be punished by a fine of not less than One Hundred dollars ($100.00) nor more than One Thousand dollars ($1,000.00), or by imprisonment not exceeding 180 days, or by both such fine and imprisonment.

(Ord. 2989; 03-02-20)

# CHAPTER VI. ELECTIONS

**Article 1. City Election; City Officers**
**Article 2. Wards**

## ARTICLE 1. CITY ELECTION; CITY OFFICERS

SECTIONS

6-101 CITY ELECTIONS; TERM OF CITY OFFICES; OFFICER QUALIFICATIONS
6-101A CANDIDACY PETITION
6-102 EFFECT OF REDISTRICTING OF WARD BOUNDARIES ON COUNCIL MEMBERSHIP

### 6-101. CITY ELECTIONS; TERM OF CITY OFFICES; OFFICER QUALIFICATIONS.

(a) **Term of Office Extended.** The term of members of the governing body of the City of Leawood that would expire at any time in 2016 shall expire on the second Monday in January, 2018. The terms of members of the governing body of the City of Leawood that would expire at any time in 2018, shall expire on the date of the first regular meeting in January 2020.

(b) **Elections in Odd-Numbered Years.** There shall be a general election on the Tuesday succeeding the first Monday in November of 2017 for the offices of all elected city officers completing their current terms of office in January of 2018. All elected city officers not then completing their current terms, shall continue to hold their respective offices until said terms are completed or said offices are otherwise vacated. Thereafter, the general election of city officers shall be held on the Tuesday succeeding the first Monday in November of every odd numbered year.

(c) **Terms of Office and Qualifications.** The terms of office for all elected city officers shall commence on the date of the first regular meeting in January following certification of the election and shall be for four years. Each ward of the city shall have two councilmembers with staggered terms so that one councilmember from each ward shall be elected at each election by qualified voters. No person shall be eligible to the office of the councilmember who is not at the time of his or her election an actual resident of the ward for which he or she was elected. The office of Mayor shall be elected from the city at large. All elected officers shall be qualified electors of the City under the constitution of the State of Kansas. Code of the City of Leawood.

(d) **Elections to be Nonpartisan.** All elections for the City of Leawood, Kansas shall be nonpartisan.

(Ord. 1755C; 11-02-98)
(Ord. 1755C; 11-02-98)
(Ord. 2749C; 10-05-15)
(Ord. 2779C; 04-18-16)
(Ord. 2949C; 06-17-19)

**6-101A.** **Candidacy Petition.** In accordance with K.S.A. 25-205, a person may become a candidate for municipal office by filing a declaration of intention to become a candidate, accompanied by the required fee or by having a nomination petition filed on their behalf. Nomination petitions for the position of Mayor must be signed by one percent [1%] of the qualified electors in the city. Nomination petitions for the position of councilmember must be signed by one percent [1%] of the qualified electors in the applicable ward. All filings shall be in accordance with the laws of Kansas.

(Ord. 2824C; 03-06-17)

**6-102** **EFFECT OF REDISTRICTING OF WARD BOUNDARIES ON COUNCIL MEMBERSHIP.** Whenever the residence of any councilmember shall be transferred from one ward of the City to another solely as a result of a change in the ward boundaries, said councilmember's office shall not become vacant and said councilmember shall be eligible to represent said ward from which he or she was elected or appointed until the next city election as long as he or she is otherwise qualified to serve as a councilmember. Then, at the next city election, a new qualified councilmember shall be elected to represent said ward. If at such time, the original term of said office is not yet expired, the newly elected councilmember shall be elected only to serve out the balance of the original unexpired term.

(Ord. 1755C; 11-2-98)

## ARTICLE 2. WARDS

**6-201.** **DIVISION OF CITY INTO WARDS.** The City shall be divided into four wards for election purposes, pursuant to the provisions of K.S.A. § 19-3438, and as subsequently amended, having their boundaries as set out in Sections 6-202 through 6-205.

(Ord.1762C; 11-2-98)
(Ord. 2014C; 08-04-03)
(Ord. 2781C; 05-02-16)

**6-202.** **BOUNDARIES OF WARD 1.** That territory of the City of Leawood beginning at the Northeast corner of the present limits of the City; thence South along Eastern limits of the City to the centerline of 103rd Street; thence West along the centerline of 103rd Street to the Western limits of the City; thence Northerly and Easterly along the Western limits of the City to the centerline of Somerset Drive; thence Easterly along the Northern limits of the City to the point of beginning.

(Ord. 1173C; 08-21-90)
(Code 2000)
(Ord. 2014C; 08-04-03)
(Ord. 2781C; 05-02-16)

**6-203.** **BOUNDARIES OF WARD 2.** That territory of the City of Leawood beginning at the centerline of 103rd Street at the Eastern limits of the City; thence South along the Eastern limits of the City to the centerline of 123rd Street; thence West along the centerline of 123rd Street to the junction with the centerline of Cherokee Lane; thence South along the centerline of Cherokee Lane to the junction with the centerline of Ensley Lane; thence South along the centerline of Ensley Lane to the junction with the centerline of Overbrook Road; thence South along the centerline of Overbrook Road to the junction with the centerline of Cherokee Lane; thence Westerly along the centerline of Cherokee Lane to the junction with the centerline of Pawnee Lane; thence North along the centerline of Pawnee Lane to the junction with the centerline of 127th Street; thence West along the centerline of 127th Street to the junction with the centerline of Mission Road; thence North along the centerline of Mission Road to the junction with the centerline of 119th Street; thence West along the centerline of 119th Street to the junction with the Western limits of the City; thence Northerly along the Western limits of the City to the junction with the centerline of 103rd Street; thence East along the centerline of 103rd Street to the point of beginning.

(Ord. 1173C; 08-21-90)
(Code 2000)
(Ord. 2014C; 08-04-03)
(Ord. 2781C; 05-02-16)

**6-204.** **BOUNDARIES OF WARD 3.** That territory of the City of Leawood beginning at the centerline of 123rd Street at the Eastern limits of the City; thence Southerly and Westerly along the Eastern limits of the City to the junction with the Southern limits of the City; thence Westerly along the Southern limits of the City to the centerline of Mission Road; thence North along the centerline of Mission Road to the junction with the centerline of 127th Street; thence East along the centerline of 127th Street to the junction with the centerline of Pawnee Lane; thence South along the centerline of Pawnee Lane to the junction with the centerline of Cherokee Lane; thence Easterly along the centerline of Cherokee Lane to the junction with the centerline of Overbrook Road; thence North along the centerline of Overbrook Road to the junction with the centerline of Ensley Lane; thence North along the centerline of Ensley Lane to the junction with the centerline of Cherokee Lane; thence North along the centerline of Cherokee Lane to the junction with the centerline of 123rd Street; thence East along the centerline of 123rd Street to the point of beginning.

(Ord. 1173C; 08-21-90)
(Code 2000)
(Ord. 2014C; 08-04-03)
(Ord. 2781C; 05-02-16)

**6-205.** **BOUNDARIES OF WARD 4.** That territory of the City of Leawood beginning at the centerline of Mission Road at the Southern limits of the City; thence North along the centerline of Mission Road to the junction with the centerline of 119th Street; thence West along the centerline of 119th Street to the junction with the Western limits of the City; thence Southerly along the Western limits of the City to the Southerly limits of the City; thence Easterly along the Southerly limits of the City to the point of beginning.

(Ord. 1173C; 08-21-90)
(Code 2000)
(Ord. 2014C; 08-04-03)
(Ord. 2781C; 05-02-16)

# CHAPTER VII. FIRE PROTECTION

**Article 1. Fire Department**
**Article 2. Fire Prevention**

## ARTICLE 1. FIRE DEPARTMENT

SECTIONS


7-101 FIRE DEPARTMENT
7-102 MEMBERSHIP
7-103 FIREFIGHTER'S RELIEF ASSOCIATION
7-104 MUTUAL ASSISTANCE BETWEEN CITIES IN EMERGENCIES
7-105 COOPERATION WITH DEFENSE AGENCIES


### 7-101. FIRE DEPARTMENT ESTABLISHED.

(a) There is hereby established a fire department to extinguish and prevent fires in the city and in such other places as the city council shall by resolution direct, and which shall perform duties in connection therewith as the governing body shall, from time to time, by ordinance direct.

(b) The fire department shall maintain and operate rescue equipment to be used within the city and in such other places as the governing body shall by resolution direct.

(c) The fire department shall maintain and operate the fire department building, grounds, and other equipment under the direction of the fire chief.

(d) The fire department shall be operated under the supervision and administration of the fire chief in accordance with such rules and regulations as the fire chief shall from time to time formulate, copies of which shall be furnished to the city administrator upon request.

(Ord. 1714C; 03-23-98)

**7-102.** **MEMBERSHIP.** Membership in the fire department shall consist of three categories which are set forth below:

(a) Full-time paid personnel who shall be selected in accordance with the "Personnel Rules and Regulations" incorporated by Section 1-306.

(b) Volunteer firefighters who shall be selected by the fire chief and who shall serve with compensation of $100 per year paid by the city.

(c) “On Call”, part-time paid personnel who shall be selected in accordance with the “Personnel Rules and Regulations” incorporated by Section 1-306.

(Ord. 1714C; 03-23-98)
(Code 2000)
(Ord. 2300C; 02-04-08)

**7-103.** **FIREFIGHTER’S RELIEF ASSOCIATION.** The Firemen's Relief Association of the City of Leawood, Kansas, is hereby authorized:

(a) The Firefighter's Relief Association of the City of Leawood, Kansas, shall operate under the regulations set forth by the statutes of the State of Kansas under the supervision of the state commissioner of insurance. Each year on or before April 1, the fire chief shall present a copy of the annual report submitted to the commissioner of insurance, which sets forth receipts and disbursements for the year ending the preceding December 31, to the governing body.

(b) The treasurer of the Firefighter's Relief Association, incorporated, shall be bonded by sureties as required by the laws of the State of Kansas.

(c) The distribution of funds shall be under such provisions as shall be made by the governing body. In all cases involving expenditures or payments in the amount of $500 or more, prior certification shall be obtained from the city attorney that such expenditures or payment complies with the requirements of this article.

(d) Investments as provided for by K.S.A. 40-1706 must be approved by the governing body. It shall be the duty of the city attorney to examine all bonds as to their validity and report thereon in writing to the governing body and the Firefighter's Relief Association until they have been approved and found valid by the city attorney.

(Ord. 1714C; 03-23-98)
(Code 2000)
(Ord. 2300C; 02-04-08)

**7-104.** **MUTUAL ASSISTANCE BETWEEN CITIES IN EMERGENCIES.**

(a) The fire chief is hereby authorized and directed to enter into mutual assistance pacts with the chiefs of the fire departments of such other cities as the chief deems advisable and upon such conditions as he or she deems necessary for the purpose of planning in advance what personnel and equipment of each department will be made mutually available.

(b) Whenever the necessity arises during any emergency resulting from the existence of a state of war, or from fire, or any other cause, the firefighters and officers of the fire department of the city may, together with all necessary equipment, lawfully go or be sent beyond the territorial limits of the city to any point within the state, to assist in meeting such emergency. The fire chief shall have the right in every case to determine whether or not the city can spare all or any portion of its fire equipment and firefighters at any particular time.

(c) The fire chief is hereby authorized and directed to enter into mutual assistance pacts with the chiefs of the fire departments of such other cities as the chief deems advisable in order to determine in advance what personnel and equipment of each department will be made mutually available, and upon what conditions.

(d) In such event the acts performed for such purposes by such firefighters or officers, and the expenditures made for such purpose by the city shall be deemed conclusively to be for a public and government purpose and all of the immunities from liability enjoyed by the city when acting through its firefighters or officers of the fire department for public or governmental purposes within its territorial limits shall be enjoyed by it to the same extent when such city is so acting under this section or under other lawful authority beyond its territorial limits. The firefighters and officers of the fire department of the city, when acting hereunder, or under other lawful authority, beyond the territorial limits of this city, shall have all of the immunities from liability and exemptions from laws, ordinances and regulations and shall have all of the pension, relief, disability and other benefits, enjoyed by them while performing their respective duties within the territorial limits of the city.

(Ord. 1714C; 03-23-98)

**7-105. COOPERATION WITH DEFENSE AGENCIES.** The fire chief is hereby authorized and directed to cooperate with any state, district or local civil defense agency for the purpose of coordinating the chief's mutual assistance pacts with the overall planning of civilian defense.

(Ord. 1714C; 03-23-98)

# ARTICLE 2. FIRE PREVENTION

**SECTIONS**


7-201 ADOPTION OF THE INTERNATIONAL FIRE CODE.
7-202 INTERNATIONAL FIRE CODE, SECTION 101.1. TITLE.
7-203 INTERNATIONAL FIRE CODE, SECTION 101.6. FIRE CODE OFFICIAL DESIGNATED.
7-204 INTERNATIONAL FIRE CODE, SECTION 103.1. ESTABLISHMENT OF THE BUREAU OF FIRE PREVENTION.
7-205 INTERNATIONAL FIRE CODE, SECTION 105.1.2. TYPES OF PERMITS.
7-206 INTERNATIONAL FIRE CODE, SECTION 105.6. REQUIRED OPERATIONAL PERMITS.
7-206A INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 105.6.1 THROUGH AND INCLUDING SECTION 105.6.19.
7-206B INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 105.6.21 THROUGH AND INCLUDING SECTION 105.6.50.
7-207 INTERNATIONAL FIRE CODE, SECTION 105.7. REQUIRED CONSTRUCTION PERMITS.
7-208 INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 105.7.1. THROUGH AND INCLUDING 105.7.25.
7-208A INTERNATIONAL FIRE CODE, SECTION 108.2. TESTING AND OPERATION.
7-208B INTERNATIONAL FIRE CODE, SECTION 108.2.1. TEST AND INSPECTION RECORDS.
7-208C INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 109.1, 109.2 AND 109.3.
7-209 INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 110.4 AND 110.4.1.
7-210 INTERNATIONAL FIRE CODE, SECTION DELETED AND OMITTED, SECTION 114.4, FAILURE TO COMPLY.
7-211 INTERNATIONAL FIRE CODE, SECTION 307.1. OPEN BURNING, GENERAL.
7-212 INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 307.1.1. THROUGH 307.5.
7-212A INTERNATIONAL FIRE CODE, SECTION 403. EMERGENCY PREPAREDNESS REQUIREMENTS.
7-212B INTERNATIONAL FIRE CODE, SECTION 404. FIRE SAFETY, EVACUATION AND LOCK DOWN PLANS.
7-213 INTERNATIONAL FIRE CODE, SECTION 404.2.1. FIRE EVACUATION PLANS.
7-214 INTERNATIONAL FIRE CODE, SECTIONS 405. EMERGENCY EVACUATION DRILLS.
7-215 INTERNATIONAL FIRE CODE, SECTION 503.1. FIRE APPARATUS RAODS, WHERE REQUIRED.
7-216 INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 503.1.1 THROUGH 503.6. *REPEALED*.
7-217 INTERNATIONAL FIRE CODE, SECTION OMITTED AND DELETED, SECTION 508.5.1.
7-218 INTERNATIONAL FIRE CODE, SECTION 508.2. FIRE COMMAND CENTER, EXCEPTION.
7-219 INTERNATIONAL FIRE CODE, SECTION 903.2. AUTOMATIC SPRINKLER SYSTEMS..
7-220 INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 903.1. THROUGH 903.6.1 REGARDING AUTOMATIC SPRINKLER SYSTEMS. *REPEALED*.
7-220A INTERNATION FIRE CODE, SECTION 905. STANDPIPE SYSTEMS.
7-220B INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 905.1 THROUGH 905.12 REGARDING STANDPIPE SYSTEMS.
7-220C INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 1010.1.4.4 AND 1010.1.4.4.1.

7-221 INTERNATIONAL FIRE CODE, SECTION 5607.16. CONSTRUCTION BLASTING.
7-222 INTERNATIONAL FIRE CODE, SECTION 5608. FIREWORKS DISPLAY.
7-223 INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 5608.1. THROUGH 5608.10 REGARDING FIREWORKS.
7-223A INTERNATIONAL FIRE CODE, SECTION 5704.2.9.6.1. LOCATIONS WHERE ABOVE-GROUND TANKS ARE PROHIBITED.
7-224 INTERNATIONAL FIRE CODE, SECTION 5706.2.4.4. LOCATIONS WHERE ABOVE-GROUND TANKS ARE PROHIBITED.
7-224A INTERNATIONAL FIRE CODE, SECTION 5806.2. LIMITATIONS.
7-225 INTERNATIONAL FIRE CODE, SECTION 6104.2. MAXIMUM CAPACITY WITHIN ESTABLISHED LIMITS.
7-226 APPEALS.
7-227 PENALTIES.

**7-201. ADOPTION OF THE INTERNATIONAL FIRE CODE**. In addition to other standards set forth in this chapter, there is hereby incorporated by reference that certain Fire Code known as the "International Fire Code", edition of 2018, ["IFC"] prepared and published by the International Code Council, Inc., including appendix chapters D and I, save and except such portions as are hereinafter omitted, deleted, modified or amended or added thereto, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, as amended. At least one copy of the Fire Code shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2987," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open for inspection and available to the public at all reasonable business hours.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-202. INTERNATIONAL FIRE CODE, SECTION 101.1. TITLE.** Section 101.1 of the IFC is hereby amended to read as follows: **Title.** These regulations shall be known and referred to as this code, the IFC, or the Fire Code of the City of Leawood, Kansas.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)

**7-203. INTERNATIONAL FIRE CODE, SECTION 101.6. FIRE CODE OFFICIAL DESIGNATED.** A new section 101.6 of the IFC is hereby added to read as follows:

Fire **Code official designated.** The Fire Marshal, under the direction of the Fire Chief, is hereby designated as the authority charged with the duties of administration and enforcement of the Fire Code of the City of Leawood and all references to the "fire code official" in the International Fire Code and in this Chapter, shall mean the Fire Marshal, under the direction of the Fire Chief.

(Ord. 2987; 01-21-20**)**
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)

**7-204. INTERNATIONAL FIRE CODE, SECTION 103.1. ESTABLISHMENT OF THE BUREAU OF FIRE PREVENTION.** Section 103.1 of the IFC is hereby amended to read as follows: **Establishment of the bureau of fire prevention.** The Fire Code of the City of Leawood shall be enforced by the Bureau of Fire Prevention under the direction of the Fire Marshal. The function of the Bureau shall be the implementation, administration and enforcement of the provisions of the International Fire Code as amended.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-205. INTERNATIONAL FIRE CODE, SECTION 105.1.2. TYPES OF PERMITS.** Section 105.1.2 of the IFC is hereby amended to read as follows: **Type of Permit**. There shall be one type of permit known as an operational permit. An operational permit allows the applicant to conduct an operation or a business for which a permit is required by this Article for either a prescribed period or until renewed or revoked.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Code 1984)
(Ord. 1714C; 03-23-98)
(Code 1973)

**7-206. INTERNATIONAL FIRE CODE, SECTION 105.6. REQUIRED OPERATIONAL PERMITS.** Section 105.6 of the IFC and its subsections are hereby amended to read as follows: **Required Operational Permit**. The Fire Code official is authorized to issue operational permits in accordance with the provisions of this Code for the following operations:

(a) Carnivals and Fairs. An operational permit is required to conduct a carnival or fair.

(b) Compressed Gases. An operational permit is required for the storage, use or handling at normal temperature and pressure (NTP) of compressed gases in excess of the amounts shown in Table 105.6.8 of the IFC, provided, however, such permit is not required for vehicles equipped for and using compressed gas as a fuel for propelling the vehicle.

(c) Covered Mall Buildings. An operational permit is required for:

1. The placement of retail fixtures and displays, concession equipment, displays of highly combustible goods and similar items in the mall.
2. The display of liquid- or gas-fired equipment in the mall.
3. The use of open-flame or flame-producing equipment in the mall.

(d) Fireworks Display.

(e) Liquid- or gas-fueled vehicles or equipment in assembly buildings. An operational permit is required to display, operate or demonstrate liquid- or gas-fueled vehicles or equipment in assembly buildings.

(f) Miscellaneous combustible storage. An operational permit is required to store in any building or upon any premises in excess of 2,500 cubic feet (71 $m^3$) gross volume of combustible empty packing cases, boxes, barrels or similar containers, rubber tires, rubber, cork or similar combustible material.

(g) Open Burning as permitted under Section 7-211 of the City Code.

(h) Temporary membrane structures, tents and canopies. An operational permit is required to operate an air-supported temporary membrane structure or a tent having an area in excess of 800 square feet, or a canopy in excess of 1600 square feet. Tents used exclusively for recreational camping purposes do not require a permit.

(i) Construction Blasting.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)

**7-206A. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 105.6.1 THROUGH AND INCLUDING SECTION 105.6.19.** Sections 105.6.1 through 105.6.19 of the IFC, excluding the tables referenced therein are hereby deleted and omitted.

(Ord. 2987; 01-21-20)

**7-206B. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 105.6.21 THROUGH AND INCLUDING SECTION 105.6.50.** Sections 105.6.21 through 105.6.50 of the IFC, excluding the tables referenced therein are hereby deleted and omitted.

(Ord. 2987; 01-21-20)

**7-207. INTERNATIONAL FIRE CODE, SECTION 105.7. REQUIRED CONSTRUCTION PERMITS,** Section 105.7 of the IFC is hereby amended to read as follows: **Required Construction Permits.** Permits shall be required and issued in accordance with Chapter 4, Article 2 of the Code of the City of Leawood, 2000.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-208. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 105.7.1 THROUGH AND INCLUDING SECTION 105.7.25.** Sections 105.7.1 through 105.7.25 of the IFC are hereby deleted and omitted.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)

**7-208A. INTERNATIONAL FIRE CODE, SECTION 108.2. TESTING AND OPERATION.** Section 108.2 of the IFC is hereby amended to read as follows: **Testing and Operation.** Equipment requiring periodic testing or operation to ensure maintenance shall be tested or operated as specified in this code.

(Ord. 2987; 01-21-20)
(Ord. 2655C; 03-17-14)

**7-208B. INTERNATIONAL FIRE CODE, SECTION 108.2.1. TEST AND INSPECTION RECORDS.** Section 108.2.1 of the IFC is hereby amended to read as follows: **Test and inspection records.** Required test and inspection records shall be submitted within 30 days of testing and inspection to the *fire code official* in such form and by such means as determined by the Fire Department. Any data management fees charged by third party administrators to process, store and report such documentation, as approved by the Governing Body, shall be the responsibility of the party submitting the report. Reports submitted other than in accordance with this section may not be accepted in the discretion of the Fire Code Official.

(Ord. 2987; 01-21-20)

**7-208C. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 109.1, 109.2 AND 109.3.** All provisions of Sections 109.1, 109.2 and 109.3 of the IFC are hereby deleted and omitted.

(Ord. 2987; 01-21-20)

**7-209. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 110.4 AND 110.4.1.** All provisions of Sections 110.4 and 110.4.1 of the IFC are hereby deleted and omitted.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)

**7-210. INTERNATIONAL FIRE CODE, SECTION DELETED AND OMITTED, SECTION 112.4, FAILURE TO COMPLY.** All provisions of Section 112.4 of the IFC entitled "Failure to comply," are hereby deleted and omitted.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-211. INTERNATIONAL FIRE CODE, SECTION 307.1., OPEN BURNING, GENERAL.** Section 307.1 of the IFC is hereby amended to read as follows: **Open Burning.** No open burning shall be allowed within the boundaries of the City of Leawood.

**EXCEPTIONS:**

1. Open burning of vegetation for land clearing operations is allowed when all of the following conditions are met and, when required, a permit has been issued:
   - (a) There is 1000 feet clearance from all dwellings and public roadways.
   - (b) Approved smoke abatement methods are used, specifically.
     - i. A burn pit and blower is used to increase efficiency of combustion; or
     - ii. Alternative methods as approved by the Fire Code Official.
   - (c) Daily weather conditions are as follows:
     - i. Wind speed greater than 5 mph and less than 15 mph
     - ii. Cloud ceiling above 1000 feet
     - iii. Atmospheric conditions are not conducive to thermal inversion. Such conditions typically are low temperature, high humidity, fog, calm winds.
   - (d) Burning is accomplished between sunrise and 30 minutes prior to sundown each approved burning day.

(e) The maximum fuel at any given time does not exceed 3000 cu. ft.

(f) The burn site is constantly attended while burning operations are occurring.

2. Bonfires not exceeding 30 cubic feet of fuel load, which are contained by a non-combustible barrier and are a minimum of 50 feet from combustible structures or public roadways. Such bonfires require a permit and are subject to stipulations limiting the duration of the burning and/or other conditions which constitute a hazard or a public nuisance.

3. In R-3 occupancies, the burning of solid fuel or liquefied petroleum gas (LPG) for cooking purposes in a non-combustible container is allowed where the solid fuel load does not exceed 4 pieces of wood 18 inches in length or an equivalent amount of other wood material. No permit shall be required for this type of open burning.

4. In R-1, R-2 and R-4 occupancies, the burning of natural gas or LPG in a listed appliance for outdoor cooking purposes is allowed where the LPG supply does not exceed 5 gallons water capacity. No permit shall be required for this type of open burning.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-212. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 307.1.1 THROUGH 307.5.** All provisions of Sections 307.1.1 through 307.5 of the IFC are hereby deleted and omitted.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-212A. INTERNATIONAL FIRE CODE, SECTION 403. EMERGENCY PREPAREDNESS REQUIREMENTS.** Section 403 of the IFC is hereby amended to read as follows:

**Emergency preparedness requirements.** It shall be the responsibility of all commercial and institutional occupants to prepare an emergency preparedness plan for the physical spaces and persons under their supervision. Such plan shall address the response to fire, tornado and security emergencies. The plan shall also

include such preparedness and training activities as are necessary to assure the success of the plan.

(Ord. 2987; 01-21-20)

**7-212B. INTERNATIONAL FIRE CODE, SECTION 404. FIRE SAFETY, EVACUATION AND LOCK DOWN PLANS.** All provisions of Section 404 of the IFC are hereby deleted and omitted.

(Ord. 2987; 01-21-20)

**7-213. INTERNATIONAL FIRE CODE, SECTION 404.2.1. FIRE EVACUATION PLANS.** Section 404.2.1 is hereby amended to read as follows: **Fire evacuation plans**. Fire evacuation plans shall include the following:

1. Emergency egress or escape routes and whether evacuation of the building is to be complete or, where approved, by selected floors or areas only.
2. Procedures for employees who must remain to operate critical equipment before evacuating.
3. Procedures for accounting for employees and occupants after evacuation has been completed.
4. Identification and assignment of personnel responsible for rescue or emergency medical aid.
5. The preferred and any alternative means of notifying occupants of a fire or emergency.
6. The preferred and any alternative means of reporting fires and other emergencies to the fire department or designated emergency response organization.
7. Identification and assignment of personnel who can be contacted for further information or explanation of duties under the plan. Code of the City of Leawood
8. A description of the emergency voice/alarm communication system alert tone and preprogrammed voice messages, where provided.
9. Required fire evacuation plans shall include provisions for the evacuation of mobility-impaired occupants in a safe, efficacious and respectful manner.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984) (Code 1973)

**7-214 INTERNATIONAL FIRE CODE, SECTION 405. EMERGENCY EVACUATION DRILLS.** All provisions of Section 405 of the IFC are hereby deleted and omitted.

(Ord. 2987; 01-21-20)

(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000) (Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-215. INTERNATIONAL FIRE CODE, SECTION 503.1. FIRE APPARATUS ACCESS ROADS, WHERE REQUIRED** Section 503.1 of the IFC is hereby amended to read as follows: **Fire Apparatus Access Roads.** All occupancies within this jurisdiction shall be required to have a fire apparatus access road.

(A) Fire Apparatus Access Road defined: A street, road, lane or drive including any bridge or culvert providing access to a building for emergency vehicles; does not include driveways less than 150 feet serving less than three single family dwellings. This definition shall supersede the definition in Section 502 of the International Fire Code.

(B) Fire Apparatus Access Road Requirements: Fire Apparatus Access Roads shall meet the following minimum provisions:

1. Extend to within 50 feet of a usable entrance to the structure.
2. Extend to within 200 feet exterior travel distance of all exterior portions of the structure at grade level.
3. Have a minimum clear width of 20 feet.
4. Have a minimum clear height of 13 feet 6 inches.
5. Provide an all-weather surface.
6. Be designed for minimum H-2 loading or to support 20,000 pounds weight per axle.
7. Have approved turn-around provisions for fire apparatus where its length exceeds 150 feet.
8. Have no change in grade exceeding 10%.
9. Have a minimum turning radius of at least 37.5 feet.
10. Have no barriers to unobstructed conveyance except as approved by the Fire Marshal.
11. Private gates, where permitted, must have approved redundant opening provisions.

**EXCEPTION**:

1. Driveways of any length serving not more than two R-3 occupancies may have reduced requirements as approved by the Fire Marshal.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)

(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-216. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 503.1.1 THROUGH 503.6. *Repealed*.**

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)
(Ord. 1714C; 03-23-98)
(Code 1984)
(Code 1973)

**7-217. INTERNATIONAL FIRE CODE, SECTION DELETED AND OMITTED, SECTION 508.5.1, WHERE REQUIRED. *Repealed*.**

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Code 2000)
(Ord. 1943C; 02-04-02)

**7-218. INTERNATIONAL FIRE CODE, SECTION 508.2. FIRE COMMAND CENTER, EXCEPTION.** A new section 508.2 of the IFC is hereby added to read as follows: **Fire Command Center, Exception.** Where the fire official determines that a fire command center has little or no value to emergency operations or is unlikely to be used due to the size and/or location of the building, no fire command center shall be required.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08) (Ord. 1943C; 02-04-02)

**7-219. INTERNATIONAL FIRE CODE, SECTION 903. AUTOMATIC SPRINKLER SYSTEMS.** Section 903 of the IFC is hereby amended to read as follows: **Automatic Sprinkler Systems.** The requirements regarding the installation of sprinkler systems are governed by and must comply with Article 2 of Chapter 4 of the Code of the City of Leawood, 2000.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Ord. 1943C; 02-04-02)
(Code 2000)

**7-220. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 903.1 THROUGH 903.6.1 REGARDING AUTOMATIC SPRINKLER SYSTEMS.** ***Repealed.***

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Code 2000)
(Ord. 1943C; 02-04-02)
(Ord. 1714C; 03-23-98)
(Ord. No. 1486C; 5-15-95)
(Code 1984)
(Code 1973)

**7-220A. INTERNATIONAL FIRE CODE, SECTION 905. STANDPIPE SYSTEMS.** Section 905 of the IFC is hereby amended to read as follows: **STANDPIPE SYSTEMS.** An approved Class I standpipe system shall be required in all occupancies where the travel distance from the nearest point of approved fire department access to any point within the building exceeds 200 feet. All Class I standpipe systems may be combined with sprinkler system piping.

**Exception**: Occupancy Classifications R-3, R-4 and U.

(Ord. 2987; 01-21-20)

**7-220B. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 905.1 THROUGH 905.12 REGARDING STANDPIPE SYSTEMS.** Sections 905.1 through 905.12 of the IFC including all portions, subsections, and parts are hereby omitted and deleted.

(Ord. 2987; 01-21-20)

**7-220C. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 1010.1.4.4 AND 1010.1.4.4.1.** Sections 1010.1.4.4 and 1010.1.4.4.1 of the IFC are hereby deleted and omitted.

(Ord. 2987; 01-21-20)

**7-221. INTERNATIONAL FIRE CODE, SECTION 5607.16. CONSTRUCTION BLASTING.** A new section 5607.16 of the IFC is hereby added to read as follows:

**CONSTRUCTION BLASTING**. Blasting done in conjunction with construction shall meet all of the following requirements.

(a) **BLASTING PERMIT, DEFINED** - "Permit" whenever used hereafter in this section shall refer to the written authorization of the Director of Public Works and the Fire Chief or their designees authorizing any person, firm, corporation,

partnership, governmental agency or association to store, possess, and use explosive materials and blasting agents for construction blasting operations only. Possession or use of explosives not authorized under this section is prohibited.

**Exception:** A permit as required by this Article will not be required to transport explosives or blasting agents where the explosives or blasting agents are not being shipped from, or delivered to a location within the corporate boundaries of the City of Leawood, provided that said explosives or blasting agents are being transported in accordance with applicable regulations of other governmental agencies having jurisdiction, including the Federal Department of Transportation.

(b) **RESPONSIBILITY FOR ENFORCEMENT**. The Director of Public Works, referred to in this Section as the "Director", shall be responsible for the administration and enforcement of this Section as provided herein. In addition, the Fire and Police Departments shall have authority to enforce regulatory provisions set forth herein, provided further that the Director shall be notified of any enforcement action taken by Fire or Police Departments.

(c) **APPLICATION PROCESS** – This Section covers the process for applying for a permit to store or use explosives in the City of Leawood for the purpose of blasting as part of construction operations. Permits for other types of operations involving explosives shall be according to the applicable sections of the Fire Code of the City of Leawood as amended by the Governing Body.

(1) **PRE-APPLICATION CONFERENCE**. At the time an application is obtained a pre-application conference will be scheduled with the Director of Public Works and the Fire Chief, or their designees, to discuss the requirements of the ordinance and the expectations of the Public Works Director and the Fire Chief. The pre-application conference shall be scheduled a minimum of three (3) working days prior to submission of the application.

(2) **SCALE DRAWING**. At the time an application is submitted, the applicant shall furnish to the Director of Public Works a scale drawing accurately showing the surrounding land and all improvements thereon, all dimensions and all distances relative thereto. The scale drawing shall show distances to all houses, buildings, or other facilities within 500 feet of the blasting or demolition work. The scale drawing accompanying an application for a permit to store explosives or blasting agents must show distances to buildings and other features in accordance with the American Table of Distances for Storage of Explosives (IFC Tables 5604.5.2(1), (2) and (3)). All permit applications which are not accompanied by a scale drawing shall be refused and will not be considered until such scale drawing accompanies the application for permit. In addition, the Director of Public Works shall have authority to establish additional written standards for the submission of scaled drawings or other application submittals.

(3) **INSURANCE REQUIRED**. The applicant shall name the City as additional insured and shall provide proof of insurance coverage meeting the following minimum requirements:

a. **Workers Compensation: Statutory Coverage**

b. **Employers Liability:**

| | |
|---|---|
| Bodily Injury by Accident | $1,000,000 each accident |
| Bodily Injury by Disease | $1,000,000 policy limit |
| Bodily Injury by Disease | $1,000,000 each employee |

c. **Commercial General Liability, including explosion, collapse and underground:**

| | |
|---|---|
| Bodily Injury/ Property Damage | $2,000,000 Comb. Single |
| | $4,000,000 Aggregate |

d. **Business Automobile Policy**

| | |
|---|---|
| Bodily Injury/ Property Damage | $1,000,000 Comb. Single |
| Bodily Injury | $1,000,000 per Person |
| Bodily Injury | $1,000,000 per Accident |
| Property Damage | $1,000,000 per Accident |

(4) **BLASTING PLAN.** The application for the permit must be accompanied by a Blasting Plan for the blasting operation. This Blasting Plan shall include specific information on the operation as follows:

1. charge weights;
2. delays;
3. depths;
4. patterns;
5. protective mats or coverings required;
6. seismographic monitoring shall be provided by an independent firm, approved by the Director of Public Works, reporting directly to the City at the applicant's expense;
7. The names of all responsible on-site personnel and copies of their blaster's licenses.

Regardless of distance to nearby facilities, the blasting operations shall be carried out in such a manner that they will not cause fly rock or damage from air blast overpressure or ground vibration. Seismic recordings may be required by the Director. The maximum peak particle velocity at any such recording site must not exceed one inch per second in any one of three mutually perpendicular directions. Proposed specific location(s) of the seismic recording(s) shall be included in the Blasting Plan.

(d) **NOTIFICATION OF ADJACENT PROPERTY OWNERS.** The applicant shall provide written notification to owners of property located within 500 feet of a blast site, including utilities companies with facilities located in that area, within

ten business days of filing its application. The applicant shall provide verification of the mailing to the City and evidence of delivery of such notification shall be retained by the applicant. Failure to provide such evidence of such notification to the Director of Public Works on demand shall be construed to mean that such notification has not occurred. Notice shall be approved by the Director and shall include the following:

1. statement of intent to blast;
2. name of blasting contractor;
3. name of agency making the pre-blast inspection;
4. insurance company providing the coverage and claims process including the telephone number of the claims agent;
5. notice to property owner to contact the Director of Public Works within three (3) days of notification to request a copy of the pre-blast inspection of structures on their property;
6. notification shall include a complete copy of Section 7-221 Construction Blasting;
7. contractor must meet with affected property owners in advance of commencement of blast operations to explain blasting operations when requested within five (5) working days of notification.

(e) **PRE-BLAST INSPECTIONS.** Pre-blast inspections shall be performed by the applicant on all structures within 500 feet of a blast site unless permission for the inspection is denied by the occupant or owner. Applicant shall provide a copy of the pre-blast inspection to all property owners requesting same at applicant's expense.

(f) **FEE**. Upon filing the application, the applicant shall pay to the City, a non-refundable application fee as set forth in the fee schedule adopted annually by the Governing Body.

(g) **NOTICE OF INTENT TO ISSUE PERMIT**. The applicant, if it has fulfilled all application requirements and has not given cause for denial by previous permit violations, will be notified of the City's intent to issue the permit. The applicant shall then provide copies of such notification to all property owners within 500 feet of a proposed blast site. The notice required by this section shall be mailed by certified mail not less than ten days prior to issuance of a blasting permit. The applicant shall provide proof of such mailing to the City and shall retain evidence that such notification has occurred. Failure to provide such evidence to the Director shall be construed to mean that such notification has not occurred.

(h) **APPEAL**. The applicant or any owner of property located within the notice area may appeal a decision made under this section by filing a written request for appeal with the City Clerk, with a copy to the Public Works Director, within ten business days of the date of mailing of the notice of the decision. The request shall be placed on the next available Governing Body agenda for review and final decision.

(Ord. 2987; 01-21-20)

(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)

**7-222. INTERNATIONAL FIRE CODE, SECTION 5608. FIREWORKS DISPLAY.** Section 5608 of the IFC is hereby amended to read as follows: **Fireworks.** No fireworks may be sold, used or possessed in the City of Leawood, Kansas.

**Exception**:

1. Permitted fireworks displays meeting the following criteria:
   a) Where the display operator is a Kansas licensed pyrotechnician;
   b) Where a display plan is submitted specifying compliance with NFPA 1123 and 1126, including a site plan and list of fireworks devices to be used' and
   c) Where the operator has demonstrated proof of $2 million general commercial liability coverage for the display.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)
(Code 1973)

**7-223. INTERNATIONAL FIRE CODE, SECTIONS DELETED AND OMITTED, SECTIONS 5608.1 THROUGH 5608.10 REGARDING FIREWORKS.** Sections 5608.1 through 5608.10 of the IFC including all portions, subsections and parts are hereby omitted and deleted.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)

**7-223A. INTERNATIONAL FIRE CODE, SECTION 5704.2.9.6.1. LOCATIONS WHERE ABOVE-GROUND TANKS ARE PROHIBITED.** Section 5704.2.9.6.1 of the IFC is hereby amended to read as follows: **Locations where permanent above-ground tanks are prohibited.** Storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited within the limits established by the Leawood Development Ordinance. Where allowed by ordinance, such tanks shall be covered by this Article and other provisions of the City Code.

(Ord. 2987; 01-21-20)

**7-224. INTERNATIONAL FIRE CODE, SECTION 5706.2.4.4. LOCATIONS WHERE ABOVE-GROUND TANKS ARE PROHIBITED.** Section 5706.2.4.4 of the IFC is hereby amended to read as follows: **Locations where temporary above-ground tanks are prohibited.** Temporary storage of Class I and II liquids in above-ground tanks shall be allowed only in accordance with the provisions of the Leawood Development Ordinance. Where allowed, such tanks shall be in accordance with

this Article and other provisions of the City Code.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)

**7-224A. INTERNATIONAL FIRE CODE, SECTION 5806.2. LIMITATIONS.** Section 5806.2 of the IFC is hereby amended to read as follows: **Limitations.** Outside flammable cryogenic fluids storage is only allowed if permitted by the Leawood Development Ordinance. If permitted, such storage shall be in accordance with this Article and other provisions of the City Code.

(Ord. 2987; 01-21-20)

**7-225. INTERNATIONAL FIRE CODE, SECTION 6104.2. MAXIMUM CAPACITY WITHIN ESTABLISHED LIMITS.** Section 6104.2 of the IFC is hereby amended to read as follows: **Maximum capacity within established limits.** The storage of liquefied petroleum gas ["LP-gas"] is hereby limited to areas zoned AG, RPA and RPA5. The amount of such storage is limited to a maximum water capacity of 2,000 gallons. In particular installations, this capacity limit shall be determined by the fire code official, after consideration of special features such as topographical conditions, nature of occupancy, and proximity to buildings, capacity of proposed containers, degree of fire protection to be provided, and capabilities of the local fire department. In addition, LP-gas tanks for heating purposes may be temporarily located on construction sites for the duration of the project.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)

**7-226. APPEALS.**

Whenever the Fire Marshal disapproves any type of application or refuses to grant any type of permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal the decision of the Fire Marshal to the Board of Fire and Building Code Appeals within 30 days in accordance with the procedures more fully set forth in Chapter 4 of the Code of the City of Leawood, 2000.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)

**7-227. PENALTIES.**

(a) Any person who shall violate any of the provisions of this Code or Standards hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications, or plans submitted and approved

thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with an order as affirmed or modified by the appeals board or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every violation and noncompliance, respectively, be guilty of a misdemeanor, punishable by a fine of not more than one thousand ($1000) dollars per occurrence or by imprisonment for not more than thirty (30) days or by both fine and imprisonment. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or otherwise remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.

(b) The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

(Ord. 2987; 01-21-20)
(Ord. 2600C; 12-03-12)
(Ord. 2301C; 02-04-08)

**CHAPTER VIII. HEALTH AND WELFARE**

**Article 1. Environmental Sanitary Regulations**
**Article 2. Health and Welfare Nuisances**
**Article 3. Inoperable Vehicles**
**Article 4. Cost Recovery From Environmental Releases**
**Article 5. Property Maintenance**

# ARTICLE 1. ENVIRONMENTAL SANITARY REGULATIONS

SECTIONS

8-101 INCORPORATION OF JOHNSON COUNTY ENVIRONMENTAL SANITARY CODE
8-102 ADMINISTRATION AND PROSECUTION

**8-101. INCORPORATION OF JOHNSON COUNTY ENVIRONMENTAL SANITARY CODE.** There is hereby incorporated by reference, for the purpose of prescribing rules and regulations for controlling practices to minimize health and safety hazards, that certain sanitary code known as the "Johnson County Environmental Sanitary Code, adopted by Resolution 008-04 on January 29, 2004," prepared and published by the Johnson County Environmental Department, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012.

No fewer than three copies of such "Johnson County Environmental Sanitary Code", marked or stamped "Official Copy" as adopted by Governing Body, shall be on file with the City Clerk to be open for inspection and available to the public during regular office hours.

(Ord. 1504C; 06-05-95)
(Ord. 2056C; 03-22-04)

**8-102. ADMINISTRATION AND PROSECUTION.**

(a) The Director of the Johnson County, Kansas, Environmental Department, and/or his/her designees, shall have the primary authority and responsibility for the administration of this Code.

(b) The Johnson County, Kansas, County Counselor shall have the authority to prosecute all violations of this Code. Prosecution shall be in accordance with the Johnson County, Kansas, Code for Prosecution and Enforcement, Resolution No. 116-88, or any amendments or subsequent enactments, and shall be commenced in the County Codes Section of the District Court of Johnson County, Kansas.

(Ord. 2302C; 02-04-08)
(Ord. 1504C; 06-05-95)

## ARTICLE 2. HEALTH AND WELFARE NUISANCES

SECTIONS

8-201 NUISANCES DEFINED
8-202 WEEDS; DUTY OF OWNER
8-203 ABATEMENT OF NUISANCES

## ARTICLE 2. HEALTH AND WELFARE NUISANCES

**8-201. NUISANCES DEFINED.** Nuisances, as used in this article, include without limitation:

(a) Filth, excrement, lumber, rocks, dirt, cans, paper, trash, metal or any other offensive or disagreeable thing or substance thrown or left or deposited upon any street, avenue, alley, sidewalk, park, public or private enclosure or lot whether vacant or occupied;

(b) All dead animals not removed with 24 hours after death;

(c) Any place or structure or substance which emits or causes any offensive, disagreeable or noxious odors;

(d) All stagnant ponds or pools of water;

(e) All grass or weeds or other unsightly vegetation not usually cultivated or grown for domestic use or to be marketed or for ornamental purposes;

(f) Abandoned refrigerators or freezers kept on the premises under the control of any person, or deposited on the sanitary landfill, or any refrigerator or freezers not in actual use unless the door, opening or lid thereof is unhinged, or unfastened and removed therefrom;

(g) All articles or things whatsoever caused, kept, maintained or permitted by any person to the injury, annoyance or inconvenience of the public or of any neighborhood;

(h) Any fence, structure, thing or substance placed upon or being upon any street, sidewalk, alley or public ground so as to obstruct the same, except as permitted by the laws of the city;

(i) Any obstruction of streams or stormwater channels or drainageways or other storm sewer systems if such obstruction impedes the free flow of water or causes flooding.

(Code 1984)
(Code 2000)
(Ord. 1991C; 05-19-03)

**8-202. WEEDS; DUTY OF OWNER.** No property owner shall permit weeds or grasses to exceed 12 inches in height upon any platted area or within 100 feet of any platted area or any developed area. A property owner is responsible for property maintenance for his or her property and for the public right-of-way to the street.

(Ord. 692; 04-06-81)
*(See also Section 8-501 et seq.)*

**8-203.** **ABATEMENT OF NUISANCES.** Whenever the Public Officer, as the enforcement officer for the Property Maintenance Code incorporated by Article 5 of Chapter 8 of this Code, is notified that a nuisance exists within the city, he or she shall give notice as provided by the Property Maintenance Code, as supplemented by Section 8-501 et seq.. The person maintaining the nuisance shall be subject to the duty to abate as provided for by the Property Maintenance Code, as supplemented by Section 8-501 et seq. Failure to abate a nuisance as directed shall result in abatement of the nuisance by the city and assessment of costs against the property, as provided for by the Property Maintenance Code, as supplemented by Section 8-501 et seq.

(Code 1984)
(Code 2000)
(Ord. 1941C; 01-22-02)

## ARTICLE 3. INOPERABLE VEHICLES

SECTIONS

8-301 FINDING OF GOVERNING BODY
8-302 DEFINITIONS
8-303 INOPERATIVE VEHICLES PROHIBITED

## ARTICLE 3. INOPERABLE VEHICLES

**8-301. FINDING OF GOVERNING BODY.** The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

(a) Serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
(b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
(c) Are a ready source of fire and explosion;
(d) Encourage pilfering and theft;
(e) Constitute a blighting influence upon the area in which they are located; and
(f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures.

(Code 1984)

**8-302. DEFINITIONS.** As used in this article, the following terms shall mean:

(a) ***Inoperative***. A condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed;
(b) ***Vehicle*** means any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.

(Code 1984)

**8-303. INOPERATIVE VEHICLES PROHIBITED.** Inoperative vehicles which are junked, wrecked, dismantled, inoperative, discarded, unregistered, unlicensed, or abandoned in and upon property within the city shall be prohibited. The removal of such vehicles shall be governed by the provisions of the Property Maintenance Code incorporated by Section 8-501 et seq., and other provisions of this Code.

(Ord. 692; 04-06-81)
(Code 2000)
(Ord. 1941C; 01-22-02)

# ARTICLE 4. COST RECOVERY FROM ENVIRONMENTAL RELEASES

SECTIONS

8-401 DEFINITIONS
8-402 STRICT LIABILITY
8-403 RECOVERY OF EXPENSES

**8-401. DEFINITIONS.**

(a) ***Emergency action***. Emergency action shall mean all exigent activities conducted in order to prevent or mitigate harm to the public health and safety and the environment from a release or threatened release of any material into or upon land, water or air.

(b) ***Person***. Person shall include any individual, corporation, association, partnership, firm, trustee, legal representative, or any combination thereof.

(c) ***Recoverable expenses***. Recoverable expenses shall include those expenses of the City of Leawood that are reasonable, necessary and allocable to an emergency action. Recoverable expenses shall not include normal budgeted expenditures that are incurred in the course of providing what are traditionally city services and responsibilities, such as routine fire fighting protection. Expenses allowable for recovery may include, but are not limited to:

(1) Disposable materials and supplies consumed and expended specifically for the purpose of the emergency action.

(2) Compensation of employees for the time and efforts devoted specifically to the emergency action.

(3) Rental or leasing of equipment used specifically for the emergency action (e.g., protective equipment or clothing, scientific and technical equipment).

(4) Replacement costs for equipment owned by the City that is contaminated beyond reuse or repair, if the equipment was a total loss and the loss occurred during the emergency action (e.g., self-contained breathing apparatus irretrievably contaminated during the response).

(5) Decontamination of equipment contaminated during the response.

(6) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the City).

(7) Other special services specifically required for the emergency action.

(8) Laboratory costs of analyzing samples taken during the emergency action.

(9) Any costs of cleanup, storage, or disposal of the released material.

(10) Costs associated with the services, supplies and equipment procured for a specific evacuation of persons or property.

(11) Medical expenses incurred as a result of response activities.

(12) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this ordinance.

(d) ***Release***. Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon land, water or air, of any material.

(e) ***Threatened Release***. Threatened release shall mean any imminent or impending event potentially causing but not resulting in a release, but causing the City to undertake an emergency action.

(Ord. 1102C; 06-19-89)

**8-402. STRICT LIABILITY.** Any person causing or responsible for a release or threatened release resulting in an emergency action shall be strictly liable to the City for the recoverable expenses resulting from the emergency action. There shall be a rebuttable presumption that any person owning or controlling property causing a release or threatened release is responsible for such release or threatened release.

(Ord. 1102C; 06-19-89)

**8-403. RECOVERY OF EXPENSES.**

(a) Itemization of Recoverable Expenses. City personnel and departments involved in an emergency action shall keep an itemized record of recoverable expenses resulting from an emergency action. Promptly after completion an of emergency action, the appropriate City department shall certify those expenses to the City Administrator.

(b) Submission of Claim. The City shall submit a written itemized claim for the total expenses incurred by the City for the emergency action to the responsible person and a written notice that unless the amounts are paid in full to the City within thirty (30) days after the date of the mailing of the claim and notice, the City will file a civil action seeking recovery for the stated amount.

(c) Lien on Property. The City may cause a lien in the amount of the recoverable expenses to be placed on any real property located with the City owned by the person causing or responsible for the emergency action.

(d) Civil Suit. The City may bring a civil action for recovery of the recoverable expenses against any and all persons causing or responsible for the emergency action.

(Ord. 1102C; 06-19-89)

# ARTICLE 5. PROPERTY MAINTENANCE

**SECTIONS**


8-501 INTERNATIONAL PROPERTY MAINTENANCE CODE ADOPTED.
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8-503 INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 101.2. SCOPE.
8-504 INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 102.3. APPLICATION OF OTHER CODES.
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**8-501.** **INTERNATIONAL PROPERTY MAINTENANCE CODE ADOPTED.** There is hereby incorporated by reference that certain code known as the International Property Maintenance Code, 2018 edition, ["IPMC"] prepared and published in book form by the International Code Council, Inc., save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed or added thereto, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, as amended. At least one copy of said Code shall be marked or stamped "Official copy as incorporated by Ordinance No. 2988," with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1510C; 08-07-95)

**8-502.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 101.1. TITLE**. Section 101.1 of the IPMC is hereby amended to read as follows: **Title.** These regulations shall be known as this code, the IPMC, or the Property Maintenance Code of the City of Leawood, Kansas.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-503** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 101.2. SCOPE.** Section 101.2 of the IPMC is hereby amended to read as follows: **Scope.** The provisions of this code shall apply to all residential and nonresidential structures, all premises, residential and nonresidential lands, and vacant lands and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating,

sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, or authorized agents, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-504.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 102.3. APPLICATION OF OTHER CODES.** Section 102.3 of the IPMC is hereby amended to read as follows: **Application of other codes.** Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the *International Building Code, International Existing Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, International Plumbing Code and* the *NFPA 70 National Electrical Code* as adopted in the Code of the City of Leawood, 2000. Nothing in this code shall be construed to cancel, modify or set aside any provision of the *Leawood Building Code* or the *Leawood Development Ordinance.*

(Ord. 2988; 01-21-20)
(Ord. 2601C; 12-03-12)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-505.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 102.6. HISTORIC BUILDINGS.** Section 102.6 of the IPMC is hereby amended to read as follows: **Historic Buildings.** The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings and protected by other provisions of law, when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-506.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 103.5 FEES.** Section 103.5 of the IPMC is hereby amended to read as follows: **Fees.** The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the City of Leawood Fee Schedule.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-507.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 106.1. UNLAWFUL ACTS.** Section 106.1 of the IPMC is hereby amended to read as follows: Unlawful Acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code. Enforcement investigation and, if necessary further proceedings, shall be initiated by the code official upon his/her own initiative or upon receipt of a complaint.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-508.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 106.4. VIOLATION PENALTIES.** Section 106.4 of the IPMC is hereby amended to read as follows: **Violation penalties.** Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Any person who shall violate such provisions shall be subject to a fine of not less than one hundred dollars ($100.00) or more than one thousand dollars ($1,000.00) or imprisonment for a term not to exceed thirty (30) days, or both, and shall be ordered to correct the violation or make restitution for the correction of the violation thereof, at the discretion of the court. Each day that a violation continues shall be deemed a separate offense.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-509.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 107.1. NOTICE TO PERSON RESPONSIBLE.** Section 107.1 of the IPMC is hereby amended to read as follows: **Notice to person responsible.** Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, the code official shall issue the owner of record, or current occupant, a courtesy notice for first time offenders. A minimum of forty eight (48) hours from date of notice shall be given for initial response to the City with a minimum of ten (10) days given for corrections, or additional time as may be determined by the code official. The code official shall make an inspection at the end of the prescribed time period. If the corrections are satisfactory, the case shall be closed. If the work is not completed, or if the violation is alleged to have been made by a person or party who has previously

had notice of a codes violation, then the code official shall issue a written complaint and notice to appear, setting a court date before the Municipal Court.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-509A.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 107.2. FORM.** Section 107.2 of the IPMC is hereby amended to read as follows: **Form.** Such courtesy notice as described in Section 107.1 shall:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a compliance date, allowing a reasonable time to make the repairs and improvements required to bring the property into compliance with the provisions of this code.

It shall not be a defense or issue in any action taken pursuant to the IPMC that the person responsible for the property did not personally receive the courtesy notice, provided it was served in compliance with Section 107.3. It shall not be a defense or issue in any action taken pursuant to the IPMC that the courtesy notice did not include all information required, so long as the notice was in substantial compliance with this Section.

(Ord. 2988; 01-21-20)

**8-510.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 107.3. METHOD OF SERVICE**. Section 107.3 of the IPMC is hereby amended to read as follows: **Method of Service**. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally; or
2. Sent by certified or first-class mail addressed to the last known address.
3. In addition to the above service options, a copy of such notice may be posted in a conspicuous place on or about the structure affected by such notice.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-511.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 108.3. NOTICE.** ***Repealed*.**

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-512.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 110.1. DEMOLITION.** Section 110.1 of the IPMC is hereby amended to read as follows: **General.** Except as otherwise authorized by K.S.A. 12-1750 et seq. and Section 109.1 of this code, the code official may only order the owner of any premises to

have a structure razed or removed per action of the Governing Body after hearing.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-513.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 110.2. UNREASONABLE REPAIRS**. Section 110.2 of the IPMC is hereby amended to read as follows: **Unreasonable repairs.** Whenever the code official determines that the cost of repairs required by this code may exceed one hundred percent (100%) of the current value of such structure, such repairs shall be presumed unreasonable and it shall be presumed for the purpose of this section that such structure is a nuisance and the City may proceed in accordance with the provisions of K.S.A. 12-1750 et seq.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-514.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 110.3. ORDER.** Section 110.3 of the IPMC is hereby amended to read as follows: **Order.** Following an order by the Governing Body, after a hearing to remove or raze a structure pursuant to K.S.A. 12-1750 et seq., the owner shall have a minimum of sixty (60) days to comply with such order. The owner, after showing good cause, may petition the Governing Body for an extension of time for compliance. It shall be at the discretion of the Governing Body whether or not to grant additional time for compliance. If after the sixty (60) days or additional time, if granted by the Governing Body, has expired and the order has not been completed the code official may order the structure removed or razed immediately by private contract.

(a) Anyone affected by any such order shall have thirty (30) days after the decision of the Governing Body to appeal to the district court of the county in accordance with law.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-515.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 110.4. FAILURE TO COMPLY**. Section 110.4 of the IPMC is hereby amended to read as follows: **Failure to comply.** If the owner of a premises fail to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-516.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTIONS 111 MEANS OF APPEAL THROUGH 111.8 STAYS OF ENFORCEMENT, DELETED AND OMITTED.** The following sections of the International Property

Maintenance Code are hereby deleted and omitted: Section 111 Means of Appeal, Section 111.1, Application for Appeal, Section 111.2, Membership of Board, Section 111.2.1 Alternate members, Section 111.2.2 Chairman, Section 111.2.3, Disqualification of member, Section 111.2.4 Secretary, Section 111.2.5 Compensation of members, Section 111.3 Notice of meeting, Section 111.4 Open Hearing, Section 111.4.1 Procedure, Section 111.5 Postponed hearing, Section 111.6 Board decision, Section 111.6.1 Records and copies, Section 111.6.2 Administration, Section 111.7 Court review, and Section 111.8 Stays of enforcement.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-517.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 202. GENERAL DEFINITIONS.** Section 202 of the IPMC is hereby amended to include the following definitions:

**NOXIOUS WEEDS.** Any noxious weed as defined by KSA § 2-1314 and amendments thereto.

**RUBBISH.** Non-putrescible solid wastes consisting of combustible and/or noncombustible waste materials from dwelling units, commercial, industrial, institutional, or agricultural establishments, including yard wastes and items commonly referred to as “trash”.

**STORAGE.** The uninterrupted placement of materials for a period exceeding 48 hours.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-518** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 301.2. RESPONSIBILITY.** Section 301.2 of the IPMC is hereby amended to read as follows: **Responsibility.** The owner or occupant of a structure or part thereof shall keep the structure and property in compliance with this code and shall keep the supplied equipment and fixtures therein clean and sanitary, and shall be responsible for the exercise of reasonable care in their proper use and operation.

All equipment and fixtures furnished by the occupant of a structure shall be properly installed, and shall be maintained in good working condition, kept clean and sanitary, and free of defects, leaks or obstructions.

In every multiple dwelling rental unit complex (multiple buildings) in which the owner does not reside there shall be a responsible person, designated by the owner, residing on the premises, whose duties shall include premises maintenance.

Nonresident owners of residential rental property within the City of Leawood, shall designate an agent who shall either reside within the City or metropolitan

area, and shall be authorized to accept service of notice under the provisions of this code. It shall be the owner's responsibility to register said agent with the City.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-519. INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 302.2. GRADING AND DRAINAGE.** Section 302.2 of the IPMC is hereby amended to read as follows: **Grading and drainage.** All premises shall be graded and maintained so as to prevent the erosion of soil and the accumulation of stagnant water thereon, or within any structure located thereon.

1. Landowners shall not divert water from their property to an adjacent property in such a fashion as to cause erosion, flooding or pooling of water or otherwise cause damage to the adjacent property.

   (a) It shall be *prima facie* evidence of a violation of this section if downspouts from gutters discharge within 10 feet of an adjoining property line or if such downspouts are connected to underground drains that surface and discharge within 10 feet of an adjoining property line <u>and</u> if that property is experiencing flooding, silt or other storm water damages from the general area where such drain exists.

   (b) It shall be *prima facie* evidence of a violation of this section if sump pump drains discharge within 15 feet of an adjoining property and if that property is experiencing flooding, silt or other storm water damages from the general area where such drain surfaces.

2. All detention and retention storm water basins shall be maintained by the owner, developer, custodian or other person responsible for the property. Such maintenance shall include but not be limited to:

   (a) The cleaning of storm sewers and other drainage appurtenances serving the said basin so that the said installations function as designed; and

   (b) The removal of any garbage, rubbish, silt, topsoil or other foreign material which creates an unsanitary condition or prevents or impedes the leaching action of the said basin.

(Ord. 2988; 01-21-20)
(Ord. 2336C; 08-18-08)
(Ord. 2302C; 02-04-08)

**8-520.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 302.3. SIDEWALKS AND DRIVEWAYS.** Section 302.3 of the IPMC is hereby amended to read as follows: **Sidewalks and driveways.** All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions. All off street parking facilities shall be kept free of debris including, but not limited to, trash, gravel, mud, blowing paper, etc.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-521.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 302.4. TREES, GRASS, WEEDS AND COMPOST.** Section 302.4 of the IPMC is hereby amended to read as follows: **Trees, Grass, Weeds and Compost.** Trees, Grass, Weeds and the trimmings thereof and compost shall be maintained as follows:

(a) **Trees and shrubbery.** All trees and shrubbery shall be maintained free of disease and/or decay. In the event that death occurs in any tree shrub or other plant material the owner of the premise shall without delay remove same. Upon notice from the code official the owner shall remove dead or dying tree(s) or other plant material so specified within thirty (30) days from legal notice as required by this code.

(b) **Brush and lawn trimmings.** Each and every owner, tenant, or occupant of any dwelling or other building in the city shall place lawn trimmings, brush trimmings, and other yard debris in suitable containers or tied in bundles. The containers and bundles shall not be placed at the street curb more than twenty four (24) hours prior to the anticipated time of collection. All trimmings prior to collection shall be placed behind the front building line or front line of the house whichever is greater.

(c) **Weeds.** All premises and exterior property shall be maintained free from weeds or plant growth in excess of twelve inches in any platted area or within one hundred (100) feet of any platted area, developed area or any public street or right-of-way. All noxious weeds shall be prohibited. Weeds and plant growth shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs, provided; however, this term shall not include cultivated flowers and gardens. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.

(d) **Compost.** All compost materials shall be placed in containers designed or constructed for same; be located in rear yards only; be a maximum height of four (4) feet and be located a minimum of ten (10) feet from any

property line. Such containers shall be designed or be constructed to prevent rodent infestation. All compost areas shall be visually screened from adjoining property view.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-522.** **INTERNATIONAL PROPERTY MAINTENANCE CODE SECTION, SECTION 302.8. MOTOR VEHICLES**. Section 302.8 of the IPMC is hereby amended to read as follows: **Motor Vehicles**.

(a) Except as provided for in other regulations or as may be stored in an enclosed garage, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any premises, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an approved spray booth. Repair of occupant owned vehicles within residential areas shall only be allowed between the hours of 8:00 am and 9:00 pm and shall be allowed within the garage area itself. Nothing in this section shall supersede the enforcement of the City's public nuisance or disturbing the peace ordinance.

(b) Where the license plate of a vehicle parked or stored on any premises is screened from view by an adjacent structure or vegetation, or by a cover, tarp or similar object or is otherwise not visible, then the vehicle shall be deemed to be an inoperable vehicle in violation of this section. This determination of inoperability may be voided if the property owner or vehicle owner or resident demonstrates to the code official that the vehicle is operable on a public street and has a license plate and current registration. Such demonstration and proof shall be provided to the code official within 15 days from the date when a notice of violation was first given to the property owner, vehicle owner or resident.

(Ord. 2988; 01-21-20)
(Ord. 2755C; 10-19-15)
(Ord. 2302C; 02-04-08)

**8-523.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 302.9. DEFACEMENT OF PROPERTY.** Section 302.9 of the IPMC is hereby amended to read as follows: **Defacement of property.** No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti.

(a) **Defacement violation, penalty.** Any person who is convicted of violating this section shall be punished by a fine of not exceeding one thousand dollars ($1,000) or by imprisonment not to exceed six (6) months, or both such fine and imprisonment. In addition to such punishment, the court may, in imposing sentence, order the defendant to restore the property so defaced, damaged or destroyed.

(b) **Defacement, notice of removal.** Whenever the code official determines that defacement has occurred on any public or private building, structure and place which are visible to any person utilizing any public right-of-way in this city, be this road, parkway, alley or otherwise, and that seasonal temperatures permit the painting of exterior services, the code official shall cause a notice to be issued to abate such nuisance. The property owner shall have forty eight (48) hours after the date of the notice to remove the defacement, or the conditions will be subject to abatement by the city.

The notice to abate the defacement pursuant to this section shall cause a courtesy notice to be served upon the owner(s) of the affected premises. If there is no known address for the owner, the notice shall be sent in care of the property address.

(c) **Defacement, costs declared lien.** Any and all costs incurred by the city in the abatement of a defacement nuisance under the provision of this code may constitute a lien against the property upon which such nuisance existed.

(d) **Defacement, removal by city.** Upon failure of persons to comply with the notice by the designated date, or such continued date thereafter as the code official approves, then the code official is authorized and directed to cause the defacement to be abated by city forces or private contract, and the city or its private contractor is expressly authorized to enter upon the premises for such purposes. All reasonable efforts to minimize damage from such entry shall be taken by the city, and any paint used to obliterate defacement shall be as close as practicable to the background color(s). If the code official provides for the removal of the defacement, the code official shall not authorize nor undertake to provide for the painting or repair of any more extensive area than that where the defacement is located.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-524.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 302.10. LOADING AREAS.** A new section 302.10 of the IPMC is hereby added to read as follows: **Loading areas.** All loading areas, automobile service stations and drive-in food establishments shall be paved with bituminous, concrete or equivalent surfacing and shall be free from dirt and other litter and kept in good repair. When lighted for nighttime use, lights shall not be permitted to cast directly upon dwellings nearby.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-525.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 302.11. PUBLIC AREAS.** A new section 302.11 of the IPMC is hereby added to read as follows: **Public areas.** Grass, landscaping, and trees located within subdivision traffic control islands shall be the maintenance responsibility of the homes associations. Monuments, landscaping, trees, fountains and lighting located on private property at the entrance to residential subdivisions and/or commercial property shall be the responsibility of the homes association and/or the individual property owner.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-526.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 302.12. SCREENING.** A new section 302.12 of the IPMC is hereby added to read as follows: **Screening.** All existing open storage areas shall be completely obscured from surrounding property by a solid screen up to 6 feet in height as required by the code official.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-527.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 303.2. ENCLOSURES.** Section 303.2 of the IPMC is hereby amended to read as follows: **Enclosures.** Private swimming pools, hot tubs and spas, containing water more than 24 inches (610 mm) in depth shall be completely surrounded by a fence or barrier at least 48 inches (1219 mm) in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 54 inches (1372 mm) above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches (152 mm) from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-528.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 304.6.1. WALL SURFACES.** A new section 304.6.1 of the IPMC is hereby added to read as follows: **Wall Surfaces**. Wall surfaces, other than brick, stucco or stone, shall be treated to prevent deterioration in a manner that creates a harmonious and uniform appearance. Aggregate wall areas (complete sides or sections) shall be similarly treated with like substances (i.e. paint or stain) to create a cohesive look. Such treatment shall give the wall section a uniform appearance in color and at no time shall portions of wall surfaces be allowed to deteriorate or treated with dissimilar substances creating a patchwork appearance. The only exceptions to this requirement is when a wall surface is being primed prior to final application of wall surface treatment or trim work that may be in a different color to provide contrast.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-529.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 304.10. STAIRWAYS, DECKS, PORCHES, BALCONIES AND OTHER APPURENTANCES.** Section 304.10 of the IPMC is hereby amended to read as follows: **Stairways, decks, porches, balconies and other appurtenances.** Every exterior stairway, deck, porch, balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads. All splash blocks, fences, tennis courts and other similar appurtenances shall be maintained in a serviceable and safe condition.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-530.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 305.3.1. BATHROOM AND KITCHEN FLOORS.** A new section 305.3.1 of the IPMC is hereby added to read as follows: **Bathroom and kitchen floors.** Every toilet, bathroom and kitchen floor surface shall be constructed and maintained so as to be substantially impervious to water, except when carpeting is used, and so as to permit such floor to be easily kept in a clean and sanitary condition.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-531.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 305.7. HOUSEHOLD APPLIANCES.** A new section 305.7 of the IPMC is hereby added to read as follows: **Household appliances.** All built-in appliances shall be serviceable and maintained in a sanitary condition.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-532.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 305.8. FIRE EXTINGUISHERS.** A new section 305.8 of the IPMC is hereby added to read as follows: **Fire extinguishers.** At least one fire extinguisher for each dwelling unit shall be provided and shall be located in the kitchen area.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-533.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 308.1. ACCUMULATION OF RUBBISH OR GARBAGE.** Section 308.1 of the IPMC is hereby amended to read as follows: **Accumulation of rubbish or garbage.** No person shall dump, deposit or store on any property whether owned, dedicated to public use or upon the property of any person, nor to allow to fall or be washed upon any street or upon any property of any other person rubbish, dirt, earth, building materials, debris, refuse, cans, garbage or grass clippings, unless such materials are placed in containers in accordance with Section 8-534 and stored inside a garage or structure. Also, no person shall dump, deposit or store on any

property, whether dedicated to public use, property of any person or their own property, junked or otherwise inoperative equipment, vehicles, machinery or appliances. Operable farm equipment or implements which are used in agricultural areas are excluded. All exterior property and premises, and the interior of every structure, shall be free from any accumulation of rubbish or garbage not appropriately stored in accordance with this code.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-534.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 308.3.2. CONTAINERS.** Section 308.3.2 of the IPMC is hereby amended to read as follows: **Containers.** The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, approved leakproof containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal.

(a) **One and Two Family Residential.** Each and every owner, tenant, housekeeper, or other person occupying any one or two family dwelling within the city shall provide and renew when necessary a sufficient number of trash containers of rigid construction with tight fitting covers to hold the trash accumulating there at. Such trash containers shall be placed at the curb no earlier than 6:00 pm the evening preceding the day on which the trash is anticipated to be collected by the regular trash collection service subscribed to by the occupant or owner.

(b) **Multi Family.** Each multi-family complex consisting of more than 2 dwelling units shall provide and renew when necessary sufficient trash containers of rigid construction with tight fitting cover or dumpsters to adequately contain the refuse and waste produced at such location. Such containers shall comply with the Leawood Development Ordinance requirements for screening.

(c) **Business and Industrial.** Each and every business and industry shall provide and renew when necessary sufficient trash containers of rigid construction with tight fitting covers to adequately contain the refuse and waste produced at such location and such containers shall be kept closed except when depositing and removing materials. Such containers shall comply with the Leawood Development Ordinance for screening.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-535.** **INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 309.1. INFESTATION.** Section 309.1 of the IPMC is hereby amended to read as follows: **Infestation.** All structures shall be kept free from insect and rodent infestation. All structures in which insects or rodents are found shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to prevent reinfestation. Continued and repeated (3 or more) incidents of rodent infestation determined from the official records as provided in Section 104.6 of this code shall require the installation of rodent and vermin proof walls. The walls shall be installed in

accordance with the Building Code.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

**8-536. INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 405. LICENSING AND MINIMUM STANDARDS FOR RENTAL DWELLING UNITS.** A new section 405 of the IPMC is hereby added to read as follows: **LICENSING AND MINIMUM STANDARDS FOR RENTAL DWELLING UNITS.**

**(a) License and Certificate of Occupancy**

**1. Rental license required.** No person, firm or corporation shall lease or rent, or offer for lease or rent, any portion of a dwelling unit. No person, firm or corporation shall lease or rent, or offer for lease or rent, a dwelling unit for a period of less than 30 days. No person, firm or corporation shall lease or rent, or offer for lease or rent, any dwelling unit for a period of 30 days or more without first making application to the City for a rental license therefore, paying to the City the license fee hereunder prescribed and obtaining such license from the City. Prior to issuance of a rental license, an inspection per subsection (a)(5) shall be made of the entire structure and premises for which an application is sought for conformance of this code.

**2. Renewal of rental license.** Application for renewal of the rental license shall be made no more than sixty (60) days and no less than seven (7) days prior to the expiration of the current rental license.

**3. License fee.** An annual license fee shall be paid by the owner on or before the 1st of January each year in accordance with the City of Leawood Fee Schedule.

**4. Occupancy certificate required.** No person shall occupy, or allow occupancy of, any rental dwelling unit without first making application to the City for a Certificate of Occupancy therefore, paying to the City the inspection fee as designated in the City of Leawood Fee Schedule and receiving an approved inspection as required in subsection (a)(5).

**5. Inspection required.** Prior to the issuance of a rental license, the code official shall inspect the entire structure and premises for violations of building and property maintenance codes. Such inspections for the issuance of a rental license shall be required upon the initial application only. Inspections shall be required after the dwelling unit has been vacated by one tenant and prior to the re-occupancy by another, except that when a dwelling unit has been inspected anytime within the previous six (6) months of such vacation, a new inspection shall not be required.

**6. Denial of rental license.** An application for a rental license shall be denied if:

a. The owner refuses to grant access to any part of the dwelling unit or premise for a required inspection; or

b. The code official finds or determines that there exists in the dwelling unit or on the premises a violation of building or property maintenance codes; provided, however that whenever the code official in inspecting a rental dwelling unit finds or determines that

there exists in the dwelling unit or on the premise a violation of building or property maintenance codes, the code official shall provide written notice to the owner or applicant detailing such violation and informing the owner or applicant that a reinspection of the dwelling unit will be performed after notification to the City that the violation(s) of the building or property maintenance codes have been corrected; or

c. The desired type or length of rental is not permitted by this code.

**7.** **Registration of Agents.** No rental license shall be issued or renewed for an applicant, unless such applicant designates in writing to the City the name of the agent, as provided by Section 301.2 of this code, for the receipt of service of the notice of violation of the provisions of this code and for service of process pursuant to this code.

**8.** **Definition.** For purposes of this section, Dwelling Unit shall have the same meaning as defined at Section 16-9-96 of the LDO.

**(b) Expiration and Revocation**

**1.** **Expiration of rental license.** The rental license shall expire on December 31 following its date of issuance unless sooner revoked, and may be renewed for successive periods not to exceed one (1) year.

**2.** **Revocation of license.** The rental license may be revoked by the City if there exists for any structure or premises a history of three (3) or more violations of the City's building or property maintenance codes, or if the dwelling unit is being rented or offered for rent in violation of this code or the Leawood Development Ordinance. Before revoking a rental license, the City shall give the owner and owner's agent (pursuant to Section 301.2), if any, at least ten (10) days written notice and the opportunity for review by the City Administrator or their designee. If the owner or agent requests review, the revocation will be stayed pending the review, but in no event more than fourteen (14) days from the original effective date of the revocation. The City Administrator, or their designee, may uphold or rescind the revocation, and if applicable, specify certain conditions and stipulations therewith. The decision of the City Administrator, or their designee, is final.

Following revocation of a rental license, any tenant or rental occupant must vacate the premises within thirty (30) days. Any owner or applicant who has had a rental license revoked two or more times, for the same or different properties, cannot reapply for a rental license for any property in the City for a minimum of twelve (12) months following the most recent license revocation.

**(c)** **Request for Inspection.** Nothing herein shall be construed to prohibit an inspection by the code official of any dwelling unit when requested by the tenant or occupant of said dwelling unit. Fees for tenant requested inspections shall be borne by the tenant and paid for prior to the inspection being made.

(Ord. 2988; 01-21-20)
(Ord. 2855C; 09-05-17)
(Ord. 2302C; 02-04-08)

**8-537. INTERNATIONAL PROPERTY MAINTENANCE CODE, SECTION 604.2. SERVICE. *Repealed*.**

(Ord. 2988; 01-21-20)
(Ord. 2601C; 12-03-12)
(Ord. 2302C; 02-04-08)

**8-538. WEEDS TO BE REMOVED.**

It shall be unlawful for any property owner, agent, lessee, tenant, or other person occupying or having charge or control of any premises to permit weeds to remain upon said premises or any area between the property lines of said premises and the centerline of any adjacent street or alley, including but not specifically limited to sidewalks, streets, alleys, easements, rights-of-way and all other areas, public or private. All weeds as hereinafter defined are hereby declared a nuisance and are subject to abatement as hereinafter provided.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-539. DEFINITIONS.**

(a) ***Calendar Year*** as used herein, means that period of time beginning January 1 and ending December 31 of the same year.

(b) ***Noxious Weeds*** –For the purpose of this Section, the term *Noxious Weeds,* means those items listed in K.S.A. § 2-1314, or any amendments thereto, and those further declared as such pursuant to K.S.A. § 2-1314(b), and shall include: kudzu [Pueraria lobata], field bindweed [Convolvulus arvensis], Russian knapweed [Centaurea picris], hoary cress [Lepidium draba], Canada thistle [Cirsium arvense], quackgrass [Agropyron repens], leafy spurge [Euphorbia esula], bur ragweed [Ambrosia grayii], pignut [Hoffmannseggia densiflora], musk [nodding], thistle [Carduus nutans L.], Johnson grass [Sorghum halepense], lespedeza [Lespedexa cuneata], and multiflora rose [Rosa multiflora] or any plants which are poisonous to the touch, including but not limited to, poison ivy, poison oak, and poison sumac.

(c) ***Property Owner*** – shall mean the named property owner as indicated by the records of the Register of Deeds or Appraiser's office in Johnson County, Kansas, and for purposes of this Article, shall include an owner of property abutting the streets, alleys, avenues, boulevards, public easements and public rights-of-way.

(d) ***Public Officer*** – shall mean the Neighborhood Services Administrator, an authorized assistant, authorized representative, or his/her designee.

(e) ***Rank Vegetation*** – shall mean any annual or perennial herbaceous plants, including grasses, of volunteer growth, not cultivated or of any agricultural nature nor useful for human food or enjoyment which, because of its height, but

not less than twelve inches [12"], will be a fire menace, harbor rats, insects or other creatures or will have blighting influence upon the neighborhood.

(f) ***Weeds*** as used herein, means any of the following: (1) Brush and woody vines shall be classified as weeds; (2) Plant matter which may attain such large growth as to become, when dry, a fire menace to adjacent improved property; (3) Plants which bear or may bear seeds of a downy or wingy nature; (4) Plants which are located in an area which harbors rats, insects, animals, reptiles, or any other creature which either may or does constitute a menace to health, public safety or welfare; (5) Weeds and indigenous grasses on or about residential property which, because of height, has a blighting influence on the neighborhood. Any such weeds and indigenous grasses shall be presumed to be blighting if they exceed 10 inches in height.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-540. CITY CLERK; NOTICE TO REMOVE.**

The City Clerk shall notify the property owner, occupant or agent in charge of any premises in the city upon which weeds exist in violation of this ordinance, in writing by certified mail, return receipt requested mail or by personal service, once per calendar year as set forth in K.S.A. 12-1617f. If property is unoccupied and the property owner is a nonresident, such notice shall be sent by certified mail, return receipt requested to the last known address. Such notice shall include the following information:

(a) That the property owner, occupant or agent in charge of the property is in violation of the city weed control law;

(b) That the property owner, occupant, or agent in charge of the property is ordered
to cut the weeds within five days of the receipt of notice;

(c) That the property owner, occupant or agent in charge of the property may request a hearing before the Governing Body or its designated representative within five days of the receipt of notice, and said hearing shall be set on the agenda of the next meeting and said notice shall toll the time for correction of the alleged violation;

(d) That if the property owner, occupant or agent in charge of the property does not cut the weeds, the city or its authorized agent will cut the weeds and assess the cost of the cutting, including a reasonable administrative fee, against the property owner, occupant or agent in charge of the property;

(e) That the property owner, occupant or agent in charge of the property will be given an opportunity to pay the assessment, and, if it is not paid, it will be added to the property tax as a special assessment or the City may proceed with collection under K.S.A. 12-1,115, as amended;

(f) That, pursuant to ordinance and to K.S.A. 12-1617f, no further notice shall be given prior to removal of weeds during the current calendar year

(g) That the public officer should be contacted if there are any questions regarding

the order;

(h) If there is a change in the record property owner of title to property subsequent to the giving of notice pursuant to this subsection, the city shall issue a new notice to the new property owner of record and proceed as set forth herein. The city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds on such property unless the new record owner of title of such property is provided notice as required by this section.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-541 ABATEMENT; ASSESSMENT OF COSTS.**

(a) Upon the expiration of five days after receipt of the notice required by this code, and in the event that the property owner, occupant or agent in charge of the premises shall neglect or fail to comply with the requirements herein or fail to file a request for hearing, , the Public Officer shall cause to be cut, destroyed and/or removed all such weeds and abate the nuisance created thereby at any time during the current calendar year.

(b) The Public Officer shall provide a report of all costs to the City Clerk and shall give notice to the property owner, occupant or agent in charge of the premises by certified mail, return receipt requested mail of the costs of abatement of the nuisance. The notice shall state that payment of the costs is due and payable within 30 days following receipt of the notice.

(c) If the costs of removal or abatement remain unpaid after 30 days following receipt of notice, a record of the costs of cutting and destruction and/or removal shall be certified to the City Clerk who shall cause such costs to be assessed against the particular lot or piece of land on which such weeds were so removed, and against such lots or pieces of land in front of or abutting on such street or alley on which such weeds were so removed. The City Clerk shall certify the assessment to the County Clerk at the time other special assessments are certified for spreading on the tax rolls of the county. Alternatively, the City may proceed with collection as authorized under K.S.A. 12-1,115, as amended.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-542. RIGHT OF ENTRY.**

The Public Officer, contracting agents or other representatives are hereby expressly authorized to enter upon private property at all reasonable hours for the purpose of cutting, destroying and/or removing such weeds in a manner not inconsistent with this ordinance.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)

(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-543. UNLAWFUL INTERFERENCE.**

It shall be unlawful for any person to interfere with or to attempt to prevent the Public Officer from entering upon any such lot or piece of ground or from proceeding with such cutting and destruction. Such interference shall constitute an ordinance violation.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

**8-544. NOXIOUS WEEDS.**

Nothing in this Article shall affect or impair the rights of the City under the provisions of Chapter 2, Article 13 of the Kansas Statutes Annotated, relating to the control and eradication of certain noxious weeds.

(Ord. 2988; 01-21-20)
(Ord. 2302C; 02-04-08)
(Ord. 1940C; 01-22-02)
(Code 2000)
(Ord. 1646C; 01-20-97)

# CHAPTER IX. MUNICIPAL COURT

**Article 1. General Provisions**
**Article 2. Traffic Offenses**

## ARTICLE 1. GENERAL PROVISIONS

### SECTIONS


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**9-101.** **MUNICIPAL COURT ESTABLISHED.** There is hereby established a municipal court for the City of Leawood, Kansas. The municipal court shall have jurisdiction to hear and determine cases involving violations of the ordinances of the city, and such other matters as provided by this Code.

(Code 1973, 9-101)
(Ord. No. 2805C; 09-19-16)

**9-102.** **PRACTICE AND PROCEDURE.** The Kansas code of procedure for municipal courts as set forth in K.S.A. 12-4101 *et seq*. and all acts amendatory or supplemental thereto, unless and until exempted by a Charter Ordinance, shall govern the practice and procedure in all cases in the municipal court.

(Code 1984)
(Ord. No. 2805C; 09-19-16)

**9-103.** **OFFICERS.** The officers of the municipal court of this city shall be the municipal judge, city attorney, assistant city attorney/prosecutor, clerk of the municipal court, the chief of police, and the police officers of the city.

(Code 1973, 9-101)
(Ord. No. 2805C; 09-19-16)

**9-104.** **MUNICIPAL JUDGE.** The municipal judge shall:

(a) Have such powers and duties as set forth in the Kansas code of procedure for municipal courts (K.S.A. § 12-4101 *et seq.*) and all acts amendatory or supplemental thereto;

(b) Be a conservator of the peace and have exclusive jurisdiction to hear and determine all offenses violating the laws of the city;

(c) Keep a docket in which every case commenced before him or her as municipal judge is entered; and

(d) Have power to administer the oath and enforce due obedience to all orders, rules and judgments made by the judge, and may fine or imprison for contempt in the same manner and to the same extent as a judge of the district court.

(Code 1973, 9-102)
(Ord. No. 2805C; 09-19-16)

**9-105.** **QUALIFICATIONS.** The municipal judge shall be a resident of Johnson County, Kansas; a practicing attorney in and licensed by the State of Kansas and shall have so practiced for a period of three years.

(Ord. 617)
(Ord. No. 2805C; 09-19-16)

**9-106. SELECTION.**
Prior to the Mayor's appointment of a Municipal Judge as provided for in Section 1-404 of the Code, the Mayor, with the consent of the Council, shall appoint a judicial selection committee to screen candidates for the position of Municipal Judge. The committee shall screen applicants for the position of Municipal Judge. The committee shall present to the Mayor a list of up to three qualified individuals, from which list the Mayor shall appoint, by and with the consent of the City Council, the individual to serve as Municipal Judge.

(Ord. 1098C; 04-17-89)
(Ord. No. 2805C; 09-19-16)

**9-107. ABSENCE.** If the municipal judge be absent, sick or disqualified from acting, some suitable and proper person meeting the qualifications of Section 9-105 shall act as municipal judge until the absence, disqualification or objection ceases.

(Code 1973, 9-102)
(Ord. No. 2805C; 09-19-16)

**9-108. VACANCY IN OFFICE.** In the case of a vacancy in the office of Municipal Judge, the Mayor shall temporarily appoint some suitable and proper person meeting the qualifications of Section 9-105 to fill the vacancy, until a successor is appointed as set forth in section 9-106 above.

(Ord. 1098C; 04-17-89)
(Ord. No. 2805C; 09-19-16)

**9-109. SALARY.** The municipal judge shall receive a salary as established by the governing body from time to time.

(Code 1984)
(Ord. No. 2805C; 09-19-16)

**9-109.1. QUALIFICATIONS OF CITY ATTORNEY.** The City Attorney shall be a resident of Johnson County, Kansas, a practicing attorney in and licensed by the State of Kansas, and shall have so practiced for a period of three years.

(Ord. 1569C; 03-25-96)
(Ord. No. 2805C; 09-19-16)

**9-109.2. PERIODIC EVALUATION OF MUNICIPAL JUDGE.**
The Mayor may periodically evaluate the Municipal Judge.

(Ord. No. 1569C; 03-25-96)
(Code 2000)
(Ord. No. 2805C; 09-19-16)

**9-110.** **CLERK OF THE MUNICIPAL COURT.** The clerk of the municipal court is hereby authorized to perform the following:

(a) Prepare and issue all process of the court;
(b) Administer oaths required in proceedings before the court;
(c) File and carefully preserve all papers in cases pending in the court;
(d) Docket cases and set them for trial;
(e) Attend sessions of the court;
(f) Receive and account for fines and bonds paid into the court; and
(g) Perform such other duties as the judge may require, or as may be necessary and proper to carry out the duties and responsibilities of the court.

(Ord. No. 556; 11-21-77)
(Ord. No. 2805C; 09-19-16)

**9-111.** **BAILIFF-CLERK OF THE MUNICIPAL COURT.** The bailiff-clerk of the municipal court, when so directed or authorized by the municipal judge, shall:

(a) Administer oaths;
(b) Prepare papers and documents of cases pending before the court;
(c) File and catalogue cases;
(d) Type orders, reports or documents as directed by the judge;
(e) Serve as acting clerk of the municipal court in the absence of the clerk of the municipal court;
(f) Assist the clerk of the court with the duties of that office, including the preparation of the docket, and the receiving and accounting for fines and bonds paid into the court;
(g) Perform such other duties as may be assigned from time to time, consistent with the function of the municipal court.

(Ord. No. 556; 11-21-77)
(Ord. No. 2805C; 09-19-16)

**9-112.** **SUPPLIES FOR JUDGE, INSPECTION OF RECORDS DOCKET.**
The Governing Body shall provide suitable records, blanks, etc., for the use of the judge in carrying out the provisions of this act. Such records shall be kept open at all times for the inspection of all persons interested therein. The governing body shall furnish the municipal judge with a suitable docket and the judge shall deliver the docket and all books and papers pertaining to the office of municipal judge to his or her successor in office.

(Code 1973, 9-105)
(Ord. No. 2805C; 09-19-16)

**9-113.** **MUNICIPAL JUDGE DEFINED.** As used in the Ordinance of the City of Leawood, the term "municipal judge" shall mean that person or those persons who have been appointed by the Mayor in the manner provided by Section 9-106 of this Article.

(Ord. No. 853C; 06-03-85)
(Ord. No. 2805C; 09-19-16)

**9-114.** **APPOINTMENT OF MUNICIPAL JUDGES.** In the event that the Governing Body of the City shall determine that additional judges are necessary to adequately serve the needs of the City, upon resolution of the Council, the Mayor shall, with the consent of the Council, appoint a committee to screen candidates for the position of Municipal Judge, and the Mayor shall appoint such additional judges in the manner provided by Section 9-106 of this Article.

(Ord. No. 853C; 06-03-85)
(Ord. No. 2805C; 09-19-16)

**9-115.** **MUNICIPAL JUDGE AUTHORITY, DUTIES AND QUALIFICATIONS.** In the event that more than one Municipal Judge is appointed by the mayor, said judge or judges shall have the same authority, duties and qualifications as established and provided by Chapter IX, Article 1 of the "Code of the City of Leawood".

(Ord. No. 853C; 06-03-85)
(Ord. No. 2805C; 09-19-16)

**9-116.** **ADMINISTRATIVE FUNCTIONS OF MUNICIPAL JUDGE.** Whenever there shall be more than one Municipal Judge, the administrative functions of the Municipal Court shall be rotated and divided equally on an annual basis.

(Ord. No. 853C; 06-03-85)
(Ord. No. 2805C; 09-19-16)

**9-117.** **MUNICIPAL COURT.** The governing body may provide, at the expense of the city, a suitable room or office for the municipal judge, and shall hold court in such room and court shall be open every day except Saturdays, Sundays, and legal holidays. In addition thereto, the court shall be in regular session at least weekly on a schedule to be established by the rules of the court for the purpose of arraignments, sentencing and/or trials.

(Ord. No. 1759C; 11-02-98)
(Ord. No. 2805C; 09-19-16)

**9-118.** **HOW PROSECUTIONS CONDUCTED.** All prosecutions for violating any city ordinance shall be entitled "The City of Leawood against _____" (naming the person or persons charged), and the municipal judge shall state in the docket the name of the accused person and complainant, the nature or character of the offense, the date of trial or plea, the names of all witnesses sworn and examined, the finding of the court, the judgment of fine and costs, the date of payment, the date of issuing commitment, if any, and every other fact necessary to show the full proceedings in such case.

In no case shall a judgment of conviction be rendered, except upon sufficient legal testimony given on a public trial or upon a plea of guilty or no contest made, except as hereinafter provided in the case of certain traffic offenses, in open court.

(Ord. No. 1759C; 11-02-98)
(Ord. No. 2805C; 09-19-16)

**9-119.** **COMPLAINT AND NOTICE TO APPEAR.**
In all cases in the municipal court, a complaint and notice to appear, whether in written form or an electronic citation, filed with the municipal court shall be deemed sufficient if it substantially complies with the information required by subsection (b) of K.S.A. 8-2106, K.S.A. 12-4202 or K.S.A. 12-4204, and amendments thereto.

(Ord. No. 2805C; 09-19-16)

**9-120.** **COMPLAINT AND NOTICE TO APPEAR; SERVICE AND RETURN.**
The complaint and 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. A complaint and notice to appear may be signed by and served by a law enforcement officer, fire marshal or designee, duly appointed Leawood City building official, code enforcement officer or zoning enforcement officer, animal control officer, public service officer, city attorney, city prosecutor, or the clerk of the municipal court, and, if mailed, shall be mailed by a law enforcement officer or the clerk of the municipal court.

Upon service by mail, the official effecting service shall document on the complaint or notice to appear the address to which it was mailed, the date mailed, and by whom. Nothing herein shall be construed to empower the fire marshal or designee, building officials, code enforcement officers, zoning enforcement officers, animal control officers, public service officers, city attorney, city prosecutors or court clerks with powers of arrest, search, detention or other powers of law enforcement officers, except as provided by law.

(Ord. No. 2805C; 09-19-16)

**9-121. ELECTRONIC CITATIONS.**

(a) As used in this Article:

(1) "Electronic citation" means a charging citation, complaint or notice to appear which is prepared by a law enforcement officer, fire marshal or designee, duly appointed Leawood City building official, code enforcement officer or zoning enforcement officer, animal control officer, public service officer, city attorney or city prosecutor, in an electronic data device with intent that the data collected will be electronically filed with the municipal court for prosecution of a municipal ordinance violation. The data elements collected shall conform to the requirements of K.S.A. 12-4201 through 12-4207, and amendments thereto, or the requirements of the secretary of revenue or the secretary's designee pursuant to K.S.A. 79-3393, and amendments thereto, as applicable.

(2) "Electronic citation system" means the device, database or computer software used to create, store, transmit or exchange the data included in an electronic citation.

(3) "Electronic signature" means an electronic signature having legal effect pursuant to the Kansas uniform electronic transaction act, K.S.A. 16-1601 et seq., and amendments thereto.

(b) For purposes of an electronic citation, including a complaint and notice to appear issued under this section, an electronic signature indicated by the law enforcement officer or complainant's typed name, agency and agency identification number, if any, has the same effect and is as sufficient as a manual signature as required in K.S.A. 12-4202, 12-4204, 12-4207, subsection (b) of 22-3201 or 79-3393, and amendments thereto.

(c) A notice to appear, complaint or electronic citation as provided in K.S.A. 12-4201 through 12-4207 or 79-3393, and amendments thereto, shall be deemed to be written if on a paper form or in a document printed from an electronic citation system.

(d) For purposes of signing a notice to appear as provided in K.S.A. 8-2107 and 12-4204, and amendments thereto, a person being charged by a law enforcement officer shall be deemed to have signed the notice to appear if the person physically signs the paper notice to appear or, in the case of an electronic citation, verbally acknowledges that the person promises to appear on or before the date set at or with the designated court.

(Ord. No. 2805C; 09-19-16)

**9-122. COURT COSTS AND FEES.**

Pursuant to Section 1-701 of this Code, the Municipal Court may assess and collect such costs and fees as are set forth in the City of Leawood Fee Schedule.

(a) Liberal Construction. The provisions of this Ordinance shall be liberally construed to effectively carry out its purposes which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience.

(b) Invalidity. If for any reason any chapter, article, section, subsection, sentence, portion or part of this proposed Ordinance set out herein, or the application thereof to any person or circumstances is declared to be unconstitutional or invalid, such decision will not affect the validity of the remaining portions of this Code or other Ordinances.

(Ord. No. 2970C; 12-10-19)

## ARTICLE 2. TRAFFIC OFFENSES

### SECTIONS

9-201 TRAFFIC VIOLATIONS BUREAU
9-202 PLEA AND PAYMENT OF FINES

**9-201.** **TRAFFIC VIOLATIONS BUREAU.** The municipal court of Leawood, having determined that the efficient disposition of its business and the convenience of persons charged so requires, is hereby enabled to establish a Traffic Violations Bureau and shall, by the rules of the municipal court of the City of Leawood, set forth the procedure for its operation. The court shall, upon such determination of necessity and convenience having been made, appoint as an officer of the court, a violations clerk (or clerks), define the limits of authority of the violations clerk, and establish a schedule of fines which may from time to time be amended by order of the court, to be accepted by the violations clerk for pleas of guilty to offenses within the clerk's authority, the fines to be within the limits prescribed by the ordinances of the City of Leawood, Kansas.

(Ord. 1759C; 11-2-98)

**9-202.** **PLEA AND PAYMENT OF FINES.** Any person charged with any traffic offense within the authority of the violations clerk may appear before the violations clerk, and upon signing an entry of appearance and plea of guilty, pay the fine established fro the offense. Each defendant shall, prior to the acceptance by the violations clerk of the entry of appearance and plea of guilty, be informed of his or her right to trial, and that his or her signature to a plea of guilty will have the same effect as a judgment of the court and that the record of conviction will be sent to the motor vehicle department of the State of Kansas as to the appropriate authority of the state in which defendant is licensed to drive or in which he or she resides.

(Ord. 1759C; 11-2-98)

# CHAPTER X. POLICE DEPARTMENT

**Article 1. Department Regulations**
**Article 2. Property in Police Custody**

## Article 1. Department Regulations

SECTIONS

10-101 POLICE FORCE
10-102 DUTIES OF POLICE
10-103 CHIEF OF POLICE: POWERS
10-104 ARRESTS BY LAW ENFORCEMENT PERSONNEL
10-105 ATTENDANCE IN COURT
10-106 VACANCY IN OFFICE OF CHIEF OF POLICE

**10-101**. **POLICE FORCE**. The regular police force of the city shall consist of the chief of police and such law enforcement personnel as the governing body may provide. The chief of police under direction of the mayor, shall have supervision and be in charge of the police department and any law enforcement personnel who shall be selected in accordance with the personnel regulations of the department.

(Code 1984)

**10-102.** **DUTIES OF POLICE.** It shall be the duty of the chief of police and other police officers to see that the laws of the State of Kansas and all ordinances of the city and all resolutions of the governing body are properly enforced and obeyed within the police jurisdiction of the city. Whenever arrest is made they shall attend all trials in municipal court unless excused by the municipal judge. They shall promptly serve all process papers, notices or orders required by law or as directed by the mayor. They shall also perform such other duties as may be required by the mayor, or by laws of the city.

(Code 1984)

**10-103.** **CHIEF OF POLICE: POWERS.** The chief of police shall at all times have power to make or order an arrest, with proper process, for any offense against the laws of the state or of the city, and bring the offender for trial before the proper officer of the city, and to arrest without process in all cases where any such offense shall be committed, or attempted to be committed, in his or her presence. The chief of police shall have power to make such rules and regulations as may be necessary for the proper and efficient conduct of the department.

(Code 1984)

**10-104.** **ARRESTS BY LAW ENFORCEMENT PERSONNEL.** The law enforcement personnel of the city shall have power to arrest all offenders against the laws of the state, or of the city, by day or night, in the same manner as the chief of police, and keep them in the city prison or other place to prevent their escape, until a trial can be had before the proper officer.

(Code 1984)

**10-105.** **ATTENDANCE OF COURT.** The chief of police, in person or by deputy, shall attend all sessions of the municipal court. Law enforcement personnel shall attend the sessions when the business of the court shall require their attendance.

(Code 1973, 9-107)

**10-106.** **VACANCY IN OFFICE OF CHIEF OF POLICE.** If a vacancy shall occur in the office of chief of police, the senior law enforcement officer in rank shall automatically become supervising officer of the police department and shall perform all duties and be vested with all authority here in given to the chief of police. Such supervision officer's authority shall immediately cease when the office of chief of police is filled in the manner provided by law.

(Code 1984)

## ARTICLE 2. PROPERTY IN POLICE CUSTODY

SECTIONS

10-201 REGULATIONS
10-202 DISPOSITION
10-203 EXEMPT PROPERTY
10-204 CLAIMING PROPERTY
10-205 PROOF OF OWNERSHIP
10-206 AUCTION
10-207 REWARD

**10-201.** **REGULATIONS.** The police department is required to establish regulations detailing the collection, storage, and inventory of property which may come under its control by any manner.

(Code 1984)

**10-202.** **DISPOSITION.** Any property which has been acquired or turned over to the police department and has been classified in accordance with procedure existing in the police department as unclaimed or for which the proper owner cannot be ascertained shall be kept for a minimum of 90 days. After a period of 90 days, such property, except as provided in Section 10-203, shall be sold at public auction to the highest bidder and the proceeds after expenses shall be paid to the city general fund.

(Code 1984)

**10-203.** **EXEMPT PROPERTY.** The following classes of property shall be considered exceptions to Section 10-202 and shall be dealt with in the following manner:

(a) Cash money shall be turned over to the city general fund unless it is held as evidence of a crime, or unless it is determined to have collector's value, in which case it shall be auctioned according to the provisions in section 10-202.

(b) Firearms or ammunition which are available for disposition may be dealt with in the following manner:

(1) If compatible with law enforcement usage, they may be forfeited to the Leawood police department for use within such agency, for sale or trade to a properly licensed federal firearms dealer, or for trading to another law enforcement agency for that agency's use.

(2) Forfeited to the Kansas Bureau of Investigation (KBI) for law enforcement, testing or comparison by the KBI forensic laboratory.

(3) Forfeited to a county regional forensic science center, or other county forensic laboratory for testing, comparison or other forensic science purposes.

(4) Any firearm which cannot be forfeited due to the condition of the weapon, shall be destroyed.

(5) If a firearm is seized from an individual and the individual is not convicted of, or adjudicated as a juvenile offender for, the violation for which the weapon was seized, then within 30 days after the declination or conclusion of prosecution of the case against the individual, including any period of appeal, the law enforcement agency that seized the firearm shall verify that the firearm is not stolen, and upon such verification, shall notify the person from whom it was seized that the weapon may be retrieved. Such notification shall include the location where such weapon may be retrieved.

(6) In no case shall firearms be sold at public auction.

(c) Other weapons such as knives, etc., which are deemed to have a legitimate value may be sold at auction, however, homemade weapons or weapons of a contraband nature shall be destroyed.

(d) Any items determined to be contraband such as explosives, narcotics, etc., may be destroyed or retained by the police department for investigative or training purposes.

(e) Items of a pharmaceutical nature, which, while not contraband when properly dispensed, or which are of an over-the-counter variety, shall be destroyed.

(f) Foodstuffs, if sealed and undamaged may be turned over to any appropriate social service agency or destroyed, but shall not be auctioned.

(g) Alcohol products such as beer, wine, whiskey, etc., shall be destroyed.

(h) Items of only nominal value, as determined by the chief of police, may be returned to the finder upon a finding by the chief of police that the lawful owner of the item cannot or will not be located and that return of the item to the finder is in the public interest.

(Code 1984)
(Ord. 2861C; 09-18-17)

**10-204.** **CLAIMING PROPERTY.** The police department shall be required to make reasonable attempts to locate the owner of any property and no property shall be released unless such reasonable proof is presented.

(Code 1984)

**10-205.** **PROOF OF OWNERSHIP.** Claimants to any property in police storage shall be required to present reasonable proof of ownership and no property shall be released unless such reasonable proof is presented.

(Code 1984)

**10-206.** **AUCTION.** At such time as it has been determined that a public auction is necessary to dispose of unclaimed property, an inventory listing all property to be auctioned, and the date and type of auction, shall be prepared and kept on file in the police department. As used in this Article, public auction shall include all sales by direct auction, consignment auction or online auction, where items are sold to the highest bidder using methods for ensuring each sale is conducted in an open, fair and competitive manner. Online auction companies shall be approved by the City in advance.

(Code 1984)
(Ord. 2861C; 09-18-17)

**10-207.** **REWARD.** The chief of police is hereby authorized and empowered to adopt and enforce rules and regulations regarding the payment of reward monies to persons who turn over to the custody of the police department lost or stolen property. The payment of reward money in any particular instance shall be made at the discretion of the chief of police in accordance with the adopted rules and regulations and subject to the monies appropriated for such purpose in the adopted city budget.

(Code 1984)

# CHAPTER XI. PUBLIC OFFENSES

**Article 1. Uniform Public Offense Code [UPOC]**
**Article 2. Local Provisions**
**Article 3. Nuisance Alarm Systems**
**Article 4. Proclamation of Emergency**
**Article 5. Signs**
**Article 6. Drugs**
**Article 7. Premises Identification**
**Article 8. Lighting Nuisance**
**Article 9. Smoking**

## ARTICLE 1. UNIFORM PUBLIC OFFENSE CODE [UPOC]

SECTIONS

11-101 UNIFORM PUBLIC OFFENSE CODE INCORPORATED
11-101A PURCHASE OR POSSESSION OF CIGARETTES, TOBACCO PRODUCTS OR VAPOR PRODUCTS BY A MINOR
11-101B SELLING, GIVING OR FURNISHING CIGARETTES, TOBACCO PRODUCTS OR VAPOR PRODUCTS BY A MINOR
11-101C VAPOR PRODUCTS, DEFINED
11-102 ANTI-SCAVENGER
11-103 CRIMINAL USE OF WEAPONS
11-103A CRIMINAL CARRYING OF A WEAPON
11-104 AIR GUN, AIR RIFLE, PAINTBALL GUN, BOW AND ARROW, SLINGSHOT OR BB GUN
11-104A UNLAWFUL DISCHARGE OF FIREARMS
11-105 BARBED WIRE
11-105A SMOKING- **DELETED AND OMITTED**
11-106 CRUELTY TO ANIMALS-**DELETED AND OMITTED**
11-107 CRIMINAL LITTERING
11-108 DIRT BIKES, TRAIL BIKES ALL TERRAIN VEHICLES PROHIBITED
11-109 BATTERY- **REPEALED**- [SEE UNIFORM PUBLIC OFFENSE CODE]
11-110 NUDITY IN A PUBLIC PLACE

# ARTICLE 1. UNIFORM PUBLIC OFFENSE CODE [UPOC]

**11-101.** **UNIFORM CODE INCORPORATED.** There is hereby incorporated by reference the "Uniform Public Offense Code for Kansas Cities", 2019 Edition, ("UPOC") prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. § 12-3009 through §12-3012, inclusive, as amended. No fewer than three copies of said uniform ordinance shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 2961C", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 1904C; 08-06-01)
(Ord. 1958C; 11-04-02)
(Ord. 2023C; 09-15-03)
(Ord. 2083C; 09-20-04)
(Ord. 2137C; 11-07-05)
(Ord. 2193C; 11-06-06)
(Ord. 2304C; 02-04-08)
(Ord. 2351C; 10-06-08)
(Ord. 2418C; 11-02-09)
(Ord. 2463C; 09-20-10)
(Ord. 2515C; 10-17-11)
(Ord. 2578C; 10-01-12)
(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-06-14)
(Ord. 2757C; 11-02-15)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-101A.** **PURCHASE OR POSSESSION OF CIGARETTES, TOBACCO PRODUCTS OR VAPOR PRODUCTS BY A MINOR.** Section 5.6 of the UPOC incorporated in Section 11-101 above is hereby amended to read as follows:

**PURCHASE OR POSSESSION OF CIGARETTES, TOBACCO PRODUCTS OR VAPOR PRODUCTS BY A MINOR.**

It shall be unlawful for any person:

(a) Who is under 21 years of age to purchase or attempt to purchase cigarettes, vapor products or tobacco products; or

(b) Who is under 18 years of age to possess or attempt to possess cigarettes, vapor products or tobacco products. (K.S.A. 79-3321, as amended).

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be a minimum of $25 and a maximum of $100. In addition, the judge may require a juvenile to appear in court with a parent or legal guardian and/or may require a person charged with violating this section to complete a tobacco education program.

(Ord. 2788C; 06-20-16)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-101B. SELLING, GIVING OR FURNISHING CIGARETTES, TOBACCO PRODUCTS OR VAPOR PRODUCTS BY A MINOR.** Section 5.7 of the UPOC incorporated in Section 11-101, above is hereby amended to read as follows:

**SELLING, GIVING OR FURNISHING CIGARETTES, TOBACCO PRODUCTS OR VAPOR PRODUCTS BY A MINOR.**

(a) It shall be unlawful for any person to:
  (1) Sell, furnish or distribute cigarettes, vapor products, or tobacco products to any person under 21 years of age; or
  (2) Buy any cigarettes, vapor products, or tobacco products for any person under 21 years of age.

(b) It shall be a defense to a prosecution under this section if:
  (1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
  (2) The defendant sold, furnished or distributed the cigarettes, vapor products, or tobacco products to the person under 21 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes, vapor products or tobacco products; and
  (3) To purchase or receive the cigarettes, vapor products, or tobacco products, the person under 21 years of age exhibited to the defendant a driver's license, Kansas non driver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes, vapor products, or tobacco products.
  (4) For purposes of this section the person who violates this section shall be the individual directly selling, furnishing or distributing the cigarettes, vapor products, or tobacco products to any person under 21 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

(c) It shall be a defense to a prosecution under this subsection if:
  (1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes, vapor products, or tobacco products by mail; and
  (2) The defendant sold, furnished or distributed the cigarettes, vapor products, or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 21 or more years of age.

(d) As used in this section, sale means any transfer of title or possession or both, exchange, barter, distribution or gift of cigarettes, vapor products, or tobacco products, with or without consideration. (K.S.A. Supp. §79-3302, 79-3321, 79-3322)

Violation of this section shall constitute a Class B violation punishable by a minimum fine of $200 and a maximum fine of $1,000.

(Ord. 2788C; 06-20-16)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-101C.** **VAPOR PRODUCTS, DEFINED. VAPOR PRODUCTS, DEFINED.** For purposes of Sections 11-101A and 11-101B, the term "vapor products" is defined to mean: Any non-combustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical or mechanical means, regardless of shape or size, which can be used to produce vapor for human consumption from a solution or other form that may or may not contain nicotine. Vapor product includes, but is not limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, personal vaporizer, e-pen, vapor pen or similar product or device and any vapor cartridge, container of nicotine or any other solution or substance that is intended to be used to produce a vapor for human consumption. Vapor product does not include any medical inhaler or other device that has been specifically approved for medical use by the United States Food and Drug Administration.

(Ord. 2788C; 06-20-16)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-102.** **ANTI-SCAVENGER.** The UPOC incorporated in Section 11-101, is hereby amended by adding a new section 6.15a, entitled "Anti-Scavenger," to read as follows:

**ANTI-SCAVENGER**. It shall be unlawful for any person not licensed by the City and not under contract with the owner or occupant, to remove from private property or public right-of-way any item which has been placed by the occupant for collection by a person holding a permit to collect solid waste or recyclables; provided, however, that this section shall not apply to law enforcement officers and other City employees acting in accordance with law.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 1958C; 11-04-02)
(Ord. 2023C; 09-15-03)
(Ord. 2083C; 09-20-04)
(Ord. 2137C; 11-07-05)
(Ord. 2149C; 01-03-06)
(Ord. 2193C; 11-06-06)
(Ord. 2304C; 02-04-08)
(Ord. 2351C; 10-06-08)
(Ord. 2418C; 11-02-09)
(Ord. 2463C; 09-20-10)
(Ord. 2515C; 10-17-11)
(Ord. 2578C; 10-01-12)
(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-06-14)
(Ord. 2757C; 11-02-15)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-103.** **CRIMINAL USE OF WEAPONS.** Section 10.1 of the UPOC incorporated in Section 11-101 above is hereby amended to read as follows:

**CRIMINAL USE OF WEAPONS**

(a) Criminal use of weapons is knowingly:
- (1) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sand club, metal knuckles, or throwing star.
- (2) Possessing with intent to use the same unlawfully against another, a billy, blackjack, slunghshot, or any other dangerous or deadly weapon or instrument of like character.
- (3) Setting a spring gun.

(b) Criminal use of weapons as defined in subsection (a) is a Class A violation.

(c) Subsections (a)(1) and (a)(2) shall not apply to:
- (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(4) Manufacture of, transportation to, or sale of weapons to a person authorized under (c)(1) through (c)(3) of this section to possess such weapons.

(Ord.1797C; 5-17-99)
(Code 2000)
(Ord. 1904C; 08-06-01)
(Ord. 1958C; 11-04-02)
(Ord. 2023C; 09-15-03)
(Ord. 2083C; 09-20-04)
(Ord. 2137C; 11-07-05)
(Ord. 2193C; 11-06-06)
(Ord. 2230C; 05-21-07)
(Ord. 2304C; 02-04-08)
(Ord. 2351C; 10-06-08)
(Ord. 2418C; 11-02-09)
(Ord. 2463C; 09-20-10)
(Ord. 2515C; 10-17-11)
(Ord. 2578C; 10-01-12)
(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-06-14)
(Ord. 2757C; 11-02-15)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-103A. CRIMINAL CARRYING OF A WEAPON.** Section 10.1.1 of the UPOC incorporated in Section 11-101 above is hereby amended to read as follows:

**CRIMINAL CARRYING OF A WEAPON**

(a) Criminal carrying of a weapon is knowingly carrying:

(1) Any bludgeon, sandclub, metal knuckles, or throwing star;

(2) Concealed on one's person, a billy, blackjack, slungshot or any other dangerous or deadly weapon or instrument of like character;

(3) On one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance.

(b) Subsection (a) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) Members of the armed services or reserve forces of the United States or the Kansas National Guard while in the performance of their official duty; or

(4) The manufacture of, transportation to, or sale of weapons to a person authorized under (b)(1) through (b)(3) of this section to possess such weapons.

(c) Criminal carrying of a weapon is a Class A violation.

(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-104. AIR GUN, AIR RIFLE, PAINTBALL GUN, BOW AND ARROW, SLINGSHOT OR BB GUN.** Section 10.6 of the UPOC incorporated in Section 11-101 above shall be amended to read as follows:

**AIR GUN, AIR RIFLE, PAINTBALL GUN, BOW AND ARROW, SLINGSHOT OR BB GUN**

(a) The unlawful operation of an air gun, air rifle, paintball gun, bow and arrow, slingshot or BB gun is the shooting, discharging or operating of any air gun, air rifle, paintball gun, bow and arrow, slingshot or BB gun, within the city, except within the confines of a building or other structure from which the projectiles cannot escape.

Unlawful operation of an air gun, air rifle, paintball gun, bow and arrow, slingshot or BB gun is a Class C violation.

(b) The unlawful possession of an air gun, air rifle, paintball gun, bow and arrow, slingshot or BB gun is the possession of an air gun, air rifle, paintball gun, bow and arrow, slingshot or BB gun with the intent to shoot, discharge, or operate the air gun, air rifle, paintball gun, bow and arrow, slingshot or BB gun within the city, except within the confines of a building or other structure from which the projectiles cannot escape.

Unlawful possession of an air gun, air rifle, paintball gun, bow and arrow, slingshot or BB gun is a Class C violation.

(Ord. 1797C; 5-17-99)
(Code 2000)
(Ord. 1958C; 11-04-02)
(Ord. 2023C; 09-15-03)
(Ord. 2083C; 09-20-04)
(Ord. 2137C; 11-07-05)
(Ord. 2193C; 11-06-06)
(Ord. 2304C; 02-04-08)
(Ord. 2351C; 10-06-08)
(Ord. 2418C; 11-02-09)
(Ord. 2463C; 09-20-10)
(Ord. 2515C; 10-17-11)
(Ord. 2578C; 10-01-12)
(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-06-14)
(Ord. 2757C; 11-02-15)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-104A. UNLAWFUL DISCHARGE OF A FIREARM.** Section 10.5 of the UPOC incorporated in Section 11-101 above shall be amended to read as follows:

**UNLAWFUL DISCHARGE OF A FIREARM.**

(a) Unlawful discharge of a firearm is the discharge or firing of any gun, rifle, pistol, revolver or other firearm within or into the corporate limits of the City of Leawood.

(b) This section shall not apply if:

1. The firearm is discharged in the lawful defense of one's person, another person or one's property;
2. The firearm is discharged at a private or public shooting range;
3. The firearm is discharged to lawfully take wildlife only if expressly authorized in writing by the City's Governing Body;
4. The firearm is discharged by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;
5. The firearm is discharged by special permit of the chief of police;
6. The firearm is discharged using blanks and is used by a ceremonial firing squad or used in a starting gun for a bona fide authorized sporting event; or
7. The firearm is discharged in lawful self-defense or defense of another person against an animal attack.

Unlawful discharge of a firearm is a Class B violation.

(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-06-14)
(Ord. 2757C; 11-02-15)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-105.** **BARBED WIRE.** Section 10.13 of the UPOC incorporated in Section 11-101 above shall be amended to read as follows:

**BARBED WIRE.**
It shall be unlawful for any person to construct, set up or maintain any barbed wire or barbed wire fence or enclosure within the city, except on property zoned for and actually used for agricultural purposes.

Violation of this section is a Class C violation.

(Ord. 1797C; 5-17-99)
(Code 2000)
(Ord. 1904C; 08-06-01)
(Ord. 1958C; 11-04-02)
(Ord. 2023C; 09-15-03)
(Ord. 2083C; 09-20-04)
(Ord. 2137C; 11-07-05)
(Ord. 2193C; 11-06-06)
(Ord. 2304C; 02-04-08)
(Ord. 2351C; 10-06-08)
(Ord. 2418C; 11-02-09)
(Ord. 2463C; 09-20-10)
(Ord. 2515C; 10-17-11)
(Ord. 2578C; 10-01-12)
(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-06-14)
(Ord. 2757C; 11-02-15)
(Ord. 2802C; 09-19-16)
(Ord. 2859C; 09-18-17)
(Ord. 2961C; 09-16-19)

**11-105A.** **SMOKING.** Sections 10.24, 10.25 and 10.26 of the UPOC incorporated in Section 11-101 above, pertaining to smoking, shall be omitted and deleted.

***[See Article 9 of Chapter 11 of the Code of the City of Leawood, 2000]***
(Ord. 2463C; 09-20-10)
(Ord. 2515C; 10-17-11)
(Ord. 2578C; 10-01-12)
(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-14-14)
(Ord. 2757C; 11-02-15)

**11-106.** **CRUELTY TO ANIMALS.** Section 11.11 of the UPOC incorporated in Section 11-101 above, pertaining to Cruelty to Animals, is hereby omitted and deleted

*[See Code Section 2-103 of the Code of The City of Leawood, 2000]*

(Ord. 1797C; 5-17-99)
(Code 2000)
(Ord. 1958C; 11-04-02)
(Ord. 2023C; 09-15-03)
(Ord. 2083C; 09-20-04)
(Ord. 2137C; 11-07-05)
(Ord. 2193C; 11-06-06)
(Ord. 2304C; 02-04-08)
(Ord. 2418C; 11-02-09)
(Ord. 2463C; 09-20-10)
(Ord. 2515C; 10-17-11)
(Ord. 2578C; 10-01-12)
(Ord. 2639C; 10-21-13)
(Ord. 2690C; 10-06-14)
(Ord. 2757C; 11-02-15)

**11-107.** **CRIMINAL LITTERING**

(a) Except as provided in section 14-110 regarding littering from a motor vehicle, and amendments thereto, criminal littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:
   (1) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or
   (2) Any private property without the consent of the owner or occupant of such property.

(b) Criminal littering is an unclassified misdemeanor punishable:
   (1) Upon a first conviction by a fine of not less than $250 nor more than $1,000;

(2) Upon a second conviction by a fine of not less than $1,000 nor more than $2,000; and

(3) Upon a third or subsequent conviction by a fine of not less than $2,000 nor more than $4,000.

(c) In addition to the fines in subsection (b), a person convicted of littering shall be required to pick up litter for a time prescribed by and a place within the jurisdiction of the court.

(Ord. 2083C; 09-20-04)
(Ord. 2137C; 11-07-05)
(Ord. 2351C; 10-06-08)
(Ord. 2418C; 11-02-09)

**11-108. DIRT BIKES, TRAIL BIKES AND ALL TERRAIN VEHICLES PROHIBITED.**

(a) Operating a dirt bike or trail bike or all terrain vehicle on public or private property in the City is prohibited, except when operated for the purpose of ingress, egress, loading or unloading upon a private driveway.

(b) For purposes of this ordinance the following terms shall have the indicated meanings:

(1) Dirt bike and trail bike are each defined to mean a small motorcycle designed and built with special tires and suspension for riding on unpaved roads and over rough terrain. Such terms do not include dirt bikes or trail bikes which are legally licensed to operate on the highways and roadways of this state, when operated on such highways and roadways.

(2) All terrain vehicle is defined to mean any motorized non-highway vehicle 48 inches or less in width, having a dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires. As used in this section, 'low-pressure tire' means any pneumatic tire six inches or more in width, designed for use on wheels with rim diameter of 12 inches or less and utilizing an operating pressure of 10 pounds per square inch or less as recommended by the vehicle manufacturer.

(c) All terrain vehicles do not include the following:

(1) an unmodified golf cart;

(2) a motorized vehicle designed for use by children [such as battery operated vehicles sold in toy stores or vehicles with a weight limitation of 100 pounds or less];

(3) an unmodified utility cart with seating for two people and containing a bed or flatbed; or

(4) City owned and operated maintenance vehicles.

(Ord. 2211C; 02-05-07)
(Ord. 2418C; 11-02-09)

**11-109. BATTERY. – Repealed [See 'Uniform Public Offense Code']**

(Ord. 1797C; 05-17-99)
(Code 2000)
(Ord. 1904C; 08-06-01)

**11-110.** **NUDITY IN A PUBLIC PLACE.** It shall be unlawful for a person to knowingly or intentionally appear in a state of nudity in a public place, provided, however, that this section shall not prohibit breastfeeding as is specifically allowed under K.S.A. 65-1,248 and amendments thereto.

(a) For purposes of this section, the term nudity shall mean the exposure of the human bare buttocks, anus, genitals, the areola or the nipple of the female breast or a state of dress which fails to opaquely or fully cover the anus, genitals or the areola or the nipple of the female breast; the showing of the covered male genitals in a discernibly turgid state; the exposure of any device, costume, or covering which gives the realistic appearance of or simulates the human bare buttocks, anus, genitals, the areola or the nipple of the female breast.

(b) For purposes of this section, the term public place shall mean any location open to the public, or any location visible from public property or public right-of-way. These locations shall be considered public places regardless of whether they are for profit or not for profit and regardless of whether they are open to the public at large or whether entrance is limited by a cover charge or membership requirement.

(Ord. 2792C; 07-05-16)

# ARTICLE 2. LOCAL PROVISIONS

SECTIONS


11-201 PENALTIES
11-202 GIVING A WORTHLESS CHECK
11-203 SMOKING ON COMMON CARRIER
11-204 PERMITTING, MAINTAINING, OR KEEPING A PUBLIC NUISANCE
11-205 DISTURBING THE PEACE
11-206 DECLARATION
11-207 PICKETING RESIDENCE OR DWELLING UNLAWFUL
11-208 PENALTY FOR VIOLATIONS
11-209 WINDOW PEEPING
11-210 URINATING OR DEFECATING IN PUBLIC
11-211 LANDING OF AIRCRAFT
11-212 CARRYING OF FIREARMS PROHIBITED - **REPEALED**


**11-201.** **PENALTIES**. Unless otherwise specified, the penalties for violation of any provision of this Article 2, will be classed in the manner set out in Article 12 of the Uniform Public Offense Code for Kansas Cities, as may be amended and as incorporated by reference by Section 11-101 of this Chapter.

(Code 2000)
(Ord. 1905C; 08-06-01)
(Ord. 1959C; 11-04-02)

**11-202.** **GIVING A WORTHLESS CHECK.** Repealed by Ord. No. 1362C, 7-19-93. (See Code Section 11-103)

(Ord. 1362C; 07-19-93)
(Code 2000)
(Ord. 1905C; 08-06-01)

**11-203.** **SMOKING ON COMMON CARRIER.** No person shall smoke or carry in his or her hand a lighted cigar, cigarette or pipe, while in or upon any buses operated in common carrier passenger service upon the streets or public ways of the city.

A conviction upon violation of this section is punishable by a fine not to exceed $100.

(Code 1973, 10-601)

**11-204. PERMITTING, MAINTAINING, OR KEEPING A PUBLIC NUISANCE.**

(a) Nuisance Defined. For the purpose of this section, the term "nuisance" is defined to mean a thing, condition or use of some continuity as distinguished from a solitary act, which through offensive odors, noises, substances, disturbances, emanations, sights, or the like, works hurt, annoyance, inconvenience or damage to the public or to another, with respect to his or her comfort, health, repose or safety or with respect to the free use and comfortable enjoyment of his or her property, whether it does so by reason of its nature or by reason of conditions and circumstances, where the cause of these effects has no legal sanction, or where, if the cause is sanctioned, the effects, nevertheless, are unreasonably harmful or annoying to persons of normal sensibility, and constitute a legal wrong.

(b) Nuisance Prohibited. No person owning, leasing, occupying or having charge of any premises, shall permit, maintain or keep any nuisance thereon.

(Ord. 1039C; 03-07-88)

**11-205 DISTURBING THE PEACE**

(a) It shall be unlawful for any person to make, continue, maintain or cause to be made or continued any excessive, unreasonable or unusually loud noise or any noise which disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the City of Leawood, when such noise would disturb, injure or endanger the comfort, repose, health, peace or safety of a reasonable person.

*Prima Facie Violation:* It shall be prima facie evidence of a violation of this section for the operation of any tool, construction equipment, construction operations in such a manner as to be plainly audible at any adjacent property, or for 50 feet or more in the case of a multiple-family dwelling, between the hours of nine o'clock p.m. and seven o'clock a.m.

(b) It shall be unlawful for any person to use, operate or permit the use or operation of any electronic device, radio receiving set, television, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. "Neighboring inhabitants" shall include persons living within or occupying residential districts of single or multi-family dwellings and shall include areas where multiple-unit dwellings and high-density residential districts are located.

(c) No person shall congregate with other persons because of, participate in, or be in any party or gathering of people from which sound emanates of a sufficient volume so as to disturb the peace, quiet or repose of persons residing in any residential area, when such sound would disturb the peace, quiet or repose of a reasonable person. A police officer may order all persons present in any group or gathering from which such sound emanates, other than the owners or tenants of the dwelling unit, to immediately disperse in lieu of being charged under this section. Owners or tenants of the dwelling unit shall immediately abate the disturbance and, failing to do so, shall be in violation of this section.

(d) It shall be unlawful for any person to use or operate any loudspeaker, radio or phonograph device, either in or attached to any automobile or other vehicle operated on the streets of the City for the purpose of advertising, announcing or otherwise calling the attention of others; provided, however, that any individual or business having the applicable approvals under this Code, may use such devices between the hours of 8:00 A.M. to 9:00 P.M., provided that the noise level produced does not violate any other section of this Code.

(e) Exemptions. Sounds emanating from the following shall be exempt from the provisions of (a) through (c) above:

(1) Emergency vehicles;
(2) Public safety vehicles;
(3) Emergency activities of the fire or police department;
(4) Emergency activities of any utility company;
(5) Municipal maintenance vehicles and equipment;(6) Parades, fun run, race, festival, fiesta, concert, or other public gathering, within city limits, which are sponsored or permitted by the City;
(6) Any noise or sound from church bells, or similar chimes, when used as part of a religious observance or service and which does not exceed five [5] continuous minutes in duration;
(7) Any noise or sound from lawful school activity;
(8) Any noise or sound from lawful fireworks displays.

(f) Statement of Intent. No provision of this section shall be construed to limit or abridge the rights of any person to peacefully assemble and express opinions. It is the purpose of this section to protect individuals from unreasonable intrusions caused by excessive, unnecessary, unreasonable or unusually loud noises.

(Ord. 1691C; 08-18-97)
(Code 2000)
(Ord. 1899C; 07-16-01)
(Ord. 2042C; 05-01-04)
(Ord. 2325C; 06-16-08)

**11-206.** **DECLARATION.** It is declared that the protection and preservation of the home is the keystone of democratic government; that the public health and welfare and the good order of the community require that members of the community enjoy in their homes and dwellings a feeling of well being, tranquility, and privacy, and when absent from their homes and dwellings, carry with them the sense of security inherent in the assurance that they may return to the enjoyment of their homes and dwellings; that the practice of picketing before or about residences and dwellings causes emotional disturbance and distress to the occupants; obstructs and interferes with the free use of public sidewalks and public ways of travel; that such practice has as its object the harassing of such occupants; and without resort to such practice full opportunity exists, and under the terms and provisions of this section will continue to exist for the exercise of freedom of speech and other constitutional rights; and that the provisions hereinafter enacted are necessary for the public interest to avoid the detrimental results herein set forth and are enacted by the Governing Body of the City of Leawood pursuant to the Home Rule provisions of the Kansas Constitution, the City's police powers, and all other lawful authority available to the City.

(Ord. l067C; 09-19-88)

**11-207.** **PICKETING RESIDENCE OR DWELLING UNLAWFUL.** It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the City of Leawood.

(Ord. 1067C; 09-19-88)

**11-208.** **PENALTY FOR VIOLATIONS.** Any person violating the provisions of Sections 11-206, 11-207 of the Code of the City of Leawood shall be deemed guilty of a public offense and upon conviction therefore shall be punished by a fine of not more than $500, and/or by imprisonment for a period not to exceed six months or by both such fine and imprisonment.

(Ord. 1067C; 09-19-88)

**11-209.** **WINDOW PEEPING.** Window peeping is the going upon property owned or occupied by another without such person's consent for the purpose of looking into any window, door, skylight, or other opening into a house, room, or building.

Window peeping is a Class B violation.

(Ord. No. 1271C; 02-18-92)

**11-210.** **URINATING OR DEFECATING IN PUBLIC**. No person shall urinate or defecate in or upon any street, sidewalk, alley, plaza, park, public building, public property, private parking lot or in any place open to the public or exposed to public view. Urination or defecation utilizing appropriate fixtures in any lavatory or other facility designed for the sanitary disposal of human waste shall not constitute an offense under this Section.

Violation of this Section shall constitute a Class C violation.

(Ord. 1571C; 04-01-96)

**11-211.** **LANDING OF AIRCRAFT**. No person shall, without the prior written approval of the Governing Body of the City of Leawood, use any land for the landing or departure of any aircraft. For purposes of this Section, aircraft shall be defined to include any aircraft, airplane or helicopter designed to carry at least one passenger and/or cargo but shall not include any manned, free balloon that derives lift exclusively from heated air.

(Ord. 1965C; 11-04-02)

**11-212** **CARRYING OF FIREARMS PROHIBITED. – REPEALED**

(Ord. 2184C; 10-02-06)
(Ord. 2231C; 05-21-07)
(Ord. 2713C; 01-20-15)

## ARTICLE 3. NUISANCE ALARM SYSTEMS. – REPEALED

SECTIONS


11-301 NUISANCE ALARM SYSTEMS PROHIBITED -**REPEALED**
11-302 REGISTRATION OF ALARM SYSTEMS -**REPEALED**
11-303 DISTURBING ALARMS TO BE DISCONNECTED OR MODIFIED -**REPEALED**
11-304 NOTIFICATION OF NUISANCE ALARMS -**REPEALED**
11-305 RESPONSIBLE PARTY -**REPEALED**
11-306 FALSE ALARMS; FEES REQUIRED -**REPEALED**
11-307 APPEALS -**REPEALED**
11-308 DESIGNATION OF ALARM COORDINATOR; DUTIES -**REPEALED**
11-309 NON-RESPONSE TO ALARMS -**REPEALED**
11-310 PENALTY -**REPEALED**
11-311 NON-RESPONSE TO CERTAIN ALARMS -**REPEALED**
11-312 CONTROL PANEL STANDARD INCORPORATED BY REFERENCE -**REPEALED**
11-313 ENHANCED CALL VERIFICATION -**REPEALED**


**11-301. NUISANCE ALARM SYSTEMS PROHIBITED.**

***SECTION 11-301 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Code 2000)
(Ord. 1906C; 08-06-01)
(Ord. 2924C; 01-07-19)

**11-302. REGISTRATION OF ALARM SYSTEMS.**

***SECTION 11-302 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Ord. 2924C; 01-07-19)

**11-303. DISTURBING ALARMS TO BE DISCONNECTED OR MODIFIED.**

***SECTION 11-303 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Ord. 2924C; 01-07-19)

**11-304. NOTIFICATION OF NUISANCE ALARMS.**

***SECTION 11-304 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Code 2000)
(Ord. 1906C; 08-06-01)
(Ord. 2924C; 01-07-19)

**11-305. RESPONSIBLE PARTY.**

***SECTION 11-305 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Ord. 2924C; 01-07-19)

**11-306. FALSE ALARMS; FEES REQUIRED.**

***SECTION 11-306 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Code 2000)
(Ord. 1906C; 08-06-01)
(Ord. 2177C; 08-07-06)
(Ord. 2924C; 01-07-19)

**11-307. APPEALS.**

***SECTION 11-307 IS HEREBY REPEALED.***

(Ord. 1578C; 05-06-96)
(Ord. 2924C; 01-07-19)

**11-308. DESIGNATION OF ALARM COORDINATOR; DUTIES.**

***SECTION 11-308 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Code 2000)
(Ord. 2924C; 01-07-19)

**11-309. NON-RESPONSE TO ALARMS.**

***SECTION 11-309 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Code 2000)
(Ord. 1906C; 08-06-01)
(Ord. 2924C; 01-07-19)

**11-310. PENALTY.**

***SECTION 11-310 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Ord. 2924C; 01-07-19)

**11-311. NON-RESPONSE TO CERTAIN ALARMS.**

***SECTION 11-311 IS HEREBY REPEALED.***

(Ord. 1467C; 02-21-95)
(Ord. 2924C; 01-07-19)

**11-312. CONTROL PANEL STANDARD INCORPORATED BY REFERENCE.**

***SECTION 11-312 IS HEREBY REPEALED.***

(Ord. 2177C; 08-07-06)
(Ord. 2924C; 01-07-19)

**11-313. ENHANCED CALL VERIFICATION.**

***SECTION 11-313 IS HEREBY REPEALED.***

(Ord. 2177C; 08-07-06)
(Ord. 2924C; 01-07-19)

## ARTICLE 4. PROCLAMATION OF EMERGENCY

SECTIONS

11-401 PROCLAMATION OF EMERGENCY
11-402 EFFECTIVE PERIOD
11-403 EXPIRATION OR EXTENSION OF EMERGENCY
11-404 PENALTY
11-405 NO RELEASE OF CIVIL DAMAGES

**11-401. PROCLAMATION OF EMERGENCY**

(a) ***Authorization of Mayor or Councilmember to Act***. Whenever the Mayor or, in the event of his or her inability to act, a Councilmember of the City Council acting under the authority of this section as provided in 11-401(b), determines that an emergency or imminent threat of emergency exists as a result of mob action, civil disobedience, or natural or man-made disaster within the Kansas City Standard Metropolitan Statistical Area causing or threatening to cause danger or injury to or damage to persons or property, he or she shall have power to impose by proclamation any or all of the following regulations necessary to preserve the peace and order of the City:

1. To impose a curfew upon all or any portion of the city thereby requiring all persons in such designated curfew areas to forthwith remove themselves and/or their motor vehicles from the public streets, alleys, public parking lots, parks or other public places: Provided, that physicians, nurses and ambulance operators performing medical services, utility personnel maintaining essential public services, firefighters and city authorized or requested law enforcement officers and personnel may be exempted from such curfew.
2. To order the closing of any business establishment anywhere within the city for the period of the emergency, such businesses to include, but not limited to, those selling intoxicating liquors, cereal malt beverages, gasoline or firearms.
3. To designate any public street, thoroughfare or vehicle parking area closed to motor vehicles and pedestrian traffic.
4. To call upon regular and auxiliary law enforcement agencies and organizations within or outside the city, including the sheriff's department under provisions of mutual emergency police protection compact, to assist in preserving and keeping the peace within the City.
5. That any and all of the regular and auxiliary law enforcement agencies, organizations and their individual officers shall have the full power and authority to make arrests and to act on behalf of the City in order to enforce the provisions provided for herein and any and all other city ordinances that might be violated as a result of any mob action, civil disobedience, or natural or manmade disaster.

6. To enter into a mutual emergency police protection compact with any and all governing bodies of Johnson County, Kansas, and any other duly authorized governing body within the Kansas City Standard Metropolitan Statistical Area.
7. To authorize the City Administrator or designated Department Head to approve the expenditure of funds up to $100,000.00.
8. To suspend specific internal City rules and regulations as may be necessary.

(b) *Determination of Councilmember Authorized to Act in the Event of Inability of the Mayor*. In the event the Mayor is unable to act, the Presiding Officer shall have the foregoing power as they are able to act and in a line of succession, in accordance with the Mayor's appointments made under Section 1-209 of this Code. In the event a proclaimed emergency extends beyond the period stated in the Mayor's appointment, then the Presiding Officer at the commencement of the emergency shall continue to act as Presiding Officer until the termination of the emergency.

(Ord. 1268C; 01-20-92)
(Code 2000)
(Ord. 1946C; 03-18-02)
(Ord. 2715C; 01-20-15)

**11-402.** **EFFECTIVE PERIOD.** The proclamation of emergency provided herein shall become effective upon its issuance and dissemination to the public by appropriate news media.

(Ord. 436; 06-27-73)
(Code 1973, 10-502)
(Code 2000)
(Ord. 1946C; 03-18-02)

**11-403.** **EXPIRATION OR EXTENSION OF EMERGENCY.** Any emergency proclaimed in accordance with the provisions of this Article shall terminate in accordance with the terms as set forth in the Proclamation of Emergency, or upon the issuance of a proclamation determining an emergency no longer exists, whichever occurs first. Such an emergency may be extended for such additional periods of time as determined necessary by resolution of the governing body.

(Ord. 436; 06-27-73)
(Code 1973, 10-503)
(Code 2000)
(Ord. 1946C; 03-18-02)

**11-404.** **PENALTY.** Any person who shall willfully fail or refuse to comply with the orders of duly authorized law enforcement officers or personnel charged with the responsibility of enforcing the proclamation of emergency authorized herein shall be deemed guilty of a public offense and upon conviction therefore, shall be punished by a fine of not more than $500, and/or by imprisonment in the city or county jail for a period not to exceed three months.

(Ord. 436; 06-27-73)
(Code 1973, 10-504)
(Code 2000)
(Ord. 1946C; 03-18-02)

**11-405.** **NO RELEASE OF CIVIL DAMAGES.** Nothing contained in this article shall be in lieu of any civil damages.

(Ord. 436; 06-27-73)
(Code 1973, 10-505)
(Code 2000)
(Ord. 1946C; 03-18-02)

# ARTICLE 5. SIGNS

Repealed by Ordinance No. 1189C; 11-19-90

Residential sign regulations - see the “Leawood Development Ordinance”

# ARTICLE 6. DRUGS

SECTIONS


11-601 DEFINITIONS
11-602 POSSESSION OF CONTROLLED SUBSTANCES
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**11-601. DEFINITIONS.**

When used in this section:

(a) "**Controlled substance**" means any drug, substance or immediate precursor included in any of the schedules as designated in the Uniform Controlled Substance Act, Chapter 65, Article 41 of the Kansas Statutes Annotated.

(b) "**Deliver**" or "**delivery**" means actual constructive or attempt to transfer from one person to another whether or not there is an agency relationship.

(c) "**Dangerous drug**" means one that is unsafe for use except under the supervision of a practitioner because of its toxicity or other potentiality for human effect, method of use, or collateral measures necessary to use; "Dangerous drug" shall include all other drugs or compounds, preparations or mixtures thereof which the state board of health shall find and declare by rule or regulation duly promulgated after reasonable public notice and opportunity for hearing to have a dangerous hallucinogenic hypnotic, somnifacient or stimulating effect of the body of a human or animal.

(d) "**Drug**" means:

1. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary, or any supplement to any of them;
2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animal;
3. Substances other than food intended to affect the structure or any function of the body or man or animal;
4. Substances intended for use as a component of any articles specified in paragraphs 1, 2 or 3 of this subsection, but does not include devices or their components, parts or accessories.

(e) "**Drug Paraphernalia**" means all equipment, products and materials of any kind which are used or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Uniform Controlled Substances Act. Drug Paraphernalia shall include, but is not limited to:

1. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any specifies of plant which is a controlled substance or from which a controlled substance can be derived;
2. Kits used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
3. Isomerization devices used or intended for use in increasing the potency of any species of plant which is a controlled substance;
4. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of a controlled substance;
5. Scales and balances used or intended for use in weighing or measuring controlled substances;
6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, which are used or intended for use in cutting controlled substances;
7. Separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;
8. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;
9. Capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;
10. Containers and other objects used or intended for use in storing or concealing controlled substances;
11. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body;
12. Objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), heroin, methamphetamine, amphetamine or any other illegal or dangerous drug into the human body, such as:
    - (i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
    - (ii) Water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;
    - (iii) Carburetion pipes, glass or other heat resistant tubes or any other device used or intended to be used, designed to be used to cause vaporization of a controlled substance for inhalation;
    - (iv) Smoking and carburetion masks;
    - (v) Roach clips (objects used to hold burning material such as marijuana cigarettes that have become too small or too short to be held in the hand);

(vi) Miniature cocaine spoons and cocaine vials;
(vii) Chamber pipes;
(viii) Carburetor pipes;
(ix) Electric pipes;
(x) Air-driven pipes;
(xi) Chillums;
(xii) Bongs;
(xiii) Ice pipes or chillers;
(xiv) Any smoking pipe manufactured to disguise its intended purpose;
(xv) Wired cigarette papers; or
(xvi) Cocaine freebase kits.

In determining whether an object is drug paraphernalia, a court or other authority shall consider in addition to all other logically relevant factors, the following:

1. Statements by an owner or person in control of the object concerning its use;
2. Prior convictions, if any, of the owner or person in control of the object under any city, state or federal law relating to any controlled substance;
3. The proximity of the object to a direct violation of the Uniform Controlled Substances Act or other similar law;
4. The proximity of the object to a controlled substance;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or person in control of the object to deliver it to a person the owner or person in control of the object knows or should reasonably know, intends to use the object to facilitate a violation of the Uniform Controlled Substances Act or other similar law; the innocence of an owner or person in control of the object, as to a direct violation of the Uniform Controlled Substances Act or similar law shall not prevent a finding that the object is intended for use as drug paraphernalia;
7. Oral or written instructions provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning the object's use;
10. The manner in which the object is displayed for sale;
11. Whether the owner or person in control of the object is a legitimate supplier of similar or related items to the community such as a distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning the object's use;
15. Any evidence that alleged paraphernalia can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use for the alleged paraphernalia; or

16. Advertising of the item in magazines or other means which specifically glorify, encourage or espouse the illegal use, manufacture, distribution or cultivation of controlled substances.

(f) "**Immediate precursor**" means a substance which the board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(g) "**Marijuana**" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

(h) "**Manufacture**" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include the preparation or compounding of a controlled substance by an individual for his own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

1. By a practitioner or his agent pursuant to a lawful order of a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
2. By a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to his or its dispensing of a controlled substance.

(i) "**Patient**" means, as the case may be:

1. The individual for whom a drug is prescribed or to whom a drug is administered; or
2. The owner or the agent or the owner of the animal for which a drug is prescribed or to which a drug is administered; provided, that the prescribing or administering referred to in subdivisions 1 and 2 of this subsection is in good faith and in the course of professional practice only.

(j) "**Person**" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(k) "**Pharmacist**" means an individual currently licensed to practice the profession of pharmacy in this state.

(l) "**Possess**" or "**possession**" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(m) "**Practitioner**" means a physician (M.D. or D.O.),dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.

(n) "**Production**" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(o) "**Prescription**" means a written order, and in cases of emergency, a telephone order, issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

(p) "**Simulated drug**" and "**simulated controlled substance**" means any product which identifies itself by a common name or slang term associated with a controlled substance and which indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

(q) "**Somnafacient**" and "stimulating" have the meaning attributable in standard medical lexicons.

(r) "**Warehouseman**" means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.

(s) "**Wholesaler**" means a person engaged in the business of distributing drugs to persons included in any of the classes named in this chapter.

(Ord. 1128C; 09-18-89)
(Ord. 2804C; 09-19-16)

**11-602. POSSESSION OF CONTROLLED SUBSTANCES.**

(a) It is unlawful for any person to possess, or have under his or her control, any dangerous drug or controlled substance.

(b) [Repealed]

(c) It is unlawful for any person to possess, or have under his or her control, any marijuana. A violation of this subsection (c) shall be punishable as a Class B violation as defined by the "Uniform Public Offense Code for Kansas Cities," as incorporated by reference by Section 11-101 of this Chapter, as amended; except that if a person has a prior conviction for possession of marijuana in this City or under a substantially similar law from any another jurisdiction, it shall be punishable as a Class A violation.

(Ord. 1128C; 09-18-89)
(Ord. 2804C; 09-19-16)

**11-603. DRUG PARAPHERNALIA .**

(a) It shall be unlawful for any person to use, or possess with the intent to use, any drug paraphernalia to store, contain, conceal, inject, inhale or otherwise introduce into the human body, a controlled substance.

(b) [Repealed]

(c) No person shall sell, offer for sale, deliver, possess with intent to deliver, manufacture with intent to deliver, or display for sale any drug paraphernalia within this City, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body, a controlled substance in violation of the Uniform Controlled Substances Act and amendments thereto.

(d) The fact that an item has not yet been used or did not contain a controlled substance at the time of its seizure is not a defense to a charge that the item was possessed with the intent for use as drug paraphernalia.

(Ord. 1702C; 11-03-97)
(Ord. 2804C; 09-19-16)

**11-604. SIMULATED CONTROLLED SUBSTANCES AND SIMULATED DRUGS PROHIBITED.**

It shall be unlawful for any person to use, possess with intent to use, sell, offer for sale, deliver, possess with intent to deliver, manufacture with intent to deliver or display for sale any simulated controlled substance, or any simulated drug within the city limits of Leawood, Kansas.

(Ord. 1128C; 09-18-89)
(Ord. 2804C; 09-19-16)

**11-605. EXEMPTIONS.**

(a) Section 11-602(a) does not apply:

1. to manufacturers, practitioners, pharmacists, owners of pharmacies and other persons duly registered with the Kansas Board of Pharmacy as prescribed in the Uniform Controlled Substances Act, Article 41, Chapter 65 of the Kansas Statutes Annotated.
2. when such drug or controlled substance is delivered by a pharmacist, or his authorized agent, in good faith upon prescription, and there is affixed to the immediate container in which such drug is delivered a label bearing:
   - (i) the name and address of the owner of the establishment from which such drug or controlled substance was delivered;
   - (ii) the date on which the prescription for such drug was filled;
   - (iii) the number of such prescription as filed in the prescription files of the pharmacist who filled such prescription;
   - (iv) the name of the practitioner who prescribed such drug;

(v) the name and address of the patient, if such drug was prescribed for an animal, a statement showing the species of the animal, and

(vi) the direction for use of the drug and cautionary statements, if any, as contained in the prescription.

3. when such drug is delivered by a practitioner in good faith and in the course of his or her professional practice only.

4. to the delivery of drugs for medical or scientific purposes only to persons included in any of the classes hereinafter named, or to the agents or employees of such person, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be;

5. to the possession of drugs by the following persons or their agents or employees for such use:

(i) Pharmacists,

(ii) Practitioners,

(iii) Persons who procure drugs: (a) for disposition by or under the supervision of pharmacists or practitioners employed by them or (b) for the purpose of lawful research, teaching, or testing and not for resale,

(iv) Hospitals and other institutions which procure drugs for lawful administration by or under the supervision of practitioners,

(v) Manufacturers and wholesalers, and

(vi) Carriers and warehousemen.

(b) Nothing contained in Section 11-602 shall make it unlawful for a public officer, agent or employee, or person aiding such public officer in performing his official duties to possess, obtain, or attempt to obtain a drug for the purpose of enforcing the provisions of any law of this state or of the United States relating to the regulation of the handling, sale or distribution of drugs.

(Ord. 1128C; 09-18-89)
(Ord. 2804C; 09-19-16)

**11-606.** **PENALTIES.** Unless a more specific penalty is provided, a violation of any provision of this Article shall be punishable as a Class A violation as defined by the "Uniform Public Offense Code for Kansas Cities," as incorporated by reference by Section 11-101 of this Chapter, as amended.

(Code 2000)
(Ord. 1907C; 08-06-01)
(Ord. 2804C; 09-19-16)

**11-607.** **FORFEITURE OF DRUGS, PARAPHERNALIA AND SIMULATED CONTROLLED SUBSTANCES.** All drugs, drug paraphernalia, controlled substances and simulated controlled substances seized hereunder, when no longer required as evidence, are subject to destruction or forfeiture as provided by law.

(Ord. 1128C; 09-18-89)
(Ord. 2804C; 09-19-16)

# ARTICLE 7. PREMISES IDENTIFICATION

SECTIONS

11-701 SHORT TITLE
11-702 PURPOSE
11-703 DEFINITIONS
11-704 PREMISES IDENTIFICATION

**11-701.** **SHORT TITLE.** This article shall hereafter be known and cited as the Leawood Address Ordinance.

(Ord. 1163C; 06-18-90)

**11-702.** **PURPOSE.** It is the intent of this article to establish criteria that will provide a standard means for responding emergency personnel to be able to readily identify all buildings within the City, and allow any person to properly identify the location of an emergency situation to the appropriate agency.

(Ord. 1163C; 06-18-90)

**11-703.** **DEFINITIONS.**

(a) *Address* - The numbers and/or letters assigned by the City to identify the location of a building.

(b) *Building* - Any structure used or intended for supporting or sheltering any use or occupancy.

(c) *Numerals* - The digits 0, 1, 2, 3, 4, 5, 6, 7, 8, 9 and combinations of those digits.

(d) *Stroke* - One of the lines of a digit.

(Ord. 1163C; 06-18-90)

**11-704.** **PREMISES IDENTIFICATION.** Approved numbers or addresses shall be placed on all new and existing buildings in such a position to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background. The address shall be posted with numbers that are at least four (4) inches (102 mm) in height and have a minimum stroke of one-half (½) inch (12.7 mm).

Buildings were it is not practical to post the address on the building, due to distance from the street, geographic considerations, or obstructions, may post the address in an approved location near the vehicular entry point to the property, on an approved sign. The location of sign, size of numbers, and height of the sign shall be subject to the approval of the building official and the fire official, or their designee(s).

**Exception:**

Buildings with existing address numbers that are not in strict compliance with the size of number required by this section, that are plainly visible and legible from the street or road fronting the property, may be allowed to continue, subject to the approval of the building official and the fire official, or their designee(s).

(Ord. 2303: 02-04-08)
(Ord. 1163C; 06-18-90)

# ARTICLE 8. LIGHTING NUISANCE

SECTIONS


11-801 PURPOSE
11-802 DEFINITIONS
11-803 APPLICABILITY OF ARTICLE TO CORPORATIONS
11-804 LIGHTING NUISANCE
11-805 PERMITTING, CAUSING OR MAINTAINING A LIGHTING NUISANCE PROHIBITED
11-806 NOTICE OF VIOLATION
11-807 FAILURE TO COMPLY
11-808 EMERGENCIES
11-809 PENALTY FOR VIOLATION OF ARTICLE
11-810 NUISANCE, INJUNCTION


**11-801. PURPOSE.** It is the intent of this article to establish criteria that will provide a standard means for determining what constitutes a light nuisance.

(Ord. 1750C; 11-02-98)

**11-802. DEFINITIONS.** The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them as follows, except where the context clearly indicates a different meaning:

(a) Chief of Police — means the chief of police or any authorized representative.

(b) Fully Shielded Fixture — An outdoor lighting fixture that is shielded or constructed so that all light emitted is projected below a horizontal plane running through the lowest part of the fixture.

(c) Occupant — means any person who has a legal or equitable interest in a parcel of real property other than a fee interest including a life tenant, tenant, lessee, tenant at will, tenant at sufferance or adverse possessor, as well as a person in possession or a person who has charge, care or control of the parcel of real property, as the agent or personal representative of the person holding legal title to a fee interest.

(d) Owner — means any person who, alone or jointly or severally with others, shall have legal title to a fee interest in the parcel of real property, with or without accompanying actual possession thereof.

(e) Person — means and includes any individual, firm, estate, corporation, association, partnership, cooperative or governmental agency.

(f) Planning Director — means the Director of Planning and development or any authorized representative of the Director of Planning and Development.

(g) Premises — means any public or private property, vacant or occupied lot, plot, parcel of land, street sidewalk, alley, boulevard, highway, right-of-way, park, parkway, public square or viaduct, including the structures or buildings thereon.

(h) Primary Structure — means a dwelling, garage or attached shed.

(i) Residential — means a place where a human(s) dwell.

(Ord. 1790C; 03-22-99)

**11-803. APPLICABILITY OF ARTICLE TO CORPORATIONS.**

(a) When the owner or occupant of the premises on which a lighting nuisance has been determined to exist is a corporation, any officer of such corporation or the person in charge of the local office of such corporation who shall have been notified as provided for at Section 11-806 shall be guilty of violating the provisions of this article upon the failure, neglect or refusal of such corporation to comply with such notice.

(b) Exception — Nothing in this article is to be applied or in any way construed against any governmental entity or any agent approved by any governmental entity or any public utility in the performance of a sanctioned or official activity.

(Ord. 1750C; 11-02-98)

**11-804. LIGHTING NUISANCE.**

(a) A lighting nuisance is any exterior light fixture or light source erected or maintained by any property owner or occupant that:

(1) Is a light that does not comply with the shielding requirements as set forth in subsection (b);

(2) Illuminates any portion of the premises of another person with a light intensity greater than 0.5 foot-candle as measured by a photoelectric photometer having a spectral response similar to that of the human eye, in accordance with standard spectral luminous efficiency curve adopted by the International Commission on Illumination;

(3) Is not mounted on a primary structure except for low wattage, ground mounted landscape lighting that poses no driving hazard; or,

(4) Is intermittent, except for motion detector lighting and temporary (not to exceed 45 days) holiday lighting.

(b) Table of Shielding Requirements

| **Fixture Lamp Type** | **Shielding Requirement** |
|---|---|
| All of the following lamps if over 50 watts: | |
| Low/High Pressure Sodium, Mercury Vapor, Metal Halide, Flourescent, Linear Halogen, and Linear Tungsten-Halogen, all over 50 watts | Fully Shielded |
| Incandescent* over 150 wafts | Fully Shielded |
| Incandescent* 150 watts or less | No Shielding Required |
| Fossil Fuel | No Shielding Required |
| Any light source of 50 watts or less | No Shielding Required |

*Note: Incandescent includes non-linear halogen and non-linear tungsten-halogen lamps.

(Ord. 1790C; 03-22-99)

**11-805. PERMITTING, CAUSING OR MAINTAINING A LIGHTING NUISANCE PROHIBITED.**

(a) It shall be unlawful for any owner or occupant, as defined at 11-802, of any lot, tract or parcel of land, to cause or permit any nuisance as defined in this article to be created or remain upon such premises; and it shall be the duty of such owner or occupant to remove and abate any such lighting nuisance from such premises.

(b) No owner or occupant shall permit, cause, keep, maintain or create any lighting nuisance as defined in this article, or cause any such lighting nuisance to be committed, kept, maintained or created within the corporate limits of the city.

(c) No owner or occupant of any dwelling, building, lot or premises shall cause or allow any lighting nuisance to be or remain in or upon any such dwelling, building, lot or premises.

(Ord. 1750C; 11-02-98)

**11-806. NOTICE OF VIOLATION.**

(a) When an allegation of a lighting nuisance, as set forth at 11-804 herein, is received by the neighborhood services administrator, he or she will conduct an inspection of the premises within five business days. Whenever the neighborhood services administrator has determined that a lighting nuisance exists on any premises within the City's corporate limits, he or she shall or she shall issue written notice as provided herein and have the notice served on the owner or agent of such property by restricted mail or by personal service, or if the same is unoccupied and the owner is a nonresident, then by mailing the notice by restricted mail to the last known address of the owner. This notice shall:

1. Be in writing.
2. State the nature of such alleged lighting nuisance and that such condition constitutes nuisance lighting.
3. Describe the premises where the lighting nuisance is alleged to exist or to have been committed.
4. Specify a period five days (120 hours) for the removal and abatement of the nuisance.
5. State that failure, neglect or refusal to remove and abate lighting nuisances renders the owner or occupant prosecutable in municipal court, and upon a finding of guilty, punishable by a fine of not more than $500 or imprisonment of not more than 180 days, or by both such fine and imprisonment.
6. State that each day (24 hour period) that such lighting nuisance exists alter the five days (120 hours) waiting period constitutes a separate punishable offense as set forth herein.

(Ord. 1790C; 03-22-99)
(Code 2000)

**11-807.** **FAILURE TO COMPLY.** When a notice of violation is served under this article, at the end of the period of time allowed in the notice of violation, the neighborhood services administrator shall reinspect the premises. If, upon reinspection, the cited nuisance is found not to have been removed and abated, the neighborhood services administrator may cause a complaint to be tiled for prosecution in municipal court.

(Ord. 1750C; 11-02-98)
(Code 2000)

**11-808.** **EMERGENCIES.** Whenever a lighting nuisance creates an emergency requiring immediate action to protect the public health, safety or welfare, the planning director or the chief of police may issue an immediate order directing the owner, occupant or other person in charge of the premises to take such action as is necessary to remove or abate the emergency. If circumstances warrant, the director of planning or chief of police may act to correct or abate the emergency. Said emergency order shall be in effect in lieu of the notice of violation.

(Ord. 1750C; 11-02-98)

**11-809.** **PENALTY FOR VIOLATION OF ARTICLE.**

(a) Any person convicted of a violation of this article shall be punished for that violation by a fine of not less than $50 but not more than $500, or by imprisonment of not more than 180 days, or by both such fine and imprisonment. All fines imposed shall be in accordance with the minimum fine schedule set out in subsection (c) of this section.

(b) Every day that a violation continues shall be considered a separate offense, for which the violator may be arrested, tried and convicted without serving another notice.

(c) Whenever the penalty is to be a fine or a fine and imprisonment, the fine shall be no less than the minimum amount set out in the following:

| | |
|---|---|
| .....First offense | $ 50 |
| ..... Second offense | $100 |
| ..... Third offense | $300 |
| ..... Fourth and subsequent offense | $500 |

(d) In determining the applicable minimum fine, an offense shall be considered a subsequent offense only if the defendant has previously pleaded or been found guilty of causing or permitting the same nuisance at the same location.

(Ord. 1750C; 11-02-98)

**11-810.** **NUISANCE, INJUNCTION.** Any violation of this section is hereby declared to be a nuisance. In addition to any other relief provided by this section, the city attorney may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this section. Such application for relief may include seeking a temporary restraining order, temporary injunction and permanent injunction.

(Ord. 1750C; 11-02-98)

# ARTICLE 9. SMOKING

SECTIONS


11-901 PURPOSE
11-902 DEFINITIONS
11-903 PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT
11-904 PROHIBITION OF SMOKING IN PUBLIC PLACES
11-905 WHERE SMOKING IS NOT REGULATED
11-906 VIOLATION; PENALTY
11-907 PENALTY FOR VIOLATION OF ORDINANCE- REPEALED


**11-901.** **PURPOSE.** The purpose of this Ordinance is to promote the public health by decreasing exposure to secondhand smoke and creating smoke free environments for workers and citizens through regulation in the work place and all public places.

(Ord. 1773C; 01-18-99)
(Ord. 1777C; 02-16-99)
(Code 2000)
(Ord. 2195C; 11-20-06)

**11-902.** **DEFINITIONS.** For the purposes of this Ordinance, the following words shall have the meanings respectively ascribed to them by this paragraph:

a. **Employee.** Any person who performs services for an employer, with or without compensation.
b. **Employer.** A person, partnership, association, corporation, trust, or other organized group of individuals, including the City or any agency thereof, which utilizes the services of one (1) or more employees.
c. **Enclosed.** A space bounded from floor to ceiling by walls and/or panels, with or without windows or doors, and regardless of whether such panels, windows or doors are partially opened or closed, including, but not limited to, offices, rooms and all space(s) therein.
d. **Open Office Landscaping.** Indoor areas without permanent walls, or walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.
e. **Place of Employment.** Any enclosed area under the control of a public or private employer which employees may enter during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, private rooms in nursing homes, private meeting/conference rooms and halls not open to the general public while being used for private functions or located within private clubs and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.

f. **Public Place.** Any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, hotels, motels, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."

g. **Service Line.** Any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

h. **Smoking.** Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product.

i. **Sports Arena.** Sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

(Ord. 1777C; 02-16-99)
(Code 2000)
(Ord. 2195C; 11-20-06)
(Ord. 2897C; 07-02-18)

**11-903. PROHIBITION OF SMOKING IN ENCLOSED PLACES OF EMPLOYMENT.**

(a) **Prohibition.** Smoking shall be prohibited in all enclosed places of employment within the City.

(b) **Employer Responsibilities.** It shall be the responsibility of employers to:

1. Provide a smoke-free workplace for all employees.
2. Each employer having any enclosed place of employment located within the City shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirement:

c) Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed facilities.

(d) The smoking policy shall be communicated to all employees within one (1) week of the adoption of this Ordinance and all employers shall provide a written copy of the smoking policy to each new employee upon hire and upon request to any existing or prospective employee.

(Ord. 1777C; 02-16-99)
(Code 2000)
(Ord. 2195C; 11-20-06)
(Ord. 2461C; 09-20-10)

**11-904. PROHIBITION OF SMOKING IN PUBLIC PLACES.**

(a) Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to, the following places:

1. Any vehicle of public transportation, including but not limited to buses, limousines for hire and taxicabs.
2. Elevators.
3. Restrooms.
4. Libraries, educational facilities, childcare and adult day care facilities, museums, auditoriums, aquariums and art galleries.
5. Any health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, nursing homes, doctors' offices and dentists' offices. The statute allows adult care homes and long term care facilities to designate smoking areas.
6. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling alleys, arenas and swimming pools.
7. Service lines.
8. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; provided, however, that smoking may take place on stage during live theatrical performances, where smoking is integral to the plot or storyline and prior notice is given to the audience.
9. Shopping malls.
10. Sports arenas, including enclosed places in outdoor arenas.
11. Bars. Statute allows private clubs.
12. Restaurants.
13. Convention facilities.
14. Hotels and motels, including sleeping rooms. Statute allows 20% of sleeping rooms
15. All public areas and waiting rooms of public transportation facilities, including but not limited to bus and airport facilities.
16. Any other area used by the public or serving as a place of work, including open office landscaping.
17. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including, but not limited to joint committees, or agencies of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
18. All enclosed facilities owned by the City.
19. Rooms in which meetings or hearings open to the public are held, except where such rooms are in a private residence.
20. Within a 10 foot radius of any doorway, open window or air intake leading into a building or facility that is not otherwise exempt under the provisions of this Ordinance.

(b) The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall post or casue to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking is prohibited by state law.

(Ord. 1777C; 02-16-99)
(Code 2000)
(Ord. 1993C; 06-02-03)
(Ord. 2195C; 11-20-06)
(Ord. 2461C; 09-20-10)

**11-905. WHERE SMOKING IS NOT REGULATED.** Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this Ordinance:

(a) Private residences, not serving as enclosed places of employment or an enclosed public place, except when such residence is used as a day care home, as defined in K.S.A. 65-530.

(b) An existing retail establishment whose primary business is the sale of tobacco products deriving not less than 65% of its gross receipts from the sale of tobacco and new retail establishments whose primary business is the sale of tobacco products which derive not less than 65% of gross receipts from the sale of tobacco and which are located in a stand-alone building not attached to or the part of any building devoted to other uses.

(c) Outdoor seating areas at restaurants or bars, provided, however, that such outdoor seating areas must have at least 2 sides entirely open and that smoking is allowed only outside of the radius required in 11-904(a)(20), and further that reasonable efforts are made to minimize the chance of smoke affecting the employees and the inside occupants of the establishment.

(Ord. 2195C; 11-20-06)
(Code 2000)
(Ord. 2461C; 09-20-10)
(Ord. 2897C; 07-02-18)

**11-906. VIOLATION; PENALTY.**

a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of this ordinance.

(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person: (1) Has knowledge that smoking is occurring; and (2) acquiesces to the smoking under the totality of the circumstances.

(c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this ordinance.

(d) Any person who violates any provision of this ordinance, shall be guilty of a cigarette or tobacco infraction punishable by a fine:

(1) Not exceeding $100 for the first violation;
(2) Not exceeding $200 for a second violation within a one year period after the first violation; or
(3) Not exceeding $500 for a third or subsequent violation within a one year period after the first violation.

For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

(e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).

(f) No employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer reports or attempts to prosecute a violation of any of the provisions of this ordinance.

(g) In addition to the fines established by this Section, violation of this Ordinance by a person having control of a public place or place of employment may result in the suspension or revocation of any permit or license issued by the City of Leawood to the person for the premises on which the violation occurred.

(Ord. 1777C; 02-16-99)
(Code 2000)
(Ord. 2195C; 11-20-06)
(Ord. 2461C; 09-20-10)

**11-907. PENALTY FOR VIOLATION OF ORDINANCE. Repealed.**

*See Section 11-906.*

(Ord. 1777C; 02-16-99)
(Code 2000)
(Ord. 2195C; 11-20-06)
(Ord. 2461C; 09-20-10)

# ARTICLE 10. ALARM SYSTEMS

SECTIONS


11-1001 DEFINITIONS
11-1002 REGISTRATION OF ALARM SYSTEMS
11-1003 DUTIES OF ALARM USERS
11-1004 DUTIES OF ALARM COMPANIES
11-1005 FALSE ALARMS; FEES REQUIRED
11-1006 UNREGISTERED ALARM SYSTEMS; FEE REQUIRED
11-1007 FALSE ALARMS; APPEALS
11-1008 ALARM COORDINATOR; DUTIES
11-1009 DISTURBING ALARMS
11-1010 NO DUTY CREATED
11-1011 PENALTY


**11-1001. DEFINITIONS.** For the purpose of this Article, the following definitions shall apply unless the context clearly requires otherwise:

(a) **Alarm company** means a person, company, firm, corporation or other entity that is engaged in selling, leasing, installing, servicing, or monitoring alarm systems, and which has a contractual relationship with an alarm user in the City, and is subject to the City's alarm registration requirements set forth in Section 11-1002 of this Article.

(b) **Alarm coordinator** means a person or persons designated by the Chief of Police to assist with the administration of this ordinance.

(c) **Alarm dispatch request** means a notification by an alarm company to the City that an alarm has been activated (whether manual or automatic) at a particular alarm site, and a City emergency service response is requested.

(d) **Alarm permit** means a permit issued to an alarm user by the City or its designee, authorizing the operation of an alarm system for a particular alarm site within the City.

(e) **Alarm signal** means a notification to the City that an alarm has been activated at a particular alarm site and requesting a City emergency service response.

(f) **Alarm site** means a building, buildings, property or other location upon which an alarm system is installed.

(g) **Alarm system** means a device or series of devices, including, but not limited to, hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals, which emit or transmit a remote or local audible, visual or electronic signal to a monitoring alarm company, and intended to summon a City emergency service response.

(h) **Alarm user** means any person, company, firm, corporation, or other entity owning, leasing, or operating an alarm system, or on whose premises an alarm system is used, for the protection of such premises.

(i) **Automatic voice dialer** means any electrical, electronic, mechanical, or other device capable of sending a prerecorded voice message, when activated, over a telephone line, radio or other communication system, to a law enforcement, public safety or emergency services agency requesting an alarm dispatch request.

(j) **Cancellation** means the cancellation of a City emergency service response by an alarm company or alarm user who reports to the City that there is not an existing situation at the alarm site requiring a City emergency service response. If cancellation occurs prior to police or fire arriving at the alarm site, it will be considered a canceled false alarm, and will not count as a false alarm and no penalty will be assessed.

(k) **City emergency service response** means a law enforcement, fire department or other emergency service response.

(l) **City communications center** means a dispatch or communications center that receives a request for a City emergency service response, including but not limited to the Leawood Police dispatch and the Johnson County Emergency Communications Center.

(m) **Designee** means a third party contractor authorized by the City to assist with the administration of this ordinance.

(n) **Disturbing alarm** means any alarm that emits an audible or visible signal that is not automatically discontinued within 15 minutes of activation.

(o) **False alarm** means an alarm dispatch request that has generated a City emergency service response to an alarm site when no actual emergency or criminal activity exists. False alarms shall not include alarm signals that are the result of extraordinary conditions of nature or other extraordinary circumstances beyond the control of the alarm user or alarm company, or false alarms which occur within the first 30 days of a newly installed alarm system.

(p) **False alarm fee** means a fee assessed against an alarm user for every false alarm in excess of two in any 12-month period.

(q) **Local alarm** means an alarm that emits an audible or visual signal, but is not monitored by a remote monitoring facility or alarm company.

(r) **Unregistered alarm system** means any alarm system that is not registered with the City or its designee.

(Ord. 2924C; 01-07-19)

**11-1002. REGISTRATION OF ALARM SYSTEMS.**

(a) Registration and permit required. No person shall use, operate, or allow to be operated, an alarm system in the City without first registering and obtaining a permit for such alarm system as required by the City. A separate alarm permit is required for each alarm site. An alarm permit is not required for local alarms affixed to buildings, motor vehicles, or other property that are not designed to send a signal to a remote monitoring company. A new owner or occupant of an alarm site shall have a five (5) day grace period from the date they take ownership or possession of the alarm site to register said alarm and obtain an alarm permit.

(b) Permits nontransferable. An alarm permit cannot be transferred to another alarm user or alarm site. An alarm user shall inform the City or designee of any change to the information listed on the alarm registration or permit within five (5) business days of such change.

(c) Fees. The fee to register an alarm and obtain an alarm permit shall be as set forth in the City fee schedule.

(d) Exemptions. Alarm systems owned and operated by a governmental entity are exempt from the provisions of this Article.

(Ord. 2924C; 01-07-19)

**11-1003. DUTIES OF ALARM USERS.** An alarm user in the City shall:

(a) Within five days of ownership or possession of property with an alarm system, or within five days of installing an alarm system, register the alarm system as required by Section 11-1002.

(b) Maintain the alarm site and the alarm system in a manner that will reduce or eliminate false alarms.

(c) Provide the permit number(s) to the alarm company responsible for monitoring the alarm system as soon as practicable, to assist with any City emergency service response.

(d) Respond, or cause a representative to respond, to the alarm site within thirty (30) minutes from notification by the City or alarm company of an activated alarm signal.

(e) Never manually activate an alarm system for any reason other than an occurrence of an event that requires a City emergency service response.

(f) Not use an automatic voice dialer.

(g) Notify the City and/or alarm company prior to any service, test, repair, or maintenance of an alarm system that might activate a false alarm.

(Ord. 2924C; 01-07-19)

**11-1004. DUTIES OF ALARM COMPANIES**

(a) An alarm company operating in the City shall:

1. Obtain and maintain the required state, county and/or city license(s).
2. Provide name, address, and telephone numbers of the alarm company license holder or a designee who can be called in an emergency, 24 hours a day, and be able to respond to an alarm call when notified within a reasonable amount of time.
3. Be able to provide the most current contact information for the alarm user; and be able to contact a key holder for a response, if requested.
4. Provide new and cancelled alarm sites in the format required by the City every thirty (30) days, or upon request by the City or designee.
5. Notify the City or designee of any purchase of alarm system account(s) from another person or company, and provide details as may be requested by the City or designee.

(b) An alarm company performing monitoring services in the City shall:

1. Upon receipt of an alarm notification from an alarm site, attempt to confirm the validity of the alarm by first calling the alarm site and/or alarm user by telephone, before requesting an alarm dispatch request. If the first attempt to reach the alarm site or alarm user fails, the alarm company shall make a second call to an alternate number provided by the alarm user, before requesting an alarm dispatch request. The requirements of this subsection shall not apply in the case of a fire, panic, crime-in-progress (as defined in ANSI/CSAA CS-V-01-2016 or current version) or similar alarm, that requires an immediate response by an alarm company to the City communications center requesting an immediate City emergency service response. These types of fire, panic, and crime-in-progress alarms cannot be cancelled.
2. Provide alarm permit numbers to the City communications center to facilitate dispatch and/or cancellations.
3. Communicate any available information about the location of the alarm to the City.
4. Communicate a cancellation to the City communications center as soon as possible following a determination that a City emergency service response is unnecessary.
5. Maintain for a period of at least one (1) year from the date of the alarm dispatch request, records relating to the alarm dispatch. Records must include name, address and telephone number of the alarm user, the alarm system zones activated, the time of alarm dispatch request and any evidence of an attempt to verify the alarm. The alarm coordinator may request copies of such records for individually identified alarm users. The alarm company shall provide the requested information to the City or its designee within (10) business days of receiving the request.

(Ord. 2924C; 01-07-19)

**11-1005. FALSE ALARMS; FEES REQUIRED**

(a) The owner of any alarm system, or the property owner or occupant upon which an unregistered alarm system is active, who has had more than two false alarms from the same alarm system within any twelve-month period, shall be required to pay a false alarm fee for every false alarm in excess of two in any 12 month period. The false alarm fees shall be as set forth in the Fee Schedule established and maintained by the City, and as authorized in Section 1-701 of this Code.

(b) Upon notice of a third false alarm in any twelve-month period, the City or designee shall send written notice to the alarm user by first class mail, with the date and approximate time of the false alarm(s), and any fees due. Such written notification shall be presumed to have been delivered three days after mailing. The notice shall include a statement regarding the alarm user's right to appeal.

(c) Failure to timely pay any false alarm fee(s) shall result in the assessment of a late payment fee as set forth in the City fee schedule. Failure to pay fees as required by this Article may result in municipal court prosecution and additional penalties under Section 11-1011.

(Ord. 2924C; 01-07-19)

**11-1006. UNREGISTERED ALARM SYSTEMS; FEE REQUIRED.**

The City or designee shall have the power to assess a non-registration fee against the owner or occupant of any property or premises upon which there is an active but unregistered alarm system. Failure to timely pay any non-registration fee shall result in the assessment of a late payment fee as set forth in the City fee schedule. Failure to pay fees as required by this Article may result in municipal court prosecution and additional penalties under Section 11-1011.

(Ord. 2924C; 01-07-19)

**11-1007 FALSE ALARMS; APPEALS**

Any alarm user who desires to appeal a false alarm fee imposed pursuant to Section 11-1005 shall submit a written request for a hearing to the Chief of Police or designee within ten (10) business days from the date of the fee notice. The request for a hearing shall include the reason(s) upon which the alarm user relies to support his or her belief that the false alarm did not occur or should not result in a fee. The submission of a written request for hearing shall stay the assessment of the false alarm fee, and the assessment of any related late payment fee, until a decision on the appeal is rendered by the Chief of Police or designee. The Chief of Police or designee may consider the statements and other evidence of the person appealing, as well as the alarm coordinator, and may uphold or set aside the false alarm fee.

Any alarm user who desires to appeal the decision of the Chief of Police or designee may appeal to the City Administrator. The alarm user must file a written notice of appeal with the City Clerk within ten (10) business days from the date of written notice of the Chief's decision. The City Administrator shall meet with the alarm user and City staff as soon as practicable to consider the merits of the appeal. The decision of the City Administrator shall be final.

The failure of an alarm user to request a hearing or appeal within the above established time periods shall constitute a waiver of the right to contest the assessment of the false alarm fee(s) or other enforcement decision.

(Ord. 2924C; 01-07-19)
(Ord. 2941C; 04-15-19)

**11-1008 ALARM COORDINATOR; DUTIES**

The Chief of Police shall designate one or more persons to act as the alarm coordinator who shall:

(a) Maintain records necessary to carry out the terms of this Article;

(b) Coordinate with the City's designee for implementation, enforcement, and collection of fees authorized by this Article.

(c) Assist in determining which alarms constitute false alarms as defined in Section 11-1005.

(d) Receive and process appeals.

(Ord. 2924C; 01-07-19)
(Ord. 2941C; 04-15-19)

**11-1009. DISTURBING ALARMS**

It shall be unlawful for any person, company, firm, corporation or other entity to fail to disconnect or modify any disturbing alarm, as defined in Section 11-1001, after notice from the City that such a condition exists.

When no responsible party can be located, the police department may take necessary steps to safely silence or deactivate any such alarm. Costs associated with such action will be assessed to the person or business, and the City will have no liability for damages to property or persons as a consequence of its efforts.

(Ord. 2924C; 01-07-19)

**11-1010. NO DUTY CREATED**

Nothing in this Article shall be construed to create any duty, guarantee or obligation of a City emergency service response to any alarm signal or alarm site.

(Ord. 2924C; 01-07-19)

**11-1011. PENALTY**

Any person, company, firm, corporation or other entity who violates any provision of this Article or fails to comply with any of the requirements thereof is guilty of a public offense, punishable by a fine of not more than $500 or by imprisonment not exceeding 30 days, or both such fine and imprisonment. Each day that any violation continues shall be deemed a separate offense.

(Ord. 2924C; 01-07-19)

# CHAPTER XI. PUBLIC OFFENSES

## ARTICLE 11. NON-DISCRIMINATION

SECTIONS

11-1101 DEFINITIONS
11-1102 DECLARATION OF POLICY
11-1103 UNLAWFUL PRACTICES
11-1104 ENFORCEMENT
11-1105 SEVERABILITY

**11-1101. DEFINITIONS.** For The definitions contained within the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., shall apply to this article unless a term is specifically defined herein. For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise:

(a) **Aggrieved individual** means any individual who has a good faith belief that such individual has been injured by an unlawful discriminatory practice as set forth herein.
(b) **City** means the City of Leawood, Kansas.
(c) **Code** means the Code of the City of Leawood, Kansas, 2000 as amended.
(d) **Days** means calendar days. If a deadline falls on a day city hall is not open (e.g. a weekend, a holiday recognized by the city, emergency closure) the deadline will be extended to the next day city hall is open.
(e) **Employee** means any individual employed by an employer, but does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any individual. The term employee does not include an independent contractor.
(f) **Employer** means any individual or entity (e.g. corporation, partnership, limited liability company, association, labor organization, mutual company, joint-stock company, trust, unincorporated organization) employing four or more employees, the city (including all departments, boards, agencies), and any city contractor. For purposes of this article, no non-profit fraternal or social association/corporation shall be considered to be an employer.
(g) **Gender identity** means an individual's actual or perceived (by the individual or another) gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics regardless of the individual's designated sex at birth.
(h) **Investigator** means the City of Leawood Chief of Police or his/her designee.

(i) **Nonprofit fraternal or social association/corporation** means an association or corporation that meets all of the following requirements: (1) it is organized in good faith for social or fraternal purposes; (2) membership entails the payment of bona fide initiation fees or regular dues; (3) there exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership; (4) there is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates; and (5) it is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

(j) **Place of public accommodation** shall include every establishment within the city that is open to the public and offers any product, service or facility. The term place of public accommodation shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with one or more tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. The term place of public accommodation shall not, however, include: (1) a religious organization; (2) any hotel, motel, restaurant or theater operated by a nonprofit fraternal or social association/corporation which restricts its facilities and services to the members of such association/corporation and their guests; or (3) any nonprofit fraternal or social association/corporation, or bona fide civic, political or religious organization, when the profits of such association/corporation or organization, above reasonable and necessary expenses, are solely for its benefit or mission.

(k) **Religious organization** means a church, mosque, temple, synagogue, or other entity principally devoted to religious practice or religious teaching.

(l) **Rent** means to lease, to sublease, to let or otherwise to grant the right to occupy premises not owned by the occupant in exchange for payment or other consideration.

(m) **Rental housing** means any real property, consisting of one or more dwelling units, which is required to obtain a license or permit or is otherwise addressed in Chapter 8 of this Code.

(n) **Respondent** means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the city.

(o) **Sexual orientation** means an individual's actual or perceived (by the individual or another) emotional, romantic, or sexual attraction to other people, such as heterosexual, homosexual, bisexual, pansexual or asexual.

(Ord. 2955C; 08-12-19)

**11-1102. DECLARATION OF POLICY.**

(a) Rights Recognized. The right of an individual to be free from discrimination because of that individual's race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or military status is hereby recognized. This right shall include, but not be limited to, any of the following:

1. The right to pursue and hold employment and the benefits associated therewith without unlawful discrimination.
2. The right to the full enjoyment of any of the services, advantages or privileges of any place of public accommodation without unlawful discrimination.
3. The right to engage in property transactions, including obtaining housing for rent or purchase and credit therefore, without unlawful discrimination.
4. The right to exercise any right granted under this ordinance without retaliation.

(b) Protection. To protect these rights, it is hereby declared to be the purpose of this article to prohibit discrimination and retaliation based upon sexual orientation and gender identity and to provide a local process for the acceptance, investigation and resolution of complaints of discrimination and retaliation relating to sexual orientation and/or gender identity arising hereunder.

(Ord. 2955C; 08-12-19)

**11-1103 UNLAWFUL PRACTICES.**

(a) Employment. It shall be an unlawful discriminatory practice for an employer to refuse to hire or employ, or to discharge from employment or to otherwise discriminate against an otherwise qualified person because of the person's sexual orientation or gender identity; or to otherwise discriminate against such individual in compensation or in terms, conditions or privileges of employment. This article shall not apply to employment by a religious organization that consists of religious teaching, ministry, or other religious duties or practices.

(b) Housing. It shall be an unlawful discriminatory practice for an individual or entity to discriminate against any individual in the terms, conditions or privileges of the sale or lease of real property including rental housing, or in the provision of services or facilities in connection therewith, because of an individual's sexual orientation or gender identity or to discriminate against any individual in such individual's use or occupancy of rental housing because of the sexual orientation or gender identity of individuals with whom such individual associates. Nothing in this article shall prohibit a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, from limiting the sale, rental or occupancy of real property or rental housing which it owns or operates for other than a commercial purpose to individuals of the same religion, or from giving preference to such individuals.

(c) Public Accommodation. It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, privileges, advantages or accommodations to any individual because of their sexual orientation or gender identity.

(d) Defenses. It shall be a defense to any allegation of an unlawful discriminatory practice brought hereunder:

1. that the individual or entity did not know or have reason to know of the aggrieved individual's sexual orientation or gender identity;

2. that the individual or entity acted in good faith and had reasonable grounds for believing that an act or omission was not a violation of this ordinance; or
3. that any adverse action taken against the aggrieved individual would have been taken regardless of the individual's sexual orientation or gender identity (i.e. the aggrieved individual violated the law, a workplace rule, a lease provision or policy applicable to all similarly situated individuals, such as employees, lessees, customers, etc.).

(e) Exceptions. Nothing in this article shall:

1. prohibit a fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members.
2. prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law.
3. require an employer to hire unqualified individuals or to retain employees when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment.
4. be construed to prohibit an employer from requiring all of its employees, as a condition of employment, to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace. The fact that an employer requires an employee to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace shall not, in itself, be deemed a violation of this article. However, an employee may simultaneously file a complaint with the city as provided in this ordinance; completion of the employer's procedures is not a pre-requisite to filing a complaint with the city.
5. be construed to require any person or entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law.
6. be construed to prohibit an employer or place of public accommodation to post signs for restrooms and dressing rooms based on gender.
7. be construed to prohibit or require an action in violation of a person's rights protected by K.S.A. 60-5301 et seq.
8. be construed to make it lawful to discriminate or retaliate against individuals on the basis of race, color, religion, national origin, sex, age, disability, marital status, familial status, or military status. Such discrimination and retaliation is not addressed in this article because federal and state laws consistently address unlawful discriminatory and retaliatory practices related to those characteristics and provide appropriate procedures for addressing complaints for such discrimination and retaliation.

(Ord. 2955C; 08-12-19)

**11-1104 ENFORCEMENT.**

(a) An aggrieved individual may file a written, verified complaint that the individual has been, or is being, subject to an alleged unlawful discriminatory practice as prohibited by this article. The complaint may be filed personally or through an attorney (or if a minor, through the minor's parent, legal guardian or attorney) and shall be completed on a form provided by the city. The complaint form shall state the names and contact information of the aggrieved individual, the individual(s) and/or entity/entities alleged to have committed the unlawful discriminatory practice(s), a description of the alleged unlawful conduct and all other information as may be required by the form provided by the city.

(b) The complaint form shall be submitted to the investigator via hand-delivery, certified mail, or by email, and shall only be considered complete if all information required by the city's form has been provided to the extent such information is reasonably available to the aggrieved individual.

(c) The complaint form must be filed within sixty (60) days of the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within sixty (60) days of the last act of discrimination.

(d) Upon receipt of a complete complaint, the investigator shall notify the respondent(s) of the complaint, providing sufficient details related to the complaint so the respondent(s) may respond. The investigator shall give the respondent(s) thirty (30) days to file a written answer to the complaint, and to provide any documentation or evidence related to the complaint. The investigator may, at the request of respondent(s), extend the answer period an additional thirty (30) days. If the respondent(s) accused of violating the provisions of this article is the city, the city will engage an independent investigator who shall not otherwise be an employee, agent, or contractor of the city.

(e) Following the conclusion of the answer period, the investigator may initiate an investigation period, requesting that the complainant and/or respondent(s) provide additional information, documentation, statements or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be concluded within sixty (60) days of the investigator's last request for information, unless the investigator notifies the complainant and the respondent(s) in writing of the need for additional time and reason(s) therefore.

(f) Within thirty (30) days of the conclusion of the investigation period, the investigator will review all evidence received during the investigation and make a determination whether probable cause exists that the respondent(s) committed an unlawful discriminatory practice.

(g) If the investigator finds that probable cause does not exist, then the investigator shall notify the complainant and the respondent(s), and this notification shall be considered a final order and no further action shall be taken by the city.

(h) If the investigator finds probable cause that an unlawful discriminatory practice was committed by respondent(s), the investigator shall notify the complainant and respondent(s) and request conciliation and settlement. If a party refuses to participate in conciliation and settlement, or if a settlement agreement is not executed within sixty (60) days of the date of the finding of probable cause, the matter shall be referred to the city prosecutor for review and filing of ordinance violation charges in the Municipal Court. The investigator may extend the time for signing a settlement agreement for good cause and with the agreement of all parties.

(i) If the prosecutor determines that ordinance violation charges should be brought, then the matter will be scheduled for arraignment and notice given to the parties in accordance with law. If the Municipal Court Judge finds that a violation of this article has occurred, the Municipal Court Judge may order restitution and/or a civil penalty in the amount of up to $1,000.00 for each violation. Each party is to bear their own attorneys' fees, if any.

(j) The filing of a complaint for the alleged violation of this article or a response thereto shall in no way preclude any party from seeking other relief under state or federal law.

(Ord. 2955C; 08-12-19)

**11-1105 SEVERABILITY.**

Should any section, subsection, sentence, clause or phrase of this article, or the application thereof to any person or circumstance, be declared to be unconstitutional or invalid or unenforceable, such determination shall not affect the validity of the remaining portions of this article.

(Ord. 2955C; 08-12-19)

# CHAPTER XII. PUBLIC PROPERTY

**Article 1. Parks & Recreation Advisory Board**
**Article 2. Park Regulation**
**Article 3. Recreation Commission – REPEALED**
**Article 4. Park Impact Fee**
**Article 5. Golf Course Impact Fee [Reserved]**
**Article 6. Public Art Impact Fee**

## ARTICLE 1. PARKS AND RECREATION ADVISORY BOARD

SECTIONS

12-101 PARKS & RECREATION ADVISORY BOARD
12-102 MEMBERSHIP AND QUALIFICATIONS
12-103 POWERS AND DUTIES

**12-101. PARKS AND RECREATION ADVISORY BOARD ESTABLISHED.** There is hereby created a Parks and Recreation Advisory Board consisting of up to seven members appointed by the mayor. All members shall be qualified electors of the city.

(Ord. 1795C; 5-3-99; Code 2000)

**12-102. MEMBERSHIP AND QUALIFICATIONS.** All members of the recreation commission at the date of the adoption of this ordinance shall constitute the initial park and recreation advisory board. Members shall serve upon such park and recreation advisory board for the term for which they were appointed to the recreation commission and upon the expiration of the term of any member, appointment shall be made to fill such position for a term of three years. Whenever a vacancy shall occur in the membership of the commission, an elector shall be selected to fill the vacancy in the same manner as and for the unexpired term of the member he or she is succeeding.

(Ord. 1213C; 4-1-91; Code 2000)

**12-103.** **POWERS AND DUTIES**. The governing body shall refer all major proposals and propositions for the construction, reconstruction and improvement of public parks and recreational facilities including the acquisition of land for park purposes, the acquisition of major recreational equipment and facilities and the institution of new programs in the recreational system to such board. The board shall make reports and recommendations to the governing body on all matters referred to it and any further recommendations as deemed advisable. Such reports shall be made within a time fixed by the governing body at the time the proposal or proposition is submitted to the board and no action shall be taken thereafter by the governing body upon any such proposal or proposition until the reports and recommendations thereon have been received from the board. The governing body of the city shall take action upon the reports and recommendations received from the advisory board within 30 days after their receipt. The governing body may extend the time as it deems necessary to give the matter further attention before action is taken.

(Ord. 1213C; 04-01-91)

## ARTICLE 2. PARK REGULATIONS

SECTIONS


12-201 PARK HOURS
12-202 PROHIBITION OF USE BY OTHERS
12-203 PROHIBITED VEHICLES
12-204 CAMPING PROHIBITED
12-205 BRIDLE PATH
12-206 HUNTING AND FISHING PROHIBITED; EXCEPTION FOR FISHING IN PUBLIC WATERS
12-207 CARRYING OF WEAPONS PROHIBITED **- REPEALED**
12-208 FIRES
12-209 SANITATION
12-210 PROHIBITION AGAINST ALCOHOLIC BEVERAGES AND BEER
12-210A COMMERCIAL USE OF PARKS
12-211 PARKING
12-212 PRESERVATION OF NATURAL STATE
12-213 SWIMMING
12-213A BOATING PROHIBITED
12-214 PLAYING FIELDS
12-215 CONFINING DOGS ON THE LEAWOOD TOMAHAWK GREENWAY AND IN ALL CITY PARKS
12-216 GENERAL REGULATIONS
12-217 PENALTY


**12-201. PARK HOURS.**

(a) All Leawood parks with the exception of the trail shall be closed between the hours of 11:00 p.m. and 6:00 a.m. during the period of the first Sunday in April to the fourth Sunday in October during which central daylight savings time shall be in force in the City; and between the hours of 9:00 p.m. and 7:00 a.m. during the balance of the year.

(b) All trails within all city parks shall be closed one-half hour after sunset until one-half hour before sunrise during the calendar year.

(c) Any or all parks may be closed temporarily, or opening hours extended temporarily, in case of emergency, adverse weather, or unusual circumstances, as determined by the Director of Parks and Recreation, or his or her designee.

(d) It shall be unlawful for any person to be in any city park during the hours in which it is closed.

(Ord. 1542C; 11-06-95)

**12-202. PROHIBITION OF USE BY OTHERS.** The Director of Parks and Recreation is empowered to allow reservation of park facilities. It shall be unlawful for any person or persons to occupy, use or attempt to control the occupation or use of any park facilities or portion thereof after being notified that a written reservation for exclusive use of the same has been issued by the Director of Parks and Recreation's designee during the period of time set forth in said reservation, and no person or persons shall continue to use or attempt to use any such park facility after said written reservation has been issued for said purpose and time. Any person failing to vacate such park facility promptly after being informed of such reservation shall be subject to arrest for violation of this ordinance. The foregoing is not intended to prohibit the free and unrestricted use of the park facilities by persons without written reservation as long as no such reservation has been issued by the Director of Parks and Recreation or his or her designee.

(Ord. 1213C; 04-01-91))

**12-203. PROHIBITED VEHICLES.**

(a) Go-carts, racing-type motorbikes or motorcycles and other similar vehicles not licensed for public roadway driving shall be prohibited within the city parks. Non-motorized bicycles shall be permitted upon the roads in the city parks, providing that the bicycles are operated only in those areas designated for motor vehicle traffic except when being walked to or from an authorized bicycle parking area or upon a designated bike trail.

(b) Trucks over 1 ½ tons are hereby prohibited, except for maintenance and delivery vehicles, unless permission therefor has been granted in writing by the Director of Parks and Recreation or his or her designee.

(c) Driving of any motorized or non-motorized vehicles off any hard surface improved roadway is prohibited except in the case of authorized maintenance and emergency vehicles.

(d) Driving a motorized vehicle on jogging and bicycle trails is prohibited except for maintenance and emergency vehicles.

(Ord. 1213C; 04-01-91)

**12-204.** **CAMPING PROHIBITED.** Overnight camping is hereby prohibited in city parks, unless otherwise approved by the Director of Parks and Recreation.

(Ord. 1213C; 04-01-91
(Code 2000)

**12-205.** **BRIDLE PATH.** It shall be unlawful for any owner of any horse to allow his or her animal to be outside the confines of the designated bridle path of any Leawood city park.

(Ord. 1213C; 04-01-91)

**12-206.** **HUNTING AND FISHING PROHIBITED; EXCEPTION FOR FISHING IN PUBLIC WATERS**. No person shall pursue, catch, trap, maim, kill, shoot or take any wildlife, either bird or animal, except at the specific authorization of the Governing Body, in any manner at any time except that fishing is permitted in public waters within public parks in the City of Leawood during the hours that said parks are open to the public. Fishermen shall use fishing rods and/or reels only, shall possess a valid Kansas State fishing license and a City of Leawood fishing permit. The cost for a Leawood resident permit is $3.00 and for a non-resident permit is $20.00. Fishermen shall obey all Kansas State fishing regulations and all of the following City restrictions relating to length and creel limits:

(1) Catfish must be no less than 14" in length and a maximum of four may be taken per day;
(2) Bass must be no less than 15" in length and a maximum of one may be taken per week;
(3) Bluegill must be no less than 7" in length and a maximum of six may be taken per day.

The revenue generated by the City fishing permits will be used solely for the preservation and maintenance of Leawood public waters.

(Ord. No. 1316C; 10-05-92)

**12-207.** **CARRYING OF WEAPONS PROHIBITED. – REPEALED**

(Ord. 1213C; 04-01-91)
(Ord. 2472C; 11-15-10)
(Ord. 2713C; 01-20-15)

**12-208.** **FIRES.** Fires may be built only in the ovens, stoves, or grills provided for that purpose by the city, and must be extinguished by the person, persons or parties starting such fires, immediately after use thereof.

(Ord. 1213C; 04-01-91)

**12-209.** **SANITATION.** All waste material, paper, trash, rubbish, tin cans, bottles, containers, garbage and refuse of any kind whatsoever shall be deposited in disposal containers provided for such purposes. No such waste or contaminating material shall be discarded otherwise. No sticks, stones, trash or other objects shall be thrown or discarded in or on any park lands, fountains, pools, drinking fountains, sanitary facilities, or other improvements.

(Ord. 1213C; 04-01-91)

**12-210.** **PROHIBITION AGAINST ALCOHOLIC BEVERAGES AND BEER.** It shall be unlawful for any person or persons to use, consume or have on the premises of any park or other city property within the city, any alcoholic liquor, or cereal malt beverage, except as specifically allowed by ordinance.

(Ord. 1213C; 04-01-91
(Code 2000)

**12-210A.** **COMMERCIAL USE OF PARKS.** No individual, group or organization may use any portion of any Leawood park or recreation facility, including but not limited to tennis courts, shelters, swimming pools, community center facilities, drives, driveways, access roads, parking lots, trails and green areas, for any commercial venture, including the sale of services, wares, goods, merchandise, food, drink or other items without the express permission of the City's Parks and Recreation Department. Such permission shall only be granted if:

(1) the service provider has a valid written agreement with the City to provide such services, or
(2) the service provider has applied for and received approval of a special event use permit with the parks and recreation department.

(Ord. 2389C; 04-20-09)
(Ord. 2109C; 06-06-05)

**12-211.** **PARKING.**

(a) Parking is permitted in designated, marked parking areas only unless specifically directed by a law enforcement officer.
(b) Parking is prohibited on or along roadways unless specifically directed by a law enforcement officer.
(c) The Chief of Police is authorized by the Governing Body to post "No Parking" signs within the City parks.

(d) Parking in other than designated areas shall be deemed to be a violation of this article.

(e) Overnight parking is prohibited except for vehicles which are disabled.

(Ord. 1213C; 04-01-91)

**12-212. PRESERVATION OF NATURAL STATE.** No person shall take, injure, or disturb any live or dead tree, plant, shrub, or flower, or otherwise interfere with the natural state of city parks.

(Ord. 1213C; 4-1-91)

**12-213. SWIMMING.** Swimming is prohibited in city parks except in pools constructed for that purpose.

(Ord. 1213C; 4-1-91)

**12-213A. BOATING PROHIBITED.** Boating is prohibited in City parks or greenways except as approved by the Director of Parks and Recreation in paddleboats, canoes or other City approved watercraft provided by the City or as otherwise required for maintenance by the City, provided, however, that this section shall not prohibit the use or small toy boats, whether or not they are motorized.

(Ord. 2061C; 05-17-04)

**12-214. PLAYING FIELDS.** The Director of Parks and Recreation or his or her designee shall have the authority to close any playing field for maintenance or for damage prevention. Closed fields shall be conspicuously posted, and any use of a closed field is prohibited.

(Ord. 1213C; 04-01-91)

**12-215. CONFINING DOGS ON THE LEAWOOD TOMAHAWK GREENWAY AND IN ALL CITY PARKS.** It shall be unlawful for any owner or keeper of any dog to allow his or her dog to run at large on the Tomahawk Greenway or within the boundaries of all City parks. All dogs must be on a leash no longer than eight feet, leash to be in hand of owner or keeper, and must be in control of the owner or keeper. If a dog is found running at large, the animal may be impounded in accordance with Section 2-203 of the Code of the City of Leawood. This section shall not be construed as prohibiting dogs from being on the Greenway or in City parks when within the confines of vehicles.

(Ord. No. 1328C; 12-21-92)

**12-216.** **GENERAL REGULATIONS.** The Governing Body may authorize the Director of Parks and Recreation to post such rules and regulations approved by the Governing Body pertaining to the use of the City parks in a conspicuous place in each City park. Violations of these posted rules shall also constitute a violation under the penalty provisions of this article.

(Ord. 1213C; 04-01-91)

**12-217.** **PENALTY.** Any person violating any of the provisions of this article shall be deemed guilty of a violation of this Code and upon conviction thereof shall be punished by a fine of not more than $500 for each such offense. Each and every day that such violation continues shall constitute a separate offense.

(Ord. 1213C; 04-01-91)

## ARTICLE 3. RECREATION COMMISSION

Replaced by Parks and Recreation Advisory Board
Ordinance No. 1213C; 04-01-91

## ARTICLE 4. PARK IMPACT FEE

SECTIONS


12-401 SHORT TITLE
12-402 PURPOSE
12-403 DEFINITIONS
12-404 APPLICABILITY OF PARK IMPACT FEE
12-405 IMPOSITION OF PARK IMPACT FEE
12-406 AMOUNT OF PARK IMPACT FEE
12-407 COLLECTION OF PARK IMPACT FEE
12-408 CALCULATION OF PARK IMPACT FEE
12-409 ANNUAL REVIEW
12-410 RESTRICTIONS ON USE OF AND ACCOUNTING FOR PARK IMPACT FEE FUNDS
12-411 REFUNDS
12-412 EXEMPTIONS
12-413 APPEALS
12-414 EFFECT OF PARK IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS
12-415 PARK IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT
12-416 VARIANCES AND EXCEPTIONS


**12-401.** **SHORT TITLE.** This Ordinance shall be known and cited as the "Leawood, Kansas Park Impact Fee Ordinance".

(Ord. 985C; 05-18-87)

**12-402.** **PURPOSE.** A Park Impact Fee is hereby imposed on new development for the purpose of assuring that parkland and open space is available and adequate to meet the needs created by new development while maintaining current and proposed park and open space standards pursuant to the Leawood Master Plan. The park impact fee shall be imposed by the City on all new development and all fees collected shall be used solely and exclusively for the purpose of acquisition and development of parkland and open space made necessary by and serving such new development.

(Ord. 985C; 05-18-87)

**12-403** **DEFINITIONS.**

(a) ***Applicant****:* the property owner or duly designated agent of the property owner, of land on which a building permit has been requested for nonresidential development or on which final plat approval has been requested for residential development.

(b) ***Building*****:** any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.

(c) ***Building Permit***: the City permit required for new building construction and/or additions to buildings pursuant to Chapter 4 of the Code of the City of Leawood. The term "building permit" as used herein shall not be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses.

(d) ***City****:* the City of Leawood, Kansas.

(e) ***Development***: the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit; and the final platting of land for residential uses.

(f) ***Dwelling*****:** any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.

(g) ***Floor Area, Finished***: the square foot area of all space within the outside line of exterior walls including the total area of all floor levels, but excluding porches, garages, or unfinished space in a basement or cellar.

(h) ***Master Plan or Master Development Plan***: the official, adopted comprehensive development plan for the City of Leawood, and amendments thereto.

(i) ***Non-residential Development***: all development other than residential development and public and quasi-public use, as herein defined.

(j) ***Open Space***: land used or to be used as park or open space associated with the City greenway system, but not including floodplains and steep slopes for which compensating density has been granted to the property owner by the City. Open space land includes the acquisition of such land, the construction of improvements thereon, and the expenditure of funds incidental thereto, including but not necessarily limited to planning, engineering and design work, utility relocation, provision of pedestrian and vehicular access thereto and purchase of equipment.

(k) ***Parkland*****:** land used or to be used as a City Park, including both the acquisition of such land, the construction of improvements thereon and the expenditure of funds incidental thereto, including but not necessarily limited to planning, engineering and design of the park and improvements, utility relocation, provision of pedestrian and vehicular access thereto and purchase of equipment.

(l) ***Property*****:** a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.

(m) ***Property Owner***: any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.

(n) ***Public and Quasi-Public Use***: a development owned, operated or used by the City of Leawood, Kansas; any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, any agencies or departments thereof; the Federal Government, and any agencies and departments thereof. For purposes of this Ordinance only, "places of worship" are hereby defined as quasi-public uses.

(o) ***Residential Development***: the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.

(p) ***Subdivision Regulations***: the Subdivision Regulations of the City of Leawood contained in the Leawood Development Ordinance, including all duly adopted amendments thereto.

(q) ***Zoning Ordinance***: The Leawood Development Ordinance, including all duly adopted amendments thereto.

(Ord. 985C; 05-18-87)
(Ord. 2074C; 08-16-04)

**12-404. APPLICABILITY OF PARK IMPACT FEE.**

(a) This Ordinance shall be uniformly applicable to residential and nonresidential development, but not public and quasi-public uses on property in the City of Leawood which is or will be served by and is accessible to Parkland and Open Space as herein defined.

(b) For purposes of this Ordinance, property is "served by" parkland and open space land when such park or open space land is provided, pursuant to the City Master Plan and Capital Improvements Program, within five (5) years from the date of collection of Park Impact Fees and such park or open space land is accessible to the development from which impact fees are collected.

(c) For purposes of this Ordinance, additional park and open space land provided south of I-435, but excluding additions to or expansions of the existing Leawood City Park, is "accessible" to and serves development in the City south of I-435. Additional park and open space land provided north of I-435, but including additions to or expansions of the existing Leawood City Park, is accessible to and serves development in the City north of I-435.

(Ord. 985C; 05-18-87)

**12-405. IMPOSITION OF PARK IMPACT FEE.**

(a) A Park Impact Fee shall be imposed on all residential and nonresidential development in the City, except as provided in subsection (b) and Section 12-412, herein.

(b) The Park Impact Fee shall not be imposed on any development for which an application for development approval had been received by the City on or before the date of publication of notice of public hearing by the City Council on this Ordinance (April 29, 1987). For purposes of this subsection only, an application for development approval shall mean and include any of the following: application for preliminary or final plat approval or replat pursuant to Section 17 of the City Code (the Leawood Subdivision Regulations); application for rezoning, special use permit, variance or development plan approval pursuant to Section 15 of the City Code (the Leawood Zoning Ordinance); application for a building permit; and application for a certificate of occupancy.

(c) Imposition of the Impact Fee does not alter, negate, supersede or otherwise affect any other requirements of City, County, State or federal legislation or regulations that may be applicable to a development, including City zoning and/or subdivision regulations that may impose open space and park requirements and standards.

(d) Upon receipt of an application for a preliminary plat, the Director of Planning and Development shall preliminarily calculate the amount of the Park Impact Fee by multiplying the applicable residential or non-residential impact fee rate by the number of dwelling units or floor area (in square feet) estimated for the proposed development for which subdivision approval is being sought. Such calculation shall be an estimate only for the benefit of the applicant for subdivision approval and shall be subject to final determination at such time as applicant requests a building permit or final plat approval. (Ord. 985C; 5-18-87)

**12-406. AMOUNT OF PARK IMPACT FEE.**

(a) Effective for all development plans for which an application for development approval was not received by the City prior to September 1, 2018, the Park Impact Fee shall be at the following rate:

*Residential Development:* $400.00 per dwelling unit
*Nonresidential Development:* $.15 per square foot of floor area, finished.

(b) For all plans for which an application for development approval was received by the City prior to September 1, 2018, the Park Impact Fee shall be at the following rate:

*Residential Development:* $300.00 per dwelling unit
*Nonresidential Development:* $.10 per square foot of floor area, finished.

(Ord. 2889C; 05-21-18)
(Ord. 985C; 05-18-87)

**12-407. COLLECTION OF PARK IMPACT FEE.**

(a) The Director of Planning and Development shall be responsible for the processing and collection of the applicable Impact Fee.

(b) Applicants for building permits for nonresidential development and applicants for final plat approval for residential development subject to this Ordinance must submit the following information:

(1) the number of dwelling units for residential development;
(2) the finished floor area for non-residential development;
(3) both the number of dwelling units and the finished floor area for a mixed-use development; and
(4) relevant supporting documentation as may be required by the Director of Planning and Development.

(c) The Director of Planning and Development shall be responsible for determining that:
   (1) the applicant has paid the Park Impact Fee; or
   (2) the applicant has been determined to be exempt pursuant to Section 12-412; or
   (3) an appeal has been taken and a bond or other surety posted pursuant to Section 12-413.

(d) The Director of Planning and Development shall collect the applicable Park Impact Fee prior to issuance of a building permit for non-residential development and prior to final plat approval for residential development.

(Ord. 985C; 05-18-87)

**12-408. CALCULATION OF PARK IMPACT FEE.** Upon receipt of an application for a building permit or final plat approval for development subject to this Ordinance, the Director of Planning and Development shall calculate the amount of the applicable Park Impact Fee due in accordance with the following procedure:

(a) determination of the applicability of this ordinance to the subject property shall be made within three (3) working days of receipt of such application by the Director of Planning and Development;

(b) if this Ordinance is not applicable because (i) the subject property is not served by the proposed parkland and open space or (ii) the subject property is not accessible to such parkland and open space or (iii) the subject property is exempt pursuant to Section 12-412 herein, the Director of Planning and Development shall return the application with the inapplicability or exemption noted thereon;

(c) if this Ordinance is determined to be applicable, the Director of Planning and Development shall:

(1) for residential development, multiply the applicable Park Impact Fee rate by the number of dwelling units for which final plat approval is being sought.

(2) for nonresidential development, multiply the applicable Park Impact Fee rate by the finished floor area (in square feet) of nonresidential development for which the building permit is being sought.

(3) for mixed-use developments, the Park Impact Fee shall be separately calculated as set forth above for residential and nonresidential development.

(4) Director of Planning and Development shall calculate the amount of the Park Impact Fee due pursuant to the building permit application or application for final plat approval as submitted and the requirements of this Ordinance in effect at the time of submission.

(5) A building permit application or application for final plat approval must be resubmitted to the Director of Planning and Development and the amount of the Park Impact Fee recalculated if the applicant alters the proposed development by increasing the number of dwelling units or increasing the finished floor area of non-residential development.

(d) An applicant may file a petition for review with the City Administrator or his duly designated agent on forms provided by the City for the purpose of seeking administrative review of a decision by the Director of Planning and Development as to the applicability of the Park Impact Fee ordinance or the exemption of the property, or the amount of the Park Impact Fee due. Within one (1) month of the date of receipt of a petition for review, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the request. The decision shall include the reasons for the decision.

(Ord. 985C; 05-18-87)

**12-409. ANNUAL REVIEW.**

(a) Prior to April 1, 2013, and each year thereafter, the City Administrator, or his duly designated agent, shall prepare a report to the Governing Body on Park Impact Fees. In the preparation of such report, the City Administrator or his duly designated agent shall review the following information:

(1) A statement from the City Treasurer summarizing Park Impact Fees collected and disbursed during the year;

(2) A statement from the City Recreation Director summarizing parkland and open space acquisition and development and the status thereof for the preceding year;

(3) A statement from the Director of Planning and Development summarizing the type, location, timing and amount of development for which building permits were issued or final plat approval granted in the year and summarizing the administration and enforcement of the Park Impact Fee.

(4) A statement and recommendation from the Parks and Recreation Advisory Board on any and all aspects of the Park Impact Fee and City park and open space needs.

(b) The City Administrator's Report shall make recommendations, if appropriate, on amendments to the Ordinance; changes in the administration or enforcement of the Ordinance; changes in the Park Impact Fee rate; and changes in the Comprehensive Plan.

(c) The Park Impact Fee rate shall be reviewed annually. Based upon the City Administrator's Report and such other factors as the Governing Body deems relevant and applicable, the Governing Body may amend the Park Impact Fee Ordinance including, but not limited to an amendment of the Impact Fee rate. If the Governing Body fails to take such action, the Park Impact Fee rate then in effect shall remain in effect. Nothing herein precludes the Governing Body or limits its discretion to amend the Park Impact Fee Ordinance at such other times as may be deemed necessary.

(d) In the annual review process, the Governing Body shall take into consideration the following factors: inflation as measured by changes in an appropriate land and construction cost index used by the City; improvement cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed parkland and open space; revisions to the Comprehensive Plan; and changes in the anticipated land use mix and/or intensity in new development areas of the City.

(Ord. 2562C; 08-20-12)
(Code 2000)
(Ord. 985C; 5-18-87)

**12-410. RESTRICTIONS ON USE OF AND ACCOUNTING FOR PARK IMPACT FEE FUNDS.**

(a) The funds collected by reason of the establishment of the Park Impact Fee must be used solely for the purpose of funding parkland and open space acquisition and development pursuant to the Master Plan or for reimbursement to the City for parkland and open space acquisition and development pursuant to the Master Plan.

(b) Upon receipt of Park Impact Fees, the Director of Planning and Development shall transfer such funds to the City Treasurer who shall be responsible for the placement of such funds in a segregated, interest bearing account designated as the "Park Impact Fee Account." All funds placed in said account and all interest earned therefrom shall be utilized solely and exclusively for parkland and open space acquisition and development pursuant to the Master Plan. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such account. The City Treasurer shall establish adequate financial and accounting controls to ensure that Park Impact Fee funds disbursed from such accounts are utilized solely and exclusively for parkland and open space acquisition and development or for reimbursement to the City of advances made from other revenue sources to fund parkland and open space acquisition and development. Disbursement of funds from said accounts shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Ordinance; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed five (5) years from the date such funds are collected.

(c) The City Treasurer shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.

(d) Interest earned by such account shall be credited to the account and shall be utilized solely for the purposes specified for funds of the account.

(e) Impact Fee funds collected shall not be used to maintain, repair or operate the existing park system, nor to finance park and recreational activities other than parkland and open space acquisition and development as herein defined.

(f) The City may issue and utilize general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of parkland and open space as set forth in the Master Plan. Funds pledged toward the retirement of such bonds or other certificates of indebtedness may include the Park Impact Fees and other City (and non-City) funds and revenues as may be allocated by the Governing Body. Park Impact Fees paid pursuant to this Ordinance, however, shall be used solely and exclusively for parkland and open space acquisition and development as defined herein.

(Ord. 985C; 05-18-87)

**12-411. REFUNDS.**

(a) The current owner of property on which a Park Impact Fee has been paid may apply for a refund of such fee if:

(1) the City has failed to provide parkland or open space serving such property within five (5) years of the date of payment of the Park Impact Fee; or

(2) the building permit for nonresidential development pursuant to which the Park Impact Fee has been paid has lapsed for non-commencement of construction; or

(3) the nonresidential development for which a building permit has been issued has been altered resulting in a decrease in the amount of the Park Impact Fee due; or

(4) the final plat for a residential development pursuant to which an Impact Fee has been paid is vacated; or

(5) a replat for fewer residential lots or dwelling units is submitted on property pursuant to which an Impact Fee had been paid prior to final plat approval.

(b) Only the current owner of property may petition for a refund. A petition for refund must be filed within one year of the event giving rise to the right to claim a refund.

(c) The petition for refund must be submitted to the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition must contain: a statement that petitioner is the current owner of the property; a copy of the dated receipt for payment of the Park Impact Fee issued by the Director of Planning and Development; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which a refund is sought.

(d) Within one month of the date of receipt of a petition for refund, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due petitioner, the City Administrator or his duly designated agent shall notify the City Treasurer and request that a refund payment be made to petitioner.

(e) Petitioner may appeal the determination of the City Manager to the Governing Body.

(Ord. 985C;05-18-87)

**12-412. EXEMPTIONS.**

(a) A property owner shall be exempt from the Park Impact Fee otherwise due for proposed residential or nonresidential development on the subject property if such property owner has:

(1) dedicated parkland or open space to the City without obtaining compensating density therefor and the City has accepted such dedication; or

(2) agreed, as a condition of preliminary or final plat approval or rezoning, to dedicate identified parkland or open space consistent with the City Master Plan without obtaining compensating density therefor and the property is actually developed pursuant to said zoning and plan approval.

(b) An exemption may only be given for building permit applications for nonresidential development or final plat approval for residential development on the subject property for which dedication or agreement to dedicate has occurred.

(c) An applicant may apply for an exemption at the time of application for a building permit or in conjunction with a final plat approval. The applicant shall file a petition for exemption with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain: a statement by the property owner or a duly designated agent of the property owner certifying that petitioner is the current owner of the property; documentary evidence of the ownership of the property at the time of occurrence of the event giving rise to the claim for exemption; documentary evidence of dedication or agreement to dedicate including a legal description or plat of the affected property; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which the exemption is being sought. Within one month of the date of receipt of a petition for exemption, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the exemption request; provided, however, that a decision on a petition for exemption filed in conjunction with a final plat shall be made by the City Administrator concurrently with Planning Commission action on the final plat. The decision must include the reasons for the decision. Upon making the decision, the City Administrator or his duly designated agent shall notify the petitioner in writing. Petitioner may appeal the determination of the City Administrator to the Governing Body.

(d) An applicant may apply for an advance determination of exemption at any time by filing a petition for same with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain the information required and shall be processed in accordance with the procedure set forth in Section 12-412(c) above.

((Ord. 985C; 05-18-87)

**12-413.** **APPEALS.** After a determination by the Director of Planning and Development of the applicability of the Park Impact Fee or the amount of the Impact Fee due or after a determination, by the City Administrator of the amount of refund due, if any, or the determination of an exemption, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the Governing Body within thirty (30) days following the determination by the Director of Planning and Development or City Administrator. If the Notice of Appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Park Impact Fee due as calculated by the Director of Planning and Development, the application shall be processed. The filing of an appeal shall not stay the collection of the Impact Fee due unless a bond or other sufficient surety has been filed.

(Ord. 985C; 05-18-87)

**12-414.** **EFFECT OF PARK IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS.** This ordinance shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements or any other aspect of the development of land or provision of public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. 985C; 05-18-87)

**12-415.** **PARK IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT.** The Park Impact Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the City on the development of land or the issuance of building permits. It is intended to be consistent with and to further the objectives and policies of the Master Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of adequate parkland and open space in conjunction with the development of land. In no event shall a property owner be obligated to pay for parkland and open space in an amount in excess of the amount calculated pursuant to this Ordinance; but, provided that a property owner may be required, pursuant to City zoning and subdivision regulations to provide open lands, setbacks, buffers and other non-buildable areas on-site in addition to meeting the Impact Fee requirement.

(Ord. 985C; 05-18-87)

**12-416.** **VARIANCES AND EXCEPTIONS.** Petitions for variances and exceptions to the application of this Ordinance shall be made to the City Administrator in accordance with procedures to be established by Resolution of the Governing Body.

(Ord. 985C; 05-18-87)

## ARTICLE 5. LEAWOOD GOLF COURSE IMPACT FEE - RESERVED

ORDINANCE NO. 1338C REPEALED BY ORDINANCE NO. 1677C, 7-7-97

## ARTICLE 6. PUBLIC ART IMPACT FEE

SECTIONS


12-601 SHORT TITLE
12-602 PURPOSE
12-603 DEFINITIONS
12-604 APPLICABILITY OF PUBIC ART IMPACT FEE
12-605 IMPOSITION OF PUBLIC ART IMPACT FEE
12-606 AMOUNT OF PUBLIC ART IMPACT FEE
12-607 COLLECTION OF PUBLIC ART IMPACT FEE
12-608 CALCULATION OF PUBLIC ART IMPACT FEE
12-609 ANNUAL REVIEW
12-610 RESTRICTIONS ON USE OF AND ACCOUNTING FOR PUBLIC ART IMPACT FEE FUNDS
12-611 REFUNDS
12-612 EXEMPTIONS
12-613 APPEALS
12-614 EFFECT OF PUBLIC ART IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS
12-615 PUBLIC ART IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT


**12-601.** **SHORT TITLE.** This section shall be known and cited as the "Leawood, Kansas Public Art Impact Fee Section."

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-602.** **PURPOSE.** The Governing Body of the City of Leawood has determined that commercial development within the City should be accompanied by the establishment of Public Art to balance and harmonize the impact that non-residential development has upon the community. The Governing Body has further determined that a fee should be imposed upon nonresidential development to establish a fund to be administered by the City for the purposes of acquisition, development, construction and maintenance of Public Art. A Public Art Impact Fee is hereby imposed on development for the purpose of integrating highly visible art into the Leawood community to create a legacy of works to be enjoyed by current and future generations. The Public Art Impact Fee shall be imposed by the City on all development, and all fees collected shall be used solely and exclusively to provide and maintain public art that will enhance the aesthetic appearance of Leawood's public spaces and designated private areas and increase the public's enjoyment of community areas and of the arts.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-603.** **DEFINITIONS.**

(a) ***Applicant****:* the property owner or duly designated agent of the property owner, of land on which a building permit has been requested for nonresidential development.

(b) ***Building****:* any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.

(c) ***Building Permit****:* the City permit required for new building construction and/or additions to buildings pursuant to Chapter 4 of the Code of the City of Leawood. The term "building permit" as used herein shall be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, and to the rebuilding of a damaged structure, but not to permits required for accessory uses.

(d) ***City****:* the City of Leawood, Kansas.

(e) ***Development****:* the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit. (f) ***Dwelling:*** any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.

(g) ***Floor Area; Finished****:* the square foot area of all space within the outside line of exterior walls including the total area of all floor levels, but excluding porches, garages, or unfinished space in a basement or cellar.

(h) ***Master Plan or Master Development Plan****:* the official, adopted comprehensive development plan for the City of Leawood, and amendments thereto.

(i) ***Non-residential Development****:* all development other than residential development and public and quasi-public use, as herein defined.

(j) ***Property****:* a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.

(k) ***Property Owner****:* any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.

(l) ***Public Art****:* The term “public art” as used herein, may include, but not be limited to the visual and performing arts, creative production of music, drama, dance, creative writing, arts and crafts, film, photocopying or other suitable expression, including that of an artist as a member of the design team for a building, park land or infrastructure, sculptures, paintings, murals, manhole covers, paving pattern, lighting, seating, building façade, kiosk, gate, fountain, play equipment, engraving, carving, fresco, mobile, collage, mosaic, bas-relief, tapestry, photography, drawing, landscape item including artistic placement of natural material or arches or other structures of a permanent or temporary character intended for ornament or commemoration.

(m) ***Public and Quasi-Public Use****:* a development owned, operated or used by the City of Leawood, Kansas: any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, any agencies or departments thereof; the Federal Government, and any agencies and departments thereof. For purposes of this section only, "places of worship" are hereby defined as quasi-public uses.

(n) ***Residential Development****:* the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.

(o) ***Subdivision Regulations****:* The Subdivision Regulations of the City of Leawood contained in the Leawood Development Ordinance, including all duly adopted amendments thereto.

(p) ***Zoning Ordinance****:* The Leawood Development Ordinance, including all duly adopted amendments thereto.

(Ord. 1751C; 11-2-98)
(Ord. 2075C; 08-16-04)
(Ord. 2233C; 05-21-07)

**12-604.** **APPLICABILITY OF PUBLIC ART IMPACT FEE.** This section shall be uniformly applicable to nonresidential development but not apply to residential, public and quasi-public uses on property in the City of Leawood.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-605.** **IMPOSITION OF PUBLIC ART IMPACT FEE.**

(a) A Public Art Impact Fee shall be imposed on nonresidential development in the City, except as provided in subsection (b) and Section 12-612, herein.

(b) The Public Art Impact Fee shall not be imposed on any development for which an application for development approval had been received by the City prior to November 2, 1998. For purposes of this subsection only, an application for development approval shall mean an application for a certificate of occupancy for any property that is zoned for use as non-residential property.

(c) Upon receipt of an application for development approval, the Director of Planning and Development shall preliminarily calculate the amount of the Public Art Impact Fee by multiplying the applicable nonresidential impact fee rate by the floor area (in square feet) estimated for the proposed development for which approval is being sought. Such calculation shall be an estimate only for the benefit of the applicant for preliminary plan approval and shall be (a) subject to final determination at such time as applicant requests a building permit; and (b) imposed in accordance with the ordinance in effect at the time of the request for building permit.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-606.** **AMOUNT OF PUBLIC ART IMPACT FEE.** The Public Art Impact Fee shall be at the following rate:

*Nonresidential Development:* $. 15 per square foot of floor area, finished.

(Ord. 1751C; 11-02-98)
(Ord. 2179C; 08-21-06)
(Ord. 2233C; 05-21-07)

**12-607. COLLECTION OF PUBLIC ART IMPACT FEE.**

(a) The Director of Planning and Development shall be responsible for the processing and collection of the applicable Public Art Impact Fee.

(b) Applicants for building permits for nonresidential development subject to this section must submit the following information:

(1) the finished floor area for non-residential development;

(2) relevant supporting documentation as may be required by the Director of Planning and Development.

(c) The Director of Planning and Development shall be responsible for determining that:

(1) the applicant has paid the Public Art Impact Fee; or

(2) the applicant has been determined to be exempt pursuant to Section 12-612; or

(3) an appeal has been taken and a bond or other surety posted pursuant to Section 12-613.

(d) The Director of Planning and Development shall collect the applicable Public Art Impact Fee at the time of issuance of a building permit for non-residential development.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-608. CALCULATION OF PUBLIC ART IMPACT FEE.** Upon receipt of an application for a building permit for development subject to this article, the Director of Planning and Development shall calculate the amount of the applicable Public Art Impact Fee due in accordance with the following procedure:

(a) Determination of applicability of this article to the subject property shall be made within three working days of receipt of such application by the Director of Planning and Development;

(b) If this section is not applicable because the subject property is exempt pursuant to Section 12-612 herein, the Director of Planning and Development shall return the application with the inapplicability or exemption noted thereon;

(c) If this section is determined to be applicable, the Director of Planning and Development shall:

(1) for nonresidential development, multiply the applicable Public Art Impact Fee rate by the finished floor area (in square feet) of nonresidential development for which the building permit is being sought.

(2) Director of Planning and Development shall calculate the amount of the Public Art Impact Fee preliminarily due pursuant to the building permit application and the requirements of this section in effect at the time of issuance of the building permit.

(3) A building permit application must be resubmitted to the Director of Planning and Development and the amount of the Public Art Impact Fee recalculated if the applicant alters the proposed development by increasing the finished floor area of non-residential development.

(d) An applicant may file a petition for review with the City Administrator or his or her duly designated agent on forms provided by the City for the purpose of seeking administrative review of a decision by the Director of Planning and Development as to the applicability of the Public Art Impact Fee ordinance or the exemption of the property, or the amount of the Public Art Impact Fee due. Within one month of the date of receipt of a petition for review, the City Administrator or his or her duly designated agent must provide the petitioner, in writing, with a decision on the request. The decision shall include the reasons for the decision.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-609. ANNUAL REVIEW.**

(a) Prior to April 1, 2013 and each year thereafter, the City Administrator, or his or her duly designated agent, shall prepare a report to the Governing Body on Public Art Impact Fees. In the preparation of such report, the City Administrator or his or her duly designated agent shall review the following information:

(1) a statement from the City Finance Director summarizing Public Art Impact Fees collected and disbursed during the year;

(2) a statement from the Director of Public Works summarizing public art acquisition and development in connection with public works improvements and the status thereof for the preceding year;

(3) a statement from the Director of Planning and Development summarizing the type, location, timing and amount of development for which building permits were issued in the year and summarizing the administration and enforcement of the Public Art Impact Fee.

(4) a statement and recommendation from the Leawood Arts Council on any and all aspects of the Public Art Impact Fee and public art needs.

(b) The City Administrator's report shall make recommendations, if appropriate, on amendments to the ordinance; and changes in the administration or enforcement of the ordinance; and changes in the Public Art Impact Fee rate.

(c) The Public Art Impact Fee rate shall be reviewed annually. Based upon the City Administrator's report and such other factors as the Governing Body deems relevant and applicable, the Governing Body may amend the Public Art Impact Fee ordinance including, but not limited to an amendment of the Impact Fee rate. If the Governing Body fails to take such action, the Public Art Impact Fee rate then in effect shall remain in effect. Nothing herein precludes the Governing Body or limits its discretion to amend the Public Art Impact Fee ordinance at such other times as may be deemed necessary.

(d) In the annual review process, the Governing Body shall take into consideration the following factors: inflation as measured by changes in an appropriate land and construction cost index used by the City; improvement cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed public art.

(Ord. 2563C; 08-20-12)
(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-610. RESTRICTIONS ON USE OF AND ACCOUNTING FOR PUBLIC ART IMPACT FEE FUNDS.**

(a) The funds collected by reason of the establishment of the Public Art Impact Fee must be used solely for the purpose of funding the acquisition, development, construction and maintenance of public art.

(b) Upon receipt of Public Art Impact Fees, the City Administrator or his designee shall transfer such funds to the City Finance Director who shall be responsible for the placement of such funds in a segregated interest bearing account designated as the "Public Art Impact Fee Account." All funds placed in said account and all interest earned therefrom shall be utilized solely and exclusively for public art acquisition, development, construction and maintenance. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such account. The City Finance Director shall establish adequate financial and accounting controls to ensure that Public Art Impact Fee funds disbursed from such account is utilized solely and exclusively for public art acquisition, development, construction and maintenance or for reimbursement to the City of advances made from other revenue sources to fund public art acquisition, development, construction and maintenance. Disbursement of funds from the accounts shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this section. provided, however, that funds shall be expended within a reasonable period of time, but not to exceed seven years from the date such funds are collected.

(c) The City Finance Director shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.

(d) Interest earned by such account shall be credited to the account and shall be utilized solely for the purposes specified for funds of the account.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-611. REFUNDS.**

(a) The current owner of property on which a Public Art Impact Fee has been paid may apply for a refund of such fee if:

(1) the city has failed to provide public art utilizing impact fee collected within seven years of the date of payment of the Public Art Impact Fee, assuming that the money that is first deposited in the impact fee account is the money that is first spent from such account; or

(2) the building permit for nonresidential development pursuant to which the Public Art Impact Fee has been paid has lapsed for non-commencement of construction.

(b) Only the current owner of property may petition for a refund. A petition for refund must be filed within one year of the event giving rise to the right to claim a refund.

(c) The petition for refund must be submitted to the City Administrator or his or her duly designated agent on a form provided by the city for such purpose. The petition must contain: a statement that petitioner is the current owner of the property; a copy of the dated receipt for payment of the Public Art Impact Fee issued by the Director of Planning and Development; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which a refund is sought.

(d) Within one month of the date of receipt of a petition for refund, the City Administrator or his or her duly designated agent must provide the petition, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due petitioner, the City Administrator or his or her duly designated agent shall notify the City Treasurer and request that a refund payment be made to petitioner.

(e) Petitioner may appeal the determination of the City Administrator to the Governing Body.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-612. EXEMPTIONS.**

(a) A property owner shall be exempt from the Public Art Impact Fee otherwise due for proposed nonresidential development on the subject property if such property owner has:

(1) provided an art project, developed and selected in accordance with the process set forth in the City's Public Art Policy, through private funding that is equal to or greater than the dollar value of the fee that is imposed by this section;

(2) which art project has been approved in accordance with the City's planning codes and restrictions; and

(3) which has been approved by the Leawood Arts Council, the Planning Commission and the Governing Body as a part of the development approval process as satisfying the requirements of this article.

(b) All Public Art procured under the City's impact fee process shall become the property of the City.

(c) An exemption may only be given for building permit applications for nonresidential development on the subject property for which exemption has been approved as provided in Section 12-612(a) prior to application for issuance of a building permit.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-613. APPEALS.** After a determination by the Director of Planning and Development of the applicability of the Public Art Impact Fee or the amount of the Impact Fee due, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the Governing Body within 30 days following the determination by the Director of Planning and Development. If the Notice of Appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Public Art Impact Fee due as calculated by the Director of Planning and Development, the application shall be processed. The filing of an appeal shall not stay the collection of the Impact Fee due unless a bond or other sufficient surety has been filed.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-614. EFFECT OF PUBLIC ART IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS.** This section shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements or any other aspect of the development of land or provision public improvements subject to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

**12-615. PUBLIC ART IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT.** The Public Art Impact Fee is additional and supplemental to, and not in substitution on any other requirements imposed by the City on the development of land or the issuance of building permits. It is intended to be consistent with and to further the objectives and policies of the Master Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of public art in conjunction with the development of land.

(Ord. 1751C; 11-2-98)
(Ord. 2233C; 05-21-07)

# CHAPTER XIII. STREETS AND SIDEWALKS


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## ARTICLE 1. GENERAL PROVISIONS

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**13-101.** **GENERAL SUPERVISION**. The supervision and control of the construction, alteration, maintenance and repair of all streets, bridges, tunnels, sidewalks, curbs and gutters, driveway entrances, storm sewers and street lights, and other public right-of-way and thoroughfares of the city shall be under the direction of the director of public works, who shall, in addition to the provisions of this chapter, enact such regulations by resolutions of the governing body as are required.

(Ord. 1845C, 1-17-00)

**13-102.** **INCORPORATING SPECIFICATIONS AND STANDARDS.** There is hereby incorporated by reference that certain publication known as "Public Improvement Construction Standards," prepared and published by the City of Leawood, March 1, 2015. No fewer than three copies of said publication shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2722C" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the city clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1847C; 02-07-00)
(Code 2000)
(Ord. 1885C; 03-05-01)
(Ord. 2722C; 03-02-15)

**13-103.** **PERMIT.** A permit to excavate and/or construct within public right-of-way is required and application for the permit shall be made at the director of public works' office. A separate permit shall be required for each separate phase of work. All information required by the permit must be completed prior to the approval and issuance of the permit.

(Ord. 1845C; 01-17-00)

**13-104.** **PERMIT FEES.** All permit fees shall be established by the city administrator in the following manner:
The fees and/or deposits for any permit issued under the provisions of this chapter are as set forth in the City's Fee Schedule established and maintained by the city administrator.

In addition to the permit fees required by this section, the city administrator, at his or her discretion, may require the person seeking a permit to post a bond in an amount set by the city administrator.

(Ord. 1845C; 01-17-00)

**13-105.** **CUTTING, EXCAVATING OR TUNNELING OF PUBLIC RIGHT-OF-WAY.** No person shall make or cause to be made any cut, excavation or tunnel in, through or under any street, sidewalk, alley or other public place or public rights-of-way in the city for any purpose whatsoever, except for as provided by Article 3 of this Chapter re: the Use and Excavation of the Public Right-of-Way.

(Ord. 1845C; 01-17-00)

**13-106.** **BUILDING MATERIALS IN PUBLIC RIGHT-OF-WAY.** Any person desiring to use the sidewalk, street or any other part of the public right-of-way for the temporary deposit of building material during the construction or repair of any building, or during the temporary use of the same while excavating any cellar, shall apply to the director of public works for permission for such use. Upon such an application, the director of public works may grant permission to use the street, sidewalk and/or right-of-way temporarily for the purpose to be named. Not more than 1/3 of the width of the street shall be used, and in case the sidewalk is obstructed, a temporary walkway shall be provided around such obstruction, and the gutter shall be kept open for flow of water. No person shall use or temporarily appropriate any street, sidewalk and/or right-of-way or any material part thereof without the consent of the director of public works. Upon the completion of any building, the material in the street shall be removed within 10 days. Any such obstruction shall be adequately lighted from ½ hour after sunset to ½ hour before sunrise to give warning to the drivers of vehicles.

(Ord. 1845C; 01-17-00)

**13-107.** **COMMERCIAL USE OF PUBLIC RIGHT-OF-WAY.** No person may use any portion of any sidewalk, street or any other part of the public right-of-way for the purpose of displaying or offering for sale wares, goods, merchandise or other items. Nothing in this article, however, shall be construed as prohibiting the governing body from waiving the prohibition of this section in connection with community promotions or community-wide celebrations when such waiver is considered to be in the best interest of the city.

(Ord. 1845C; 01-17-00)

**13-108.** **DANGEROUS OBJECTS IN PUBLIC RIGHT-OF-WAY.** It shall be unlawful for any person to place, throw or cause to be placed or thrown in or on any sidewalk, street, alley, public right-of-way or other public grounds of the city, any glass, tacks, nails, bottles, wire or other dangerous objects that might wound any person or animal, or cut or puncture any pneumatic tire while passing over the same.

(Ord. 1845C; 01-17-00)

**13-109.** **HARMFUL PRODUCTS IN PUBLIC RIGHT-OF-WAY.** It shall be unlawful for any person to deposit or throw any waste oil, fuel oil, kerosene, gasoline or other products of petroleum or any acids into or upon any sidewalk, street, alley, public right-of-way or other public grounds of the city, or willfully to permit the same to be spilled, dripped or otherwise to come into contact with the surface of the same.

(Ord. 1845C; 01-17-00)

## ARTICLE 1A. SIDEWALKS

SECTIONS


13-1A01 PETITION **- REPEALED**
13-1A02 CONDEMNATION, RECONSTRUCTION
13-1A03 NOTICE; PUBLICATION
13-1A04 RIGHT OF ABUTTING OWNER
13-1A05 REPAIRS BY OWNER OR CITY
13-1A06 CONTRACTS
13-1A07 PERFORMANCE, STATUTORY BOND
13-1A08 WORK ACCORDING TO SPECIFICATIONS
13-1A09 OBSTRUCTING SIDEWALKS
13-1A10 EXCEPTION
13-1A11 SIDEWALKS COVERED WITH EARTH
13-1A12 VIOLATION
13-1A13 SNOW AND ICE TO BE REMOVED
13-1A14 REMOVAL BY CITY


**13-1A01. PETITION. – REPEALED**

(Ord. 1845C; 01-17-00)
(Ord. 2721C; 02-16-15)

**13-1A02. CONDEMNATION, RECONSTRUCTION.** When any sidewalk, in the opinion of the governing body, becomes inadequate or unsafe for travel thereon, the governing body may adopt a resolution condemning such walk and providing for the construction of a new walk in the place of the walk condemned.

(Ord. 1845C; 01-17-00)

**13-1A03. NOTICE; PUBLICATION.** The resolution providing for the construction or reconstruction of a sidewalk, as the case may be, shall give the owner of the abutting property not less than 30 days nor more than 60 days after its publication one time in the official city paper in which to construct or cause to be constructed or reconstructed the sidewalk at his or her own expense. If the sidewalk is not constructed by the property owner within the time specified, the governing body shall cause the work to be done by contract.

(Ord. 1845C; 01-17-00)

**13-1A04.** **RIGHT OF ABUTTING OWNER.** Nothing in this article shall be constructed to prohibit the owner of property abutting on a street, who desires to construct or reconstruct a sidewalk at his or her own expense and in accordance with official plans and specifications for the purpose and which meet such other requirements as would have to be met if the sidewalk were constructed or reconstructed by the city, to construct or reconstruct a sidewalk without any petition or a condemning resolution by the governing body. If such property owner desires the sidewalk to be constructed and reconstructed by the city and an assessment levied as provided by law in other cases, he or she shall file a request with the governing body. The governing body, in its discretion, may provide for the construction or reconstruction of the sidewalk requested in the same manner as in other cases where citizens or taxpayers petition the governing body.

(Ord. 1845C; 01-17-00)

**13-1A05.** **REPAIRS BY OWNER OR CITY.** It shall be the duty of the owner of the abutting property to keep the sidewalk in repair, but the city may, after giving five days' notice to the owner or the owner's agent, if known, of the necessity for making repairs or without notice if the lot or piece of land is unoccupied, make all necessary repairs at any time. The same shall be done and the cost thereof assessed against the lot or piece of land abutting on the sidewalk so repaired as may be provided by law.

(Ord. 1845C; 01-17-00)

**13-1A06.** **CONTRACTS.** The director of public works shall cause to be prepared a form or forms of contracts for work to be performed by independent contractors. The form or forms of such contracts shall be approved by the city attorney and adopted by resolution of the governing body.

(Ord. 1845C, 1-17-00)

**13-1A07.** **PERFORMANCE, STATUTORY BOND.** In any case where the reconstruction or construction of a sidewalk is required to be done by contract as provided in section 13-1A06 hereof, the governing body may require the contractor to give a bond for the faithful performance of the contract and for the construction of the sidewalk in accordance with the plans and specifications, ordinances of the city or laws of Kansas, and for all contracts exceeding $10,000 entered into by the city for any such purpose a statutory lien bond required by K.S.A. 60-1111 shall be furnished.

(Ord. 1845C, 1-17-00)

**13-1A08.** **WORK ACCORDING TO SPECIFICATIONS.** Any person who shall construct or assist in constructing any sidewalk or crosswalk, or rebuild or assist in rebuilding any sidewalk or crosswalk, or make or assist in making any improvement whatever upon the streets avenues or alleys of the city shall do so in accordance with the maps, plans, specifications and profiles of the director of public works above mentioned, and the rules and directions herein contained.

(Ord. 1845C, 1-17-00)

**13-1A09.** **OBSTRUCTING SIDEWALKS.** It shall be unlawful for any person to build or construct any step or other obstruction, whether temporary or permanent, or to store, leave or allow to be left any implements, tools, merchandise, goods, containers, benches, display or showcases, on any sidewalks or other public ways in the city or to obstruct the same longer than is necessary for loading or unloading any such article or object.

(Ord. 1845C; 01-17-00)

**13-1A10.** **SAME; EXCEPTION.** The director of public works may authorize the granting of temporary permits in connection with a building or moving permit for limited times only to the owner of property abutting on any sidewalk to use or encumber such sidewalk or public way the city during the construction of any building or improvement thereon. No permit shall be issued for such purpose until plans for warning and safeguarding the public during such use of sidewalks shall have been submitted by the owner or his or her contractor and approved by the city council.

(Ord. 1845C; 01-17-00)

**13-1A11.** **SIDEWALKS COVERED WITH EARTH.** No lot or piece of land abutting on any sidewalk shall be allowed to become or remain in such condition that earth or other substance therefrom shall accumulate on the sidewalk and it shall be the duty of the owner of such lot or piece of land to place the same in such condition as to prevent the accumulation of such earth or other substance on such sidewalk.

(Ord. 1845C; 01-17-00)

**13-1A12.** **VIOLATION.** For the violation of sections 13-1A08 and 13-1A11:1A14 of this article each day that the work is left in a condition unsatisfactory to the city inspector shall be considered a separate violation under this article with the exception that each such day shall not be considered a separate violation where repair work in accordance with city specifications and requirements has been commenced.

(Ord. 1845C; 01-17-00)

**13-1A13.** **SNOW AND ICE TO BE REMOVED.** It is hereby made the duty of the owner and/or the occupant of any lots abutting upon any sidewalks to cause all snow

and ice to be removed from such sidewalks within forty-eight (48) hours after the end of a snow or ice event. If ice has accumulated of such character as to make removal thereof impossible, the sprinkling or placement of sand, ash or other noncorrosive material thereon within the time specified for removal in such a manner as to make such sidewalk safe for travel of pedestrians shall be deemed in compliance with the provisions of this Chapter.

(Ord. 1845C; 01-17-00)
(Ord. 2517C; 11-07-11)

**13-1A14.** **SAME; REMOVAL BY CITY.** If any owner or occupant of any lot or lots shall refuse or neglect to clean or remove all snow and ice from the sidewalk abutting said lot or lots, within the time specified, the city may remove the snow and ice from sidewalks and the costs of the removal shall be assessed against such abutting lot or lots and such cost shall be collected in the same manner as other taxes.

(Ord. 1845C; 01-17-00)

## ARTICLE 2. STREETS

SECTIONS

13-201 ALTERING DRAINAGE
13-202 BURNING IN STREETS
13-203 HAULING LOOSE MATERIAL
13-204 OBSTRUCTING RAIL CROSSING
13-205 TRAIN CREW; WARNING
13-206 DUMPING PROHIBITED

**13-201. ALTERING DRAINAGE.** No person shall change or alter any gutter, storm sewer, drain or drainage structure which has been constructed, or is being lawfully maintained or controlled by the city unless such change or alteration has been authorized or directed by the public works director.

(Ord. 1845C; 01-17-00)

**13-202. BURNING IN STREETS.** It shall be unlawful for any person to make or cause to be made any fire upon any of the paved streets, alleys, or street intersections within the city.

(Ord. 1845C; 01-17-00)

**13-203. HAULING LOOSE MATERIAL.** It shall be unlawful to haul over the streets or alleys of this city any loose material of any kind except in a vehicle having a tight box so constructed as to prevent the splashing or spilling of any of the substances therein contained upon the streets or alleys.

(Ord. 1845C; 01-17-00)

**13-204. OBSTRUCTING RAIL CROSSING.** It shall be unlawful for any railroad company or any person operating a railroad in the city, to allow its trains, engines or cars to stand upon any crossing or street in excess of 10 minutes at any one time without leaving an opening in the traveled portion of the street or crossing of at least 30 feet wide.

(Ord. 1845C; 01-17-00)

**13-205. TRAIN CREW; WARNING.** It shall be unlawful for the conductor or engineer of any train, engine or moving cars not preceded by an engine to cross any street, alley or public place without causing a person to be stationed upon the end of the first car or at the crossing to warn of the approaching cars.

(Ord. 1845C; 01-17-00)

**13-206.** **DUMPING PROHIBITED.** No person, firm or corporation shall dump or deposit or cause to be dumped or deposited any dirt, gravel, rubbish, leaves or other debris including but not limited to lumber, paper, trash concrete or metal in any street, right-of-way, gutter, storm sewer, waterway or drainage way. Erosion of soil which flows onto any street, right-of-way, gutter, storm sewer, waterway or drainage way, from property before or during construction shall be considered as depositing dirt, gravel or other construction debris.

If upon inspection by the Chief Building Inspector, Director of Public Works or any of their designated representatives, it is determined that dirt, gravel, rubbish, leaves or other debris has been dumped or deposited in any street, right-of-way, gutter, storm sewer, waterway or drainage way in violation of the provisions of this Ordinance, he or she shall then notify the responsible permittee or permittees and give a four hour period to make the affected area free and clear of said dirt, gravel or debris. If the city's representative cannot determine which permittee is responsible for cleaning the street's right-of-way, the developer of the land shall be given four hours notice to make the affected area free of said dirt, gravel or debris. If within the four hour period the said area is not clear, the Director of Public Works or his or her designate may authorize the city to take necessary action to clean up the said area and assess all charges at an established hourly rate, but in no case will the charges be less than two hours for labor, materials and equipment.

The Director of Public Works shall provide a fee structure for charges to be assessed for cleanup required by this section. The permittee shall be given 30 days to make payment to the city for any costs incurred to make cleanup. In the event the permittee does not make payment within the 30 days, all costs including administrative cost, will be assessed to the performance bond provided by Section 4-241.

(Ord. 1845C; 01-17-00)

# ARTICLE 3. USE AND OCCUPANCY OF THE PUBLIC RIGHT-OF-WAY

SECTIONS


13-301 General
13-302 Purpose
13-303 Definitions
13-304 Policy
13-305 Administration
13-306 Requirements of Service Provider
13-307 Mapping Requirement of Service Provider
13-308 Service Provider's Right to Sell, Transfer, Lease, Assign, Sublet or Dispose
13-309 Use of Right-of-Way
13-310 Facility Relocation
13-311 Protection of the Public
13-312 Right-of-Way Vacation
13-313 Abandoned and Unusable Facilities
13-314 Permit Requirement
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13-316 Liability Insurance, Performance and Maintenance Bond Requirement
13-317 Right-of-Way Permit Fees and Costs
13-318 Issuance of Permit
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13-321 Joint Applications
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13-323 Other Obligations
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13-327 Appeals Process
13-328 Indemnification
13-329 Force Majeure
13-330 Federal, State and City Jurisdiction
13-331 Severability
13-332 City's Failure to Enforce
13-333 Penalties
13-334 Reservation of Rights

13-335 REPEAL OF OTHER ORDINANCES
13-336 RESERVED FOR FUTURE USE
13-337 PLACEMENT OF GATES ON PUBLIC STEETS

**13-301. GENERAL.**

(a) No person shall excavate the right-of-way, construct, or use the facilities within the right-of-way of the City except as provided herein.

(Ord. 1834C; 12-06-99)
(Ord. 1976C; 12-16-02)

**13-302. PURPOSE.**

(a) To recognize the City's primary role as chief steward of the right-of-way and its duty to its citizens to recover the costs of managing the right-of-way and incursions into it;

(b) To clarify and regulate conditions of occupancy and construction for those ROW-users occupying space within the City's right-of-way given the anticipated increased use of the right-of-way by various ROW-users throughout the county;

(c) To recognize the necessity for sound management practices in light of the increased use of the right-of-way and the fact that the right-of-way is a limited resource;

(d) To treat each ROW-user equitably and in a competitively neutral and nondiscriminatory manner with considerations that may be unique to the technologies and situation of each particular ROW-user;

(e) To minimize disruption, visual impact or inconvenience to the public, and to preserve the public health, safety and welfare; and

(f) To comply with state and federal legislation.

(Ord. 1834C; 12-06-99)
(Ord. 1976C; 12-16-02)

**13-303. DEFINITIONS.**

(a) For purposes of this Ordinance, the following words and phrases shall have the meaning given herein:

(1) A*bandoned Facilities* means those facilities owned by the ROW-user that are not in use and will not be utilized by the owner in the future.

(2) *Affiliate* means any person controlling, controlled by or under the common control of a *service provider*.

(3) *Applicant* means any person requesting permission to occupy, lease or operate facilities using the right-of-way, or to excavate the right-of-way.

(4) *Area of Influence* means that area around a street excavation where the pavement and sub-grade is impacted by the excavation and is subject to

more rapid deterioration.

(5) *City* means the City of Leawood, Kansas, a municipal corporation and any duly authorized representative.

(6) *Construct* means and includes construct, install, erect, build, affix or otherwise place any fixed structure or object, in, on, under, through or above the right-of-way.

(7) *Day* means calendar day unless otherwise specified.

(8) *Emergency* means a condition that (a) poses a clear and immediate danger to life or health, or of a significant loss of property; or (b) requires immediate repair or replacement in order to restore service to a user.

(9) *Excavate* means and includes any cutting, digging, excavating, tunneling, boring, grading or other alteration of the surface or subsurface material or earth in the right-of-way.

(10) *Excavation Fee* means the fee charged by the City for each street or pavement cut which is intended to recover the costs associated with construction and repair activity of the ROW-user and its contractors and/or subcontractors.

(11) *FCC* means Federal Communications Commission.

(12) *Facility* means lines, pipes, irrigation systems, wires, cables, conduit facilities, ducts, poles, towers, vaults, pedestals, boxes, appliances, antennas, transmitters, gates, meters, appurtenances, wireless communications facilities, or other equipment.

(13) *Governing Body* means the Mayor and the City Council of the City of Leawood, Kansas.

(14) *Governmental Entity* means any county, township, city, town, village, school district, library district, road district, drainage or levee district, sewer district, water district, fire district or other municipal corporation, quasi-municipal corporation or political subdivision of the State of Kansas or of any other state of the United States and any agency or instrumentality of the State of Kansas or of any other state of the United States or of the United States.

(15) *KCC* means the Kansas Corporation Commission.

(16) *Parkway* means the area between a property line and the street curb, sometimes called boulevard, tree shelf or snow shelf.

(17) *Pavement* means and includes Portland cement concrete pavement, asphalt concrete pavement, asphalt treated road surfaces and any aggregate base material.

(18) *Permit and Inspection Fee* means the fee charged by the City to recover its cost incurred for right-of-way management; including, but not limited to, costs associated with registering applicants; issuing, processing, and verifying right-of-way permit applications; inspecting job sites and restoration of improvements; determining the adequacy of right-of-way restoration; revoking right-of-way permits and, other costs the City may incur in managing the provisions of this Ordinance.

(19) *Permittee* means any person to whom a right-of-way permit is issued to excavate a right-of-way.

(20) *Person* means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

(21) *Public Improvement* means any project undertaken by the City for the construction, reconstruction, maintenance, or repair of any public infrastructure, and including without limitation, streets, alleys, bridges, bikeways, parkways, sidewalks, sewers, drainage facilities, traffic control devices, streetlights, public facilities, public buildings or public lands.

(22) *Public Lands* means any real property of the City that is not right-of-way.

(23) *Public Works Director* means the Public Works Director, Leawood, Kansas, or the authorized representative.

(24) *Registration* means the application process of a service provider, the approval of the application by the City, and the authorization of the service provider to use any portion of the right-of-way within the City to provide service both within and beyond the City limits.

(25) *Repair* means the temporary construction work necessary to make the right-of-way useable.

(26) *Repair and Restoration costs* means those costs associated with repairing and restoring the public right-of-way because of damage caused by the ROW-user and its contractors and /or subcontractors in the right-of-way.

(27) *Restoration* means the process by which an excavated right-of- way and surrounding area, including pavement and foundation, is returned to the same condition, or better, that existed before the commencement of the work.

(28) *Right-of-Way* means the area on, below or above streets, alleys, bridges and Parkways in which the City has a dedicated or acquired right-of-way interest in the property.

(29) *Right-of-Way Permit* means the authorization to excavate for the construction, installation, repair or maintenance of any type of facility within the right-of-way.

(30) *Routine Service Operation* means a work activity that makes no material change to the facilities and does not disrupt traffic.

(31) *ROW-User* means a person, its successors and assigns, that uses the right-of-way for purposes of work, excavation, provision of services, or to install, construct, maintain, repair facilities thereon, including, but not limited to, landowners and service providers. A ROW-user shall not include ordinary vehicular or pedestrian traffic or any governmental entity that has entered into an agreement pursuant to K.S.A. 12-2901 *et seq.* with the City regarding the use and occupancy of the City's right-of-way.

(32) *Service* means a commodity provided to a person by means of a delivery system that is comprised of facilities located or to be located in the right-of- way, including, but not limited to, gas, telephone, cable television, Internet services, Open Video Systems, wireless services, alarm systems, steam, electric, water, telegraph, data transmission, petroleum pipelines, or sanitary sewerage.

(33) *Service Provider* means any person owning, possessing or having an interest in facilities in the right-of-way that are used for the provisions of a service for or without a fee; provided, that this definition shall also include persons owning, possessing or having an interest in facilities in the right-of- way that are used by, may be used by or are intended for use by another person, in whole or in part, to provide a service for or without a fee, regardless of whether the actually facility owner provides any service as defined herein.

(34) *Street* means the pavement and subgrade of a City residential, collector or arterial roadway.

(Ord. 1834C; 12-06-99)
(Ord. 1976C; 12-16-02)
(Ord. 2807C; 09-19-16)

**13-304. POLICY.**

(a) It is the policy of the City to authorize any ROW-user to utilize the right-of- way in a competitively neutral, non-discriminatory manner that maximizes the efficient use of and conserves the right-of-way and minimizes the burden on the right-of-way, physically and aesthetically. Any use of the right-of-way by a ROW-user shall be subject to the terms and conditions hereof, in addition to other applicable federal, state or local requirements.

(b) The right granted to the ROW-user to use the right-of-way is limited to the use that the ROW-user has filed with the City in accordance with this Ordinance. These rights are for the exclusive use of the ROW-user except where otherwise provided herein, or when authorized by the City.

(c) This Ordinance also is designed to regulate occupancy and excavations in the right-of-way by providing, among other things, for the issuance of permits which grant the authority to utilize and occupy the right-of-way within the City.

(d) All ROW-users shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power and are subject to all applicable laws, orders, rules and regulations adopted by governmental entities now or hereafter having jurisdiction. In addition, the ROW-users shall be subject to all technical specifications, design criteria, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to permits and fees, sidewalk and pavement cuts, utility location, construction coordination, surface restoration, and other requirements on the use of the right-of-way.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-305. ADMINISTRATION.**

(a) The Public Works Director is the principal city official for administration of right-of-way permits for work and excavations made in the right-of-way. The Public Works Director may delegate any or all of the duties hereunder.

(b) The Public Works Director is the principal City Official responsible for administration of the registering of a service provider. The Public Works Director may delegate any or all of the duties hereunder.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-306. REQUIREMENTS OF SERVICE PROVIDER.**

(a) Any existing service provider must register within 30 days of the effective date of this ordinance.

(b) Any person, who is not an existing service provider prior to the effective date of this ordinance and who wishes to become a service provider, must first register with the City.

(c) The service provider shall report any changes in its registration information within 30 days.

(d) No service provider shall be authorized to utilize the right-of-way in any capacity or manner without registering and obtaining the necessary right-of-way permit from the City.

(e) The information required for registration includes the following:

(1) Identity and legal status of service provider, including related affiliates.

(2) Name, address, telephone number, fax number and email address of officer, agent or employee responsible for the accuracy of the registration statement.

(3) Name, address, telephone number, fax number and email address of the local representative of the service provider who shall be available at all times to act on behalf of the service provider in the event of an emergency.

(4) Proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC.

(5) Description of the service provider's intended use of the right-of-way.

(6) Information sufficient to determine whether the service provider is subject to franchising by Kansas law.

(7) Information sufficient to determine whether the service provider has applied for and received any certificate of authority required by the Kansas Corporation Commission.

(8) Information sufficient to determine that the service provider has applied for and received any permit or other approvals required by the Federal Communications Commission.

(9) Such other information as may be reasonably required by the City to complete the registration statement.

(f) Each service provider shall designate a local person familiar with the facilities who will act as a local agent for the service provider and will be responsible for satisfying information requirements of this Ordinance. The service provider shall present to the City the agent's name, address, telephone number, fax number and email address. The agent shall be the person to whom relocation notices and other such notices shall be sent, and with whom rests the responsibility to facilitate all necessary communications. The service provider shall be responsible for all costs incurred by the City due to the failure to provide such information to the City.

(g) Prior to construction, reconstruction, repair, maintenance, or relocation of facilities owned by the service provider in the right-of-way, the service provider shall first obtain the necessary right-of-way permit as provided hereafter.

(h) Prior to providing service to the City and its residents, the service provider shall first obtain the necessary franchise agreement, if any, from the City.

(i) The service provider shall participate in any joint planning, construction and advance notification of right-of-way work, including coordination and consolidation of street cut work as directed by the Public Works Director. In addition, the service provider shall cooperate with other service providers and the City for the best, most efficient, most aesthetic and least obtrusive use of the right-of-way, consistent with safety, and to minimize traffic and other disruptions, including street cuts.

(j) The service provider shall furnish maps showing the location of facilities of the service provider within the City as provided hereafter.

(k) The City shall not exercise its authority under this provision to in any way deter competition or discriminate against any service provider.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-307. MAPPING REQUIREMENT OF SERVICE PROVIDER.**

(a) The service provider shall keep and maintain accurate records and as built drawings depicting accurate location of all its facilities constructed, reconstructed or relocated in the right-of-way.

(b) Within 10 days of a request by the City, the service provider will provide to the City information concerning such facilities as may be reasonably requested.

(c) When available to the service provider, such information will be submitted electronically in an AutoCad® format to the extent compatible with the City's Geographical Information Systems (GIS) and Johnson County Automated Integrated Mapping Systems (AIMS) provided, however, that nothing herein shall be construed to require the service provider to acquire or modify any electronic mapping system.

(d) Underground facilities shall be differentiated from overhead facilities

(e) Such mapping and identification shall be at the sole expense of the service provider.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-308. SERVICE PROVIDER'S RIGHT TO SELL, TRANSFER, LEASE, ASSIGN, SUBLET OR DISPOSE.**

(a) Except as provided hereafter, the service provider shall not sell, transfer, lease, assign, sublet or dispose of its facilities, or any portion thereof, that is located in City right-of-way, or any right, title or interest in the same, or the transfer of any rights granted by the City to any person either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, without notice to the City. This provision shall not apply to the sale of property or equipment in the normal course of business or to the sale or lease of facilities to reseller service providers. No notice to the City shall be required for a transfer in trust, mortgage, or other similar instrument, in whole or in part, to secure an indebtedness, or for a pro forma transfer to a corporation, partnership, or other entity controlling, controlled by or under common control with the service provider.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-309. USE OF THE RIGHT-OF-WAY.**

(a) The ROW-users use of the right-of-way shall in all matters be subordinate to the City's use or occupation of the right-of-way. The City may reserve sufficient space within the right-of-way for future public improvements. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested in or granted to the City.

(b) The ROW-user shall coordinate the placement of facilities in a manner that does not interfere with any Public Improvement and does not compromise the public health, safety or welfare, as reasonably determined by the City. Where placement is not regulated, the facilities shall be placed with adequate clearance from such public improvements so as not to impact or be impacted by such public improvement as required by the City's Public Improvement Construction Standards available in the office of the Public Works Director.

(c) The ROW-user shall consider any request made by the City concerning placement of facilities in private easements in order to limit or eliminate future street improvement relocation expenses.

(d) All facilities shall be located and laid so as not to disrupt or interfere with any pipes, drains, sewers, irrigation systems, or other structures or public improvements already installed. In addition, the ROW-user shall, in doing work in connection with its facilities, avoid, so far as may be practicable, disrupting or interfering with the lawful use of the right-of-way or other public lands of the City.

(e) All facilities of the ROW-user shall be placed so that they do not interfere with the use of right-of-way and public lands. The City, through its Public Works Director, shall have the right to consult and review the location, design and nature of the facility prior to its being installed.

(f) Whenever reasonably possible, all newly constructed facilities shall be located underground. The ROW-user shall comply with all requirements of the City relating to underground facilities. This requirement may be waived by the Public Works Director at his or her discretion for safety concerns, or some other good cause under the condition that does not cause discrimination among ROW-users.

If this requirement is waived, the facilities shall be located as directed by the Public Works Director, including, but not limited to, requirements regarding location and height. Above ground Facilities shall comply with the Public Improvement Construction Standards and all applicable zoning regulations, and be located in a manner that does not compromise the public health, safety or welfare. The height of any such facility will not exceed the lessor of:

1. 35 feet for residential or collector streets or 45 feet for arterial streets; and
2. 66 inches above the height of existing street light poles along the right-of-way surrounding the facility.

(g) The ROW-user shall not interfere with the facilities of the other ROW-users without their permission. If and when the City requires or negotiates to have a service provider cease using its existing poles and to relocate its facilities underground, all other service providers using the same poles shall also relocate their facilities underground at the same time, subject to the appeal process contained in section 13-327, as amended.

(h) The Public Works Director may assign specific corridors within the right-of-way, or any particular segment thereof as may be necessary, for each type of facility that is currently or, pursuant to current technology, the Public Works Director expects will someday be located within the right-of-way. All right-of-way permits issued by Public Works Director shall indicate the proper corridor for the ROW-user's facilities. Any ROW-user whose facilities are currently in the right-of-way in a position at a variance with the designated corridors shall, no later than at the time of next reconstruction or excavation of the area where its facilities are located, move the facilities to its assigned position within the right-of-way, unless this requirement is waived by Public Works Director for good cause shown, upon consideration of such factors as the remaining economic life of the facilities, public health, safety or welfare; user service needs and hardship to the ROW-user.

(i) If, in the preparation and planning of a right-of-way project, the Public Works Director deems it appropriate for a conduit to be constructed along, across or under the right-of-way, the Public Works Director shall contact all appropriate ROW-users for their input on the planning and design of such conduit. If a ROW-user desires to construct, maintain or operate facilities along such right-of-way, the Public Works Director may require the ROW-user to use such conduit, and to contribute to the expense of such conduit, provided, however, the ROW-user use of the conduit is reasonable and appropriate under the circumstances.

(j) All earth, materials, sidewalks, paving, crossings, utilities, other public improvements or improvements of any kind damaged or removed by the ROW-

user shall be fully repaired or replaced promptly by the ROW-user at its sole expense and to the reasonable satisfaction of the City. Upon determination by the Public Works Director that such repair or replacement is a public safety matter, all such repair or replacement shall be commenced within 24 hours of notice from the City, or the Public Works Director may direct the City to make such repair or replacement and bill the ROW-user for the City cost. The Public Works Director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the ROW-user to do any necessary additional work.

(k) All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of a ROW-user's facilities in the right-of-way shall be in accordance with applicable federal, state and local law and regulations, including those promulgated by national trade associations commonly associated with the service provided by the ROW-user. It is understood that the standards established in this paragraph are minimum standards and the requirements established or referenced in this Ordinance may be in addition to or stricter than such minimum standards. A ROW-user shall not construct or reconstruct any of its facilities located upon, over, under or within the City right-of-way without first having submitted in writing a description of its planned improvement to the Public Works Director and having received a permit for such improvement. The Public Works Director may require that any drawings, plans and/or specifications submitted be certified by a Kansas registered professional engineer stating that such drawings, plans and/or specifications comply with all applicable technical codes, rules and regulations, unless such plans are based directly on nationally recognized codes, which are appropriately cited, and attested to on the plans by the signature of an authorized official of the organization applying for the permit.

(l) The ROW-user shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete on-site information regarding the nature and horizontal and vertical location of its facilities located within the right-of-way, both underground and overhead, when requested by the City or its authorized agent for a public improvement. Such location and identification shall be at the sole expense of the ROW-user without any expense to the City, its employees, agents, or authorized contractors.

(m) The City shall have the authority to prohibit the use or occupancy of a specific portion of the right-of-way by a ROW-user due to public health, safety or welfare considerations.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)
(Ord. 2807C; 09-19-16)

**13-310. FACILITY RELOCATION.**

(a) The ROW-user shall promptly remove, relocate or adjust any facilities located in the right-of-way as directed by the City for a public improvement or when

reasonably required by the City by reason of public health, safety and welfare. Such removal, relocation, or adjustment shall be performed by the ROW-user at the ROW-user's expense without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules, regulations and schedules of the City pertaining to such. The ROW-user shall proceed with relocations at due diligence upon notice by the City to begin relocation.

(b) The ROW-user shall promptly remove, relocate or adjust any facilities located in private easement, as directed by the City, for a public improvement, at City expense, by moving such facilities to areas within the expanded right-of-way or within remaining private easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements. The ROW-user shall disclaim those parts of its easements which lie within the expanded right-of-way. Should the City, in the future, elect to require the ROW-user to again relocate its facilities to other areas within the expanded right-of- way, the cost of any such future relocation shall be borne by the City.

(c) As soon as working drawings are available for public improvements which will require the ROW-user to relocate its facilities, the City shall provide the ROW-user with written notice of relocations and the anticipated bid letting date of the improvement. The ROW-user shall respond with any conflicts and a proposed construction schedule within 30 days.

(d) Following notice by the City in the form of the delivery of final design plans for such public improvements, the ROW-user shall remove, and relocate its facilities in accordance with the mutually agreed upon schedule, provided the project is not delayed by adverse weather conditions and other factors beyond the control of the ROW-user. The ROW-user shall certify to the City, in writing, that its facilities have been relocated or adjusted to clear construction in accordance with project plans provided by the City.

(e) Any damages suffered by the City, its agents or its contractors to the extent caused by ROW-user's failure to timely relocate or adjust its facilities, or failure to properly relocate or adjust such facilities, shall be borne by the ROW-user.

(f) In the event the ROW-user is required to move its facilities in accordance with this section, any ordinary right-of-way permit fee shall be waived.

(g) It is the intent of this section for both the City and the ROW-user to cooperate with one another so that the need for facility relocation is minimized and, when required and feasible, relocations may be completed prior to receipt of bids by the City for a public improvement.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-311. PROTECTION OF THE PUBLIC.**

(a) It shall be the responsibility of the ROW-user to take adequate measures to protect and defend its facilities in the right-of-way from harm and damage.

(b) The City shall not be liable for any damage to or loss of any of the ROW-user's facilities within the right-of-way as a result of or in connection with any construction, excavation, grading, filling or work of any kind, including public improvements by or on the behalf of the City, except to the extent caused by the negligent, willful, intentional, or malicious acts or omissions of the City.

(c) The ROW-user shall be responsible to the City and its agents, representatives, and authorized contractors for all damages suffered by them including, but not limited to delay damages, repair costs, construction delays, penalties or other expenses of any kind arising out of the failure of the ROW-user to timely perform any of its obligations under this Ordinance to the extent caused by the acts or omissions of the ROW-user.

(d) The City or its authorized contractors shall be responsible for taking reasonable precautionary measures including calling for facility locations when constructing its public improvements.

(e) Any ROW-user who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley or other right-of-way, and shall leave any part or portion thereof open, or shall leave any part or portion thereof disrupted with rubbish, building or other material during construction and/or the night time, shall cause the same to be enclosed with good substantial and sufficient barricades or drums equipped with the appropriate type warning lights and orange safety fencing material which is properly secured around the excavation or the disruption.

(f) Whenever a ROW-user shall excavate the full width of any street, sidewalk, alley, driveway approach or other right-of-way, it shall be its duty to maintain an adequate passage for vehicles and pedestrians across or around the excavation until it is refilled as specified.

(g) Any excavation left open overnight on any thoroughfare or collector type street shall be securely covered. The ROW-user assumes the sole responsibility for maintaining proper barricades, plates, safety fencing and/or lights as required from the time of opening of the excavation until the excavation is surfaced and opened for travel.

(h) The Public Works Director, upon the review and approval of a plan and details for trimming trees in the right-of-way, may grant permission by permit to any ROW-user to trim trees upon and overhanging the right-of- way so as to prevent the

branches of such trees from coming in contact with the facilities of the ROW-user.

(i) In the event the ROW-user severely disturbs or damages the root structure of any tree in the right-of-way to the detriment of the health and safety of the tree, the ROW-user will be required to remove and replace the tree at the ROW-user's cost. Further, in review of the ROW-user's plan, Public Works Director, in his or her discretion, may require the ROW-user to directionally bore around any tree in the right-of-way.

(j) Upon the appropriate request of any person having satisfied City procedure and ordinances, the ROW-user shall remove, raise, or lower its facilities temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the ROW-user may require such payment in advance. The ROW-user must be given not less than 15 days written notice from the person detailing the time and location of the moving operations, and not less than 24-hours advance notice from the person advising of the actual operation.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-312. RIGHT-OF-WAY VACATION.**

(a) If the City vacates a right-of-way which contains the facilities of the service provider, and if the vacation does not require the relocation of the service provider's facilities, the City shall reserve, to and for itself and all service providers having facilities in the vacated right-of-way, an easement for the right to install, maintain and operate any facilities in the vacated right-of- way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining or repairing the same.

(b) If the vacation requires the relocation of facilities, and

(1) If the vacation proceedings are initiated by the service provider, the service provider must pay the relocation costs.

(2) If the vacation proceedings are initiated by the City, the service provider must pay the relocation costs unless otherwise agreed to by the City and the service provider.

(3) If the vacation proceedings are initiated by a person other than the service provider or the City, such other person must pay the relocation costs.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-313. ABANDONED AND UNUSABLE FACILITIES.**

(a) A ROW-user owning abandoned facilities in the right-of-way must either:

(1) Remove its facilities and replace or restore any damage or disturbance caused by the removal at its own expense. The Public Works Director may allow underground facilities or portions thereof remain in place if the

Public Works Director determines that it is in the best interest of public safety to do so. At such time, the City may take ownership and responsibility of such vacated facilities left in place;

(2) Provide information satisfactory to the City that the ROW-user's obligations for its facilities in the right-of-way have been lawfully assumed by another authorized ROW-user; or

(3) Submit to the City a proposal and instruments for transferring ownership of its facilities to the City. If the ROW-user proceeds under this section, the City may, at its option purchase the equipment, require the ROW-user, at its own expense, to remove it, or require the ROW-user to post a bond in an amount sufficient to reimburse the City for reasonable anticipated costs to be incurred to remove the facilities.

(b) Facilities of a ROW-user who fails to comply with this section, and whose facilities remain unused for two years, shall be deemed to be abandoned after the City has made a good faith effort to contact the ROW-user, unless the City receives confirmation that the ROW-user intends to use the facilities. Abandoned facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at law or in equity, including, but not limited to, (a) abating the nuisance, (b) taking possession and ownership of the facility and restoring it to a useable function, or (c) requiring the removal of the facility by the ROW-user.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-314. PERMIT REQUIREMENT.**

(a) Except as otherwise provided, no ROW-user may excavate any right-of- way or conduct any repair, construction, or reconstruction of facilities located within the right-of-way without first having obtained the appropriate right-of-way permit.

(b) There are two exemptions to this provision:

(1) Contractors working on the construction or reconstruction of public improvements.

(2) ROW-users performing routine service operations which do not require excavation in the right-of-way and do not disrupt traffic for more than four hours.

(c) No person owning or occupying any land abutting on a public right-of-way shall construct, maintain, or permit in or on the portion of the public right-of-way to which such land is adjacent, any fixed structure, material or object without having obtained the appropriate right-of-way permit.

(d) A right-of-way permit is required for emergency situations. If due to an emergency it is necessary for the ROW-user to immediately perform work in the right-of-way, and it is impractical for the ROW-user to first get the appropriate permit, the work may be performed, and the required permit shall be obtained as soon as possible during the next City working day.

(e) No permittee may excavate the right-of-way beyond the date or dates specified in the right-of-way permit unless the permittee:

(1) Makes a supplementary application for another right-of-way permit before the expiration of the initial permit; and

(2) A new right-of-way permit or permit extension is granted.

(f) Right-of-way permits issued shall be conspicuously displayed by the permittee at all times at the indicated work site and shall be available for inspection by the Public Works Director, other City employees and the public.

(g) Prior to the commencement of excavation, the permittee shall identify and locate any buried facilities to be spray painted according to the Uniform Color Code required by the Kansas One Call.

(h) All excavations by the permittee shall have a metal marker inserted into the excavation of the restored pavement, which shall identify the ROW-user.

(i) Before receiving a right-of-way permit, the applicant must show proof of any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC.

(j) Any ROW-user who is found to be working in the public right-of-way without a permit will be directed to stop work until a permit is acquired and properly posted at the work site. The only exception allowed is for emergency repair work.

(k) Any permittee found to be working without providing for required safety and traffic control will be directed to stop work until the appropriate measures are implemented in accordance with the current edition of the Manual on Uniform Traffic Control Devices.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-315. PERMIT APPLICATIONS.**

(a) Application for a right-of-way permit shall be submitted to the Public Works Director by either the ROW-user or by the person who will do the work and/or excavation in the right-of-way. Before an application may be submitted, the Applicant must attend a pre-application conference, unless waived by the City Engineer.

(b) Right-of-way applications shall contain and be considered complete only upon receipt of the following:

(1) Compliance with verification of registration;

(2) Submission of a completed permit application form, including all required attachments and scaled drawings showing the location and area of the proposed project and the location of all existing and proposed facilities at such location;

(3) A traffic control plan;

(4) Payment of all money due to the City for permit fees and costs, for prior excavation costs, for any loss, damage or expense suffered by the City because of the applicant's prior excavations of the right-of-way or for any emergency actions taken by the City, unless the payment of such money is in dispute and timely appealed as provided hereafter.

(c) If an Applicant has submitted an application for a permit for the installation, construction, maintenance or repair of multiple Facilities, that Applicant may not submit another application for a permit for the installation, construction, maintenance or repair of multiple Facilities until the first application has been approved or denied. This provision may be waived by the City Engineer.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)
(Ord. 2807C; 09-19-16)

**13-316. LIABILITY INSURANCE, PERFORMANCE AND MAINTENANCE BOND REQUIREMENT.**

(a) The permittee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas. The amount will be not less than $1,000,000 per occurrence and $2,000,000 in aggregate. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent acts or omissions of the permittee. If the permittee is self-insured, it shall provide the City proof of compliance regarding its ability to self insure and proof of its ability to provide coverage in the above amounts.

(b) The permittee shall at all times during the term of the permit, and for two years thereafter, maintain a performance and maintenance bond in a form approved by the City Attorney. The amount of the bond will be $5,000 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two additional years, conditioned upon the permittee's faithful performance of the provisions, terms and conditions conferred by this Ordinance. An annual bond in an amount of $50,000 automatically renewed yearly during this period shall satisfy the requirement of this section. In the event the City shall exercise its right to revoke the permit as granted herein, then the City shall be entitled to recover under the terms of the bond the full amount of any loss occasioned.

(c) A copy of the Liability Insurance Certificate and Performance and Maintenance Bond must be on file with the City Clerk.

(d) No performance and maintenance bond will be required for permits issued for driveway replacement or landscaping work such as irrigation systems and tree planting. No performance and maintenance bond will be required of any governmental entity. No performance and maintenance bond or liability insurance will be required of any residential property owner working in the right-of-way adjacent to his or her residence, who does not utilize a contractor to perform the excavation.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-317. RIGHT-OF-WAY PERMIT FEES AND COSTS.**

(a) The right-of-way permit fee shall be recommended by the Public Works Director, approved by the Governing Body and listed in the Schedule of Fees maintained in the City Clerk's office.

(b) The right-of-way permit fee may include a permit and inspection fee, and an excavation fee.

(c) Fees paid for a right-of-way permit, which is subsequently revoked by the Public Works Director, are not refundable.

(d) Except as provided for in an emergency situation, when a ROW-user is found to have worked or is working in the right-of-way without having obtained a permit, the fee for the permit will be double the amount had the ROW-user obtained a permit prior to beginning work.

(e) The City may also charge and collect any necessary repair and restoration costs.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-318. ISSUANCE OF PERMIT.**

(a) If the Public Works Director determines that the applicant has satisfied the requirements of this Ordinance, the Public Works Director shall issue a right-of-way permit.

(b) The Public Works Director may impose reasonable conditions upon the issuance of a right-of-way permit and the performance of the permittee in order to protect the public health, safety and welfare, to ensure the structural integrity of the right-of-way, to protect the property and safety of other users of the right-of-way, and to minimize the disruption and inconvenience to the traveling public.

(c) When a right-of-way permit is requested for purposes of installing additional facilities and the performance and maintenance bond for additional facilities is reasonably determined to be insufficient, the posting of an additional or larger performance and maintenance bond for the additional facilities may be required.

(d) Issued permits are not transferable.

(e) If work is being done for the ROW-user by another person, a subcontractor or otherwise, the person doing the work and the ROW-user shall be liable and responsible for all damages, obligations, and warranties herein described.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-319. PERMITTED WORK.**

(a) The permittee shall not make any cut, excavation or grading of right-of-way other than excavations necessary for emergency repairs without first securing a right-of-way permit.

(b) The permittee shall not at any one time open or encumber more of the right-of-way than shall be reasonably necessary to enable the permittee to complete the project in the most expeditious manner.

(c) The permittee shall, in the performance of any work required for the installation, repair, maintenance, relocation and/or removal of any of its facilities, limit all excavations to those excavations that are necessary for efficient operation.

(d) The permittee shall not permit such an excavation to remain open longer than is necessary to complete the repair or installation.

(e) The permittee shall notify the City no less than three working days in advance of any construction, reconstruction, repair, location or relocation of facilities which would require any street closure or which reduces traffic flow to less than two lanes of moving traffic for more than four hours. Except in the event of an emergency as reasonably determined by the permittee, no such closure shall take place without notice and prior authorization from the City.

(f) Non-emergency work on arterial and collector streets may not be accomplished during the hours of 7:00 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m., in order to minimize disruption of traffic flow.

(g) All work performed in the right-of-way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected at the permittee's expense. Such signage shall be in conformance with the latest edition of the Administration's Manual on Uniform Traffic Control Devices, unless otherwise agreed to by the City.

(h) The permittee shall identify and locate any underground facilities in conformance with the Kansas Underground Utility Damage Prevention Act "Kansas One Call" system, and notice shall be provided directly to Water District No. 1 and either to Kansas City Power and Light (KCPL) or to the Traffic Operations Section of the Public Works Department with respect to any municipal traffic signal and street light systems, as appropriate.

(i) The permittee shall be liable for any damages to underground facilities due to excavation work prior to obtaining location of such facilities, or for any damage to underground facilities that have been properly identified prior to excavation. The permittee shall not make or attempt to make repairs, relocation or replacement of damaged or disturbed underground facilities without the approval of the owner of the facilities.

(j) Whenever there is an excavation by the permittee, the permittee shall be responsible for providing adequate traffic control to the surrounding area as determined by Public Works Director of the City. The permittee shall perform work on the right-of-way at such times that will allow the least interference with the normal flow of traffic and the peace and quiet of the neighborhood. In the event the excavation is not completed in a reasonable period of time, the permittee may be liable for actual damages to the City for delay caused by the permittee pursuant to this Ordinance.

(k) All facilities and other appurtenances laid, constructed and maintained by the permittee shall be laid, constructed and maintained in accordance with acceptable engineering practice and in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, as well as the rules and regulations of the Kansas Corporation Commission or any other local, state or federal agency having jurisdiction over the parties.

(l) Following completion of permitted work for new construction, the permittee shall keep, maintain and provide to the City accurate records and as-built drawings, drawn to scale and certified to the City as accurately depicting the location of all utility facilities constructed pursuant to the permit. When available to the permittee, maps and drawings provided will be submitted in AUTOCAD.DXF or AUTOCAD.DWG automated formats if available, or in hard copy otherwise. The Public Works Director may waive this requirement. Such information shall be subject in all respects and shall have the benefit of protection as set forth in the section entitled "Mapping Requirements of Service Provider" contained herein.

(m) The City may use the as-built records of the service provider's facilities in connection with public Improvements.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-320. RIGHT-OF-WAY REPAIR AND RESTORATION.**

(a) The work to be done under the right-of-way permit and the repair and restoration of the right-of-way as required herein must be completed within the dates as specified in the permit. However, in the event of circumstances beyond the control of the permittee or when work was prohibited by unseasonable or unreasonable conditions, the Public Works Director may extend the date for completion of the project upon receipt of a supplementary application for a permit extension.

(b) All earth, materials, sidewalks, paving, crossing, utilities, public improvement or improvements of any kind damaged or removed by the permittee shall be fully repaired or replaced promptly by the permittee at its sole expense and the reasonable satisfaction of the City. The Public Works Director has the authority to inspect the repair or replacement of the damage, and if necessary, to require the permittee to do the additional necessary work. Notice of the unsatisfactory restoration and the deficiencies found will be provided to the permittee and a reasonable time not to exceed 15 days will be provided to allow for the deficiencies to be corrected.

(c) After any excavation, the permittee shall, at its expense, restore all portions of the right-of-way to the same condition or better condition than it was prior to the excavation thereof.

(d) In addition to repairing its own street cuts, the permittee must restore any area within five feet of the new street cut that has previously been excavated, including the paving and its aggregate foundations.

(e) If the permittee fails to restore the right-of-way in the manner and to the condition required by the Public Works Director, or fails to satisfactorily and timely complete all restoration the City may, at its option, serve written notice upon the permittee and its surety that, unless within five days after serving of such notice, a satisfactory arrangement can be made for the proper restoration of the right-of-way, the City shall immediately serve notice of failure to comply upon the surety and the permittee, and the surety shall have the right to take over and complete the work; provided, however, that if the surety does not commence performance thereof within 10 days from the date of notice, the City may take over the work and prosecute same to completion, by contract or otherwise, at the expense of the permittee, and the permittee and its surety shall be liable to the City for any and all excess cost assumed by the City by reason of such prosecution and completion.

(f) The permittee responsible for the excavation who leaves any debris in the right-of-way shall be responsible for providing safety protection in accordance with the latest edition of the Manual of Uniform Traffic Control Devices and any applicable federal or state requirement.

(g) If an excavation cannot be back-filled immediately and left unattended, the permittee shall securely and adequately cover the unfilled excavation. The permittee has sole responsibility for maintaining proper barricades, safety fencing and/or lights as required, from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(h) In restoring the right-of-way, the permittee guarantees its work and shall maintain it for 24 months following its completion. During the 24 months the permittee shall, upon notification from the Public Works Director, correct all restoration work to the extent necessary, using any method as required by the Public Works Director. The work shall be completed within a reasonable time, not to exceed 30 calendar days, of the receipt of notice from the Public Works (not including days during which work cannot be done because of circumstances constituting force Majeure or days when work is prohibited as unseasonable or unreasonable). In the event the permittee is required to perform new restoration pursuant to the foregoing guarantee, the Public Works Director shall have the authority to extend the guarantee period for such new restoration for up to an additional 24 months from the date of the new restoration, if the Public Works Director determines any overt action by the permittee not to comply with the conditions of the right-of-way permit and any restoration requirements.

(i) The 24 month guarantee period shall be applicable to failure of the pavement surface as well as failure below the pavement surface.

(j) Payment of an excavation fee shall not relieve the permittee of the obligation to complete the necessary right-of-way restoration.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-321. JOINT APPLICATIONS.**

(a) Applicants may apply jointly for permits to excavate the right-of-way at the same time and place.

(b) Applicants who apply jointly for a right-of-way permit may share in the payment of the permit fee. Applicants must agree among themselves as to the portion each shall pay.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-322. SUPPLEMENTARY APPLICATIONS.**

(a) A right-of-way permit shall only be valid for the area of the right-of-way specified within the permit. No permittee may cause any work to be done outside the area specified in the permit, except as provided herein. Any permittee who determines that an area greater than that which is specified in the permit must be excavated must do the following prior to the commencement of work in that greater area: (a) make application for a permit extension and pay any additional fees required thereby; and (b) receive a new right-of-way permit or permit extension.

(b) A right-of-way permit shall be valid only for the dates specified in the permit. No permittee may commence work before the permit start date or, except as provided herein, may continue working after the end date. If a permittee does not complete the work by the permit end date, the permittee must apply for and receive a new right-of-way permit or a permit extension for additional time. This supplementary application must be submitted to the City prior to the permit end date.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-323. OTHER OBLIGATIONS.**

(a) Obtaining a right-of-way permit under this Ordinance shall not relieve the permittee of its duty to obtain any necessary permit, license, certification, grant, registration, franchise agreement or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, and to pay any fees required by any other City, County, State, or Federal rules, laws, or regulations. A permittee shall perform all work in full accord with any and all applicable engineering codes adopted or approved by the parties and in accordance with applicable statutes of the State of Kansas, and the rules and regulations of the KCC or any other local, state or federal agency having jurisdiction over the parties. A permittee shall perform all work in conformance with all applicable codes and established rules and regulations and shall be responsible for all work done in the right-of-way pursuant to its permit, regardless by whom the work is done by.

(b) Except in cases of an emergency or with approval of the Public Works Director, no right-of-way work may be done when conditions are unreasonable for such work.

(c) A permittee shall not disrupt a right-of-way such that the natural free and clear passage of water through the gutters or other waterways is interfered with. Private vehicles may not be parked within or next to the permit area.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-324. DENIAL OF PERMIT.**

(a) The Public Works Director may deny a permit or prohibit the use or occupancy of a specific portion of the right-of-way to protect the public health, safety and welfare, to prevent interference with the safety and convenience of ordinary travel over the right-of-way, or when necessary to protect the right-of-way and its users. The Public Works Director, at his or her discretion, may consider all relevant factors including but not limited to:

(1) The extent to which the right-of-way space where the permit is sought is available;

(2) The competing demands for the particular space in the right-of-way;

(3) The availability of other locations in the right-of-way or in other right-of-way for the facilities of the applicant;

(4) The applicability of any ordinance or other regulations that affect location of facilities in the right-of-way;

(5) The degree of compliance of the applicant with the terms and conditions of its franchise, this Ordinance, and other applicable ordinances and regulations;

(6) The degree of disruption to surrounding communities and businesses that will result from the use of that part of the right-of-way;

(7) The balancing of costs of disruption to the public and damage to the right-of-way, against the benefits to that part of the public served by the construction in the right-of-way;

(8) Whether the applicant maintains a current registration with the City;

(9) Whether the issuance of a right-of-way permit for the particular dates and/or time requested would cause a conflict or interferes with an exhibition, celebration, festival, or any other event. In exercising this discretion, the Public Works Director shall be guided by the safety and convenience of anticipated travel of the public over the right-of-way.

(b) Notwithstanding the above provisions, the Public Works Director may in his or her discretion issue a right-of-way permit in any case where the permit is necessary to:

(1) Prevent substantial economic hardship to a user of the applicant's service;

(2) Allow such user to materially improve the service provided by the applicant.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-325. REVOCATION OF PERMIT.**

(a) Permittees hold right-of-way permits issued pursuant to this Ordinance as a privilege and not as a right. The City reserves its right as provided herein, to revoke any right-of-way permit, without refund of the permit fee, in the event of a substantial breach of the terms and conditions of any law or the right-of-way permit. A substantial breach shall include, but not be limited to the following:

(1) The violation of any material provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens;

(3) Any material misrepresentation of any fact in the permit application;

(4) The failure to maintain the required bond or insurance;

(5) The failure to complete the work in a timely manner;

(6) The failure to correct a condition indicated on an order issued pursuant to this Ordinance;

(7) Repeated traffic control violations; or

(8) Failure to repair facilities damaged in the right-of-way.

(b) If the Public Works Director determines that the permittee has committed a substantial breach of any law or condition placed on the right-of-way permit, the Public Works Director shall make a written demand upon the permittee to remedy such violation. The demand shall state that the continued violation may be cause for revocation of the permit, or legal action if applicable. Further, a substantial breach, as stated above, will allow the Public Works Director, at his or her discretion, to place additional or revised conditions on the right-of-way permit, specifically related to the manner in which the breach is cured by the permittee. Within five calendar days of receiving notification of the breach, permittee shall contact the Public Works Director with a plan, acceptable to the Public Works Director, for correction of the breach. Permittee's failure to contact the Public Works Director, permittee's failure to submit an acceptable plan, or permittee's failure to reasonably implement the approved plan shall be cause for immediate revocation of the right-of-way permit.

(c) If a right-of-way permit is revoked, the permittee shall also reimburse the City for the City's reasonable costs, including administrative costs, restoration costs and

the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-326. WORK REQUIREMENTS AND INSPECTIONS.**

(a) Any excavation, back filling, repair and restoration, and all other work performed in the right-of-way shall be done in conformance with the City's Manual of Infrastructure Standards as promulgated by the Public Works Director.

(b) The permittee shall employ a testing laboratory as approved by the Public Works Director, which shall certify the proper backfilling on any street cut The permittee shall pay all costs associated with such testing. This provision shall be waived when flowable fill is used as backfill or with the permission of the Public Works Director.

(c) The permittee shall notify the office of the Public Works Director upon completion of the authorized work permit.

(d) The permittee will notify the Public Works Director to schedule an inspection at the start of backfilling. Upon completion of all right-of-way restoration activities, the permittee will schedule a closeout inspection.

(e) When any corrective actions required have been completed and inspected to the Public Works Director's satisfaction, the two year maintenance period will begin.

(f) In addition to the required scheduled inspections, the Public Works Director may choose to inspect the ongoing permitted work in the right-of-way at any time to ensure that all requirements of the approved permit are being met by the permittee.

(g) At the time of any inspection, the Public Works Director may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or well being of the public. The Public Works Director may issue a citation to the permittee for any work, which does not conform, to the applicable standards, conditions, code or terms of the permit. The citation shall state that failure to correct the violation will be cause for revocation of the permit.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-327. APPEALS PROCESS.**

(a) Whenever a person shall deem themselves aggrieved by any decision or action taken by the Public Works Director, the person may file an appeal to the Governing Body within 10 calendar days of the date of notice of such decision or action.

(b) The persons shall be afforded a hearing on the matter before the Governing Body within 30 days of filing the appeal.

(c) In cases of applicability or interpretation of the rules, the Governing Body may revoke such decision or action taken by the Public Works Director.

(d) In cases where compliance with such decision or action taken by the Public Works Director would cause undue hardship, the Governing Body may extend the time limit of such decision or action, or may grant exceptions to, or waive requirements of, or grant a variance from the specific provisions of rules. The Governing Body shall give due consideration to the purposes of the rules in preserving public safety and convenience, integrity of public infrastructure, and the operational safety and function of the public right-of-way.

(e) Pending a decision of the Governing Body, the order of the Public Works Director shall be stayed, unless the Public Works Director determines that such action will pose a threat to public safety or the integrity of the public infrastructure.

If a person still deems themselves aggrieved after the appeal to the Governing Body, such person shall have 30 days after the effective date of the Governing Body's final decision to institute an action in the District Court of Johnson County, Kansas.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-328. INDEMNIFICATION.**

A ROW-user 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 ROW-user, any agent, officer, director, or their respective officers, agents, employees, directors or representatives, while installing repairing or maintaining facilities in a public right-of-way. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve the ROW-user from its duty to defend against liability or its duty to pay and judgment entered against the City, or its agents.

If a ROW-user and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state of federal law. This section is solely for the benefit of the City and ROW-user and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-329. FORCE MAJEURE.**

Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other circumstances beyond the ROW-user's or the City's control.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-330. FEDERAL, STATE AND CITY JURISDICTION.**

This Ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this Ordinance to the contrary, the construction, operation and maintenance of the ROW-user's facilities shall be in accordance with all laws and regulations of the United States, the state and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, the ROW-user shall meet or exceed the most stringent technical standards set by regulatory bodies, including the City, now or hereafter having jurisdiction. The ROW-user's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. The ROW-user shall comply with all applicable laws and ordinances enacted pursuant to that power. Finally, failure of the ROW-user to comply with any applicable law or regulation may result in a forfeiture of any permit, registration or authorization granted in accordance with this Ordinance.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-331. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutionally any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-332. CITY'S FAILURE TO ENFORCE.**

The City's failure to enforce or remedy any noncompliance of the terms and conditions of this Ordinance or of any permit granted hereunder shall not constitute a waiver of the City's rights nor a waiver of any person's obligation as herein provided.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-333. PENALTIES.**

(a) Any person or entity violating any provision of this chapter is guilty of a public offense, and upon conviction thereof shall be fined in a sum of not less than $200 nor more than $500. Every day that this chapter is violated shall constitute a separate offense.

(b) The violation of any provision of this Ordinance is hereby deemed to be grounds for revocation of the permit and registration to operate with the City.

(c) The City shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this Ordinance. In addition to any other remedies, the City Attorney may institute injunction, mandamus or other appropriate action or proceeding to prevent violation of this Ordinance.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-334. RESERVATION OF RIGHTS.**

(a) In addition to any rights specifically reserved to the City by this Ordinance, the City reserves unto itself every right and power which is required to be reserved by a provision of any ordinance under any registration, permit or other authorization granted under this Ordinance. The City shall have the right to waive any provision of this Ordinance or any registration, permit or other authorization granted thereunder, except those required by federal or state law, if the City determines as follows: (a) that it is in the public interest to do so; and (b) that the enforcement of such provision will impose an undue hardship on the person. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

(b) Notwithstanding anything to the contrary set forth herein, the provisions of this Ordinance shall not infringe upon the rights of any person pursuant to any applicable state or federal statutes, including, but not limited to the right to occupy the right-of-way.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-335. REPEAL OF OTHER ORDINANCES.**

All other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed, and set aside;

provided, that this ordinance shall not take effect or become in force until the requirements for adopting an ordinance as set forth in the Code of the City of Leawood have occurred.

(Ord. 1834C, 12-06-99)
(Ord. 1976C; 12-16-02)

**13-336. Reserved for future use.**

**13-337. PLACEMENT OF GATES ON PUBLIC STREETS.**

(a) **Intent.** It is the stated policy of the Governing Body of the City of Leawood, Kansas, that the installation of limited access gates between residential subdivisions is not in the overall general interest of the citizens of Leawood and its neighboring communities. The installation of a limited access gate should be a rare exception with any installation being clearly demonstrated to the Governing Body by professional documentation that the positive impact of such an installation significantly exceeds the potential detrimental impact created by the presence of the limited access gate. Additionally, any limited access gate permitted and installed subsequent to the effective date of this ordinance, should be subject to periodic review with regard to maintenance.

(b) **Gates prohibited; exceptions.** Subject to the terms of this section, no person or entity shall install or maintain a limited access gate on or along any public street. Limited access gates installed prior to the effective date of this ordinance shall not be subject to the terms of this ordinance. Limited access gates on public streets may only be installed upon approval of the Governing Body.

(c) **Procedure for approval.** A person or entity desiring to install a limited access gate on or along a public street shall provide information and documentation to the City Administrator proving the following factors:

(1) The City has not previously decided that a limited access gate located at or near the site should be denied;

(2) The street connection involved has been constructed;

(3) There are at least two existing unobstructed access points within any directly affected subdivision;

(4) The furthest linear travel surface distance between the closest unobstructed access point and any home site is less than or equal to 1,500 feet;

(5) The magnitude of the density, defined as dwelling unit per acre, between the affected subdivisions varies by at least 50%;

If the City Administrator determines that these factors have been met, then the applicant shall remit to the City the amount necessary for the City to commission a traffic study to evaluate the vehicle and pedestrian traffic and the capacity of the street design and street construction of the affected streets with and without having the proposed limited access gate. The study shall then be distributed to any directly affected neighboring city and subdivision, with a request for a formal response by a date certain. Upon expiration of the date certain, the City Administrator shall make a recommendation as to compliance with these conditions and shall compile this information and his findings and shall submit the information to the Planning Director. The applicant may then, upon filing the proper development application and fees, proceed with a proposed final development plan amendment with the Planning Commission.

If the City Administrator finds that any of the above referenced elements have not been met, then the applicant may not proceed with a request for amendment to the final development plan. The City Administrator shall inform the applicant of this decision. The applicant may then seek appeal to the Governing Body and the matter shall be scheduled on the next available agenda for hearing. If the Governing Body by majority vote of its membership determines that the factors have been met, then the applicant may proceed with filing the proper development application and fees necessary to request amendment to its final development plan.

(Ord. 1976C; 12-16-02)
(Ord. 1974C; 12-16-02)

# CHAPTER XIII. STREETS AND SIDEWALKS

## ARTICLE 4. TREES AND SHRUBS

SECTIONS


13-401(A) PURPOSE
13-401(B) DEFINITIONS
13-402 STREET TREES
13-403 SPACING
13-404 PLACEMENT OF TREES
13-404(A) STREET TREES REQUIRED FOR NEW CONSTRUCTION
13-405 CARE OF STREET TREES
13-406 TREE-TOPPING UNLAWFUL; EXEMPTION
13-407 DUTY TO PRUNE OVERHANGING TREES
13-408 DISEASED, DEAD TREES; DUTY TO REMOVE
13-409 FAILURE TO COMPLY
13-410 REMOVAL OF STUMPS
13-411 INTERFERENCE WITH CITY UNLAWFUL
13-412 ENFORCEMENT AUTHORITY
13-413 VIOLATIONS, PENALTIES


**13-401(a). PURPOSE**

The purpose of this article is to preserve, protect, replace and properly maintain Street Trees within the City of Leawood, because trees are an important part of the community infrastructure, similar to waterlines, storm water systems and roadways. They improve our air, water and land quality by virtue of their biological functions. Trees provide aesthetic value to our community by increasing property values and improving our quality of life. Trees are long-lived and their services and value improve with age. For these reasons, Street Trees are recoginized as important green infrastructure in our community. Examples of how Street Trees provide services to our community include:

1. Street Trees improve air quality by absorbing carbon dioxide, filtering out pollutants and providing oxygen.
2. Street Trees preserve and enhance the physical and aesthetic environment.

3. Street Trees reduce energy consumption, by shading roofs and streetscapes.
4. Street Trees reduce costs associated with gray infrastructure.
5. Street Trees absorb and intercept stormwater and help to reduce flooding and erosion.
6. Street Trees provide habitat for wildlife and food for birds and insects.
7. Street Trees improve physical and psychological health and social behavior.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Code 1984)

**13-401(b).** **DEFINITIONS.** For purposes of this article, the following terms shall have the following meanings:

(a) *Approved Landscape Plan* shall mean a landscape plan approved by the Governing Body that establishes the location, and number of Street Trees in a specific development or area.

(b) *Large Tree* shall mean a tree which, when mature, is expected to grow to a height of greater than 40 feet.

(c) *Medium Tree* shall mean a tree which, when mature, is expected to grow to a height of 25 to 40 feet.

(d) *Street Trees* shall mean trees within the street right-of-way.

(e) *Tree Lawn* shall mean the area of right of way between the back of curb to the edge of the sidewalk, or the area from back of curb to right of way line where no sidewalk is present.

(f) *Tree Topping* shall mean the reduction of a tree's size using heading cuts that shorten limbs or branches leaving stubs or lateral branches that are not large enough to assume a terminal role to such a degree so as to remove the normal canopy and disfigure the tree.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Code 1984)

**13-402.** **STREET TREES.** The City of Leawood shall maintain an extensive list of recommended species of Street Trees. The list shall be available on the City of Leawood website.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Ord. 1541C; 11-06-95)

**13-403.** **SPACING.** Residents or homes associations replacing or planting new Street Trees shall maintain minimum spacing. The minimum spacing of Street Trees shall 30 feet for Medium Trees, and 40 feet for Large Trees. The Director of Public Works may approve an exception to the minimum spacing when, due to the layout of a lot, street or sidewalk, and/or because of the location of existing trees, the minimum spacing cannot reasonably be achieved.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Ord. 1707C; 01-19-98)

**13-404.** **PLACEMENT OF TREES.** Street trees shall be planted in a minimum 10 feet wide tree lawn, or a minimum of 5 feet from the curbline when no sidewalk is present. Street trees planted prior to 2015 in tree lawns less than 10 feet wide, but greater than 7 feet wide, may be replaced in the same location. Existing Street trees in tree lawns less than 7 feet shall not be replaced when removed.

After the effective date of this Ordinance, no Street Tree shall be planted:

(a) Within 35 feet of any street corner, measured from the point of nearest intersecting curbs or curblines;
(b) Within 10 feet of any fire hydrant;
(c) Under or within 20 lateral feet for Medium Trees or 30 lateral feet for Large Trees of any overhead electric distribution lines.
(d) In violation of any overhead transmission line utility easement.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Ord. 1707C; 01-19-98)

**13-404(A).** **STREET TREES REQUIRED FOR NEW CONSTRUCTION.** Construction or reconstruction resulting in a new single family or two family dwelling shall provide for the planting of one street tree for each 40 feet of street frontage. Such trees shall be in the right-of-way unless the layout of the lot, utilities, sidewalk and street do not allow for such planting, in which case a tree planted no more than 5 feet from any sidewalk, shall be allowed to meet this requirement. Existing trees in good health located in the right-of-way adjacent to the lot, shall be counted toward this requirement.

(Ord. 2921C; 01-07-19)

**13-405.** **CARE OF STREET TREES.** It shall be the responsibility of the adjacent landowner and/or homes association to plant, prune, maintain and remove Street Trees. The city shall have the right to prune, maintain and remove trees, plants and shrubs or any part thereof within the right-of-way of all streets, alleys, avenues, lanes, squares and public grounds, as may be necessary to insure public safety. The city may remove, or cause or order to be removed, any tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to storm sewers or other public improvements, as determined by the Superintendent of Parks and in accordance with the procedures set forth in this Ordinance and Kansas Statutes.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Code 1984)

**13-406.** **TREE-TOPPING UNLAWFUL; EXEMPTION.** It shall be unlawful for any person, firm or entity to perform Tree Topping or otherwise to top any Street Tree. Street 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 exempted from this section by the Superintendent of Parks.

(Ord. 2921C; 01-07-19)
(Ord. 1707C; 01-19-98)

**13-407.** **DUTY TO PRUNE OVERHANGING TREES.**

(a) Every owner of any tree or the owner of land adjacent to right-of-way where a Street Tree is planted, is required to prune the branches so that such branches shall not obstruct the light from any street lamp, obstruct the view of any street intersection or obstruct any public sidewalk, and to provide a clear space of 10 feet above the surface of the sidewalk and 14 feet above the surface of the street at the curbline.

(b) Every owner of any tree or the owner of the land adjacent to the right-of-way where Street Trees are planted, shall remove all dead, diseased or dangerous trees, or broken or decayed limbs which constitute a danger to the health, safety or welfare of the public. In accordance with the City's Code and Kansas law, the city shall have the right to prune any tree or shrub on public right-of-way or on private property when it interferes with the proper spread of light along the street from a street light, or interferes with visibility of any traffic control device or sign or interferes with any public sidewalk. The cost of such work shall be charged to such owner as provided by law.

(c) Should such owner fail to prune trees as provided herein, the City shall send a notice of violation to such owner providing that such trees must be pruned within 10 days and that failure to abide by the notice will result in a citation being issued.

(Ord. 2921C; 01-07-19)
(Ord. 2522C; 02-06-12)
(Code 2000)
(Code 1984)

**13-408. DISEASED, DEAD TREES; DUTY TO REMOVE.**

The city shall have the right to cause the removal of any dead or diseased trees on private property within the city, when such trees constitute a hazard to life and property, or harbor insects or disease which constitute a potential threat to other trees within the city. The city will proceed as required by Kansas law and shall notify the owners of such trees in writing. Removal shall be done by the owners at their own expense within 60 days after the date of mailing of such notice.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Code 1984)
(Ord. 648; 09-17-79)

**13-409. SAME; FAILURE TO COMPLY.**

Upon the failure of a person who is under the duty to remove a dead or diseased tree pursuant to Section 13-408 to so remove, the city shall have the authority to remove such trees and to charge the cost of removal against the owner, in accordance with the procedures set forth in Kansas law. The City Clerk shall, at the time of certifying other city taxes to the County Clerk, certify the unpaid costs of removal and the County Clerk shall extend the same on the tax roll of the county against the lot or parcel involved.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Code 1984)
(Ord. 648; 09-17-79)

**13-410. REMOVAL OF STUMPS.**

All stumps of Street Trees shall be removed below the surface of the ground within 60 days of tree removal.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Code 1984)
(Ord. 648; 09-17-79)

**13-411. INTERFERENCE WITH CITY UNLAWFUL.**

It shall be unlawful for any person to prevent, delay, or interfere with the City of Leawood or its agents, contractors or employees, while engaging in and about the pruning, or removing of any Street Tree.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Code 1984)

**13-412. ENFORCEMENT AUTHORITY.**

The Community Development Department's code enforcement officers, in cooperation with and on the recommendations of the Parks and Recreation Department's Superintendent of Parks, will be responsible for enforcement of this article.

(Ord. 2921C; 01-07-19)
(Code 2000)
(Ord. 1707C; 01-19-98)

**13-413. VIOLATION, PENALTIES.**

Any person who shall violate a provision of this Article, or fail to comply with any of the requirements of this Article, shall be subject to a fine of not less than $100.00 or more than $1,000.00, and may be ordered to correct the violation or make restitution for the correction of the violation thereof, at the discretion of the court. Each day that a violation continues shall be deemed a separate offense.

(Ord. 2921C; 01-07-19)

# ARTICLE 5. 135th STREET CORRIDOR IMPACT FEE

SECTIONS


13-501 SHORT TITLE
13-502 PURPOSE
13-503 DEFINITIONS
13-504 APPLICABILITY OF IMPACT FEE
13-505 IMPOSITION OF IMPACT FEE
13-506 AMOUNT OF IMPACT FEE
13-507 COLLECTION OF IMPACT FEE
13-508 CALCULATION OF IMPACT FEE
13-509 ANNUAL REVIEW
13-510 RESTRICTIONS ON USE OF AND ACCOUNTING FOR IMPACT FEE FUNDS
13-511 REFUNDS
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13-513 EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS
13-514 IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT
13-515 VARIANCES AND EXCEPTIONS


**13-501.** **SHORT TITLE.** This Ordinance shall be known and cited as the "Leawood, Kansas 135th Street Corridor Impact Fee Ordinance".

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-502.** **PURPOSE.** A 135th Street corridor impact fee is imposed on new development in the 135th Street corridor for the purpose of assuring that 135th Street transportation improvements are available and provide adequate transportation system capacity to support new development while maintaining levels of transportation service on 135th Street deemed adequate by the City. The impact fee shall be imposed on all new development in the 135th Street corridor and all fees collected shall be utilized solely and exclusively for transportation improvements in the 135th Street corridor serving such new development.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-503. DEFINITIONS.**

(a) ***Applicant***: the property owner or duly designated agent of the property owner, of land on which a building permit has been requested for non-residential development or on which final plat approval has been requested for residential development.

(b) ***Building***: any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.

(c) ***Building Permit***: the City permit required for new building construction and/or additions to buildings pursuant to Chapter 4 of the Code of the City of Leawood. The term "building permit" as used herein shall not be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses.

(d) ***City***: the City of Leawood, Kansas.

(e) ***Development***: the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit; and the final platting of land for residential development.

(f) ***Dwelling***: any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.

(g) ***Floor Area, Finished***: the square foot area of all space within the outside line of exterior walls including the total area of all floor levels, but excluding porches, garages, or unfinished space in a basement or cellar.

(h) ***Highway K-150****:* means that road formally known as Highway K-150, and currently known as 135th Street. (i) *Highway K-150 Corridor*: all of that land within the north and south Highway K-150 reverse frontage roads, also known as 133rd Street and 137th Street, as set forth in the Leawood Master Development Plan.

(i) ***135th Street Corridor Impact Fee or Impact Fee***: a pro rata regulatory fee imposed on all new development in the 135th Street corridor and required by the City as a condition of development approval and collected at final platting for residential development and at building permit issuance for nonresidential development to ensure that the necessary 135th Street corridor transportation improvements are or will be in place to accommodate the traffic generated by such new development.

(j) ***Highway K-150 Corridor Study***: the Joint Land Use Study and Recommended Corridor Development Plan for Highway K-150 prepared by the Cities of Leawood, Olathe and Overland Park and Johnson County, Kansas.

(k) ***Impact Fee Rate***: the amount of the applicable impact fee per trip generated by new development in the 135th Street corridor.

(l) ***Master Plan or Master Development Plan***: the official, adopted comprehensive development plan for the City of Leawood, and amendments thereto, including the Major Street Plan.

(m) ***Nonresidential Development***: all development other than residential development and public and quasi-public use, as herein defined.

(n) ***Property***: a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.

(o) ***Property Owner***: any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.

(p) ***Public and Quasi-Public Use***: a development owned, operated or used by the City of Leawood, Kansas; any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, and any agencies or departments thereof; the Federal Government, and any agencies and departments thereof. For purposes of this Ordinance only, "places of worship" are hereby defined as quasi-public uses.

(q) ***Residential Development***: the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.

(r) ***Subdivision Regulations***: The Subdivision Regulations of the City of Leawood contained in the Leawood Development Ordinance, including all duly adopted amendments thereof.

(s) ***Transportation Improvements***: the development of Phase I roads and roadway improvements in the 135th Street corridor, which may include but which are not limited to, widening, paving, intersectional improvements, signalization, grading, acquisition of right-of-way, medians, turn lanes, curbs, gutters, signage, sidewalks, street lighting and ancillary facilities or any portion thereof pursuant to the City Master Plan and this Ordinance.

(t) ***Transportation Improvement Costs***: the amounts spent, to be spent or authorized to be spent in connection with the provision of transportation improvements, which may include, but which are not limited to, funds spent on the planning, design, engineering, financing, acquisition of land or easements, construction, administration or incidental expenses associated with the provision of transportation improvements.

(u) ***Zoning Ordinance***: The Leawood Development Ordinance including all duly adopted amendments thereto.

(v) ***135th Street Corridor:*** means all of that land within and between 133rd Street and 137th Street in the City of Leawood, as more further set forth in the Leawood Master Development Plan, all as formerly known as or may be referred to as the K-150 Corridor.

(Ord. 1027C; 01-04-88)
(Ord 2073C; 08-16-04)
(Ord. 2554C; 07-16-12)

**13-504. APPLICABILITY OF IMPACT FEE.**

(a) This Ordinance shall be uniformly applicable to residential and nonresidential development, but not public and quasi-public uses, on property in the City of Leawood which is in the 135th Street corridor.

(b) This Ordinance shall be applicable to development occurring prior to, in conjunction with, or subsequent to the initiation of Phase I transportation improvements in the 135th Street corridor as set forth in the Master Plan and in Attachment "A" to Ordinance 1027C; provided, however, that such transportation improvements are actually provided within a reasonable period of time following payment of the impact fee imposed by this Ordinance.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-505 IMPOSITION OF IMPACT FEE.**

(a) No building permit for development to which this section is applicable shall be issued by the City nor shall any development subject to this section be finally approved by the City unless the applicant therefor or the owner of the subject property has paid the applicable impact fee in full in the amount and manner prescribed herein.

(b) The impact fee shall not be imposed on any residential development for which final plat approval had been granted by the City or on any nonresidential development for which a building permit has been issued by the City on or before the date of adoption of this section.

(c) Imposition of the impact fee does not alter, negate, supersede or otherwise affect any other requirements of city, county, state or federal legislation or regulations that may be applicable to a development, including City zoning and/or subdivision regulations that may impose transportation improvements requirements, right-of-way dedication requirements, and design and construction standards for local, collector or arterial streets.

(d) Upon receipt of an application for a preliminary plat, the Director of Community Development shall preliminarily calculate the amount of the impact fee due by multiplying the impact fee rate by the number of dwelling units or floor area (in square feet) for the proposed development for which subdivision approval is being sought. This calculation shall be an estimate only for the benefit of the applicant for subdivision approval and shall be subject to final determination at such time as the applicant requests final plat approval for residential development or a building permit for nonresidential development.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-506. AMOUNT OF IMPACT FEE.**

(a) Impact Fee Rate: the impact fee rate shall be established by Resolution of the City Council initially upon the adoption of this Ordinance, and thereafter as part of the annual review provided in Section 13-509 or at such other times as deemed necessary by the City. If no action is taken by the City Council to amend the impact fee rate, the rate then in effect shall remain in effect.

(b) Amount of Impact Fee: the amount of the impact fee per dwelling unit for residential development and the amount of the impact fee per square foot of floor area, finished for nonresidential development (by type) shall be established by Resolution of the City Council initially upon the adoption of this Ordinance, and thereafter as part of the annual review provided in Section 13-509 or at such other times as deemed necessary by the City. If no action is taken by the City Council to amend the impact fee amounts, the amounts then in effect shall remain in effect.

(Ord. 1027C; 01-04-88)
(Reso. No. 1357; 07-07-97)
(Reso. No. 2287; 08-16-04)
(Ord. 2554C; 07-16-12)

**13-507. COLLECTION OF IMPACT FEE.**

(a) The Director of Community Development shall be responsible for the processing and collection of the applicable impact fee.

(b) Applicants for building permits for nonresidential development and applicants for final plat approval for residential development subject to this Ordinance must submit the following information:

(1) the number of dwelling units for residential development;

(2) the type and amount of finished floor area for nonresidential development (in square feet);

(3) both the number of dwelling units and the type and finished floor area of nonresidential development(in square feet) for a mixed-use project;

(4) relevant supporting documentation as may be required by the Director of Community Development.

(c) The Director of Community Development shall be responsible for determining that:

(1) the applicant has paid the applicable impact fee; or

(2) an appeal has been taken and a bond or other surety posted pursuant to Section 13-512.

(d) The Director of Community Development shall collect the applicable impact fee prior to issuance of a building permit for nonresidential development and prior to final plat approval for residential development.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-508. CALCULATION OF IMPACT FEE.** Upon receipt of an application for a building permit or final plat approval for development subject to this Ordinance, the Director of Community Development shall calculate the amount of the applicable impact fee due in accordance with the following procedure:

(a) determination of the applicability of this ordinance to the subject property shall be made within three (3) working days of receipt of such application by the Director of Community Development;

(b) if this Ordinance is not applicable, the Director of Community Development shall indicate the inapplicability of this Ordinance on such application, shall notify the applicant of said inapplicability, and shall process the application in accordance with all relevant City ordinances and regulations.

(c) if this Ordinance is determined to be applicable, the Director of Community Development shall:

(1) for residential development, multiply the applicable impact fee amount pursuant to Section 13-506(b) by the number of dwelling units for which final plat approval is being sought.

(2) for nonresidential development, multiply the applicable impact fee amount pursuant to Section 13-506(b) by the finished floor area (in square feet)of nonresidential development for which the building permit is being sought.

(3) for mixed use developments, the impact fee shall be separately calculated as set forth above for residential and nonresidential development (by type).

(4) the Director of Community Development shall calculate the amount of the impact fee due pursuant to the building permit application or application for final plat approval as submitted and the requirements of this Ordinance in effect at the time of submission.

(5) a building permit application or application for final plat approval must be resubmitted to the Director of Community Development and the amount of the impact fee recalculated if the applicant alters the proposed development by increasing the number of dwelling units, increasing the finished floor area of nonresidential development or changing the non-residential use to a different use category.

(d) An applicant may file a petition for review with the City Administrator or his duly designated agent on forms provided by the City for the purpose of seeking administrative review of a decision by the Director of Community Development as to the applicability of the impact fee ordinance, the type of development, the number of dwelling units for residential development, the finished floor area (in square feet) of nonresidential development, or the amount of the impact fee due. Within one (1) month of the date of receipt of a petition for review, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the request. The decision shall include the reasons for the decision.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-509. ANNUAL REVIEW.**

(a) Each year the City Administrator, or his duly authorized agent, shall prepare a report to the Governing Body on the 135th Street Corridor Transportation Impact Fees. In preparation of such report, the City Administrator or his duly designated agent shall review the following information:

(1) a statement from the City Finance Director summarizing impact fees collected and disbursed during the year;

(2) a statement from the City Engineer summarizing transportation improvements completed during the past year and planned for the next succeeding year.

(3) a statement from the Director of Community Development summarizing the type, location, timing and amount of development for which building permits were issued or final plat approval granted in the year and summarizing the administration and enforcement of the impact fee.

(4) a statement and recommendation from the Leawood Public Works Committee on any and all aspects of the Impact Fee and 135th Street corridor transportation improvements and land uses.

(b) The City Administrator's Report shall make recommendations, if appropriate, on amendments to the Ordinance; changes in the administration or enforcement of the Ordinance; changes in the impact fee rate; and changes in the Master Plan.

(c) The impact fee rate shall be reviewed annually. Based upon the City Administrator's Report and such other factors as the Governing Body deems

relevant and applicable, the Governing Body may amend the impact fee rate by Resolution. If the Governing Body fails to take such action, the impact fee rate then in effect shall remain in effect. Nothing herein precludes the Governing Body or limits its discretion to amend the impact fee rate and/or the Impact Fee Ordinance at such other times as may be deemed necessary.

(d) In the annual review process, the Governing Body may take into consideration the following factors: inflation as measured by changes in an appropriate construction cost index used by the City; improvement and land acquisition cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed transportation improvements; revisions to the Master Plan; changes in the anticipated land use mix and/or intensity of development in the 135th Street corridor; and such other factors as may be deemed relevant and appropriate.

(Ord. 1027C; 01-04-88)
(Reso. No. 1357; 07-07-97)
(Reso. No. 2287; 08-16-04)
(Ord. 2554C; 07-16-12)
(Ord. 2891C; 06-04-18)

**13-510. RESTRICTIONS ON USE OF AND ACCOUNTING FOR IMPACT FEE FUNDS.**

(a) The funds collected by reason of the establishment of the 135th Street corridor transportation impact fee must be used solely for the purpose of funding transportation improvements as described herein and pursuant to the Master Plan or for reimbursement to the City for costs incurred in providing such transportation improvements.

(b) Upon receipt of impact fees, the Director of Community Development shall transfer such funds to the City Treasurer who shall be responsible for the placement of such funds in a segregated, interest bearing account designated as the "135th Street Corridor Transportation Impact Fee Account". All funds placed in said account and all interest earned therefrom shall be utilized solely and exclusively for the provision of transportation improvements as described herein in the 135th Street corridor pursuant to the Master Plan and this Ordinance. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such account. The City Treasurer shall establish adequate financial and accounting controls to ensure that impact fee funds disbursed from such accounts are utilized solely and exclusively for transportation improvements in the 135th Street corridor as described herein or for reimbursement to the City of advances made from other revenue sources to fund such transportation improvements. Disbursement of funds from said accounts shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Ordinance; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed five (5) years from the date such funds are collected.

(c) The City Treasurer shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.

(d) Interest earned by such account shall be credited to the account and shall be utilized solely for the purposes specified for funds of the account.

(e) Impact fee funds collected shall not be used to maintain or repair 135th Street nor to finance transportation improvements other than those described herein.

(f) The City may issue and utilize general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of the 135th Street transportation improvements as set forth in the Master Plan and this Ordinance. Funds pledged toward the retirement of such bonds or other certificates of indebtedness may include the impact fees and other City (and non-City) funds and revenues as may be allocated by the Governing Body. Impact fees paid pursuant to this Ordinance, however, shall be used solely and exclusively for transportation improvements as defined herein.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-511. REFUNDS.**

(a) The current owner of property on which an impact fee has been paid may apply for a refund of such fee if:

(1) the City has failed to initiate transportation improvements within five (5) years of the date of payment of the impact fee; or

(2) the building permit for nonresidential development pursuant to which the impact fee has been paid has lapsed for non commencement of construction; or

(3) the nonresidential development for which a building permit has been issued has been altered resulting in a decrease in the amount of impact fee due; or

(4) the final plat for a residential development pursuant to which an impact fee has been paid is vacated; or

(5) a replat for fewer residential lots or dwelling units is submitted on property pursuant to which an impact fee had been paid prior to final plat approval.

(b) Only the current owner of property may petition for a refund. A petition for refund must be filed within one year of the event giving rise to the right to claim a refund.

(c) The petition for refund must be submitted to the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition must contain: a statement that petitioner is the current owner of the property; a copy of the dated receipt for payment of the impact fee issued by the Director of Community Development; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which a refund is sought.

(d) Within one month of the date of receipt of a petition for refund, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due petitioner, the City Administrator or his duly designated agent shall notify the City Treasurer and request that a refund payment be made to petitioner.

(e) Petitioner may appeal the determination of the City Administrator to the Governing Body.

(Ord. 1027C;01-04-88)
(Ord. 2554C; 07-16-12)

**13-512.** **APPEALS.** After a determination by the Director of Community Development of the applicability of the impact fee or the amount of the impact fee due, or after a determination by the City Administrator of the amount of refund due, if any, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the Governing Body within thirty (30) days following the determination by the Director of Community Development or City Administrator. If the Notice of Appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the impact fee due as calculated by the Director of Community Development, the application shall be processed. The filing of an appeal shall not stay the collection of the impact fee due unless a bond or other sufficient surety has been filed.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-513.** **EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS.** This ordinance shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements or any other aspect of the development of land or requirements for the provision of public improvements that may be imposed by the City pursuant to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-514.** **IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT.** The Impact Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the City as a condition of the development of land or the issuance of building permits; provided, however, that the impact fee requirement and the payment of such fee by a developer for the transportation improvements described herein shall not be duplicative of other street improvement requirements imposed pursuant to City zoning, subdivision, planned unit development or other applicable ordinances or regulations and the payment of the Impact Fee shall not be used to meet such requirements. The Impact Fee requirement is intended to be consistent with and to further the objectives and policies of the Master Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of adequate transportation capacity in conjunction with the development of land. In no event shall a property owner be obligated to pay an impact fee in an amount in excess of the amount calculated pursuant to this Ordinance; but, provided that a property owner may be required, pursuant to City zoning and subdivision regulations to dedicate land and/or construct local, collector or arterial streets in addition to meeting the impact fee requirements set forth herein.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

**13-515.** **VARIANCES AND EXCEPTIONS.** Petitions for variances and exceptions to the application of this Ordinance shall be made to the City Administrator in accordance with procedures to be established by Resolution of the Governing Body.

(Ord. 1027C; 01-04-88)
(Ord. 2554C; 07-16-12)

# ARTICLE 6. SOUTH LEAWOOD TRANSPORTATION IMPACT FEE

SECTIONS


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**13-601.** **SHORT TITLE.** This Ordinance shall be known and cited as the "South Leawood Transportation Impact Fee Ordinance".

(Ord. 1031C; 02-01-88)

**13-602.** **PURPOSE.** A Transportation Impact Fee is imposed on new development in South Leawood for the purpose of assuring that transportation improvements are available and provide adequate transportation system capacity to support new development while maintaining levels of transportation service deemed adequate by the City. The Impact Fee shall be imposed on all new development in South Leawood, except as may be otherwise provided herein, and all fees collected shall be utilized solely and exclusively for transportation improvements in South Leawood serving such new development.

(Ord. 1031C; 02-01-88)

**13-603.** **DEFINITIONS.**

(a) ***Applicant***: the property owner, or duly designated agent of the property owner, of land for which final plat approval has been requested for residential or nonresidential development or for which a building permit has been requested for nonresidential development for which no final plat is required.

(b) ***Building*****:** any enclosed structure designed or intended for the support, enclosure, shelter or protection of persons or property.

(c) ***Building Permit***: the City permit required for new building construction and/or additions to buildings pursuant to Chapter 4 of the Code of the City of Leawood. The term "building permit" as used herein shall not be deemed to include permits required for remodeling, rehabilitation or other improvements to an existing structure, or to the rebuilding of a damaged structure, or to permits required for accessory uses.

(d) ***City*****:** the City of Leawood, Kansas.

(e) ***Development***: the final platting of land for residential and nonresidential development; and the construction, erection, reconstruction or use of any principal building or structure for nonresidential use which requires issuance of a building permit, but for which final plat approval is not required.

(f) ***Dwelling***: any building, or portion thereof, designed exclusively for residential occupancy and containing one or more dwelling units.

(g) ***Impact Fee or South Leawood Transportation Impact Fee***: a pro rata regulatory fee imposed on all new development in South Leawood and required by the City as a condition of development approval and collected at final platting for residential and nonresidential development for which a final plat is required or at building permit issuance for nonresidential development for which a final plat is not required to ensure that the necessary transportation improvements are or will be in place to accommodate the traffic generated by such new development.

(h) ***Impact Fee Coefficient***: the distance, to the nearest 1/10 of a mile expressed as a decimal, from the principal access of the proposed development on a north-south arterial to the point at which the arterial intersects with 135$^{th}$ Street [formally known as Highway K-150]; where the principal access of the proposed development is to an east-west arterial, the distance shall be measured from the intersection of the east-west arterial with the nearest north-south arterial to the intersection of the north-south arterial with 135$^{th}$ Street.

(i) ***Impact Fee Rate***: the amount of the applicable Impact Fee per gross acre of new development in South Leawood.

(j) ***Master Plan or Master Development Plan***: the official, adopted comprehensive development plan for the City of Leawood, and amendments thereto, including the Major Street Plan.

(k) ***Nonresidential Development***: all development other than residential development and public and quasi-public use, as herein defined.

(l) ***Property***: a legally described parcel of land capable of development pursuant to applicable City ordinances and regulations.

(m) ***Property Owner***: any person, group of persons, firm or firms, corporation or corporations, or any other entity having a proprietary interest in the land on which a building permit has been requested.

(n) ***Public and Quasi-Public Use***: a development owned, operated or used by the City of Leawood, Kansas; any political subdivision of the State of Kansas, including but not limited to school districts; the State of Kansas, and any

agencies or departments thereof; the Federal Government, and any agencies and departments thereof. For purposes of this Ordinance only, "places of worship" are hereby defined as quasi-public uses.

(o) ***Residential Development***: the development of any property for a dwelling or dwellings as indicated by an application for final plat approval.

(p) ***South Leawood***: all of that land within the City of Leawood lying south of 137th Street [formally known as the southern reverse frontage road of the Highway K-150 Corridor] as set forth in the Leawood Master Development Plan.

(q) ***Subdivision Regulations***: The Subdivision Regulations of the City of Leawood as contained in the Leawood Development Ordinance including all duly adopted amendments thereof.

(r) ***Transportation Improvements***: the development of off-site secondary arterial streets in South Leawood pursuant to the Major Street Plan, including but not limited to, widening, paving, intersectional improvements, signalization, grading, acquisition of right-of-way, medians, turn lanes, curbs, gutters, signage, sidewalks, street lighting, bridges and ancillary facilities or any portion thereof, except for the development of on-site or abutting arterial streets required pursuant to City subdivision, zoning, or planned development regulations and the collector portion of off-site arterial streets.

(s) ***Transportation Improvement Costs***: the amounts spent, to be spent or authorized to be spent in connection with the provision of transportation improvements, which may include, but which are not limited to, funds spent on the planning, design, engineering, financing, acquisition of land or easements, construction, administration or incidental expenses associated with the provision of transportation improvements.

(t) ***Zoning Ordinance***: The Leawood Development Ordinance including all duly adopted amendments thereto.

(Ord. 1031C; 02-01-88)
(Ord. 2076C; 08-16-04)

**13-604. APPLICABILITY OF IMPACT FEE.**

(a) This Ordinance shall be uniformly applicable to residential and nonresidential development, but not public and quasi-public uses, on property in South Leawood which must be served by transportation improvements as a condition of development approval. For purposes of this Ordinance, property is "served by" transportation improvements when off-site secondary arterial street improvements are necessary in order to provide north-south and east-west access to and from the property via continuous, improved arterial streets. For purposes of this Ordinance, "improved arterial streets" means and refers to secondary arterial streets identified on the Major Street Plan and constructed to secondary arterial street standards pursuant to applicable City regulations.

(b) This Ordinance shall be applicable to development occurring prior to, in conjunction with, or subsequent to the initiation of transportation improvements in South Leawood as set forth in the Master Plan and Major Street Plan; provided, however, that such transportation improvements are actually provided within a reasonable period of time following payment of the Impact Fee imposed by this Ordinance.

(Ord. 1031C; 02-01-88)

**13-605. IMPOSITION OF IMPACT FEE.**

(a) No building permit for development to which this Ordinance is applicable shall be issued by the City nor shall any development subject to this Ordinance be granted final plat approval by the City unless the applicant therefor or the owner of the subject property has paid the applicable impact fee in full in the amount and manner prescribed herein, unless exempt or partially exempt pursuant to subsection (b) or Section 13-612 herein.

(b) The Impact Fee shall not be imposed on:

(1) residential or nonresidential development for which final plat approval had been granted by the City;

(2) nonresidential development for which a building permit has been issued by the City on or before the date of adoption of this ordinance; or

(3) residential development for which preliminary plat approval and rezoning has been granted by the City prior to November 2, 1987 and which approval and/or rezoning included stipulations imposed by the City which effectively prevented the applicant from submitting a final plat or plats for all or a portion of the proposed development prior to November 2, 1987.

(c) Imposition of the Impact Fee does not alter, negate, supersede or otherwise affect any other requirements of City, County, State or Federal legislation or regulations that may be applicable to a development, including City zoning and/or subdivision regulations that may impose on-site or abutting arterial street improvement requirements, local or collector street improvement requirements, right-of-way dedication requirements, and/or design and construction standards for local, collector or arterial streets. Provided, however, that an applicant for development approval shall be eligible for a credit for the provision of arterial street improvements pursuant to Section 13-613 herein.

(d) Upon receipt of an application for a preliminary plat, the Director of Planning and Development shall preliminarily calculate the amount of the Impact Fee due by multiplying the Impact Fee rate by the number of gross acres in the proposed development for which subdivision approval is being sought and multiplying the product by the applicable Impact Fee coefficient. This calculation shall be an estimate only for the benefit of the applicant for subdivision approval and shall be subject to final determination at such time as the applicant for development requests final plat approval or a building permit is requested for nonresidential development for which a final plat is not required.

(Ord. 1031C; 02-01-88)

**13-606.** **IMPACT FEE RATE.** The Impact Fee Rate shall be established by Resolution of the City Council initially upon the adoption of this Ordinance, and thereafter as part of the annual review provided in Section 13-609 or at such other times as deemed necessary by the City. If no action is taken by the City Council to amend the Impact Fee Rate, the rate then in effect shall remain in effect.

(Ord. 1031C; 02-01-88)

**13-607. COLLECTION OF IMPACT FEE.**

(a) The Director of Planning and Development shall be responsible for the processing and collection of the applicable Impact Fee.

(b) Applicants for development approval subject to this Ordinance must submit the following information:

(1) the gross acreage of property for which approval is being sought;

(2) the principal access of the development to an arterial street;

(3) the distance from the principal access point to Highway 150;

(4) relevant supporting documentation as may be required by the Director of Planning and Development.

(c) The Director of Planning and Development shall be responsible for determining that:

(1) the applicant has paid the applicable Impact Fee; or

(2) the applicant is exempt pursuant to Section 13-612; or

(3) an appeal has been taken and a bond or other surety posted pursuant to Section 13-614.

(d) The Director of Planning and Development shall collect the applicable Impact Fee prior to final plat approval or prior to building permit issuance for nonresidential development for which final plat approval is not required.

(Ord. 1031C; 02-01-88)

**13-608. CALCULATION OF IMPACT FEE.** Upon receipt of an application for a building permit or final plat approval for development subject to this Ordinance, the Director of Planning and Development shall calculate the amount of the applicable Impact Fee due in accordance with the following procedure:

(a) determination of the applicability of this ordinance to the subject property shall be made within three (3) working days of receipt of such application by the Director of Planning and Development;

(b) if this Ordinance is not applicable, the Director of Planning and Development shall indicate the inapplicability of this Ordinance on such application, shall notify the applicant of said inapplicability, and shall process the application in accordance with all relevant City ordinances and regulations.

(c) if this Ordinance is determined to be applicable, the Director of Planning and Development shall:

(1) Determine the gross acreage of the proposed development;

(2) determine the applicable Impact Fee coefficient;

(3) determine the applicability of credit, if any;

(4) calculate the amount of the Impact Fee due pursuant to the building permit application or application for final plat approval as submitted and the requirements of this Ordinance in effect at the time of submission.

(d) An applicant may file a petition for review with the City Administrator or his duly designated agent on forms provided by the City for the purpose of seeking administrative review of a decision by the Director of Planning and Development as to the applicability of the Impact Fee Ordinance, the gross acreage of the subject development, the applicable Impact Fee coefficient, or the amount of the Impact Fee due. Within one (1) month of the date of receipt of a petition for review, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the request. The decision shall include the reasons for the decision.

(Ord. 1031C; 02-01-88)

**13-609. ANNUAL REVIEW.**

(a) Each year, the City Administrator, or his duly authorized agent, shall prepare a report to the Governing Body on the South Leawood Transportation Impact Fee. In preparation of such report, the City Administrator or his duly designated agent shall review the following information:

(1) a statement from the City Finance Director summarizing Impact Fees collected and disbursed during the year;

(2) a statement from the City Engineer summarizing transportation improvements completed during the past year and planned for the next succeeding year;

(3) a statement from the Director of Community Development summarizing the type, location, timing and amount of development for which building permits were issued or final plat approvals were granted in the year and summarizing the administration and enforcement of the Impact Fee;

(4) a statement and recommendation from the Leawood Public Works Committee on any and all aspects of the South Leawood Transportation Impact Fee, and transportation improvements and planned land use in South Leawood.

(b) The City Administrator's Report shall make recommendations, if appropriate, on amendments to the Ordinance; changes in the administration or enforcement of the Ordinance; changes in the Impact Fee Rate; and changes in the Comprehensive Plan or Major Street Plan.

(c) The Impact Fee Rate shall be reviewed annually. Based upon the City Administrator's Report and such other factors as the Governing Body deems relevant and applicable, the Governing Body may amend the impact fee rate by Resolution. If the Governing Body fails to take such action, the Impact Fee Rate then in effect shall remain in effect. Nothing herein precludes the Governing Body or limits its discretion to amend the Impact Fee Rate and/or the Impact Fee Ordinance at such other times as may be deemed necessary.

(d) In the annual review process, the Governing Body may take into consideration the following factors: inflation as measured by changes in an appropriate construction cost index used by the City; construction cost increases as measured by actual experience during the year; changes in the design, engineering, location, or other elements of proposed transportation improvements; revisions to the Comprehensive Plan and Major Street Plan; changes in the anticipated land use mix and/or intensity of development in South Leawood; and such other factors as may be deemed relevant and appropriate.

(Ord. 2564C; 08-20-12)
(Ord. 1031C; 02-01-88)
(Ord. 2892C; 06-04-18)

**13-610. RESTRICTIONS ON USE OF AND ACCOUNTING FOR IMPACT FEE FUNDS.**

(a) The funds collected by reason of the establishment of the South Leawood Transportation Impact Fee must be used solely for the purpose of funding transportation improvements as described herein and pursuant to the Master Plan and Major Street Plan or for reimbursement to the City for costs incurred in providing such transportation improvements.

(b) Upon receipt of Impact Fees, the Director of Planning and Development shall transfer such funds to the City Treasurer who shall be responsible for the placement of such funds in a segregated, interest bearing account designated as the "South Leawood Transportation Impact Fee Account". All funds placed in said account and all interest earned therefrom shall be utilized solely and exclusively for the provision of transportation improvements as described herein in South Leawood pursuant to the Master Plan and this Ordinance. At the discretion of the Governing Body, other revenues as may be legally utilized for such purposes may be deposited to such account. The City Treasurer shall establish adequate financial and accounting controls to ensure that Impact Fee funds disbursed from such accounts are utilized solely and exclusively for transportation improvements in South Leawood as described herein or for reimbursement to the City of advances made from other revenue sources to fund such transportation improvements. Disbursement of funds from said accounts shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Ordinance; provided, however, that funds shall be expended within a reasonable period of time, but not to exceed five (5) years from the date such funds are collected.

(c) The City Treasurer shall maintain and keep adequate financial records for said account which shall show the source and disbursement of all funds placed in or expended by such account.

(d) Interest earned by such account shall be credited to the account and shall be utilized solely for the purposes specified for funds of the account.

(e) Impact Fee funds collected shall not be used to maintain or repair transportation improvements nor to finance improvements other than those described herein.

(f) The City may issue and utilize general obligation bonds, revenue bonds, revenue certificates or other certificates of indebtedness as are within the authority of the City in such manner and subject to such limitations as may be provided by law in furtherance of the financing and provision of the South Leawood transportation improvements as set forth in the Master Plan and this Ordinance. Funds pledged toward the retirement of such bonds or other certificates of indebtedness may include the Impact Fees and other City (and non-City) funds and revenues as may be allocated by the Governing Body. Impact Fees paid pursuant to this Ordinance, however, shall be used solely and exclusively for transportation improvements as defined herein.

(Ord. 1031C; 02-01-88)

**13-611. REFUNDS.**

(a) The current owner of property on which an Impact Fee has been paid may apply for a refund of such fee if:

(1) the City has failed to initiate transportation improvements within five (5) years of the date of payment of the impact fee; or

(2) the final plat of an approved development is vacated; or

(3) the building permit for an approved nonresidential development for which the Impact Fee has been paid subsequently lapses for non-commencement of construction.

(b) Only the current owner of property may petition for a refund. A petition for refund must be filed within one year of the event giving rise to the right to claim a refund.

(c) The petition for refund must be submitted to the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition must contain: a statement that petitioner is the current owner of the property; a copy of the dated receipt for payment of the Impact Fee issued by the Director of Planning and Development; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which a refund is sought.

(d) Within one month of the date of receipt of a petition for refund, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the refund request. The decision must include the reasons for the decision. If a refund is due petitioner, the City Administrator or his duly designated agent shall notify the City Treasurer and request that a refund payment be made to petitioner.

(e) Petitioner may appeal the determination of the City Administrator to the Governing Body.

(Ord. 1031C; 02-01-88)

**13-612. EXEMPTIONS.**

(a) A property owner shall be exempt from the Impact Fee otherwise due if:

(1) access to and from the applicable development can be obtained via a continuous, improved arterial street;

(2) the property owner has constructed, escrowed money for the construction of, or established a benefit district for the construction of "transportation improvements" necessary to ensure that access to and from the applicable development can be obtained via a continuous, improved arterial street concurrent with development; or

(3) the property owner has agreed, as a condition of preliminary or final plat approval or rezoning, to construct, escrow money for the construction of, or to establish a benefit district for the construction of "transportation improvements" necessary to ensure that access to and from the applicable development can be obtained via a continuous, improved arterial street concurrent with development.

(b) An exemption may only be given for final plat approval or for building permits for nonresidential development for which no final plat is required on the subject property for which access, as described in subsection (a) above, is assured.

(c) An applicant must apply for an exemption in conjunction with final plat approval or at the time of application for a building permit for nonresidential development for which no final plat is required. The applicant shall file a petition for exemption with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain: a statement by the property owner or a duly designated agent of the property owner certifying that petitioner is the current owner of the property; documentary evidence of the ownership of the property at the time of occurrence of the event giving rise to the claim for exemption; documentary evidence of appropriate access, as described in subsection (a) above with respect to the affected property; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which the exemption is being sought. Within one month of the date of receipt of a petition for exemption, the City Administrator or his duly designated agent must provide the petitioner, in writing, with a decision on the exemption request; provided, however, that a decision on a petition for exemption filed in conjunction with a final plat shall be made by the City Administrator concurrently with Planning Commission action on the final plat. The decision must include the reasons for the decision. Upon making the decision, the City Administrator or his duly designated agent shall notify the petitioner in writing. Petitioner may appeal the determination of the City Administrator to the Governing Body.

(d) An applicant may apply for an advance determination of exemption at any time by filing a petition for same with the City Administrator or his duly designated agent on a form provided by the City for such purpose. The petition shall contain the information required and shall be processed in accordance with the procedure set forth in Section 13-612(c) above. If an advance determination has been granted, the applicant shall submit evidence of same at the time of application for final plat approval or, for nonresidential development for which no final plat is required, at the time of application for building permit, thereby permitting concurrent action by the City.

(Ord. 1031C; 02-01-88)

**13-613. CREDITS.**

(a) Any property owner who constructs, escrows money with the City for the construction of, or agrees to participate in a benefit district for the construction of an abutting arterial street to secondary arterial street standards as established by the City shall be eligible for a credit against the amount of the Impact Fee otherwise due.

(b) The amount of the credit shall be equal to the difference between collector and secondary arterial front-foot street costs, as determined by the City, multiplied by the length (in front feet) of the abutting arterial street as improved by the property owner; provided, however, that the credit shall not exceed the amount of the otherwise applicable Impact Fee.

(c) The Director of Planning and Development shall determine the applicability and amount of a credit based upon information to be submitted by the applicant including, but not limited to: a statement by the property owner or a duly designated agent of the property owner certifying that the applicant is the current owner of the property; documentary evidence of the ownership of the property at the time of occurrence of the event giving rise to the claim for a credit; a certified copy of the latest recorded deed for the subject property; and a statement of the reasons for which the credit is being sought.

(Ord. 1031C; 02-01-88)

**13-614. APPEALS.** After a determination by the Director of Planning and Development of the applicability of the Impact Fee or the amount of the Impact Fee due, including credits, or after a determination by the City Administrator of the amount of refund due, if any, or the applicability of an exemption, an applicant or a property owner may appeal to the Governing Body. The appellant must file a Notice of Appeal with the Governing Body within thirty (30) days following the determination by the Director of Planning and Development or City Administrator. If the Notice of Appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the Impact Fee due as calculated by the Director of Planning and Development, the application shall be processed. The filing of an appeal shall not stay the collection of the Impact Fee

due unless a bond or other sufficient surety has been filed.

(Ord. 1031C; 02-01-88)

**13-615. EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS.** This ordinance shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements or any other aspect of the development of land or requirements for the provision of public improvements that may be imposed by the City pursuant to the zoning and subdivision regulations or other regulations of the City, which shall be operative and remain in full force and effect without limitation with respect to all such development.

(Ord. 1031C; 02-01-88)

**13-616. IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT.** The Impact Fee is additional and supplemental to, and not in substitution of, any other requirements imposed by the City as a condition of the development of land or the issuance of building permits; provided, however, that the Impact Fee requirement and the payment of such fee by a developer for the transportation improvements described herein shall not be duplicative of other street improvement requirements imposed pursuant to City zoning, subdivision, planned unit development or other applicable ordinances or regulations and the payment of the Impact Fee shall not be used to meet such requirements. The Impact Fee requirement is intended to be consistent with and to further the objectives and policies of the Master Plan and Major Street Plan and to be coordinated with other City policies, ordinances and resolutions by which the City seeks to ensure the provision of an adequate street system in conjunction with the development of land. In no event shall a property owner be obligated to pay an Impact Fee in an amount in excess of the amount calculated pursuant to this Ordinance; but, provided that a property owner may be required, pursuant to City zoning and subdivision regulations to dedicate land and/or to construct or escrow money for the construction of local and collector streets and on-site and abutting arterial streets, to collector street standards, in addition to meeting the Impact Fee requirements set forth herein.

(Ord. 1031C; 02-01-88)

**13-617. VARIANCES AND EXCEPTIONS.** Petitions for variances and exceptions to the application of this Ordinance shall be made to the City Administrator in accordance with procedures to be established by Resolution of the Governing Body.

(Ord. 1031C; 02-01-88)

# CHAPTER XIV. TRAFFIC

**Article 1.** **Standard Traffic Ordinance [STO]**
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**Article 3.** **Parking**
**Article 4.** **(Reserved)**
**Article 5.** **Impoundment of Motor Vehicles**
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SECTIONS

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14-102 COMMERCIAL DRIVER'S LICENSES; DIVERSION AGREEMENT NOT ALLOWED- **REPEALED**
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14-102C IGNITION INTERLOCK DEVICES; TAMPERING -**REPEALED**
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## ARTICLE 1. STANDARD TRAFFIC ORDINANCE [STO]

**14-101. INCORPORATING "STANDARD TRAFFIC ORDINANCE."** There is hereby incorporated by reference for the purpose of regulating traffic within the corporate limits of the City of Leawood, Kansas, that certain standard traffic ordinance known as the 'Standard Traffic Ordinance for Kansas Cities,' Edition of 2018, prepared and published in book form by the League of Kansas Municipalities, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. 12-3009 through 12-3012, inclusive, as amended. No fewer than three copies of said Standard Traffic Ordinance shall be marked or stamped 'Official Copy as incorporated by Ordinance No. 2906C' with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Code 2000)
(Ord. 1908C; 08-06-01)
(Ord. 1960C; 10-07-02)
(Ord. 2022C; 09-15-03)
(Ord. 2082C; 09-20-04)
(Ord. 2136C; 11-07-05)
(Ord. 2194C; 11-06-06)
(Ord. 2305C; 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-14-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-102. COMMERCIAL DRIVER'S LICENSES; DIVERSION AGREEMENT NOT ALLOWED**

**Repealed.** ***[See Standard Traffic Ordinance, Section 30.5]***

(Ord. 2082C; 09-20-04)
(Ord. 2136C; 11-07-05)
(Ord. 2194C; 11-06-06)
(Ord. 2305C; 02-04-08)
(Ord. 2350C; 10-06-08)

(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)

**14-102A. DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DURGS; PENALTIES**
**Repealed.** ***[See Standard Traffic Ordinance, Section 30]***

(Ord. 2499C; 07-05-11)
(Ord. 2514C; 10-17-11)
(Ord. 2549C;07-02-12)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)

**14-102B. DRIVING COMMERCIAL MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES**
**Repealed.** ***[See Standard Traffic Ordinance, Section 30.1]***

(Ord. 2499C; 07-05-11)
(Ord. 2514C; 10-17-11)
(Ord. 2549C; 07-02-12)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)

**14-102C. IGNITION INTERLOCK DEVICES; TAMPERING**
**Repealed.** ***[See Standard Traffic Ordinance, Section 30.3]***

(Ord. 2499C; 07-05-11)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)

**14-102D. CHEMICAL TEST REFUSAL**
**Repealed.**

(Ord. 2549C; 07-02-12)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)

**14-102E. ACCIDENT INVOLVING DEATH OR PERSONAL INJURIES; PENALTIES.**
**Repealed**

(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)

**14-103.** **MAXIMUM SPEED LIMITS.** Section 33 of the Standard Traffic Ordinance, incorporated in Section 14-101 of this Article, shall be amended to read as follows:

**Section 33. MAXIMUM SPEED LIMITS.**

(a) Except when a special hazard exists that requires lower speed for compliance with Section 32, the limits specified in this Section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle at a speed in excess of such maximum limits, except where otherwise posted:

(1) All vehicles 20 miles per hour in any park under the jurisdiction of this city.

(2) Speed limits within a designated school zone will be posted 15 miles below the posted speed limit, but in no event shall those speed limits be lower than 20 miles per hour. This school zone speed limit will apply on any day school is in session, upon streets and/or parts of streets abutting school property and adjacent to school crosswalks or otherwise designated as school zones; provided that appropriate signs are erected giving notice of the effective hours of enforcement or when a flashing yellow beacon is in operation with appropriately erected signs indicating the area is a school zone. The Director of Public Works shall determine the times said school zone limits are in force.

(3) All vehicles 25 miles per hour in any residential district and on other streets within the City except where modified as provided hereafter in subsection (b) of this Section. The maximum speed limit established by or pursuant to this paragraph shall be of force and effect regardless of whether signs are posted giving notice thereof.

(4) On any separated multilane highway, as designated and posted by the secretary of transportation.

(b) The Director of Public Works is hereby authorized and empowered to designate maximum speed limits in excess of those listed above when he or she shall find and determine that such regulation is necessary for safety purposes or to expedite traffic, to the extent any such regulation is not in conflict with any law of the City. The Director of Public Works shall place and maintain the necessary traffic control signs and devices.

(c) Whenever the Director of Public Works shall determine upon the basis of an engineering and traffic investigation that any speed limit herein set forth is greater or less than is reasonable or safe under the conditions found to exist, he or she shall determine a reasonable and safe speed limit consistent with applicable state and local statutes which shall be effective at all times or during daytime or nighttime or at such other times as may be determined when appropriate signs giving notice thereof are erected. It shall be unlawful for any person to drive a vehicle at a speed in excess of such declared maximum limits.

(d) The Governing Body may, at any time, request review of any given speed limit by the Director of Public Works and the Governing Body may, after due investigation and review, direct that a new speed limit be determined and posted.

(Ord.1800C; 5-17-99)
(Code 2000)
(Ord. 1908C; 08-06-01)
(Ord. 1960C; 10-07-02)
(Ord. 2022C; 09-15-03)
(Ord. 2082C; 09-20-04)
(Ord. 2136C; 11-07-05)
(Ord. 2194C; 11-06-06)
(Ord. 2305C; 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord.2567C; 09-04-12)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-104.** **PEDESTRIANS ON HIGHWAYS.** Section 68 of the Standard Traffic Ordinance, incorporated in Section 14-101 of this Article, shall be amended to read as follows:

**Sec. 68. Pedestrians on Highways**.

(a) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk, jog or run along or upon an adjacent roadway.

(b) Where a sidewalk is not available, any pedestrian walking, jogging or running along or upon a highway shall walk, jog or run only on a shoulder, as far as practicable from the edge of the roadway.

(c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking, jogging or running along or upon a highway shall walk, jog or run as near as practicable to an outside edge of the roadway, and, if on a two-way roadway, shall walk, jog or run only on the left side of the roadway.

(d) Except as otherwise provided in this ordinance, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.

(Ord. 1800C; 5-17-99)
(Code 2000)
(Ord. 1908C; 08-06-01)
(Ord. 1960C; 10-07-02)
(Ord. 2022C; 09-15-03)
(Ord. 2082C; 09-20-04)
(Ord. 2136C; 11-07-05)
(Ord. 2194C; 11-06-06)
(Ord. 2305C; 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-105. UNLAWFUL OPERATION OF ALL-TERRAIN VEHICLE**

Section 114.1 of the Standard Traffic Ordinance entitled Unlawful Operation of All-Terrain Vehicle, as incorporated in Section 14-101 of this Article, is hereby deleted and omitted. *[See Section 11-108 of the Code of the City of Leawood, 2000.]2000.]*

(Ord. 2305C; 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-106.** **UNLAWFUL OPERATION OF A GOLF CART.** Section 114.4 of the Standard Traffic Ordinance, incorporated in Section 14-101 of this Article, shall be amended to read as follows:

**Sec. 114.4. Unlawful Operation of a Golf Cart.**
It shall be unlawful for any person to operate a golf cart on any interstate highway, federal highway, state highway or any other public highway or street within the corporate limits of the City of Leawood unless such golf cart is operating during the hours between sunrise and sunset and is crossing a highway or street for the purpose of continuing on a marked golf cart path.

(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-107.** **UNLAWFUL OPERATION OF A WORK-SITE UTILITY VEHICLE.** Section 114.5 of the Standard Traffic Ordinance, as incorporated in Section 14-101 of this Article, shall be amended to read as follows:

**Sec. 114.5. Unlawful Operation of a Work-Site Utility Vehicle.**
(a) It shall be unlawful for any person to operate a work-site utility vehicle:
(1) On any interstate highway, federal highway, or state highway; or
(2) Within the corporate limits of the City of Leawood, provided, however, that this prohibition shall not apply to an unmodified utility vehicle with seating for two people and containing a bed or flatbed and operating on private property or to City owned and operated maintenance vehicles.

(b) No work-site utility vehicle shall be operated on any public highway, street, or road between sunset and sunrise unless equipped with lights as required by law for motorcycles.

(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-108. USE OF COASTERS, ROLLER SKATES AND SIMILAR DEVICES RESTRICTED.** Section 136 of the Standard Traffic Ordinance, incorporated in Section 14-101 of this Article, shall be amended to read as follows:

(a) No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device, shall:
(1) go upon any roadway except while crossing a street at a crosswalk and except upon streets set aside as play streets.
(2) operate such a device on any public tennis court.
(3) operate such a device on any private parking area or lot where signs are posted giving notice of such prohibition. This prohibition shall not be applicable unless the following signage is clearly and properly posted at all entrances to said private parking lot or area, to wit:

| NOTICE |
| --- |
| Pursuant to the Code of the City of Leawood, Kansas, no roller skates, coaster, roller blades, skateboard, toy vehicle or similar device may be operated in this parking lot or area. Conviction will result in a $25 fine. |

(b) Whenever any person is operating such a device upon a useable path or sidewalk, such person shall yield the right of way to any pedestrian and shall give an audible signal before overtaking and passing such pedestrian.

(c) Any person found guilty of a violation of this section shall be fined $25.

(Ord. 1800C; 5-17-99)
(Code 2000)
(Ord. 1908C; 08-06-01)
(Ord. 1960C; 10-07-02)
(Ord. 2022C; 09-15-03)
(Ord. 2082C; 09-20-04)
(Ord. 2136C; 11-07-05)
(Ord. 2194C; 11-06-06)
(Ord. 2305C: 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2398C; 07-06-09)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-108A. DEFINITION -**
**Repealed**

(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)

**14-109. COMPRESSION RELEASE ENGINE BRAKING SYSTEM.**

It shall be unlawful for the driver of any motor vehicle to use or cause to be used or operated any compression release engine braking system; provided, however, that such brakes may be used in an emergency situation exists where the use of engine braking mechanical exhaust device is necessary for the protection of persons or property.

(Ord. 2175C; 07-17-06)
(Ord. 2305C: 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)

**14-109A. SEAT BELTS.**

**Repealed - .** ***[See Standard Traffic Ordinance, Section 182.1; K.S.A. 8-2503-2504, and K.S.A. 12-4120.]***

(Ord. 2450C; 06-21-10)
(Ord. 2462C; 09-20-10)
(Ord. 2487C; 05-02-11)
(Ord. 2514C; 10-17-11)
(Ord. 2847C; 06-19-17)
(Ord. 2906C; 10-01-18)

**14-110. LITTERING FROM MOTOR VEHICLE.**

No person shall throw, place or drop litter or allow litter to be thrown, placed or dropped from a motor vehicle onto or upon any highway, road or street. The driver of the motor vehicle may be cited for any litter thrown, placed or dropped from the motor vehicle, unless any other person in the motor vehicle admits to or is identified as having committed the act.

For purposes of this Article, “litter” is defined as rubbish, refuse, waste material, garbage, trash or debris of whatever kind or description and includes improperly discarded paper, metal, plastic or glass.

(Ord. 2136C; 11-07-05)
(Ord. 2305C: 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)

**14-111. TRAFFIC REGULATIONS ON PRIVATE PROPERTY.** Whenever the person in possession or control of any private property used by the public for purposes of vehicular traffic by permission of the owner, shall cause to be posted at each entrance thereto a permanently lettered clearly legible sign with the following legend:

**"TRAFFIC REGULATIONS OF THE CITY OF LEAWOOD ENFORCED ON THIS PROPERTY. SPEED LIMIT 15 M.P.H." (or as posted.)**

Then such private property shall thereafter be deemed to be under the traffic regulations of the city as provided by law.

(Ord. 1800C; 05-17-99)
(Code 2000)
(Ord. 1908C; 08-06-01)
(Ord. 2136C; 11-07-05)
(Ord. 2305C: 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)

**14-112. TRAFFIC INFRACTIONS AND TRAFFIC OFFENSES.**

(a) An ordinance traffic infraction is a violation of any section of this ordinance that prescribes or requires the same behavior as that prescribed or required by a statutory provision that is classified as a traffic infraction in K.S.A. 8-2118.

(b) All traffic infractions which are included within this ordinance, and which are not ordinance traffic infractions, as defined in subsection (a) of this section, shall be considered traffic offenses.

(Ord. 1800C; 5-17-99)
(Code 2000)
(Ord. 1908C; 08-06-01)
(Ord. 2136C; 11-07-05)
(Ord. 2305C: 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)

**14-112A.** **DRIVING ON ROADWAYS LANED FOR TRAFFIC.** Section 46 of the Standard Traffic Ordinance, incorporated in Section 14-101 of this Article, is amended to read as follows:

**Sec. 46. Driving on Roadways Laned for Traffic.**
Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply:

(a) A vehicle shall be driven entirely within a single lane and shall not be moved from such lane until the driver has first complied with the requirements of Section 54.

(b) Upon a roadway which is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in preparation for making a left turn or whether such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control devices.

(c) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such device.

(d) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of roadway and drivers of vehicles shall obey the direction of every such device.

(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-10-18)

**14-112B.** **CONSTRUCTION ZONES.** Section 204 of the Standard Traffic Ordinance, incorporated in Section 14-101 of this Article, is amended to read as follows:

**Sec. 204. Fines Doubled in Road Construction Zones.**
Fines listed in the schedule of fines, as established by the municipal court judge, shall be doubled if a person is convicted of an ordinance traffic infraction, which is defined as a moving violation in accordance with rules and regulations adopted pursuant to K.S.A. 8-249 and amendments thereto, committed within any road construction zone.

(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

**14-112C. RIDING ON ROADWAYS AND BICYCLE PATHS.** Section 131 of the Standard Traffic Ordinance incorporated in Section 14-101 of this article shall be amended to read as follows:

**Sec. 131. Riding on Roadways and Bicycle Paths.**

(a) Every person operating a bicycle or a moped upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as near to the right side of the roadway as practicable, except under any of the following situations when:

(1) Overtaking and passing another bicycle or vehicle proceeding in the same direction;

(2) Preparing for a left turn at an intersection or into a private road or driveway; or

(3) Reasonably necessary to avoid conditions including, but not limited to, fixed or moving objects, parked or moving bicycles, bicycles, pedestrians, animals, surface hazards or narrow width lanes that make it unsafe to continue along the right-hand edge of the roadway.

(b) Any person operating a bicycle or a moped upon a one-way highway with two or more marked traffic lanes may ride as near to the left side of the roadway as practicable.

(c) Persons riding bicycles upon a roadway shall not ride more than two abreast, except on paths or parts of roadways set aside for the exclusive use of bicycles.

(d) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway.

(e) For purposes of this section, "narrow width lane" means a lane that is too narrow for a bicycle and a vehicle to travel safely side-by-side within the lane. “Usable path for bicycles” shall mean paths or parts of roadways set aside for the exclusive use of bicycles.

(Ord. 2906C; 10-01-18)

**14-112D. DRIVING UPON SIDEWALKS.** Section 116 of the Standard Traffic Ordinance incorporated in Section 14-101 of this article shall be amended to read as follows:

**Sec. 116. Driving Upon Sidewalks.**

No person shall drive any vehicle or motor scooter upon a sidewalk, sidewalk area, or trail in the City, except upon a permanent or duly authorized temporary driveway.

(Ord. 2906C; 10-01-18)

**14-113.** **PENALTY FOR SCHEDULE FINES.** Section 201 of the Standard Traffic Ordinance, incorporated in Section 14-101 of this Article, shall be amended to read as follows:

**Sec. 201 Penalties**

(a) It is unlawful for any person to violate any of the provisions of this ordinance.

(b) The judge of the municipal court shall in the manner prescribed by K.S.A. 12-4305 and amendments thereto establish a schedule of fines for violation of any section of this ordinance classified as an ordinance traffic infraction by K.S.A. 8-2118 and amendments thereto. Such fines shall be imposed upon a voluntary entry of appearance and upon a plea of guilty or no contest to a complaint alleging such violation and payment of the fine and any court costs.

(c) The fine for violation of an ordinance traffic infraction or any other traffic offense for which the municipal judge establishes a fine in a fine schedule shall not be less than $10 nor more than $1,000. A person tried and convicted for violation of an ordinance traffic infraction or other traffic offense for which a fine has been established in a schedule of fines shall pay a fine fixed by the court not to exceed $1,000.

(d) Every person convicted of a violation of any of the provisions of this ordinance for which another penalty is not provided by this ordinance or by the schedule of fines established by the judge of the municipal court shall be punished for a first conviction thereof by a fine of not more than $1000 or by imprisonment for not more than six months or by both such fine and imprisonment; and for a second or subsequent conviction within two years after the first conviction such person shall be punished by a fine of not more than $2,500 or by imprisonment for not more than one year or by both such fine and imprisonment.

(Ord. 1800C; 5-17-99)
(Code 2000)
(Ord. 1908C; 08-06-01)
(Ord. 2136C; 11-07-05)
(Ord. 2305C: 02-04-08)
(Ord. 2350C; 10-06-08)
(Ord. 2419C; 11-02-09)
(Ord. 2462C; 09-20-10)
(Ord. 2514C; 10-17-11)
(Ord. 2577C; 10-01-12)
(Ord. 2640C; 10-21-13)
(Ord. 2691C; 10-06-14)
(Ord. 2756C; 11-02-15)
(Ord. 2803C; 09-19-16)
(Ord. 2906C; 10-01-18)

## ARTICLE 2. LOCAL TRAFFIC REGULATIONS

SECTIONS


14-201 PENALTIES
14-202 RESTRICTIONS ON USE OF CONTROLLED-ACCESS FACILITY OR ROADWAY SIGNS
14-203 PUSHING VEHICLES
14-204 BRIDGE WEIGHT RESTRICTIONS
14-205 REGULATION OF TRUCK TRAFFIC
14-206 MAIN TRAFFICWAYS
14-207 UNFINISHED PAVEMENT


**14-201. PENALTIES.** Unless otherwise specified, the penalties for violation of any provision of this Article 2 will be classed in the manner set out in Section 201(d) of the Standard Traffic Ordinance for Kansas Cities, as may be amended and as incorporated by reference by Section 14-101 of this Chapter.

(Ord. 1801C; 5-17-99)
(Code 2000)
(Ord. 1909C; 08-06-01)
(Ord. 1961C; 10-07-02)

**14-202. RESTRICTIONS ON USE OF CONTROLLED-ACCESS FACILITY OR ROADWAY SIGNS.**

(a) The governing body by ordinance may regulate or prohibit the use of any controlled access facility or roadway under its jurisdiction, by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.

(b) Whenever adopting any such prohibitory regulation the governing body shall erect and maintain official traffic-controlled devices on the controlled-access facility or roadway on which such regulations are applicable, and when so erected no person shall disobey the restrictions stated on such devices.

(Code 1973, 14-208)

**14-203. PUSHING VEHICLES.** No vehicle shall be pushed for a distance exceeding 300 feet nor for any distance at a speed exceeding 20 mph.

(Code 1973,14-205)

**14-204.** **BRIDGE WEIGHT RESTRICTIONS.** Upon recommendation of the city engineer with respect to bridges under the jurisdiction of the city, the governing body may by resolution impose restrictions as to the maximum gross weight of vehicles operated thereon.

(Code 1973, 14-206)

**14-205.** **REGULATION OF TRUCK TRAFFIC.** Regulations of truck traffic in the city shall be as follows:

(a) Regulation of Truck Traffic. No vehicle or truck, including trailers or attachments, carrying a manufacturer's rating of one ton or more, other than those carrying passengers or constructed to carry passengers, shall be allowed to travel within the city on any roadway other than a designated Truck Route.

(b) Exceptions. Any vehicle carrying goods, merchandise, building material or other articles to be delivered in the city may travel to that location by the most direct route from the nearest available Truck Route.

(c) Designated Truck Routes. The following streets shall be exempt from the above regulations: State Line Road; 103rd Street; I-435; 135th Street; Mission Road from 95th Street north; Kenneth Parkway; Nall Avenue; Roe Avenue; and 119th Street from Mission Road to Roe Avenue.

(Ord. 1005C, 10-6-87)
(Code 2000)
(Ord. 1909C; 08-06-01)

**14-206.** **MAIN TRAFFICWAYS.** The following list of streets, as located within the City of Leawood, are hereby designated as main trafficways with primary functions of said trafficways for the moving of through traffic between areas of concentrated activities and between such areas within the city and traffic facilities outside the city all pursuant to K.S.A. 12-685:

(a) 83rd Street;
(b) 89th Street;
(c) 95th Street;
(d) 103rd Street;
(e) 115th Street;
(f) 117th Street;
(g) 119th Street;
(h) 123rd Street;
(i) 127th Street;
(j) 133rd Street (reverse frontage road);
(k) 135th Street;
(l) 137th Street (reverse frontage road);
(m) 143rd Street;
(n) 151st Street;
(o) College Boulevard;

(p) Kenneth Parkway/Kenneth Road;
(q) Lee Boulevard;
(r) Mission Road;

(s) Nall Avenue;
(t) Roe Avenue;
(u) Somerset Drive;
(v) State Line Road;
(w) Tomahawk Creek Parkway;
(x) Town Center Drive.

(Ord. 1710C; 3-23-98)
(Code 2000)
(Ord. 1909C; 08-06-01)

**14-207. UNFINISHED PAVEMENT.** No person shall walk upon, drive or ride over or across any pavement, sidewalk or incomplete grading which has not been opened for traffic.

(Code 1984)

# CHAPTER XIV. TRAFFIC

## ARTICLE 3. PARKING

SECTIONS


14-301 DEFINITIONS
14-302 PARKING OF TRUCKS, BUSES, AND TRAILERS; EXEMPTIONS
14-303 ANGLE PARKING
14-304 PARKING YARDS OR PARKWAYS
14-305 RAMP PARKING
14-306 BUS STOPS
14-307 PARKING AND STANDING OF BUSES
14-308 PARKING PROHIBITED
14-309 TEMPORARY NO PARKING SIGNS
14-310 PARKING LIMITATION


**14-301.** **DEFINITIONS.** For the purpose of this article, the following words shall have the following meaning:

(a) **Driveway.** A hard drivable surface constructed of concrete, asphalt, brick pavers, or other solid impervious surfaces upon which vehicles are driven from the street to the garage.

(b) **Pad.** A hard drivable surface constructed of concrete, asphalt, brick pavers, or other solid impervious surfaces used to park or store vehicles off of driveways so as not to conflict with the daily use of the driveway.

(c) **Parking**. The placement of a vehicle, trailer or boat on a lot for seven consecutive days or for any portion of each of 14 total days in any 30 day period.

(d) **Passenger Vehicle**. A self-propelled motor vehicle, designed primarily for the transportation of people as opposed to equipment, freight or other vehicles. The following are expressly excluded from the definition:

1. Vehicles that have had external modifications to the structure or body, including aerial buckets or platforms (e.g. “cherry pickers”), welding equipment and mechanical lifts or arms designed to assist in loading and unloading freight, but not including cosmetic changes or common vehicle accessories;

2. Pickup trucks that do not have the traditional pickup bed and side walls, and vans that have an expanded cargo area that is taller or wider than a passenger van, including step vans, box vans, flatbed trucks, buses, semi-tractors and trailers;
3. Recreational vehicles, trailers, cement mixers, construction equipment, and any vehicle with dual rear axles.

(e) **Recreational Vehicles**. Any unit designed for recreation, living, or sleeping purposes, permanently equipped with wheels or placed upon a wheel device for the purpose of transporting from place to place. This shall include but is not limited to camping trailers, campers, tent trailers, motor homes, tent campers, buses, snowmobiles, jet skis/wave runners and boats of all sizes.

(f) **Storage**. The placement on a residential lot of any vehicle for more than seven consecutive days or for any portion of each of 15 or more days, whether or not consecutive, in a 30 day period.

(g) **Trailer**. A vehicle without motor power designed for the carrying of property, trash or debris.

(Ord. 1802C; 5-17-99)
(Code 2000)
(Ord. 1957C; 10-07-02)

**14-302. PARKING OF TRUCKS, BUSES, AND TRAILERS; EXEMPTIONS.**

(a) **Parking of Certain Vehicles Prohibited**. No person shall park or store any recreational vehicle, trailer, tractor, truck tractor or box van on any street of the city, or upon any lot, improved or unimproved, in a residential or commercial area of the city except for the purpose of making a delivery or pickup of items in order to load or unload those items, provided such vehicles are not left continuously parked between the hours of 11:00 p.m. and 6:00 a.m. and except for parking of recreational vehicles and trailers on lots when such parking is authorized under the Leawood Development Ordinance.

(b) Whenever the person in possession or control of any private property used by the public for purposes of vehicular traffic by permission of the owner, shall cause to be posted at each entrance thereto a permanently lettered clearly legible sign with the following legend:

**NOTICE**

Pursuant to Section 14-302(b) of the Code of the City of Leawood, Kansas, no trucks carrying a manufacturer's weight rating of one ton or more may be parked on this lot except for the expressed purpose of loading or unloading goods or merchandise for tenants. Violators will be towed at the vehicle owner's expense and be subject to a fine.

Then such private property shall be deemed to be under the traffic regulation of the city as provided by law and it shall be unlawful for any person to park a truck,

bus or trailer upon the property in any manner that is contrary to the laws of the City of Leawood or contrary to the posted sign.

(c) **Exempt Vehicles**. City owned and operated vehicles; service vehicles owned by utility companies while in the process of providing services or maintenance; construction vehicles while being used in connection with construction or maintenance authorized by the City and vehicles exceeding a manufacturer's weight rating of one ton when parked in designated loading and unloading areas, are hereby exempt from the provisions of this section.

(Ord. 1802C; 5-17-99)
(Code 2000)
(Ord. 1957C; 10-07-02)
(Ord. 2661C; 05-05-14)

**14-303. ANGLE PARKING.** Angle parking, except where driveways exist, shall be permitted as follows:

(a) On the west side of Lee Boulevard adjacent to the north 45 feet of Lot 67 Leawood, and from the north line of Lot 67 Leawood, an additional 213 feet northwards, adjacent to portions of Lots 68, 69 and 70 Leawood, measured at the edge of the right-of-way. Nothing in this section shall be construed to permit the parking of other than private passenger vehicles;

(b) On the south side of Somerset Drive adjacent to Lots 69 and 70 Leawood.

(Code 1973, 14-301)
(Code 2000)
(Ord. 1910C; 08-06-01)

**14-304. PARKING YARDS OR PARKWAYS**. In areas which are primarily residential in nature or specifically zoned R-1, no parking shall be permitted in the front, rear, or side yard of the residence except that passenger vehicles shall be permitted on the hard surfaced driveways of single family residences and except as expressly allowed in the Leawood Development Ordinance; provided, however, no passenger vehicle shall be parked continuously on a driveway or adjacent pad for a period exceeding 90 consecutive days.

(Ord. 573; 01-16-78)
(Code 2000)
(Ord. 1957C; 10-07-02)
(Ord. 2774C; 03-21-16)

**14-305.** **RAMP PARKING.** Parking of vehicles on Lee Boulevard is hereby prohibited from the south lot line of Lots 1322 and 1328 Leawood Estates south to Indian Creek, the same being the ramps and elevated access to Leawood Park.

(Code 1973, 14-306)

**14-306.** **BUS STOPS.** The governing body shall designate and establish by resolution zones or areas on the public streets for the stopping of buses for the safe and convenient loading and unloading of passengers.

(Code 1973, 14-307)

**14-307.** **PARKING AND STANDING OF BUSES.** The driver of a bus shall not stand or park the same upon any street in any business district at any place other than at a bus stop, except that this provision shall not prevent the driver of any school bus from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in loading or unloading passengers.

(Code 1973, 14-308)

**14-308.** **PARKING PROHIBITED.** It shall be unlawful to park, where signs are erected and maintained giving notice of prohibited parking, in the following streets or portions thereof within the City:

(a) Somerset Drive;
(b) 83rd Street, except for that portion on the south side from Wenonga to the west City limits;
(c) That part of 89th Street between State Line and Dykes Branch of Indian Creek;
(d) 95th Street;
(e) The north side of 96th Street between Lee Boulevard and State Line;
(f) The north side of 97th Street between Lee Boulevard and High Drive;
(g) 103rd Street;
(h) College Boulevard;
(I) 119th Street;
(j) 123rd Street;
(k) 127th Street between Mission Road and Nall Avenue;
(l) 143rd Street;
(m) 151st Street;
(n) State Line Road;
(o) Kenneth Parkway;
(p) Kenneth Road;
(q) Mission Road north of I-435;
(r) East side of Mission Road between 119th Street and K-150;
(s) Mission Road south of K-150;
(t) El Monte, north of College Boulevard;
(u) Tomahawk Creek Parkway;

(v) Roe Avenue, College Boulevard to K-150;
(w) Nall Avenue

(Ord. 1149C; 02-20-90)
(Code 2000)

**14-309.** **TEMPORARY NO PARKING SIGNS.** Requests can be made to the police department for installation of temporary "No Parking" signs for special occasions, or to handle parking for unusually large crowds, but only if 72 hours advance notice is given in order to provide ample time for the departments involved to handle the details. In the event ample notice is not given and employee overtime is involved, such overtime will be charged to the citizen requesting such signs, unless waived by chief of police to expedite public safety provisions.

(Ord. 575; 02-21-78)
(Code 2000)

**14-310.** **PARKING LIMITATION.** No person shall park or place any vehicle upon the streets, alleys, boulevards, or other public ways continuously for a period of more than twenty-four (24) hours. The police department may cause such vehicles parked in excess of twenty-four (24) hours to be removed and impounded. Vehicles may be released only after bond has been made for appearance in municipal court and payment of towing and storage fees.

(Ord. 921C; 07-21-86)
(Code 2000)

# CHAPTER XIV. TRAFFIC

## ARTICLE 4. RESERVED

# CHAPTER XIV. TRAFFIC

## ARTICLE 5. IMPOUNDMENT OF MOTOR VEHICLES

SECTIONS

14-501 IMPOUNDMENT OF VEHICLES
14-501A TOWING OF VEHICLES FROM PRIVATE PROPERTY [NON-CITY INITIATED]
14-502 NOTICE PRIOR TO REMOVAL
14-503 NOTICE AFTER REMOVAL
14-504 HEARING TO CONTEST REMOVAL
14-505 POLICE DEPARTMENT TOW/WRECKER ROTATION LIST
14-506 SUSPENSION OR REVOCATION OF APPROVAL AND AUTHORIZATION; GROUNDS
14-507 WRECKER OR TOWING SERVICES; PROCEDURE
14-508 SURRENDER OF TOWED VEHICLE TO OWNER
14-509 WRECKER AND TOW SERVICE FEES AND CHARGES

**14-501. IMPOUNDMENT OF VEHICLES.**

Police officers are authorized to request the immediate impoundment or removal of motor vehicles under the following circumstances:

A. As allowed by the provisions of the Standard Traffic Ordinance incorporated in this Code;

B. When an unoccupied motor vehicle is left parked continuously upon any street of the City for twenty-four (24) hours or more; provided the police department has placed a notice on the vehicle warning it will be towed if not removed within 24 hours;

C. When an unoccupied motor vehicle is found parked in or upon any regularly designated parking meter space, or in or upon any street, sidewalk or alley in violation of any of the provisions of this title or any other traffic ordinance of the City;

D. Whenever any unattended vehicle is left standing upon any highway, street, bridge, roadway, right-of-way, or public property and in such position or under such circumstances as to interfere with the normal movement of traffic or otherwise create a traffic hazard;

E. When a report has been made that such vehicle has been stolen or taken without the consent of its owner;

F. When the driver of a vehicle is arrested, except the vehicle may be released to the custody of another licensed person present upon the authority of the arrestee/driver and the consent of the other person;

G. When the driver or person in charge of a vehicle is unable to provide for its custody or removal; or

H. Accident cases where the vehicle is not driveable or the driver is injured or otherwise unable to designate disposition of the vehicle,

(Ord. No. 2228C; 07-01-07)
(Ord. No. 2907C; 10-01-18)

**14-501A. TOWING OF VEHICLES FROM PRIVATE PROPERTY [NON-CITY INITIATED]**

A. It is the intent of this Section to further the safety of the general public by ensuring that a private property owner or lessee has provided adequate authorization for the removal of a vehicle from their property, and to attempt to avoid towing mistakes and false vehicle theft reports, thereby promoting the safety of those persons involved in ordering the removal of the vehicle as well as those persons removing, towing, and storing the vehicle.

B. It shall be unlawful and a violation of this Section for any person to fail to comply with the following regulations when involved in the towing or request of towing of motor vehicles from private property at the request of third parties and without the consent of the owner or operator of the vehicle:

1. Notification: Prior to the person or tow company towing or removing a vehicle from private property, they shall notify the Leawood Police Department of their intent and of the following information concerning the tow or removal:

   a. Vehicle make, model, style, color and year;

   b. Vehicle Identification Number (VIN);

   c. License plate number and State of issuance;

   d. Ultimate destination where the vehicle is to be towed and stored, and a contact number for the owner to call for information regarding release of the vehicle;

   e. Reason for the tow; and

   f. Person ordering the tow.

2. Mandatory Disconnect: If the owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half (1/2) of the posted rate for such towing or removal, for which a receipt shall be given unless that person refuses to remove the vehicle from the property where it is otherwise unlawfully parked. There shall be no charge if the vehicle has not been connected to the tow truck.

3. Notice and Sign Requirements: Except for property appurtenant to and obviously a part of a single-family residence, which shall include duplexes, townhomes, and residential planned unit developments, and except for instances when notice is personally given to a vehicle owner or operator that the area where the vehicle is parked is reserved or otherwise unavailable for unauthorized vehicles which are subject to being towed at the owner or operator's expense, any private property owner or other person in legal possession of the property, prior to towing or removing any vehicle from private property without the consent of the owner or operator, must post a notice meeting the following requirements:

   a. The notice must be prominently placed at each primary driveway access or curb cut allowing vehicular access to the property.

   b. The notice must clearly indicate, in not less than two inch (2") high, light-reflective letters on a contrasting background, that "Unauthorized Vehicles Will Be Towed".

   c. The sign structure containing the required notices shall not exceed three (3) square feet in area and must be permanently installed, with the bottom of the sign not less than four feet (4') and not more than five feet (5') above ground level and must be continuously maintained on the property for not less than twenty four (24) hours prior to the towing or removal of vehicles.

4. Right to Enter Vehicle: A tow company may enter a vehicle for the sole purpose of removing the vehicle, provided reasonable care is used in entering the vehicle, and the tow company or person entering the vehicle is responsible for the security of the vehicle and its contents. The right of entry is conditioned on the tow service having the keys or other legal non-damaging means of entering the vehicle.

5. Owner Access: Any owner of a vehicle towed pursuant to this Section shall have access to personal property in such vehicle for up to 48 hours after such vehicle has been towed, and such personal property shall be released to said owner unless it is being held or seized as evidence.

6. Report of Location: No later than two hours after the tow or removal of a vehicle, the tow company shall report the final location of the towed vehicle to the Leawood Police Department.

7. Maximum Fees. The maximum fee a person or tow company may charge for towing vehicles from private property at the request of a third party or for storage of a vehicle shall not exceed the rates as provided in Section 14-509.

8. Violation. Any person or tow company that violates the provisions of this Section shall be fined not less than five hundred dollars ($500.00) nor more than two thousand five hundred dollars ($2,500.00). In addition to such fine, the Court may sentence any person convicted hereunder to a period of confinement of up to six (6) months in jail.

(Ord. No. ####; 03-16-20)

**14-502. NOTICE PRIOR TO REMOVAL**

A. Vehicles which are authorized to be impounded pursuant to Section 14-501 of this Code may be impounded without additional notice to the owner or lawful custodian of such vehicle.

B. Vehicles which are subject to being impounded under any other provision of this Code may not be towed until the owner or person entitled to lawful custody has been notified and given an opportunity to remove said vehicle within a reasonable time; provided, however, that where the owner or person entitled to custody cannot be located after a bona fide effort has been made to do so, then such vehicle may be towed; provided, further, that when such vehicle is located on the Interstate, then notice to the owner may be by sticker or placard on the vehicle's windshield or other prominent location indicating that the vehicle is in violation of city ordinance and shall be towed and impounded after 24 hours. For purposes of this subsection, "a bona fide effort" includes, but is not limited to, a check of the license tag of the vehicle with the Department of Motor Vehicle Registration; and a vehicle identification number search through the Department of Motor Vehicle Registration and an attempt to contact that person in person, by mail or by telephone at the address of record.

(Ord. No. 2228C; 07-01-07)
(Ord. No. 2907C; 10-01-18)

**14-503. NOTICE AFTER REMOVAL**

Wreckers and towing services shall report the location of any towed vehicle to the Leawood Police Department within two hours of towing the vehicle.

(Ord. No. 2496C; 06-20-11)
(Ord. No. 2228C; 07-01-07)

**14-504. HEARING TO CONTEST REMOVAL**

A. Owners or persons entitled to lawful custody of impounded vehicles who wish to contest the payment of any fees or charges incurred in the towing or storage of any vehicle may do so and a hearing for such purpose shall be provided within seven (7) working days after such hearing is requested. The request for hearing must be made within ten (10) days of the vehicle's impoundment.

B. Such hearings shall be held by the municipal court at times to be determined by the municipal court.

C. Pending such hearing, the owner or person lawfully entitled to custody of any impounded vehicle may retrieve the impounded vehicle upon posting a cash or surety bond in the amount of towing fees and storage charges due and if such bond is posted, the vehicle will be released immediately upon proof of entitlement thereof. If the owner or person lawfully entitled to custody of any vehicle does not post bond, then such vehicle will remain in storage until a hearing is held.

D. If after hearing, the court determines that there was no factual basis for the impoundment of said vehicle, then the vehicle will be released to the owner or person lawfully entitled to custody thereof without costs, and any bond, if posted, will be returned. If after hearing it is determined that the vehicle was lawfully towed, then all charges shall be paid by the owner or person having lawful custody of vehicle; such charges may be paid for partly or in whole by the bond, if cash, and any surplus bond money will be returned.

(Ord. No. 2228C; 07-01-07)

**14-505. POLICE DEPARTMENT TOW/WRECKER ROTATION LIST**

A. The Chief of Police shall keep a list of approved wrecker or towing service providers.

B. The following requirements and criteria shall be met by any wrecker or towing service seeking approval to be authorized and listed as eligible to respond to requests for towing service by the Leawood Police Department:

1. Exclusive of legal holidays, each wrecker or towing service shall be open and have a representative actually on the premises of the location or area where towed vehicles are stored or kept ten (10) hours per day, from 8:00 a.m. to 6:00 p.m. Monday through Friday, and a representative shall be available when called between 8:00 a.m. and 12:00 noon on Saturdays.
2. Towing and wrecker services and drivers must be available on a twenty-four (24) hour, seven (7) days a week basis and must respond within 30 minutes of any request made by the Leawood Police Department.
3. Each towing and wrecker service must have properly zoned adequate storage facilities located in Kansas. The outside storage areas should be fenced, with at least a six (6) foot high fence.
4. Each wrecker and towing service must have available storage area which is totally enclosed within a building for the protection and security of recovered stolen property to be processed and valuable property left in vehicles.
5. Each wrecker and towing service must handle and tow abandoned vehicles in proportion to the number of tow requests received from the police department for damaged or disabled vehicles.
6. Each towing and wrecker service must provide the City with proof of adequate insurance coverage as follows:
   a. Commercial General Liability: Protection limits of at least $1,000,000 Combined Single Limits, bodily injury and property damage. Policy must include the following:

i. Premises & Operations Liability;
ii. Products & Completed Operations
**and**

b. Business Automobile Liability: Protection limits of at least $1,000,000 Combined Single Limits, bodily injury and property damage. Policy must include the following:
i. All Owned, Hired and Non-Owned Autos;
ii. Garage keeper's Legal Liability including:
(1) Comprehensive
(2) Collision
(3) Towing (On-Hook)
(4) $75,000 Limit per Garage Location

c. Workers Compensation: Protection against all claims under applicable state workers' compensation laws. The Tow Company shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:
i. Workers' Compensation: Statutory
ii. Employers Liability
(1) Bodily Injury by Accident: $500,000 Each Accident
(2) Bodily Injury by Disease:
$500,000 Policy Limit
(3) Bodily Injury by Disease: $500,000 Each Employee

d. Proof of insurance must be furnished on standard Acord© certificate of insurance forms. The City is to be named as an additional insured on General Liability, including Completed Operations, and on Automobile Liability.

e. Industry Ratings: The City will only accept coverage from an insurance carrier who offers proof that it:
i. Is licensed to do business in the State of Kansas;
ii. Carries a Best's policy holder rating of "A" or better; and
iii. Carries at least a Class X financial rating; or
iv. Is a company approved by the City.

C. Each tow company must enter into and sign a Tow Service Provider Authorization and Indemnification Agreement.

(Ord. No. 2228C; 07-01-07)
(Ord. No. 2249C; 07-16-07)

**14-506. SUSPENSION OR REVOCATION OF APPROVAL AND AUTHORIZATION; GROUNDS.**

A. The Police Chief may, for just cause, suspend a company from the rotation tow list. Any such suspension shall be at the discretion of the Police Chief for a specified period of time or until the cause or reason for the suspension has been

remedied to the satisfaction of the Police Chief.

B. The Police Chief may order the revocation of a tow company from the rotational tow list for just cause. Such tow company shall not be eligible for reinstatement for at least one (1) year from the date of revocation.

C. Such suspension or revocation shall be by written notice to the tow company. The tow company may appeal such decision to the City of Leawood Governing Body by filing notice with the City Clerk's office within ten (10) days of the notice of suspension or revocation. The Governing Body shall have the power to reverse, alter, modify, uphold or increase any suspension or revocation ordered by the Police Chief.

D. Nothing in this Article or, specifically, the issuance of any license to any tow company or the utilization of any tow company, shall confer any vested property rights upon the tow company to continue on the City's rotational tow list.

E. The tow company may terminate their designation as an authorized tow service provider by providing five (5) days written notice to the Police Chief.

(Ord. No. 2228C; 07-01-07)

**14-507. WRECKER OR TOWING SERVICES; PROCEDURE**

A. Whenever a tow truck is required for any reason, the police officer will contact the vehicle owner or his or her representative when one is available to determine preference as to which tow service will be called to tow the vehicle. If the owner or his or her representative has a preference, the dispatcher will be advised to order the preferred tow service. In all circumstances of an owner preference tow where the subject vehicle may cause a traffic hazard, the contacted tow company will be required to be able to respond within 30 minutes. If the company is unable to so respond, the next company on the rotation list shall be contacted. Where no preference is indicated, then the next tow service on the rotation list shall be contacted.

B. If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half ($^1/_2$) of the posted rate for such towing or removal, for which a receipt shall be given unless that person refuses to remove the vehicle from the property where it is otherwise unlawfully parked. There shall be no charge if the vehicle has not been connected to the tow truck.

C. The tow truck driver or operator will assume full responsibility for cleaning all accident debris including but not limited to dirt, broken glass, metal or broken pieces, and the use of oil dry or a similar product to clean up any fluid spills, etc., from the roadway unless otherwise waived by the City. All debris shall be removed and deposited in a trash receptacle at the tow company's place of business.

(Ord. No. 2228C; 07-01-07)

**14-508. SURRENDER OF TOWED VEHICLE TO OWNER**

A. All motor vehicles towed and impounded pursuant to the provisions of this chapter shall be surrendered to the owner or person entitled to custody of the vehicle subject to the provisions of subparagraph B herein, upon presentation of the following to the commercial tow service where the vehicle is impounded:

1. Proof of ownership of the vehicle by lawful title or other proof of lawful entitlement to the vehicle;
2. Proof of liability insurance on the vehicle as required by the laws of the state of Kansas;
3. Proof of current registration of the vehicle as required by the laws of the state of Kansas; and

B. Payment of all storage charges and towing fees incurred in the towing and impounding of the vehicle must be made prior to release of the vehicle unless otherwise relieved of that requirement by application of the hearing provisions set forth herein.

C. Should a person seeking release of a motor vehicle impounded under the provisions of this chapter not present proof of current registration and proof of insurance, the vehicle will not be released to be driven away from the impound lot, but the vehicle may be released to be towed from the tow lot if proof of ownership is shown and all storage and towing charges are paid.

D. Any owner of a towed vehicle shall have access to personal property in such vehicle for forty-eight (48) hours after such vehicle has been towed and such personal property shall be released to the owner. No wrecker or towing service, or owner, employee or agent thereof, shall prohibit or refuse to allow the owner, operator, person in charge or possession of the towed and stored vehicle, who has proof of title or registration, to retrieve any medicine or medical supplies or personal items including purses and wallets, from such towed and stored vehicle. This section shall apply whether or not the person has paid the required fees or charges.

E. Any person or commercial towing service that tows and impounds a motor vehicle pursuant to this chapter or any other legal request for towing and impounding by a law enforcement officer of the City shall have a possessory lien as provided for in K.S.A. § 8-1103 *et seq*. Notice and disposition provisions for foreclosure of the lien and procedures as set forth in K.S.A. § 8-1103 through 8-1108 shall be complied with. Prior to any sale by a person or commercial tow service of a vehicle towed or impounded at the request of the Leawood Police Department, the person or tow service must notify the Leawood Police Department in writing that they intend to foreclose a lien they have perfected on said vehicle and they intend to sell the vehicle at public auction pursuant to the provisions of K.S.A. 8-1103 through K.S.A. 8-1108. No person will sell such vehicle until they have complied with all notices required by law.

(Ord. No. 2496C; 06-20-11)
(Ord. No. 2228C; 07-01-07)

**14-509. WRECKER AND TOW SERVICE FEES AND CHARGES.**

All wrecker or towing services may charge for towing services and storage fees, provided, however, that such amounts shall not exceed the maximum amounts set by the Governing Body of the City of Leawood by resolution. Such fees and charges shall apply only as to vehicles towed and stored in response to a request by the Police Department and shall not apply to when the request is to tow a vehicle licensed at over 16,000 pounds, however the tow company shall not charge an unreasonable fee in such situation.

| | |
|---|---|
| Hookup | $80.00 |
| Fee per mile | $3.00 |
| Outside Storage | $20.00 per day |
| Inside Storage | $25.00 per day |
| Dolly Fee | $43.00 |
| Winching fee | $100.00 per hour |

The City shall have the right to audit the records and invoices of the approved wrecker and tow services pertaining to such services rendered pursuant to request of the Leawood Police Department. Such audits may be made on an as requested basis, provided that such review shall not occur more than once every 6 months.

(Ord. No. 2228C; 07-01-07)
(Reso. No. 2788; 07-01-07)
(Ord. No. 2249C; 07-11-07)

# CHAPTER XIV. TRAFFIC

## ARTICLE 6. PARADE REGULATIONS

SECTIONS


14-601 DEFINITIONS
14-602 PERMIT REQUIRED; EXCEPTIONS
14-603 PROCEDURE
14-604 STANDARDS FOR ISSUANCE
14-605 APPLICATION FOR PARADE; DECISION BY THE CHIEF OF POLICE
14-606 APPEAL PROCEDURE
14-607 ALTERNATIVE PERMIT
14-608 NOTICE TO CITY OFFICIALS
14-609 CONTENTS OF PERMIT
14-610 DUTIES OF PERMITTEE
14-611 PUBLIC CONDUCT DURING PARADES
14-612 REVOCATION OF PERMIT


**14-601. DEFINITIONS.** The definitions of certain terms relating to parade regulations shall be as follows:

(a) *Parade* is any parade, march, ceremony, show, exhibition, pageant, foot run or race, bike race, or procession of any kind, or any similar display, in or upon any street, park or other public place in the city.

(b) *Parade Permit* is a permit as required by this article.

(c) *Person* is any person, firm, partnership, association, corporation, company or organization of any kind.

(Ord. 2495C; 06-20-11)
(Code 1973)
(Code 2000)

**14-602. PERMIT REQUIRED, EXCEPTIONS.**

(a) No person shall engage in, participate in, aid, form or start any parade, unless a parade permit shall have been obtained from the chief of police.

(b) This article shall not apply to:

(1) Funeral processions;

(2) Students going to and from school classes or participating in education activities when such conduct is under the immediate direction and supervision of the proper school authorities;

(3) A governmental agency acting within the scope of its functions.

(Code 1973)
(Code 2000)

**14-603. PROCEDURE.** A person seeking issuance of a parade permit shall file an application with the chief of police on forms provided by such officer.

(a) An application for a parade permit shall be filed with the chief of police not less than 30 days before the date on which it is proposed to conduct the parade.

(b) The application for a parade permit shall set forth the following information:

(1) The name, address and telephone number of the person seeking to conduct such parade;

(2) If the parade is proposed to be conducted for, on behalf of, or by an organization, then the name, address and telephone number of the headquarters of the organization, and of the authorized and responsible head of such organization;

(3) The name, address and telephone number of the person who will be the parade chairperson and who will be responsible for its conduct;

(4) The date the parade is to be conducted;

(5) The route to be traveled, the starting point and the termination point;

(6) The approximate number of persons, animals and vehicles that will constitute such parade; the type of animals and description of the vehicles;

(7) The hours when such parade will start and terminate;

(8) A statement as to whether the parade will occupy all or only a portion of the width of the streets to be traversed;

(9) The location by streets of any assembly areas for such parade;

(10) The time at which units of the parade will begin to assemble at any such assembly area or areas;

(11) The interval of space to be maintained between units of such parade;

(12) If the parade is designed to be held by, and on behalf of or for any person other than the applicant, the applicant for such permit shall file with the chief of police a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his or her behalf;

(13) Any additional information which the chief of police shall find reasonably necessary to a fair determination as to whether a permit should be issued including a certificate of insurance coverage if required.

(c) The chief of police, where good cause is shown therefor, shall have the authority to consider any application hereunder which is filed less than 30 days before the date such parade is proposed to be conducted.

(d) A permit fee and any other applicable fees shall be paid at the time of filing the application for a parade permit. The amount of the fee(s) shall be as established by the Governing Body by resolution or ordinance.

(Ord. 2495C; 06-20-11)
(Ord. 1264C; 11-18-91)
(Code 2000)
(Ord. 2825C; 03-06-17)

**14-604. STANDARDS FOR ISSUANCE.** The Chief of Police shall issue a permit as provided for hereunder when, from a consideration of the application and from such other information as may otherwise be obtained, he or she finds that:

(a) The conduct of the parade will not substantially interrupt the safe and orderly movement of other traffic contiguous to its route;

(b) The conduct of such parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to portions of the city other than to be occupied by the proposed line of march and areas contiguous thereto;

(c) The concentration of persons, animals and vehicles at assembly points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such assembly areas; and

(d) The event has in place, a minimum of one million dollars of general liability insurance with the City named as additional insured, unless the City Administrator after review of the circumstances determines otherwise.

(e) The conduct of such parade will not interfere with the movement of fire fighting equipment in route to a fire.

(Ord. 2495C; 06-20-11)
(Code 1973)
(Code 2000)

**14-605. APPLICATION FOR PARADE: DECISION BY THE CHIEF OF POLICE.** The chief of police shall act upon the application for a parade within a reasonable time after the filing thereof.

(Code 1973)
(Code 2000)

**14-606.** **APPEAL PROCEDURE.** Any person aggrieved shall have the right to appeal the denial of a parade permit to the City Administrator. The notice of appeal shall be served upon the City Clerk within 10 days after notice of denial.

(Code 1973)
(Code 2000)
(Ord. 2825C; 03-06-17)

**14-607.** **ALTERNATIVE PERMIT.** The chief of police, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within 10 days after notice of the action of the chief of police, file a written notice of acceptance with the chief of police. An alternate parade permit shall conform to the requirements of, and shall have the effect of, a parade permit under this article.

(Code 1973)
(Code 2000)

**14-608.** **NOTICE TO CITY OFFICIALS.** Immediately upon the issuance of a parade permit, the Chief of Police shall send a copy thereof to the Director of Public Works and the Fire Chief.

(Ord. 1264C; 11-18-91)
(Code 2000)

**14-609.** **CONTENTS OF PERMIT.** Each parade permit shall state the following information:

(a) Starting time;
(b) Minimum speed;
(c) Maximum speed;
(d) Maximum interval of space to be maintained between the units of the parade;
(e) The portions of the streets to be traversed that may be occupied by the parade;
(f) The maximum length of the parade in miles or fractions thereof;
(g) Such other information as the chief of police shall find necessary to the enforcement of this article.

(Code 1973)
(Code 2000)

**14-610.** **DUTIES OF PERMITTEE.** A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances.

The parade chairperson or other person heading or leading such activity shall carry the parade permit upon his or her person during the conduct of the parade.

(Code 1973)
(Code 2000)

**14-611.** **PUBLIC CONDUCT DURING PARADES.** The following rules of public conduct

shall be observed during parades:

(a) No person shall unreasonably hamper, obstruct or impede, or interfere with any parade or parade assembly or with any person, vehicle or animal participating or used in a parade.

(b) No driver of a vehicle shall drive between the vehicles or persons comprising a parade when such vehicles or persons are in motion and are conspicuously designated as a parade.

(c) The chief of police shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a highway or part thereof constituting a part of the route of a parade. The chief of police shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this article.

(Ord. 1264C; 11-18-91)
(Code 2000)

**14-612.** **REVOCATION OF PERMIT.** The chief of police shall have the authority to revoke a parade permit issued hereunder upon violation of the standards for issuance as herein set forth.

(Ord. 1264C; 11-18-91)
(Code 2000)

# CHAPTER XV. UTILITIES


| | | |
|---|---|---|
| **Article 1.** | **Leawood Sanitary Sewer System** | **- Repealed** |
| **Article 2.** | **Private Sewage Disposal System** | **- Repealed** |
| **Article 3.** | **Storm Sewers** | |
| **Article 4.** | **Solid Waste** | |
| **Article 5.** | **Stormwater Management** | |
| **Article 6.** | **Illicit Discharge** | |
| **Article 7.** | **Post Construction Stormwater Runoff Control** | |


## ARTICLE 1. GENERAL PROVISIONS

**[REPEALED BY ORDINANCE NO. 1897C; 07-02-01]**

**[Prior Law: Ord. 1137C; 11/20/1989: Ord. 753: Ord. 501; Code 1984; Code 1973]**

## ARTICLE 2. PRIVATE SEWAGE DISPOSAL SYSTEM

**(REPEALED BY ORD. NO. 1504C; 06-05-95)**

## ARTICLE 3. STORM SEWERS

SECTIONS


15-301 INCORPORATING HYDRAULIC PERFORMANCE OF SETBACK CURB INLETS-REPEALED
15-302 INCORPORATING DIVISION V-SECTION 5600 DESIGN CRITERIA FOR STORM DRAINAGE SYSTEMS AND FACILITIES
15-303 INCORPORATING DIVISION V-DESIGN CRITERIA – DIVISION 5100 EROSION AND SEDIMENT CONTROL
15-303A INCORPORATING DIVISION II- CONSTRUCTION AND MATERIAL SPECIFICATIONS-SECTION 2150 EROSION AND SEDIMENT CONTROL
15-304 STANDARD SPECIFICATIONS AND DESIGN CRITERIA INCORPORATED
15-304A SECTION 2602 PIPE SEWER CONSTRUCTION
15-305 PUBLIC AND PRIVATE RESPONSIBILITIES UNDER THE STORMWATER MANAGEMENT SYSTEM
15-306 PROCEDURE FOR APPROVAL OF STORMWATER MANAGEMENT PLAN
15-307 DESIGN CRITERIA AND PERFORMANCE STANDARDS


**15-301. INCORPORATING HYDRAULIC PERFORMANCE OF SETBACK CURB INLETS. –**
**[Repealed by Ord. No. 2354C]**

(Ord. 1841C; 01-03-00)
(Ord. 2354C; 10-20-08)

**15-302. INCORPORATING DIVISION V- SECTION 5600 DESIGN CRITERIA FOR STORM DRAINAGE SYSTEMS AND FACILITIES.**

There is hereby incorporated by reference that certain "Division V –Section 5600, Storm Drainage Systems & Facilities" of that publication known as "Standard Specifications and Design Criteria" approved and adopted, February 16, 2011, prepared and published by the Kansas City Metropolitan Chapter of the American Public Works Association, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of the Design Criteria for Storm Drainage Systems and Facilities (Division V - Section 5600) shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2827C" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1842C; 01-03-00)
(Code 2000)
(Ord. 2062C; 05-17-04)
(Ord. 2355C; 10-20-08)
(Ord. 2827C; 03-20-17)

**15-303. INCORPORATING DIVISION V- DESIGN CRITERIA - DIVISION 5100 EROSION AND SEDIMENT CONTROL.**

There is hereby incorporated by reference that certain "Division V –Design Criteria– Division 5100 Erosion and Sediment Control" of that publication known as "Standard Specifications and Design Criteria" approved and adopted, September, 15, 2010, prepared and published by the Kansas City Metropolitan Chapter of the American Public Works Association. No fewer than three copies of the Division V – Design Criteria – Division 5100 Erosion and Sediment Control shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2827C" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1843C; 01-03-00)
(Ord. 2356C; 10-20-08)
(Ord. 2827C; 03-20-17)

**15-303a. INCORPORATING DIVISION II – CONSTRUCTION AND MATERIAL**

**SPECIFICATIONS – SECTION 2150 EROSION AND SEDIMENT CONTROL.**

There is hereby incorporated by reference that certain "Division II – Construction and Material Specifications – Section 2150 Erosion and Sediment Control" of that publication known as "Standard Specifications and Design Criteria", approved and adopted, May 21, 2008, prepared and published by the Kansas City Metropolitan Chapter of the American Public Works Association. No fewer than three copies of the Division II – Construction and Material Specifications – Section 2150 Erosion and Sediment Control shall be marked or stamped "Official Copy as Adopted by Ordinance No. _____2357C_____" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 2357C; 10-20-08)

**15-304. STANDARD SPECIFICATIONS AND DESIGN CRITERIA INCORPORATED.** There is hereby incorporated by reference the "Division II-Construction and Material Specifications, Sewers, Section 2600 Storm Sewers" of the "Standard Specifications and Design Criteria," April 17, 1996 Edition, as amended through December 31, 2007, prepared and published by Kansas City Metropolitan Chapter of the American Public Works Association, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. § 12-3009 through §12-3012, inclusive, as amended. No fewer than three copies of said Standard Specifications and Design Criteria shall be marked or stamped "Official Copy as Incorporated by Ordinance No. _____2358C_____", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 1844C; 01-03-00)
(Ord. 2358C; 10-20-08)

**15-304a. SECTION 2602 PIPE SEWER CONSTRUCTION**

2602.1 SCOPE: This section governs the construction of pipe storm sewers and appurtenances at the location and to the lines and grades indicated on the Contract Drawings.

2602.2 MATERIALS:

***A. Reinforced Concrete Pipe:***

1. Pipe: Reinforced concrete pipe shall conform to the following ASTM Standards and be of the minimum strength designated herein or such higher strength as may be required by the Contract Drawings or Special Provisions:

a. Round Pipe: ASTM C 76, Class III, Wall B.
b. Elliptical Pipe: ASTM C 507, Class HE-III.
c. Arch Culvert Pipe: ASTM C 506, Class A-III.

2. Joints:

a. Flexible Gasket: Flexible gaskets may be either flat gaskets cemented to the pipe tongue or spigot, O-ring gaskets, or roll-on gaskets. All gaskets shall conform to ASTM C 443.

b. Cement Mortar: Cement mortar shall consist of one part Type 1 portland cement by volume to three parts sand conforming to ASTM C 144 by volume mixed with sufficient water to form a workable stiff mortar paste.

c. Plastic Compound: This compound shall be a homogeneous blend of bituminous material, inert filler and suitable solvents or plasticizing compounds thoroughly mixed at the factory to a uniform consistency suitable for sealing joints of concrete pipe. The compound shall conform to the following requirements:

Bitumen, soluble in $CS_2$, percent by weight, minimum 45%
Ash, percent by weight 15-50%
Penetration, standard cone, 150g,
5 seconds, 25º C
Trowel grade, bulk type 110-250mm
Extruded rope or flat tape type 50-120mm

The above penetration ranges include test tolerances.

d. Preformed Plastic Compound: This compound shall be either rope form or flat tape form conforming to ASTM C 990. Primer, as recommended by the manufacturer, shall be used to maintain the material in position while pipe sections are being joined.

## *B. Alternate Material for Private Storm Sewers*

1. Scope. This section defines requirements for the use of HDPE pipe as an alternate material for privately maintained storm sewer systems originating on private property.
2. Definitions. For purposes of this section, the following terms shall have the following definitions:
    a. HDPE pipe – For the purposes of this section, acceptable HDPE pipe is defined as: Type S, double wall (smooth interior, corrugated outer wall), high density polyethylene pipe utilizing a bell-and-spigot joint system and providing a water tight joint.
    b. Incidental landscape drainage system – A system which serves landscaping and is minor in nature and where the system is less than a 15" diameter.
    c. PE – Polyethylene.
    d. Private storm sewer system – A system which mainly collects and conveys runoff from a single property and is privately maintained by the property owner. The City will make final determinations regarding which systems may be private versus public during the plan review process.
    e. Roof drain – A pipe system which conveys only runoff from building roofs.
    f. Storm water detention facility – A facility which controls the maximum release rate from a site. It is considered to be separate by definition from the storm sewer system for regulation and specification purposes.

3. General Requirements.
    a. 15-inch diameter, 18-inch diameter and 24-inch diameter HDPE pipe is allowed only for private storm sewer systems.
    b. A private system using HDPE pipe may enter the public right-of-way to connect with a public storm sewer at a structure. However, HDPE pipe is not allowed to be installed underneath public streets.
    c. Roof drains and Incidental landscape drainage systems may use pipe with a diameter less than 15-inches in size. Pipe material must meet industry standards and the Storm Drainage section of the International Building Code as adopted by the City of Leawood.
    d. Storm water detention facilities may use15-inch through 60-inch diameter HDPE circular pipe or chambered type structures if approved by the City Engineer.
    e. HDPE /plastic storm drainage junction structures and inlets are not allowed as part of the private storm sewer system except as an internal part of a stormwater detention facility or if specifically approved by the City Engineer.

4. Requirements and Specifications
   a. Certification. All HDPE pipe used in storm sewer applications shall conform to the requirements in the latest edition of AASHTO M294 and ASTM F2306.
   b. Manufacturers. Pipe shall be provided only by manufacturers that are certified through the Plastic Pipe Institute (PPI) Third Party Certification program and/or the National Transportation Product Evaluation Program (NTPEP).
   c. Materials.
      i. Pipe. The manufacturer of HDPE pipe shall be governed by the latest edition of ASTM F2306 and AASHTO M294. Pipe and fittings shall be made from virgin PE compounds which conform to the requirements of cell class 435400C in the latest edition of ASTM D3350.
      ii. Joints.
         (1) Pipe joints shall consist of in-line integral bell and spigot with rubber gasket that meets ASTM F477. Bell shall span over three spigot corrugations.
         (2) Water tight joints shall be provided which meet a 10.8 psi laboratory test in accordance with ASTM Test Method D3212.
      iii. Fittings.
(1) Fittings shall not reduce or impair the overall integrity or function of the pipeline system.
(2) Fittings shall meet the requirements of AASHTO M294 and ASTM F2306.
(3) Fittings may be either molded or fabricated.
(4) Only fittings supplied or recommended by the manufacturer shall be used.
   d. Installation.
      i. Installation shall be per ASTM D2321 and the manufacturer's specifications. In the case of a discrepancy between the two, the more restrictive requirements shall govern.
      ii. Exception: The minimum cover over the pipe shall be 18-inches for pipes up to 24-inches in diameter. The minimum cover for pipes larger than 24 inches in diameter and up to 60 inches in diameter shall be 24-inches.
5. Construction.
   a. All pipe, pipe couplings, and accessories shall be unloaded, stockpiled, hauled, distributed, and otherwise handled in a manner which will prevent damage thereto.
   b. Special care shall be taken to lay all pipe to exact grade and line. All pipe, when jointed, shall form a true line of sewer. Any pipe that has a grade or joint disturbed after laying shall be taken up and re-laid.

c. All pipes shall be laid with the separate sections joined firmly together, with outside laps of circumferential joints pointing upstream, and the center line of the invert coinciding with the specified alignment of the pipe.

d. The interior surfaces of all pipes shall be thoroughly cleaned of all foreign matter before being lowered in the trenches and shall be kept clean during laying operations.

e. Joints shall be constructed to attain a watertight joint.

f. Marking. Each pipe, fitting, or special section shall have markings per AASHTO M294. Required information shall be plainly and permanently marked on each item. Markings shall include: specification designation, the nominal size, the manufacturer's name, trade name or trademark, plant designation code, and date of manufacture (or appropriate code).

g. Deflection. Maximum deflection (reduction of the barrel base inside diameter) is 5%. Time of measurement shall be not less than 30 days nor more than 60 days following installation. Deflections in excess of 5% may require the pipe to be removed and new pipe installed.

6. Field Quality Control & Testing

a. Prior to backfilling the pipe, all storm sewer shall be inspected by a licensed engineer hired by the owner or developer.

b. Mandrel testing (or other approved method) shall be required when inspection reveals excessive deflection as determined by the engineer and/or the City. Testing shall be at the expense of the contractor.

***C. Granular Bedding Material:***

Granular bedding material shall be crushed stone or pea gravel conforming to MCIB, Section No. 4 (Materials), Column No. 3, (Coarse Aggregate), or as approved by the Engineer.

(Ord. 2358C; 10-20-08)

**15-305. PUBLIC AND PRIVATE RESPONSIBILITIES UNDER THE STORMWATER MANAGEMENT SYSTEM.**

(a) **Public Responsibilities**:

(1) ***Administration*** - The administration of these regulations shall be the responsibility of the Director of Public Works who shall review and approve Stormwater Management Plans as provided herein.

(2) ***Operation and Maintenance of Publicly Owned Facilities*** - The City Public Works Department shall be responsible, during and after construction, for the operation and maintenance of all drainage structures and improved courses which are part of the stormwater runoff management system under public ownership and which are not constructed and maintained by or under the jurisdiction of any state or federal agency.

(b) **Private Responsibilities**:

(1) Each developer of land within the City of Leawood has the responsibility to provide on the developer's property all approved stormwater runoff management facilities to ensure the adequate drainage and control of stormwater on the developer's property both during and after construction of such facilities.

(2) Each developer or owner has the responsibility and duty before and after construction to properly maintain any on-site stormwater runoff control facility which has not been accepted for maintenance by the public. Such responsibility is to be transmitted to subsequent owners through appropriate covenants.

(Ord. 1048C; 04-04-88)

**15-306. PROCEDURE FOR APPROVAL OF STORMWATER MANAGEMENT PLAN.** No development shall increase the quantity and rate of stormwater emanating from said land areas except in accordance with an approved Stormwater Management Plan as provided in Article 5 of the Code of the City of Leawood, 2000, as amended. No building permits shall be issued until and unless the Stormwater Management Plan has been approved by the Director of Public Works.

(Ord. 1048C;04-04-88)
(Code 2000)
(Ord. 2062C; 05-17-04)

**15-307. DESIGN CRITERIA AND PERFORMANCE STANDARDS.** The Design Criteria as provided in Division V, Section 5600 of the Kansas City Metropolitan APWA shall govern the design of improvements with respect to managing stormwater runoff.

(Ord. 1048C; 04-04-88)

## ARTICLE 4. SOLID WASTE

SECTIONS

15-401 CITY'S SOLID WASTE MANAGEMENT PLAN
15-402 DEFINITIONS
15-403 STORAGE OF SOLID WASTE
15-404 TEMPORARY STORAGE
15-405 COLLECTION AND DISPOSAL OF SOLID WASTE
15-406 COLLECTION AND DISPOSAL OF RECYCLABLES
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15-422 PENALTY

**15-401. CITY'S SOLID WASTE MANAGEMENT PLAN.** This Article shall be construed in such a manner to be consistent with the Johnson County Solid Waste Management Plan.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-402. DEFINITIONS.** For the purposes of this article, the following terms, phrases, words and their derivation shall have the meanings given in this section:

(1) ***Agricultural Waste***. Solid waste resulting from the production of farm or agricultural products.

(2) ***Approved Container***. All containers designed for the disposal of solid waste, which may include cans and recycling containers. All such containers shall be of rigid construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers. Containers shall have a maximum capacity of 96 gallons and be so constructed as to adequately contain all contents placed therein without spillage, leakage or emission of odors while awaiting collection.

(3) ***Bulky Waste***. Items either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefore, including but not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.

(4) ***City***. The City of Leawood, Kansas.

(5) ***Collection***. Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

(6) ***Collector***. Any person, public or private, engaged in collecting solid waste and recyclable materials.

(7) ***Combined Refuse Collection***. The collection of mixed refuse (putrescible and nonputrescible).

(8) ***Combined Solid Waste***. Solid waste containing both garbage and rubbish.

(9) ***Commercial Waste***. Solid waste emanating from establishments engaged in business. This category includes, but is not limited to solid waste originating in stores, markets, office buildings, restaurants, shopping centers, theaters and schools.

(10) ***Composting***. A controlled process of microbial degradation of organic material into a stable, nuisance free humas-like product.

(11) ***Construction Waste***. Waste building materials and rubble resulting from construction, remodeling or repair operations on houses, commercial buildings, or other structures and pavements.

(12) ***Contractor***. The person or corporation holding a valid Solid Waste Management contract, whether public or private operation.

(13) ***Demolition Waste***. Waste material from the destruction of residential, industrial or commercial structures.

(14) ***Disposable Solid Waste Container***. Approved containers, which are designed to be disposed of with the solid waste contained therein.

(15) ***Disposal***. Depositing solid waste in or at a facility approved by the City, Johnson County Solid Waste Management, and the Kansas State Board of Health for such purpose.

(16) ***Dump***. A collection or consolidation of solid waste from one or more sources at a central disposal site, which does not meet standards for proper disposal.

(17) ***Dwelling Unit***. Any room or group of rooms located within a structure, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

(18) ***Garbage***. The animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods, including unclean containers.

(19) ***Hazardous Waste***. Solid and liquid waste which requires special handling and disposal to protect and conserve the environment and human health including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive materials, flammable or explosive materials, oils and solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous waste.

(20) ***Incineration***. The controlled process of burning solid, liquid and/or industrial processes and liquid waste resulting from manufacturing or industrial processes which are not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant.

(21) ***Nuisance***. Anything which (1) is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the handling or disposal of solid waste.

(22) ***Occupant***. Any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or any other improved real property, either as owner, guest, or as a tenant, either with or without the consent of the owner thereof.

(23) ***Owner***. Any person who, alone or jointly or severally with others, has legal title to, or sufficient proprietary interest in, or have charge, care or control of any dwelling unit or any other improved real property, as title holder, as employee or agent of the title holder, or as landlord or manager or as trustee or guardian of the estate or person of the title holder.

(24) ***Person***. Individual, partnership, corporation, institution, political subdivision, homes association or state agency.

(25) ***Processing*** of ***Waste***. Any technology applied for the purpose of reducing the bulk or hazards of solid waste materials or any technology designed to convert part or all of the solid waste materials for refuse.

(26) ***Putrescible Waste***. The progressive chemical decomposition of the organic matter in refuse, with the production of foul smelling compounds and/or material that attracts insect or animal life.

(27) ***Recyclable Container***. Receptacle used by any person to store recyclables during the interval between recyclable collections.

(28) ***Recyclable Material***. Glass, aluminum, tin, newspaper and plastic beverage containers.

(29) ***Refuse***. (See Solid Waste).

(30) ***Rubbish***. Nonputrescible solid wastes consisting of combustible and/or noncombustible

waste materials from: dwelling units, commercial, industrial, institutional, or agricultural establishments, including yard wastes and items commonly referred to as "trash."

(a) ***Bulky rubbish*** - (See Bulky Waste).

(b) ***Commercial rubbish*** - rubbish resulting from commercial, industrial, institutional, or agricultural activities.

(c) ***Residential rubbish*** - rubbish resulting from the maintenance and operation of dwelling units.

(31) ***Scavenger***. A person who scavenges. Scavenge means to collect and remove refuse from.

(32) ***Service***. The useful result; the product of labor and machines in property and effective management to dispose of solid waste.

(33) ***Solid Waste***. Unwanted or discarded waste materials in a solid or semiliquid state, including but not limited to refuse, garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, abandoned vehicle parts, special wastes, industrial wastes, demolition and construction wastes and digested sludges resulting from the treatment of domestic sewage or a combination thereof.

(a) ***Commercial solid waste*** - solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment.

(b) ***Residential solid waste*** - solid waste resulting from the maintenance and operation of dwelling units.

(34) ***Solid Waste Container***. Any receptacle used by any person to store solid waste during the interval between solid waste collections.

(35) ***Solid Waste Disposal Area***. Also referred to herein as "disposal area" or "disposal site", means any area used for the disposal of refuse from more than one residential premise, or one or more commercial, industrial, manufacturing, or municipal operations.

(36) ***Solid Waste Processing Facility***. Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

(37) ***Storage***. Keeping, maintaining or storing solid waste from the time of its production until the time of its collection.

(38) ***Temporary Storage***. Proper accumulation and storage of solid waste between regularly scheduled refuse collection intervals.

(39) ***Transfer Station***. A facility used as an adjunct to solid waste collect on system. Such a facility may be fixed or mobile and may include recompaction of solid waste.

(40) ***Water Pollution***. Contamination, or other alteration of the physical, chemical or biological properties of any waters of the City or state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health safety or welfare, or to the plant, animal or aquatic life of the City or state or to other legitimate beneficial uses.

(41) ***Waters of the City or State***. All streams, creeks, and springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state.

(42) ***Yard Wastes***. All forms of botanical waste, including but not limited to grass clippings, leaves, tree trimmings, branches and stumps.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2822C; 03-06-17)

**15-403. STORAGE OF SOLID WASTE.**

(a) The owner or occupant of every dwelling unit and of every institutional, commercial, industrial or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate approved containers for the storage of such solid waste in sufficient number to serve each such dwelling unit and/or establishment; and shall maintain such solid waste containers and their environs at all times reasonably clean and in good repair; and shall repair or replace same from time to time, without notice, when any such containers shall no longer meet the specifications therefore as established by regulations.

(b) The occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural or business establishment, from which solid waste collection is made under this article, shall place all solid waste in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat, and sanitary condition at all times. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation must be kept covered or in approved containers, closed bins or containers not subject to deterioration. All containers shall be screened in such a manner that they are not visible from any street or roadway except when placed in position for pickup.

(c) Residential solid waste shall be stored in approved containers of not more than 96 gallons. Such containers shall be of watertight construction and provided with a lid or cover which shall fit closely to retain all odors and keep out flies and other insects and shall be kept covered at all times except when depositing waste or removing same.

(d) Commercial solid waste shall be stored in solid waste containers. The containers shall be water-proof, leak-proof, and shall be covered at all times except when depositing waste therein or removing contents thereof; and shall meet all requirements as set forth in this article.

(e) Tree limbs less than four inches in diameter and brush shall be securely tied in bundles not larger than 48 inches long and 18 inches in diameter when not placed in storage containers.

(f) Yard wastes shall be stored in approved containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, upon adjacent

premises, or upon adjacent public rights-of-way. The weight of any individual container and its contents shall not exceed 75 pounds.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2822C; 03-06-17)

**15-404.** **TEMPORARY STORAGE**. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation shall be covered or in closed bins or containers not subject to deterioration and properly maintained. Materials not subject to decay or putrefaction shall be stored temporarily in containers suitable for the handling thereof.

(Ord. 1895C; 06-18-01)

**15-405.** **COLLECTION AND DISPOSAL OF SOLID WASTE.** The City shall provide or allow for the collection of all residential solid waste as follows:

(a) The City shall provide for or establish the parameters by which all solid waste and recyclables are collected and disposed of in the City. The City provides for the collection of solid waste by authorizing others, including, but not limited to, homes associations, commercial and retail establishments and other nonresidential establishments to be responsible for providing for the collection of solid waste and recyclables, and complying with all applicable restrictions, regulations and property maintenance codes, provided further that the following guidelines are followed:

1. Residential Collection: Residential collection, other than bulky waste, in residential areas shall be not less than one [1] collection each calendar week when applicable.
2. Commercial-Industrial Collection: Commercial-industrial collection shall be not less than one [1] collection each calendar week or at more frequent intervals upon a determination that more frequent intervals if necessary to protect the health, welfare and safety of the City and to maintain the premises in a sanitary and unlittered condition.
3. Hours of Collection: Collection within two hundred [200] feet of residential areas shall not commence earlier than 7:00 A.M. nor continue later than:

   (i) 8:00 P.M. during the months of May through September; and
   (ii) 7:00 P.M. during the months of October through April.

(b) Each collector shall contractually provide for the service of collecting and transporting residential solid waste, recyclables and yard waste to each person requesting such service located within the City of Leawood, Kansas. Upon request, each collector shall promptly furnish a copy of any and all contracts to the City.

(c) All persons contracting to provide the service of collecting and transporting residential solid waste and recyclables in the City of Leawood shall meet all the licensing requirements and regulations of the City. Every hauler shall periodically provide documentation to their clients substantiating the method by which the recyclables were disposed of, weight and/or volume of recyclables collected and compensation received for the recycled materials.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2791C; 07-05-16)
(Ord. 2923C; 01-07-19)

**15-406. COLLECTION AND DISPOSAL OF RECYCLABLES.** The City shall provide or allow for the collection of all residential recyclables as follows:

(a) All recyclables shall be disposed of at a recycling processing or disposal facility approved by and complying with all requirements of the Johnson County Waste Administrator and which will meet all local, State and Federal regulations.

(b) Residential recyclables shall be stored in an open rectangular bin, a minimum of fourteen (14) gallons in capacity, green in color and constructed of twenty five percent (25%) recycled plastic to be furnished by the contractor. The City Administrator, may, upon application, approve different colors for the container. The City Administrator may require placement of an approved logo or identifying mark on each recyclable container.

(c) Should the owner or occupant of any premises desire to recycle, then such person shall separate recyclable materials from all other solid waste and place such recyclable materials at curbside, in one container, for collection and shall maintain such recyclable containers and the area surrounding it in a neat, clean and sanitary condition at all times. It shall be the responsibility of the recyclable collector to provide such container.

(d) All recyclable collection containers shall be maintained in a safe, clean and sanitary condition and shall be so construed, maintained and operated as to prevent spillage therefrom.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-407. COLLECTION VEHICLES.**

(a) All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with water-tight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting waste, or, as an alternate, the entire bodies thereof shall be enclosed, with only loading hoppers exposed. No materials shall be transported in the loading hoppers.

(b) All motor vehicles operating under any permit required by this article shall display a City permit (sticker) in the lower right corner of the windshield of each vehicle. The permit must be clearly visible.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-408. PERMITS.**

(a) Any person engaging in the business of collecting, transporting or processing of solid waste or recyclables, within the corporate limits of the City shall first obtain a permit from the City Clerk. Each applicant for any such permit shall state in his or her application the following:

1. The nature of the permit desired (storage, collection and/or transportation of solid waste or any combination thereof);
2. The characteristics of solid waste to be collected and transported;
3. The number of solid waste vehicles and equipment to be operated thereunder;
4. The precise location or locations of solid waste processing or disposal for service to be used;
5. The information sufficient to establish that the permittee in contracting to collect and transport solid waste within the City has agreed that said collection and transportation will be in accordance with the provisions of this ordinance;
6. An agreement to indemnify and hold the City harmless for any claims which may be made against the City as a result of the failure of the permittee to transport, dispose, or process solid waste collected within the City in compliance with this ordinance, state or federal law;
7. Such other information as required by the City Clerk as may be reasonably necessary to determine that the operations of the permittee will be conducted in compliance with the provisions of this ordinance.

(b) Permits will be issued on a client-by-client basis. A permit will not be issued for collection of solid waste for those clients who have not agreed to expand their service to include all aspects of the integrated solid waste management program.

(c) If the application shows that the applicant will collect and transport solid waste and recyclables without hazard to the public health or damage to the

environment and in conformity with the Johnson County Solid Waste Management System, the laws of the State of Kansas, and of this article, the City shall issue the permit authorized by this article.

(d) The permit shall be issued fora period of time, not to exceed one year and each applicant shall pay a fee of $25.00 for each collection vehicle to be used in the City. The application must clearly show that the collection and transportation of solid waste and recyclables will create no public health hazard or be without harmful effects on the environment. If such a showing is not made by the applicant, the City Clerk shall deny the application and not issue the permit.

(e) Permits shall not be required for the removal, hauling or disposal of demolition or construction wastes; however, all such wastes shall be conveyed in tight vehicles, trucks or receptacles, so constructed and maintained to prevent the material being transported from spilling upon the public highways.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2791C; 07-05-16)

**15-409. PERMIT SUSPENSION OR REVOCATION.**

In all cases, when corrective measures have not been taken, within the time specified, when so required by the City to comply with this Article, the City Administrator shall suspend or revoke the permit involved in the violation; however, in those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time may be given.

(Ord. 1895C; 06-18-01)
(Ord. 2798C; 08-15-16)

**15-410. APPEALS.**

(a) Any person who feels aggrieved by any act of the Public Works Director or City Administrator, may within ten [10] days of the act for which redress is sought, appeal directly to the Governing Body, in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.

(b) Any person licensed under this Article and found, after public hearing before the Governing Body, to be in violation of the provisions of this Article, may have any license or permit issued by the City suspended or revoked.

(c) Nothing in this section shall prejudice the right of the applicant to reapply at a later date for a permit.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2798C; 08-15-16)

**15-411. INSURANCE REQUIREMENTS.**

The applicant must furnish the City a certificate of insurance showing a minimum public liability insurance coverage in an amount not less than $500,000 for each occurrence. In

the event the insurance is canceled during the term of the permit, the insurance carrier shall notify the City in writing no less than 10 days prior to the effective date of such cancellation. The certificate of insurance shall provide that the insurance company agrees to so notify the City, and further, the insurance policy shall contain written provisions which shall place the responsibility for the 10-day written notification upon the company issuing the policy in order that the coverage be considered proper.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-412. OFFICE AND TELEPHONE REQUIRED.**

All licensed contractors shall maintain an office with adequate telephone service to provide for service inquiries and complaints. The City Clerk shall be promptly furnished with any change in telephone or address, if such changes occur after receiving the license or permit.

(Ord. 1895C; 06-18-01)

**15-413. INSPECTIONS.**

In order to ensure compliance with the laws of this State, the Johnson County Solid Waste Management Plan, County Solid Waste Regulations, this Article and the rules authorized herein, the City Administrator, or his/her designee, is authorized to inspect all phases of solid waste management within the City and within the property of the permit holder. No inspection shall be made in any residential unit unless authorized by the occupant or by due process of law. In all instances where such inspections reveal a violation of this Article, the City Administrator, or his/her designee, shall issue notice for each such violation stating therein the violation or violations found, the time and date and the corrective measure to be taken, together with the time in which such corrections shall be made.

(Ord. 1895C; 06-18-01)

**15-414. RULES AND REGULATIONS.**

(a) The Public Works Director, by and with the consent of the Governing Body, shall define and promulgate reasonable and necessary rules governing the solid waste management system, which rules and regulations shall be filed in the Office of the City Clerk. The rules and regulations shall include, but not be limited to:

Handling of special wastes such as toxic and hazardous wastes, sludges, ashes, agricultural wastes, construction wastes, automobiles, oils, greases, bulky wastes.

(b) The Public Works Director may classify certain wastes as hazardous wastes which will require special handling and which should be disposed of only in a manner acceptable to the public safety and banned in a manner which meets all city, county, state and federal regulations.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-415. ANTI-SCAVENGER. – [See Section 11-102 of the Code of the City of Leawood, 2000]**

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 1958C; 11-04-02)

**15-416. DUMPING ON STREETS.**

(a) It shall be unlawful for any person, any owner, occupant or person in charge of any house, building or premise to deposit or cause to be deposited upon any street of the City or upon any other property, public or private, within the City limits, any rejected material or items. Such described material or items must be deposited in such a manner and placed as prescribed in this Article.

(b) Any person performing public work directed toward making improvements may place necessary materials at such places as are prescribed by the specifications of his contract or as approved by the Public Works Director.

(Ord. 1895C; 06-18-01)

**15-417. PROHIBITED PRACTICES.**

(a) No person shall engage in the business of collection, transportation or processing of solid waste within the City in a manner which is contrary to any provisions of this ordinance.

(b) No person shall engage in the business of collection, transportation or processing of solid waste within the corporate limits of the City without first obtaining a permit as defined and required in Section 15-409.

(c) No person shall deposit any type of solid waste within public dumpsters.

(d) It shall be unlawful for any person to:

1. Deposit solid waste or recyclables in any solid waste container other than his/her own container without the written consent of the owner of such container and/or with the intent of avoiding payment of those fees charged for solid waste or recyclables collection or disposal, or;
2. Interfere in any manner with solid waste or recyclables collection equipment, or with solid waste or recyclables collectors in the lawful performance of their duties as such, whether such equipment or collectors shall be those of the City or those of a solid waste collection agency operating under agreement with the City of Leawood.
3. Burn solid waste or recyclables, unless an approved incinerator is provided.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-418. OWNERSHIP OF COLLECTED MATERIAL.**

All solid waste and recyclables collected, shall, upon being loaded into collection equipment, become the property of the collection agency.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-419. EDUCATION, PROMOTION AND MARKETING.**

Each solid waste and recyclable contractor shall implement public education and awareness programs to educate their clients of the importance of recycling, yard waste composting, and disposal of household hazardous waste. This program shall be implemented regardless of the type of recycling service, if any, that is performed.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-420. ENFORCEMENT PROVISIONS.**

The Public Works Director or his/her designee is hereby authorized to exercise such powers as may be necessary to carry out and effectuate the purposes and provisions of this article. Included in the powers is the right to inspect all phases of solid waste management within the City to assure compliance with this ordinance.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-421. GENERAL PROVISIONS.**

(a) Solid waste collectors employed by the City or solid waste collection agencies operating under contract with the City, are hereby authorized to enter in and upon private property for the purpose of collecting solid waste or recyclables therefrom as authorized by agreement.

(b) All contracts providing for the storage, collection and transportation of solid waste to which the City is a party shall contain provisions for a performance bond in an amount not less than the total value of the services provided by the contractor. The bond shall be with a good and sufficient surety and shall be approved by the City Clerk before the execution of the contract. The bonds shall provide that the principal shall pay any and all damages which may be caused to any property, public or private, within the City when such injury or damage shall be inflicted by the principal or his/her agent, employee, workman, contractor or subcontractor, and such bond shall be conditioned also that the principal will serve, indemnify, hold harmless and protect the City from any and all liability, that he/she will in all respects, comply with all articles of the City and comply with the terms of his/her permit and conditional upon his/her faithful performance of the contract. The form of such bond must be approved by the City Attorney.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-422. PENALTY.** Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this article shall be guilty of a public offense and punished by a fine of not more than $500 or by imprisonment not to exceed six months or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by any such person.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

# ARTICLE 5. STORMWATER MANAGEMENT

SECTIONS


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**15-501.** **GENERAL PROVISIONS.** These regulations shall hereafter be known, cited and referred to as the "Stormwater Management Ordinance" of the City of Leawood, Kansas.

(Ord. 1839C, 01-03-00)

**15-502.** **APPLICABILITY.** The provisions of this article shall extend and apply to all land within the corporate limits of the City.

(Ord. 1839C, 01-03-00)

**15-503.** **INTERPRETATIONS.** The provisions of this article are intended to supplement existing zoning and land use ordinances of the City. In their interpretations and application, the provisions herein shall be held to be the minimum requirements for the promotion of the public health, safety, protection of property and general welfare and where a conflict occurs the most stringent interpretation will apply.

(Ord. 1839C, 01-03-00)

**15-504.** **OBJECTIVES.** To promote the public health, safety, protection of property and general welfare of the citizens of Leawood, this "Stormwater Management Ordinance" is enacted for the general purpose of assuring the proper balance between use of land and the preservation of a safe and beneficial environment. More specifically, the provisions of these regulations, as amended from time to time, are intended to reduce property damage and to minimize the hazards of personal injury and loss of life due to flooding and erosion of soil through the following:

(a) Establishment of a Stormwater Management System.

(b) Definition and establishment of Stormwater Management Practice.

(c) Establishment of methods and guidelines for attenuating or avoiding flooding and erosion within the City from cumulative effects of increased volume and peak discharge of surface water runoff.

(d) Establishment of an appeal board to review disputed decisions of the Director of Public Works or Building Official and to resolve disputes regarding the interpretation and implementation of the provisions of this article. The Board of Zoning Appeals (BZA) will hear disputes regarding interpretations of the Director of Public Works or Building Official as appropriate.

(Ord. 1839C, 01-03-00)

**15-505.** **RELATIONSHIP TO OTHER LAWS.** These regulations shall not be construed as abating any action now pending under, or by virtue of prior regulations or ordinances, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm or corporation, by lawful action of the City, except as shall be expressly provided for in these regulations.

(Ord. 1839C, 01-03-00)

**15-506.** **DISCLAIMER OF LIABILITY.** The performance standards and design criteria set forth herein establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of the requirements contained herein shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any stormwater management structure or use of land. Nor shall the approval of a Stormwater Management Plan and the issuance of a permit imply that land uses permitted will be free from damages caused by stormwater runoff. The degree of protection required by these regulations is considered reasonable for regulatory purposes and is based on historical records, engineering and scientific methods of study. Larger storms may occur or stormwater runoff heights may be increased by man-made or natural causes. These regulations therefore shall not create liability on the part of the City or any officer with respect to any legislative or administrative decision lawfully made hereunder.

(Ord. 1839C, 01-03-00)

**15-507.** **SEVERABILITY.** If any section, subsection, paragraph, sentence, clause or

phrase in this chapter or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter.

(Ord. 1839C, 01-03-00)

**15-508. CONFLICT WITH PUBLIC AND PRIVATE PROVISIONS.**

(a) *Public Provisions* — These regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any ordinance, rule or regulation or other provision of law, whichever provisions are more stringent such ordinance, rule or regulation or other provision of law shall control.

(b) *Private Provisions* — These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, and no such easement, covenant or private agreement or restriction will change or alter the enforcement of this article.

(Ord. 1839C, 01-03-00)

**15-509. DEFINITIONS.** For the purpose of this article, the words and terms as used herein are defined to mean as set out in this chapter. Words used in the present tense include the future tense; words used in the masculine include the feminine; words used in the singular include the plural, and vice-versa; the word “building” includes the word “structure”, the word, “person” includes corporation, partnership, and unincorporated association of persons; the term “used for” includes the meaning “designed for” or “intended for”, and the word “shall” or the word “must” is mandatory. Words not defined shall be given their common and ordinary meaning.

***Agricultural Crop Management Practices*** — All land farming operations including plowing or tilling of land for the purpose of crop production or the harvesting of crops.

***Appeal Board*** — The Board of Zoning Appeals of the City of Leawood, Kansas.

***Applicant*** — The person or other legal entity who owns the affected property or the person’s or other legal entity’s authorized agent who submits or is required to submit an application to the Building Official for a land disturbance permit.

***Base Flood*** — The flood having a one percent probability of being equaled or exceeded in any given year, i.e., the 100-year flood.

***Bond*** — Performance and Maintenance Bond for the construction and maintenance of the final stormwater construction plans for a period of two years from the date of acceptance by the City. Any form of security for the completion or performance of a stormwater management plan or the maintenance of drainage improvements, including surety bond, or instrument of credit, or escrow deposit in an amount and form satisfactory to the Director of Finance.
***Brook*** — A small natural stream of water.
***Branch*** — A division related to a whole.
***Building*** — Is any structure used or intended for supporting or sheltering any use or occupancy.
***Building Official*** — The Building Official of the City or the Building Official's authorized representative.
***Building Permit*** — Any permit issued by the Building Official.
***Channel*** — A watercourse of perceptible extent, either natural or improved, which periodically or continuously contains moving water or which forms a connecting link between two bodies of water.
***City Engineer*** — This title where used in the APWA specifications and/or in this article shall have the same meaning as the title "Director of Public Works".
***Clearing*** — Any activity, which removes the vegetative ground cover including, but not limited to, root removal or topsoil removal or other forms of earth moving.
***Construction Permit*** — A permit issued by the Director of Public Works subsequent to approval of final Stormwater Construction Plans.
***Creek*** — A stream smaller than a river and larger than a brook.
***Depression*** — A pressing down: lowering. A depressed area or part.
***Detention*** — A stormwater management technique of which the primary function is to control the peak rate of surface water runoff by utilizing temporary storage and a controlled rate of release. This may include, but not be limited to, the use of reservoirs, rooftops, parking areas, holding tanks, inpipe and in-channel storage.
***Development*** — Development means any man-made change to improved or unimproved real property including the construction or reconstruction of buildings or structures; paving, excavation, grading, filling or similar operations; or the filing and recording of a subdivision plat.
***Differential Runoff*** — The volume and rate of flow of stormwater runoff discharge from a parcel of land or drainage area which is or will be greater than that volume or rate which pertained prior to the proposed development or redevelopment.
***Director of Public Works*** — The Director of Public Works of the City or authorized representative.
***Drainageway*** — An area used for draining; through the act or process of draining; a means for draining Dry Bottom Basin
***Dry Bottom Basin*** — A natural or artificial stormwater storage area which is designed and maintained for temporary containment of stormwater runoff.
***Earth Materials*** — Any rock, natural soil or combination thereof.
***Easement*** — Authorization by a property owner for use by another party or parties of all or any portion of his or her land for a specified purpose.
***Engineer*** — A professional engineer licensed in the State of Kansas.
***Erosion*** — The wearing away of land by the action of wind, water, gravity, or a combination

thereof.
***Erosion and Sediment Control Plan*** — A set of measures designed to control runoff and erosion, and to retain sediment on a particular site during pre-construction, construction, and after all permanent improvements have been erected or installed.
***Erosion and Sediment Control Regulations*** — Shall mean sections 15-525 through 15-544.
***Erosion and Sediment Control Standards*** — The erosion and sediment control design criteria and specifications adopted in writing by the Director of Public Works as part of the Stormwater Management Plan.
***Excavate*** — The mechanical removal of earth materials.
***Fill*** — The deposit or stockpiling of earth materials.
***Floodplain*** — The land area adjoining a river, stream, watercourse, or lake which is likely to be flooded in the event of a 100-year flood, or as shown on the National Flood Insurance Program maps, or as designated by Johnson County, or by the City of Leawood, Kansas as a floodplain system where Leawood or the County is not under the National Flood Insurance Program.
***Floodway*** — The channel of a watercourse and the adjacent land area that must be reserved in order to discharge a100-year flood without cumulatively increasing the water surface elevation more than one foot.
***Freeboard*** — A factor of safety expressed as the difference in elevation between the top of the detention basin dam and the design surface water elevation resulting from the storm for which the basin's required storage volume was determined.
***Grading*** — Any excavating or filling of earth materials or any combination thereof.
***Grading Plan*** — For grading plan refer to sections 15-521 through 15-524.
***Habitable Dwelling Unit*** — A dwelling unit intended for and suitable for human habitation.
***Inspection*** — The periodic field review of erosion and sediment control measures as defined in the erosion and sediment control plan for the purposes of determining compliance.
***Land Disturbance/Land Disturbance Activity*** — Any activity that changes the physical conditions of land form, vegetation, and hydrology. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging, and storing of materials. Such activities do not include routine care of existing lawns including verti-cutting and aerating.
***Land Disturbance Permit*** — The land disturbance permit required for any grading, filling, clearing, and excavation land disturbance activity.
***Land Fill*** — Any human activity depositing soil or other earth materials.
***Lake*** — An inland body of standing water of considerable size.
***Lot Lines*** — A common boundary or property line between adjacent property owners.
***Nuisance Erosion and Sedimentation*** — Any land disturbance activity that causes erosion or sedimentation for a non-permitted activity less than 300 square feet in area when disturbed land remains unprotected for more than seven calendar days.
***100-Year Storm*** — A rainstorm having a one percent probability of occurrence in any given year.
***Permit*** — Written permission giving consent.
***Permittee*** — A person, partnership, corporation or other legal entity whom a permit is granted.
***Plat*** — A legally recorded plan of a parcel of land indicating the location and dimension of such features as streets, alleys, lots, easements and other elements pertinent to a subdivision.

***Pond*** — A small body of water.
***Project*** — Any man-made change involving the construction, reconstruction, maintenance or improvement of real property, structures and/or grounds.
***Public Owned Improvements*** — Improvements such as (but not limited to) concrete channel liner, improved channel, pipes of various sizes and materials, box culverts and miscellaneous other concrete structures all on public property or in a public easement.
***Public Property*** — Property owned by the City or dedicated to the City.
***Public Storm Drainage System*** — Any underground enclosed pipe system and/or improved channel that is on public property or within a public easement.
***Rational Method*** — An empirical formula for calculating peak rates of stormwater runoff resulting from rainfall.
***Reservoir*** — A place where something is kept in store; an artificial lake where water is collected as a water supply.
***Sampling*** — The procedures associated with the determination of settleable solids and may include suspended solids in a discharge sample of water.
***Sediment*** — Any solid material, mineral or organic that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, or gravity as result of soil erosion.
***Soil*** — The unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.
***Soil Storage*** — Any human activity depositing soil or other earth materials for later use or disposal.
***Stormwater Runoff*** — Water resulting from precipitation which is not absorbed by the soil, evaporated into the atmosphere, or entrapped by ground surface depressions and vegetation, and which flows over the ground surface.
***Stream*** — A body of water (as a river) flowing on the earth.
***Structure*** — Is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.
***Swale*** — A graded depression for the purpose to conveying overland flow from point to point.
***10-Year Storm*** — A rainstorm having a 10 percent probability of occurrence in any given year.
***These Regulations*** — The Storm Water Management Ordinance in its entirety.
***Timbering*** — The act of cutting and removing trees without disturbing the root or adjacent vegetation.
***Tributary Area*** — All of the area contributing stormwater runoff to a given point of consideration, both public and private.
***25-Year Storm*** — A rainstorm with a four percent probability of occurrence in any given year.
***Vegetative Cover*** — Any grasses, shrubs, trees and other vegetation, which hold and stabilize soils.
***Water Bodies*** — Surface waters including watercourse and wetlands.
***Watercourse*** — Any stream, channel, creek, brook, branch, depression, reservoir, lake, pond, or drainage way in or into which stormwater runoff flows.
***Wet Bottom Basin*** — A natural or artificial stormwater storage area, which is designed and maintained to contain stormwater runoff temporarily and to hold permanently an additional volume of water at a level below the discharge structure of the storage area.

***Wetlands*** — Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include the following surface waters of the state intentionally constructed from sites that are not wetlands: drainage ditches, grass-lined swales, and landscape amenities.

(Ord. 1839C, 01-03-00)

**15-510.** **THE STORMWATER MANAGEMENT SYSTEM.** This article establishes the Stormwater Management System, which shall be composed of a primary system, a secondary system, management controls, and management practices. These regulations shall apply to the secondary system.

(Ord. 1839C, 01-03-00)

**15-511.** **THE PRIMARY SYSTEM.** The primary system shall be composed of the regulatory floodplain as shown on the National Flood Insurance Program maps as developed for the City of Leawood by the U.S. Department of Housing and Urban Development, Federal Insurance Administration. All components of the primary system shall be designed to handle the 100-year rainfall event.

(Ord. 1839C, 01-03-00)

**15-512.** **THE SECONDARY SYSTEM.** The secondary system shall consist of storm drainage facilities including, but not necessarily limited to, roadway curb and gutter, open channels, swales and enclosed conveyance systems both public and private that transport stormwater runoff to the primary system (regulatory floodplain). Secondary system facilities are those designed to accommodate runoff resulting from a storm with a given design frequency.

(Ord. 1839C, 01-03-00)

**15-513.** **MANAGEMENT CONTROLS.** Management controls are regulations applicable to the secondary system under the provisions of this ordinance. Such controls shall limit any activity, which will adversely affect hydraulic function of any storm drainage facilities, public or private, including, but not limited to, detention facilities, open channels, drainage swales, or enclosed stormwater conveyance systems.

Exceptions to the applicability of the use of management controls for new developments may be granted in the following situations:

(a) On land used and zoned for agricultural purposes where no change in grades over that, which has existed historically, will take place.

(b) Construction of any buildings or structures on a site, which has been previously, provided with stormwater management control facilities as part of a larger unit of development.

The Building Official shall refer all development plans and all building permit applications that may require a stormwater drainage study and subsequent permit to the Director of Public Works.

(Ord. 1839C, 01-03-00)

**15-514.** **MANAGEMENT PRACTICES.** The following practices may be utilized upon approval of the Director of Public Works. Use of these methods shall be fully in accordance with the design criteria and performance standards as set forth in this article:

(a) ***Storage*** — Runoff may be stored in temporary or permanent detention basins, or through rooftop or parking lot ponding, or percolation storage, or by other acceptable means. Where parking lot ponding is utilized appropriate signage posting the use of the parking lot for stormwater storage must be installed.

(b) ***Open Channels*** — Maximum feasible use shall be made of existing drainage ways, open channels, and drainage swales that are designed and coordinated with design of building lots and streets.

(c) ***Streets and Curbs*** — Streets, curbs, and gutters shall be an integral part of the stormwater runoff management system. To the maximum extent possible, drainage systems, street layout and grades, lot patterns and the location of curb inlets and site drainage and overflow swales shall be concurrently designed in accordance with the standards set forth in these regulations.

(d) ***Enclosed Conveyance System*** — Enclosed conveyance systems consisting of inlets, conduits, and manholes shall be used to convey stormwater runoff for storms with a frequency of the 10-year event.

(e) ***Other*** — The stormwater runoff management practices enumerated herein shall not constitute an exclusive listing of available management practices. Other generally accepted practices and methods may be utilized where approved by the Director of Public Works and which do not contravene the objectives of this article.

(Ord. 1839C, 01-03-00)

**15-515. PUBLIC AND PRIVATE RESPONSIBILITIES UNDER THE STORMWATER MANAGEMENT SYSTEM.**

(a) Public Responsibilities:

(1) Administration: The administration of these regulations and enforcement of this article shall be the responsibility of the Director of Public Works.

(2) The Public Drainage system shall be defined as follows for new construction.

(a) If a proposed drainage system, storm sewer line or improved channel, is a continuation of an existing City system, the system will be public and an applicant for plan approval will be required to dedicate necessary easements.

(b) If a proposed drainage system, storm sewer line or improved channel, extends across private property under multiple private ownership before crossing public right-of-way the system will be public and an applicant for plan approval will be required to dedicate necessary easements.

(c) If the grading of a swale is required for the conveyance of the 100-year flow, an applicant for plan approval will be required to dedicate necessary easements. The maintenance of overflow swales along property lines is the responsibility of the property owner.

(3) Operation and Maintenance of Public Owned Facilities: The City's Department of Public Works shall be responsible for all maintenance of the public owned drainage system, either improved or unimproved, located on public right-of-way or city owned property. Maintenance of public owned drainage systems located on private property with public easements shall be limited to the public owned improvements such as concrete structures, pipe systems, and City improved channels. However, it shall be the responsibility of the property owner, occupant or agent in charge of private property, upon which the public storm drainage system exists, to maintain all vegetation including mowing, trimming and/or removal of dead trees and shrubs and providing of such other general maintenance as is required to maintain the free flow of stormwater.

(b) Private Responsibilities:

(1) Maintenance and operation of a private storm drainage system is the responsibility of the owner of the property.

(2) Each developer or owner of land within the City has the responsibility to provide all approved stormwater runoff management facilities to ensure the adequate drainage and control of stormwater on the developer's or owner's property both during and after construction of such facilities.

(3) Each developer or landowner has the responsibility and duty before and after construction to properly operate and maintain any on-site stormwater runoff control facility, which has not been accepted for maintenance by the City. Such responsibility is to run with the land and be transmitted to subsequent owners through appropriate covenants. This maintenance shall include, keeping such facilities free and clear of weeds, brush and vegetation, removal of debris or any other waste material that might impede or hinder the facilities intended use, erosion repair, and removal of silt and maintenance of structural facilities which have not been accepted for maintenance by the City.

(4) Owners of detention basins and associated facilities upon completion of construction and on or before May 1 of each year, shall furnish certification by a professional engineer licensed in the State of Kansas that the detention basin has full storage capacity and that all associated facilities including inlet and outlet structures are fully functional.

(5) Each property owner or resident adjacent to a natural drainage channel not maintained by the City shall maintain the free flow character by prompt removal of all debris, overgrowth or downed trees and limbs and unapproved structures. All property owners shall cooperate by overseeing their properties without encouragement of the City. In the event an Official Notice is issued by the City in accordance with City Codes and Ordinances, the property owner shall comply and may request the City's assistance as outlined herein.

(6) City Assistance — The City may provide assistance through the Public Works Department to the property owner/residents when requested, by hauling and disposing of collected debris, downed trees and broken limbs. The property owner shall cooperate with the City by placing debris and tree limbs on the side of the street for collection by the Public Works Department.

(7) Failure to Maintain — If the Director of Public Works determines that the owners, occupants or agents in charge of any lot piece or parcel of land on which a drainage control structure exists or abuts has failed to properly maintain such facility as previously set forth, the Director of Public Works shall notify the owners, occupants or agents in charge of the violation in writing. If the owners, occupants or agents in charge fail, neglect or refuse to comply with the requirements specified in the notice, within 10 days, the City Clerk shall issue notice requiring the owner or agent of the owner of the premises to repair, remove, and/or abate from the premises the thing or things therein described as a defect(s) and/or nuisance and perform the necessary remedial work within 10 days. The notice shall state that before the expiration of the waiting period, the recipient thereof may request a hearing before the governing body or it's designated representative. The notice shall be served by delivering a copy thereof to the owner or agent of such owner of the property or, if the owner or owner's agent cannot be located, then by mailing a notice by registered mail to the last known address of the owner or agent of the owner and by posting the notice in a conspicuous place on the property. If the owner or agent fails to comply with the requirement of the notice for a period longer than the 10 day time period set forth above, then the city shall proceed to cause the necessary remedial work to be performed and thereby have the things described in the notice repaired, removed, and/or abated from the lot or parcel of ground. The city shall give notice to the owner, occupant or agent by registered mail of the total cost of such repair, abatement or removal incurred by the city. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If cost of such repair, removal, and/or abatement is not paid within the 30 day period, the cost shall be collected in the manner provided by appropriate legal action or shall be assessed and charged against the lot or parcel of ground on which the nuisance was located. If the cost is to be assessed, the City Clerk at the timing of certifying other city taxes to the county clerk shall certify the aforesaid costs, and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

(Ord. 1839C, 01-03-00)

**15-516. PROCEDURE FOR THE SUBMISSION, REVIEW AND APPROVAL OF STORMWATER DRAINAGE STUDY.** No development shall increase the quantity and rates of stormwater emanating from the land areas except in accordance with an approved Stormwater Drainage Study as provided for in these regulations. A professional engineer licensed in the State of Kansas shall prepare the Stormwater Drainage Study. The Director of Public Works shall issue no public works permit or approve any construction plans prior to the approval of the Stormwater Drainage Study.

(Ord. 1839C, 01-03-00)

**15-517. STORMWATER DRAINAGE STUDY.** A Stormwater Drainage Study shall accompany all preliminary applications for land development submitted in accordance with the City's ordinances. This study shall contain the following information and data:

(a) A site plan of suitable scale and contour interval showing topographical information of the land to be developed and adjoining land whose topography may affect the proposed layout or drainage patterns for the development.

(b) A general plan of final contours of the site development shall also be shown, as shall all existing streams, waterways, channels, lakes and the extent of the established floodplain and date of flood plain map used.

(c) A drainage map showing the location and calculated flow rates of all adjacent storm drainage facilities.

(d) A hydraulic and hydrologic summary table showing the 10 and 100-year flows for ultimate development.

(e) A general discussion of the type and characteristics of soils contained in the development area.

(f) A discussion of the concepts to be considered in the development to handle anticipated stormwater runoff including the, methods to be utilized to detain or control increased stormwater runoff generated by the proposed development.

(g) A preliminary plan of proposed storm drainage facilities including preliminary calculations of runoff to be handled by such facilities, basic information regarding the effects the proposed project will have on the receiving streams or channels for a distance as far downstream as the runoff will have a noticeable affect. The plan should also include the proposed routing of the 100-year runoff.

(h) A discussion of the possible affects that the proposed development could have on downstream facilities and areas adjoining the development and proposed solutions.

Following the receipt of the Stormwater Drainage Study, a general review meeting shall be conducted with the Director of Public Works, representatives of the Developer, and the Developer's Engineer. The purpose of this review meeting shall be to jointly agree on the conceptual methods proposed to be utilized and the possible effects of the proposed development on existing or future adjacent developments.

(Ord. 1839C, 01-03-00)

**15-518. FINAL CONSTRUCTION PLANS.** Following the review of the Stormwater Drainage Study and after the general approval of the study by the Director of Public Works, Final Construction Plans shall be prepared for each phase of the proposed project as each phase is developed. The submittal of the final plans shall coincide with application for final approval of the development and shall constitute a refinement of the concepts approved in the study. It is important to note that if a project is to be phased, the total area of the conceptual project is to be considered in all calculations and the facility shall be designed for each phase, which will be compatible with those of the total development plan.

Final Construction Plans for any development shall conform to all construction standards set forth in the City's ordinances, including those set forth in section 15-302 of the City's Code.

Final Construction Plans shall also include the following additional information unless specifically allowed to be excluded by the Director of Public Works during the preliminary review of the plans.

(a) A topographic map of the project site and adjacent areas, of suitable scale and contour interval, which shall define the location of streams, the extent of flood plains and calculated high water elevations, the shoreline of lakes, ponds swamps, and detention basins including their inflow and outflow structures, if any.

(b) The location and flowline elevation of all existing sanitary and stormwater sewers which fall within the project limits and within a distance of 200 feet beyond the exterior boundaries of said project.

(c) Detailed determination of runoff anticipated for the entire project site following project completion indicating volumes and rates of proposed runoff for each portion of the watershed tributary to the storm drainage system, the calculations used to determine said runoff volumes and rates, and summary of the criteria which have been used by the design engineer.

(d) A layout of the proposed stormwater system including the location and size of all drainage structures, stormwater sewers, channel and channel sections, detention basins, and analyses regarding the effect said improvement will have upon the receiving channel and its high water elevation. The layout shall also include 100-year flood elevations at lot corners along all open channels improved or natural, 100-year overflow swales and detention basins.

(e) The slope, type, size, flow calculations and 10-year and 100-year energy grade line for all existing and proposed storm sewers and other waterways.

(f) A grading and erosion and sediment control plan for the project site as described in sections 15-521 through 15-524 and sections 15-525 through 15-544 of this section.

(g) For developments with lakes, the plan shall show the location of a silt basin and proposed access to the basin for periodic removal of silt and debris. The plans shall also show an alternate water supply to maintain the normal pool elevation and aeration for the lake.

(h) A profile and one or more cross-sections of all existing and proposed channels or other open drainage facilities, showing existing conditions and the proposed changes thereto, together with the high water elevations expected from stormwater runoff under the controlled conditions called for by these regulations and the relationship of structures, streets, and other utilities to such channels.

The Director of Public Works shall review the Final Construction Plans. If it is determined according to current engineering practice that the proposed plan will provide control of stormwater runoff in accordance with the purposes, design criteria and performance standards of these regulations and will not be detrimental to the public health, safety and protection of property and general welfare, the Director of Public Works shall approve the plan or conditionally approve the plan, setting forth the conditions thereof. If approved, a permit for the construction shall be granted. If disapproved, the application and data shall be returned to the applicant for corrective action and resubmittal.

(Ord. 1839C, 01-03-00)

**15-519. DESIGN CRITERIA AND PERFORMANCE STANDARDS.**

Unless otherwise approved by the Director of Public Works, the following rules shall govern the design of improvements with respect to managing stormwater runoff:

(a) *Development Design* - Streets, blocks, depth of lots, parks, and other public grounds shall be located and laid out in such a manner as to minimize the velocity of overland flow and allow maximum opportunity for infiltration of stormwater into the ground, and to preserve and utilize existing and planned streams, channels and detention basins, and include, whenever possible, streams, and floodplains within park and other public grounds.

(b) *Stormwater System Design* - Unless otherwise provided by the Director of Public Works, the latest approved edition of the Standard Specifications and Design Criteria, Division II, Section 2600, Construction and Material Specifications, adopted April 1996, (except Section 2602.2 B Corrugated Steel Pipe and Division V) and Section 5600, Storm Drainage Systems and Facilities, of the Standard Specifications and Design Criteria, adopted February 15, 2006, prepared by the Kansas City Metropolitan Chapter American Public Works Association or the latest edition as amended, which is by reference made a part hereof as though expressly rewritten and incorporated in the ordinance, shall govern the design and construction of storm sewer systems within the City except as otherwise noted herein.

(c) *Methods of Controlling Downstream Flooding* - The Stormwater Drainage Study shall identify downstream flooding impacts of the proposed development. If the Stormwater Drainage Study indicates the proposed development will cause or increase downstream local flooding conditions during the design storm, provisions to minimize such flooding conditions shall be included in the design of storm drainage improvements and/or the temporary controlled detention of stormwater runoff and its regulated discharge to the downstream storm drainage system.

(d) *Downstream Improvements* - Improvements to minimize downstream flooding conditions may include the construction of dams, dikes, levees, and floodwalls; culvert enlargements; and channel clearance and modification projects.

(1) Detention Basins - All detention basins shall be designed in accordance with Chapter 5608. All modeling of detention basins shall use either HEC-1 or the KU Penn State Runoff, (enhanced version PSRM Version 7) or subsequent editions, or as otherwise approved in advance by the City Engineer.

(2) Outlet Control Works - Outlet works shall not include any mechanical components or devices and shall function without requiring attendance or control during operation. Size and hydraulic characteristics shall be such that all water in detention storage is released to the downstream storm drainage system within 24 hours after the end of the design rainfall.

(e) *Other Design Considerations* - All stormwater detention basins shall be designed with the capability of passing a 100-year storm event from a fully developed watershed basin through the outlet works without causing failure of the embankment. It is not the intent of this requirement to entail any additional reduction of the peak runoff rate; but to assure the integrity and safety of the structure. All underground pipe systems to the detention basin shall tie directly into the outlet structure and not discharge directly into the basin unless waived by the Director of Public Works, in accordance with good engineering practices.

(f) *Appearance* - Pipes, drainage structures, outlet works, or other necessary structural features such as a fence and a gate of detention basins shall be devised so as to be minimum in number and inconspicuous. Screening and/or landscaping shall be included and shall be in accordance with plans sealed by an Engineer.

(Ord. 1839C; 01-03-00)
(Code 2000)
(Ord. 2063C; 05-17-04)
(Ord. 2359C; 10-20-08)

**15-520. PERFORMANCE STANDARDS.**

(a) *Stormwater Channel Location* — Acceptable locations of stormwater runoff channels in the design of a subdivision may include the following:

(1) Channels are permitted as outlined in Chapter 5600 of the Standard Specifications and Design Criteria adopted March 1991, prepared by the Kansas City Metropolitan Chapter American Public Works Association or current edition.

(2) Channels shall be centered on back lot lines or entirely within the rear yards of a single row of lots or parcels.

(3) In each of the foregoing cases, if the improved channel is to be maintained by the City a drainage easement to facilitate access maintenance and design flow shall be provided and shown on the plat. No structures will be allowed to be constructed within or across stormwater channels.

(4) Maintenance of such channels shall be the responsibility of adjoining property owners except as noted in section 15-515(a)(3).

(b) *Stormwater Sewer Outfall* — The storm sewer outfall shall be designed so as to provide adequate protection against downstream erosion and scouring. All pipe discharge shall be in the direction of the channel flow. The flow line of the pipe outfall shall be at the normal pool elevation or channel bottom if dry.

(c) *Lot Lines* — Whenever the plans call for the grading of swales for the passage of floodwater, surface runoff, or stormwater along lot lines, the grading of all such lots shall be prescribed and established for the passage of waters. No structure may be erected in these areas, which will obstruct the flow of stormwater.

In addition, installation of fences and the planting of shrubbery or trees within the areas will not be permitted. Changes in the grade and contours of the floodwater or stormwater runoff channels or facilities will not be permitted unless approved in writing by the Director of Public Works.

(d) *Easements* — Permanent easements for the detention and conveyance of stormwater, including easements for access to structures and facilities, shall be dedicated to the City at no additional cost for those structures maintained by the City.

(e) *Permits* — A permit for projects including detention facilities may be granted by the Director of Public Works only after Final Construction Plans have been approved and all easements have been dedicated, accepted, and recorded, and all required maintenance assurances and required bonds have been executed.

(Ord. 1839C, 01-03-00)

**15-521. PLANS FOR GRADING.** Prior to the approval of the Final Construction Plans, a plan depicting proposed site grading within the development shall be submitted to the Building Official of the City of Leawood for review and approval.

(Ord. 1839C, 01-03-00)

**15-522. GRADING PLAN FOR DEVELOPMENT.** A professional engineer licensed in the State of Kansas shall prepare the grading plan. The contents of the plan shall include the following information:

(a) Contours of existing grades at intervals of not more than two feet.

(b) Location of all property lines, existing or proposed and lot and block number.

(c) Elevation and location of nearest bench mark (U.S.G.S. datum).

(d) Final grading contours drawn at sufficient intervals of not more than two feet to depict major subdivision drainage patterns. In addition, final grading spot elevations shall be shown for all corners of each lot. Such corner elevations shall be general in nature and upon written approval of the Director of Public Works may be revised at the time of plot plan submittal. Lot lines shall have a minimum of two percent slope.

(e) 100-year floodplain limits with elevation. The plan should also note the date of the study and the panel number.

(f) Easement and right-of-way information including drainage easements required for offsite drainageways.

(g) 100-year flood elevations for all lots adjacent to 100-year Flood Plain, open channel or 100-year overflow swale.

(h) Grading plan shall show the cross section of all 100-year overflow swales, slope, depth and capacity. Minimum slope shall be two percent.

(i) Erosion and sediment control plan. Refer to sections 15-541 and 15-542.

(Ord. 1839C, 01-03-00)

**15-523. GRADING PLAN FOR SINGLE FAMILY LOT.** Applications for building permits for new construction of single-family homes shall be accompanied by a specific grading plan for that lot. Such grading plan shall be incorporated into the plot plan and shall contain as a minimum, the following information:

(a) Location of property lines, all easements, street address, and lot and block number.

(b) Proposed location of structure.

(c) Elevations of the top of foundation, proposed grade at principal structure corners and at lot corners.

(d) Contours at two foot intervals. The grading of the lot should match the subdivision-grading plan. Grading plan should have a minimum two percent slope along property lines.

(e) Location of 100-overflow swale. Grading plan shall show the grading of the swale. The plan should also note the cross section, slope, and depth of swale, 100-year water elevation and the low opening.

(f) Where a swale is shown, the minimum low opening of the structure shall be one foot above the 100-year flood elevation perpendicular to the swale.

(g) Erosion and sediment control plan. Refer to sections 15-541 and 15-542.

(Additional information may be required by the Director of Public Works to assure protection of adjacent property.)

(Ord. 1839C, 01-03-00)

**15-524. MINIMUM GRADING STANDARD.** The following minimum criteria for site grading shall apply to all applications for site grading:

(a) Protective slopes around structures. Downward slope from structure foundations to drainage swales.

(1) Impervious surfaces shall be 1/4 inch per foot (two percent).

(2) Pervious surfaces shall be one inch per foot (8.33 percent).

(b) Lawn areas

(1) Minimum gradient shall be 1/4 inch per foot (two percent).

(2) Maximum gradient shall not be greater than three horizontal to one vertical.

(c) Driveways sloping toward buildings shall be graded in such a manner as to provide an intercepting swale draining away from the structure prior to its connection with the building. Subdivision plans should be designed in a manner to limit the number of or eliminate driveways sloping away from the street.

(d) Erosion and sediment control plan. Refer to sections 15-541 and 15-542.

In specific cases the use of gradients less than or greater than those specified may be required. Variance from these requirements may be allowed where justified and approved by the Director of Public Works, in accordance with good engineering practices.

(Ord. 1839C, 01-03-00)

**15-525. EROSION AND SEDIMENT CONTROL REGULATIONS.** Sections 15-525 though 15-544 shall be known as the Erosion and Sediment Control Regulations. The purpose of these standards is to promote and protect the public interest by regulating land disturbance, landfill, and soil storage in connection with the clearing and grading of land for construction related or other purposes. It is also the purpose of these standards to encourage responsible development and minimize the cost to the development community as a result of these regulations.

These erosion control regulations establish administrative, implementation and enforcement procedures for the protection and enhancement of the water quality of watercourses, water bodies, and wetlands by controlling erosion, sedimentation, and related environmental damage caused by construction-related or other activities.

Neither these ordinances nor any administrative decision made hereunder exempts the applicant or any other person from other requirements of the City's ordinances, state and federal laws, or from procuring other required permits, or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the applicant or any person arising from the activity regulated by these ordinances.

(Ord. 1839C, 01-03-00)

**15-526.** **ADMINISTRATION.** The Building Official or his or her designee [hereinafter 'Building Official'] shall administer and enforce these erosion control standards. For such purposes, the Building Official shall have the powers of a law enforcement officer to issue written orders and take any other legal actions in the enforcement of these ordinances. The Building Official shall have the power to render interpretations of these regulations and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of these regulations. When it is necessary to make an inspection or to enforce the provisions of these regulations, the Building Official may enter the property involved.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-527.** **LAND DISTURBANCE PERMIT.** Unless exempted by section 15-528, no person may perform land disturbing activities, including clearing, grading, excavating, filling, storing or disposing of soil and earth materials without first obtaining a land disturbance permit from the Building Official as set forth in these regulations.

(Ord. 1839C, 01-03-00)

**15-528.** **EXEMPTIONS.** Persons performing land disturbance activities that meet any of the criteria below are not required to apply for a land disturbance permit pursuant to this chapter:

(a) Land disturbances less than or equal to 400 square feet. Land disturbances, other than those set forth in exemptions (b) through (e) of this subsection, impacting land less than or equal to 400 square feet in area; provided however, that persons performing such work on such parcels who are not otherwise exempt under exemptions (b) through (e) of this subsection, must comply with the Erosion and Sediment Control Standards promulgated pursuant to section 15-541 if such land remains unprotected for more than seven calendar days.

(b) Land disturbance activities by city departments. In those cases, the department is required to comply with the requirements of the Erosion and Sediment Control Standards.

(c) Home gardening operations including plowing or tilling of land for the purposes of growing flowers and/or vegetables, but not in excess of 400 square feet.

(d) Work to correct or remedy emergencies. This includes situations that pose an immediate danger to life or property, or substantial flood or fire hazards.

(e) Routine agricultural crop management practices.

(Ord. 1839C, 01-03-00)
(Ord. 2360C; 10-20-08)

**15-529. LAND DISTURBANCE PERMIT APPLICATION.** Any person requesting a land disturbance permit must submit an application to the Building Official. The application shall be submitted on a form promulgated by the Building Official and shall include the names, addresses, and telephone numbers of the developer/owner of the property, the contractors or subcontractors actually performing the land disturbing activity and their respective tasks, the engineer responsible for the preparation of the site map and grading plan, and the engineer responsible for preparation of the erosion and sediment control plan. In addition to the application form, the person shall submit the following items:

(a) A site map, and clearing and grading plan that is in compliance with sections 15-521 through 15-524 and section 15-542, sealed by a professional engineer licensed in the State of Kansas.

(b) An erosion and sediment control plan that is in compliance with section 15-542.

(c) Work schedule in compliance with section 15-543.

(d) Land disturbance permit fee.

(e) Inspection schedule.

(f) Security for performance of work as required under section 15-545.

(g) Any supplementary materials related to the land disturbance as required by the Building Official.

(Ord. 1839C, 01-03-00)

**15-530.** **REVIEW FOR COMPLIANCE.** Review for compliance will begin once all information requested in section 15-529 has been submitted.

Land disturbance permits may be issued for each land disturbance phase of a specific site. The land disturbance permit when issued in phases shall be a separate permit for each land disturbance phase. The Building Official shall review the submitted documents for compliance with the City's regulations and adopted standards. After reviewing the documents, the Building Official shall determine whether or not the documents submitted are in compliance with the City's regulations and adopted standards. If the Building Official finds that the documents are in compliance, the engineer who submitted the documents shall be advised in writing and may request a land disturbance permit in accordance with the requirements set forth in section 15-529. If the Building Official finds that documents are not in compliance with the City's regulations and adopted standards, the Building Official shall advise the engineer in writing, which elements of the submitted documents are not in compliance. When documents are determined to be in compliance, the determination does not imply that the City is guaranteeing specific outcomes or is the City accepting any responsibility for the documents submitted.

(Ord. 1839C, 01-03-00)

**15-531.** **LAND DISTURBANCE PERMIT FEE.** Before issuance of a land disturbance permit as defined in this section, the applicant shall pay a fee to cover the cost of administration, plan review and inspection services associated with the land disturbance permit. The fee for each permit shall be as set forth by the City Council from time to time.

(Ord. 1839C, 01-03-00)

**15-532.** **COORDINATION WITH OTHER PERMITS.** When a person is developing a site, and a land disturbance permit is required in accordance with section 15-527, no construction permits shall be issued to make improvements on that site until the person has secured the land disturbance permit for the same site. The Building Official may simultaneously issue a land disturbance permit and a grading permit in accordance with a plan approved by Director of Public Works.

(Ord. 1839C, 01-03-00)

**15-533.** **DURATION OF PERMIT.** The land disturbance permit shall be valid from the time of issuance until the site is stabilized and erosion and sediment control measures are no longer necessary and the permit is terminated as provided herein, or until the permit is otherwise suspended or revoked as provided in these erosion control standards. The site will be considered stabilized when either perennial vegetation, pavement, buildings, or structures using permanent materials cover all areas that have been disturbed. In order to terminate the land disturbance permit, the applicant shall submit a request to terminate permit to the Building Official. The Building Official will then inspect the site and make a determination as to whether the permit can be terminated. The applicant will be notified in writing of the determination.

If the applicant sells the property before the termination of the land disturbance permit, the permit may be assigned to the new owner, if such assignment is approved in writing by the Building Official.

If the applicant sells any portion of the property before the termination of the land disturbance permit, the applicant will remain responsible for that portion until one of the following events occur:

(a) The new owner of the property obtains a land disturbance permit.
(b) The new owner of the property obtains or is required to obtain a building permit.

(Ord. 1839C; 01-03-00)

**15-534.** **SUSPENSION OR REVOCATION OF PERMIT.** The Building Official shall follow the procedures outlined in this Section before any action is taken against the security as provided under Section 15-545.

As a complete alternative to other enforcement measures, the Building Official may suspend the land disturbance permit and issue a written Stop Work Order, and the applicant shall cease all work on the site, except work necessary to remedy the cause of the suspension, upon notification of such suspension when:

(a) Applicant fails to submit reports timely and in accordance with this Article;
(b) Inspection by the Building Official reveals the site is not in substantial compliance with the erosion and sediment control plan;
(c) Applicant fails to comply with an Order to bring the site into compliance with the permit within time limits imposed by the Building Official; or

(d) Applicant fails to pay any required permit fee.
The Building Official shall reinstate a suspended land disturbance permit upon the applicant's correction of the cause of the suspension.

The Building Official shall revoke the land disturbance permit and issue a Stop Work Order if the applicant fails or refuses to cease work.

The Building Official may not reinstate a revoked permit.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-535.** **INSTALLATION OF CONTROL MEASURES.** The applicant shall notify the Building Official that all erosion and sediment control measures are installed in accordance with the erosion and sediment control plan and the City's adopted standards. The applicant shall not perform any land disturbance activities prior to approval from the Building Official that all erosion and sediment control measures are installed properly.

(Ord. 1839C, 01-03-00)

**15-536.** **MAINTENANCE OF CONTROL MEASURES.** The applicant shall at all times maintain all erosion and sediment control measures in good order and in compliance with the erosion and sediment control plan for the site and with the City's adopted standards, for the duration of the permit as defined in section 15-533. In determining the Applicant's compliance with the erosion and sediment control plan for the site, the Building Official shall take into consideration any results the applicant has obtained through sampling.

(Ord. 1839C, 01-03-00)

**15-537.** **SAMPLING.** The applicant shall have the option of including a system of regular sampling by individuals approved to perform such sampling by the Building Official as a part of the applicant's Erosion and Sediment Control Plan. The Building Official may require sampling to determine the effectiveness of the erosion control plan or to obtain information to investigate complaints regarding the site. Sampling shall not be the only item reviewed to determine compliance with the erosion and sediment control plan for the site. The Building Official may also perform sampling.

(Ord. 1839C, 01-03-00)

**15-538.** **REMOVAL OF CONTROL MEASURES.** The applicant shall receive the Building Official's approval before any structural erosion and sediment control measure identified on the plans is removed or made ineffective. Removal of erosion and sediment control measures must be performed in the manner described in the erosion and sediment control plan and in accordance with the City's adopted standards. When determining whether an erosion and sediment control measures may be removed or made ineffective, the Building Official shall take into consideration testing results furnished by the applicant.

(Ord. 1839C, 01-03-00)

**15-539.** **INSPECTIONS GENERALLY.** It shall be the duty of the land disturbance permit holder to install, routinely inspect, and maintain effective erosion and sediment control measures as specified in the permit holder's approved erosion control plan. The applicant shall inspect the land disturbance site at least every 14 days or more frequently if required by the plan, and within 24 hours following each rainfall event of ½ inch or more within any 24-hour period. The Building Official shall also perform regular inspections of the land disturbance site to ensure compliance with the erosion and sediment control plan for the site and the City's adopted standards. Should it be found that required erosion and sedimentation control measures have not been installed properly, the Building Official may refuse any inspection requests for work requiring inspections until such time as the site complies with the requirements of this Article. Subsequent inspections may be refused if the erosion and siltation control measures are ineffective, or not being maintained.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-540.** **ENFORCEMENT.** The Building Official may enforce this ordinance through the normal routine activities that include receiving inspection reports from the applicant, inspecting the site, communicating, negotiating, and written warnings to the applicant to resolve issues of non-compliance. However, as a complete alternative to the normal activities referred to above, the Building Official may proceed with any of the methods set forth in Sections 15-534 [suspension or revocation], 15-545 [bonds, maintenance assurances and permits] or may proceed with a citation for violation of this Article and seek the penalties set forth in § 15-550.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-541.** **EROSION AND SEDIMENT CONTROL STANDARDS.** The Director of Public Works shall adopt and maintain erosion and sediment control design criteria and performance standards and specifications to assist in the administration of the land disturbance program. The erosion and sediment control design criteria and specifications shall be based on, but not limited to the following principles:

(a) Fitting the development to existing site conditions.
(b) Minimizing the extent and duration of exposure.
(c) Protecting areas to be disturbed from stormwater runoff.
(d) Stabilizing disturbed areas.
(e) Keeping runoff velocities low.
(f) Retaining sediment on the site.
(g) Inspecting and maintaining control measures.
(h) Containing performance measures and outcomes.

The property owner and/or applicant may request that differing standards be applied and such request shall be granted if, in the opinion of the Building Official or Director of Public Works, such different standards will provide the same protection provided by the City's standards.

(Ord. 1839C, 01-03-00)

**15-542.** **GRADING, EROSION AND SEDIMENT CONTROL SITE PLAN REQUIREMENTS.** The applicant shall submit an Erosion and Sediment Control Site Plan. The Plan shall include the following:

(a) A description of how the plan will prevent all sediment from leaving the site.
(b) Estimated duration of the permit as defined in section 15-533. Existing and proposed topography of the site taken at not more than a two-foot contour interval over the entire site.
(c) Contours extend a minimum of 100 feet off-site, or sufficient to show on/off-site drainage.
(d) Site's property lines shown in true location with respect to the plan's topographic information.
(e) Location and graphic representation of all existing and proposed natural and manmade drainage facilities.
(f) Location, graphic representation and legend of soil types.
(g) Location and graphic representation of proposed excavations and fills, of on-site storage of soil and other earthen material, and on-site disposal.
(h) Location and legend of existing vegetation cover, the location and legend of vegetation cover to be left undisturbed.
(i) Quantity of soil or earthen materials in cubic yards to be excavated, filled, stored, or otherwise utilized on-site.
(j) Proposed sequence of excavation, filling, and soil or earthen material storage and disposal.

(k) List of the measures undertaken to retain sediment from the site, including, but not limited to, designs and specifications for terms, and sediment detention basins, and a schedule for maintenance and upkeep.

(l) A description of the surface runoff and erosion control measures to be implemented, including, but not limited to, types and method of applying mulches, location details and specifications for diverters, dikes and drains, and a schedule for their maintenance and upkeep.

(m) A delineation and brief description of the vegetative measures to be used, including, but not limited to seeding methods, the type, location and extent of pre-existing undisturbed vegetation types and vegetation to remain and a schedule for maintenance and upkeep.

(n) Alternative methods of stabilizing the site when either seeding was not performed in accordance with the schedule, or was performed and was not effective.

(o) Plans to be prepared and sealed and dated by a profession engineer licensed in the State of Kansas.

(p) Location of debris containers, portable fueling station, concrete truck washout, sanitary waste facility so as to minimize water quality impacts.

(q) Include good housekeeping program to include site cleanup and disposal of trash and debris, hazardous material management, vehicle equipment maintenance and sanitary waste.

(Ord. 1839C, 01-03-00)
(Ord. 2826C; 03-20-17)

**15-543.** **WORK SCHEDULE.** The applicant shall submit a work schedule of construction activities for the development where the land disturbance activity is proposed. The work schedule shall provide, at minimum, the following information:

(a) Proposed clearing and grading schedule.

(b) Proposed schedule for installation of temporary and permanent erosion and sediment control measures.

(c) Proposed schedule for all construction activity.

(d) Estimated duration of land disturbance permit as defined in section 15-533.

The applicant shall be allowed to modify the work schedule under this section in the event circumstances dictate such deviation and after the applicant has obtained approval from the Building Official.

(Ord. 1839C, 01-03-00)

**I5-544.** **VIOLATIONS.** Any violation of sections 15-525 through 15-543 shall be subject to the provisions of section 15-550.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-545.** **BONDS, MAINTENANCE ASSURANCES, AND PERMITS.** Upon approval of the final Construction Plan, but before the issuance of a construction permit, the Director of Public Works shall require the applicant to post a Performance Bond, cash escrow, certified check, or other form of performance security acceptable to the Director of Finance for the amount of the work to be done pursuant to the approval of the Final Construction Plans for any facility or improvement to be dedicated to the public.

The Building Official shall require the applicant to provide security equal to the estimated cost to install and maintain the approved erosion and sediment control measures. The Building Official may take action against the security if the applicant fails to install or maintain the erosion and sediment control measures in accordance with the erosion and sediment control plan for the site and the City's adopted standards for the duration of the permit as defined in Section 15-534. The Building Official will provide the applicant with a 10 day written notice before any action is taken against the security, and if during that 10 day period the applicant brings control measures into compliance with the Plan, no action shall be taken against the security.

(Ord. 1839C; 01-03-00)
(Ord. 1973C; 12-02-02)

**15-546.** **MAINTENANCE BONDS.** A two-year maintenance bond against defects in workmanship will be required by the City for any portion of the improvements dedicated for public maintenance.

(Ord. 1839C, 01-03-00)

**15-547.** **PERMITS.** Upon approval of the Final Construction Plans and Erosion and Sediment Control Plan and acceptance of the applicant's assurances of performance and maintenance as provided in these regulations, the Director of Public Works shall issue a permit for construction and the Building Official shall issue a Land Disturbance Permit.

(Ord. 1839C, 01-03-00)

**15-548.** **APPEALS.** Any person aggrieved by a decision of the Director of Public Works or Building Official in the enforcement of this Article shall have the right to appeal any such order, requirement, decision, or determination by filing an appeal with the Building and Fire Code Board of Appeals within 10 calendar days of the action and otherwise in accordance with Chapter 5 of the Code.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-549.** **DAMAGING OR ALTERING STORMWATER MANAGEMENT FACILITIES.** No person, firm, association, partnership or corporation shall maliciously, willfully or negligently break, damage, destroy, deface, alter or tamper with any structure, appurtenance or facility which is a part of the municipal stormwater system or an approved stormwater management plan. No person, firm or corporation shall cause or permit the curbs and gutters in the city to be filled with any material, which tends to restrict or divert the flow of water therein except that the Director of Public Works may upon request grant written permission for an exception. Any violation of this section shall be subject to the provisions of section 15-550.

(Ord. 1839C, 01-03-00)

**15-550.** **PENALTY FOR VIOLATION — ACTION.** The violation of any provision of this article is a misdemeanor, and any person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not less than $200 nor more than $500. The City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this chapter and to abate nuisance maintained in violation thereof; and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure, or land. Each day of any violation of this chapter shall constitute a separate offense.

(Ord. 1839C, 01-03-00)

# ARTICLE 6. ILLICIT DISCHARGE

SECTIONS

15-601 TITLE
15-602 PURPOSE AND FINDINGS
15-603 ABBREVIATIONS
15-604 DEFINITIONS
15-605 GENERAL PROHIBITION
15-606 SPECIFIC PROHIBITIONS AND DUTIES
15-607 INSPECTION AND DETECTION PROGRAM
15-608 RELEASE REPORTING AND CLEANUP
15-609 ENFORCEMENT; DESIGNATION OF OFFICER; ABATEMENT; RIGHT OF ENTRY; PENALTY

**15-601. TITLE.** This Article 6 of Chapter 15 shall be known as the Illicit Discharge Code.

(Ord. 2173C; 07-17-06)

**15-602. PURPOSE AND FINDINGS.**

(a) The purpose of this Code shall be to prevent the discharge of pollutants from land and activities within the City into the municipal separate storm sewer system (MS4) and/or into surface waters.

(b) The Governing Body of the City hereby finds that pollutants are discharged into surface waters, both through inappropriate non-stormwater discharges into the MS4 or the surface waters directly, and through the wash off and transport of pollutants found on the land and built surfaces by stormwater during rainfall events.

(c) Further, the Governing Body of the City hereby finds that such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.

(d) Further, the Governing Body of the City hereby finds that this ordinance will promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.

(e) Further, the Governing Body of the City hereby finds that such discharges are inconsistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES), and other federal and state requirements for water quality and environmental preservation.

(f) Further, the Governing Body of the City hereby finds that a reasonable establishment of restrictions and regulations on activities within the City is necessary to eliminate or minimize such discharges of pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program.

(Ord. 2173C; 07-17-06)

**15-603. ABBREVIATIONS.**

The following abbreviations when used in this Code shall have the designated meanings:

| | |
|---|---|
| BMP | Best Management Practice |
| CFR | Code of Federal Regulations |
| EPA | Environmental Protection Agency |
| HHW | Household Hazardous Waste |
| KDHE | Kansas Department of Health and Environment |
| MS4 | Municipal Separate Storm Sewer System |
| NPDES | National Pollutant Discharge Elimination System |
| PST | Petroleum Storage Tank |

(Ord. 2173C; 07-17-06)

**15-604. DEFINITIONS.**

For the purposes of this Code, the following definitions shall apply:

(a) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(b) “Car” means any vehicle meeting the definition for passenger car, passenger van, pickup truck, motorcycle, recreational vehicle, or motor home given in Chapter XXX of the Code.

(c) "City" means the City of Leawood, Kansas.

(d) “Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

(e) "City Code" means the City of Leawood Municipal Code.

(f) "Director" means the Director of Public Works for the City of Leawood, or the Director's authorized representative.

(g) "Discharge" means the addition, release, or introduction, directly or indirectly, of any pollutant, water, or other substance into the MS4 or surface waters.

(h) "Domestic sewage" means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.

(i) "Extremely hazardous substance" means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

(j) "Fertilizer" means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

(k) "Hazardous household waste (HHW)" means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261 or K.A.R 28-29-23b.

(l) "Hazardous substance" means any substance listed in Table 302.4 of 40 CFR Part 302.

(m) "Hazardous waste" means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

(n) "Industrial waste" means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

(o) "Municipal separate storm sewer system (MS4)" means the system of conveyances, (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

(p) “NPDES” means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the federal Clean Water Act.

(q) "NPDES permit" means, for the purpose of this chapter, a permit issued by United States Environmental Protection Agency (EPA) or the state of Kansas that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(r) “Oil” means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

(s) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.

(t) "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

(u) “Petroleum Product” means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and diesel fuel.

(v) "Pollutant" means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of the waters including changes in temperature, taste, odor, turbidity, or color of the water. Such substance or material may include but is not limited to, dredged spoil, spoil waste, incinerator residue, sewage, pet and livestock waste, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, oil and petroleum products, used motor oil, anti-freeze, litter, pesticides, and industrial, municipal, and agricultural waste discharged into water.

(w) "Property Owner" shall mean the named property owner as indicated by the records of the Johnson County Kansas Records and Tax Administration;

(x) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

(y) "Sanitary sewer" means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

(z) "Septic tank waste" means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(aa) "Sewage" means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

(bb) "State" means the state of Kansas.

(cc) "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(dd) "Surface waters" means any body of water classified as "surface waters" by the state of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a "water of the United States".

(ee) “Waste” means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the State of Kansas. The Federal definition of solid waste is found at 40 CFR 257.2.

(ff) "Water quality standard" means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an antidegradation statement.

(Ord. 2173C; 07-17-06)

**15-605. GENERAL PROHIBITION.**

(a) No person shall release or cause to be released into the MS4, or into any surface water within the City, any discharge that is not composed entirely of stormwater that is free of pollutants, except as allowed in subsection B.

(b) Unless identified by the City or KDHE as a significant source of pollutants to surface water, the following non-stormwater discharges are deemed acceptable and not a violation of this section:

1. Water line flushing;
2. Diverted stream flow;
3. Rising groundwater;
4. Uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;
5. Uncontaminated pumped groundwater;
6. Contaminated groundwater if authorized by KDHE and approved by the municipality;
7. Discharges from potable water sources;
8. Foundation drains;

9. Air conditioning condensate;
10. Irrigation waters;
11. Springs;
12. Water from crawl space pumps;
13. Footing drains;
14. Individual residential car washing;
15. Flows from riparian habitats and wetlands;
16. Dechlorinated swimming pool discharges excluding filter backwash;
17. Street wash waters (excluding street sweepings which have been removed from the street);
18. Discharges or flows from emergency fire fighting activities;
19. Hheat pump discharge waters (residential only);
20. Treated wastewater or other discharges meeting requirements of a NPDES permit; and21. Other discharges determined not to be a significant source of pollutants to waters of the state, a public health hazard or a nuisance.

(c) Discharges specified in writing by the Director as being necessary to protect public health and safety.

(d) Notwithstanding the provisions of subsection B of this section, any discharge shall be prohibited by this section if the discharge in question has been determined by the Director to be a source of pollutants to the MS4 or to surface waters, written notice of such determination has been provided to the property owner or person responsible for such discharges, and the discharge has occurred more than ten days beyond such notice.

(Ord. 2173C; 07-17-06)

**15-606. SPECIFIC PROHIBITIONS AND DUTIES.**

The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition in Section 15-605, but are provided to address specific discharges that are frequently found or are known to occur:

(a) No person shall release or allow to be released any of the following substances into the MS4:

1. Any new or used petroleum product or oil;
2. Any industrial waste;
3. Any hazardous substance or hazardous waste, including household hazardous waste;
4. Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste;
5. Any garbage, rubbish or other waste;
6. Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products;
7. Any yard wastes, which have been moved or gathered by a person;
8. Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment;
9. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner;
10. Any wastewater from commercial floor, rug, or carpet cleaning;

11. Any wastewater from the washdown or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all such materials have been previously removed;
12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
13. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
14. Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area or any pet wastes generally;
15. Any filter backwash from a swimming pool or fountain, except that nothing in this ordinance shall be construed as to require the alteration of the filter discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction;
16. Any swimming pool, fountain or spa water containing a readily detectable level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the water or during cleaning of the facility;
17. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or surface waters;
18. Any contaminated runoff from a vehicle wrecking or storage yard;
19. Any substance or material that will damage, block, or clog the MS4;
20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state;
21. Any other discharge that causes or contributes to causing the City to violate a state water quality standard, the City's NPDES stormwater permit, or any state-issued discharge permit for discharges from its MS4.

(b) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures, except as allowed for in conformance with Section 15-525 through 15-544 also known as, Erosion and Sediment Control Regulations.

(c) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No property owner shall allow such a connection to continue in use on their property.

(d) No person shall use pesticides, herbicides and fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides and fertilizers shall be stored, transported and disposed of in a manner to prevent release to the MS4.

(e) No person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs which have been required by the City or by other local, state, or federal jurisdictions.

(Ord. 2173C; 07-17-06)

**15-607. INSPECTION AND DETECTION PROGRAM.**

The Director is authorized to develop and implement a plan to actively detect and eliminate prohibited discharges and connections to the MS4 or surface waters within the City. Such plan may include, but is not limited to, periodic and random inspections of facilities and businesses, particularly those most associated with potentially prohibited discharges; visual surveys of exterior practices; inspection, sampling and analyses of discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected discharges.

(Ord. 2173C; 07-17-06)

**15-608. RELEASE REPORTING AND CLEANUP.**

(a) Any person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or surface waters shall take all necessary steps to ensure the containment and cleanup of such release.

(b) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(c) In the event of a release of non-hazardous materials, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three business days of the phone notice.

(Ord. 2173C; 07-17-06)

**15-609. ENFORCEMENT; DESIGNATION OF OFFICER; ABATEMENT; RIGHT OF ENTRY; PENALTY.**

(a) Generally. The provisions of this Article shall be administered and enforced by the Director of Public Works or by the Designated Official as further defined in this Article.

(b) Violations, Enforcement, Notice.

1. Complaints Regarding Violations. Whenever a violation of this Article occurs or is alleged to have occurred, any person may file a complaint of such alleged violation with the Designated Official stating fully the facts or grounds upon which the complaint is based. The Designated Official shall promptly record and investigate such complaint and take appropriate action as provided by this Article.
2. Enforcement Procedure. Whenever the Designated Official finds that any provisions of this Article are being violated, the Designated Official shall promptly notify in writing the person(s) responsible for such violations, indicating in such notice the nature of the violation and the actions, if any, ordered to correct it. The Designated Official shall in all cases take such actions or issue such orders or directives as are authorized by this Article to insure compliance with or to prevent violations of its provisions.
3. Actions, Orders and Directives. The Designated Official shall have the authority to establish priorities for the abatement of violations and implement appropriate procedures or remedies as provided herein to abate violations. The Designated Official shall issue appropriate written orders or directives to any person deemed to be responsible for a violation of this Article. A failure to promptly comply with such lawful orders or directives shall be deemed a violation of this Article, punishable as provided herein.
4. Designated Official's Remedies. The Designated Official shall have the following remedies, without limitations, available:
    a. No Action. After careful consideration of the facts and circumstances, the Designated Official may authorize no action be taken on a complaint of an alleged violation.
    b. Informal Contact. The Designated Official shall have the authority to effectuate abatement through informal meetings or conversations.

c. Agreement to Abate. The Designated Official may enter into an agreement with a violator whereby the violator agrees to abate the violation within a certain time frame based upon certain conditions within the agreement. This time frame shall not exceed a period of 1 month from date of execution of the abatement agreement.

d. Notice and Order. The Designated Official may issue a notice and order to the violator ordering the cessation of illegal condition within a specified period of time based upon the nature of the violation following receipt of notice as outlined in the Notification Procedures.

e. Municipal Court Action. The Designated Official may pursue action in Municipal Court.

f. Other Action. The Designated Official may take any other action permitted by law

5. Notification Procedures. Whenever the Designated Official determines to issue a notice as specified above, written notice of such violation shall be sent by certified mail, return receipt requested, to the person(s) responsible for such violation. Such person(s) may include the owner and the occupant of the premises. The letter shall direct that 10 days shall be granted for the abatement of said violation following the mailing of the written notice. If after such time, such violation continues or reoccurs, the City may pursue action in Municipal Court. It should be noted that, if a violation occurs, notification is sent, and said violation is abated but occurs again at a later date, the Designated Official is not required to renotify said violator a second time of the same violation.

(c) Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Designated Official has reasonable cause to believe that there exists in any building or upon any premises any violation, the Designated Official may enter such building or premises at all reasonable times to inspect the same or to perform any necessary sampling or tests or to perform any duty imposed upon the Designated Official by this Article, provided that if such building or premises be occupied, the Designated Official shall first present proper credentials and request entry; and if such building or premises be unoccupied, the Designated Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Designated Official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

(d) Administration of Provisions. The provisions of this Ordinance shall be administered and enforced by the Designated Official(s), defined to include the Director, or his or her appointed representative and/or the Neighborhood Services Administrator or his or her appointed representative.

(e) Penalties and Remedies

1. Remedies. In addition to other remedies, the City may institute any appropriate action or proceedings to halt or prevent the violation of this Article.

2. Abatement. In addition to other remedies, the Director may order City representatives to terminate any illicit connection to the MS4. Any expense related to such abatement shall be fully reimbursed by the property owner. Such reimbursement may be enforced by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding abatement of nuisances.

Additionally, if a property owner is not available, not able or willing to correct a violation, then, in the case of an emergency, the Director may order City representatives to enter private property to take any and all measures necessary to abate the violation. If the violation does not present an immediate hazard, then the Director shall follow those procedures for the abatement of nuisances. In any event, the owner and/or occupant of the property shall reimburse the City for the full amount of the cost of the abatement and such reimbursement may be enforce by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding the abatement of nuisances.

Additionally, if it is determined that a violation of this Code exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in Chapter 8 of the Code of the City of Leawood, 2000.

3. Penalties, Fines, Imprisonment. The owner, occupant or general agent of a building or premises where a violation of any provision of this Article has been committed or shall exist, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than $250.00 and not more than $1,500.00 for each and every day that such violation continues, or by imprisonment for 10 days for each and every day such violation shall continue, but in no case to exceed 3 months of imprisonment, or by both such fine and imprisonment in the discretion of the Court. Each separate day on which a violation is committed or continues shall constitute a separate offense.

4. Performance Bonds. Where necessary for the reasonable implementation of this Article, the Director may, by written notice, order any owner of a construction site or subdivision development to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance with this Article. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such a performance bond has been filed.

(Ord. 2173C; 07-17-06)

## ARTICLE 7. POST CONSTRUCTION STORMWATER RUNOFF CONTROL

### 15-701. TITLE.

This Article 7 of Chapter 15 shall be known as the Post-Construction Storm Water Runoff Control Ordinance ("Ordinance").

(Ord. 2287C; 12-17-07)

### 15-702. PURPOSE AND FINDINGS.

(a) The purpose of this Ordinance is to minimize and prevent the discharge of pollutants from developed land into the surface waters of the City by establishing reasonable requirements for the treatment of stormwater runoff from new development and redevelopment activities.

(b) The Governing Body finds that land development and the associated increases in impervious cover can increase the quantity and nature of pollutants carried by stormwater runoff, increase stormwater runoff rates and volumes, aggravate stream channel erosion and sediment transport, alter the hydrologic response of watersheds, and degrade the ecological function of downstream rivers, creeks, streams, lakes and other water bodies.

(c) Further, the Governing Body finds that stormwater treatment facilities and requirements can minimize those impacts by reducing pollutant levels carried in stormwater runoff, removing or reducing the concentrations of those pollutants that are carried, reducing stream bank erosion, and by restoring stormwater runoff rates and volumes to levels closer to the pre-development hydrologic regimes.

(Ord. 2287C; 12-17-07)

**15-703. ABBREVIATIONS.**

The following abbreviations when used in these Regulations shall have the designated meanings:

| | |
|---|---|
| APWA | American Public Works Association |
| BMP | Best Management Practice |
| MARC | Mid-America Regional Council |

(Ord. 2287C; 12-17-07)

**15-704. DEFINITIONS.**

For the purposes of this Ordinance, the following definitions apply:

(a) "Approved Plan" means a set of representational drawings or other documents that have been approved by the *City* as complying with the provisions of this Ordinance submitted by an applicant (either as an independent submittal or a part of another development application(s) required by the City Code as a prerequisite to obtaining a building or land disturbance permit and that contain the information and specifications required by the City to minimize storm water runoff.

(b) "Applicant" means any person who makes application for an approved plan or for a building permit for an activity involving building or development that results in land disturbance or for a land disturbance permit, as required by this Ordinance.

(c) "As-Built plan" means a record drawing or plan prepared and certified by a licensed Professional Engineer or Land Surveyor that represents the actual dimensions, contours, elevations, etc., of a completed structure, facility, or constructed feature.

(d) "Channel" means a natural or artificial watercourse with defined bed and banks that conducts continuously or periodically flowing water.

(e) "City" means the City of Leawood, Kansas

(f) "City Code" means the Code of the City of Leawood, 2000, as amended and the Leawood Development Ordinance.

(g) "Community Development Director" means the individual appointed by the City as the Community Development Director or a duly authorized representative.

(h) "Detention" means a stormwater management technique of which the primary function is to control the peak rate of surface water runoff by utilizing temporary storage and a controlled rate of release. This may include, but not be limited to, the use of reservoirs, rooftops, parking areas, holding tanks, in-pipe and in-channel storage.

(i) "Detention Facility" means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

(j) "Development Application" means all applications required by the *City* Code as a prerequisite to initiation of development, including, but not limited to a building permit application.

(k) "Drainage Easement" means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

(l) "Erosion" means the wearing away of land by the action of wind, water, gravity, or a combination thereof.

(m) "Floodplain" means the floodway and floodway fridge as identified by the Federal Insurance Administration through its report entitled "The Flood Insurance Study for the City of Leawood, Kansas," dated June 17, 2002 or such other designation of the floodplain as is subsequently adopted by the City, and representing the regulated 100-year water surface and corresponding elevations.

(n) "Impervious Cover" means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

(o) "Infiltration" means the process of percolating stormwater into the subsoil.

(p) "Land Disturbance Activity" means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

(q) "Landowner" means that legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights on the land.

(r) "Licensed land surveyor" means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice surveying.

(s) "Maintenance Agreement" means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

(t) "Maximum Extent Practicable" means the use of those best management practices, which, based on sound engineering and hydro-geological principals, will, to the greatest degree possible, given all relevant considerations, including technology, climate, and site conditions, minimize storm water runoff from a site during and after construction.

(u) "Off-Site Facility" means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

(v) "On-Site Facility" means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.

w) “Permit” means a building permit for activities involving building or development resulting in land disturbance and a land disturbance permit for activities resulting in land disturbance, required by 15-705, that does not involve building or development.

(x) “Permittee” means any person to whom a building permit is issued with respect to activities involving building or development resulting in land disturbance or for purposes of this Ordinance only, any person to whom a land disturbance permit is issued.

(y) Pollutant" means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of water, including changes in temperature, taste, odor, turbidity, or color.

(z) “Professional Engineer” is an engineer duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice engineering.

(aa) “Public Works Director” is the individual appointed by the City as the Public Works Director or a duly authorized representative.

(bb) "Redevelopment" means development on a tract of land with existing structures where all or most of the existing structures would be razed and a new structure or structures built.

(cc) “Sediment” means soils or other materials transported or deposited by the action of wind, water, ice, gravity, or artificial means.

(dd) “Site” any lot or parcel of land or a series of lots or parcels of land adjoining or contiguous or joined together under one (1) ownership on which land disturbance activity is proposed.

(ee) “Stop Work Order” means an order issued which requires that all construction activity on a site be stopped.

(ff) “Stormwater Management” means the use of structural or non-structural practices that are designed to reduce storm water pollutant loads, discharge volumes, and/or peak flow discharge rates.

(gg) “Stormwater Best Management Practices” means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

(hh) “Stormwater Runoff” means water resulting from precipitation which is not absorbed by the soil, evaporated into the atmosphere, or entrapped by ground surface depressions and vegetation, and which flows over the ground surface.

(ii). “Watercourse” means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(Ord. 2287C; 12-17-07)

**15-705. PERMITS REQUIRED**

(a) No person shall receive any building development or other permit that results in land disturbance except as specifically provided for herein without first complying with this Ordinance, the Leawood Development Ordinance, the Code of the City of Leawood, 2000, including Article 5 of Chapter 15 of the City Code.

(b) This Ordinance shall not be construed to be in conflict with any state law intended to control post construction storm water runoff. In those instances where state law imposes a duty or requirement with respect to a matter covered by this Ordinance, the more environmentally stringent duty or requirement shall control.

(c) Projects meeting any of the following criteria are exempt from the requirement of obtaining a permit required by this section and the provisions of this Article:

1. Land disturbance of less than 1 acre that are not part of common plan development the will cumulatively disturb more than 1 acre.
2. Land farming operations, including plowing or tilling of land for the purpose of crop production or the harvesting of crops on land located in the agricultural district.
3. Expansions and modifications to previously constructed developments otherwise subject to this Ordinance where the proposed increase in impervious surface is less than 5,000 square feet.
4. Land disturbance for utility construction.
5. Single lot residential developments that are not part of a larger common plan for development.
6. Reestablishment of lawn areas.
7. any emergency activity that is immediately necessary for the protection of life, property, or natural resources.

provided that, if one or more of the above activities is undertaken as a part of or in conjunction with an activity involving building or development that otherwise requires issuance of a building permit, this Section does not alter the requirement that a building permit shall be obtained for that activity or activities.

(d) Previously Approved Development Plans:
Projects having a preliminary development plan or preliminary plat approved or having an application on file prior to the adoption of this Ordinance are exempt from the provisions of this Ordinance, provided that a final plan for the development is submitted and approved on or before July 1, 2010 and construction is diligently pursued. For projects with plan applications filed and pending on the effective date of this ordinance, the subject preliminary or final plan application must obtain approval by the Governing Body on or before July 1, 2008, in order to retain the exemption stated herein.

(e) The issuance of a permit shall constitute authorization to do only that work described or shown on the approved plan, all in strict compliance with the requirements of this Ordinance, unless each and every modification or waiver is

specifically listed and approved as required by Section 15-716 of this Ordinance. Reasonable field modifications can be made pursuant to Section 15-719(B) of this Ordinance

(f) The permittee and/or permittee's agent, contractors, and employees shall carry out the proposed work in accordance with the approved plan, and the permit, and in compliance with all applicable requirements or conditions.

(Ord. 2287C; 12-17-07)

**15-706. AUTHORIZATION TO UNDERTAKE LAND DISTURBANCE ACTIVITIES: COMPONENT OF BUILDING PERMITS**

(a) A permit must be obtained before any activity involving building or development resulting in land disturbance is initiated, except as provided in Section 15-705(C). The authority to undertake any of these activities shall be evidenced only by a valid permit. Before a permit is issued for these activities, the engineered plans specified in Section 15-708 must be submitted to the City and must contain the information and be in the form required therein, subject to the provisions of Section 15-708. In effect, Section 15-708 sets forth application submission requirements for activities involving building or development resulting in land disturbance that are in addition to the application submission requirements specified in Chapter 4 of the City Code.

(b) If an individual proposes to undertake a land disturbance activity that does not, pursuant to any other section of the Code, require issuance of a building permit (such as, but not limited to, installation of sanitary sewers), the individual shall not, except as provided in Article 5, Section 15-525, initiate land disturbance activities until a land disturbance permit is obtained.

(Ord. 2287C; 12-17-07)

**15-707. PERMIT OR PLAN GENERALLY**

(a) Where activities involving building or development resulting in land disturbance are to be performed, the owner of a site, or the site owner's authorized representative shall submit a complete building permit application in writing upon forms furnished by the City, which application shall include the engineered plans specified in Section 15-708.

(b) Where land disturbance activity is to be performed and the City Code does not otherwise require issuance of a building permit, the owner of the site or the site owner's authorized representative shall submit the engineered plans in compliance with this Ordinance and Article 5 Section 15-525 to the Community Development Director.

(c) A permit must be issued in the name of the current property owner.

(d) No permit for activities that are not permitted by existing zoning, variances or other valid development approvals applicable to the land, shall be approved.

(e) In making an application covered by this Ordinance, the applicant or the landowner performing or allowing the work consents to the City's right to enter the site for the purpose of inspecting compliance with the approved plan or for

performing any work necessary to bring the site into compliance with the approved plan.

(f) The engineered plans required by Section 15-708 are not intended to be duplicative of other provisions of this Ordinance or Code. Accordingly, the required engineered plan may be included in or with any other development application(s) or submission(s) otherwise required by this Ordinance or Code; provided that, all the information required therein is in a form that can reasonably be evaluated by the designated decision maker. The decision concerning the form of the information submitted shall be made in the Community Development Director's sole discretion. In addition, these Sections provide authority for the Community Development Director to waive submission requirements determined not to be necessary to the evaluations that are required by this Ordinance.

(Ord. 2287C; 12-17-07)

**15-708. ENGINEERED PLANS**

(a) If not otherwise included in a separate development application or applications to the City that seek approval of the specific activity that will result in land disturbance, as provided by Section 15-707 above, the following information shall be submitted to the Community Development Director:

1. a site map in compliance with Section 15-709;
2. a post construction stormwater runoff management concept plan in compliance with Section 15-710;
3. a post construction stormwater BMP maintenance agreement in compliance with Section 15-712;
4. a work schedule in compliance with Section 15-713;
5. the permit fee as set forth in Section 15-721;
6. a performance guaranty as required by Section 15-724;
7. an engineering soils report in compliance with Section 15-710, when required by the City.

(b) The post construction stormwater runoff management concept and stormwater BMP maintenance agreement plans must be prepared and certified by a Professional Engineer.

(c) The City may require any additional information or data deemed appropriate and/or may impose conditions thereto as the Director of Public Works may deem necessary to ensure compliance with the provisions of this Ordinance and to preserve public health and safety.

(d) The Director of Public Works may waive the requirements for maps, plans, reports, or drawings, if the Director of Public Works finds that the current submittals or information to be submitted will be sufficient to show that the proposed work will conform to the requirements of this Ordinance.

(e) The applicant is bound by information submitted and by this Ordinance.

(f) Failure to comply with these requirements may result in the City denying the issuance of a permit.

(Ord. 2287C; 12-17-07)

**15-709. MAP AND EXISTING CONDITIONS**

(a) Subject to Section 15-708(A), the applicant shall submit a site map that contains all of the information specified in the current Post-Construction Stormwater Runoff Management Manual approved by the City as required by Section 15-712 of this Ordinance.

(b) An attached vicinity map showing the location of the site in relation to the surrounding area's watercourses, water bodies, and other significant geographic and natural features, and street and other significant features.

(c) The vicinity map also should identify any watercourses or water bodies where drainage on the site may flow to waters that are known to be impaired as defined by the Clean Water Act 303d listing as identified by the Kansas Department of Health and Environment or known to have any special designation, such as habitat for a protected species. Also, if impaired waters or special designations are present, list impairments and special designations.

(d) Existing and proposed topography of the entire site with contour lines drawn at one-foot intervals.

(e) Show on/off-site drainage, including the subwatershed as well as the entire drainage basin;

(f) Site's property lines shown in true location of all existing and proposed natural and man-made drainage facilities;

(g) Graphic representation of the location of and legend of soil types if applicable to proposed runoff controls (including source of information);

(h) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on this site, or a statement that there are no wetlands, detention areas or drainage ditches located on the property;

(i) A clear and definite delineation of any drainage, sanitary, utility, or other easement(s) on or near the site;

(j) A clear and definite delineation of applicant's determination, based on the best available information and sound engineering principles of the existence of a regulatory Floodplain, as defined in 15-704 and of any fully urbanized floodplain on or near the site as determined by a Johnson County watershed study or a statement that there are no such floodplains located on the property;

(k) Location and legend of existing vegetative cover and the location and legend of vegetative cover to be left undisturbed;
(l) Location of existing surface runoff and detention control measures;
(m) The signature and seal of a Professional Engineer.

(Ord. 2287C; 12-17-07)

**15-710. PRELIMINARY POST-CONSTRUCTION STORMWATER MANAGEMENT CONCEPT PLAN REQUIREMENTS**

A stormwater management concept plan shall be required with all permit applications and will include sufficient information (i.e., maps, hydrologic calculations, BMP level of service calculations, etc.) to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site.

(a) A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural stormwater management and sediment control facilities. The map(s) also will clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads, and easements; the limits of clearing and grading; A written description of the site plan and justification of proposed changes in natural conditions.
(b) Sufficient engineering analysis to show that the proposed stormwater management BMPs are capable of controlling and treating runoff from the water quality storm at the site in compliance with this ordinance and the specifications in the current Post-Construction Stormwater Management Manual approved by the City.
(c) A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features, including water body impairments listed in the Clean Water Act 303d listing and identified by the Kansas Department of Health and Environment, which provide particular opportunities or constraints for development.

(d) Identification and preliminary plan for control of any stormwater “hot spots” that could pose an environmental hazard such as, but not limited to; fuel dispensing facilities, above ground storage of liquid materials, solid waste storage areas, exterior storage of bulk materials, material transfer areas and loading docks, equipment and vehicle washing facilities, covered parking areas, and high-use vehicle and equipment traffic areas, parking, and vehicle storage.

(e) A written description of the required maintenance burden for any proposed structural and non-structural stormwater BMP as defined in Section 15-712 of this Ordinance.

(f) Schedule for required maintenance as well as identification of party responsible for the maintenance as defined in Section 15-712 of this Ordinance.

(g) For development or redevelopment occurring on a previously developed site, the applicant is required to include within the plan measures for controlling existing stormwater runoff discharges from the site in accordance with the standards of this Ordinance to the maximum extent practicable.

(Ord. 2287C; 12-17-07)

**15-711. FINAL POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN REQUIREMENTS**

After review of the preliminary stormwater management concept plan, and modifications to that plan as deemed necessary by the Public Works Director, a final post-construction stormwater management plan must be submitted for approval. The final stormwater management plan, in addition to the information from the concept plan, shall include all of the following information:

(a) Contact Information: The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.

(b) Topographic Base Map: A 1”=200’ topographic base map of the site which extends a minimum of 500-feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.

(c) Calculations: Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in this ordinance. Such calculations shall include (i) description of the design storm frequency, intensity, and duration, (the design storm for water quality BMPs is the water quality storm, which is the storm event that produces less than or equal to 90 percent volume of all 24-hour storms on an annual basis) (ii) time of concentration, (iii) Soil Curve Numbers or runoff coefficients, (iv) peak runoff rates and total runoff volumes for each watershed area; (v) infiltration rates, where applicable, (vi) culvert capacities, (vii) flow velocities, (viii) data on the increase in rate and volume of runoff for the design storms referenced in the current City approved version of the Post-Construction Stormwater Runoff Management manual, (ix) pre- and post-development percent imperviousness of the site, and (x) documentation of sources for all computation methods and field test results.

(d) Soils information: If a stormwater management control BMP depends on the hydrologic properties of soils (i.e., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measures.

(e) Maintenance and Repair Plan

The design and planning of all storm water management structural and non-structural BMPs shall include detailed maintenance and repair procedures to ensure their continued function. These plans will identify the parts or components of a storm water management BMP that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

i. Vegetation: The applicant must present a detailed plan for management of vegetation used for the BMP's at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by the registered engineer responsible for the design of the BMP's.

ii. Maintenance Easements: The applicant must ensure access to all stormwater BMPs at the site for the purpose of inspection and repair by securing all the maintenance/access easements needed on a permanent basis. These easements will be recorded with the plat and will remain in effect even with transfer of title to the property.

iii. Maintenance Agreement: The applicant must include a maintenance agreement including all components identified in Section 15-712.

iv. Erosion and Sediment Control Plans for Construction of Stormwater Management Measures: The applicant must prepare an erosion and sediment control plan for all construction activities related to implementing any on-site stormwater management practices as required by Article 5 of this Chapter.

v. Other Environmental Permits: The applicant shall assure that all other applicable environmental permits have been acquired for the site prior to approval of the final stormwater design plan.

(Ord. 2287C; 12-17-07)

**15-712. MAINTENANCE AGREEMENT AND RESPONSIBILITY**

(a) Maintenance Agreement

1. Prior to the issuance of any building permit for activities involving building a development resulting in land disturbance, except as specified in Section 15-705 is required, the City shall require the applicant to execute an inspection and maintenance agreement binding on all subsequent owners of land served by a private stormwater management facility. Such agreement shall provide for access to the facility at reasonable times for regular inspections by the City or its authorized representative to ensure that the facility is maintained in proper working condition to meet design standards.
2. The agreement shall be recorded by the applicant and/or owner in the land records of the County.
3. The agreement shall also provide that, if after notice by the City to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) within a reasonable period of time (30 days maximum), the owner will be cited for violation of the ordinance in accordance with Section 15-723.

(b) Maintenance Responsibility

1. The owner of the property on which work has been done pursuant to this Ordinance for private stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
2. A maintenance schedule shall be developed for the life of any stormwater management facility and shall state the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be printed on the approved stormwater management plan.

(Ord. 2287C; 12-17-07)

**15-713. WORK SCHEDULE**

Subject to Section 15-714, the applicant shall submit a chronological construction and maintenance schedule for each BMP, structural or non-structural, approved in the final post-construction stormwater management plan.

Stormwater BMPs are subject to inspection throughout construction at the discretion of the Public Works Director.

(Ord. 2287C; 12-17-07)

**15-714. POST-CONSTRUCTION STORMWATER RUNOFF MANAGEMENT MANUAL; POST-CONSTRUCTION STORMWATER RUNOFF DESIGN CRITERIA**

There is hereby incorporated by reference that certain document entitled “The Manual of Best Management Practices for Stormwater Quality” dated October 2012, prepared and published by the Mid-America Regional Council and the American Public Works Association. No fewer than three copies of The Manual of Best Management Practices for Stormwater Quality shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2823C" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 2287C; 12-17-07)
(Ord. 2361C; 10-20-08)
(Ord. 2823C; 03-06-17)

**15-715. DEVIATIONS**

(a) The Planning Commission or Governing Body may, in the process of approving preliminary plats, final plats, preliminary development plans or final development plans, or a building permit or land disturbance permit, if none of the above are required by other sections of this Chapter, approve deviations from the specific terms of this Ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship for the applicant, and provided that the spirit of this Ordinance shall be observed, the public safety and welfare secured and substantial justice done for the applicants.

(b) An application for a deviation may only be granted upon a finding that all of the following conditions have been met:

1. That the granting of the deviation will not adversely affect the rights of adjacent landowners.
2. That the strict application of the provisions of this Ordinance would constitute unnecessary hardship upon the landowner represented in the application.
3. That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
4. That granting the deviation will comply with the general spirit and intent of this Ordinance.
5. That it has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or state laws.

Upon consideration of the factors listed above and the purposes of this Ordinance, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter.

(c) In considering deviation applications, the City has the discretion of using any or all of the following project evaluations when, in the judgment of the Planning Commission or Governing Body, these evaluations are relevant and appropriate. No individual or combination of evaluations are necessarily required for an application to be approved and the Planning Commission or Governing Body may weigh these evaluations in light of all relevant considerations in determining whether or not to approve an application.

1. That alternative standards for stormwater management, water quality protection, and ecological preservation have been established, and/or that mitigation measures are undertaken.
2. That existing physical or natural characteristics of the site make strict application of the Ordinance infeasible.

3. That concerns for flooding, stream bank erosion, stream instability, and maintenance of culverts, bridges or other structures are addressed.
4. That the deviation is the minimum necessary to afford relief.

(Ord. 2287C; 12-17-07)

**15-716. REVIEW AND APPROVAL**

(a) The City will review all submissions required by this Ordinance to determine their conformance with the provisions of this Ordinance and the MARC Manual of Best Management Practices for Stormwater Quality incorporated by reference through Section 15-714 of this City Code.

(b) The Community Development Director may approve a plan and authorize the Building Official to issue a building permit or may issue a land disturbance permit if all required submittals comply with all the requirements of this Ordinance or that of Article 5 Section 15-525.

(c) Within fifteen (15) working days after receiving all required submissions, the Community Development Director, in writing, may:

1. If a building permit is otherwise required;
   a. Approve the plan and notify the Building Official that all requirements of this Ordinance have been met and that the permit may be issued; or
   b. Conditionally approve the plan and notify the Building Official that the requirements of this Ordinance has been met and that the building permit may be issued, subject to conditions as may be necessary to substantially secure the objectives of this Ordinance, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or private property; or
   c. Disapprove the plan and notify the Building Official that the requirements of this Ordinance have not been met; indicating those requirement(s) that have not been met.

2. If a building permit is not otherwise required:
   a. Approve the plan and issue the permit; or
   b. Conditionally approve the plan and issue a land disturbance permit subject to conditions as may be necessary to substantially secure the objectives of this Ordinance, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or private property; or
   c. Disapprove the plan and inform the applicant in writing of those requirement(s) that have not been met.

(Ord. 2287C; 12-17-07)

**15-717. MODIFICATION OF PLANS**

(a) Modification of the approved plan must be submitted to the City, and shall be reprocessed in the same manner as the original plan, where:

1. Field inspection or evaluation has revealed the inadequacy of the approved plan to accomplish and control the post construction runoff according to the design criteria; or
2. The person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out.

(b) Field modifications of a minor nature may be authorized in writing by the Public Works Director; provided those modifications are consistent with the post construction runoff criteria of this Ordinance and the Post-Construction Stormwater Runoff Management manual. The Public Works Director may establish a list of allowable field modifications for this purpose that shall be included in the manual.

(Ord. 2287C; 12-17-07)

**15-718. AS BUILT PLANS**

(a) All applicants are required to submit actual “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer. A final inspection by the City is required before the release of any performance and maintenance bond.

(Ord. 2287C; 12-17-07)

**15-719. FEES**

(b) Before issuance of a permit, the applicant shall pay a fee, which shall be in addition to the building permit fee if otherwise applicable, to cover the cost of administration, plan review, and inspection services associated with evaluation of submittals and permits required by this Ordinance. The amount of the fee shall be established by the Governing Body by resolution or ordinance.

(Ord. 2287C; 12-17-07)

**15-720. PERMIT AND/OR APPROVED PLAN, EXPIRATION AND RENEWAL**

(a) The permit shall be valid from the time that it is issued until a final certificate of occupancy is issued in conjunction with a building permit, or a certificate of completion submitted by the design engineer pursuant to Section 15-718.

(b) If the permittee sells the property before the expiration of the permit, the permit may be assigned to the new owner of the site if the assignment is approved in writing by the Community Development Director, provided that the permittee shall remain responsible for compliance with the permit until a final certificate of occupancy is issued or a certificate of completion is issued as set forth in Section 15-720.

(c) If the permittee sells any portion of the property before the expiration of the permit, the permittee will remain responsible for that portion of the property until the new owner of the property, with respect to the property covered by a permit, makes all submissions required by this Ordinance, which or not waived, to the Community Development Director and he or she approves the plan an issues the new owner a permit.

(Ord. 2287C; 12-17-07)

**15-721. COORDINATION WITH OTHER PERMITS**

When a person is developing a site and a permit is required, in accordance with Section 15-705 of this Ordinance, no other construction permits shall be issued to make improvements on that site until the person has secured the permit required by this Ordinance for the same site. This includes all permits issued by another City department.

(Ord. 2287C; 12-17-07)

**15-722. PERFORMANCE GUARANTY**

The City will require the submittal of a two year performance and maintenance bond prior to issuance of a permit. The two year period shall commence upon issuance of a Certificate of Occupancy or Certificate of completion.

(Ord. 2287C; 12-17-07)

**15-723. PENALTIES, FINES, IMPRISONMENT**

The owner, occupant or general agent of a building or premises where a violation of any provision of this Ordinance has been committed or shall exist, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than $250.00 and not more than $1,500.00 for each and every day that such violation continues, or by imprisonment for 10 days for each and every day such violation shall continue, but in no case to exceed 3 months of imprisonment, or by both such fine and imprisonment in the discretion of the Court. Each separate day on which a violation is committed or continues shall constitute a separate offense.

Additionally, if a property owner is not available, not able or willing to correct a violation,

then, in the case of an emergency, the Director may order City representatives to enter private property to take any and all measures necessary to abate the violation. If the violation does not present an immediate hazard, then the Director shall follow those procedures for the abatement of nuisances. In any event, the owner and/or occupant of the property shall reimburse the City for the full amount of the cost of the abatement and such reimbursement may be enforce by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding the abatement of nuisances.

Additionally, if it is determined that a violation of this Code exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in Chapter 8 of the Code of the City of Leawood, 2000.

(Ord. 2287C; 12-17-07)

## ARTICLE 1. GENERAL PROVISIONS

**[REPEALED BY ORDINANCE NO. 1897C; 07-02-01]**

**[Prior Law: Ord. 1137C; 11/20/1989: Ord. 753: Ord. 501; Code 1984; Code 1973]**

## ARTICLE 2. PRIVATE SEWAGE DISPOSAL SYSTEM

**(REPEALED BY ORD. NO. 1504C; 06-05-95)**

## ARTICLE 3. STORM SEWERS

**15-301. INCORPORATING HYDRAULIC PERFORMANCE OF SETBACK CURB INLETS. –**
**[Repealed by Ord. No. 2354C]**

(Ord. 1841C; 01-03-00)
(Ord. 2354C; 10-20-08)

**15-302. INCORPORATING DIVISION V- SECTION 5600 DESIGN CRITERIA FOR STORM DRAINAGE SYSTEMS AND FACILITIES.**

There is hereby incorporated by reference that certain "Division V –Section 5600, Storm Drainage Systems & Facilities" of that publication known as "Standard Specifications and Design Criteria" approved and adopted, February 16, 2011, prepared and published by the Kansas City Metropolitan Chapter of the American Public Works Association, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. No fewer than three copies of the Design Criteria for Storm Drainage Systems and Facilities (Division V - Section 5600) shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2827C" with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1842C; 01-03-00)
(Code 2000)
(Ord. 2062C; 05-17-04)
(Ord. 2355C; 10-20-08)
(Ord. 2827C; 03-20-17)

**15-303. INCORPORATING DIVISION V- DESIGN CRITERIA - DIVISION 5100 EROSION AND SEDIMENT CONTROL.**

There is hereby incorporated by reference that certain "Division V –Design Criteria– Division 5100 Erosion and Sediment Control" of that publication known as "Standard Specifications and Design Criteria" approved and adopted, September, 15, 2010, prepared and published by the Kansas City Metropolitan Chapter of the American Public Works Association. No fewer than three copies of the Division V – Design Criteria – Division 5100 Erosion and Sediment Control shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2827C" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 1843C; 01-03-00)
(Ord. 2356C; 10-20-08)
(Ord. 2827C; 03-20-17)

**15-303a. INCORPORATING DIVISION II – CONSTRUCTION AND MATERIAL SPECIFICATIONS – SECTION 2150 EROSION AND SEDIMENT CONTROL.**

There is hereby incorporated by reference that certain "Division II – Construction and Material Specifications – Section 2150 Erosion and Sediment Control" of that publication known as "Standard Specifications and Design Criteria", approved and adopted, May 21, 2008, prepared and published by the Kansas City Metropolitan Chapter of the American Public Works Association. No fewer than three copies of the Division II – Construction and Material Specifications – Section 2150 Erosion and Sediment Control shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2357C" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 2357C; 10-20-08)

**15-304. STANDARD SPECIFICATIONS AND DESIGN CRITERIA INCORPORATED.** There is hereby incorporated by reference the "Division II-Construction and Material Specifications, Sewers, Section 2600 Storm Sewers" of the "Standard Specifications and Design Criteria," April 17, 1996 Edition, as amended through December 31, 2007, prepared and published by Kansas City Metropolitan Chapter of the American Public Works Association, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. § 12-3009 through §12-3012, inclusive, as amended. No fewer than three copies of said Standard Specifications and Design Criteria shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 2358C", with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 1844C; 01-03-00)
(Ord. 2358C; 10-20-08)

**15-304a. SECTION 2602 PIPE SEWER CONSTRUCTION**

2602.1 SCOPE: This section governs the construction of pipe storm sewers and appurtenances at the location and to the lines and grades indicated on the Contract Drawings.

2602.2 MATERIALS:

***A. Reinforced Concrete Pipe:***

1. Pipe: Reinforced concrete pipe shall conform to the following ASTM Standards and be of the minimum strength designated herein or such higher strength as may be required by the Contract Drawings or Special Provisions:

    a. Round Pipe: ASTM C 76, Class III, Wall B.
    b. Elliptical Pipe: ASTM C 507, Class HE-III.
    c. Arch Culvert Pipe: ASTM C 506, Class A-III.

2. Joints:
    a. Flexible Gasket: Flexible gaskets may be either flat gaskets cemented to the pipe tongue or spigot, O-ring gaskets, or roll-on gaskets. All gaskets shall conform to ASTM C 443.

b. Cement Mortar: Cement mortar shall consist of one part Type 1 portland cement by volume to three parts sand conforming to ASTM C 144 by volume mixed with sufficient water to form a workable stiff mortar paste.

c. Plastic Compound: This compound shall be a homogeneous blend of bituminous material, inert filler and suitable solvents or plasticizing compounds thoroughly mixed at the factory to a uniform consistency suitable for sealing joints of concrete pipe. The compound shall conform to the following requirements:

Bitumen, soluble in $CS_2$, percent by weight, minimum 45%
Ash, percent by weight 15-50%
Penetration, standard cone, 150g,
5 seconds, 25º C
Trowel grade, bulk type 110-250mm
Extruded rope or flat tape type 50-120mm

The above penetration ranges include test tolerances.

d. Preformed Plastic Compound: This compound shall be either rope form or flat tape form conforming to ASTM C 990. Primer, as recommended by the manufacturer, shall be used to maintain the material in position while pipe sections are being joined.

***B. Alternate Material for Private Storm Sewers***

1. Scope. This section defines requirements for the use of HDPE pipe as an alternate material for privately maintained storm sewer systems originating on private property.
2. Definitions. For purposes of this section, the following terms shall have the following definitions:
   a. HDPE pipe – For the purposes of this section, acceptable HDPE pipe is defined as: Type S, double wall (smooth interior, corrugated outer wall), high density polyethylene pipe utilizing a bell-and-spigot joint system and providing a water tight joint.
   b. Incidental landscape drainage system – A system which serves landscaping and is minor in nature and where the system is less than a 15” diameter.
   c. PE – Polyethylene.

d. Private storm sewer system – A system which mainly collects and conveys runoff from a single property and is privately maintained by the property owner. The City will make final determinations regarding which systems may be private versus public during the plan review process.

e. Roof drain – A pipe system which conveys only runoff from building roofs.

f. Storm water detention facility – A facility which controls the maximum release rate from a site. It is considered to be separate by definition from the storm sewer system for regulation and specification purposes.

3. General Requirements.

a. 15-inch diameter, 18-inch diameter and 24-inch diameter HDPE pipe is allowed only for private storm sewer systems.

b. A private system using HDPE pipe may enter the public right-of-way to connect with a public storm sewer at a structure. However, HDPE pipe is not allowed to be installed underneath public streets.

c. Roof drains and Incidental landscape drainage systems may use pipe with a diameter less than 15-inches in size. Pipe material must meet industry standards and the Storm Drainage section of the International Building Code as adopted by the City of Leawood.

d. Storm water detention facilities may use15-inch through 60-inch diameter HDPE circular pipe or chambered type structures if approved by the City Engineer.

e. HDPE /plastic storm drainage junction structures and inlets are not allowed as part of the private storm sewer system except as an internal part of a stormwater detention facility or if specifically approved by the City Engineer.

4. Requirements and Specifications

a. Certification. All HDPE pipe used in storm sewer applications shall conform to the requirements in the latest edition of AASHTO M294 and ASTM F2306.

b. Manufacturers. Pipe shall be provided only by manufacturers that are certified through the Plastic Pipe Institute (PPI) Third Party Certification program and/or the National Transportation Product Evaluation Program (NTPEP).

c. Materials.

i. Pipe. The manufacturer of HDPE pipe shall be governed by the latest edition of ASTM F2306 and AASHTO M294. Pipe and fittings shall be made from virgin PE compounds which conform to the requirements of cell class 435400C in the latest edition of ASTM D3350.

ii. Joints.

(1) Pipe joints shall consist of in-line integral bell and spigot with rubber gasket that meets ASTM F477. Bell shall span over three spigot corrugations.

(2) Water tight joints shall be provided which meet a 10.8 psi laboratory test in accordance with ASTM Test Method D3212.

iii. Fittings.

(1) Fittings shall not reduce or impair the overall integrity or function of the pipeline system.

(2) Fittings shall meet the requirements of AASHTO M294 and ASTM F2306.

(3) Fittings may be either molded or fabricated.

(4) Only fittings supplied or recommended by the manufacturer shall be used.

d. Installation.

i. Installation shall be per ASTM D2321 and the manufacturer's specifications. In the case of a discrepancy between the two, the more restrictive requirements shall govern.

ii. Exception: The minimum cover over the pipe shall be 18-inches for pipes up to 24-inches in diameter. The minimum cover for pipes larger than 24 inches in diameter and up to 60 inches in diameter shall be 24-inches.

5. Construction.

a. All pipe, pipe couplings, and accessories shall be unloaded, stockpiled, hauled, distributed, and otherwise handled in a manner which will prevent damage thereto.

b. Special care shall be taken to lay all pipe to exact grade and line. All pipe, when jointed, shall form a true line of sewer. Any pipe that has a grade or joint disturbed after laying shall be taken up and re-laid.

c. All pipes shall be laid with the separate sections joined firmly together, with outside laps of circumferential joints pointing upstream, and the center line of the invert coinciding with the specified alignment of the pipe.

d. The interior surfaces of all pipes shall be thoroughly cleaned of all foreign matter before being lowered in the trenches and shall be kept clean during laying operations.

e. Joints shall be constructed to attain a watertight joint.

f. Marking. Each pipe, fitting, or special section shall have markings per AASHTO M294. Required information shall be plainly and permanently marked on each item. Markings shall include: specification designation, the nominal size, the manufacturer's name, trade name or trademark, plant designation code, and date of manufacture (or appropriate code).

g. Deflection. Maximum deflection (reduction of the barrel base inside diameter) is 5%. Time of measurement shall be not less than 30 days nor more than 60 days following installation. Deflections in excess of 5% may require the pipe to be removed and new pipe installed.

6. Field Quality Control & Testing

a. Prior to backfilling the pipe, all storm sewer shall be inspected by a licensed engineer hired by the owner or developer.

b. Mandrel testing (or other approved method) shall be required when inspection reveals excessive deflection as determined by the engineer and/or the City. Testing shall be at the expense of the contractor.

***C. Granular Bedding Material***:

Granular bedding material shall be crushed stone or pea gravel conforming to MCIB, Section No. 4 (Materials), Column No. 3, (Coarse Aggregate), or as approved by the Engineer.

(Ord. 2358C; 10-20-08)

**15-305. PUBLIC AND PRIVATE RESPONSIBILITIES UNDER THE STORMWATER MANAGEMENT SYSTEM.**

(a) **Public Responsibilities**:

(1) ***Administration*** - The administration of these regulations shall be the responsibility of the Director of Public Works who shall review and approve Stormwater Management Plans as provided herein.

(2) ***Operation and Maintenance of Publicly Owned Facilities*** - The City Public Works Department shall be responsible, during and after construction, for the operation and maintenance of all drainage structures and improved courses which are part of the stormwater runoff management system under public ownership and which are not constructed and maintained by or under the jurisdiction of any state or federal agency.

(b) **Private Responsibilities**:

(1) Each developer of land within the City of Leawood has the responsibility to provide on the developer's property all approved stormwater runoff management facilities to ensure the adequate drainage and control of stormwater on the developer's property both during and after construction of such facilities.

(2) Each developer or owner has the responsibility and duty before and after construction to properly maintain any on-site stormwater runoff control facility which has not been accepted for maintenance by the public. Such responsibility is to be transmitted to subsequent owners through appropriate covenants.

(Ord. 1048C; 04-04-88)

**15-306. PROCEDURE FOR APPROVAL OF STORMWATER MANAGEMENT PLAN.**

No development shall increase the quantity and rate of stormwater emanating from said land areas except in accordance with an approved Stormwater Management Plan as provided in Article 5 of the Code of the City of Leawood, 2000, as amended. No building permits shall be issued until and unless the Stormwater Management Plan has been approved by the Director of Public Works.

(Ord. 1048C;04-04-88)
(Code 2000)
(Ord. 2062C; 05-17-04)

**15-307.** **DESIGN CRITERIA AND PERFORMANCE STANDARDS.** The Design Criteria as provided in Division V, Section 5600 of the Kansas City Metropolitan APWA shall govern the design of improvements with respect to managing stormwater runoff.

(Ord. 1048C; 04-04-88)

## ARTICLE 4. SOLID WASTE

**15-401.** **CITY'S SOLID WASTE MANAGEMENT PLAN.** This Article shall be construed in such a manner to be consistent with the Johnson County Solid Waste Management Plan.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-402.** **DEFINITIONS.** For the purposes of this article, the following terms, phrases, words and their derivation shall have the meanings given in this section:

(1) ***Agricultural Waste***. Solid waste resulting from the production of farm or agricultural products.

(2) ***Approved Container***. All containers designed for the disposal of solid waste, which may include cans and recycling containers. All such containers shall be of rigid construction with tight fitting covers and be watertight. Yard waste may be placed in other suitable containers. Containers shall have a maximum capacity of 96 gallons and be so constructed as to adequately contain all contents placed therein without spillage, leakage or emission of odors while awaiting collection.

(3) ***Bulky Waste***. Items either too large or too heavy to be loaded in solid waste collection vehicles with safety and convenience by solid waste collectors, with the equipment available therefore, including but not limited to appliances, furniture, tires, large auto parts, trees, branches, and stumps.

(4) ***City***. The City of Leawood, Kansas.

(5) ***Collection***. Removal and transportation of solid waste and recyclables, material from its place of storage to its place of processing or disposal.

(6) ***Collector***. Any person, public or private, engaged in collecting solid waste and recyclable materials.

(7) ***Combined Refuse Collection***. The collection of mixed refuse (putrescible and nonputrescible).

(8) ***Combined Solid Waste***. Solid waste containing both garbage and rubbish.

(9) ***Commercial Waste***. Solid waste emanating from establishments engaged in business. This category includes, but is not limited to solid waste originating in stores, markets, office buildings, restaurants, shopping centers, theaters and schools.

(10) ***Composting***. A controlled process of microbial degradation of organic material into a stable, nuisance free humas-like product.

(11) ***Construction Waste***. Waste building materials and rubble resulting from construction, remodeling or repair operations on houses, commercial buildings, or other structures and pavements.

(12) ***Contractor***. The person or corporation holding a valid Solid Waste Management contract, whether public or private operation.

(13) ***Demolition Waste***. Waste material from the destruction of residential, industrial or commercial structures.

(14) ***Disposable Solid Waste Container***. Approved containers, which are designed to be disposed of with the solid waste contained therein.

(15) ***Disposal***. Depositing solid waste in or at a facility approved by the City, Johnson County Solid Waste Management, and the Kansas State Board of Health for such purpose.

(16) ***Dump***. A collection or consolidation of solid waste from one or more sources at a central disposal site, which does not meet standards for proper disposal.

(17) ***Dwelling Unit***. Any room or group of rooms located within a structure, and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating.

(18) ***Garbage***. The animal and vegetable waste resulting from the handling, processing, storage, packaging, preparation, sale, cooking and serving of meat, produce and other foods, including unclean containers.

(19) ***Hazardous Waste***. Solid and liquid waste which requires special handling and disposal to protect and conserve the environment and human health including, but not limited to, pesticides, acids, caustics, pathological waste, radioactive materials, flammable or explosive materials, oils and solvents, and similar organic and inorganic chemicals and materials, containers and materials that have been contaminated with hazardous waste.

(20) ***Incineration***. The controlled process of burning solid, liquid and/or industrial processes and liquid waste resulting from manufacturing or industrial processes which are not suitable for discharge to a sanitary sewer or treatment in a community sewage treatment plant.

(21) ***Nuisance***. Anything which (1) is injurious to health or is offensive to the senses or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during or as a result of the handling or disposal of solid waste.

(22) ***Occupant***. Any person who, alone or jointly or severally with others, shall be in actual possession of any dwelling unit or any other improved real property, either as owner, guest, or as a tenant, either with or without the consent of the owner thereof.

(23) ***Owner***. Any person who, alone or jointly or severally with others, has legal title to, or sufficient proprietary interest in, or have charge, care or control of any dwelling unit or any other improved real property, as title holder, as employee or agent of the title holder, or as landlord or manager or as trustee or guardian of the estate or person of the title holder.

(24) ***Person***. Individual, partnership, corporation, institution, political subdivision, homes association or state agency.

(25) ***Processing*** of ***Waste***. Any technology applied for the purpose of reducing the bulk or hazards of solid waste materials or any technology designed to convert part or all of the solid waste materials for refuse.

(26) ***Putrescible Waste***. The progressive chemical decomposition of the organic matter in refuse, with the production of foul smelling compounds and/or material that attracts insect or animal life.

(27) ***Recyclable Container***. Receptacle used by any person to store recyclables during the interval between recyclable collections.

(28) ***Recyclable Material***. Glass, aluminum, tin, newspaper and plastic beverage containers.

(29) ***Refuse***. (See Solid Waste).

(30) ***Rubbish***. Nonputrescible solid wastes consisting of combustible and/or noncombustible

waste materials from: dwelling units, commercial, industrial, institutional, or agricultural establishments, including yard wastes and items commonly referred to as "trash."

(a) ***Bulky rubbish*** - (See Bulky Waste).

(b) ***Commercial rubbish*** - rubbish resulting from commercial, industrial, institutional, or agricultural activities.

(c) ***Residential rubbish*** - rubbish resulting from the maintenance and operation of dwelling units.

(31) ***Scavenger***. A person who scavenges. Scavenge means to collect and remove refuse from.

(32) ***Service***. The useful result; the product of labor and machines in property and effective management to dispose of solid waste.

(33) ***Solid Waste***. Unwanted or discarded waste materials in a solid or semiliquid state, including but not limited to refuse, garbage, ashes, street refuse, rubbish, dead animals, animal and agricultural wastes, yard wastes, discarded appliances, abandoned vehicle parts, special wastes, industrial wastes, demolition and construction wastes and digested sludges resulting from the treatment of domestic sewage or a combination thereof.

(a) ***Commercial solid waste*** - solid waste resulting from the operation of any commercial, industrial, institutional or agricultural establishment.

(b) ***Residential solid waste*** - solid waste resulting from the maintenance and operation of dwelling units.

(34) ***Solid Waste Container***. Any receptacle used by any person to store solid waste during the interval between solid waste collections.

(35) ***Solid Waste Disposal Area***. Also referred to herein as "disposal area" or "disposal site", means any area used for the disposal of refuse from more than one residential premise, or one or more commercial, industrial, manufacturing, or municipal operations.

(36) ***Solid Waste Processing Facility***. Also referred to herein as "processing facility" means incinerator, compost plant, transfer station or any other location where solid wastes are consolidated, temporarily stored, salvaged, or processed prior to being transported to a final disposal site.

(37) ***Storage***. Keeping, maintaining or storing solid waste from the time of its production until the time of its collection.

(38) ***Temporary Storage***. Proper accumulation and storage of solid waste between regularly scheduled refuse collection intervals.

(39) ***Transfer Station***. A facility used as an adjunct to solid waste collect on system. Such a facility may be fixed or mobile and may include recompaction of solid waste.

(40) ***Water Pollution***. Contamination, or other alteration of the physical, chemical or biological properties of any waters of the City or state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health safety or welfare, or to the plant, animal or aquatic life of the City or state or to other legitimate beneficial uses.

(41) ***Waters of the City or State***. All streams, creeks, and springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state.

(42) ***Yard Wastes***. All forms of botanical waste, including but not limited to grass clippings, leaves, tree trimmings, branches and stumps.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2822C; 03-06-17)

**15-403. STORAGE OF SOLID WASTE.**

(a) The owner or occupant of every dwelling unit and of every institutional, commercial, industrial or agricultural establishment producing solid waste within the corporate limits of the City, shall provide sufficient and adequate approved containers for the storage of such solid waste in sufficient number to serve each such dwelling unit and/or establishment; and shall maintain such solid waste containers and their environs at all times reasonably clean and in good repair; and shall repair or replace same from time to time, without notice, when any such containers shall no longer meet the specifications therefore as established by regulations.

(b) The occupant of every dwelling unit and of every institutional, commercial, industrial, or agricultural or business establishment, from which solid waste collection is made under this article, shall place all solid waste in proper solid waste containers, except as otherwise provided herein, and shall maintain such solid waste containers and the area surrounding them in a clean, neat, and sanitary condition at all times. Whenever a portion of the solid waste is subject to decay or putrefaction, such an accumulation must be kept covered or in approved containers, closed bins or containers not subject to deterioration. All containers shall be screened in such a manner that they are not visible from any street or roadway except when placed in position for pickup.

(c) Residential solid waste shall be stored in approved containers of not more than 96 gallons. Such containers shall be of watertight construction and provided with a lid or cover which shall fit closely to retain all odors and keep out flies and other insects and shall be kept covered at all times except when depositing waste or removing same.

(d) Commercial solid waste shall be stored in solid waste containers. The containers shall be water-proof, leak-proof, and shall be covered at all times except when depositing waste therein or removing contents thereof; and shall meet all requirements as set forth in this article.

(e) Tree limbs less than four inches in diameter and brush shall be securely tied in bundles not larger than 48 inches long and 18 inches in diameter when not placed in storage containers.

(f) Yard wastes shall be stored in approved containers so constructed and maintained as to prevent the dispersal of wastes placed therein upon the premises served, upon adjacent premises, or upon adjacent public rights-of-way. The weight of any individual container and its contents shall not exceed 75 pounds.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2822C; 03-06-17)

**15-404. TEMPORARY STORAGE**. Whenever a portion of the solid waste is subject

to decay or putrefaction, such an accumulation shall be covered or in closed bins or containers not subject to deterioration and properly maintained. Materials not subject to decay or putrefaction shall be stored temporarily in containers suitable for the handling thereof.

(Ord. 1895C; 06-18-01)

**15-405. COLLECTION AND DISPOSAL OF SOLID WASTE.** The City shall provide or allow for the collection of all residential solid waste as follows:

(a) The City shall provide for or establish the parameters by which all solid waste and recyclables are collected and disposed of in the City. The City provides for the collection of solid waste by authorizing others, including, but not limited to, homes associations, commercial and retail establishments and other nonresidential establishments to be responsible for providing for the collection of solid waste and recyclables, and complying with all applicable restrictions, regulations and property maintenance codes, provided further that the following guidelines are followed:

1. **Residential Collection**: Residential collection, other than bulky waste, in residential areas shall be not less than one [1] collection each calendar week when applicable.

2. **Commercial-Industrial Collection**: Commercial-industrial collection shall be not less than one [1] collection each calendar week or at more frequent intervals upon a determination that more frequent intervals if necessary to protect the health, welfare and safety of the City and to maintain the premises in a sanitary and unlittered condition.

3. **Hours of Collection**: Collection within two hundred [200] feet of residential areas shall not commence earlier than 7:00 A.M. nor continue later than:
   (i) 8:00 P.M. during the months of May through September; and
   (ii) 7:00 P.M. during the months of October through April.

(b) Each collector shall contractually provide for the service of collecting and transporting residential solid waste and recyclables to each person requesting such service located within the City of Leawood, Kansas. Upon request, each collector shall promptly furnish a copy of any and all contracts to the City.

(c) All persons contracting to provide the service of collecting and transporting residential solid waste and recyclables in the City of Leawood shall meet all the licensing requirements and regulations of the City. Every hauler shall periodically provide documentation to their clients substantiating the method by which the recyclables were disposed of, weight and/or volume of recyclables collected and compensation received for the recycled materials.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2791C; 07-05-16)

**15-406. COLLECTION AND DISPOSAL OF RECYCLABLES.** The City shall provide or allow for the collection of all residential recyclables as follows:

(a) All recyclables shall be disposed of at a recycling processing or disposal facility approved by and complying with all requirements of the Johnson County Waste Administrator and which will meet all local, State and Federal regulations.

(b) Residential recyclables shall be stored in an open rectangular bin, a minimum of fourteen (14) gallons in capacity, green in color and constructed of twenty five percent (25%) recycled plastic to be furnished by the contractor. The City Administrator, may, upon application, approve different colors for the container. The City Administrator may require placement of an approved logo or identifying mark on each recyclable container.

(c) Should the owner or occupant of any premises desire to recycle, then such person shall separate recyclable materials from all other solid waste and place such recyclable materials at curbside, in one container, for collection and shall maintain such recyclable containers and the area surrounding it in a neat, clean and sanitary condition at all times. It shall be the responsibility of the recyclable collector to provide such container.

(d) All recyclable collection containers shall be maintained in a safe, clean and sanitary condition and shall be so construed, maintained and operated as to prevent spillage therefrom.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-407. COLLECTION VEHICLES.**

(a) All collection vehicles shall be maintained in a safe, clean and sanitary condition, and shall be so constructed, maintained and operated as to prevent spillage of solid waste therefrom. All vehicles to be used for collection of solid waste shall be constructed with water-tight bodies and with covers which shall be an integral part of the vehicle or shall be a separate cover of suitable material with fasteners designed to secure all sides of the cover to the vehicle and shall be secured whenever the vehicle is transporting waste, or, as an alternate, the entire bodies thereof shall be enclosed, with only loading hoppers exposed. No materials shall be transported in the loading hoppers.

(b) All motor vehicles operating under any permit required by this article shall display a City permit (sticker) in the lower right corner of the windshield of each vehicle. The permit must be clearly visible.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-408. PERMITS.**

(a) Any person engaging in the business of collecting, transporting or processing of solid waste or recyclables, within the corporate limits of the City shall first obtain a permit from the City Clerk. Each applicant for any such permit shall state in his or her application the following:

1. The nature of the permit desired (storage, collection and/or transportation of solid waste or any combination thereof);
2. The characteristics of solid waste to be collected and transported;
3. The number of solid waste vehicles and equipment to be operated thereunder;
4. The precise location or locations of solid waste processing or disposal for service to be used;
5. The information sufficient to establish that the permittee in contracting to collect and transport solid waste within the City has agreed that said collection and transportation will be in accordance with the provisions of this ordinance;

6. An agreement to indemnify and hold the City harmless for any claims which may be made against the City as a result of the failure of the permittee to transport, dispose, or process solid waste collected within the City in compliance with this ordinance, state or federal law;
7. Such other information as required by the City Clerk as may be reasonably necessary to determine that the operations of the permittee will be conducted in compliance with the provisions of this ordinance.

(b) Permits will be issued on a client-by-client basis. A permit will not be issued for collection of solid waste for those clients who have not agreed to expand their service to include all aspects of the integrated solid waste management program.

(c) If the application shows that the applicant will collect and transport solid waste and recyclables without hazard to the public health or damage to the environment and in conformity with the Johnson County Solid Waste Management System, the laws of the State of Kansas, and of this article, the City shall issue the permit authorized by this article.

(d) The permit shall be issued fora period of time, not to exceed one year and each applicant shall pay a fee of $25.00 for each collection vehicle to be used in the City. The application must clearly show that the collection and transportation of solid waste and recyclables will create no public health hazard or be without harmful effects on the environment. If such a showing is not made by the applicant, the City Clerk shall deny the application and not issue the permit.

(e) Permits shall not be required for the removal, hauling or disposal of demolition or construction wastes; however, all such wastes shall be conveyed in tight vehicles, trucks or receptacles, so constructed and maintained to prevent the material being transported from spilling upon the public highways.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2791C; 07-05-16)

**15-409. PERMIT SUSPENSION OR REVOCATION.**

In all cases, when corrective measures have not been taken, within the time specified, when so required by the City to comply with this Article, the City Administrator shall suspend or revoke the permit involved in the violation; however, in those cases where an extension of time will permit correction, and there is no public health hazard created by the delay, one extension of time may be given.

(Ord. 1895C; 06-18-01)
(Ord. 2798C; 08-15-16)

**15-410. APPEALS.**

(a) Any person who feels aggrieved by any act of the Public Works Director or City Administrator, may within ten [10] days of the act for which redress is sought, appeal directly to the Governing Body, in writing, setting forth in a concise statement the act being appealed and the grounds for its reversal.

(b) Any person licensed under this Article and found, after public hearing before the Governing Body, to be in violation of the provisions of this Article, may have any license or permit issued by the City suspended or revoked.

(c) Nothing in this section shall prejudice the right of the applicant to reapply at a later date for a permit.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 2798C; 08-15-16)

**15-411. INSURANCE REQUIREMENTS.**

The applicant must furnish the City a certificate of insurance showing a minimum public liability insurance coverage in an amount not less than $500,000 for each occurrence. In the event the insurance is canceled during the term of the permit, the insurance carrier shall notify the City in writing no less than 10 days prior to the effective date of such cancellation. The certificate of insurance shall provide that the insurance company agrees to so notify the City, and further, the insurance policy shall contain written provisions which shall place the responsibility for the 10-day written notification upon the company issuing the policy in order that the coverage be considered proper.

(Ord. 1199C; 01-21-91)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-412. OFFICE AND TELEPHONE REQUIRED.**

All licensed contractors shall maintain an office with adequate telephone service to provide for service inquiries and complaints. The City Clerk shall be promptly furnished with any change in telephone or address, if such changes occur after receiving the license or permit.

(Ord. 1895C; 06-18-01)

**15-413. INSPECTIONS.**

In order to ensure compliance with the laws of this State, the Johnson County Solid Waste Management Plan, County Solid Waste Regulations, this Article and the rules authorized herein, the City Administrator, or his/her designee, is authorized to inspect all phases of solid waste management within the City and within the property of the permit holder. No inspection shall be made in any residential unit unless authorized by the occupant or by due process of law. In all instances where such inspections reveal a violation of this Article, the City Administrator, or his/her designee, shall issue notice for each such violation stating therein the violation or violations found, the time and date and the corrective measure to be taken, together with the time in which such corrections shall be made.

(Ord. 1895C; 06-18-01)

**15-414. RULES AND REGULATIONS.**

(a) The Public Works Director, by and with the consent of the Governing Body, shall define and promulgate reasonable and necessary rules governing the solid waste management system, which rules and regulations shall be filed in the Office of the City Clerk. The rules and regulations shall include, but not be limited to:

Handling of special wastes such as toxic and hazardous wastes, sludges, ashes, agricultural wastes, construction wastes, automobiles, oils, greases, bulky wastes.

(b) The Public Works Director may classify certain wastes as hazardous wastes which will require special handling and which should be disposed of only in a manner acceptable to the public safety and banned in a manner which meets all city, county, state and federal regulations.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-415. ANTI-SCAVENGER. – [See Section 11-102 of the Code of the City of Leawood, 2000]**

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)
(Ord. 1958C; 11-04-02)

**15-416. DUMPING ON STREETS.**

(a) It shall be unlawful for any person, any owner, occupant or person in charge of any house, building or premise to deposit or cause to be deposited upon any street of the City or upon any other property, public or private, within the City limits, any rejected material or items. Such described material or items must be deposited in such a manner and placed as prescribed in this Article.

(b) Any person performing public work directed toward making improvements may place necessary materials at such places as are prescribed by the specifications of his contract or as approved by the Public Works Director.

(Ord. 1895C; 06-18-01)

**15-417. PROHIBITED PRACTICES.**

(a) No person shall engage in the business of collection, transportation or processing of solid waste within the City in a manner which is contrary to any provisions of this ordinance.

(b) No person shall engage in the business of collection, transportation or processing of solid waste within the corporate limits of the City without first obtaining a permit as defined and required in Section 15-409.

(c) No person shall deposit any type of solid waste within public dumpsters.

(d) It shall be unlawful for any person to:

1. Deposit solid waste or recyclables in any solid waste container other than his/her own container without the written consent of the owner of such container and/or with the intent of avoiding payment of those fees charged for solid waste or recyclables collection or disposal, or;
2. Interfere in any manner with solid waste or recyclables collection equipment, or with solid waste or recyclables collectors in the lawful performance of their duties as such, whether such equipment or collectors shall be those of the City or those of a solid waste collection agency operating under agreement with the City of Leawood.
3. Burn solid waste or recyclables, unless an approved incinerator is provided.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-418. OWNERSHIP OF COLLECTED MATERIAL.**
All solid waste and recyclables collected, shall, upon being loaded into collection equipment, become the property of the collection agency.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-419. EDUCATION, PROMOTION AND MARKETING.** Each solid waste and recyclable contractor shall implement public education and awareness programs to educate their clients of the importance of recycling, yard waste composting, and disposal of household hazardous waste. This program shall be implemented regardless of the type of recycling service, if any, that is performed.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-420. ENFORCEMENT PROVISIONS.** The Public Works Director or his/her designee is hereby authorized to exercise such powers as may be necessary to carry out and effectuate the purposes and provisions of this article. Included in the powers is the right to inspect all phases of solid waste management within the City to assure compliance with this ordinance.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-421. GENERAL PROVISIONS.**

(a) Solid waste collectors employed by the City or solid waste collection agencies operating under contract with the City, are hereby authorized to enter in and upon private property for the purpose of collecting solid waste or recyclables therefrom as authorized by agreement.

(b) All contracts providing for the storage, collection and transportation of solid waste to which the City is a party shall contain provisions for a performance bond in an amount not less than the total value of the services provided by the contractor. The bond shall be with a good and sufficient surety and shall be approved by the City Clerk before the execution of the contract. The bonds shall provide that the principal shall pay any and all damages which may be caused to any property, public or private, within the City when such injury or damage shall be inflicted by the principal or his/her agent, employee, workman, contractor or subcontractor, and such bond shall be conditioned also that the principal will serve, indemnify, hold harmless and protect the City from any and all liability, that he/she will in all respects, comply with all articles of the City and comply with the terms of his/her permit and conditional upon his/her faithful performance of the contract. The form of such bond must be approved by the City Attorney.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

**15-422.** **PENALTY.** Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this article shall be guilty of a public offense and punished by a fine of not more than $500 or by imprisonment not to exceed six months or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this article is committed, continued or permitted by any such person.

(Ord. 1161C; 05-07-90)
(Code 2000)
(Ord. 1895C; 06-18-01)

## ARTICLE 5. STORMWATER MANAGEMENT

**15-501.** **GENERAL PROVISIONS.** These regulations shall hereafter be known, cited and referred to as the "Stormwater Management Ordinance" of the City of Leawood, Kansas.

(Ord. 1839C, 01-03-00)

**15-502.** **APPLICABILITY.** The provisions of this article shall extend and apply to all land within the corporate limits of the City.

(Ord. 1839C, 01-03-00)

**15-503.** **INTERPRETATIONS.** The provisions of this article are intended to supplement existing zoning and land use ordinances of the City. In their interpretations and application, the provisions herein shall be held to be the minimum requirements for the promotion of the public health, safety, protection of property and general welfare and where a conflict occurs the most stringent interpretation will apply.

(Ord. 1839C, 01-03-00)

**15-504.** **OBJECTIVES.** To promote the public health, safety, protection of property and general welfare of the citizens of Leawood, this "Stormwater Management Ordinance" is enacted for the general purpose of assuring the proper balance between use of land and the preservation of a safe and beneficial environment. More specifically, the provisions of these regulations, as amended from time to time, are intended to reduce property damage and to minimize the hazards of personal injury and loss of life due to flooding and erosion of soil through the following:

(a) Establishment of a Stormwater Management System.

(b) Definition and establishment of Stormwater Management Practice.

(c) Establishment of methods and guidelines for attenuating or avoiding flooding and erosion within the City from cumulative effects of increased volume and peak discharge of surface water runoff.

(d) Establishment of an appeal board to review disputed decisions of the Director of Public Works or Building Official and to resolve disputes regarding the interpretation and implementation of the provisions of this article. The Board of Zoning Appeals (BZA) will hear disputes regarding interpretations of the Director of Public Works or Building Official as appropriate.

(Ord. 1839C, 01-03-00)

**15-505.** **RELATIONSHIP TO OTHER LAWS.** These regulations shall not be construed as abating any action now pending under, or by virtue of prior regulations or ordinances, or as discontinuing, abating, modifying or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm or corporation, by lawful action of the City, except as shall be expressly provided for in these regulations.

(Ord. 1839C, 01-03-00)

**15-506.** **DISCLAIMER OF LIABILITY.** The performance standards and design criteria set forth herein establish minimum requirements, which must be implemented with good engineering practice and workmanship. Use of the requirements contained herein shall not constitute a representation, guarantee or warranty of any kind by the City, or its officers and employees, of the adequacy or safety of any stormwater management structure or use of land. Nor shall the approval of a Stormwater Management Plan and the issuance of a permit imply that land uses permitted will be free from damages caused by stormwater runoff. The degree of protection required by these regulations is considered reasonable for regulatory purposes and is based on historical records, engineering and scientific methods of study. Larger storms may occur or stormwater runoff heights may be increased by man-made or natural causes. These regulations therefore shall not create liability on the part of the City or any officer with respect to any legislative or administrative decision lawfully made hereunder.

(Ord. 1839C, 01-03-00)

**15-507.** **SEVERABILITY.** If any section, subsection, paragraph, sentence, clause or phrase in this chapter or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter.

(Ord. 1839C, 01-03-00)

**15-508.** **CONFLICT WITH PUBLIC AND PRIVATE PROVISIONS.**

(a) *Public Provisions* — These regulations are not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any ordinance, rule or regulation or other provision of law, whichever provisions are more stringent such ordinance, rule or regulation or other provision of law shall control.

(b) *Private Provisions* — These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, and no such easement, covenant or private agreement or restriction will change or alter the enforcement of this article.

(Ord. 1839C, 01-03-00)

**15-509.** **DEFINITIONS.** For the purpose of this article, the words and terms as used herein are defined to mean as set out in this chapter. Words used in the present tense include the future tense; words used in the masculine include the feminine; words used in the singular include the plural, and vice-versa; the word "building" includes the word "structure", the word, "person" includes corporation, partnership, and unincorporated association of persons; the term "used for" includes the meaning "designed for" or "intended for", and the word "shall" or the word "must" is mandatory. Words not defined shall be given their common and ordinary meaning.

***Agricultural Crop Management Practices*** — All land farming operations including plowing or tilling of land for the purpose of crop production or the harvesting of crops.

***Appeal Board*** — The Board of Zoning Appeals of the City of Leawood, Kansas.

***Applicant*** — The person or other legal entity who owns the affected property or the person's or other legal entity's authorized agent who submits or is required to submit an application to the Building Official for a land disturbance permit.

***Base Flood*** — The flood having a one percent probability of being equaled or exceeded in any given year, i.e., the 100-year flood.

***Bond*** — Performance and Maintenance Bond for the construction and maintenance of the final stormwater construction plans for a period of two years from the date of acceptance by the City. Any form of security for the completion or performance of a stormwater management plan or the maintenance of drainage improvements, including surety bond, or instrument of credit, or escrow deposit in an amount and form satisfactory to the Director of Finance.

***Brook*** — A small natural stream of water.

***Branch*** — A division related to a whole.

***Building*** — Is any structure used or intended for supporting or sheltering any use or occupancy.

***Building Official*** — The Building Official of the City or the Building Official's authorized representative.

***Building Permit*** — Any permit issued by the Building Official.

***Channel*** — A watercourse of perceptible extent, either natural or improved, which periodically or continuously contains moving water or which forms a connecting link between two bodies of water.

***City Engineer*** — This title where used in the APWA specifications and/or in this article shall have the same meaning as the title "Director of Public Works".

***Clearing*** — Any activity, which removes the vegetative ground cover including, but not limited to, root removal or topsoil removal or other forms of earth moving.

***Construction Permit*** — A permit issued by the Director of Public Works subsequent to approval of final Stormwater Construction Plans.

***Creek*** — A stream smaller than a river and larger than a brook.

***Depression*** — A pressing down: lowering. A depressed area or part.

***Detention*** — A stormwater management technique of which the primary function is to control the peak rate of surface water runoff by utilizing temporary storage and a

controlled rate of release. This may include, but not be limited to, the use of reservoirs, rooftops, parking areas, holding tanks, inpipe and in-channel storage.

***Development*** — Development means any man-made change to improved or unimproved real property including the construction or reconstruction of buildings or structures; paving, excavation, grading, filling or similar operations; or the filing and recording of a subdivision plat.

***Differential Runoff*** — The volume and rate of flow of stormwater runoff discharge from a parcel of land or drainage area which is or will be greater than that volume or rate which pertained prior to the proposed development or redevelopment.

***Director of Public Works*** — The Director of Public Works of the City or authorized representative.

***Drainageway*** — An area used for draining; through the act or process of draining; a means for draining Dry Bottom Basin

***Dry Bottom Basin*** — A natural or artificial stormwater storage area which is designed and maintained for temporary containment of stormwater runoff.

***Earth Materials*** — Any rock, natural soil or combination thereof.

***Easement*** — Authorization by a property owner for use by another party or parties of all or any portion of his or her land for a specified purpose.

***Engineer*** — A professional engineer licensed in the State of Kansas.

***Erosion*** — The wearing away of land by the action of wind, water, gravity, or a combination thereof.

***Erosion and Sediment Control Plan*** — A set of measures designed to control runoff and erosion, and to retain sediment on a particular site during pre-construction, construction, and after all permanent improvements have been erected or installed.

***Erosion and Sediment Control Regulations*** — Shall mean sections 15-525 through 15-544.

***Erosion and Sediment Control Standards*** — The erosion and sediment control design criteria and specifications adopted in writing by the Director of Public Works as part of the Stormwater Management Plan.

***Excavate*** — The mechanical removal of earth materials.

***Fill*** — The deposit or stockpiling of earth materials.

***Floodplain*** — The land area adjoining a river, stream, watercourse, or lake which is likely to be flooded in the event of a 100-year flood, or as shown on the National Flood Insurance Program maps, or as designated by Johnson County, or by the City of Leawood, Kansas as a floodplain system where Leawood or the County is not under the National Flood Insurance Program.

***Floodway*** — The channel of a watercourse and the adjacent land area that must be reserved in order to discharge a100-year flood without cumulatively increasing the water surface elevation more than one foot.

***Freeboard*** — A factor of safety expressed as the difference in elevation between the top of the detention basin dam and the design surface water elevation resulting from the storm for which the basin's required storage volume was determined.

***Grading*** — Any excavating or filling of earth materials or any combination thereof.

***Grading Plan*** — For grading plan refer to sections 15-521 through 15-524.

***Habitable Dwelling Unit*** — A dwelling unit intended for and suitable for human habitation.

***Inspection*** — The periodic field review of erosion and sediment control measures as defined in the erosion and sediment control plan for the purposes of determining compliance.

***Land Disturbance/Land Disturbance Activity*** — Any activity that changes the physical conditions of land form, vegetation, and hydrology. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging, and storing of materials. Such activities do not include routine care of existing lawns including verti-cutting and aerating.

***Land Disturbance Permit*** — The land disturbance permit required for any grading, filling, clearing, and excavation land disturbance activity.

***Land Fill*** — Any human activity depositing soil or other earth materials.

***Lake*** — An inland body of standing water of considerable size.

***Lot Lines*** — A common boundary or property line between adjacent property owners.

***Nuisance Erosion and Sedimentation*** — Any land disturbance activity that causes erosion or sedimentation for a non-permitted activity less than 300 square feet in area when disturbed land remains unprotected for more than seven calendar days.

***100-Year Storm*** — A rainstorm having a one percent probability of occurrence in any given year.

***Permit*** — Written permission giving consent.

***Permittee*** — A person, partnership, corporation or other legal entity whom a permit is granted.

***Plat*** — A legally recorded plan of a parcel of land indicating the location and dimension of such features as streets, alleys, lots, easements and other elements pertinent to a subdivision.

***Pond*** — A small body of water.

***Project*** — Any man-made change involving the construction, reconstruction, maintenance or improvement of real property, structures and/or grounds.

***Public Owned Improvements*** — Improvements such as (but not limited to) concrete channel liner, improved channel, pipes of various sizes and materials, box culverts and miscellaneous other concrete structures all on public property or in a public easement.

***Public Property*** — Property owned by the City or dedicated to the City.

***Public Storm Drainage System*** — Any underground enclosed pipe system and/or improved channel that is on public property or within a public easement.

***Rational Method*** — An empirical formula for calculating peak rates of stormwater runoff resulting from rainfall.

***Reservoir*** — A place where something is kept in store; an artificial lake where water is collected as a water supply.

***Sampling*** — The procedures associated with the determination of settleable solids and may include suspended solids in a discharge sample of water.

***Sediment*** — Any solid material, mineral or organic that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, or gravity as result of soil erosion.

***Soil*** — The unconsolidated mineral and organic material on the immediate surface of the earth that serves as a natural medium for the growth of land plants.

***Soil Storage*** — Any human activity depositing soil or other earth materials for later use or disposal.

***Stormwater Runoff*** — Water resulting from precipitation which is not absorbed by the soil, evaporated into the atmosphere, or entrapped by ground surface depressions and vegetation, and which flows over the ground surface.

***Stream*** — A body of water (as a river) flowing on the earth.

***Structure*** — Is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

***Swale*** — A graded depression for the purpose to conveying overland flow from point to point.

***10-Year Storm*** — A rainstorm having a 10 percent probability of occurrence in any given year.

***These Regulations*** — The Storm Water Management Ordinance in its entirety.

***Timbering*** — The act of cutting and removing trees without disturbing the root or adjacent vegetation.

***Tributary Area*** — All of the area contributing stormwater runoff to a given point of consideration, both public and private.

***25-Year Storm*** — A rainstorm with a four percent probability of occurrence in any given year.

***Vegetative Cover*** — Any grasses, shrubs, trees and other vegetation, which hold and stabilize soils.

***Water Bodies*** — Surface waters including watercourse and wetlands.

***Watercourse*** — Any stream, channel, creek, brook, branch, depression, reservoir, lake, pond, or drainage way in or into which stormwater runoff flows.

***Wet Bottom Basin*** — A natural or artificial stormwater storage area, which is designed and maintained to contain stormwater runoff temporarily and to hold permanently an additional volume of water at a level below the discharge structure of the storage area.

***Wetlands*** — Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include the following surface waters of the state intentionally constructed from sites that are not wetlands: drainage ditches, grass-lined swales, and landscape amenities.

(Ord. 1839C, 01-03-00)

**15-510.** **THE STORMWATER MANAGEMENT SYSTEM.** This article establishes the Stormwater Management System, which shall be composed of a primary system, a secondary system, management controls, and management practices. These regulations shall apply to the secondary system.

(Ord. 1839C, 01-03-00)

**15-511.** **THE PRIMARY SYSTEM.** The primary system shall be composed of the regulatory floodplain as shown on the National Flood Insurance Program maps as developed for the City of Leawood by the U.S. Department of Housing and Urban Development, Federal Insurance Administration. All components of the primary system shall be designed to handle the 100-year rainfall event.

(Ord. 1839C, 01-03-00)

**15-512.** **THE SECONDARY SYSTEM.** The secondary system shall consist of storm drainage facilities including, but not necessarily limited to, roadway curb and gutter, open channels, swales and enclosed conveyance systems both public and private that transport stormwater runoff to the primary system (regulatory floodplain). Secondary system facilities are those designed to accommodate runoff resulting from a storm with a given design frequency.

(Ord. 1839C, 01-03-00)

**15-513.** **MANAGEMENT CONTROLS.** Management controls are regulations applicable to the secondary system under the provisions of this ordinance. Such controls shall limit any activity, which will adversely affect hydraulic function of any storm drainage facilities, public or private, including, but not limited to, detention facilities, open channels, drainage swales, or enclosed stormwater conveyance systems.

Exceptions to the applicability of the use of management controls for new developments may be granted in the following situations:

(a) On land used and zoned for agricultural purposes where no change in grades over that, which has existed historically, will take place.

(b) Construction of any buildings or structures on a site, which has been previously, provided with stormwater management control facilities as part of a larger unit of development.

The Building Official shall refer all development plans and all building permit applications that may require a stormwater drainage study and subsequent permit to the Director of Public Works.

(Ord. 1839C, 01-03-00)

**15-514. MANAGEMENT PRACTICES.** The following practices may be utilized upon approval of the Director of Public Works. Use of these methods shall be fully in accordance with the design criteria and performance standards as set forth in this article:

(a) ***Storage*** — Runoff may be stored in temporary or permanent detention basins, or through rooftop or parking lot ponding, or percolation storage, or by other acceptable means. Where parking lot ponding is utilized appropriate signage posting the use of the parking lot for stormwater storage must be installed.

(b) ***Open Channels*** — Maximum feasible use shall be made of existing drainage ways, open channels, and drainage swales that are designed and coordinated with design of building lots and streets.

(c) ***Streets and Curbs*** — Streets, curbs, and gutters shall be an integral part of the stormwater runoff management system. To the maximum extent possible, drainage systems, street layout and grades, lot patterns and the location of curb inlets and site drainage and overflow swales shall be concurrently designed in accordance with the standards set forth in these regulations.

(d) ***Enclosed Conveyance System*** — Enclosed conveyance systems consisting of inlets, conduits, and manholes shall be used to convey stormwater runoff for storms with a frequency of the 10-year event.

(e) ***Other*** — The stormwater runoff management practices enumerated herein shall not constitute an exclusive listing of available management practices. Other generally accepted practices and methods may be utilized where approved by the Director of Public Works and which do not contravene the objectives of this article.

(Ord. 1839C, 01-03-00)

**15-515. PUBLIC AND PRIVATE RESPONSIBILITIES UNDER THE STORMWATER MANAGEMENT SYSTEM.**

(a) Public Responsibilities:

(1) Administration: The administration of these regulations and enforcement of this article shall be the responsibility of the Director of Public Works.

(2) The Public Drainage system shall be defined as follows for new construction.

(A) If a proposed drainage system, storm sewer line or improved channel, is a continuation of an existing City system, the system will be public and an applicant for plan approval will be required to dedicate necessary easements.

(B) If a proposed drainage system, storm sewer line or improved channel, extends across private property under multiple private ownership before crossing public right-of-way the system will be public and an applicant for plan approval will be required to dedicate necessary easements.

(C) If the grading of a swale is required for the conveyance of the 100-year flow, an applicant for plan approval will be required to dedicate necessary easements. The maintenance of overflow swales along property lines is the responsibility of the property owner.

(3) Operation and Maintenance of Public Owned Facilities: The City's Department of Public Works shall be responsible for all maintenance of the public owned drainage system, either improved or unimproved, located on public right-of-way or city owned property. Maintenance of public owned drainage systems located on private property with public easements shall be limited to the public owned improvements such as concrete structures, pipe systems, and City improved channels. However, it shall be the responsibility of the property owner, occupant or agent in charge of private property, upon which the public storm drainage system exists, to maintain all vegetation including mowing, trimming and/or removal of dead trees and shrubs and providing of such other general maintenance as is required to maintain the free flow of stormwater.

(b) Private Responsibilities:

(1) Maintenance and operation of a private storm drainage system is the responsibility of the owner of the property.

(2) Each developer or owner of land within the City has the responsibility to provide all approved stormwater runoff management facilities to ensure the adequate drainage and control of stormwater on the developer's or owner's property both during and after construction of such facilities.

(3) Each developer or landowner has the responsibility and duty before and after construction to properly operate and maintain any on-site stormwater runoff control facility, which has not been accepted for maintenance by the City. Such responsibility is to run with the land and be transmitted to subsequent owners through appropriate covenants. This maintenance shall include, keeping such facilities free and clear of weeds, brush and vegetation, removal of debris or any other waste material that might impede or hinder the facilities intended use, erosion repair, and removal of silt and maintenance of structural facilities which have not been accepted for maintenance by the City.

(4) Owners of detention basins and associated facilities upon completion of construction and on or before May 1 of each year, shall furnish certification by a professional engineer licensed in the State of Kansas that the detention basin has full storage capacity and that all associated facilities including inlet and outlet structures are fully functional.

(5) Each property owner or resident adjacent to a natural drainage channel not maintained by the City shall maintain the free flow character by prompt removal of all debris, overgrowth or downed trees and limbs and unapproved structures. All property owners shall cooperate by overseeing their properties without encouragement of the City. In the event an Official Notice is issued by the City in accordance with City Codes and Ordinances, the property owner shall comply and may request the City's assistance as outlined herein.

(6) City Assistance — The City may provide assistance through the Public Works Department to the property owner/residents when requested, by hauling and disposing of collected debris, downed trees and broken limbs. The property owner shall cooperate with the City by placing debris and tree limbs on the side of the street for collection by the Public Works Department.

(7) Failure to Maintain — If the Director of Public Works determines that the owners, occupants or agents in charge of any lot piece or parcel of land on which a drainage control structure exists or abuts has failed to properly maintain such facility as previously set forth, the Director of Public Works shall notify the owners, occupants or agents in charge of the violation in writing. If the owners, occupants or agents in charge fail, neglect or refuse to comply with the requirements specified in the notice, within 10 days, the City Clerk shall issue notice requiring the owner or agent of the owner of the premises to repair, remove, and/or abate from the premises the thing or things therein described as a defect(s) and/or nuisance and perform the necessary remedial work within

10 days. The notice shall state that before the expiration of the waiting period, the recipient thereof may request a hearing before the governing body or it's designated representative. The notice shall be served by delivering a copy thereof to the owner or agent of such owner of the property or, if the owner or owner's agent cannot be located, then by mailing a notice by registered mail to the last known address of the owner or agent of the owner and by posting the notice in a conspicuous place on the property. If the owner or agent fails to comply with the requirement of the notice for a period longer than the 10 day time period set forth above, then the city shall proceed to cause the necessary remedial work to be performed and thereby have the things described in the notice repaired, removed, and/or abated from the lot or parcel of ground. The city shall give notice to the owner, occupant or agent by registered mail of the total cost of such repair, abatement or removal incurred by the city. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If cost of such repair, removal, and/or abatement is not paid within the 30 day period, the cost shall be collected in the manner provided by appropriate legal action or shall be assessed and charged against the lot or parcel of ground on which the nuisance was located. If the cost is to be assessed, the City Clerk at the timing of certifying other city taxes to the county clerk shall certify the aforesaid costs, and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

(Ord. 1839C, 01-03-00)

**15-516.** **PROCEDURE FOR THE SUBMISSION, REVIEW AND APPROVAL OF STORMWATER DRAINAGE STUDY.** No development shall increase the quantity and rates of stormwater emanating from the land areas except in accordance with an approved Stormwater Drainage Study as provided for in these regulations. A professional engineer licensed in the State of Kansas shall prepare the Stormwater Drainage Study. The Director of Public Works shall issue no public works permit or approve any construction plans prior to the approval of the Stormwater Drainage Study.

(Ord. 1839C, 01-03-00)

**15-517.** **STORMWATER DRAINAGE STUDY.** A Stormwater Drainage Study shall accompany all preliminary applications for land development submitted in accordance with the City's ordinances. This study shall contain the following information and data:

(a) A site plan of suitable scale and contour interval showing topographical information of the land to be developed and adjoining land whose topography may affect the proposed layout or drainage patterns for the development.

(b) A general plan of final contours of the site development shall also be shown, as shall all existing streams, waterways, channels, lakes and the extent of the established floodplain and date of flood plain map used.

(c) A drainage map showing the location and calculated flow rates of all adjacent storm drainage facilities.

(d) A hydraulic and hydrologic summary table showing the 10 and 100-year flows for ultimate development.

(e) A general discussion of the type and characteristics of soils contained in the development area.

(f) A discussion of the concepts to be considered in the development to handle anticipated stormwater runoff including the, methods to be utilized to detain or control increased stormwater runoff generated by the proposed development.

(g) A preliminary plan of proposed storm drainage facilities including preliminary calculations of runoff to be handled by such facilities, basic information regarding the effects the proposed project will have on the receiving streams or channels for a distance as far downstream as the runoff will have a noticeable affect. The plan should also include the proposed routing of the 100-year runoff.

(h) A discussion of the possible affects that the proposed development could have on downstream facilities and areas adjoining the development and proposed solutions.

Following the receipt of the Stormwater Drainage Study, a general review meeting shall be conducted with the Director of Public Works, representatives of the Developer, and the Developer's Engineer. The purpose of this review meeting shall be to jointly agree on the conceptual methods proposed to be utilized and the possible effects of the proposed development on existing or future adjacent developments.

(Ord. 1839C, 01-03-00)

**15-518.** **FINAL CONSTRUCTION PLANS.** Following the review of the Stormwater Drainage Study and after the general approval of the study by the Director of Public Works, Final Construction Plans shall be prepared for each phase of the proposed project as each phase is developed. The submittal of the final plans shall coincide with application for final approval of the development and shall constitute a refinement of the concepts approved in the study. It is important to note that if a project is to be phased, the total area of the conceptual project is to be considered in all calculations and the facility shall be designed for each phase, which will be compatible with those of the total development plan.

Final Construction Plans for any development shall conform to all construction standards set forth in the City's ordinances, including those set forth in section 15-302 of the City's Code.

Final Construction Plans shall also include the following additional information unless specifically allowed to be excluded by the Director of Public Works during the preliminary review of the plans.

(a) A topographic map of the project site and adjacent areas, of suitable scale and contour interval, which shall define the location of streams, the extent of flood plains and calculated high water elevations, the shoreline of lakes, ponds swamps, and detention basins including their inflow and outflow structures, if any.

(b) The location and flowline elevation of all existing sanitary and stormwater sewers which fall within the project limits and within a distance of 200 feet beyond the exterior boundaries of said project.

(c) Detailed determination of runoff anticipated for the entire project site following project completion indicating volumes and rates of proposed runoff for each portion of the watershed tributary to the storm drainage system, the calculations used to determine said runoff volumes and rates, and summary of the criteria which have been used by the design engineer.

(d) A layout of the proposed stormwater system including the location and size of all drainage structures, stormwater sewers, channel and channel sections, detention basins, and analyses regarding the effect said improvement will have upon the receiving channel and its high water elevation. The layout shall also include 100-year flood elevations at lot corners along all open channels improved or natural, 100-year overflow swales and detention basins.

(e) The slope, type, size, flow calculations and 10-year and 100-year energy grade line for all existing and proposed storm sewers and other waterways.

(f) A grading and erosion and sediment control plan for the project site as described in sections 15-521 through 15-524 and sections 15-525 through 15-544 of this section.

(g) For developments with lakes, the plan shall show the location of a silt basin and proposed access to the basin for periodic removal of silt and debris. The plans

shall also show an alternate water supply to maintain the normal pool elevation and aeration for the lake.

(h) A profile and one or more cross-sections of all existing and proposed channels or other open drainage facilities, showing existing conditions and the proposed changes thereto, together with the high water elevations expected from stormwater runoff under the controlled conditions called for by these regulations and the relationship of structures, streets, and other utilities to such channels.

The Director of Public Works shall review the Final Construction Plans. If it is determined according to current engineering practice that the proposed plan will provide control of stormwater runoff in accordance with the purposes, design criteria and performance standards of these regulations and will not be detrimental to the public health, safety and protection of property and general welfare, the Director of Public Works shall approve the plan or conditionally approve the plan, setting forth the conditions thereof. If approved, a permit for the construction shall be granted. If disapproved, the application and data shall be returned to the applicant for corrective action and resubmittal.

(Ord. 1839C, 01-03-00)

**15-519. DESIGN CRITERIA AND PERFORMANCE STANDARDS.**

Unless otherwise approved by the Director of Public Works, the following rules shall govern the design of improvements with respect to managing stormwater runoff:

(a) *Development Design* - Streets, blocks, depth of lots, parks, and other public grounds shall be located and laid out in such a manner as to minimize the velocity of overland flow and allow maximum opportunity for infiltration of stormwater into the ground, and to preserve and utilize existing and planned streams, channels and detention basins, and include, whenever possible, streams, and floodplains within park and other public grounds.

(b) *Stormwater System Design* - Unless otherwise provided by the Director of Public Works, the latest approved edition of the Standard Specifications and Design Criteria, Division II, Section 2600, Construction and Material Specifications, adopted April 1996, (except Section 2602.2 B Corrugated Steel Pipe and Division V) and Section 5600, Storm Drainage Systems and Facilities, of the Standard Specifications and Design Criteria, adopted February 15, 2006, prepared by the Kansas City Metropolitan Chapter American Public Works Association or the latest edition as amended, which is by reference made a part hereof as though expressly rewritten and incorporated in the ordinance, shall govern the design and construction of storm sewer systems within the City except as otherwise noted herein.

(c) *Methods of Controlling Downstream Flooding* - The Stormwater Drainage Study shall identify downstream flooding impacts of the proposed development. If the Stormwater Drainage Study indicates the proposed development will cause or increase downstream local flooding conditions during the design storm, provisions to minimize such flooding conditions shall be included in the design of storm drainage improvements and/or the temporary controlled detention of stormwater runoff and its regulated discharge to the downstream storm drainage system.

(d) *Downstream Improvements* - Improvements to minimize downstream flooding conditions may include the construction of dams, dikes, levees, and floodwalls; culvert enlargements; and channel clearance and modification projects.

(1) Detention Basins - All detention basins shall be designed in accordance with Chapter 5608. All modeling of detention basins shall use either HEC-1 or the KU Penn State Runoff, (enhanced version PSRM Version 7) or subsequent editions, or as otherwise approved in advance by the City Engineer.

(2) Outlet Control Works - Outlet works shall not include any mechanical components or devices and shall function without requiring attendance or control during operation. Size and hydraulic characteristics shall be such that all water in detention storage is released to the downstream storm drainage system within 24 hours after the end of the design rainfall.

(e) *Other Design Considerations* - All stormwater detention basins shall be designed with the capability of passing a 100-year storm event from a fully developed watershed basin through the outlet works without causing failure of the embankment. It is not the intent of this requirement to entail any additional reduction of the peak runoff rate; but to assure the integrity and safety of the structure. All underground pipe systems to the detention basin shall tie directly into the outlet structure and not discharge directly into the basin unless waived by the Director of Public Works, in accordance with good engineering practices.

(f) *Appearance* - Pipes, drainage structures, outlet works, or other necessary

structural features such as a fence and a gate of detention basins shall be devised so as to be minimum in number and inconspicuous. Screening and/or landscaping shall be included and shall be in accordance with plans sealed by an Engineer.

(Ord. 1839C; 01-03-00)
(Code 2000)
(Ord. 2063C; 05-17-04)
(Ord. 2359C; 10-20-08)

**15-520. PERFORMANCE STANDARDS.**

(a) *Stormwater Channel Location* — Acceptable locations of stormwater runoff channels in the design of a subdivision may include the following:

(1) Channels are permitted as outlined in Chapter 5600 of the Standard Specifications and Design Criteria adopted March 1991, prepared by the Kansas City Metropolitan Chapter American Public Works Association or current edition.

(2) Channels shall be centered on back lot lines or entirely within the rear yards of a single row of lots or parcels.

(3) In each of the foregoing cases, if the improved channel is to be maintained by the City a drainage easement to facilitate access maintenance and design flow shall be provided and shown on the plat. No structures will be allowed to be constructed within or across stormwater channels.

(4) Maintenance of such channels shall be the responsibility of adjoining property owners except as noted in section 15-515(a)(3).

(b) *Stormwater Sewer Outfall* — The storm sewer outfall shall be designed so as to provide adequate protection against downstream erosion and scouring. All pipe discharge shall be in the direction of the channel flow. The flow line of the pipe outfall shall be at the normal pool elevation or channel bottom if dry.

(c) *Lot Lines* — Whenever the plans call for the grading of swales for the passage of floodwater, surface runoff, or stormwater along lot lines, the grading of all such lots shall be prescribed and established for the passage of waters. No structure may be erected in these areas, which will obstruct the flow of stormwater.

In addition, installation of fences and the planting of shrubbery or trees within the areas will not be permitted. Changes in the grade and contours of the floodwater or stormwater runoff channels or facilities will not be permitted unless approved in writing by the Director of Public Works.

(d) *Easements* — Permanent easements for the detention and conveyance of stormwater, including easements for access to structures and facilities, shall be dedicated to the City at no additional cost for those structures maintained by the City.

(e) *Permits* — A permit for projects including detention facilities may be granted by the Director of Public Works only after Final Construction Plans have been approved and all easements have been dedicated, accepted, and recorded, and all required maintenance assurances and required bonds have been executed.

(Ord. 1839C, 01-03-00)

**15-521. PLANS FOR GRADING.** Prior to the approval of the Final Construction Plans, a plan depicting proposed site grading within the development shall be submitted to the Building Official of the City of Leawood for review and approval.

(Ord. 1839C, 01-03-00)

**15-522. GRADING PLAN FOR DEVELOPMENT.** A professional engineer licensed in the State of Kansas shall prepare the grading plan. The contents of the plan shall include the following information:

(a) Contours of existing grades at intervals of not more than two feet.

(b) Location of all property lines, existing or proposed and lot and block number.

(c) Elevation and location of nearest bench mark (U.S.G.S. datum).

(d) Final grading contours drawn at sufficient intervals of not more than two feet to depict major subdivision drainage patterns. In addition, final grading spot elevations shall be shown for all corners of each lot. Such corner elevations shall be general in nature and upon written approval of the Director of Public Works may be revised at the time of plot plan submittal. Lot lines shall have a minimum of two percent slope.

(e) 100-year floodplain limits with elevation. The plan should also note the date of the study and the panel number.

(f) Easement and right-of-way information including drainage easements required for offsite drainageways.

(g) 100-year flood elevations for all lots adjacent to 100-year Flood Plain, open channel or 100-year overflow swale.

(h) Grading plan shall show the cross section of all 100-year overflow swales, slope, depth and capacity. Minimum slope shall be two percent.

(i) Erosion and sediment control plan. Refer to sections 15-541 and 15-542.

(Ord. 1839C, 01-03-00)

**15-523. GRADING PLAN FOR SINGLE FAMILY LOT.** Applications for building permits for new construction of single-family homes shall be accompanied by a specific grading plan for that lot. Such grading plan shall be incorporated into the plot plan and shall contain as a minimum, the following information:

(a) Location of property lines, all easements, street address, and lot and block number.

(b) Proposed location of structure.

(c) Elevations of the top of foundation, proposed grade at principal structure corners and at lot corners.

(d) Contours at two foot intervals. The grading of the lot should match the subdivision-grading plan. Grading plan should have a minimum two percent slope along property lines.

(e) Location of 100-overflow swale. Grading plan shall show the grading of the swale. The plan should also note the cross section, slope, and depth of swale, 100-year water elevation and the low opening.

(f) Where a swale is shown, the minimum low opening of the structure shall be one foot above the 100-year flood elevation perpendicular to the swale.

(g) Erosion and sediment control plan. Refer to sections 15-541 and 15-542.

(Additional information may be required by the Director of Public Works to assure protection of adjacent property.)

(Ord. 1839C, 01-03-00)

**15-524. MINIMUM GRADING STANDARD.** The following minimum criteria for site grading shall apply to all applications for site grading:

(a) Protective slopes around structures. Downward slope from structure foundations to drainage swales.

(1) Impervious surfaces shall be 1/4 inch per foot (two percent).

(2) Pervious surfaces shall be one inch per foot (8.33 percent).

(b) Lawn areas

(1) Minimum gradient shall be 1/4 inch per foot (two percent).

(2) Maximum gradient shall not be greater than three horizontal to one vertical.

(c) Driveways sloping toward buildings shall be graded in such a manner as to provide an intercepting swale draining away from the structure prior to its connection with the building. Subdivision plans should be designed in a manner to limit the number of or eliminate driveways sloping away from the street.

(d) Erosion and sediment control plan. Refer to sections 15-541 and 15-542.

In specific cases the use of gradients less than or greater than those specified may be required. Variance from these requirements may be allowed where justified and approved by the Director of Public Works, in accordance with good engineering practices.

(Ord. 1839C, 01-03-00)

**15-525.** **EROSION AND SEDIMENT CONTROL REGULATIONS.** Sections 15-525 though 15-544 shall be known as the Erosion and Sediment Control Regulations. The purpose of these standards is to promote and protect the public interest by regulating land disturbance, landfill, and soil storage in connection with the clearing and grading of land for construction related or other purposes. It is also the purpose of these standards to encourage responsible development and minimize the cost to the development community as a result of these regulations.

These erosion control regulations establish administrative, implementation and enforcement procedures for the protection and enhancement of the water quality of watercourses, water bodies, and wetlands by controlling erosion, sedimentation, and related environmental damage caused by construction-related or other activities.

Neither these ordinances nor any administrative decision made hereunder exempts the applicant or any other person from other requirements of the City's ordinances, state and federal laws, or from procuring other required permits, or limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the applicant or any person arising from the activity regulated by these ordinances.

(Ord. 1839C, 01-03-00)

**15-526.** **ADMINISTRATION.** The Building Official or his or her designee [hereinafter 'Building Official'] shall administer and enforce these erosion control standards. For such purposes, the Building Official shall have the powers of a law enforcement officer to issue written orders and take any other legal actions in the enforcement of these ordinances. The Building Official shall have the power to render interpretations of these regulations and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformance with the intent and purpose of these regulations. When it is necessary to make an inspection or to enforce the provisions of these regulations, the Building Official may enter the property involved.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-527.** **LAND DISTURBANCE PERMIT.** Unless exempted by section 15-528, no person may perform land disturbing activities, including clearing, grading, excavating, filling, storing or disposing of soil and earth materials without first obtaining a land disturbance permit from the Building Official as set forth in these regulations.

(Ord. 1839C, 01-03-00)

**15-528.** **EXEMPTIONS.** Persons performing land disturbance activities that meet any of the criteria below are not required to apply for a land disturbance permit pursuant to this chapter:

(a) Land disturbances less than or equal to 400 square feet. Land disturbances, other than those set forth in exemptions (b) through (e) of this subsection, impacting land less than or equal to 400 square feet in area; provided however, that persons performing such work on such parcels who are not otherwise exempt under exemptions (b) through (e) of this subsection, must comply with the Erosion and Sediment Control Standards promulgated pursuant to section 15-541 if such land remains unprotected for more than seven calendar days.

(b) Land disturbance activities by city departments. In those cases, the department is required to comply with the requirements of the Erosion and Sediment Control Standards.

(c) Home gardening operations including plowing or tilling of land for the purposes of growing flowers and/or vegetables, but not in excess of 400 square feet.

(d) Work to correct or remedy emergencies. This includes situations that pose an immediate danger to life or property, or substantial flood or fire hazards.

(e) Routine agricultural crop management practices.

(Ord. 1839C, 01-03-00)
(Ord. 2360C; 10-20-08)

**15-529.** **LAND DISTURBANCE PERMIT APPLICATION.** Any person requesting a land disturbance permit must submit an application to the Building Official. The application shall be submitted on a form promulgated by the Building Official and shall include the names, addresses, and telephone numbers of the developer/owner of the property, the contractors or subcontractors actually performing the land disturbing activity and their respective tasks, the engineer responsible for the preparation of the site map and grading plan, and the engineer responsible for preparation of the erosion and sediment control plan. In addition to the application form, the person shall submit the following items:

(a) A site map, and clearing and grading plan that is in compliance with sections 15-521 through 15-524 and section 15-542, sealed by a professional engineer licensed in the State of Kansas.

(b) An erosion and sediment control plan that is in compliance with section 15-542.

(c) Work schedule in compliance with section 15-543.

(d) Land disturbance permit fee.

(e) Inspection schedule.

(f) Security for performance of work as required under section 15-545.

(g) Any supplementary materials related to the land disturbance as required by the Building Official.

(Ord. 1839C, 01-03-00)

**15-530.** **REVIEW FOR COMPLIANCE.** Review for compliance will begin once all

information requested in section 15-529 has been submitted.
Land disturbance permits may be issued for each land disturbance phase of a specific site. The land disturbance permit when issued in phases shall be a separate permit for each land disturbance phase. The Building Official shall review the submitted documents for compliance with the City's regulations and adopted standards. After reviewing the documents, the Building Official shall determine whether or not the documents submitted are in compliance with the City's regulations and adopted standards. If the Building Official finds that the documents are in compliance, the engineer who submitted the documents shall be advised in writing and may request a land disturbance permit in accordance with the requirements set forth in section 15-529. If the Building Official finds that documents are not in compliance with the City's regulations and adopted standards, the Building Official shall advise the engineer in writing, which elements of the submitted documents are not in compliance. When documents are determined to be in compliance, the determination does not imply that the City is guaranteeing specific outcomes or is the City accepting any responsibility for the documents submitted.

(Ord. 1839C, 01-03-00)

**15-531.** **LAND DISTURBANCE PERMIT FEE.** Before issuance of a land disturbance permit as defined in this section, the applicant shall pay a fee to cover the cost of administration, plan review and inspection services associated with the land disturbance permit. The fee for each permit shall be as set forth by the City Council from time to time.

(Ord. 1839C, 01-03-00)

**15-532.** **COORDINATION WITH OTHER PERMITS.** When a person is developing a site, and a land disturbance permit is required in accordance with section 15-527, no construction permits shall be issued to make improvements on that site until the person has secured the land disturbance permit for the same site. The Building Official may simultaneously issue a land disturbance permit and a grading permit in accordance with a plan approved by Director of Public Works.

(Ord. 1839C, 01-03-00)

**15-533.** **DURATION OF PERMIT.** The land disturbance permit shall be valid from the time of issuance until the site is stabilized and erosion and sediment control measures are no longer necessary and the permit is terminated as provided herein, or until the permit is otherwise suspended or revoked as provided in these erosion control standards. The site will be considered stabilized when either perennial vegetation, pavement, buildings, or structures using permanent materials cover all areas that have been disturbed. In order to terminate the land disturbance permit, the applicant shall submit a request to terminate permit to the Building Official. The Building Official will then inspect the site and make a determination as to whether the permit can be terminated. The applicant will be notified in writing of the determination.

If the applicant sells the property before the termination of the land disturbance permit, the permit may be assigned to the new owner, if such assignment is approved in writing by the Building Official.

If the applicant sells any portion of the property before the termination of the land disturbance permit, the applicant will remain responsible for that portion until one of the following events occur:

(a) The new owner of the property obtains a land disturbance permit.

(b) The new owner of the property obtains or is required to obtain a building permit.

(Ord. 1839C; 01-03-00)

**15-534.** **SUSPENSION OR REVOCATION OF PERMIT.** The Building Official shall follow the procedures outlined in this Section before any action is taken against the security as provided under Section 15-545.

As a complete alternative to other enforcement measures, the Building Official may suspend the land disturbance permit and issue a written Stop Work Order, and the applicant shall cease all work on the site, except work necessary to remedy the cause of the suspension, upon notification of such suspension when:

(a) Applicant fails to submit reports timely and in accordance with this Article;

(b) Inspection by the Building Official reveals the site is not in substantial compliance with the erosion and sediment control plan;

(c) Applicant fails to comply with an Order to bring the site into compliance with the permit within time limits imposed by the Building Official; or

(d) Applicant fails to pay any required permit fee.

The Building Official shall reinstate a suspended land disturbance permit upon

the applicant's correction of the cause of the suspension.

The Building Official shall revoke the land disturbance permit and issue a Stop Work Order if the applicant fails or refuses to cease work.

The Building Official may not reinstate a revoked permit.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-535.** **INSTALLATION OF CONTROL MEASURES.** The applicant shall notify the Building Official that all erosion and sediment control measures are installed in accordance with the erosion and sediment control plan and the City's adopted standards. The applicant shall not perform any land disturbance activities prior to approval from the Building Official that all erosion and sediment control measures are installed properly.

(Ord. 1839C, 01-03-00)

**15-536.** **MAINTENANCE OF CONTROL MEASURES.** The applicant shall at all times maintain all erosion and sediment control measures in good order and in compliance with the erosion and sediment control plan for the site and with the City's adopted standards, for the duration of the permit as defined in section 15-533. In determining the Applicant's compliance with the erosion and sediment control plan for the site, the Building Official shall take into consideration any results the applicant has obtained through sampling.

(Ord. 1839C, 01-03-00)

**15-537.** **SAMPLING.** The applicant shall have the option of including a system of regular sampling by individuals approved to perform such sampling by the Building Official as a part of the applicant's Erosion and Sediment Control Plan. The Building Official may require sampling to determine the effectiveness of the erosion control plan or to obtain information to investigate complaints regarding the site. Sampling shall not be the only item reviewed to determine compliance with the erosion and sediment control plan for the site. The Building Official may also perform sampling.

(Ord. 1839C, 01-03-00)

**15-538.** **REMOVAL OF CONTROL MEASURES.** The applicant shall receive the Building Official's approval before any structural erosion and sediment control measure identified on the plans is removed or made ineffective. Removal of erosion and sediment control measures must be performed in the manner described in the erosion and sediment control plan and in accordance with the City's adopted standards. When determining whether an erosion and sediment control measures may be removed or made ineffective, the Building Official shall take into consideration testing results furnished by the applicant.

(Ord. 1839C, 01-03-00)

**15-539.** **INSPECTIONS GENERALLY.** It shall be the duty of the land disturbance permit holder to install, routinely inspect, and maintain effective erosion and sediment control measures as specified in the permit holder's approved erosion control plan. The applicant shall inspect the land disturbance site at least every 14 days or more frequently if required by the plan, and within 24 hours following each rainfall event of ½ inch or more within any 24-hour period. The Building Official shall also perform regular inspections of the land disturbance site to ensure compliance with the erosion and sediment control plan for the site and the City's adopted standards. Should it be found that required erosion and sedimentation control measures have not been installed properly, the Building Official may refuse any inspection requests for work requiring inspections until such time as the site complies with the requirements of this Article. Subsequent inspections may be refused if the erosion and siltation control measures are ineffective, or not being maintained.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-540.** **ENFORCEMENT.** The Building Official may enforce this ordinance through the normal routine activities that include receiving inspection reports from the applicant, inspecting the site, communicating, negotiating, and written warnings to the applicant to resolve issues of non-compliance. However, as a complete alternative to the normal activities referred to above, the Building Official may proceed with any of the methods set forth in Sections 15-534 [suspension or revocation], 15-545 [bonds, maintenance assurances and permits] or may proceed with a citation for violation of this Article and seek the penalties set forth in § 15-550.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-541. EROSION AND SEDIMENT CONTROL STANDARDS.** The Director of Public Works shall adopt and maintain erosion and sediment control design criteria and performance standards and specifications to assist in the administration of the land disturbance program. The erosion and sediment control design criteria and specifications shall be based on, but not limited to the following principles:

(a) Fitting the development to existing site conditions.
(b) Minimizing the extent and duration of exposure.
(c) Protecting areas to be disturbed from stormwater runoff.
(d) Stabilizing disturbed areas.
(e) Keeping runoff velocities low.
(f) Retaining sediment on the site.
(g) Inspecting and maintaining control measures.
(h) Containing performance measures and outcomes.

The property owner and/or applicant may request that differing standards be applied and such request shall be granted if, in the opinion of the Building Official or Director of Public Works, such different standards will provide the same protection provided by the City's standards.

(Ord. 1839C, 01-03-00)

**15-542. GRADING, EROSION AND SEDIMENT CONTROL SITE PLAN REQUIREMENTS.** The applicant shall submit an Erosion and Sediment Control Site Plan. The Plan shall include the following:

(a) A description of how the plan will prevent all sediment from leaving the site.
(b) Estimated duration of the permit as defined in section 15-533. Existing and proposed topography of the site taken at not more than a two-foot contour interval over the entire site.
(c) Contours extend a minimum of 100 feet off-site, or sufficient to show on/off-site drainage.
(d) Site's property lines shown in true location with respect to the plan's topographic information.
(e) Location and graphic representation of all existing and proposed natural and manmade drainage facilities.
(f) Location, graphic representation and legend of soil types.
(g) Location and graphic representation of proposed excavations and fills, of on-site storage of soil and other earthen material, and on-site disposal.
(h) Location and legend of existing vegetation cover, the location and legend of vegetation cover to be left undisturbed.
(i) Quantity of soil or earthen materials in cubic yards to be excavated, filled, stored, or otherwise utilized on-site.
(j) Proposed sequence of excavation, filling, and soil or earthen material storage and disposal.
(k) List of the measures undertaken to retain sediment from the site, including, but not limited to, designs and specifications for terms, and sediment detention

basins, and a schedule for maintenance and upkeep.

(l) A description of the surface runoff and erosion control measures to be implemented, including, but not limited to, types and method of applying mulches, location details and specifications for diverters, dikes and drains, and a schedule for their maintenance and upkeep.

(m) A delineation and brief description of the vegetative measures to be used, including, but not limited to seeding methods, the type, location and extent of pre-existing undisturbed vegetation types and vegetation to remain and a schedule for maintenance and upkeep.

(n) Alternative methods of stabilizing the site when either seeding was not performed in accordance with the schedule, or was performed and was not effective.

(o) Plans to be prepared and sealed and dated by a profession engineer licensed in the State of Kansas.

(p) Location of debris containers, portable fueling station, concrete truck washout, sanitary waste facility so as to minimize water quality impacts.

(q) Include good housekeeping program to include site cleanup and disposal of trash and debris, hazardous material management, vehicle equipment maintenance and sanitary waste.

(Ord. 1839C, 01-03-00)
(Ord. 2826C; 03-20-17)

**15-543.** **WORK SCHEDULE.** The applicant shall submit a work schedule of construction activities for the development where the land disturbance activity is proposed. The work schedule shall provide, at minimum, the following information:

(a) Proposed clearing and grading schedule.

(b) Proposed schedule for installation of temporary and permanent erosion and sediment control measures.

(c) Proposed schedule for all construction activity.

(d) Estimated duration of land disturbance permit as defined in section 15-533.

The applicant shall be allowed to modify the work schedule under this section in the event circumstances dictate such deviation and after the applicant has obtained approval from the Building Official.

(Ord. 1839C, 01-03-00)

**I5-544.** **VIOLATIONS.** Any violation of sections 15-525 through 15-543 shall be subject to the provisions of section 15-550.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-545.** **BONDS, MAINTENANCE ASSURANCES, AND PERMITS.** Upon approval of the final Construction Plan, but before the issuance of a construction permit, the Director of Public Works shall require the applicant to post a Performance Bond, cash escrow, certified check, or other form of performance security acceptable to the Director of Finance for the amount of the work to be done pursuant to the approval of the Final Construction Plans for any facility or improvement to be dedicated to the public.

The Building Official shall require the applicant to provide security equal to the estimated cost to install and maintain the approved erosion and sediment control measures. The Building Official may take action against the security if the applicant fails to install or maintain the erosion and sediment control measures in accordance with the erosion and sediment control plan for the site and the City's adopted standards for the duration of the permit as defined in Section 15-534. The Building Official will provide the applicant with a 10 day written notice before any action is taken against the security, and if during that 10 day period the applicant brings control measures into compliance with the Plan, no action shall be taken against the security.

(Ord. 1839C; 01-03-00)
(Ord. 1973C; 12-02-02)

**15-546.** **MAINTENANCE BONDS.** A two-year maintenance bond against defects in workmanship will be required by the City for any portion of the improvements dedicated for public maintenance.

(Ord. 1839C, 01-03-00)

**15-547.** **PERMITS.** Upon approval of the Final Construction Plans and Erosion and Sediment Control Plan and acceptance of the applicant's assurances of performance and maintenance as provided in these regulations, the Director of Public Works shall issue a permit for construction and the Building Official shall issue a Land Disturbance Permit.

(Ord. 1839C, 01-03-00)

**15-548.** **APPEALS.** Any person aggrieved by a decision of the Director of Public Works or Building Official in the enforcement of this Article shall have the right to appeal any such order, requirement, decision, or determination by filing an appeal with the Building and Fire Code Board of Appeals within 10 calendar days of the action and otherwise in accordance with Chapter 5 of the Code.

(Ord. 1839C, 01-03-00)
(Ord. 1973C; 12-02-02)

**15-549.** **DAMAGING OR ALTERING STORMWATER MANAGEMENT FACILITIES.** No person, firm, association, partnership or corporation shall maliciously, willfully or negligently break, damage, destroy, deface, alter or tamper with any structure, appurtenance or facility which is a part of the municipal stormwater system or an approved stormwater management plan. No person, firm or corporation shall cause or permit the curbs and gutters in the city to be filled with any material, which tends to restrict or divert the flow of water therein except that the Director of Public Works may upon request grant written permission for an exception. Any violation of this section shall be subject to the provisions of section 15-550.

(Ord. 1839C, 01-03-00)

**15-550.** **PENALTY FOR VIOLATION — ACTION.** The violation of any provision of this article is a misdemeanor, and any person, firm, association, partnership or corporation convicted thereof shall be punished by a fine not less than $200 nor more than $500. The City shall further have the authority to maintain suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this chapter and to abate nuisance maintained in violation thereof; and in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation, or to prevent the occupancy of the building, structure, or land. Each day of any violation of this chapter shall constitute a separate offense.

(Ord. 1839C, 01-03-00)

## ARTICLE 6. ILLICIT DISCHARGE

**15-601. TITLE.** This Article 6 of Chapter 15 shall be known as the Illicit Discharge Code.

(Ord. 2173C; 07-17-06)

**15-602. PURPOSE AND FINDINGS.**

(a) The purpose of this Code shall be to prevent the discharge of pollutants from land and activities within the City into the municipal separate storm sewer system (MS4) and/or into surface waters.

(b) The Governing Body of the City hereby finds that pollutants are discharged into surface waters, both through inappropriate non-stormwater discharges into the MS4 or the surface waters directly, and through the wash off and transport of pollutants found on the land and built surfaces by stormwater during rainfall events.

(c) Further, the Governing Body of the City hereby finds that such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.

(d) Further, the Governing Body of the City hereby finds that this ordinance will promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.

(e) Further, the Governing Body of the City hereby finds that such discharges are inconsistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES), and other federal and state requirements for water quality and environmental preservation.

(f) Further, the Governing Body of the City hereby finds that a reasonable establishment of restrictions and regulations on activities within the City is necessary to eliminate or minimize such discharges of pollutants, to protect the health and safety of citizens, to preserve economic and ecological value of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program.

(Ord. 2173C; 07-17-06)

**15-603. ABBREVIATIONS.**

The following abbreviations when used in this Code shall have the designated meanings:

| | |
|---|---|
| BMP | Best Management Practice |
| CFR | Code of Federal Regulations |
| EPA | Environmental Protection Agency |
| HHW | Household Hazardous Waste |
| KDHE | Kansas Department of Health and Environment |
| MS4 | Municipal Separate Storm Sewer System |
| NPDES | National Pollutant Discharge Elimination System |
| PST | Petroleum Storage Tank |

(Ord. 2173C; 07-17-06)

**15-604. DEFINITIONS.**

For the purposes of this Code, the following definitions shall apply:

(a) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(b) “Car” means any vehicle meeting the definition for passenger car, passenger van, pickup truck, motorcycle, recreational vehicle, or motor home given in Chapter XXX of the Code.

(c) "City" means the City of Leawood, Kansas.

(d) “Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), and any subsequent amendments thereto.

(e) "City Code" means the City of Leawood Municipal Code.

(f) "Director" means the Director of Public Works for the City of Leawood, or the Director's authorized representative.

(g) "Discharge" means the addition, release, or introduction, directly or indirectly, of any pollutant, water, or other substance into the MS4 or surface waters.

(h) "Domestic sewage" means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged

from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.

(i) "Extremely hazardous substance" means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

(j) "Fertilizer" means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

(k) "Hazardous household waste (HHW)" means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261 or K.A.R 28-29-23b.

(l) "Hazardous substance" means any substance listed in Table 302.4 of 40 CFR Part 302.

(m) "Hazardous waste" means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

(n) "Industrial waste" means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade, or business.

(o) "Municipal separate storm sewer system (MS4)" means the system of conveyances, (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

(p) “NPDES” means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the federal Clean Water Act.

(q) "NPDES permit" means, for the purpose of this chapter, a permit issued by United States Environmental Protection Agency (EPA) or the state of Kansas that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(r) “Oil” means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

(s) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local governmental entities.

(t) "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

(u) “Petroleum Product” means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and diesel fuel.

(v) "Pollutant" means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of the waters including changes in temperature, taste, odor, turbidity, or color of the water. Such substance or material may include but is not limited to, dredged spoil, spoil waste, incinerator residue, sewage, pet and livestock waste, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, oil and petroleum products, used motor oil, anti-freeze, litter, pesticides, and industrial, municipal, and agricultural waste discharged into water.

(w) "Property Owner" shall mean the named property owner as indicated by the records of the Johnson County Kansas Records and Tax Administration;

(x) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

(y) "Sanitary sewer" means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

(z) "Septic tank waste" means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(aa) "Sewage" means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

(bb) "State" means the state of Kansas.

(cc) "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(dd) "Surface waters" means any body of water classified as "surface waters" by the state of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs, oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a "water of the United States".

(ee) “Waste” means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the State of Kansas. The Federal definition of solid waste is found at 40 CFR 257.2.

(ff) "Water quality standard" means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an antidegradation statement.

(Ord. 2173C; 07-17-06)

**15-605. GENERAL PROHIBITION.**

(a) No person shall release or cause to be released into the MS4, or into any surface water within the City, any discharge that is not composed entirely of stormwater that is free of pollutants, except as allowed in subsection B.

(b) Unless identified by the City or KDHE as a significant source of pollutants to surface water, the following non-stormwater discharges are deemed acceptable and not a violation of this section:

21. Water line flushing;

22. Diverted stream flow;

23. Rising groundwater;

24. Uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewers;

25. Uncontaminated pumped groundwater;

26. Contaminated groundwater if authorized by KDHE and approved by the municipality;

27. Discharges from potable water sources;

28. Foundation drains;

29. Air conditioning condensate;

30. Irrigation waters;

31. Springs;

32. Water from crawl space pumps;

33. Footing drains;

34. Individual residential car washing;

35. Flows from riparian habitats and wetlands;

36. Dechlorinated swimming pool discharges excluding filter backwash;

37. Street wash waters (excluding street sweepings which have been removed from the street);

38. Discharges or flows from emergency fire fighting activities;

39. Hheat pump discharge waters (residential only);

40. Treated wastewater or other discharges meeting requirements of a NPDES permit; and

21. Other discharges determined not to be a significant source of pollutants to waters of the state, a public health hazard or a nuisance.

(c) Discharges specified in writing by the Director as being necessary to protect public health and safety.

(d) Notwithstanding the provisions of subsection B of this section, any discharge shall be prohibited by this section if the discharge in question has been determined by the Director to be a source of pollutants to the MS4 or to surface waters, written notice of such determination has been provided to the property owner or person responsible for such discharges, and the discharge has occurred more than ten days beyond such notice.

(Ord. 2173C; 07-17-06)

**15-606. SPECIFIC PROHIBITIONS AND DUTIES.**

The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition in Section 15-605, but are provided to address specific discharges that are frequently found or are known to occur:

(a) No person shall release or allow to be released any of the following substances into the MS4:

2. Any new or used petroleum product or oil;

2. Any industrial waste;

3. Any hazardous substance or hazardous waste, including household hazardous waste;

4. Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste;

5. Any garbage, rubbish or other waste;

6. Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products;

7. Any yard wastes, which have been moved or gathered by a person;

8. Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment;

9. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner;

10. Any wastewater from commercial floor, rug, or carpet cleaning;

11. Any wastewater from the washdown or other cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all such materials have been previously removed;

12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;

13. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;

14. Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area or any pet wastes generally;

15. Any filter backwash from a swimming pool or fountain, except that nothing in this ordinance shall be construed as to require the alteration of the filter

discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction;

16. Any swimming pool, fountain or spa water containing a readily detectable level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the water or during cleaning of the facility;

17. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or surface waters;

18. Any contaminated runoff from a vehicle wrecking or storage yard;

19. Any substance or material that will damage, block, or clog the MS4;

20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state;

21. Any other discharge that causes or contributes to causing the City to violate a state water quality standard, the City's NPDES stormwater permit, or any state-issued discharge permit for discharges from its MS4.

(b) No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures, except as allowed for in conformance with Section 15-525 through 15-544 also known as, Erosion and Sediment Control Regulations.

(c) No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No property owner shall allow such a connection to continue in use on their property.

(d) No person shall use pesticides, herbicides and fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides and fertilizers shall be stored, transported and disposed of in a manner to prevent release to the MS4.

(e) No person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs which have been required by the City or by other local, state, or federal jurisdictions.

(Ord. 2173C; 07-17-06)

**15-607. INSPECTION AND DETECTION PROGRAM.**

The Director is authorized to develop and implement a plan to actively detect and eliminate prohibited discharges and connections to the MS4 or surface waters within the City. Such plan may include, but is not limited to, periodic and random inspections of facilities and businesses, particularly those most associated with potentially prohibited discharges; visual surveys of exterior practices; inspection, sampling and analyses of discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected discharges.

(Ord. 2173C; 07-17-06)

**15-608. RELEASE REPORTING AND CLEANUP.**

(a) Any person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or surface waters shall take all necessary steps to ensure the containment and cleanup of such release.

(b) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(c) In the event of a release of non-hazardous materials, said person shall notify the Director in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director within three business days of the phone notice.

(Ord. 2173C; 07-17-06)

**15-609. ENFORCEMENT; DESIGNATION OF OFFICER; ABATEMENT; RIGHT OF ENTRY; PENALTY.**

(a) Generally. The provisions of this Article shall be administered and enforced by the Director of Public Works or by the Designated Official as further defined in this Article.

(b) Violations, Enforcement, Notice.

1. Complaints Regarding Violations. Whenever a violation of this Article occurs or is alleged to have occurred, any person may file a complaint of such alleged violation with the Designated Official stating fully the facts or grounds upon which the complaint is based. The Designated Official shall promptly record and investigate such complaint and take appropriate action as provided by this Article.
2. Enforcement Procedure. Whenever the Designated Official finds that any provisions of this Article are being violated, the Designated Official shall promptly notify in writing the person(s) responsible for such violations, indicating in such notice the nature of the violation and the actions, if any, ordered to correct it. The Designated Official shall in all cases take such actions or issue such orders or directives as are authorized by this Article to insure compliance with or to prevent violations of its provisions.
3. Actions, Orders and Directives. The Designated Official shall have the authority to establish priorities for the abatement of violations and implement appropriate procedures or remedies as provided herein to abate violations. The Designated Official shall issue appropriate written orders or directives to any person deemed to be responsible for a violation of this Article. A failure to promptly comply with such lawful orders or directives shall be deemed a violation of this Article, punishable as provided herein.
4. Designated Official's Remedies. The Designated Official shall have the following remedies, without limitations, available:
   a. No Action. After careful consideration of the facts and circumstances, the Designated Official may authorize no action be taken on a complaint of an alleged violation.

b. Informal Contact. The Designated Official shall have the authority to effectuate abatement through informal meetings or conversations.

c. Agreement to Abate. The Designated Official may enter into an agreement with a violator whereby the violator agrees to abate the violation within a certain time frame based upon certain conditions within the agreement. This time frame shall not exceed a period of 1 month from date of execution of the abatement agreement.

d. Notice and Order. The Designated Official may issue a notice and order to the violator ordering the cessation of illegal condition within a specified period of time based upon the nature of the violation following receipt of notice as outlined in the Notification Procedures.

e. Municipal Court Action. The Designated Official may pursue action in Municipal Court.

f. Other Action. The Designated Official may take any other action permitted by law.

5. Notification Procedures. Whenever the Designated Official determines to issue a notice as specified above, written notice of such violation shall be sent by certified mail, return receipt requested, to the person(s) responsible for such violation. Such person(s) may include the owner and the occupant of the premises. The letter shall direct that 10 days shall be granted for the abatement of said violation following the mailing of the written notice. If after such time, such violation continues or reoccurs, the City may pursue action in Municipal Court. It should be noted that, if a violation occurs, notification is sent, and said violation is abated but occurs again at a later date, the Designated Official is not required to renotify said violator a second time of the same violation.

(c) Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this Article, or whenever the Designated Official has reasonable cause to believe that there exists in any building or upon any premises any violation, the Designated Official may enter such building or premises at all reasonable times to inspect the same or to perform any necessary sampling or tests or to perform any duty imposed upon the Designated Official by this Article, provided that if such building or premises be occupied, the Designated Official shall first present proper credentials and request entry; and if such building or premises be unoccupied, the Designated Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Designated Official or his authorized representative shall have recourse to every remedy provided by law to secure entry.

(d) Administration of Provisions. The provisions of this Ordinance shall be

administered and enforced by the Designated Official(s), defined to include the Director, or his or her appointed representative and/or the Neighborhood Services Administrator or his or her appointed representative.

(e) Penalties and Remedies

1. Remedies. In addition to other remedies, the City may institute any appropriate action or proceedings to halt or prevent the violation of this Article.

2. Abatement. In addition to other remedies, the Director may order City representatives to terminate any illicit connection to the MS4. Any expense related to such abatement shall be fully reimbursed by the property owner. Such reimbursement may be enforced by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding abatement of nuisances.

   Additionally, if a property owner is not available, not able or willing to correct a violation, then, in the case of an emergency, the Director may order City representatives to enter private property to take any and all measures necessary to abate the violation. If the violation does not present an immediate hazard, then the Director shall follow those procedures for the abatement of nuisances. In any event, the owner and/or occupant of the property shall reimburse the City for the full amount of the cost of the abatement and such reimbursement may be enforce by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding the abatement of nuisances.

   Additionally, if it is determined that a violation of this Code exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in Chapter 8 of the Code of the City of Leawood, 2000.

3. Penalties, Fines, Imprisonment. The owner, occupant or general agent of a building or premises where a violation of any provision of this Article has been committed or shall exist, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than $250.00 and not more than $1,500.00 for each and every day that such violation continues, or by imprisonment for 10 days for each and every day such violation shall continue, but in no case to exceed 3 months of imprisonment, or by both such fine and imprisonment in the discretion of the Court. Each separate day on which a violation is committed or continues shall constitute a separate offense.

4. Performance Bonds. Where necessary for the reasonable implementation of this Article, the Director may, by written notice, order any owner of a construction site or subdivision development to file a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance with this Article. The City may deny approval of any building permit, subdivision plat, site development plan, or any other City permit or approval necessary to commence or continue construction or to assume occupancy, until such a performance bond has been filed.

(Ord. 2173C; 07-17-06)

# ARTICLE 7. POST CONSTRUCTION STORMWATER RUNOFF CONTROL

**15-701. TITLE.**

This Article 7 of Chapter 15 shall be known as the Post-Construction Storm Water Runoff Control Ordinance ("Ordinance").

(Ord. 2287C; 12-17-07)

**15-702. PURPOSE AND FINDINGS.**

(a) The purpose of this Ordinance is to minimize and prevent the discharge of pollutants from developed land into the surface waters of the City by establishing reasonable requirements for the treatment of stormwater runoff from new development and redevelopment activities.

(b) The Governing Body finds that land development and the associated increases in impervious cover can increase the quantity and nature of pollutants carried by stormwater runoff, increase stormwater runoff rates and volumes, aggravate stream channel erosion and sediment transport, alter the hydrologic response of watersheds, and degrade the ecological function of downstream rivers, creeks, streams, lakes and other water bodies.

(c) Further, the Governing Body finds that stormwater treatment facilities and requirements can minimize those impacts by reducing pollutant levels carried in stormwater runoff, removing or reducing the concentrations of those pollutants that are carried, reducing stream bank erosion, and by restoring stormwater runoff rates and volumes to levels closer to the pre-development hydrologic regimes.

(Ord. 2287C; 12-17-07)

**15-703. ABBREVIATIONS.**

The following abbreviations when used in these Regulations shall have the designated meanings:

| | |
|---|---|
| APWA | American Public Works Association |
| BMP | Best Management Practice |
| MARC | Mid-America Regional Council |

(Ord. 2287C; 12-17-07)

**15-704. DEFINITIONS.**

For the purposes of this Ordinance, the following definitions apply:

(a) "Approved Plan" means a set of representational drawings or other documents that have been approved by the *City* as complying with the provisions of this Ordinance submitted by an applicant (either as an independent submittal or a part of another development application(s) required by the City Code as a prerequisite to obtaining a building or land disturbance permit and that contain the information and specifications required by the City to minimize storm water runoff.

(b) "Applicant" means any person who makes application for an approved plan or for a building permit for an activity involving building or development that results in land disturbance or for a land disturbance permit, as required by this Ordinance.

(c) "As-Built plan" means a record drawing or plan prepared and certified by a licensed Professional Engineer or Land Surveyor that represents the actual dimensions, contours, elevations, etc., of a completed structure, facility, or constructed feature.

(d) "Channel" means a natural or artificial watercourse with defined bed and banks that conducts continuously or periodically flowing water.

(e) "City" means the City of Leawood, Kansas

(f) "City Code" means the Code of the City of Leawood, 2000, as amended and the Leawood Development Ordinance.

(g) "Community Development Director" means the individual appointed by the City as the Community Development Director or a duly authorized representative.

(h) "Detention" means a stormwater management technique of which the primary function is to control the peak rate of surface water runoff by utilizing temporary storage and a controlled rate of release. This may include, but not be limited to, the use of reservoirs, rooftops, parking areas, holding tanks, in-pipe and in-channel storage.

(i) "Detention Facility" means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

(j) "Development Application" means all applications required by the *City* Code as a prerequisite to initiation of development, including, but not limited to a building permit application.

(k) "Drainage Easement" means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

(l) “Erosion” means the wearing away of land by the action of wind, water, gravity, or a combination thereof.

(m) “Floodplain” means the floodway and floodway fridge as identified by the Federal Insurance Administration through its report entitled “The Flood Insurance Study for the City of Leawood, Kansas,” dated June 17, 2002 or such other designation of the floodplain as is subsequently adopted by the City, and representing the regulated 100-year water surface and corresponding elevations.

(n) “Impervious Cover” means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

(o) “Infiltration” means the process of percolating stormwater into the subsoil.

(p) “Land Disturbance Activity” means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

(q) “Landowner” means that legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights on the land.

(r) “Licensed land surveyor” means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice surveying.

(s) “Maintenance Agreement” means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

(t) “Maximum Extent Practicable” means the use of those best management practices, which, based on sound engineering and hydro-geological principals, will, to the greatest degree possible, given all relevant considerations, including technology, climate, and site conditions, minimize storm water runoff from a site during and after construction.

(u) “Off-Site Facility” means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

(v) “On-Site Facility” means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.

(w) “Permit” means a building permit for activities involving building or development resulting in land disturbance and a land disturbance permit for activities resulting in land disturbance, required by 15-705, that does not involve building or development.

(x) “Permittee” means any person to whom a building permit is issued with respect to activities involving building or development resulting in land disturbance or for purposes of this Ordinance only, any person to whom a land disturbance permit is issued.

(y) Pollutant" means any substance or material which contaminates or adversely alters the physical, chemical or biological properties of water, including changes in temperature, taste, odor, turbidity, or color.

(z) “Professional Engineer” is an engineer duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A. 74-7001 et seq. to practice engineering.

(aa) “Public Works Director” is the individual appointed by the City as the Public Works Director or a duly authorized representative.

(bb) "Redevelopment" means development on a tract of land with existing structures where all or most of the existing structures would be razed and a new structure or structures built.

(cc) “Sediment” means soils or other materials transported or deposited by the action of wind, water, ice, gravity, or artificial means.

(dd) “Site” any lot or parcel of land or a series of lots or parcels of land adjoining or contiguous or joined together under one (1) ownership on which land disturbance activity is proposed.

(ee) “Stop Work Order” means an order issued which requires that all construction activity on a site be stopped.

(ff) “Stormwater Management” means the use of structural or non-structural practices that are designed to reduce storm water pollutant loads, discharge volumes, and/or peak flow discharge rates.

(gg) “Stormwater Best Management Practices” means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

(hh) “Stormwater Runoff” means water resulting from precipitation which is not absorbed by the soil, evaporated into the atmosphere, or entrapped by ground surface depressions and vegetation, and which flows over the ground surface.

(ii). “Watercourse” means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

(Ord. 2287C; 12-17-07)

**15-705. PERMITS REQUIRED**

(a) No person shall receive any building development or other permit that results in land disturbance except as specifically provided for herein without first complying with this Ordinance, the Leawood Development Ordinance, the Code of the City of Leawood, 2000, including Article 5 of Chapter 15 of the City Code.

(b) This Ordinance shall not be construed to be in conflict with any state law intended to control post construction storm water runoff. In those instances where state law imposes a duty or requirement with respect to a matter covered by this Ordinance, the more environmentally stringent duty or requirement shall control.

(c) Projects meeting any of the following criteria are exempt from the requirement of obtaining a permit required by this section and the provisions of this Article:

1. Land disturbance of less than 1 acre that are not part of common plan development the will cumulatively disturb more than 1 acre.
2. Land farming operations, including plowing or tilling of land for the purpose of crop production or the harvesting of crops on land located in the agricultural district.
3. Expansions and modifications to previously constructed developments otherwise subject to this Ordinance where the proposed increase in impervious surface is less than 5,000 square feet.
4. Land disturbance for utility construction.
5. Single lot residential developments that are not part of a larger common plan for development.
6. Reestablishment of lawn areas.
7. any emergency activity that is immediately necessary for the protection of life, property, or natural resources.

provided that, if one or more of the above activities is undertaken as a part of or in conjunction with an activity involving building or development that otherwise requires issuance of a building permit, this Section does not alter the requirement that a building permit shall be obtained for that activity or activities.

(d) Previously Approved Development Plans:
Projects having a preliminary development plan or preliminary plat approved or having an application on file prior to the adoption of this Ordinance are exempt from the provisions of this Ordinance, provided that a final plan for the development is submitted and approved on or before July 1, 2010 and construction is diligently pursued. For projects with plan applications filed and pending on the effective date of this ordinance, the subject preliminary or final plan application must obtain approval by the Governing Body on or before July 1, 2008, in order to retain the exemption stated herein.

(e) The issuance of a permit shall constitute authorization to do only that work described or shown on the approved plan, all in strict compliance with the requirements of this Ordinance, unless each and every modification or waiver is specifically listed and approved as required by Section 15-716 of this Ordinance. Reasonable field modifications can be made pursuant to Section 15-719(B) of this Ordinance

(f) The permittee and/or permittee's agent, contractors, and employees shall carry out the proposed work in accordance with the approved plan, and the permit, and in compliance with all applicable requirements or conditions.

(Ord. 2287C; 12-17-07)

**15-706. AUTHORIZATION TO UNDERTAKE LAND DISTURBANCE ACTIVITIES: COMPONENT OF BUILDING PERMITS**

(a) A permit must be obtained before any activity involving building or development resulting in land disturbance is initiated, except as provided in Section 15-705(C). The authority to undertake any of these activities shall be evidenced only by a valid permit. Before a permit is issued for these activities, the engineered plans specified in Section 15-708 must be submitted to the City and must contain the information and be in the form required therein, subject to the provisions of Section 15-708. In effect, Section 15-708 sets forth application submission requirements for activities involving building or development resulting in land disturbance that are in addition to the application submission requirements specified in Chapter 4 of the City Code.

(b) If an individual proposes to undertake a land disturbance activity that does not, pursuant to any other section of the Code, require issuance of a building permit (such as, but not limited to, installation of sanitary sewers), the individual shall

not, except as provided in Article 5, Section 15-525, initiate land disturbance activities until a land disturbance permit is obtained.

(Ord. 2287C; 12-17-07)

**15-707. PERMIT OR PLAN GENERALLY**

(a) Where activities involving building or development resulting in land disturbance are to be performed, the owner of a site, or the site owner's authorized representative shall submit a complete building permit application in writing upon forms furnished by the City, which application shall include the engineered plans specified in Section 15-708.

(b) Where land disturbance activity is to be performed and the City Code does not otherwise require issuance of a building permit, the owner of the site or the site owner's authorized representative shall submit the engineered plans in compliance with this Ordinance and Article 5 Section 15-525 to the Community Development Director.

(c) A permit must be issued in the name of the current property owner.

(d) No permit for activities that are not permitted by existing zoning, variances or other valid development approvals applicable to the land, shall be approved.

(e) In making an application covered by this Ordinance, the applicant or the landowner performing or allowing the work consents to the City's right to enter the site for the purpose of inspecting compliance with the approved plan or for performing any work necessary to bring the site into compliance with the approved plan.

(f) The engineered plans required by Section 15-708 are not intended to be duplicative of other provisions of this Ordinance or Code. Accordingly, the required engineered plan may be included in or with any other development application(s) or submission(s) otherwise required by this Ordinance or Code; provided that, all the information required therein is in a form that can reasonably be evaluated by the designated decision maker. The decision concerning the form of the information submitted shall be made in the Community Development Director's sole discretion. In addition, these Sections provide authority for the Community Development Director to waive submission requirements determined not to be necessary to the evaluations that are required by this Ordinance.

(Ord. 2287C; 12-17-07)

**15-708. ENGINEERED PLANS**

(a) If not otherwise included in a separate development application or applications to the City that seek approval of the specific activity that will result in land disturbance, as provided by Section 15-707 above, the following information shall be submitted to the Community Development Director:

1. a site map in compliance with Section 15-709;
2. a post construction stormwater runoff management concept plan in compliance with Section 15-710;

3. a post construction stormwater BMP maintenance agreement in compliance with Section 15-712;
4. a work schedule in compliance with Section 15-713;
5. the permit fee as set forth in Section 15-721;
6. a performance guaranty as required by Section 15-724;
7. an engineering soils report in compliance with Section 15-710, when required by the City.

(b) The post construction stormwater runoff management concept and stormwater BMP maintenance agreement plans must be prepared and certified by a Professional Engineer.

(c) The City may require any additional information or data deemed appropriate and/or may impose conditions thereto as the Director of Public Works may deem necessary to ensure compliance with the provisions of this Ordinance and to preserve public health and safety.

(d) The Director of Public Works may waive the requirements for maps, plans, reports, or drawings, if the Director of Public Works finds that the current submittals or information to be submitted will be sufficient to show that the proposed work will conform to the requirements of this Ordinance.

(e) The applicant is bound by information submitted and by this Ordinance.

(f) Failure to comply with these requirements may result in the City denying the issuance of a permit.

(Ord. 2287C; 12-17-07)

**15-709. MAP AND EXISTING CONDITIONS**

(a) Subject to Section 15-708(A), the applicant shall submit a site map that contains all of the information specified in the current Post-Construction Stormwater Runoff Management Manual approved by the City as required by Section 15-712 of this Ordinance.

(b) An attached vicinity map showing the location of the site in relation to the surrounding area's watercourses, water bodies, and other significant geographic and natural features, and street and other significant features.

(c) The vicinity map also should identify any watercourses or water bodies where drainage on the site may flow to waters that are known to be impaired as defined by the Clean Water Act 303d listing as identified by the Kansas Department of Health and Environment or known to have any special designation, such as habitat for a protected species. Also, if impaired waters or special designations are present, list impairments and special designations.

(d) Existing and proposed topography of the entire site with contour lines drawn at one-foot intervals.

(e) Show on/off-site drainage, including the subwatershed as well as the entire drainage basin;

(f) Site's property lines shown in true location of all existing and proposed natural and man-made drainage facilities;

(g) Graphic representation of the location of and legend of soil types if applicable to proposed runoff controls (including source of information);

(h) A clear and definite delineation of any wetlands, natural or artificial water storage detention areas, and drainage ditches on this site, or a statement that there are no wetlands, detention areas or drainage ditches located on the property;

(i) A clear and definite delineation of any drainage, sanitary, utility, or other easement(s) on or near the site;

(j) A clear and definite delineation of applicant's determination, based on the best available information and sound engineering principles of the existence of a regulatory Floodplain, as defined in 15-704 and of any fully urbanized floodplain on or near the site as determined by a Johnson County watershed study or a statement that there are no such floodplains located on the property;

(k) Location and legend of existing vegetative cover and the location and legend of vegetative cover to be left undisturbed;

(l) Location of existing surface runoff and detention control measures;

(m) The signature and seal of a Professional Engineer.

(Ord. 2287C; 12-17-07)

**15-710. PRELIMINARY POST-CONSTRUCTION STORMWATER MANAGEMENT CONCEPT PLAN REQUIREMENTS**

A stormwater management concept plan shall be required with all permit applications and will include sufficient information (i.e., maps, hydrologic calculations, BMP level of service calculations, etc.) to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site.

(a) A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural stormwater management and sediment control facilities. The map(s) also will clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads, and easements; the limits of clearing and grading; A written description of the site plan and justification of proposed changes in natural conditions.

(b) Sufficient engineering analysis to show that the proposed stormwater management BMPs are capable of controlling and treating runoff from the water quality storm at the site in compliance with this ordinance and the specifications in the current Post-Construction Stormwater Management Manual approved by the City.

(c) A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features, including water body impairments listed in the Clean Water Act 303d listing and identified by the Kansas Department of Health and Environment, which provide particular opportunities or constraints for development.

(d) Identification and preliminary plan for control of any stormwater “hot spots” that could pose an environmental hazard such as, but not limited to; fuel dispensing facilities, above ground storage of liquid materials, solid waste storage areas, exterior storage of bulk materials, material transfer areas and loading docks, equipment and vehicle washing facilities, covered parking areas, and high-use vehicle and equipment traffic areas, parking, and vehicle storage.

(e) A written description of the required maintenance burden for any proposed structural and non-structural stormwater BMP as defined in Section 15-712 of this Ordinance.

(f) Schedule for required maintenance as well as identification of party responsible for the maintenance as defined in Section 15-712 of this Ordinance.

(g) For development or redevelopment occurring on a previously developed site, the applicant is required to include within the plan measures for controlling existing stormwater runoff discharges from the site in accordance with the standards of this Ordinance to the maximum extent practicable.

(Ord. 2287C; 12-17-07)

**15-711. FINAL POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN REQUIREMENTS**

After review of the preliminary stormwater management concept plan, and modifications to that plan as deemed necessary by the Public Works Director, a final post-construction stormwater management plan must be submitted for approval. The final stormwater management plan, in addition to the information from the concept plan, shall include all of the following information:

(a) Contact Information: The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.

(b) Topographic Base Map: A 1”=200’ topographic base map of the site which extends a minimum of 500-feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches, and wetlands; current land use including all existing structures; locations of utilities, roads, and easements; and significant natural and manmade features not otherwise shown.

(c) Calculations: Hydrologic and hydraulic design calculations for the pre-development and post-development conditions for the design storms specified in this ordinance. Such calculations shall include (i) description of the design storm frequency, intensity, and duration, (the design storm for water quality BMPs is the water quality storm, which is the storm event that produces less than or equal to 90 percent volume of all 24-hour storms on an annual basis) (ii) time of concentration, (iii) Soil Curve Numbers or runoff coefficients, (iv) peak runoff rates and total runoff volumes for each watershed area; (v) infiltration rates, where applicable, (vi) culvert capacities, (vii) flow velocities, (viii) data on the increase in rate and volume of runoff for the design storms referenced in the current City approved version of the Post-Construction Stormwater Runoff Management manual, (ix) pre- and post-development percent imperviousness of the site, and (x) documentation of sources for all computation methods and field test results.

(d) Soils information: If a stormwater management control BMP depends on the hydrologic properties of soils (i.e., infiltration basins), then a soils report shall be submitted. The soils report shall be based on on-site boring logs or soil pit profiles. The number and location of required soil borings or soil pits shall be determined based on what is needed to determine the suitability and distribution of soil types present at the location of the control measures.

(e) Maintenance and Repair Plan

The design and planning of all storm water management structural and non-structural BMPs shall include detailed maintenance and repair procedures to ensure their continued function. These plans will identify the parts or components of a storm water management BMP that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

i. Vegetation: The applicant must present a detailed plan for management of vegetation used for the BMP's at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by the registered engineer responsible for the design of the BMP's.

ii. Maintenance Easements: The applicant must ensure access to all stormwater BMPs at the site for the purpose of inspection and repair by securing all the maintenance/access easements needed on a permanent basis. These easements will be recorded with the plat and will remain in effect even with transfer of title to the property.

iii. Maintenance Agreement: The applicant must include a maintenance agreement including all components identified in Section 15-712.

iv. Erosion and Sediment Control Plans for Construction of Stormwater Management Measures: The applicant must prepare an erosion and sediment control plan for all construction activities related to implementing any on-site stormwater management practices as required by Article 5 of this Chapter.

v. Other Environmental Permits: The applicant shall assure that all other applicable environmental permits have been acquired for the site prior to approval of the final stormwater design plan.

(Ord. 2287C; 12-17-07)

**15-712. MAINTENANCE AGREEMENT AND RESPONSIBILITY**

(a) Maintenance Agreement

1. Prior to the issuance of any building permit for activities involving building a development resulting in land disturbance, except as specified in Section 15-705 is required, the City shall require the applicant to execute an inspection and maintenance agreement binding on all subsequent owners of land served by a private stormwater management facility. Such agreement shall provide for access to the facility at reasonable times for regular inspections by the City or its authorized representative to ensure that the facility is maintained in proper working condition to meet design standards.
2. The agreement shall be recorded by the applicant and/or owner in the land records of the County.
3. The agreement shall also provide that, if after notice by the City to correct a violation requiring maintenance work, satisfactory corrections are not made by the owner(s) within a reasonable period of time (30 days maximum), the owner will be cited for violation of the ordinance in accordance with Section 15-723.

(b) Maintenance Responsibility

1. The owner of the property on which work has been done pursuant to this Ordinance for private stormwater management facilities, or any other person or agent in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, dams and structures, vegetation, erosion and sediment control measures, and other protective devices. Such repairs or restoration and maintenance shall be in accordance with approved plans.
2. A maintenance schedule shall be developed for the life of any stormwater management facility and shall state the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be printed on the approved stormwater management plan.

(Ord. 2287C; 12-17-07)

**15-713. WORK SCHEDULE**

Subject to Section 15-714, the applicant shall submit a chronological construction and maintenance schedule for each BMP, structural or non-structural, approved in the final post-construction stormwater management plan.

Stormwater BMPs are subject to inspection throughout construction at the discretion of the Public Works Director.

(Ord. 2287C; 12-17-07)

**15-714. POST-CONSTRUCTION STORMWATER RUNOFF MANAGEMENT MANUAL; POST-CONSTRUCTION STORMWATER RUNOFF DESIGN CRITERIA**

There is hereby incorporated by reference that certain document entitled “The Manual of Best Management Practices for Stormwater Quality” dated October 2012, prepared and published by the Mid-America Regional Council and the American Public Works Association. No fewer than three copies of The Manual of Best Management Practices for Stormwater Quality shall be marked or stamped "Official Copy as Adopted by Ordinance No. 2823C" and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours; provided further, that the police department, police judge and all administrative departments of the city charged with the enforcement of this ordinance shall be supplied, at the cost of the city, such number of official copies of this publication similarly marked, as may be deemed expedient.

(Ord. 2287C; 12-17-07)
(Ord. 2361C; 10-20-08)
(Ord. 2823C; 03-06-17)

**15-715. DEVIATIONS**

(a) The Planning Commission or Governing Body may, in the process of approving preliminary plats, final plats, preliminary development plans or final development plans, or a building permit or land disturbance permit, if none of the above are required by other sections of this Chapter, approve deviations from the specific terms of this Ordinance which would not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship for the applicant, and provided that the spirit of this Ordinance shall be observed, the public safety and welfare secured and substantial justice done for the applicants.

(b) An application for a deviation may only be granted upon a finding that all of the following conditions have been met:

1. That the granting of the deviation will not adversely affect the rights of adjacent landowners.
2. That the strict application of the provisions of this Ordinance would constitute unnecessary hardship upon the landowner represented in the application.
3. That the deviation desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
4. That granting the deviation will comply with the general spirit and intent of this Ordinance.
5. That it has been determined the granting of a deviation will not result in extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local, federal, or state laws.

Upon consideration of the factors listed above and the purposes of this Ordinance, the City may attach such conditions to the granting of deviations as it deems necessary to further the purpose of this Chapter.

(c) In considering deviation applications, the City has the discretion of using any or all of the following project evaluations when, in the judgment of the Planning Commission or Governing Body, these evaluations are relevant and appropriate. No individual or combination of evaluations are necessarily required for an application to be approved and the Planning Commission or Governing Body may weigh these evaluations in light of all relevant considerations in determining whether or not to approve an application.

1. That alternative standards for stormwater management, water quality protection, and ecological preservation have been established, and/or that mitigation measures are undertaken.
2. That existing physical or natural characteristics of the site make strict application of the Ordinance infeasible.
3. That concerns for flooding, stream bank erosion, stream instability, and maintenance of culverts, bridges or other structures are addressed.
4. That the deviation is the minimum necessary to afford relief.

(Ord. 2287C; 12-17-07)

**15-716. REVIEW AND APPROVAL**

A. The City will review all submissions required by this Ordinance to determine their conformance with the provisions of this Ordinance and the MARC Manual of Best Management Practices for Stormwater Quality incorporated by reference through Section 15-714 of this City Code.

B. The Community Development Director may approve a plan and authorize the Building Official to issue a building permit or may issue a land disturbance permit if all required submittals comply with all the requirements of this Ordinance or that of Article 5 Section 15-525.

C. Within fifteen (15) working days after receiving all required submissions, the Community Development Director, in writing, may:

1. If a building permit is otherwise required;
   a. Approve the plan and notify the Building Official that all requirements of this Ordinance have been met and that the permit may be issued; or
   b. Conditionally approve the plan and notify the Building Official that the requirements of this Ordinance has been met and that the building permit may be issued, subject to conditions as may be

necessary to substantially secure the objectives of this Ordinance, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or private property; or

c. Disapprove the plan and notify the Building Official that the requirements of this Ordinance have not been met; indicating those requirement(s) that have not been met.

2. If a building permit is not otherwise required:

a. Approve the plan and issue the permit; or

b. Conditionally approve the plan and issue a land disturbance permit subject to conditions as may be necessary to substantially secure the objectives of this Ordinance, prevent the creation of a nuisance or an unreasonable hazard to persons or to a public or private property; or

c. Disapprove the plan and inform the applicant in writing of those requirement(s) that have not been met.

(Ord. 2287C; 12-17-07)

**15-717. MODIFICATION OF PLANS**

(a) Modification of the approved plan must be submitted to the City, and shall be reprocessed in the same manner as the original plan, where:

1. Field inspection or evaluation has revealed the inadequacy of the approved plan to accomplish and control the post construction runoff according to the design criteria; or

2. The person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out.

(b) Field modifications of a minor nature may be authorized in writing by the Public Works Director; provided those modifications are consistent with the post construction runoff criteria of this Ordinance and the Post-Construction Stormwater Runoff Management manual. The Public Works Director may establish a list of allowable field modifications for this purpose that shall be included in the manual.

(Ord. 2287C; 12-17-07)

**15-718. AS BUILT PLANS**

(a) All applicants are required to submit actual “as built” plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer. A final inspection by the City is required before the release of any performance and maintenance bond.

(Ord. 2287C; 12-17-07)

**15-719. FEES**

(b) Before issuance of a permit, the applicant shall pay a fee, which shall be in addition to the building permit fee if otherwise applicable, to cover the cost of administration, plan review, and inspection services associated with evaluation of submittals and permits required by this Ordinance. The amount of the fee shall be established by the Governing Body by resolution or ordinance.

(Ord. 2287C; 12-17-07)

**15-720. PERMIT AND/OR APPROVED PLAN, EXPIRATION AND RENEWAL**

(a) The permit shall be valid from the time that it is issued until a final certificate of occupancy is issued in conjunction with a building permit, or a certificate of completion submitted by the design engineer pursuant to Section 15-718.

(b) If the permittee sells the property before the expiration of the permit, the permit may be assigned to the new owner of the site if the assignment is approved in writing by the Community Development Director, provided that the permittee shall remain responsible for compliance with the permit until a final certificate of occupancy is issued or a certificate of completion is issued as set forth in Section 15-720.

(c) If the permittee sells any portion of the property before the expiration of the permit, the permittee will remain responsible for that portion of the property until the new owner of the property, with respect to the property covered by a permit, makes all submissions required by this Ordinance, which or not waived, to the Community Development Director and he or she approves the plan an issues the new owner a permit.

(Ord. 2287C; 12-17-07)

**15-721. COORDINATION WITH OTHER PERMITS**

When a person is developing a site and a permit is required, in accordance with Section 15-705 of this Ordinance, no other construction permits shall be issued to make improvements on that site until the person has secured the permit required by this Ordinance for the same site. This includes all permits issued by another City department.

(Ord. 2287C; 12-17-07)

**15-722. PERFORMANCE GUARANTY**

The City will require the submittal of a two year performance and maintenance bond prior to issuance of a permit. The two year period shall commence upon issuance of a Certificate of Occupancy or Certificate of completion.

(Ord. 2287C; 12-17-07)

**15-723. PENALTIES, FINES, IMPRISONMENT**

The owner, occupant or general agent of a building or premises where a violation of any provision of this Ordinance has been committed or shall exist, or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation shall exist, shall be guilty of a misdemeanor punishable by a fine of not less than $250.00 and not more than $1,500.00 for each and every day that such violation continues, or by imprisonment for 10 days for each and every day such violation shall continue, but in no case to exceed 3 months of imprisonment, or by both such fine and imprisonment in the discretion of the Court. Each separate day on which a violation is committed or continues shall constitute a separate offense.

Additionally, if a property owner is not available, not able or willing to correct a violation, then, in the case of an emergency, the Director may order City representatives to enter private property to take any and all measures necessary to abate the violation. If the violation does not present an immediate hazard, then the Director shall follow those procedures for the abatement of nuisances. In any event, the owner and/or occupant of the property shall reimburse the City for the full amount of the cost of the abatement and such reimbursement may be enforce by court order in any court of competent jurisdiction or may be enforced under the City's provisions regarding the abatement of nuisances.

Additionally, if it is determined that a violation of this Code exists, then the officer shall declare such condition a nuisance and is authorized to pursue abatement and enforcement procedures as specified in Chapter 8 of the Code of the City of Leawood, 2000.

(Ord. 2287C; 12-17-07)

# CHAPTER XVI. ZONING AND PLANNING

**Article 1. Zoning Regulations**
**Article 2. Repealed by Ordinance No. 1966C**
**Article 3. Board of Zoning Appeals-Repealed**
**Article 4. Subdivision Regulations-Repealed**

## ARTICLE 1. ZONING REGULATIONS

**16-101.** **ZONING REGULATIONS.** There is hereby incorporated by reference the 'Leawood Development Ordinance,' 2002 Edition, prepared and published by the City of Leawood, Kansas, including the corresponding Official Zoning Map, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed, such incorporation being authorized by K.S.A. § 12-3009 through 12-3012, inclusive, and K.S.A. § 12-3301, as amended, for the purpose of providing zoning regulations within the City of Leawood, Kansas.

Any section of this Code may be amended or repealed by ordinance by reference to the Section Number of the Leawood Development Ordinance [LDO] as follows: 'Section 16-1-2.1 of the Leawood Development Ordinance is hereby amended to read as follows: [the new provisions shall then be set out in full].' A new section not heretofore existing in the Leawood Development Ordinance may be added as follows: 'The Leawood Development Ordinance is hereby amended by adding a section [or article] which reads as follows: [the new provision shall be set out in full.]' All sections or articles to be repealed shall be repealed by specific reference as follows: 'Section 16-1-8 [or article or chapter] of the Leawood Development Ordinance is hereby repealed.'

No fewer than three [3] copies of said Leawood Development Ordinance shall be marked or stamped 'Official Copy as Incorporated by Ordinance No. 1966C,' with all sections or portions thereof intended to be omitted or changed clearly marked to show any such omission or change and to which shall be attached a copy of this ordinance, and filed with the City Clerk to be open to inspection and available to the public at all reasonable hours.

(Ord. 1966C; 11-18-02)

**16-102.** **SAME; FEES.** In order to partially cover the cost of administering the procedures set forth in the Leawood Development Ordinance, fees shall be required at the time of submission of plans and/or applications. The amount of the fees are set forth in the Fee Schedule established and maintained by the City Administrator, as prescribed in Section 1-701, of the Code of the City of Leawood, 2000. The applicant is responsible for the cost of publishing zoning, rezoning, plan approval and special use permit ordinances and any other ordinances required in conjunction with approval or partial approval of an application.

(Ord. 1966C; 11-18-02)

## ARTICLE 2. –REPEALED BY ORDINANCE NO. 1966C; 11-18-2002

## ARTICLE 3. BOARD OF ZONING APPEALS

Repealed by Ord. No. 1779C; 2-16-99
See Section 5-4 of the Leawood Development Ordinance.

## ARTICLE 4. SUBDIVISION REGULATIONS

Repealed by Ordinance No. 1216; 5/6/91
See Article 9 of the Leawood Development Ordinance.

# APPENDIX A. CHARTER ORDINANCES

*NOTE:*
*The charter ordinances included herein are for information only. Each contains the substance as adopted by the Governing Body but enacting clauses, publication clauses and signatures have been omitted to conserve space. Complete copies of each ordinance as adopted are on file in the office of the City Clerk. Date of Passage and Effective Date of each charter ordinance is shown in parenthesis at the end of the text.*

## CHARTER ORDINANCE NO. 1

(Repealed; C.O. No. 8)

[Date Passed: 03-05-62]
[Effective Date: 05-17-62]

## CHARTER ORDINANCE NO. 2

(Repealed; C.O. No. 8)

[Date Passed: 03-16-64]
[Effective Date: 05-27-64]

## CHARTER ORDINANCE NO. 3

(Repealed; C.O. No. 8)

[Date Passed: 09-05-67]
[Effective Date: 11-21-67]

## CHARTER ORDINANCE NO. 4

(Repealed; C.O. No. 29)

[Date Passed: 06-03-68]
[Effective Date: 08-12-68]

## CHARTER ORDINANCE NO. 5

(Repealed; C.O. No. 6)

[Date Passed: 07-15-68]
[Effective Date: 09-30-68]

## CHARTER ORDINANCE NO. 6

(Repealed; C.O. No. 22)

[Date Passed: 11-18-68]
[Effective Date: 01-20-69]

## CHARTER ORDINANCE NO. 7

(Repealed; C.O. No. 29)

[Date Passed: 06-01-70]

## CHARTER ORDINANCE NO. 8

**A CHARTER ORDINANCE REPEALING CHARTER ORDINANCES 1, 2, AND 3 OF THE CITY OF LEAWOOD.**

**Section 1.** **REPEAL.** Charter Ordinances Nos. 1 (adopted March 5, 1962), 2 (adopted March 16, 1964) and 3 (adopted September 5, 1967) of the City of Leawood, Kansas are hereby repealed.

[Date Passed: 06-01-70]

## CHARTER ORDINANCE NO. 9

(Repealed; C.O. No. 29)

[Date Passed: 07-06-70]
[Effective Date: 09-21-70]

## CHARTER ORDINANCE NO. 10

(Repealed; C.O. No. 29)

[Date Passed: 10-01-73]
[Effective Date: 12-17-73]

## CHARTER ORDINANCE NO. 11

(Repealed; C.O. No. 12)

[Date Passed: 10-15-73]
[Effective Date: 01-14-74]

## CHARTER ORDINANCE NO. 12

(Repealed; C.O. No. 23)

[Date Passed: 06-07-76]
[Effective Date: 08-16-76]

## CHARTER ORDINANCE NO. 13

(Repealed; C.O. No. 22)

[Date Passed: 12-04-78]
[Effective Date: 02-12-79]

## CHARTER ORDINANCE NO. 14

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM K.S.A. 79-5011; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT; AND AUTHORIZING THE LEVYING OF TAXES TO CREATE A SPECIAL FUND FOR THE PURPOSE OF PAYING COSTS FOR CONSTRUCTION AND MAINTENANCE OF STREETS, CURBS, GUTTERS, SIDEWALKS, STORM DRAINAGE FACILITIES, PARKS AND CITY OWNED IMPROVEMENTS.**

(Charter Ordinance No. 14 failed by presentation of sufficient petition for referendum.)

[Date Passed: 06-07-82]

## CHARTER ORDINANCE NO. 15

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM K.S.A. 12-4207 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT, RELATING TO SERVICE OF UNIFORM NOTICES TO APPEAR AND COMPLAINTS FILED WITH THE LEAWOOD MUNICIPAL COURT.**

(Repealed; C.O. No. 44)

[Date Passed: 06-03-85]
[Effective Date: 08-14-85]

## CHARTER ORDINANCE NO. 16

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM SECTION 79-5011 KANSAS STATUTES ANNOTATED AND ANY AMENDMENTS THERETO AND AUTHORIZING THE LEVYING OF A MAXIMUM OF 20.00 MILLS FOR THE GENERAL FUND OF THE CITY, TO EXPIRE AT CLOSE OF FISCAL YEAR 1991.**

(Charter Ordinance No. 16 failed by 6-3-86 mail ballot vote.)

[Date Passed: 03-24-86]

## CHARTER ORDINANCE NO. 17

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM SECTION 79-5011 KANSAS STATUTES ANNOTATED AND ANY AMENDMENTS THERETO AND AUTHORIZING THE LEVYING OF A MAXIMUM OF 10.00 MILLS TO CREATE A SPECIAL FUND FOR THE PURPOSE OF PAYING FOR STREET RECONSTRUCTION COSTS, TO EXPIRE AT CLOSE OF FISCAL YEAR 1991.**

(Charter Ordinance No. 17 failed by 6-3-86 mail ballot vote.)

[Date Passed: 03-24-86]

## CHARTER ORDINANCE NO. 18

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-4112, ENTITLED "COSTS"; AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT, RELATING TO THE CODE OF PROCEDURE FOR MUNICIPAL COURTS.**

**Section 1.** **EXEMPTIONS.** The City of Leawood, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to make inapplicable to it and exempts itself from K.S.A. 12-4112 relating to the assessment of court costs in Municipal Court, which applies to said City but not uniformly to all cities, and provides substitute and additional provisions on this same subject as hereinafter provided.

**Section 2.** **COSTS**. No person shall be assessed costs for the administration of justice in any municipal court case, except for cases docketed for court appearance. In such cases where the accused person is found guilty, the court costs shall be assessed against the accused person.

Costs shall be in the amount established by the Governing Body by enactment of an ordinary ordinance.

[Date Passed: 10-06-87]
[Effective Date: 12-16-87]

## CHARTER ORDINANCE NO. 19

(Repealed; C.O. No. 29)

[Date Passed: 03-07-88]
[Effective Date: 05-18-88]

## CHARTER ORDINANCE NO. 20

**CHARTER ORDINANCE AUTHORIZING A LIMITED INCREASE IN THE AGGREGATE LEVY LIMIT OF THE CITY OF LEAWOOD FOR THE PURPOSE OF FUNDING THE OPERATION OF A JOINT PARKS AND RECREATION SYSTEM, EXEMPTING THE CITY FROM THE PROVISIONS OF K.S.A. 79-5021 THROUGH 79-5033 AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT.**

**Section 1.** **CITY EXEMPT FROM THE PROVISIONS OF K.S.A. 79-5021 THROUGH 79-5033**. Pursuant to the provisions of Section 79-5036(a) of the Kansas Statutes Annotated, the City of Leawood hereby elects to exempt said City from and to make inapplicable to said City the provisions of K.S.A. 79-5021 through 79-5033 and any amendments thereto, and to provide substitute and additional provisions as hereinafter set forth in this Charter Ordinance.

**Section 2.** **AGGREGATE LEVY LIMIT INCREASED**. The Governing Body of the City of Leawood is hereby authorized and empowered, in order to fund the operations of

the combined Parks and Recreation Department, to increase its aggregate levy limit as established by K.S.A. 79-5021 through 79-5033 inclusive as amended and to levy in any year an amount in excess of said aggregate levy limit.

**Section 3.** **ADDITIONAL LEVY AMOUNT LIMITED**. The aggregate levy limit of the City of Leawood shall, in each year following the enactment of this Charter Ordinance, be the aggregate levy limit established by the provisions of K.S.A. 79-5021 through 79-5033 inclusive, with the exception that the City is hereby authorized to exceed said statutorily established aggregate levy limit by an additional levy which additional levy shall not exceed the amount which could be levied in any one year by the Leawood Recreation Commission if it had continued to function independently and had not been combined with the Parks Department in the manner authorized by K.S.A. 12-1929.

**Section 4.** **USE OF FUNDS FROM ADDITIONAL LEVY LIMITED**. The use of any funds, levied in excess of the statutorily prescribed aggregate levy limit and under the authority of this Charter Ordinance, shall be limited to the operation of the Parks and Recreation Department.

[Date Passed: 01-07-91]
[Effective Date: 04-02-91]

## CHARTER ORDINANCE NO. 21

(Repealed; C.O. No. 22)

[Date Passed: 02-05-96]
[Effective Date: 05-12-96]

## CHARTER ORDINANCE NO. 22

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. SECTIONS 13-304 AND 25-2107, REPEALING CHARTER ORDINANCES NOS. 6, 13, AND 21 OF THE CITY OF LEAWOOD, KANSAS, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECTS, CONCERNING ELECTIONS, DATES OF CITY ELECTIONS, TERMS OF OFFICE, OFFICERS ELECTED AND MATTERS RELATED THERETO.**

(Repealed; C.O. No. 41)

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 23

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. SECTIONS 13-101, 13-304, 13-305, 13-513, 13-1411 AND 13-1424 REPEALING CHARTER ORDINANCE NO. 12 OF THE CITY OF LEAWOOD, KANSAS, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECTS, CONCERNING OFFICERS DURING THE TRANSITION TO A CITY OF THE FIRST CLASS,**

**PRESIDENT OF THE COUNCIL, OFFICER QUALIFICATIONS, FILLING OF ELECTED OFFICER VACANCIES AND MATTERS RELATED THERETO.**

(Repealed; C.O. No. 42)

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 24

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-506, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECT CONCERNING SIGNING AND APPROVAL OF CITY CONTRACTS.**

**Section 1.** The City of Leawood, Kansas, a Kansas municipal corporation, by the power vested in it by Article XII, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 13-506, and any amendments thereto, which applies to the city, but is part of an enactment which does not apply uniformly to all cities, and provide substitute and additional provisions therefor as hereinafter provided.

**Section 2.** **SIGNING AND APPROVAL OF CONTRACTS.** The mayor shall sign all contracts, except the city administrator shall have the power to sign contracts to a dollar limit set by ordinance.

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 25

(Repealed; C.O. No. 30)

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 26

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-701 TO 13-790, AND 13-14a01 TO 13-14a14, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS CONCERNING THE HIRING PRACTICES AND RETIREMENT SYSTEM FOR CITY FIREFIGHTERS AND POLICE OFFICERS.**

**Section 1.** The City of Leawood, Kansas, a Kansas municipal corporation, by the power vested in it by Article XII, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 13-701 to 13-790, and 13-14a01 to 13-14a14, and any amendments thereto, which applies to the City, but is part of an enactment which does not apply uniformly to all cities, and provide substitute and additional provisions therefor as hereinafter provided.

**Section 2.** Fire department personnel shall be employees of the city and subject to the same rules and regulations as all other city employees as well as such other regulations and conditions as the fire chief may promulgate.

**Section 3.** The City shall operate under the KPF retirement program and abide by such requirements as established by K.S.A. 74-4951 and related statutes with amendments thereto.

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 27

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS FROM THE PROVISIONS OF K.S.A. 12-681, 12-682, AND 13-1038, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECTS, CONCERNING IMPROVEMENT OF CERTAIN STREETS AND ALLEYS.**

**Section 1.** The City of Leawood, a Kansas municipal corporation, by the power vested in it by Article XII, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 12-681, 12-682, and 13-1038, and any amendments thereto, which applies to the City, but is part of an enactment which does not apply uniformly to all cites, and provide substitute and additional provisions therefor as hereinafter provided.

**Section 2.** The Governing Body is authorized and empowered to recurb, regutter, resurface or repave, including necessary drainage facilities, any street or alley or any portion thereof when said street or alley has by reason of public travel thereon or by reason of the elements become in need of surface restoration or other construction and improvement, and the governing body shall have the power to determine such need, and when the governing body determines that the making of such improvement is deemed expedient it may by resolution so declare the necessity therefore and cause said improvement to be made regardless of protest or remonstrance, as herein provided. All proceedings relating to such improvements and to the assessment of benefits for the payment of the costs thereof and for the issuance of bonds shall be the same as provided by law in case of pavement regardless of protest in the first instance, except as otherwise herein provided.

The cost of said recurbing, reguttering, resurfacing or repaving, shall be borne by the city at large, and the governing body of said city is hereby empowered to issue general improvement bonds for the purpose of raising funds for making such improvements in an amount not exceeding the total cost of said improvement.

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 28

(Repealed; C.O. No. 32)

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 29

**CHARTER ORDINANCE REPEALING CHARTER ORDINANCES 4, 7, 9, 10, AND 19 OF THE CITY OF LEAWOOD, KANSAS.**

**Section 1.** **REPEAL.** Charter Ordinance Nos. 4 (adopted June 3, 1968, 7 (adopted June 1, 1970), 9 (adopted July 6, 1970), 10 (adopted October 1, 1973), and 19 (adopted March 7, 1988) of the City of Leawood, Kansas, are hereby repealed.

[Date Passed: 11-02-98]
[Effective Date: 01-10-99]

## CHARTER ORDINANCE NO. 30

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-516 AND 13-527, AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECTS, CONCERNING APPOINTIVE OFFICERS' AND EMPLOYEES' TERMS AND SALARIES AND REPEALING EXISTING CHARTER ORDINANCE NO. 25 DEALING WITH THE SAME SUBJECT MATTER.**

**Section 1.** The City of Leawood, Kansas, a Kansas municipal corporation, by the power vested in it by Article XII, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 13-516 and 13-527, and any amendments thereto, which apply to the City, but are part of an enactment which does not apply uniformly to all cities, and provide substitute and additional provisions therefore as hereinafter provided.

**Section 2.** With the consent of the governing body, the City Administrator shall appoint all officers whose position has been established by ordinance including but not limited to: City Clerk, Police Chief, Fire Chief, Public Works Director, Planning/Development Director, City Treasurer, Director of Parks and Recreation and City Attorney. Any appointment recommended by the City Administrator shall become effective upon approval by a majority vote of the governing body. The City Administrator shall have the power to appoint and remove all subordinate employees of the City subject to the personnel system regulations. The Mayor, shall, by and with the consent of the City Council, appoint (a) Municipal Judge(s). The City Clerk shall enter every appointment to office and the date thereof on the journal of proceedings. The terms of office, salary, and employment contracts of the appointed city officers and all subordinate employees shall be determined by and through the City's administration policy

and procedures.

[Date Passed: 04-05-99]
[Effective Date: 06-13-99]

## CHARTER ORDINANCE NO. 31

(Repealed; C.O. No. 38)

[Date Passed: 11-15-99]
[Effective Date: 01-23-00]

## CHARTER ORDINANCE NO. 32

(Repealed; C.O. No. 39)

[Date Passed: 02-07-00]
[Effective Date: 04-16-00]

## CHARTER ORDINANCE NO. 33

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM SECTION 13-1024a OF THE KANSAS STATUTES ANNOTATED AND PROVIDING SUBSTITUTE PROVISIONS ON THE SAME SUBJECT.**

**Section 1.** The City of Leawood, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and exempts itself from and makes inapplicable to it Section 13-1024a of the Kansas Statutes Annotated, said section applying only to cities of the first class, and provides substitute and additional provisions as hereafter set forth.

**Section 2.** General Improvements and Land Therefor; Borrowing Money and Bond Issues; When Election Required.

For the purpose of paying for any bridge, viaduct, public building, including the land necessary therefor, for lands for public parks and developing the same, within or without the city, for the establishment and construction of crematories, desiccating or reduction works, including the land necessary therefor, within or without the city, or for the improvement, repair or extension of any waterworks, sewage disposal plant, electric light plant, crematory desiccating or reduction works or other public utility plant owned by the city, and for the purpose of rebuilding, adding to or extending to the same from time to time, as the necessities of the city may require, the city may borrow money and issue its bonds for the same purposes.

[Date Passed: 02-07-00]
[Effective Date: 04-16-00]

## CHARTER ORDINANCE NO. 34

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM SECTION 13-518 OF THE KANSAS STATUTES ANNOTATED, PERTAINING TO THE DUTIES OF THE CITY CLERK, AND PROVIDING SUBSTITUTE PROVISIONS ON THE SAME SUBJECT.**

**Section 1.** The City of Leawood, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and exempts itself from and makes inapplicable to it Section 13-518 of the Kansas Statutes Annotated, said section applying only to cities of the first class, and provides substitute and additional provisions as hereafter set forth.

**Section 2.** General duties of clerk; records and accounts; deputies, salaries.

The city clerk shall attend all meetings of the city council, keep a true record of its proceedings, and also keep a record of all official acts of the clerk, and, when necessary, shall attest them. The city clerk shall also keep and preserve them. He or she shall also keep and preserve in the city clerk's office the corporate seal of the city, all records, public papers and documents of the city not belonging to any other office. The city clerk shall be authorized to administer oaths; and the copies of all papers filed in his or her office, and transcripts from the records of the proceedings of the council, including ordinances, duly certified by the city clerk under the corporate seal of the city, shall be taken as evidence in all courts of this state without further proof. The city clerk shall perform such other duties as may be prescribed by ordinance or otherwise delegated by the City Administrator or Governing Body.

The City Administrator may appoint one deputy city clerk. If such deputy clerk is appointed, then the deputy shall act officially on behalf of the City Clerk in his/her absence from his/her office due to illness, vacation, or out-of-town city business. Under such circumstances, the deputy city clerk shall have the powers and duties of the City Clerk as set forth in the statute and in the Code of the City of Leawood.

[Date Passed: 06-05-00]
[Effective Date: 08-13-00]

## CHARTER ORDINANCE NO. 35

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM K.S.A. § 41-719, REGARDING THE POSSESSION AND CONSUMPTION OF ALCOHOLIC LIQUOR IN CERTAIN PUBLIC PLACES LOCATED WITHIN THE CITY OF LEAWOOD, JOHNSON COUNTY, KANSAS**

**Section 1.** The City of Leawood, Kansas, by the power vested in it by Article 12, Section V, of the Constitution of the State of Kansas, hereby exempts itself from and makes inapplicable K.S.A. § 41-719, said section containing provisions not uniformly applicable to all cities.

[Date Passed: 05-19-03]
[Effective Date: 07-28-03]

## CHARTER ORDINANCE NO. 36

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM K.S.A. § 41-712, PROPHIBITING ALCOHOLIC LIQUOR SALES ON SUNDAY AND CERTAIN HOLDAYS**

**Section 1.** The City of Leawood, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas and as provided by K.S.A. § Supp. 79-5036(a), hereby elects to and does exempt itself and make inapplicable to it K.S.A. § 41-712, which applies to this City but is part of an enactment commonly known as the Kansas Liquor Control Act, as enacted in Chapter 242 of the Session Laws of 1949, which enactment applies to this City but does not apply uniformly to all cities.

[Date Passed: 06-16-03]
[Effective Date: 09-01-03]

## CHARTER ORDINANCE NO. 37

**CHARTER ORDINANCE LEVYING AND IMPOSING TAXES UPON AND FOR THE PRIVILEGE OF ENGAGING IN ANY BUSINESS, TRADE, OCCUPATION OR PROFESSION OR RENDERING OR FURNISHING ANY SERVICE FOR PROFIT OR LIVELIHOOD IN TH CITY, TO PROVIDE REVENUE TO DEFRAY A PART OF THE EXPENSES OF SAID CITY; DEFINING TERMS USED IN THE CHARTER ORDINANCES; PRESCRIBING LICENSING AND ADMINISTRATIVE PROCEDURES AND PENALTIES PURSUANT TO K.S.A. § 12-137**

**Section 1.** The City of Leawood, Kansas, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas and as provided by K.S.A. § 12-137, The City of Leawood, Kansas, hereby elects to levy for revenue purposes any tax, excise, fee, charge or other exaction, all pursuant to K.S.A. § 12-137.

[Date Passed: 02-02-04]
[Effective Date: 04-18-04]

## CHARTER ORDINANCE NO. 38

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-1696, 12-1697(a), 12-1698(e) AND 12-16,101 WHICH RELATE TO THE LEVY OF A TRANSIENT GUEST TAX, TO THE MAXIMUM RATE THEREOF, AND TO THE PURPOSES FOR WHICH TRANSIENT GUEST TAX REVENUES MAY BE SPENT; PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECTS RELATING TO THE LEVYING OF A TRANSIENT GUEST TAX; AND REPEALING CHARTER ORDINANCE NO. 31.**

**Section 1.** The City of Leawood, Kansas, a Kansas municipal corporation, by the power vested in it by Article XII, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 12-1696, 12-1697(a), 12-1698(e) and 12-16,101, and any amendments thereto, which

apply to the City, but are part of an enactment which does not apply uniformly to all cities, and provide substitute and additional provisions therefore as hereinafter provided.

**Section 2.** As used in this ordinance, the following words and phrases have the meaning respectively ascribed to them herein:

(a) Person means an individual, firm, partnership, corporation, joint venture or other association of persons;

(b) Hotel, Motel, or Tourist Court means any structure or building which contains rooms furnished for the purposes of providing lodging, which may or may not also provide meals, entertainment or various other personal services to transient guests, and which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are sought for pay or compensation by transient or permanent guests and having more than two bedrooms furnished for the accommodation of such guests;

(c) Transient Guest means a person who occupies a room in a hotel, motel or tourist court for not more than 28 consecutive days;

(d) Business means any person engaged in the business of renting, leasing or letting living quarters, sleeping accommodations, rooms or a part thereof in connection with any motel, hotel or tourist court;

(e) Economic Development Promotion means (1) activities and expenditures, including capital expenditures, to attract the location or relocation of business into the community; (2) activities designed to encourage retention and expansion of existing businesses in the community; and (3) convention and tourism promotion activities designed to attract visitors into the community through marketing efforts, including advertising, directed to a least one of the five basic convention and tourist market segments consisting of group tours, pleasure travelers, association meetings and conventions, trade shows and corporate meetings and travel and support of those activities and organizations which encourage increased lodging facility occupancy.

**Section 3.** That a transient guest tax shall be levied in the City of Leawood, Kansas, at a rate not to exceed 9.0% upon the gross rental receipts derived from or paid by transient guests for lodging or sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel or motel. The percentage and effective date of such tax shall be determined by the Governing Body and shall be specified in an ordinance authorizing same.

**Section 4.** The revenues from said tax shall be expended to promote economic development, conventions and tourism and related expenditures and such other purposes as may be determined by the Governing Body by resolution, including but not limited to the following uses:

(a) The Governing Body may contract with an agency, organization or group

of firms to promote economic development, conventions and tourism for the City.

(b) Revenues may be utilized for the operation, maintenance, expansion and development of City facilities connected with economic development, conventions and tourism.

(c) Revenues may be utilized for the purpose of paying all or a part of the cost of designing, acquiring, constructing, reconstructing, improving, equipping, furnishing, repairing, enlarging, remodeling, operating and maintaining capital projects relating to economic development, conventions and tourism, including but not limited to real estate, buildings, improvements, parking facilities, furnishings, machinery and equipment for facilities which promote economic development, conventions and tourism.

(d) Revenues may be utilized for the purpose of paying the principal and interest on sales tax revenue bonds, transient guest tax revenue bonds or other bonds issued by the City, the proceeds of which are used to design, acquire, construct, reconstruct, improve, equip, furnish, repair, enlarge and remodel such capital projects as are described in subsection (c) of this section.

(e) Revenues may be utilized to make payments for principal or interest for bonds issued to construct parking facilities, convention or community centers, parks, or recreational facilities that may be used in connection with economic development, conventions and tourism.

(f) Revenues may be utilized to defray the cost of providing municipal services to economic development, convention and tourism functions, such as but not limited to Police, Fire, Public Works, or Parks and Recreation Departments.

(g) Funds may also be utilized for the creation of innovative projects and activities that relate to the promotion of economic development, conventions and tourism.

(h) Revenue may be utilized to promote the general economic welfare of the City, including the attraction of industry.

(i) Revenue may be utilized for such general purposes of the City as the Governing Body shall determine by resolution to be necessary.

[Date Passed: 11-05-07]
[Effective Date: 01-20-08]

## CHARTER ORDINANCE NO. 39

**CHARTER ORDINANCE AMENDING CHARTER ORDINANCE NO 32, EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. 12-1017 WHICH RELATES TO COMPETITIVE BIDS AND BIDDING AND PROVIDING AMENDED AND SUBSTITUTED PROVISIONS ON THE SAME SUBJECT AND REPEALING ANY PROVISIONS IN CONFLICT HEREWITH.**

**Section 1.** The City of Leawood, by the power vested in it by Article 12, Section 5 of the

Constitution of the State of Kansas, hereby elects to and exempts itself from and makes inapplicable to it Section 13-1017 of the Kansas Statutes Annotated, said section applying only to cities of the first class, and provides substitute and additional provisions as hereafter set forth.

**Section 2.** *Estimate of Cost of Improvements; Contracts; Bids; Bond Issue, When*.

(a) Before the City of Leawood undertakes the construction or reconstruction of any public improvement, including but not limited to sidewalks, curbs, gutters, bridges, pavement, sewers, streets, highways, public grounds, public buildings, or public facilities, a detailed estimate of the cost of the improvements shall be made under oath by the city engineer, department head or other competent person appointed for such purposes by the Governing Body, and the estimate shall be submitted to the Governing Body for its action thereon.

(b) Subject to subsection (c), in all cases where the estimated cost of the contemplated public improvement amounts to more than $25,000, sealed proposals for the improvement shall be invited by advertisement, published by the city clerk once in the official city paper and the governing body shall let all such work by contract to the lowest responsible bidder, if there is any whose bid does not exceed the estimate.

(c) In no event shall sealed proposals and competitive bids be required when the public improvement project is to be completed by a contractor under the terms of an existing approved contract provided that such contract has been competitively bid and executed within the previous 12 months.

(d) Notwithstanding the foregoing, the Governing Body reserves the right to refuse all or any part of any bid when it is felt that such action is in the best interest of the City.

(e) If no qualified responsible person shall propose to enter into the contract at a price not exceeding the estimated cost, all bids shall be rejected and the same proceedings as before repeated. In the alternative, if all bids exceed the estimated cost, the Governing Body may accept the bid and let the work by contract to the lowest and best responsible bidder or may otherwise purchase the required tools and employ the necessary labor to complete the work. In no case shall the City be liable for anything beyond the original contract price for doing the work or making the improvement.

(f) Before any type of public improvement is commenced, the money to pay for the same must be available in the city treasury as provided by law or provision may be made for the issuance of internal improvement bonds to pay for any such improvement as provided by law.

(g) The bidding process set forth herein may be waived by an affirmative vote of a majority of the Governing Body, if the best interest of the City would be served thereby.

(h) The bidding process required hereunder is not required for any repair or maintenance work not amounting to substantial alteration, addition or change in any structure, street or facility. Further such process is not required for the making of repairs or the maintenance of any building,

street, sidewalk or other public facility in Leawood by Leawood's employees or for the making of any expenditure from the city budget for such purposes.

**Section 3.** Any sections of the Code of the City of Leawood, 2000 and amendments thereto or any sections of Charter Ordinances in conflict herewith are hereby repealed.

[Date Passed: 11-07-11]
[Effective Date: 01-23-12]

## CHARTER ORDINANCE NO. 40

**CHARTER ORDINANCE AMENDING CHARTER ORDINANCE NO. 27, EXEMPTING THE CITY OF LEAWOOD, KANSAS FROM THE PROVISIONS OF K.S.A. 12-681, 12-682, AND 13-1038, CONCERNING IMPROVEMENT OF CERTAIN STREETS AND ALLEYS AND PROVIDING SUBSTITUTE AND ADDITIONAL PROVISIONS ON THE SAME SUBJECTS AND REPEALING ANY PROVISIONS IN CONFLICT HEREWITH.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAWOOD, KANSAS THAT CHARTER ORDINANCE NO. 27 IS HEREBY AMENDED AND RESTATED TO READ AS FOLLOWS:

**Section 1.** The City of Leawood, a Kansas municipal corporation, by the power vested in it by Article XII, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt itself from and make inapplicable to it K.S.A. 12-681, 12-682, and 13-1038, and any amendments thereto, which applies to the City, but is part of an enactment which does not apply uniformly to all cities, and provide substitute and additional provisions therefor as hereinafter provided.

**Section 2.** Governing Body is authorized and empowered to recurb, regutter, resurface or repave, including necessary drainage facilities, any street or alley or any portion thereof when said street or alley has by reason of public travel thereon or by reason of the elements become in need of surface restoration or other construction and improvement, and the Governing Body shall have the power to determine such need, and when the Governing Body determines that the making of such improvement is deemed expedient it may by resolution so declare the necessity therefor and cause said improvement to be made without necessity of an election on the issue and regardless of protest or remonstrance. All proceedings relating to such improvements and to any assessment of benefits for the payment of the costs thereof, if any, and for the issuance of bonds shall be the same as provided by law in case of pavement regardless of protest in the first instance, except as otherwise herein provided; provided, however, the determination of whether assessments shall be made against properties benefited by such improvements shall be in the sole discretion of the Governing Body.

The cost of said recurbing, reguttering, resurfacing or repaving, shall be borne by the city at large, and the Governing Body of said City is hereby empowered to issue general obligation improvement bonds for the purpose of providing funds for making such improvements in an amount not exceeding the total cost of said improvement, including costs associated with the issuance of such bonds and interest incurred during the period of construction of such improvements.

**Section 3.** Any sections of the Code of the City of Leawood, 2000 and amendments thereto or any sections of Charter Ordinance 27 or other Charter Ordinances in conflict herewith are hereby repealed.

[Date Passed: 06-18-12]
[Effective Date: 09-02-12]

## CHARTER ORDINANCE NO. 41

**CHARTER ORDINANCE REPEALING CHARTER ORDINANCE NO 22, RELATING TO ELECTIONS, DATES OF CITY ELECTIONS, TERMS OF OFFICE, AND MATTERS RELATED THERETO AND REPEALING ANY PROVISIONS IN CONFLICT HEREWITH.**

**Section 1.** That Charter Ordinance No. 22 is hereby repealed.
**Section 2.** That any sections of Charter Ordinances or other ordinances in conflict herewith are hereby repealed.

[Date Passed: 10-05-15]
[Effective Date: 12-20-15]

## CHARTER ORDINANCE NO. 42

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS, FROM THE PROVISIONS OF K.S.A. 13-513 WHICH RELATES TO VACANCIES IN THE OFFICE OF MAYOR OR COUNCILMAN AND REPEALING CHARTER ORDINANCE NO. 23 AND ANY PROVISIONS IN CONFLICT HEREWITH.**

**SECTION 1.** The City of Leawood, by the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to and exempts itself from and makes inapplicable to it Section 13-513 of the Kansas Statutes Annotated, said section applying only to cities of the first class, and provides substitute and additional provisions as hereafter set forth.
**SECTION 2.** Substitute and additional provisions on the subjects addressed by K.S.A. 13-513, as amended, are and will be contained in an ordinary ordinance.
**SECTION 3.** Charter Ordinance No. 23 and sections of City of Leawood Charter Ordinances or other City ordinances, in conflict herewith are hereby repealed.

[Date Passed: 10-05-15]
[Effective Date: 12-20-15]

## CHARTER ORDINANCE NO. 43

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS FROM THE PROVISIONS OF K.S.A. § 12-104a, RELATING TO THE FILLING OF GOVERNING BODY VACANCIES.**

**SECTION 1.** The City of Leawood, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects and does exempt itself and make inapplicable to it K.S.A. § 12-104a, relating to the filling of governing body vacancies, which enactment does not apply uniformly to all cities.

**SECTION 2.** Substitute and additional provisions on the subjects addressed by K.S.A. 12-104a, as amended, are and will be contained in an ordinary ordinance.

[Date Passed: 04-18-16]
[Effective Date: 07-03-16]

## CHARTER ORDINANCE NO. 44

**CHARTER ORDINANCE EXEMPTING THE CITY OF LEAWOOD, KANSAS FROM THE PROVISIONS OF K.S.A. § 12-4108, 12-4205a, 12-4207, and 1204215 RELATING TO THE CODE OF PROCEDURE FOR MUNICIPAL COURTS, AND REPEALING CHARTER ORDINANCE NO. 15**

**Section 1.** The City of Leawood, by virtue of the power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects and does exempt itself and make inapplicable to it K.S.A. 12-4108, 12-4205a, 12-4207, and 12-4215 relating to the code of procedure for municipal courts, which enactment does not apply uniformly to all cities.

**Section 2.** Substitute and additional provisions on the subjects addressed by K.S.A. 12-4108, 12-4205a, 12-4207, and 12-4215, as amended, will be contained in an ordinary ordinance.

**Section 3.** Charter Ordinance No. 15 is hereby repealed.

[Date Passed: 09-19-16]
[Effective Date: 12-05-16]

# APPENDIX B. FRANCHISES

## ARTICLE 1. EVERGY COMPANY (F/K/A KANSAS CITY POWER & LIGHT COMPANY)

SECTION I. DEFINITIONS.

For the purpose of this Ordinance, the following words and phrases shall have the meaning given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Section shall be given their common and ordinary meaning.

"City" means the City of Leawood, Johnson County, Kansas, and includes the territory as currently is or may in the future be included within the boundaries of the City of Leawood.

"Company" means the Evergy Company, and its successors and assigns.

"Facilities" means all facilities reasonably necessary to provide electricity into, within and through the City and includes but is not limited to plants, works, systems, lines, wires, poles, cables, conduits, anchors, equipment, pipes, mains, underground infrastructure, and meters.

"Governing Body" means the governing body of the City of Leawood.

"Kansas Corporation Commission" and/or "KCC" refer to and is the State Corporation Commission of the State of Kansas or other authority succeeding to the regulatory powers of the KCC.

"Public Right-of-Way" means only the area of real property in which the City has a dedicated or acquired Right-of-Way interest in the real property as they now exist or may hereafter be opened, widened, extended, laid out and established. 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 for purposes of this Agreement includes public utility easements granted or dedicated to the City. 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, easements obtained by or granted to utilities, private easements in platted subdivisions or tracts or the private easements of the Company that predate the dedication of the Public Right of Way.

"Gross Receipts" means those amounts of money which the Company receives from its customers within the City for the sale of electricity under rates, temporary or permanent, authorized by the KCC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Gross Receipts shall not include: (1) the electrical energy sold to the United States or the State of Kansas, or to any agency or political subdivision thereof, (2) the electrical energy sold for other use which cannot be classified as domestic, commercial or industrial such as electrical energy used by public utilities, telephone, telegraph and radio communication companies, railroads, pipe line companies, educational institutions not operating for profit, churches and charitable institutions, (3) the electrical energy sold for resale, and (4) the amount paid to the City pursuant to this Agreement.

SECTION II. USE OF THE RIGHT-OF-WAY.

In consideration of the benefits to be derived by the City and the inhabitants thereof from the construction, operation and maintenance of an electric light and power system and the supplying of electric energy to the public, there is hereby granted to the Company and to its successors and assigns, pursuant to the term set out below, a franchise and non-exclusive authority to construct, operate and maintain within the Public Right of Way of the existing and any future extended corporate limits of the City for which the Company now or shall hereafter hold a Certificate of Convenience and Authority from the State Corporation Commission of the State of Kansas all appropriate facilities and plants for carrying on a power and light business and all other operations connected therewith or incident thereto for the purpose of supplying within the City and outlying areas electric or other energy in such forms as may be reasonably required for domestic, commercial, industrial, municipal and other purposes and to produce and supply such energy by manufacture, generation, purchase or otherwise, and to transmit and distribute same by means of underground or overhead facilities or otherwise, and for any or all of said purposes it is authorized to (i) construct, install, replace and remove conduits, poles, lamp posts, guys, anchors, wires, cables, street lights and all other related facilities in, on, under, along, across and over Public Right-of-Way and any future Public Right-of-Way,, (ii) construct, erect, maintain and remove all structures, machinery and attachments of any and every kind for any and all said purposes, (iii) enter upon Public Right-of-Way within the corporate limits of the City as it now exists or may hereafter be opened, widened, extended, laid out and established, including any other territory hereafter added thereto or coming under the City's jurisdiction, and (iv) to trim trees upon and overhanging such places and make such excavations thereon as may be appropriate for the construction, operation, maintenance, repair, renewal and removal of the Company's overhead and underground facilities and plants.

Provided, that all such use of the Public Right-of-Way is subject to all lawful right-of-way management and other rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in its exercise of its police power. Notwithstanding the above grant of authority, the Company shall not locate, construct or erect any Facilities used in the production, distribution, manufacture or generation of electricity, or any storage buildings, sheds or other storage facilities that are inconsistent with or otherwise not permitted by City Ordinance, especially the City's Right-of-Way Ordinance at Chapter 13, Article 3 of the Code of the City of Leawood, 2000, and including the Leawood Development Ordinance.

This Franchise Ordinance shall not convey title, equitable or legal, in the Public Right-of-Way, and gives only the right to occupy Public Right-of-Way for the purposes and for the period stated in this Franchise Ordinance and subject to the requirements herein. This Franchise Ordinance shall not grant the right to use property, other than Public Right-of-Way, or physical facilities owned or controlled by the City or a third-party, without the separate consent of such party, nor shall this Franchise Ordinance excuse Company from obtaining separate appropriate access or attachment agreements before locating its facilities on property other than Public Right-of-Way or facilities owned or controlled by the City or a third party. Nothing in this ordinance shall supersede any state law or regulation or tariff promulgated, adopted or approved by the Kansas Corporation Commission.

SECTION III. TERM AND TERMINATION OF FRANCHISE.

The term of this Franchise Ordinance shall be for an initial period of ten (10) years from the date of its final passage and approval; provided, this Franchise Ordinance and all rights and privileges herein provided shall be extended for two (2) successive periods of five (5) years unless either party terminates this Franchise Ordinance (a) as provided in this Section, (b) as set forth in Section V for failure to pay the franchise fee, or (c) as set forth in Section IX for changes in law.

At any time after a period of ten (10) years from the date of its final passage and approval, either party may terminate this Franchise Ordinance by providing written notice, one year prior to any such termination date, to the other party.

In case of failure on the part of Company to comply with any of the provisions of this Franchise Ordinance, or if Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, the City shall serve a written notice upon Company, setting forth in detail the neglect or failure complained of, and Company shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance. If at the end of such sixty (60) day period the City reasonably determines that the conditions have not been complied with, the City may take action to revoke and terminate this Franchise Ordinance by an affirmative vote of the Governing Body present at the meeting and voting, setting out the grounds upon which this Franchise Ordinance is to be revoked and terminated; provided, to afford Company due process, Company shall first be provided reasonable notice of the date, time and location of the Governing Body's consideration, and shall have the right to address the Governing Body regarding such matter; and further provided, if the nature of the default is such that it cannot be reasonably cured within the above said sixty (60) day period, and the Governing Body believes the Company has in good faith timely commenced its cure and is diligently pursuing the completion of the same, Company shall be given a reasonable additional period of time to complete its cure. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law or under this Agreement. Upon any determination by the Governing Body to revoke and terminate this Franchise Ordinance, Company shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Company has instituted such an appeal. If Company does timely institute such an appeal, such revocation and termination shall remain pending and subject to the Court's final judgment. Provided, however, that the failure of Company to comply with any of the provisions of this Franchise Ordinance or the doing or causing to be done by Company of anything prohibited by or in violation of the terms of this Franchise Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of Company is due to any cause or delay beyond the control of Company or to bona fide legal proceedings.

SECTION IV. DUTIES OF THE COMPANY.

The Company shall at all times during the term of this franchise supply to consumers of electric energy, residing in those portions of the City duly certificated to the Company by the State Corporation Commission of the State of Kansas, such electric energy as they may require, and shall extend and construct its lines and services in accordance with legal requirements, and rules and regulations as filed from time to time with the State Corporation Commission of the State of Kansas. The City shall cooperate with the Company to provide a map of the City's corporate limits (the "Map"). The Map shall be of sufficient detail to assist Company in determining whether their customers reside within the City's corporate limits. The Map shall serve as a basis for determining Company's obligation hereunder to collect and pay the franchise fee from customers; provided, however, that if the City's corporate limits are changed by annexation or otherwise, it shall be the Municipality's responsibility to (a) update the Map so that such changes are included therein, and (b) provide the updated Map to the Company. Company's obligation to collect and pay the fee from customers within an annexed area shall not commence until such time after Company's receipt from the City of actual notice of the annexation along with an updated Map including such annexed area as is reasonably necessary for such Company to identify the customers in the annexed area obligated to pay the fee. Nothing contained herein shall be construed as a guarantee upon the part of the Company to furnish uninterrupted service, and interruptions due to Acts of God, fire, strikes, civil or military authority, orders of the court and other causes reasonably beyond the

control of the Company are specifically exempted from the terms of this Section.

Company shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City. Company shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Franchise Ordinance does not provide Company the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Company agrees that this Contact Franchise Ordinance does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

SECTION V. CONSTRUCTION AND RELOCATION.

All poles and wires shall be erected in accordance with the rules and regulations of the State Corporation Commission of the State of Kansas as set out in Docket No. 1944 and any amendments thereto. All poles carrying said wires shall be placed in such manner as to interfere with and obstruct as little as reasonably possible, the ordinary use of the streets, alleys, sidewalks, bike paths, lanes and highways of said City, and shall not unreasonably interfere with any gas main, water main, storm sewer, sanitary sewer or other lawful uses now or hereafter lawfully laid out or constructed in or under the Public Right-of-Way of said City; provided, however, that nothing contained herein shall be construed as requiring Company to move its Facilities to accommodate future uses by other entities except to the extent otherwise expressly required in this Franchise or by law.

Any pavements, sidewalks or curbing taken up or any and all excavations made shall be done under the supervision and directions of the City under all necessary permits issued for the work, and shall be made and done in such manner as to give the least reasonable inconvenience to the inhabitants of the City and the public generally, and pavements, sidewalks, curbing and excavations shall be replaced and repaired in as good condition as before upon completion work done by the Company, by and at the expense of the Company.

If Company fails to make the repairs required by the City, the City may effect those repairs and charge Company 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 Company for violation of this Section and may recover its damages, including reasonable attorney fees, to the extent Company is found liable by a court of competent jurisdiction.

Company, its contractors and agents working in the Public Right-of-Way, shall comply with all provisions of the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., including but not limited to the Kansas One Call utility location program.

As a condition of this Franchise Ordinance, Company is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City or the Kansas Corporation Commission (KCC). Company shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public Right-of-Way). In the event that this ordinance or any other city ordinance or home rule powers shall conflict with federal or state law, regulation, rule or tariff, such laws, regulations, rules and tariffs shall control over any city ordinance or home rule powers.

All Facilities of Company shall be installed and maintained in accordance with all applicable federal, State and local laws, rules, and regulations, including, but not limited to, the City's applicable permit

applications and construction requirements for attachments to City facilities, if applicable, the City's adopted building and electrical codes, and the Code of the City of Leawood, 2000, City ordinances and regulations, including, but not limited to those relating to the construction and use of the Public Right-of-Way or other public property or private property, (collectively, the "Codes"). Company shall, at its own expense, make and maintain its Facilities in safe condition and good repair, in accordance with all Codes and Company shall replace, remove, reinforce or repair any defective Facilities.

The Company shall, at all times, in the construction, maintenance, and operation of its electric transmission, distribution and street lighting system, use all reasonable and proper precaution to avoid damage or injury to persons or property, and shall fully indemnify and hold harmless said City from any and all damage, injury and expense, including reasonable attorneys' fees and expenses, caused by the sole negligence of the Company, its successors and assigns.

When the City reasonably believes there is an Emergency as defined below, written notice to Company is not required and the parties shall proceed in accordance with the emergency notice requirements set forth in Section XI. If Company fails to respond, the City may perform such work and/or take such action as is necessary to alleviate the immediate threat. As soon as practicable thereafter, the City will advise Company of the work performed or the action taken. Company shall be responsible for all actual and reasonable costs incurred by the City in taking action pursuant to this Paragraph, and shall indemnify the City from liability for all such work except to the extent of the City's negligence or willful misconduct in connection with such liability. An "Emergency" is a condition that, in the reasonable discretion of City, (i) poses an immediate threat to the safety of any person or the public; (ii) materially and adversely interferes with the performance of City's necessary or essential utility service obligations or public travel; or (iii) poses an immediate threat to the integrity of City's equipment or property.

If required by the City, for reasons of public safety or in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public and paid for with public funds, Company promptly shall remove its Facilities from the Public Right-of-Way or shall relocate or adjust its Facilities within the Public Right-of-Way at no cost to the City. In all cases where the City requires Company to relocate from the Public Right-of-Way in accordance with this paragraph, City shall provide and make available adequate and suitable replacement Right-of-Way equivalent in type and size before Company shall be required to move. City shall notify Company in writing of any such required move. City shall use its best efforts to provide Company with a minimum of one hundred eighty (180) days advance notice to comply with any such relocation or adjustment. Company shall designate one (1) person within its organization by his/her employment position to whom relocation notices shall be sent and with whom rests the responsibility to facilitate all necessary communications within Company's various areas.

SECTION VI. COMPENSATION.

The franchise fee is compensation pursuant to K.S.A. 12-2001(b)(5) and shall in no way be deemed a tax of any kind.

The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The Company shall monthly pay to the City a franchise fee in cash of five percent (5%) of its gross receipts charged and collected from the sale of electric energy used within the present or future boundaries of said City for domestic, commercial and industrial consumption. Such payments shall be made on or before the last day of each month, and shall be based upon said gross receipts charged and collected for the preceding month. Such payments shall be made to the City independent of any monies or credits due the

Company from the City for street lighting and traffic signal service, for which service the Company shall bill the City and the City shall pay the same in cash to the Company.

No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is, in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.

To verify the correctness of the franchise fees paid by Company and Company's compliance with this Franchise Ordinance, the City shall have the right to examine, audit, inspect, review, and/or obtain copies of (collectively, "Audit") at its sole cost and expense, except as set forth in this Section, the papers, books, accounts, documents, maps, plans and other records (collectively, the "Records") of Company pertaining to all Gross Receipts derived by Company from the sale of electricity during any single year of this Franchise. Notice of Audit shall be provided by City to Company upon no fewer than sixty (60) days written notice and shall be performed no more often than once per calendar year. Company shall fully cooperate in making reasonably available its Records and otherwise assisting in these activities as is necessary for City to reasonably verify the correctness of the franchise fees paid by Company in the year subject to Audit. The City may extend the time for the provision of such Records upon a reasonable showing by Company that such extension is justified. In the event that such Audit discloses an underpayment by Company of more than five percent (5%) between the financial report submitted by the Company with a monthly payment and the actual Gross Receipts collected by Company that are subject to the franchise fees, as determined by the Audit, and unless Company challenges the findings of the Audit, the Company agrees to pay the City the costs of such Audit. In the event that such Audit results in a determination that additional franchise fees are due the City, Company shall be provided a copy of said Audit and provided thirty (30) days to pay or contest the results of the Audit. Company further agrees that, where it is required to remit additional franchise fees as a result of an Audit, it agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable. In the event that the Audit reveals an overpayment by Company, the City shall refund to Company all such overpayments.

The percentage of Gross Receipts charged and collected from the sale and distribution of electric energy hereunder shall be subject to revision at the option of the City at no less than two (2) year intervals during the term hereof. The City shall notify the Company in writing not later than sixty (60) days prior to the effective date of any such revision.

In the absence of a good faith dispute, the failure to pay the franchise fee when due shall entitle the City to terminate this Franchise Ordinance upon thirty (30) days written notice to the Company.

## SECTION VII. RESERVATION OF RIGHTS.

The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Company's rates and services to ensure the rendering of efficient services at reasonable rates, and the maintenance of Company's property in good repair.

In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

Nothing herein shall be construed to waive or limit City's immunities, limitation of liability, or defenses under the Kansas Tort Claim Act or other law.

In granting its consent hereunder, Company does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

SECTION VIII. INDEMNITY AND INSURANCE.

A. Indemnity. It shall be the responsibility of Company to take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Company fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Company's Facilities.

Company shall indemnify, defend, 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 or intentional conduct of Company, any agent, officer, director, representative, employee, affiliate or subcontractor of Company, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public Right-of-Way.

The indemnity provided by this Section does not apply to any damages resulting from the negligence of the City, its officers, employees, contractors or subcontractors or any third party. If Company and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Company and does not create or grant any rights, contractual or otherwise, to any other person or entity.

Company or City shall promptly advise the other in writing of any known claim or demand against Company or the City related to or arising out of Company's activities in the Public Right-of-Way.

B. Insurance and Bond. During the term of this Franchise Ordinance, Company shall obtain and maintain insurance coverage at its sole expense, with companies having and maintaining an A.M. Best rating of at least A-VII or better and that are licensed to do business in the State of Kansas. Should Company elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Company shall provide not less than the following insurance:

1. Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to

the amount required by law.

2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability and umbrella or excess liability insurance of not less than One Million Dollars ($1,000,000) per occurrence and One Million Dollars ($1,000,000) aggregate. The City shall be included as an additional insured with respect to liability arising from Company's operations under this Franchise Ordinance.

As an alternative to the requirements set forth above, Company may demonstrate to the satisfaction of the City that it is self-insured and as such Company has the ability to provide coverage in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Company, or alleged to so have been caused or occurred.

Company shall deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without Company first giving the City thirty (30) days prior written notice. Company shall make available to the City on request the policy declarations page.

Company shall, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $5,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Alternatively, if the Company anticipates that it will be engaged in the construction and/or maintenance of its Facilities in the Right-of-Way multiple times during the course of a year, the Company may choose to meet the bond requirements by providing a bond of $50,000 annually.

SECTION IX. RENEGOTIATION.

If during the term of this Franchise Ordinance, federal or state law is changed to permit competition between Company and others in the sale or distribution of electricity within the City, to permit retail wheeling of electricity in any form, to include the sale of unbundled services within the City or to eliminate or substantially modify the authority of the Kansas Corporation Commission has over the sale and distribution of electricity within the State then the City and the Company agree to enter into good faith negotiations for the purpose of revising and amending this Franchise Ordinance to address said change(s). Should the City and the Company fail after good faith negotiations to agree upon revised or amended Franchise terms, then the City and the Company shall each have the right to terminate this Franchise Ordinance upon 120 calendar days' written notice.

SECTION X. TRANSFER.

All provisions of this Ordinance shall be binding upon the Company and successors and assigns from and after the date of written acceptance hereof by the Company, and shall inure to the benefit of the

Company, its grantees and its successors and assigns.

The Company shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or voluntary sale, or by ordinary sale, consolidation, or otherwise, this Franchise Ordinance or any of the rights or privileges granted by this Franchise Ordinance, without the prior written consent of the City, except that no such consent shall be required in connection with the sale of all or substantially all of the Kansas assets of the Company. Such consent shall not be unreasonably withheld. Except as otherwise may be provided by law, the Company shall not lease, sell or otherwise transfer possession or control of the Facilities, or any portion thereof, for any purpose to any person or entity that has not obtained a duly issued Franchise, or other grant by the City to use the Public Right-of-Way and which includes the authority to use or maintain such lease or transferred facilities. Company may allow attachment to its Facilities by those entities that are subject to a joint use agreement or pole attachment agreement with Company, provided that any such attaching entity must, as a condition of such authorization to attach, agree to comply and comply with all federal, state, or local laws, including but not limited to the Code of the City of Leawood, 2000 and the Leawood Development Ordinance.

SECTION XI. CONTACT AND NOTICE PROVISIONS.

Company shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Company in the event of an emergency. Company shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by City to Company and by Company to the City may be made by telephone. In an emergency situation, City shall telephone the local point of contact designated by Company, and Company shall telephone the City Clerk, City Engineer, or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail.

The City:
The City of Leawood
4800 Town Center Drive
Leawood, Kansas 66211
Attn: City Clerk
913-339-6700

The Company:
Evergy
1200 Main
Kansas City, Missouri 64106
(816) 556-2200
Attn: Community Service Manager-Kansas, 1-888-LIGHT-KC (1-888-544-4852)

SECTION XII. SEVERABILITY.

If any clause, sentence, or section of this Ordinance, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Company may elect to declare the entire Ordinance is invalidated if the portion declared invalid is, in the judgment of the City or the Company, an essential part of the Ordinance.

Failure, by either the City or the Company, to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Company unless said waiver or relinquishment is in writing and signed by both the City and the Company.

SECTION XIII. DUTIES UPON EXPIRATION.

Upon expiration or termination of this Franchise Ordinance, whether by lapse of time, by agreement between the Company and the City, or by forfeiture thereof, the Company shall have the right to remove it Facilities within a reasonable time and after such expiration or termination, but in such event, it shall be the duty of the Company, immediately upon and during such removal to restore the streets, avenues, alleys, and other public ways and grounds from which said Facilities have been removed, to the equivalent condition as the same were before said removal.

SECTION XIV. CONDITIONS OF FRANCHISE.

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond City's or Company's control.

SECTION XV. FAILURE TO ENFORCE.

The failure of either the City or the Company to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Company unless said waiver or relinquishment is in writing and signed by both the City and the Company.

SECTION XVI. ACKNOWLEDGMENT AND EFFECTIVE DATE.

This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Company, and publication in the official city newspaper. Company shall have thirty (30) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Franchise Ordinance and when so accepted, this Franchise Ordinance and acceptance shall be deemed effective.

The City Clerk is hereby directed to publish this Ordinance once in an official newspaper. The cost of publication shall be the expense of the Company.

SECTION XVII. REPEAL. Ordinance 1947C is hereby repealed.

[Ord. No. 2992; Effective Date: 03-10-20]
[Ord. No. 1947C; Effective Date: 06-15-02]
[Ord. No. 1215C; Effective Date: 6-30-91]

## ARTICLE 2. ELECTRIC STREET LIGHTS
(Kansas City Power & Light Company)

Ordinance expired.

## ARTICLE 3. TRAFFIC CONTROL
(Kansas City Power & Light Company)

Ordinance expired.

## ARTICLE 4. KANSAS GAS SERVICE, DIVISION OF ONE GAS, INC.

**SECTION 1. Definitions.**

For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

**"City"** shall mean the City of Leawood, Kansas.

**"Distribution System or Distribution Facilities"** shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof located within the Right-of-Way, for the purpose of "Distribution" or supplying natural gas for light, heat, power and all other purposes.

**"Distributed or Distribution"** shall mean all sales, supply, or transportation of natural gas to any Sales or Transportation Consumer for use within the City by the Grantee or by others through the Distribution Facilities of Grantee in the Right of Way.

**"Entity"** shall mean any individual person(s), governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

**"Franchise"** shall mean the grant of authority by the City to transport, distribute or sell natural gas to the inhabitants of the City and to operate a Distribution System or Distribution Facilities, in accordance with K.S.A. 12-2001, et seq., as amended and City ordinances.

**"Franchise Fee"** shall mean consideration paid in the form of a charge upon the Grantee as prescribed in this Franchise Ordinance.

**"Franchise Ordinance"** shall mean this Ordinance No. 2739C granting a natural gas franchise to the Grantee.

**"Grantee**" shall mean Kansas Gas Service, a Division of ONE Gas, Inc.

**"Gross Receipts"** shall mean any and all compensation and other consideration derived directly or indirectly by the Grantee from any Distribution of natural gas to all consumers for any use, including domestic, commercial and industrial purposes, and shall include, but not be limited to, revenues from any operation or use of any or all Distribution Facilities in the Right-of –Way by the Grantee or others, including without limitation, charges as provide in tariffs filed and approved, and shall also include all fees or rentals received by the Grantee for the lease or use of pipeline capacity within the City for Transport Gas services. Such term shall not include revenue from certain miscellaneous charges and accounts including but not limited to, connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, customer project contributions, meter test fees, and returned check charges.

**"MCF"** shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million (1,000,000) British Thermal Units.

**"Right-of-Way"** shall mean the area on, below or above the present and future streets, avenues, alleys, bridges, boulevards, roads, highways dedicated to or acquired by the City as Right-of-Way and shall include parks, parking places and public areas where Grantee currently owns facilities.

**"Sales Consumer"** shall mean, without limitation, any "Entity" that purchases natural gas within the Corporate City limits from Grantee for delivery to such consumer within the City through the Grantee's Distribution System or Distribution Facilities.

**"Settlement Prices"** shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth ($15^{th}$) day of each month as published in the Wall Street Journal (WSJ), or other nationally recognized publication, on the following business day (or the next day in which a Settlement Price is published).

**"Transportation Consumer"** shall mean without limitation, any Entity that transports "Transport Gas" within the Corporate City limits through Grantee's Distribution Facilities for consumption within the City's corporate limits.

**"Transport Gas"** shall mean all natural gas transported by the Grantee, or by others, but not sold by the Grantee, to any consumer within the City through the Distribution Facilities of the Grantee.

**"Volumetric Rate"** shall mean $0.2114 per MCF for Transport Gas distributed to Transportation Consumers. The Volumetric Rate shall be subject to adjustment and recalculation in the future in accordance with the provisions set forth below. The Volumetric Rate Calculation form incorporated herein and attached hereto as Attachment A shall be used for recalculating the Volumetric Rate. There shall be an annual recalculation of the Volumetric Rate which shall be effective each January 1. The recalculation shall be based on Settlement Prices for the twelve (12) month period beginning in July of the second ($2^{nd}$) preceding year and ending in June of the preceding year. For the fifteen ($15^{th}$) day of each month during said twelve (12) month period, the Settlement Prices for natural gas for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price.

The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by five percent to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rates shall be calculated in accordance with the procedures set out herein and filed with the City Clerk by July 31 of each year for those rates to be effective on January 1 of the following year.

**SECTION 2. Grant of Franchise:**

That in consideration of the benefits to be derived by the City and its inhabitants, there is hereby granted to Grantee, subject to the terms and conditions herein set forth, the non-exclusive right, privilege, and authority for the full term of this Franchise Ordinance, the non-exclusive right, privilege and franchise to occupy and use the Right-of-Way of the City, for the placing and maintaining of Distribution Facilities necessary to carry on the business of distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said natural gas from any source available; and to do all things necessary or proper to carry on said business. Provided all Grantee's facilities authorized to be located on the Right-of-Way pursuant to this Franchise Ordinance shall be subject to the provisions of the City's Ordinance relating to the Use and Occupancy of the Public Right-of-Way codified as Chapter XIII, Article 3, of the Code of the City of Leawood, 2000, as amended. Nothing in this grant shall be construed to franchise or authorize the use of the Grantee's Distribution Facilities or Right-of-Way by the Grantee or others, for any purpose other than the provision of natural gas. The Grantee may not allow a subsidiary, affiliate, or a third party to acquire rights to occupy the Right-of-Way under this Franchise Ordinance, provided, that nothing in this section shall prevent Grantee from allowing the use of its Distribution Facilities by others for the purpose of providing Transport Gas to Transportation Consumers when the City is compensated for such use, pursuant to the provisions of this Franchise Ordinance.

**SECTION 3: Term and Re-opener Provisions.**

a. The term of this Franchise shall be twenty (20) years from the effective date of this Franchise Ordinance.

b. Upon written request of either the City or the Grantee, this Franchise may be reopened and reviewed after five (5) years from the effective date and every five (5) years from the effective date of this Franchise Ordinance and either the City or the Grantee may propose amendments to any provision of this Franchise by giving sixty (60) days written notice to the other of the amendment(s) desired. The City and the Grantee shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s).

c. Upon written request of either the City or the Grantee, the Franchise Ordinance shall be reopened and renegotiated at any time upon any of the following events:

1. Change in federal, state, or local law, regulation, or order, which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City;
2. Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or the Grantee, including but not limited to the scope of the grant to the Grantee or the compensation to be received by the City.

d. Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and/or easements granted on publicly owned property and pay a franchise fee or other payment which results in a material or economic disadvantage to the Grantee. Upon written request by the Grantee to the City, the compensation provisions of this Franchise Ordinance and the use of the Right-of-Way provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and do not have requirements on the use of the Right-of-Way substantially equivalent to the requirements of this Franchise Ordinance, which results in a material or economic disadvantage to the Grantee.

e. Upon written request by either party to the other, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated should issues arise related to the Volumetric Rate or matters related to the collection and payment of compensation due the City for Grantee operations related Transport Gas.

f. Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. This Franchise Ordinance shall remain in effect according to its terms pending completion of any review or renegotiation pursuant to this Section.

**SECTION 4: Compensation to the City.**

In consideration of and as compensation for the Franchise hereby granted to the Grantee by the City, the Grantee shall make an accounting to the City of all natural gas that has been "Distributed" within the City on a monthly basis. The Grantee shall pay the City as compensation:

a. A sum equal to five percent (5%) of the Gross Receipts received by Grantee from the Grantee's Distribution of natural gas to Sales and Transportation Consumers; plus

b. A sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas for the distribution of Transport Gas for Transportation Consumers.

The sums in A above shall be collected from Sales Consumers and the sums in A and B above shall be collected from Transportation Consumers and shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.

Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins in August 2015. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 1509C and amendments thereto. Such payments shall be made on or before the last day of each month and shall be based upon such Gross Receipts charges and collected for the preceding month.

**SECTION 5. Use of Right-of-Way**

a.. The Grantee's use of the Right of Way granted by the City shall be subject to all rules, regulations, ordinances, resolutions and policies now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Grantee shall be subject to all rules, regulations, ordinances, resolutions and policies now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of the Right of Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Grantee to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation or policy proposed, adopted, or promulgated by the City.

b. All mains, services, and pipe which shall be laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed. Grantee shall provide, prior to commencing work, information to the City concerning work to be performed in the Right-of-Way, as the City may from time to time require for purposes of record keeping.

c. Grantee shall, in doing the work in connection with its said gas mains, pipes, and services, avoid, so far as may be practicable, interfering with the use of any street, alley, avenue, or other public thoroughfare. It shall, without expense to the City, and in a manner satisfactory to the duly authorized representatives of the City, replace such paving or surface in accordance with the City's requirements.

d. It is recognized that the natural gas to be delivered hereunder is to be supplied from a pipeline system transporting natural gas from distant sources of supply; and the Grantee, by its acceptance of this Franchise Ordinance as hereinafter provided, does obligate itself to furnish natural gas in such quantity and for such length of time, limited by the terms hereof, as the said sources and said pipelines are reasonably capable of supplying.

e. Grantee, its successors and assigns, in the construction, maintenance, and operation of its natural gas system, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall hold and save harmless the City from any and all damage, injury, and expense caused by the negligence of said Grantee, its successors and assigns, or its or their agents or servants.

**SECTION 6. Acceptance of Terms by Grantee and Effective Date of Ordinance.**

This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Grantee, and publication in the official city newspaper. Grantee shall have thirty (30) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Franchise Ordinance and when so accepted, this Franchise Ordinance and acceptance shall constitute a contract between the City and Grantee and said contract shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 7. Notice of Property Annexed by City.**

Notwithstanding anything to the contrary in this Franchise Ordinance, the fees provided for in Section 4 above shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than 60 days after the date that the City provides the Grantee with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

**SECTION 8. Indemnity**

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representative, while installing, repairing or maintaining Distribution Facilities in the Right-of-Way or in regards any action or inaction related to Grantee's obligations set forth in this Franchise.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under the state 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 the Grantee and does not create or grant any rights, contractual or otherwise, to any other person or Entity.

**SECTION 9. Insurance Requirements and Performance Bond.**

a. During the term of this Franchise Ordinance, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

1. Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability and umbrella or excess liability insurance of not less than One Million Dollars ($1,000,000) per occurrence and One Million Dollars ($1,000,000) aggregate. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Franchise Ordinance.

b. As an alternative to the requirements of subsection A, Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page.

d. Grantee shall, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $5,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Distribution Facilities located in the Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Alternatively, if the Grantee anticipates that it will be engaged in the construction and/or maintenance of its Facilities in the Right-of-Way multiple times during the course of a year, the Grantee may choose to meet the bond requirements by providing a bond of $50,000 annually.

**SECTION 10. Payment of Costs.**

Grantee shall be responsible for payment of all costs and expense of publishing this Franchise Ordinance and any amendments thereof.

**SECTION 11. Authority.**

This Franchise Ordinance is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto.

**SECTION 12. Actions by the Kansas Corporation Commission.**

Should the Kansas Corporation Commission take any action with respect to this Franchise Ordinance and any amendments thereto which precludes Grantee from recovering from its customers any costs or fees provided for hereunder, the parties shall renegotiate this Franchise Ordinance in accordance with the Commission's ruling.

**SECTION 13. Revocation and Termination.**

In case of failure on the part of Grantee to comply with any of the provisions of this Franchise Ordinance, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, Grantee shall forfeit all right, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Franchise Ordinance shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have ninety (90) days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance. If a cure cannot be reasonably affected within ninety (90) days, Grantee shall be afforded such additional time to cure, as the City and Grantee shall agree. If at the end of such period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty-day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment and any appeal therefrom. Provided, however, that the failure of Grantee to comply with any of the provisions of this Franchise Ordinance or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Franchise Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 14. Rights and Duties of Grantee Upon Expiration of Franchise.**

Upon expiration of this Franchise Ordinance, whether by lapse of time, by agreement between the Grantee and the City, or by forfeiture thereof, the Grantee shall have the right to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its business within a reasonable time and after such expiration, but in such event, it shall be the duty of the Grantee, immediately upon and during such removal to restore the streets, avenues, alleys, and other public ways and grounds from which said pipes, laterals, and other equipment have been removed, to the equivalent condition as the same were before said removal was effects.

**SECTION 15. Conditions of Franchise.**

This non-exclusive franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond City's or Grantee's control.

**SECTION 16. Failure to Enforce.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 17. Repeal of Conflicting Ordinances.**

Ordinance No. 1509C and amendments thereto which heretofore granted a non-exclusive franchise to the Grantee, and which became a contract between the City and the Grantee in accordance with its terms and all other ordinances and resolutions or parts thereof inconsistent or in conflict with the terms hereof, are hereby repealed, effective as of the first cycle of the monthly billing cycle which begins in August 2015.

(Ord. No. 1509C; effective 10-15-95)
(Ord. No. 2739C; effective 07-15-15)

# ARTICLE 5. SOUTHWESTERN BELL TELEPHONE COMPANY d/b/a AT & T

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, and lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.

e. "City" - means the City of Leawood.

f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

g. “Effective date” – means December 3, 2018.

h. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

i. "Grantee" - means Southwestern Bell Telephone Company d/b/a AT&T Kansas, an electing carrier under K.S.A. 66-2005(x) and telecommunications service provider providing local exchange service and/or operating Facilities within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns. A copy of Grantee’s election as an “electing carrier”, pursuant to K.S.A. 66-2005(x), shall be provided to the City.

j. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City and that are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

k. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

l. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

m. “Telecommunication local exchange services provider” – means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187 and amendments thereto, and/or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187 and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term shall not include an interexchange carrier or competitive access provider that does not provide local exchange service, or any wireless communication services provider.

n. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. Subject to the provisions of K.S.A. 12-2001, and amendments thereto, there is hereby granted to Grantee this nonexclusive Contract franchise to provide telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way., This Contract franchise does not:

   1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
   2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or,
   3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on property or facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. Access to the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee has the right to construct, maintain and operate it Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. When the City requests removal, relocation or adjustment of Grantee's Facilities within the Public right-of-way for construction or maintenance activities related to improvements that are, in whole or in part, for private benefit, such private party or parties shall reimburse Grantee for the cost of removal, relocation or adjustment, in an amount equal to the percentage of the private benefit received. Grantee shall not be obligated to commence the removal, relocation or adjustment until receipt of funds for the costs from such private party or parties. Further, Grantee shall have no liability for delays caused by a private party's failure to reimburse costs. Grantee understands, however, that the City has no obligation to collect such reimbursement.

d. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

h. The franchise fee required herein pursuant to K.S.A. 12-2001(j) as amended shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and K.S.A. 17-1902, and amendments thereto. The franchise fee shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunication local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

a. It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

b. Grantee 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 Grantee, any agent, officer, director, representative, employee or subcontractor of Grantee, while installing, repairing or maintaining Facilities in the Public right-of-way.

c. 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 Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with insurers rated at least A-VII by AM Best and that are lawfully permitted to do business in the state of Kansas. Grantee shall provide the following insurance:

1. Statutory workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed and an employers' liability limit for bodily injury of $1,000,000 each accident, by disease policy limits and by disease each employee.
2. Commercial general liability, written on Insurance Services Office (ISO) policy form CG 00 01 or its equivalent, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of Two Million Dollars ($2,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured as its interests may appear with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may self-insure and, as such, Grantee has the ability to provide coverage in an amount not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in aggregate, to protect the City from and against claims by any person for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred as respects this Contract franchise. If Grantee elects to self-insure, it shall furnish to the City a certificate of self-insurance listing the City as additionally insured with respect to liability arising from Grantee's operations under this contract franchise. In the event Grantee elects to self-insure its obligation to include City as an additional insured, the following provisions shall apply:

1. City shall promptly and no later than thirty (30) days after notice thereof provide Grantee with written notice of any claim, demand, lawsuit or the like, for which it seeks coverage pursuant to the section and provide Grantee with copies of any demands, notices, summonses or legal papers received in connection with such claim, demand, lawsuit or the like;

2. City shall not settle any such claim, demand, lawsuit or the like without the prior written consent of Grantee; and,
3. City shall fully cooperate with Grantee in the defense of the claim, demand, lawsuit or the like.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Grantee shall timely notify the City if the insurance is cancelled or non-renewed and not replaced. Upon renewal or replacement of any such insurance policies, the Grantee shall notify the City, in writing, and provide a current Certificate of Insurance.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a construction bond in the amount of Fifty Thousand Dollars ($50,000), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the state of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

a. In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures:
   1. Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice, pursuant to Section 12 of this Contract franchise, upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise;
   2. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided, pursuant to Section 12 of this Contract franchise, reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter.

3. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

b. Nothing herein shall prevent the City or Grantee from invoking any other remedy that may otherwise exist at law.

**SECTION 8. RESERVATION OF RIGHTS.**

a. To the extent permitted by law, the City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of: the laws of the State of Kansas as the same may be amended; its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas; nor, any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of: the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended; under the Constitution of the State of Kansas; nor, any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of the Contract franchise or any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings that may be the basis for parties entering into this Contract franchise .

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of six (6) years from the effective date of this Contract franchise. Thereafter, this Contract franchise will renew for two (2) additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. MOST FAVORED NATION**
Pursuant to K.S.A. 12-2001 and K.S.A. 17-1902, and amendments thereto, City represents and warrants that all benefits, terms and conditions in this Contract franchise are and, during the term of this Contract franchise, will continue to be no less favorable to Grantee in the same or similar circumstances than those currently being offered to or that may be offered and agreed to by City and any other local exchange carrier, telecommunications carrier, or video services provider, or Internet Protocol services provider, regardless of the form or nature of the agreement with any such other carrier or provider, and that the City shall treat Grantee in a competitively neutral, non-discriminatory manner.

**SECTION 12. POINT OF CONTACT AND NOTICES**
Grantee shall at all times maintain with the City a local point of contact who shall be available to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or overnight delivery by a nationally recognized courier. All written notices shall be deemed delivered upon actual receipt or refusal of delivery.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood<br>4800 Town Center Drive<br>Leawood, Kansas<br>Attn: City Clerk | Office of the President<br>Southwestern Bell Telephone Company<br>d/b/a AT&T Kansas<br>220 SE 6th St., Room 500<br>Topeka, Kansas 66603 |

or to replacement addresses that may be later designed in writing.

**SECTION 13. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to: a wholly owned parent or subsidiary; between wholly owned subsidiaries; or to an entity with which Grantee is under common ownership or control, upon written notice to the City.

**SECTION 14. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001, and amendments thereto, shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and K.S.A. 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 15. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

**SECTION 16. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 17. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 18. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war, terrorism and other disasters beyond Grantee's or the City's control.

(Ord. No. 1794C; Effective 07-03-99)
(Ord. No. 2065C; Effective 08-01-04)
(Ord. No. 2344C; Effective 12-02-08)
(Ord. No. 2584C; Effective 11-19-12)
(Ord. No. 2806C; Effective 10-06-16)
(Ord. No. 2916C; Effective 12-11-18)

## ARTICLE 6. TIME WARNER [ formerly Telecable of Overland Park, Inc.]

**Section 1.** **SHORT TITLE**. This ordinance shall be known as "The Cable Television Franchise Ordinance of the City of Leawood, Kansas" and may herein and hereafter be cited as "Leawood Cable TV Franchise Ordinance".

**Section 2.** **DEFINITIONS.** The following terms, phrases, words and their derivations shall have for the purposes of this ordinance the meanings herein stated; provided that when not inconsistent with the context, words used in the present tense shall include the future, and words in the plural shall include the singular number, and words in the singular number shall include the plural number; provided further that the word "shall" is to be construed as mandatory and not simply directive; provided further that the following definitions shall herein apply:

(a) "*City*" shall mean the City of Leawood, Kansas, a municipal corporation, or its successors, and shall include when appropriate to the use of the term in context, the territorial boundaries of said City as now constituted or as shall hereafter exist;

(b) "*Governing Body*" shall mean the present legislative body of the City of Leawood, Kansas, or any successor to the legislative powers of said present Governing Body;

(c) "*Franchise*" means this agreement.

(d) "*Franchisee*" shall mean TeleCable of Overland Park, Inc., or its successors, transferees or assigns, which is granted the franchise, the terms and conditions of which are provided herein;

(e) "*Street*" shall mean any public street, roadway, highway, alley, or other public right-of-way now or hereafter subject to the jurisdiction and regulation of the City as provided by the laws of the State of Kansas and any subsequent amendments thereof;

(f) "*System*" or "*Cable Communications System*" or "*Cable Television System*" shall mean a system of antennas, cables, wires, lines, towers, wave guides, or other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals, located in the City. Said definition shall not include any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility uses any public right-of-way.

(g) "*Subscriber*" shall mean any person which receives from the franchisee herein named the services of said franchisee's cable television system;

(h) "*Person*" shall mean any individual or association of individuals, or any firm, corporation, or other business organization;

(i) "*Gross annual subscriber revenues*" shall mean any and all compensation and other consideration derived directly by franchisee from subscribers within said City for regularly furnished cable television service. Gross annual subscriber revenue shall include revenues derived from cable service, pay television service, installation, rental of television converters or other equipment, per-program and per-channel charges, or advertising revenues, but shall not include any taxes on services furnished by franchisee or imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the franchisee for such governmental unit.

In the event the franchisee shall receive any revenue from any advertisements disseminated to subscribers in Johnson County, Kansas, both within and without the City, gross annual subscriber revenues shall, with respect to such advertisements, include an amount derived by multiplying such advertising revenue by a fraction, the numerator of which is the number of subscribers in the City reached by such advertisement and the denominator of which is the total number of subscribers reached by such advertisement.

**Section 3.** **GRANT OF NON-EXCLUSIVE FRANCHISE.** The City of Leawood, Kansas hereby grants unto the franchisee herein named a non-exclusive franchise to construct, erect, operate and maintain a cable television system within said City, and in so doing to use the streets of said City by erecting, installing, constructing, repairing, replacing, reconstructing, maintaining, and retaining in, on, under, upon, or across any such streets, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to a cable television system, and in addition, so to use, operate and provide for all or part of such facilities by service offerings obtained from any franchised or operating utility company providing service within said City.

The authority hereby granted to conduct a cable television system within said City, and to use and occupy the streets thereof does not and shall not be deemed an exclusive right or permission, and said City expressly reserves the right to grant other non-exclusive franchises to persons, firms, corporations or other business organizations, to construct, operate, and maintain other cable television systems within said City; but no such additional franchises shall in any way affect the rights or obligations of the franchisee herein named and set forth in this ordinance.

The rights herein granted to franchisee herein named shall extend to any area hereafter annexed to the City and franchisee shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

**Section 4.** **PROGRAM ORIGINATION**. The franchisee herein named shall transmit and distribute to its subscribers such electromagnetic radiation as are now, and may hereafter, be authorized by the Federal Communications Commission or any other administrative agency of the United States, the several states, or political subdivisions thereof having jurisdiction to regulate such activity; provided that the franchisee may originate and distribute public service information regarding the weather, time, news of events that have or will occur within the franchisee's subscribers' service area, including such local community events that may be made available to its subscribers.

**Section 5.** **TERM OF FRANCHISE**. This franchise ordinance extends and renews the existing franchise for a period of twenty (20) years and the term of the renewal franchise herein granted shall commence upon expiration of the existing franchise and shall continue for a term of twenty(20) years from said date; provided that said franchisee's acceptance of this renewal franchise shall be filed in the office of the City Clerk of said City within thirty (30) days from the effective date of this ordinance; provided further that franchisee's failure to timely file said acceptance as herein provided shall cause the City's offer of franchise contained herein to be deemed revoked and without force and effect, whereupon this ordinance shall be deemed void and of no further force and effect.

**Section 6.** **FRANCHISE PAYMENTS.** The franchisee herein named shall pay to the City during the term of said franchise a sum equal to five (5) percent of the gross annual subscriber revenues, or the maximum cable television franchise fee permitted by federal law, whichever is less; provided that payment of said sum will be made quarterly in the months of January, April, July and October.

**Section 7.** **AUDIT AND REPORTING.** Within thirty (30) days after the expiration of the first twelve (12) months of this franchise and within thirty (30) days after each succeeding twelve (12) month period during the balance of the term that this franchise shall be in force, the franchisee named herein shall file in the office of the City Clerk of said City, a financial statement prepared by a certified public accountant or person otherwise satisfactory to said City, showing the gross annual subscriber revenues of said franchisee during the preceding twelve (12) months, said receipts to be determined as defined herein; provided that in the events said franchise is terminated or forfeited prior to the end of the twenty (20) year term herein provided, the franchisee shall immediately submit to the office of the City Clerk of said City a financial statement of said franchisee for the period that has elapsed since the end of the period covered by the last such financial statement; provided further that within thirty (30) days following the termination or forfeiture of said franchise, said franchisee will pay said City a sum equal to the percentage of said gross annual subscriber revenues as have accrued to said franchisee for the aforementioned period; provided further that said City reserves the right to independently audit said franchisee's gross annual subscriber revenues from which its franchise payments are computed, and any discrepancy between said audit and that filed by the franchisee with the City Clerk of said City

which results in the City's receiving a lesser sum than that which is due and owing from said franchisee will be determined and paid forthwith to said City; provided further that the City's acceptance of any payment determined as herein before provided to be deficient shall not be construed as a release of liability from said City or an accord and satisfaction of any claim said City may have for additional sums owed by said franchisee as herein before provided.

**Section 8.** **SUBSCRIBER RATES.** Rates for subscriber service shall be determined by franchisee and shall be uniform throughout the City for each type of service. Franchisee shall file with the City Clerk a schedule of current rates in effect.

Subscriber rates for installation shall be determined by franchisee and shall be uniform, except where extraordinary installation procedures are required in order to establish service, in which case franchisee may charge the subscriber the actual cost of materials and labor plus ten (10) per cent.

Where a subscriber's service is disconnected for nonpayment of monies due, franchisee is authorized to collect a reconnection fee.

**Section 9.** **FRANCHISEE'S OPERATING REGULATIONS.** The franchisee herein named shall have the authority to promulgate such rules, regulations and conditions governing the conduct of its business as shall be reasonably necessary to enable the franchisee to exercise its rights and to perform its obligations under this franchise ordinance and to assure an uninterrupted service to its subscribers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions of this franchise ordinance.

With respect to extension of service to new areas within the City, the franchisee shall file in the office of the City Clerk of said City the rules and regulations governing the franchisee's extension of service to such new areas; provided that if the Governing Body has not filed with said franchisee its written objection to any or all of said rules and regulations within thirty (30) days after they are filed by franchisee, said rules and regulations shall be deemed approved. Franchisee may thereafter change such rules and regulations by filing such changes as herein before provided, and the same shall be approved or rejected in like manner. In the event the Governing Body rejects the rules or any proposed change thereof, franchisee shall be entitled to a hearing before the Governing Body for consideration of the rules or changes within ten (10) days following the Governing Body’s rejection of the same by a resolution adopted at a regular meeting of the Governing Body.

**Section 10.** **NOTICE TO PARTIES**. Whenever, under the terms of this franchise ordinance, either party hereto shall be required or permitted to give notice to the other, such notice shall be in writing, and if to be served upon the City, it shall be delivered either by first class United States mail addressed to the office of the City Clerk of said City or by personal delivery of the same to said person, or his duly authorized agent for receiving the same, and if said notice be addressed to said franchisee, the same shall be delivered by either first class United States mail addressed to an officer or the resident agent of said franchisee at the registered office of said franchisee or its resident agent, or by personally delivering the same to such person as herein before provided, or such other person as said franchisee shall from time to time direct.

**Section 11.** **NOTICE OF FRANCHISEE'S FILINGS WITH REGULATORY AGENCIES**. The franchisee is hereby required to file in the office of the City Clerk of said City copies of any and all petitions, applications, and communications submitted or filed by said franchisee with the Federal Communications Commission, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matter effecting the operation of a cable television system, so far as the same effects or will effect said franchisee's service or operation within said City.

**Section 12.** **FRANCHISEE'S DUTY TO COMPLY WITH STATE AND FEDERAL LAW**. Notwithstanding any other provisions of this franchise ordinance to the contrary, the franchisee shall at all times comply with all laws and regulations of the United States and the several states and any political subdivision thereof, or any administrative agency thereof, having jurisdiction to regulate cable television systems; provided that franchisee's failure to comply with any law or regulation governing the operation of said cable television system may result in a forfeiture of the privileges conferred by the franchise ordinance when so determined by the Governing Body of said City as adopted by ordinance at one of its regular meetings.

**Section 13.** **LOCATION OF FRANCHISEE'S PROPERTIES IN THE PUBLIC WAY.** The franchisee in the construction of any facilities to provide service to its subscribers shall use the existing poles and other properties of franchised public utility companies operating within the City, and said franchisee shall not construct, erect, or maintain any supporting poles or other properties within the public streets of said City for the permanent operation of its cable television system except upon the express consent and permission of said City given in writing; provided that said franchisee shall not be prohibited from relocating its facilities if the poles and other properties on or upon which said facilities attach and are affixed are relocated by the owners of said properties, nor shall the franchisee be prohibited from constructing, operating, and maintaining its facilities upon other poles and properties of said franchised public utility companies as may hereinafter be constructed, so long as such construction, operation, and maintenance is in compliance with said City's existing ordinances pertaining to

construction of new utility and communications lines; provided further that, wherever within the City all or any part of the properties of the franchised public utility company with which said franchisee named herein has contracted for the use of said facilities, shall be located underground, it shall be the obligation of said franchisee to construct, operate, and maintain its properties within and under such locations; provided further that if existing properties of the franchised public utility companies with which said franchisee herein named has contracted, relocate said properties underground, said franchisee shall forthwith relocate its properties, formerly attached thereto, underground in such places; however, the City reserves the right to permit said franchisee to maintain its existing facilities aboveground in said locations when the City shall so direct the same in writing to said franchisee.

**Section 14.** **RELOCATION OF FRANCHISEE'S PROPERTY.** Whenever the City or a franchised public utility company operating within said City shall request of the franchisee the relocation or reinstallation of any of its properties along and within any of the streets of said City, said franchisee shall forthwith remove, relocate, or reinstall any such property as may be reasonably necessary to meet said request and the cost of such relocation, removal, or reinstallation of said properties shall be the exclusive obligation of said franchisee; provided that said franchisee shall upon request of any person holding a validly issued building or moving permit of said City, said request having been given in writing to said franchisee not less than forty-eight (48) hours prior to the date upon which said person intends to exercise its rights under said permit, said franchisee shall thereupon temporarily raise, lower, or relocate its wires or other property as may be required for said person to exercise the rights of its permit, and said franchisee may require said person to make payment in advance for any expenses incurred by said franchisee pursuant to said person's request.

**Section 15.** **FRANCHISEE'S DUTY TO REMOVE ITS PROPERTIES FROM THE PUBLIC WAY.** Franchisee shall promptly remove from the public streets and other public ways where its properties are located, all or any part of its facilities so located, when franchisee ceases to use any part, or all, of its cable television system for a continuous period of twelve months or when said franchise is terminated or revoked pursuant to notice as provided elsewhere in this ordinance.

Provided that said franchisee shall be entitled to receive notice in writing from said City setting forth one or more of the occurrences herein above enumerated, or such other occurrence herein before or hereinafter provided, and that said franchisee shall have ninety (90) days from the date upon which said notice is received to remove said properties as herein above required.

**Section 16.** **AUTHORITY OF CITY TO REQUIRE REMOVAL OF FRANCHISEE'S PROPERTIES FROM THE PUBLIC WAY.** The City is hereby authorized to enforce the provisions of Section 15 of this franchise ordinance as hereinafter provided;

(a) That said City shall notify said franchisee in writing of any occurrence provided for in Section 15 hereof, for which said franchise may be terminated, forfeited, revoked, or declared void by said City, and that within 90 days following receipt of said notice, said franchisee shall remove from the public streets and all other public ways of said City upon, over, and under which its properties are located, those portions of the properties which are attached to utility poles and those portions of buried properties which come above ground in closures and pedestals, unless otherwise authorized and permitted by said City. Franchisee shall not be required in any instance to remove buried cables.

(b) Said City may declare abandoned any property of said franchisee remaining in place ninety (90) days after notification as herein above provided, and the same shall be considered permanently abandoned property unless said City extends the time for removal for a period not to exceed an additional thirty (30) days.

**Section 17.** **PROPERTY ABANDONED BY THE FRANCHISEE**. Any property abandoned by said franchisee as herein above or hereinafter provided shall become the property of the City and said franchisee agrees to execute and deliver an instrument in writing, transferring its ownership interest in any such property to said City; provided that any notice given by the City as provided in Section 16 hereof, shall be deemed notice to any other persons claiming interest in said property of the franchisee, and said persons shall be subject to all the provisions herein before provided in Sections 15 and 16 hereof.

**Section 18.** **STANDARDS FOR CONSTRUCTION OF FRANCHISEE'S FACILITIES.** The construction, operation, and maintenance of the properties and facilities of said franchisee's cable television system shall be in accord with good engineering practices and shall be in compliance with the National Electric Code and applicable laws, regulations and ordinances as such are from time to time amended and revised by the United States of America and the several states and any political subdivisions thereof or any administrative agency thereof having jurisdiction to regulate the construction of cable television systems. All transmissions and distribution structures, lines and equipment erected by the franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, easements and swales, sidewalks, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, easements and swales, sidewalks, alleys or other public ways and places. The franchisee shall have the authority to trim trees which are located upon and overhang the public streets and other public ways of said City, so as to prevent the branches of such trees from coming into contact with the franchisee's properties.

The franchisee shall not construct or reconstruct any of its cable TV system located upon, over, under or within the public streets or public ways of said City without first having submitted in writing a description of its planned improvement to the Director of Public Works of said City and having received a permit for such improvement from said Director.

**Section 19.** **STANDARDS FOR OPERATING AND MAINTAINING FRANCHISEE'S CABLE TELEVISION SYSTEM.** Franchisee's cable television system shall be constructed, operated, and maintained in accordance with the highest accepted standards of the cable television industry to ensure that the subscriber receives the highest quality of service; provided that the following enumerated criteria may be considered in determining franchisee's satisfactory compliance with the provisions of this section:

(1) That the system is installed and remains capable of using all-band equipment and of passing the entire VHF television and FM radio spectrum and that it shall have the further capability of converting UHF for the distribution to subscribers on the VHF band; and
(2) That the system is capable of transmitting and passing the standard color television signals without the introduction of material degradation on color fidelity and intelligence; and
(3) That the system is designed and rated for 24-hour a day continuous operation; and
(4) That the system provides a nominal signal level of 1,000 microvolts at the input terminals of each television receiver of any subscriber; and
(5) That the system signal to noise ratio is not less than 30 decibels; and

(6) That hum modulation of the picture signal is less than 5 per cent at the subscriber's receiver; and

(7) That the system uses components having a voltage standing wave ratio (VSWR) of 1.4 or less; and

(8) That the system will and does produce a picture upon any subscriber's television screen in black and white or color (provided the subscriber's set is capable of producing a color picture) that is undistorted and free from ghost images and accompanied by proper sound, assuming standard production television sets in good repair, and in any event, the picture shall be as good as the state of the art allows; and

(9) That the system transmits or distributes signals of adequate strength to produce good pictures with good sound at all television receivers of all subscribers, without causing cross-modulation in the cables or interfering with other electromagnetic radiation or the reception of other television or radio receivers in the area not connected to the system.

The franchisee agrees that the cable television system to be operated pursuant to this franchise shall be upgraded in terms of its channel capacity and shall no later than December 31, 1991, be capable of technical transmission of a minimum of fifty-four (54) standard television channels to subscribers.

The franchisee will limit system failures to a minimum by locating and correcting malfunctions promptly but in no event longer than 24 hours after notice has been given, except said time shall be extended during such time as performance of this obligation is prevented by an act of God or the same is otherwise made impossible because of circumstances over which the franchisee has no control; provided further that the franchisee will maintain and provide to its subscribers an office near the City, which shall be available to said subscribers during normal business hours of every day Monday through Friday inclusive, for the purpose of receiving complaints or requests for repairs, adjustments, or other service caused by some failure or malfunction of the system, and that said franchisee shall provide its subscribers with facilities for receiving requests and complaints for service at a time other than that herein provided.

Should franchisee find equipment or devices have been connected to franchisee's cable television system by any persons and that said equipment or devices are causing interference to the system or degradation of the quality of transmission received by subscribers, or impairing franchisee’s ability to comply with any laws and regulations governing cable television transmissions, franchisee is hereby empowered immediately to disconnect said equipment or devices from the cable television system.

**Section 20.** **RIGHTS RESERVED TO THE CITY.** Without limitation upon the rights which the City might otherwise have, said City does hereby expressly reserve the following rights, powers and authorities:

(a) The right to exercise the governmental powers, now or hereafter, vested in or granted to said City;
(b) The right to grant additional cable television franchises within said City subject to the provisions of Section 3 hereof.

The City's failure to enforce and remedy any noncompliance by the franchisee of the terms and conditions of this franchise ordinance shall not constitute a waiver of said City's rights hereunder, and said franchisee shall continue to perform its obligations as herein provided.

**Section 21.** **CONDITIONS FOR FORFEITURE OF FRANCHISE**. In addition to all other rights and powers herein reserved or otherwise enjoyed by the City, said City reserves as an additional and separate remedy the right to revoke the franchise herein granted and all rights and privileges of said franchisee conferred hereunder, upon the occurrence of any of the following events:

(a) That franchisee fails to remedy within thirty (30) days following the date upon which written notice is received of said franchisee's failure to comply with the provisions of this franchise ordinance whether the same be committed by act or omissions, the violation set forth in said notice; or
(b) That any provisions of this franchise ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body of said City to constitute such a material consideration for the granting of said franchise as to cause the same to become null and void; or
(c) Franchisee is adjudged a bankrupt, becomes insolvent, suffers a transfer of its properties pursuant to an action of its creditors upon an instrument or judicial declaration securing said creditor's interest in said properties, and thereafter the same be not redeemed by said franchisee within thirty (30) days from the date of said transfer, or said franchisee is otherwise unable or unwilling to pay its debts and obligations as the same accrue; or
(d) The franchisee commits an act of fraud or deceit against said City in obtaining the grant of the franchise herein conferred, or upon being granted said franchisee commits such an act against said City; or

(e) Franchisee shall give to any person, firm, corporation or other business association, preference or advantage over some other person in assessing and levying its rates and charges, or in serving its subscribers, or in enforcing its rules and regulations, or in any other respect; provided that no revocation shall be effective unless, or until, the Governing Body of said City shall find at one of its regular meetings or such other special meeting as may be required, that a violation of the terms and conditions of said franchise ordinance as herein set forth, was committed or occurred by said franchisee; provided further that the revocation and repeal of this franchise ordinance shall become effective only upon the enactment of an ordinance by said Governing Body of said City adopted not sooner than a date thirty (30) days following the date upon which said franchisee is notified of any alleged act or commission for which said franchise may be revoked, as herein provided.

Provided further that any allegation of violation of subparagraph (E) herein above by franchisee shall be given to franchisee in writing and that franchisee shall have a period of thirty (30) days in which to correct said allegation or provide sufficient information to said City so City could determine that no such violation in fact occurred, before City may proceed with the franchise revocation process provided herein.

Provided further that nothing herein contained in this section shall be construed to prevent the franchisee from offering its subscribers occasional temporary discounts and promotions for the purpose of attracting subscribers or persuading existing subscribers to order additional optional services, nor shall franchisee be prohibited by this section from offering discounts on its service to cable television employees.

**Section 22. SERVICE TO SCHOOLS AND OTHER PUBLIC FACILITIES.**

(a) Upon the request of any private, parochial or public elementary or secondary school or any college or university located in the City, said franchisee shall furnish a single service drop to such institution free of installation charge and monthly service charge for basic cable television services, except where the installation of said service drop involves extraordinary expense related to the difficulty of installation, in which case franchisee is authorized to charge such school, college or university those portions of the installation expense beyond the normal and routine.

(b)

(1) Franchisee shall provide the public school districts located within the corporate limits of said City a channel, to be used jointly by such districts, upon which the districts may receive or transmit electromagnetic radiation, and

(2) Franchisee shall provide said City with a channel to be used jointly with other franchising authorities served by franchisee from its common head end, for receiving or transmitting electromagnetic radiation.

Should said City or any other franchise authority within Johnson County, Kansas, served by franchisee from a common head end site desire a second such governmental channel for joint use by the franchising authorities, franchisee agrees to provide said channel no later than December 31,1991, provided however that such second governmental channel's frequency may be specified by the franchisee and is not required to be in that portion of the VHF television spectrum commonly known as channels two (2) through thirteen (13).

**Section 23.** **EMERGENCY USE OF FRANCHISEE'S SYSTEM.** In the event of a civil disaster or other emergency which occurs within said City, the franchisee shall upon request of the Mayor or designated representative, permit said City to transmit information over the cable television system advising the subscribers regarding the nature and extent of the disaster or emergency as may be required to protect said persons for their safety and welfare; provided that any such transmission shall be conducted by or with the assistance of franchisee's authorized personnel.

**Section 24.** **FRANCHISEE'S DUTY TO SECURE LIABILITY INSURANCE.** Franchisee shall concurrently with the filing of its acceptance of the franchise herein granted, file with the City Clerk of said City evidence that said franchisee has contracted for, and has, liability insurance to protect the following enumerated risks in the sums hereinafter set forth:

That said franchisee shall further provide evidence of its having insured said City and its officers, boards, commissions, agents, and employees from and against all claims by any person whatsoever for loss or damage from personal injury, death, or property damage occasioned by the operation of said franchisee's cable television system, or alleged to so have been caused or occurred, for an amount not less than $500,000 for the personal injury or death to any one person and $5,000,000 for personal injury or death of two or more persons in any one occurrence, and $300,000 for damages to property resulting from any one occurrence.

**Section 25.** **FRANCHISEE'S PERFORMANCE BOND.** The franchisee shall at all times during the term of this franchise maintain in full force and effect, at franchisee's sole and exclusive expense, a corporate surety bond in a company, and in a form approved by the City Attorney of said City, in an amount not less than $50,000 renewable annually, and conditioned upon franchisee's faithful performance of the provisions, terms, and conditions of the franchise herein granted and conferred by this franchise ordinance; provided that in the event said City shall exercise its right to revoke the franchise of the franchisee as provided in Section 21 herein, then the City shall be entitled to recover under the terms of said bond the full amount of any loss occasioned said City by such act or occurrence as enumerated in Section 21 hereof.

**Section 26.** **FRANCHISEE IS WITHOUT REMEDY AGAINST THE CITY**. The franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this franchise ordinance, or because of the enforcement thereof by said City, or for the failure of said City to have the authority to grant, all, or any part, of the franchise herein granted; provided that said franchisee expressly acknowledges that it accepted the franchise herein granted in reliance upon its independent and personal investigation and understanding of the power of authority of said City to grant the franchise herein conferred upon said franchisee; provided further that the franchisee acknowledges by its acceptance of said franchise that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of said City, or by any other person concerning any term or condition of this franchise not expressed herein; provided further that the franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions hereof and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions.

**Section 27.** **LIMITATION UPON FRANCHISEE'S RIGHT TO TRANSFER THIS FRANCHISE.** The franchisee shall not sell or transfer its plant or cable television system or any portion thereof, nor any right, title or interest in the same, nor shall the franchisee transfer any rights under this franchise to any other person without prior approval of the Governing Body of said City, as expressed by resolution adopted at one of its regular or special meetings; provided further that such approval shall not be unreasonably withheld.

**Section 28.** **CITY'S RIGHT TO EQUAL TREATMENT.** In the event the franchisee is granted a cable television system franchise in any other political subdivision within Johnson County, Kansas, and the provisions of such franchise are more favorable to such political subdivision and the residents thereof than the provisions of the franchise hereby granted, then the City shall have the right to request franchisee to modify and amend the provisions of the franchise hereby granted to conform to any such more favorable provisions contained in the franchise of another political subdivision of Johnson County, Kansas; provided that said franchisee may offer to the City evidence and statements distinguishing any such other franchise from the franchise hereby granted, or evidence of the existence of state or federal laws or rules preventing the franchisee from making the change requested by the City; provided further that, in the event the City shall request franchisee to amend and modify said franchise in the manner herein above provided and the City determines that said franchisee has not offered sufficient evidence and statements to justify its not conforming to said City's request, then, and in that event, either the City or said franchisee may refer the City's request for arbitration as provided in the laws of the State of Kansas then existing and the decision of the arbitrator shall be binding and conclusory upon said parties, except that the arbitrator may not compel franchisee to be in non-compliance with any state or federal law or rules which take precedence over this ordinance; provided further that in the event the City's request is submitted for arbitration, the arbitrator may not consider, nor shall he effect, the then existing provisions of this franchise except as herein provided.

**Section 29.** **FRANCHISEE'S DUTY TO INDEMNIFY THE CITY.** At the time the franchisee files its acceptance of this franchise, franchisee thereby agrees to indemnify the City against any and all claims, demands, actions, suits and proceedings by other persons against any and all liability to such other persons by reason of liability for damages arising out of any failure by said franchisee to obtain consent from owner, authorized distributors and licensees of programs transmitted or distributed by the franchisee under its cable television system and against any loss, cost, expense or damages resulting therefrom and including reasonable attorneys fees incurred in the defense of any such action.

**Section 30.** **NEW DEVELOPMENTS.** It shall be the policy of the City to amend reasonably this franchise ordinance upon application of franchisee when necessary to enable franchisee to take advantage of any developments in the field of transmission of television, radio signals, cable television or other forms of electromagnetic radiation.

**Section 31. RIGHTS OF INDIVIDUALS.**

(a) Franchisee shall not deny service or otherwise discriminate against subscribers or general citizens on the basis of race, color, religion, national origin, or sex. Franchisee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to nondiscrimination which are hereby incorporated and made part of this ordinance by reference.

(b) Franchisee shall adhere to the equal employment opportunity requirements of federal, state and local regulations as now existing and as amended from time to time.

(c) Franchisee shall not transmit any signals from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provision. Any such authorization shall be revocable by the subscriber with no penalty. Provided, however, that the franchisee shall be entitled to conduct system wide or individually addressed electronic checks for the purpose of verifying system integrity, controlling two-way return path transmission, or billing for per-channel, per-event or other special services.

**Section 32. SEVERABILITY.** That should any section, paragraph, sentence, clause or phrase of this ordinance be declared unconstitutional or invalid for any reason, the remainder of this ordinance shall not be thereby affected.

**Section 33. TIME IS OF THE ESSENCE.** Whenever this franchise shall set forth any time for any action to be performed by or on behalf of the franchisee, such time shall be deemed of the essence and any failure of the franchisee to perform within the time so specified shall be sufficient grounds for said City to revoke the franchise herein granted, subject to procedural requirements stated herein.

(Ord. No. 988C; Effective 09-06-87)

## ARTICLE 7. BLUE VALLEY SCHOOL DISTRICT FRANCHISE

(Fiber optic cable telecommunications system in public right-of-way - Ordinance No. 1647; 5-year term commences 2/7/97, date of ordinance publication.)

**Section 1.** **SHORT TITLE.** This ordinance shall be known as "The Blue Valley Unified School District No. 229 Telecommunications Franchise Ordinance of the City of Leawood, Kansas" and may herein and hereafter be cited as "Blue Valley Franchise Ordinance".

**Section 2.** **ADOPTION OF AGREEMENT.** The Governing Body of the City of Leawood, Kansas, does hereby grant a franchise to Blue Valley pursuant to the terms of the agreement that is on file with the City Clerk and does hereby authorize its Mayor to execute said "Franchise Agreement Between the City of Leawood and Blue Valley Unified School District No. 229."

**Section 3.** **TAKE EFFECT.** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the official City newspaper, all as provided by law.

(Ord. No. 1647C; effective 04-07-97)

# APPENDIX B. FRANCHISES

## ARTICLE 8. MCImetro ACCESS TRANSMISSION SERVICES LLC [f/n/a Brooks Fiber Communications of Missouri, Inc.] [d/b/a Verizon Access Transmission Services]

**SECTION 1. DEFINITIONS.**
For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
d. “Access line remittance” – means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
e. "City" - means the City of Leawood.
f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
h. "Grantee" – means MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, a telecommunications provider providing service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

i. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

k. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend, and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise. Further, Grantee is hereby granted the right to lease its Facilities in whole or in part to affiliates or third parties, provided that the Grantee maintains ownership of such Facilities. This contract Franchise shall not be construed, in any manner, as relieving lessees of their obligation to obtain a Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
   1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
   2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
   3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a quarterly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement, or comparable documents showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
    1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
    2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Grantee shall provide thirty (30) days' prior written notice of cancellation or material change to its insurance. Grantee shall make available to the City on request and at Grantee's office the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall e.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTIOIN 7. REVOCATION AND TERMINATION**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of two (2) years from the effective date of this Contract franchise. Thereafter, this Contract franchise will renew for two (2) additional one (1) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred eighty days (180 ) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Leawood
4800 Town Center Drive
Leawood, Kansas 66211
Attn: City Clerk
(913) 339-9325 fax

Grantee:

MCImetro Access Transmission
Services d/b/a Verizon Access
Transmission Services
600 Hidden Ridge
Irving, TX 75038
Attn: Franchise Manager

With a copy to (except for invoices):
Verizon Business Services
1320 N. Court House Road, Suite 900
Arlington, VA 22201
Attn: General Counsel, Network &
Technology

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon notice to the City.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. 2489; Effective Date 05-24-11)
(Ord. 2879C; Effective Date 04-03-18)
(Ord. 2927C; Effective Date 03-05-19)

# APPENDIX B. FRANCHISES

## ARTICLE 9. Level 3 Telecom of Kansas City [f/n/a/ tw telecom of Kansas city llc [f/n/a Xspedius Communications, LLC]

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

c "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

d "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.

e "City" - means the City of Leawood, Kansas.

f "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide local exchange telecommunications services within the City.

g "Facilities" - includes but is not limited to telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide Telecommunication Services.

h "Grantee" - means **Level 3 Telecom of Kansas City,** a telecommunications local exchange service provider. References to Grantee shall also include as appropriate any and all successors and assigns.

i “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

j "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

k "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

l "Telecommunication services" – shall have the meaning ascribed to it in 47 U.S.C. § 153(53) and the implementing orders and regulations of the Federal Communications Commission.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of any telecommunication service or system, including, but not limited to supplying local exchange services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

c. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

d. This authority shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Ordinance, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be consistent with Federal and State law, competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No. 1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

d. The grant of this usage of the Public right-of-way by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated herein. It does not:

   1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
   2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or

3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.00 per Access line per month. The access line fee shall be a maximum of $2.75. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement, or comparable documents, showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Ordinance, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Ordinance.

h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The franchise fee is compensation pursuant to K.S.A. 12-2001(j) and shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or a gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Ordinance, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Ordinance.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Ordinance, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Ordinance, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Ordinance shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Ordinance, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Ordinance. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Ordinance by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Ordinance is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and Grantee shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Ordinance, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Ordinance shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Ordinance or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

b. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, or under any relevant federal statutes or rules implementing such statutes, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In entering into this Ordinance, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Ordinance, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Ordinance), and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of six (6) years from the effective date of this Contract franchise. Thereafter, this Contract Franchise shall renew for two (2) additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Ordinance at least ninety (90) days before termination of the then current term. If the Grantee wishes to renew this Contract franchise, it will cause the performance bond as discussed in Section 6d of this franchise to remain in force through the renewal terms. Any additional term made pursuant to the renewal shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Ordinance shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Ordinance granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Ordinance. In the event of such invalidity, if Grantee is required by law to enter into an Ordinance with the City, the parties agree to act in good faith in promptly negotiating a new Ordinance.

d. Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. This Ordinance shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new franchise or an amendment to this Ordinance upon the termination date of this Ordinance, the parties by written mutual agreement may extend the termination date of this Ordinance to allow for further negotiations. Such extension period shall be deemed a continuation of this Ordinance and not as a new franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery with receipt confirmation, overnight delivery by a nationally recognized carrier with receipt confirmation, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile with transmission confirmation. Notices shall be effective upon actual receipt, refusal of delivery, in each case as reflected by the receipt or transmission confirmation. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**

City of Leawood
4800 Town Center Drive
Leawood, Kansas 66211
Attn: City Clerk
Fax: 913-339-6781

**Grantee:**

**Level 3 Telecom of Kansas City**
1025 Eldorado Blvd,
Broomfield, Co 80021
Attn: Director ROW / NIS
& General Counsel

With copies of notices of default to:

**Level 3 Telecom of Kansas City**
General Counsel
931 14th Street
Denver Co 80202

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**

This Ordinance is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed; provided that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with Grantee or to any entity that acquires all or substantially all of the assets or equity of Grantee. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Ordinance, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Ordinance.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Ordinance and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Ordinance, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Ordinance, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Ordinance is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Ordinance.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 1814C; effective 10-16-99)
(Ord. No. 1995C; effective 08-25-03)
(Ord. No. 2090C; effective 01-15-05)
(Ord. No. 2444C; effective 05-12-10)
(Ord. No. 2696C; effective 12-04-14)
(Ord. No. 2929C; effective 03-07-19)

# ARTICLE 10. AXON TELECOM, LLC - RIGHT-OF-WAY

**Section 1.** **DEFINITIONS.** For the purpose of this ordinance, the following words and phrases and their derivations shall have the following meaning:

a. Axon Telecom means Axon Telecom, L.L.C., its duly authorized successors, transferees, or assigns.

b. Cable includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.

c. City means the City of Leawood, Kansas, a municipal corporation, and any duly authorized representative.

d. Facilities means lines, pipes, wires, cables, conduits, ducts, innerducts, culverts, manholes, vaults, pedestals, boxes, appliances, gates, meters, appurtenances, or other equipment used by Axon Telecom for the purposes of conducting its business operations as authorized herein.

e. Fee means the fee imposed by the City on Axon Telecom solely because of its status in accordance to K.S.A. 12-2001. It shall not include: (1) any tax, fee, or assessment of general applicability including any which are imposed on Axon Telecom; (2) requirements or charges incidental to the awarding or enforcement of this ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; (3) any permit fee or other fee imposed under any valid ordinance regulating the right-of-way; or (4) any other fee imposed by federal, state, or local law.

f. Person means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

g. Right-of-Way means the area on, below or above the present and future City streets, alleys, bridges, bikeways, parkways and sidewalks.

h. Right-of-Way Ordinance means this ordinance passed to grant the right, privilege or franchise to construct, operate and maintain conduit facilities within the right-of-way. This ordinance shall operate as an agreement or contract between the City and Axon Telecom and shall be subject to the laws of the State of Kansas.

i. Utility Easement means, for the purposes of this ordinance, an easement dedicated to the City for the purpose of utilities.

**Section 2.** **GRANT.** Axon Telecom is hereby granted the right, privilege or franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements in accordance with the plans submitted and approved by the Public Works Director for the purposes of supplying innerducts by lease or sale to other duly franchised entities on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, Axon Telecom is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity. This

ordinance does not grant Axon Telecom the right, privilege or franchise to provide telecommunications services (as defined by 47 U.S.C. § 153), cable service (as defined by 47 U.S.C. § 522), open video system service (as defined by 47 U.S.C. § 573) or any other service, or to install its own cable; provided that this restriction shall not preclude Axon Telecom from installing the facilities or cable of other duly franchised or otherwise authorized entities.

**Section 3.** **USE OF PUBLIC RIGHT-OF-WAY AND UTILITY EASEMENTS.** Axon Telecom's facilities shall be located in the right-of-way and utility easements in accordance with the plans currently proposed and approved by the Public Works Director. Modifications to such plans and/or any future requests for additional placement shall only be allowed as approved and authorized by the Public Works Director. Placement, modification, replacements, maintenance and repairs to Axon Telecom's facilities shall be conducted in compliance with all applicable laws, statutes, ordinances and permit requirements. Axon Telecom will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, Axon Telecom shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, Axon Telecom shall be subject to all applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers, including, but not limited to the City's ordinance regarding the Use and Excavation of the Public Right-of-Way.

**Section 4.** **MAINTENANCE OF FACILITIES.** Axon Telecom shall keep its facilities in good repair and working order and shall maintain its facilities in accordance with all applicable law, statute and ordinance; provided that any related expense may be shared in whole or in part with entities leasing or purchasing the use of Axon Telecom's facilities. In the event Axon Telecom requests to transfer or relinquish its right, privilege or franchise herein granted, Axon shall provide the City with evidence that such maintenance responsibility has been appropriately assumed by another entity or entities.

**Section 5.** **FEE.** Axon Telecom shall pay an initial one-time administrative fee of $1,000 for the right privilege or franchise hereunder. Further, Axon Telecom shall pay the City one (1%) percent of all gross revenues collected for any and all leases and sales of its innerducts and other facilities in the right-of-way and utility easements within the City of Leawood. Such payments shall be made on a semiannual basis for any lease, and within thirty (30) days of the execution of any sale. All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City. Axon Telecom shall pay interest at an annual rate of ten (10%) percent for each month or fraction thereof on any late payment of the charge provided for in this ordinance.

**Section 6.** **TERM.** This ordinance shall be effective for a term of one (1) year from the effective date. Thereafter, this ordinance will renew for ten (10) renewable one (1) year terms, unless either party notifies the other party of its intent to terminate the agreement created by this ordinance prior to one hundred eighty (180) days before the termination of the then current term.

**Section 7.** **RENEGOTIATION OF ORDINANCE PROVISIONS.** If the City has a good faith belief that Axon Telecom is offering telecommunications, cable, OVS or any other service within the City beyond those services contemplated and granted by this ordinance, the City may seek renegotiation of this ordinance or require a separate franchise ordinance for such services. Axon Telecom agrees to negotiate with the City in good faith in a timely manner, and to pay for any prior unauthorized use in accordance with the terms of the amended or new ordinance. The purpose of this provision is to allow the City to ensure that Axon Telecom is paying a fee for all services for which a franchise fee is appropriate.

**Section 8.** **DESCRIPTION OF SERVICE.** In the event Axon Telecom offers new services other than the lease or sale of its innerducts and the installation of other duly franchised entities' cable or other facilities therein, Axon Telecom shall immediately notify the City.

**Section 9.** **AXON TELECOM'S INFORMATION.** Axon Telecom shall, at its own expense, annually submit to the City a summary of the previous year's development of its facilities, including but not limited to, the location of facilities during the year, and Axon Telecom's plan of development of facilities for the next year — Note: In lieu of this requirement, Axon Telecom's agent may meet in person with the City's Public Works Director to discuss these issues.

**Section 10.** **USE OF FACILITIES BY OTHER ENTITIES.**

a. Axon Telecom may sell, transfer or lease its innerducts and related facilities to duly franchised entities; provided that such transaction shall not constitute authorization by the City for such entities to operate within the City, or a transfer in whole or part of the right, privilege or franchise herein granted. Axon Telecom shall timely notify the City of the identity of all entities that have leased or purchased in whole or in part the use of Axon Telecom's facilities.

b. Axon Telecom shall not interfere with any City right-of-way or franchise requirements regarding any entity leasing in whole or in part the use of Axon Telecom's facilities. Further, Axon Telecom shall not interfere with or oppose any line charge fee imposed upon such entity.

c. Axon Telecom understands that the City may request service providers to reasonably utilize any available space or capacity within Axon Telecom's facilities. In such event Axon Telecom will charge a fairly priced rate and will make a reasonable attempt to negotiate an appropriate agreement with any such service provider.

**Section 11.** **TRANSFER OF RIGHT, PRIVILEGE OR FRANCHISE.** Pursuant to permission of the City, which shall not be unreasonably withheld, Axon Telecom shall have the right to assign as a whole the right, privilege or franchise herein granted to any person who, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations under this ordinance or any applicable governmental requirement. Notice of Axon Telecom's intent to assign its right, privilege or franchise granted by this ordinance shall be in writing. Upon completion of the assignment, an authenticated copy thereof shall be filed with the city clerk. The right, privilege or franchise granted by this ordinance shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Any attempts to transfer, assign or otherwise dispose of the right, privilege or franchise granted herein by the City or Axon Telecom's facilities not conforming with the requirements of this section shall be null and void. This section is not intended to apply to or prevent Axon Telecom's leasing or sale of its innerducts to other entities, nor shall the same be considered a transfer of any right, privilege or franchise granted herein.

**Section 12.** **NOTIFICATION PROCEDURE.** Any required or permitted notice under this ordinance shall be in writing. Notice upon the City shall be delivered to the city clerk by first class United States mail or by personal delivery. Notice upon Axon Telecom shall be delivered by first class United States mail or by personal delivery to: Attn: Legal Department, Axon Telecom, L.L.C., 450 Pryor Blvd., P.O. Box 409, Sturgis, KY 42459.

**Section 13.** **INDEMNIFICATION**. Axon Telecom shall fully indemnify, release, defend and hold harmless the City, and agents of the City when acting in their capacity as municipal officials, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees, to the extent caused by negligent acts or omissions of Axon Telecom in the performance of the permitted work. The City agrees to timely notify Axon Telecom of such claim, demand, suit, proceeding, and/or action by providing written notice to Axon Telecom. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve Axon Telecom from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

**Section 14.** **LIABILITY INSURANCE REQUIREMENT**. Axon Telecom shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Axon Telecom, or alleged to so have been caused or occurred. If Axon Telecom is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

**Section 15.** **PERFORMANCE AND MAINTENANCE BOND REQUIREMENT**. Axon Telecom shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this ordinance plus one additional year, conditioned upon Axon Telecom's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

**Section 16.** **RESERVATION OF RIGHTS.** In addition to any rights specifically reserved to the City by this ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of this ordinance, except those required by federal or state law, if the City determines: (a) that it is in the public interest to do so, and (b) that the enforcement of such provision will impose an undue hardship on Axon Telecom or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

**Section 17.** **FORFEITURE OF RIGHT, PRIVILEGE OR FRANCHISE.** In case of the failure of Axon Telecom to comply with any of the provisions of this ordinance, or if Axon Telecom should do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, Axon Telecom shall forfeit any right, privilege or franchise granted by this ordinance and any such right, privilege or franchise shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have fourteen (14) days subsequent to receipt of such notice to inform the City in writing of the action Axon Telecom shall take to correct the violation. Such corrective action shall be completed within thirty (30) days subsequent to receipt of notice unless otherwise agreed to by the City. If at the end of such period the City deems that the conditions created by this ordinance have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. If Axon Telecom fails to take corrective action within the thirty (30) day period set forth above, nothing herein shall preclude the City from maintaining an action against Axon Telecom to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of this ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to Axon Telecom of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Axon Telecom shall have ninety (90) days after the mailing of such notice in which to comply with the conditions of this ordinance. If at the end of such period the City deems that the conditions have not been complied with by Axon Telecom and that this ordinance is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated.

c. If within thirty (30) days after the effective date of an ordinance to terminate this ordinance, in accordance with the provisions herein, Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not Axon Telecom has violated the terms of this ordinance and that this ordinance is subject to cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty (30) day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by reason of the violation of the terms, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this ordinance and/or to abate nuisances maintained in violation thereof.

**Section 18. REVOCATION OF THIS ORDINANCE.** In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this ordinance and all right, privilege or franchise of Axon Telecom as a result of and in response to any of the following events or reasons:

a. Any provision of this ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this ordinance as to cause the same to become null and void; or

b. Axon Telecom commits an act of fraud or deceit against the City in obtaining the grant of this ordinance, or upon being granted Axon Telecom commits such an act against the City.

To revoke this ordinance in accordance with the provisions of this section, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which this ordinance is to be canceled and terminated. Prior to the enactment of such ordinance, Axon Telecom shall be provided with timely written notice by certified mail, and Axon Telecom shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty (30) days after the effective date of such ordinance to terminate this ordinance Axon Telecom shall not have instituted an action in the District Court of Johnson County, Kansas to determine whether or not this ordinance was appropriately terminated in accordance to the provisions of this section and is subject to cancellation by reason thereof, this ordinance shall be canceled and terminated at the end of such thirty (30) day period. If within such thirty (30) day period Axon Telecom does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that this ordinance is subject to cancellation by the reason addressed by this section, this ordinance shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

**Section 19. MISCELLANEOUS PROVISIONS.**

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain Axon Telecom's facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other rights, privileges or franchises to other persons. However, no such additional grant shall in any way affect the rights or obligations of Axon Telecom.

b. Exclusive Benefit of Axon Telecom. The right, privilege or franchise granted to Axon Telecom by this ordinance shall be for the sole use of Axon Telecom to provide conduit services as authorized herein. These rights are for the exclusive benefit of Axon Telecom, except where otherwise provided herein, or when authorized by the City.

c. Axon Telecom is Without Remedy Against the City. Axon Telecom shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this ordinance, or for the failure of the City to have the authority to grant, all, or any part, of this ordinance granted. Second, Axon Telecom expressly acknowledges that it accepted this ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the right, privilege or franchise conferred upon Axon Telecom. Third, Axon Telecom acknowledges by its acceptance of this ordinance that it has not been induced to agree to the terms of this ordinance upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this ordinance not expressed herein. Finally, Axon Telecom acknowledges by the acceptance of this ordinance that it has carefully read the provisions, terms, and conditions of this ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this ordinance to the contrary, the construction, operation and maintenance of Axon Telecom's facilities by Axon Telecom or its agent shall be in accordance with all laws and regulations of the United States the state, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, Axon Telecom shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Axon Telecom's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Axon Telecom shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, Axon Telecom's failure to comply with any law or regulation governing the operation of said facilities may result in a forfeiture of the granting of the right, privilege or franchise created by this ordinance.

e. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of the agreement created by this ordinance shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

(Ord. No. 1851C; effective 05-06-00)

# ARTICLE 11. ABOVENET COMMUNICATIONS, INC., [formerly Metromedia Fiber Network Systems, MFNS]

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.

e. "City" - means the City of Leawood.

f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

h. “FCC” – means the Federal Communications Commission, an independent United States government agency established by the Communications Act of 1934, which is charged with regulating interstate and international communications by radio, television, wire, satellite and cable.

i. ”Grantee" - means AboveNet Communications, Inc., a telecommunications local exchange service provider. References to Grantee shall also include as appropriate any and all successors and assigns.

j. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

k. “KCC” – means the Kansas Corporation Commission which regulates rates, service and safety of public utilities, common carriers, motor carriers, and regulate oil and gas production by protecting correlative rights and environmental resources in the State of Kansas.

l. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the Kansas Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

m. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

n. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

   1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
   2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
   3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC. Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate it Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.00 per Access line per month. The access line fee shall be a maximum of $2.25 per month per access line in 2006, a maximum of $2.50 per access line in 2009, and a maximum of $2.75 per access in line in 2012 and thereafter. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement, or comparable documents, showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
    1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
    2. Commercial general and umbrella liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and shall endeavor that said insurance will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Grantee has represented to the City that it is currently unable to obtain such a bond but has, in lieu of bond, provided a Letter of Credit naming the City of Leawood as beneficiary, in the amount of $50,000.00, issued by Citibank, irrevocable and automatically extended without amendment for additional periods if necessary, for the length of this franchise, in a form acceptable to the City Attorney. Grantee acknowledges that, prior to any renewal of this Contract Franchise, as set forth below, that it shall produce the required bond or shall produce evidence that it has been unable to obtain a bond from three recognized surety companies. The City reserves its right to reject renewal of this Contract Franchise if Grantee is unable to provide such a bond.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of two (2) years from the effective date of this Contract franchise. Thereafter, this Contract Franchise may be renewed for two (2) additional one (1) year terms, provided, however, if the Grantee wishes to renew this Contract franchise, it will reapply for a performance bond as discussed in Section 6 (d) of this franchise and shall submit the required bond prior to the renewal date. Any additional term made pursuant to the renewal shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of

the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood | AboveNet Communications , Inc. |
| 4800 Town Center Drive | 360 Hamilton Avenue |
| Leawood, Kansas 62111 | White Plains, New York 10601 |
| Attn: City Clerk | (914) 421-6793 fax |
| (913) 339-9325 fax | |

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon notice to the City.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

[Ord. No. 2508C; Effective 09-20-11]
[Ord. No. 2327C; Effective 09-05-08)
[Ord. No. 2088C; Effective 01-15-05]
[Ord. No. 1893C; Effective 07-21-01]

# ARTICLE 12. SUREWEST KANSAS LICENSES, LLC [formerly EVEREST MIDWEST LICENSEE, LLC]

**SECTION 1. DEFINITIONS.**
For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
e. "City" - means the City of Leawood.
f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
h. "Grantee" – means Consolidated Communications Enterprise Services, Inc., a telecommunications local exchange service provider providing local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

i. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

k. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

**a.** Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate it Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

**b.** Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed the maximum Access line fee allowed by Statute. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

a. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

b. Grantee shall pay on a quarterly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

c. Upon forty-five (45) days prior written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

e. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

f. Unless previously paid, within sixty (60) days of the effective date of this Ordinance, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Ordinance.

g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The franchise fee is compensation pursuant to K.S.A. 12-2001(j) and shall in no way be deemed a tax of any kind.

h. Grantee shall remit an access line (franchise) fee or a gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
    1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
    2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

**a.** This Contract franchise shall be effective for a term of two (2) years from the effective date of this Contract franchise. Thereafter, this Contract franchise will renew for two (2) additional one (1) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

**c.** If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood | Consolidated Communications Enterprise Services, Inc. |
| 4800 Town Center Drive | 121 South 17th St. |
| Leawood, Kansas 62111 | Mattoon, IL 61938 |
| Attn:City Clerk | Attn: Contract Manager |
| (913) 339-9325 fax | (217) 235-3590 fax |

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with Grantee. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract franchise, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 1898C; Effective 09-15-01)
(Ord. No. 1970C; Effective 12-10-02)
(Ord. No. 2162C; Effective 04-17-06)
(Ord. No. 247C0; Effective 12-20-10)
(Ord. No. 2697C; Effective 11-20-14)
(Ord. No. 2896C; Effective 08-01-18)

# ARTICLE 13. ZAYO GROUP, LLC, [f/n/a AMERICAN FIBER SYSTEMS

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
e. "City" - means the City of Leawood.
f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
h. “FCC” – means the Federal Communications Commission, an independent United States government agency established by the Communications Act of 1934, which is charged with regulating interstate and international communications by radio, television, wire, satellite and cable.
i. "Grantee" - means Zayo Group, LLC., a telecommunications local exchange service provider. References to Grantee shall also include as appropriate any and all successors and assigns.

j. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
k. “KCC” – means the Kansas Corporation Commission which regulates rates, service and safety of public utilities, common carriers, motor carriers, and regulate oil and gas production by protecting correlative rights and environmental resources in the State of Kansas.
l. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the Kansas Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
m. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.
n. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

   1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
   2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
   3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC. Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate it Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.75 per access in line. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement, or comparable documents, showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

   1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
   2. Commercial general and umbrella liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and shall endeavor that said insurance will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Grantee has represented to the City that it is currently unable to obtain such a bond but has, in lieu of bond, provided a Letter of Credit naming the City of Leawood as beneficiary, in the amount of $50,000.00, issued by Citibank, irrevocable and automatically extended without amendment for additional periods if necessary, for the length of this franchise, in a form acceptable to the City Attorney. Grantee acknowledges that, prior to any renewal of this Contract Franchise, as set forth below, that it shall produce the required bond or shall produce evidence that it has been unable to obtain a bond from three recognized surety companies. The City reserves its right to reject renewal of this Contract Franchise if Grantee is unable to provide such a bond.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of two (2) years from the effective date of this Contract franchise. Thereafter, this Contract Franchise may be renewed for two (2) additional one (1) year terms, provided, however, if the Grantee wishes to renew this Contract franchise, it will reapply for a performance bond as discussed in Section 6 (d) of this franchise and shall submit the required bond prior to the renewal date. Any additional term made pursuant to the renewal shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood | Zayo Group, LLC |
| 4800 Town Center Drive | Attn: Michael Merryman |
| Leawood, Kansas 62111 | 400 Centennial Parkway, Suite 200 |
| Attn:City Clerk | Louiseville, Colorado 80027 |
| (913) 339-9325 fax | (303) 604-6869 fax |

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, upon notice to the City.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 1901C; Effective 10-05-01)
(Ord. No. 2089C; Effective 01-15-05)
(Ord. No. 2371C; Effective 01-02-09)
(Ord. No. 2610C; Effective 02-08-13)
(Ord. No. 2778C; Effective 04-28-16)

# ARTICLE 14. QWEST COMMUNICATIONS CORPORATION

**Section 1. Definitions.** For the purpose of this franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

***'Cable'*** includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.

***'Cable Service'*** means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for selection and use of video programming or other programming service, as defined by 47 USC §522(6), any successor statute of similar import.

***'City'*** means the City of Leawood, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Leawood as now constituted or as shall hereafter exist.

***'Facilities'*** means lines, pipes, wires, cables, conduits, ducts, culverts, hoses, irrigation systems, manholes, poles, towers, vaults, pedestals, boxes, appliances, antennas, repeaters, micro cells, Pico cells, amplifiers, transmitters, gates, meters, appurtenances, or other equipment used by the franchisee for the purposes of conducting franchise operations and providing service to subscribers.

***'Franchise Ordinance'*** means this ordinance passed to grant the telecommunications franchise to franchisee. This ordinance shall operate as an agreement or contract between the City and franchisee and shall be subject to the laws of the State of Kansas.

***'Franchisee'*** means Qwest Communications Corporation, or its successors, transferees, or assigns.

***'Franchise Fee'*** means the fee imposed by the City on franchisee solely because of its status as such, in accordance to K.S.A. § 12-2001. It shall not include: [1] any tax, fee, or assessment of general applicability including any which are imposed on franchisee; [2] requirements or charges incidental to the awarding or enforcing the franchise ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, [3] any permit fee or other fee imposed under any valid right-of-way ordinance, or [4] any other fee imposed by federal, state, or local law.

***'Gross Revenues'*** means those revenues less uncollectible, derived from the following: [1] recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features, and measured local calls; [2] recurring local exchange access line services for pay phone lines provided by franchisee to all pay phone service providers; [3] local directory assistance revenue; [4] line status verification/busy interrupt revenue; [5] local operator assistance revenue; [6] nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, unbundled network elements, nonregulated services, carrier and end user access, long distance, and all other services not wholly local in nature are excluded from 'gross revenues.'

Further, 'gross revenues' shall be reduced by bad debt expenses and uncollectible and late charges shall not be included within 'gross revenues.' If during the term of this franchise ordinance franchisee offers additional services of a wholly local nature which if in existence at the effective date of the franchise ordinance would have been included with the definition of 'gross revenues,' such services shall be included from the date of the offering of such services in the City for the remaining term of the franchise ordinance.

***'Open Video System'*** means the provision of video programming service as described in and subject to 47 USC § 573, or a successor statute of similar import.

***'Person'*** means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

***'Right-of-Way'*** means the area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated as right-of-way.

***'Service'*** means a commodity used by the public and provided through franchisee's facilities.

***'Subscriber'*** means any person who receives services from franchisee services.

***'Telecommunications'*** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, as defined by 47 USC § 153(43), and successor statute of similar import.

***'Telecommunications service'*** means the offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used, as defined by 47 USC § 153(46), a successor statute or similar import.

***'Utility Easement'*** means, for the purpose of this ordinance, an easement dedicated to the City for the purpose of utilities.

**Section 2.** **Grant.** Franchisee is hereby granted the right, privilege and franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements for the purposes of supplying local telecommunications services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, franchisee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, subject to franchisee's right to challenge in good faith such requirements as established by the FCC, KCC or other City ordinance.

This franchise does not provide franchisee the right to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City. Upon franchisee's request for a franchise to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City, the City agrees to timely negotiate such franchise in good faith with franchisee. Franchisee agrees that this franchise does not permit franchisee to operate an open video system without payment of fees permitted by 47 USC § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 USC § 573.

**Section 3.** **Use of Public Right-of-Way and Utility Easements.** Franchisee's facilities shall be located in the right-of-way and utility easements as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Nothing in this agreement shall authorize Franchisee to locate its facilities on or within any City owned parkland property or any other City owned property unless authorized by separate agreement. Placement, changes, additions, replacements, maintenance and repairs to franchisee's facilities shall be conducted in compliance with any applicable ordinance and/or permit requirement. Franchisee will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, franchisee shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, franchisee shall be subject to all right-of–way management ordinances and all other applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers.

**Section 4.** **Franchise Fee.** Franchisee shall pay the greater of $12,000 or an annual sum of $2.50 per lineal foot for all fiber in the right-of-way. This payment shall be due on the effective date of the ordinance and annually thereafter. In the event franchisee provides local service to customers within the City, franchisee shall notify the City Clerk. At such time, the franchise fee shall be the greater of the above prescribed amount, or five [5%] percent of its gross revenues as defined herein. Payment on the basis of gross revenues shall be made on a monthly basis without invoice or reminder from the City, and paid within forty-five [45] days after the last day of the applicable month.

All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Franchisee shall pay interest at an annual rate of ten [10%] percent for each month or fraction thereof on any late payment of the charge provided for in this franchise ordinance.

**Section 5.** **City's Right to Audit and Access to Records.** If franchisee is providing service within the City, franchisee shall annually file with the City of Leawood a gross receipts report regarding all applicable monthly revenues and all relevant codes. Franchisee and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of franchisee and agree that pursuant to K.S.A. § 45-221(18), as amended, such information does not constitute public records subject to K.S.A. § 45-218, as amended. In the event the City is required by to disclose such information, the City shall provide franchisee seven [7] days advance notice of its intent to disclose such information and shall take such action as may be reasonably required to cooperate with the franchisee to safeguard such information. The City shall also have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of the franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of gross revenues is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual rate of ten [10%] percent.

Regardless of whether franchisee is providing service within the City, the City's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by franchisee. In addition to access to the records of franchisee for audits, upon request, franchisee shall provide reasonable access to records necessary to verify compliance with the terms of this franchise ordinance.

**Section 6.** **Term.** This franchisee ordinance shall be effective for a term of one [1] year from the effective date.

**Section 7.** **Renegotiation of Franchise.** If the City has a good faith belief that franchisee is offering local telecommunications services within the City beyond those telecommunications services contemplated by this ordnance, the City may seek renegotiation of this franchise if the City reasonably believes that such services constitute local telecommunications services subject to a franchise fee under K.S.A. § 12-2001. In the event the City seeks renegotiation under such circumstances, franchisee agrees to negotiate with the City in good faith in a timely manner. Nothing herein shall preclude the City from seeking a separate franchise agreement with franchisee if the City has a good faith belief that franchisee is offering services other than telecommunications services that are subject to a franchise fee under K.S.A. § 12-2001. The purpose of this provision is to allow the City to ensure that franchisee is paying a franchise fee for all services for which a franchise fee is appropriate.

**Section 8.** **Description of Service.** Franchisee shall on a semi-annual basis provide the City with a description of new local telecommunications services offered within the City during the prior six-month period. In the event franchisee offers new services [other than telecommunications services, extended area service, unbundled network elements, nonregulated services, carrier and end user access and long distance], franchisee shall notify the City of such services on a semi-annual basis.

**Section 9.** **Franchisee Information.** Franchisee shall, at its own expense, annually submit to the City the following information:

a. A report of the franchisee's gross revenues as referenced by Section 5 herein [only if franchisee is providing service within the City]; and

b. A summary of the previous year's development of franchise facilities, including but not limited to, the location of facilities during the year, and franchisee's plan of development of facilities for the next year – Note: in lieu of this requirement, franchisee's right-of-way director may meet in person with the City's Public Works Director to discuss these issues; and

c. Information as to the number of subscribers in the City of Leawood [only if franchisee is providing service within the City]. Note: this requirement does not include giving the identification of the subscribers.

**Section 10.** **Subscriber Rates.** Franchisee's charges to subscribers will comply with all applicable federal and state regulations. Upon request, franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from the KCC. When provided so by state or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

**Section 11.** **Use of Facilities by Other Service Providers.** On a semi-annual basis, franchisee shall notify the City of the identity of local service providers that have been granted a certificate of convenience to offer local telecommunications services within the State of Kansas. Franchisee shall also provide the City on a semi-annual basis of the identity of entities with which franchisee has entered into an interconnection and/or resale agreement within the State of Kansas.

**Section 12.** **Transfer of Franchise.** Pursuant to the written permission of the City, which shall not be unreasonably withheld, franchisee shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations in accordance with this franchise ordinance or any other appropriate governmental requirement. If franchisee should seek approval to assign this franchise, franchisee shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Any attempts to transfer, assign or otherwise dispose of the rights granted herein by the City or franchisee's facilities not conforming with the requirements of this section shall be null and void.

**Section 13.** **Other Service Providers.** Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use its existing poles and to relocate its facilities underground, all other service providers using the same poles, including franchisee when applicable, shall also relocate their facilities underground at that time; provided, however, that such placement is economically reasonable. The City shall not unreasonably enter into such an agreement with another service provider, and notice of any intent to enter into such an agreement shall be timely provided to franchisee.

**Section 14.** **Notification Procedure.** Any required or permitted notice under this franchise ordinance shall be in writing. Notice upon the City shall be delivered to the City Clerk by first class United States Mail or by personal delivery. Notice upon franchisee shall be delivered by first class United States Mail or by personal delivery to:

Qwest Communications Corporation
13952 Denver West Parkway
Building # 53, Suite # 200
Golden, CO 80401

**Section 15.** **Indemnification.** Upon notice by the City, franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by franchisee's actions and operations of its telecommunications service in accordance to this ordinance. The City agrees to immediately notify franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to franchisee. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

**Section 16.** **Liability Insurance Requirement.** Franchisee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than One Million Dollars [$1,000,000] per occurrence and Two Million Dollars [$2,000,000] in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by the service provider, or alleged to so have been caused or occurred. If franchisee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

**Section 17.** **Performance and Maintenance Bond Requirements.** Franchisee shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this franchise ordinance plus one additional year, conditioned upon franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

**Section 18.** **Reservation of Rights.** In addition to any rights specifically reserved to the City by this franchise ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this franchise ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or state law, if the City determines: [a] that it is in the public interest to do so; and [b] that the enforcement of such provision will impose an undue hardship on franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this franchise ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

**Section 19.** **Forfeiture of Franchise.** In case of the failure of franchisee to comply with any of the provisions of this franchise ordinance, or if franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this franchise ordinance, franchisee shall forfeit all rights and privileges granted by this franchise and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this franchise ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen [14] days subsequent to receipt of such notice to inform the City in writing of the action franchisee shall take to correct the violation. Such corrective action shall be completed within thirty [30] days subsequent to receipt of notice unless otherwise agreed to by the City. If, at the end of such period, the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action against franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of the franchise ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety [90] days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated.

c. If within thirty [30] days after the effective date of an ordinance to terminate the franchise, in accordance with 19(a) or 19(b) herein, the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchisee has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If within such thirty [30] day period the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this franchise ordinance and/or to abate nuisances maintained in violation thereof.

**Section 20**. **Revocation of Franchise.** In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the franchisee as a result of and in response to any of the following events or reasons:

a. Any provision of this franchise ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise ordinance as to cause the same to become null and void; or

b. Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or upon being granted franchisee commits such an act against the City.

To revoke this franchise in accordance with the provisions of this section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. Prior to the enactment of such ordinance, franchisee shall be provided with timely written notice by certified mail, and franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty [30] days after the effective date of such ordinance to terminate the franchise the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchise was appropriately terminated in accordance to the provisions of this section and is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If, within such thirty [30] day period, the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the Court finds that the franchise is subject to cancellation by the reason addressed by this section, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

**Section 21. Miscellaneous Provisions.**

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain franchisee's facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other persons. However, no such additional franchise shall in any way affect the rights or obligations of franchisee.

b. Exclusive Benefit of Franchise Right by Franchisee. The rights granted to franchisee by this franchise ordinance shall be for the sole use of franchisee to provide telecommunications services as authorized herein. These rights are for the exclusive benefit of franchisee, except where otherwise provided herein, or when authorized by the City.

c. Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this franchise ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the franchise ordinance granted. Second, franchisee expressly acknowledges that it accepted the franchise ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the franchise conferred upon franchisee. Third, franchisee acknowledges by its acceptance of this franchise ordinance that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this franchise ordinance not expressed herein. Finally, franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this franchise ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This franchise ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this franchise ordinance to the contrary, the construction, operation and maintenance of franchise facilities by franchisee or its agent shall be in accordance with all laws and regulations of the United States, the State, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power. Finally, franchisee's failure to comply with any law or regulation governing the operation of said franchise facilities may result in a forfeiture of the franchise in accordance with the provisions of this franchise ordinance.

e. Attachment to Poles. Nothing in this franchise ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments.

f. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

g. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond franchisee's or the City's control.

h. Severability. Any section, subsection, sentence, clause, phrase, or portion of this franchise ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**Section 22. Repeal of Other Ordinances.** All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed, and set aside; provided, that this franchise ordinance shall not take effect or become in force until the requirements for adopting a franchise ordinance under Kansas statute have occurred.

**Section 23. Effectiveness.** This franchise ordinance is made under and in conformity with the laws of the State of Kansas. Before the final passage of this ordinance, it shall be read at three [3] regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force after the expiration of sixty [60] days from the date of final passage by the Governing Body and after publication in the official City newspaper for two [2] consecutive weeks following final passage, unless a proper protest is filed, or franchisee fails to provide written acceptance within the sixty [60] day period.

(Ord. No. 1916C; Effective 12-01-01)

# ARTICLE 15. SPRINT COMMUNICATIONS COMPANY, L.P.

**SECTION 1. DEFINITIONS**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. “Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.

e. "City" - means the City of Leawood, Kansas.

f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide local exchange telecommunications services within the City.

g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

h. "Grantee" - means Sprint Communications Company L.P., a telecommunications service provider providing service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

i. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

k. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of any telecommunication service or system, including, but not limited to supplying local exchange services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this usage of the Public right-of-way by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated herein. It does not:

1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. § 17-1902, and amendments thereto, and subject to the provisions of this Ordinance, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No. 1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.00 per Access line per month. The access line fee shall be a maximum of $2.25 per month per access line in 2006, a maximum of $2.50 per access line in 2009, and a maximum of $2.75 per access in line in 2012 and thereafter. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement, or comparable documents, showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Ordinance, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Ordinance.

h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The franchise fee is compensation pursuant to K.S.A. 12-2001(j) and shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or a gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Ordinance, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Ordinance.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars (2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Grantee will provide to the City a minimum of 30 days' prior written notice prior to cancellation or material change in areas and entities covered. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Ordinance, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance..

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Ordinance, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Ordinance, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Ordinance shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Ordinance, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Ordinance. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Ordinance by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Ordinance is to be revoked and terminated; provided, to

afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Ordinance, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Ordinance shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Ordinance or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Ordinance, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Ordinance, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Ordinance), and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of two (2) years from the effective date of this Contract franchise. Thereafter, this Contract Franchise may be renewed for two (2) additional one (1) year terms, provided, however, if the Grantee wishes to renew this Contract franchise, it will reapply for a performance bond as discussed in Section 6 (d) of this franchise and shall submit the required bond prior to the renewal date. Any additional term made pursuant to the renewal shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Ordinance shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Ordinance granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Ordinance. In the event of such invalidity, if Grantee is required by law to enter into a Ordinance with the City, the parties agree to act in good faith in promptly negotiating a new Ordinance.

d. Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. This Ordinance shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new franchise or an amendment to this Ordinance upon the termination date of this Ordinance, the parties by written mutual agreement may extend the termination date of this Ordinance to allow for further negotiations. Such extension period shall be deemed a continuation of this Ordinance and not as a new franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
| --- | --- |
| The City of Leawood, Kansas<br>4800 Town Center Drive<br>Leawood, Kansas 66211<br>Attn: City Clerk<br>(913) 339-6781 fax | Sprint Communications Company L.P.<br>Attn: Manager Real Estate<br>Mail Stop: KSOPHT0101-Z2040<br>6391 Sprint Parkway<br>Overland Park, Kansas 66521-2040<br>(913) 523-8337 fax<br><br>With copies of notices of default to:<br><br>Sprint Communications Company L.P.<br>Attn.: Real Estate Attorney<br>Mail Stop: KSOPHT0101-Z2020<br>6391 Sprint Parkway<br>Overland Park, Kansas 66251-2020 |

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Ordinance is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with Grantee. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Ordinance, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Ordinance.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Ordinance and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Ordinance, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Ordinance, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Ordinance is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Ordinance.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 1942C; Effective Date 04-05-2002)
(Ord. No. 2144C; Effective Date 01-20-2006)
(Ord. No. 2417C; Effective Date 12-05-2009)
(Ord. No. 2585C; Effective Date 11-16-2012)
(Ord. No. 2801C; Effective Date 09-19-2016)

# ARTICLE 16. XO KANSAS, INC.

## SECTION 1. DEFINITIONS

For the purpose of this franchise ordinance, the following words and phrases and their derivations shall have the following meaning:

***'Cable'*** includes both the coaxial cable used to transmit signals of high frequency, and fiber optic cable that consists of a bundle of thin insulated glass strands used to transmit data, voice, video and other communications, and any other assembly of materials so classified generically as cable.

***'Cable Service'*** means the one-way transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, which is required for selection and use of video programming or other programming service, as defined by 47 USC §522(6), any successor statute of similar import.

***'City'*** means the City of Leawood, Kansas, a municipal corporation, and if applicable, the territorial boundaries of the City of Leawood as now constituted or as shall hereafter exist.

***'Facilities'*** means lines, pipes, wires, cables, conduits, ducts, culverts, hoses, irrigation systems, manholes, poles, towers, vaults, pedestals, boxes, appliances, antennas, repeaters, micro cells, Pico cells, amplifiers, transmitters, gates, meters, appurtenances, or other equipment used by the franchisee for the purposes of conducting franchise operations and providing service to subscribers.

***'Franchise Ordinance'*** means this ordinance passed to grant the telecommunications franchise to franchisee. This ordinance shall operate as an agreement or contract between the City and franchisee and shall be subject to the laws of the State of Kansas.

***'Franchisee'*** means XO Kansas, Inc., or its successors, transferees, or assigns.

***'Franchise Fee'*** means the fee imposed by the City on franchisee solely because of its status as such, in accordance to K.S.A. § 12-2001. It shall not include: [1] any tax, fee, or assessment of general applicability including any which are imposed on franchisee; [2] requirements or charges incidental to the awarding or enforcing the franchise ordinance, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages, [3] any permit fee or other fee imposed under any valid right-of-way ordinance, or [4] any other fee imposed by federal, state, or local law.

***'Gross Revenues'*** means those revenues less uncollectible, derived from the following: [1] recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features, and measured local calls; [2] recurring local exchange access line services for pay phone lines provided by franchisee to all pay phone service providers; [3] local directory assistance revenue; [4] line status verification/busy interrupt revenue; [5] local operator assistance revenue; [6] nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including, but not limited to, revenues from extended area service, unbundled network elements, nonregulated services, carrier and end user access, long distance, and all other services not wholly local in nature are excluded from 'gross revenues.'

Further, 'gross revenues' shall be reduced by bad debt expenses and uncollectible and late charges shall not be included within 'gross revenues.' If during the term of this franchise ordinance franchisee offers additional services of a wholly local nature which if in existence at the effective date of the franchise ordinance would have been included with the definition of 'gross revenues,' such services shall be included from the date of the offering of such services in the City for the remaining term of the franchise ordinance.

***'Open Video System'*** means the provision of video programming service as described in and subject to 47 USC § 573, or a successor statute of similar import.

***'Person'*** means any natural or corporate person, business association or business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.

***'Right-of-Way'*** means the area on, below or above the present and future streets, alleys, avenues, roads, sidewalks, highways, parkways or boulevards dedicated as right-of-way.

***'Service'*** means a commodity used by the public and provided through franchisee's facilities.

***'Subscriber'*** means any person who receives services from franchisee services.

***'Telecommunications'*** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, as defined by 47 USC § 153(43), and successor statute of similar import.

***'Telecommunications service'*** means the offering of telecommunications for a fee directly to the public, or to such classes or users as to be effectively available directly to the public, regardless of the facilities used, as defined by 47 USC § 153(46), a successor statute or similar import.

***'Utility Easement'*** means, for the purpose of this ordinance, an easement dedicated to the City for the purpose of utilities.

**Section 2**. **Grant.** Franchisee is hereby granted the right, privilege and franchise to construct, operate, and maintain facilities in, through and along the City's right-of-way and utility easements for the purposes of supplying local telecommunications services on a nonexclusive basis within the City, subject, however, to the terms and conditions herein set forth within this ordinance. As a condition of this grant, franchisee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the KCC, subject to franchisee's right to challenge in good faith such requirements as established by the FCC, KCC or other City ordinance.

This franchise does not provide franchisee the right to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City. Upon franchisee's request for a franchise to provide cable service as a cable operator [as defined by 47 USC § 522(5)] within the City, the City agrees to timely negotiate such franchise in good faith with franchisee. Franchisee agrees that this franchise does not permit franchisee to operate an open video system without payment of fees permitted by 47 USC § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 USC § 573.

**Section 3**. **Use of Public Right-of-Way and Utility Easements.** Franchisee's facilities shall be located in the right-of-way and utility easements as now constructed and as further authorized by the City in accordance with all applicable laws, statutes and/or ordinances. Nothing in this agreement shall authorize Franchisee to locate its facilities on or within any City owned parkland property or any other City owned property unless authorized by separate agreement. Placement, changes, additions, replacements, maintenance and repairs to franchisee's facilities shall be conducted in compliance with any applicable ordinance and/or permit requirement. Franchisee will be responsible for obtaining all necessary permits as required by the City for work performed in the right-of-way and utility easements, as well as paying any associated permit fee. In addition, franchisee shall be subject to all technical specifications, design criteria, policies now or hereafter adopted or promulgated by the City, or any other appropriate governmental entity. In its use of the right-of-way and utility easements within the City, franchisee shall be subject to all right-of–way management ordinances and all other applicable rules, regulations, policies, laws, orders, resolutions, and ordinances now or hereafter adopted or promulgated by any appropriate governmental entity now or hereafter having jurisdiction, including, but not limited to the City in the reasonable exercise of its police powers.

**Section 4**. **Franchise Fee.** Franchisee shall pay the greater of $12,000 or an annual sum of $2.50 per lineal foot for all fiber in the right-of-way. This payment shall be due on the effective date of the ordinance and annually thereafter. In the event franchisee provides local service to customers within the City, franchisee shall notify the City Clerk. At such time, the franchise fee shall be the greater of the above prescribed amount, or five [5%] percent of its gross revenues as defined herein. Payment on the basis of gross revenues shall be made on a monthly basis without invoice or reminder from the City, and paid within forty-five [45] days after the last day of the applicable month.

All payments herein provided shall be in addition to, not in lieu of, all other taxes, charges, assessments, fees and impositions of general applicability that are or may be imposed by the City, with the exception of any annual occupation license. Franchisee shall pay interest at an annual rate of ten [10%] percent for each month or fraction thereof on any late payment of the charge provided for in this franchise ordinance.

**Section 5**. **City's Right to Audit and Access to Records.** If franchisee is providing service within the City, franchisee shall annually file with the City of Leawood a gross receipts report regarding all applicable monthly revenues and all relevant codes. Franchisee and the City agree that such information is confidential and proprietary and agree that such information shall remain the sole property of franchisee and agree that pursuant to K.S.A. § 45-221(18), as amended, such information does not constitute public records subject to K.S.A. § 45-218, as amended. In the event the City is required by to disclose such information, the City shall provide franchisee seven [7] days advance notice of its intent to disclose such information and shall take such action as may be reasonably required to cooperate with the franchisee to safeguard such information. The City shall also have access to and the right to examine, at all reasonable times, all books, receipts, files, records and documents of the franchisee necessary to verify the correctness of such statement and to correct the same, if found to be erroneous. If such statement of gross revenues is incorrect, then such payment shall be made upon such corrected statement, including interest on said amount at the annual rate of ten [10%] percent.

Regardless of whether franchisee is providing service within the City, the City's acceptance of any payment determined as hereinbefore provided to be deficient shall not be construed as a release of liability from the City or an accord or satisfaction of any claim that the City may have for additional sums owed by franchisee. In addition to access to the records of franchisee for audits, upon request, franchisee shall provide reasonable access to records necessary to verify compliance with the terms of this franchise ordinance.

**Section 6.** **Term.** This franchisee ordinance shall be effective for a term of one [1] year from the effective date.

**Section 7**. **Renegotiation of Franchise.** If the City has a good faith belief that franchisee is offering local telecommunications services within the City beyond those telecommunications services contemplated by this ordnance, the City may seek renegotiation of this franchise if the City reasonably believes that such services constitute local telecommunications services subject to a franchise fee under K.S.A. § 12-2001. In the event the City seeks renegotiation under such circumstances, franchisee agrees to negotiate with the City in good faith in a timely manner. Nothing herein shall preclude the City from seeking a separate franchise agreement with franchisee if the City has a good faith belief that franchisee is offering services other than telecommunications services that are subject to a franchise fee under K.S.A. § 12-2001. The purpose of this provision is to allow the City to ensure that franchisee is paying a franchise fee for all services for which a franchise fee is appropriate.

**Section 8**. **Description of Service.** Franchisee shall on a semi-annual basis provide the City with a description of new local telecommunications services offered within the City during the prior six-month period. In the event franchisee offers new services [other than telecommunications services, extended area service, unbundled network elements, nonregulated services, carrier and end user access and long distance], franchisee shall notify the City of such services on a semi-annual basis.

**Section 9**. **Franchisee Information.** Franchisee shall, at its own expense, annually submit to the City the following information:

a. A report of the franchisee's gross revenues as referenced by Section 5 herein [only if franchisee is providing service within the City]; and
b. A summary of the previous year's development of franchise facilities, including but not limited to, the location of facilities during the year, and franchisee's plan of development of facilities for the next year – Note: in lieu of this requirement, franchisee's right-of-way director may meet in person with the City's Public Works Director to discuss these issues; and
c. Information as to the number of subscribers in the City of Leawood [only if franchisee is providing service within the City]. Note: this requirement does not include giving the identification of the subscribers.

**Section 10**. **Subscriber Rates.** Franchisee's charges to subscribers will comply with all applicable federal and state regulations. Upon request, franchisee shall file with the City Clerk a schedule of current rates in effect when such rates are not on file and publicly available from the KCC. When provided so by state or federal law, the City may at any time fix a reasonable schedule of maximum rates to be charged to the City and its residents.

**Section 11**. **Use of Facilities by Other Service Providers.** On a semi-annual basis, franchisee shall notify the City of the identity of local service providers that have been granted a certificate of convenience to offer local telecommunications services within the State of Kansas. Franchisee shall also provide the City on a semi-annual basis of the identity of entities with which franchisee has entered into an interconnection and/or resale agreement within the State of Kansas.

**Section 12**. **Transfer of Franchise.** Pursuant to the written permission of the City, which shall not be unreasonably withheld, franchisee shall have the right to assign this franchise, and the rights and privileges herein granted, to any person, firm or corporation, and any such assignee, by accepting such assignment, shall be bound by the terms and provisions hereof. City approval may be denied only upon a good faith finding by the City that the assignee lacks the legal, technical or financial qualifications to perform its obligations in accordance with this franchise ordinance or any other appropriate governmental requirement. If franchisee should seek approval to assign this franchise, franchisee shall notify the City in writing. All such assignments shall be in writing and authenticated copies thereof shall be filed with the City Clerk. This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made. Any attempts to transfer, assign or otherwise dispose of the rights granted herein by the City or franchisee's facilities not conforming with the requirements of this section shall be null and void.

**Section 13**. **Other Service Providers.** Franchisee shall not interfere with any agreement between the City and another service provider. Additionally, if and when the City requires or negotiates to have another service provider cease to use its existing poles and to relocate its facilities underground, all other service providers using the same poles, including franchisee when applicable, shall also relocate their facilities underground at that time; provided, however, that such placement is economically reasonable. The City shall not unreasonably enter into such an agreement with another service provider, and notice of any intent to enter into such an agreement shall be timely provided to franchisee.

**Section 14**. **Notification Procedure.** Any required or permitted notice under this franchise ordinance shall be in writing. Notice upon the City shall be delivered to the City Clerk by first class United States Mail or by personal delivery. Notice upon franchisee shall be delivered by first class United States Mail or by personal delivery to:

**XO Kansas, Inc.**
Director, Regulatory and External Affairs
2700 Summit Ave., Suite 172
Plano, TX 75074

**Section 15**. **Indemnification.** Upon notice by the City, franchisee shall fully indemnify, defend and hold harmless the City, its officers, employees, agents and authorized contractors from and against any and all claims, demands, suits, proceedings, and actions, liability and judgment by other persons for damages, losses, costs, and expenses, including attorney fees or otherwise, to the extent caused by franchisee's actions and operations of its telecommunications service in accordance to this ordinance. The City agrees to immediately notify franchisee of any such claim, demand, suit, proceeding, and/or action, by providing written notice via certified mail to franchisee. Nothing herein shall be deemed to prevent the City, or any agent from participating in the defense of any litigation by their own counsel at their own expense. Such participation shall not under any circumstances relieve franchisee from its duty to defend against liability or its duty to pay any judgment entered against the City, or its agents.

**Section 16**. **Liability Insurance Requirement.** Franchisee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than One Million Dollars [$1,000,000] per occurrence and Two Million Dollars [$2,000,000] in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by the service provider, or alleged to so have been caused or occurred. If franchisee is self-insured, it shall provide the City proof of compliance regarding its ability to self-insure and proof of its ability to provide coverage in the above amounts.

**Section 17**. **Performance and Maintenance Bond Requirements.** Franchisee shall at all times maintain in full force and effect a corporate surety bond in a form approved by the City Attorney, in an amount of $50,000, for a term consistent with the term of this franchise ordinance plus one additional year, conditioned upon franchisee's faithful performance of the provisions, terms and conditions conferred herein. An annual bond automatically renewed yearly during this period shall satisfy this requirement.

**Section 18**. **Reservation of Rights.** In addition to any rights specifically reserved to the City by this franchise ordinance, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Kansas, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Nothing in this franchise ordinance shall limit or govern the right of the City to exercise its municipal authority to the fullest extent allowed by law. The City shall have the right to waive any provision of the franchise, except those required by federal or state law, if the City determines: [a] that it is in the public interest to do so; and [b] that the enforcement of such provision will impose an undue hardship on franchisee or its subscribers. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City.

The waiver of any provision in any one instance shall not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of this franchise ordinance unless the statement so recites. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding involving the provisions herein.

**Section 19**. **Forfeiture of Franchise.** In case of the failure of franchisee to comply with any of the provisions of this franchise ordinance, or if franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this franchise ordinance, franchisee shall forfeit all rights and privileges granted by this franchise and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

a. For violations concerning the use of the right-of-way and/or utility easements as described in Section 3 of this franchise ordinance and deemed by the Public Works Director to be a public nuisance and/or emergency, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have fourteen [14] days subsequent to receipt of such notice to inform the City in writing of the action franchisee shall take to correct the violation. Such corrective action shall be completed within thirty [30] days subsequent to receipt of notice unless otherwise agreed to by the City. If, at the end of such period, the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. If franchisee fails to take corrective action within the 30-day period set forth above, nothing herein shall preclude the City from maintaining an action against franchisee to recover damages as a result of such failure to take corrective action, including, but not limited to, reasonable costs of corrective action incurred by the City.

b. For all other violations of the franchise ordinance, the following procedure shall apply. The City shall provide written notice by certified mail to franchisee of any such violation, setting forth in detail the conditions of neglect, default or failure complained of. Franchisee shall have ninety [90] days after the mailing of such notice in which to comply with the conditions of this franchise. If at the end of such period the City deems that the conditions of such franchise have not been complied with by franchisee and that such franchise is subject to cancellation by reason thereof, the City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated.

c. If within thirty [30] days after the effective date of an ordinance to terminate the franchise, in accordance with 19(a) or 19(b) herein, the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchisee has violated the terms of this franchise and that the franchise is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period. If within such thirty [30] day period the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the court finds that the franchise is subject to cancellation by reason of the violation of its terms, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

In addition to any other remedy available herein or and at law or equity, either party shall have the authority to maintain civil suits or actions in any court of competent jurisdiction for the purpose of enforcing the provisions of this franchise ordinance and/or to abate nuisances maintained in violation thereof.

**Section 20**. **Revocation of Franchise.** In addition to all other revocation rights and powers herein or otherwise enjoyed by the City, the City shall have the additional and separate right to revoke this franchise and all rights and privileges of the franchisee as a result of and in response to any of the following events or reasons:

a. Any provision of this franchise ordinance is adjudged by a Court of Competent Jurisdiction to be invalid or unenforceable and said judicial act and declaration is deemed by the Governing Body to constitute such a material consideration for the granting of this franchise ordinance as to cause the same to become null and void; or

b. Franchisee commits an act of fraud or deceit against the City in obtaining the grant of this franchise herein conferred, or upon being granted franchisee commits such an act against the City.

To revoke this franchise in accordance with the provisions of this section regarding Revocation of Franchise, the following procedure shall apply. The City shall enact an ordinance setting out the grounds upon which said franchise is to be canceled and terminated. Prior to the enactment of such ordinance, franchisee shall be provided with timely written notice by certified mail, and franchisee shall be allowed to address the Governing Body before final consideration of such ordinance. If within thirty [30] days after the effective date of such ordinance to terminate the franchise the franchisee shall not have instituted an action in the District Court of Johnson County, Kansas, to determine whether or not the franchise was appropriately terminated in accordance to the provisions of this section and is subject to cancellation by reason thereof, such franchise shall be canceled and terminated at the end of such thirty-day period.

If, within such thirty [30] day period, the franchisee does institute an action, as above provided, and prosecutes such action to final judgment with due diligence, then, if the Court finds that the franchise is subject to cancellation by the reason addressed by this section, this franchise shall immediately terminate after such final judgment is rendered and all available appeals exhausted.

**Section 21**. **Miscellaneous Provisions.**

a. Nonexclusive Clause. The privilege to construct, erect, operate and maintain franchisee's facilities and to provide service within the City is nonexclusive. The City expressly reserves the right to grant other franchises to other persons. However, no such additional franchise shall in any way affect the rights or obligations of franchisee.

b. Exclusive Benefit of Franchise Right by Franchisee. The rights granted to franchisee by this franchise ordinance shall be for the sole use of franchisee to provide telecommunications services as authorized herein. These rights are for the exclusive benefit of franchisee, except where otherwise provided herein, or when authorized by the City.

c. Franchisee is Without Remedy Against the City. Franchisee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from the enactment of the provisions or requirements of this franchise ordinance, or for the failure of the City to have the authority to grant, all, or any part, of the franchise ordinance granted. Second, franchisee expressly acknowledges that it accepted the franchise ordinance granted in reliance upon its independent and personal investigation and understanding of the power and authority of the City to grant the franchise conferred upon franchisee. Third, franchisee acknowledges by its acceptance of this franchise ordinance that it has not been induced to enter into this franchise upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this franchise ordinance not expressed herein. Finally, franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms, and conditions of this franchise ordinance and is willing to, and does accept, all of the risk attendant to the provisions, terms, and conditions.

d. Federal, State and City Jurisdiction. This franchise ordinance shall be construed in a manner consistent with all applicable federal, state, and local laws. Notwithstanding any other provisions of this franchise ordinance to the contrary, the construction, operation and maintenance of franchise facilities by franchisee or its agent shall be in accordance with all laws and regulations of the United States, the State, and any political subdivision thereof, or any administrative agency thereof, having jurisdiction. In addition, franchisee shall meet or exceed the most stringent technical standards set by regulatory bodies, including, but not limited to the City, now or hereafter having jurisdiction. Franchisee's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Franchisee shall comply with all applicable general laws and ordinances enacted by the City pursuant to that power.

Finally, franchisee's failure to comply with any law or regulation governing the operation of said franchise facilities may result in a forfeiture of the franchise in accordance with the provisions of this franchise ordinance.

e. Attachment to Poles. Nothing in this franchise ordinance shall be construed to require or permit any telephone, electric light or power wire attachments by either the City or franchisee on the poles of the other. If such attachments are desired by either party, then a separate non-contingent agreement shall be prerequisite to such attachments.

f. Failure to Enforce. The failure of either party to enforce and remedy any noncompliance of the terms and conditions of this franchise shall not constitute a waiver of rights nor a waiver of the other party's obligations as provided herein.

g. Force Majeure. Each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond franchisee's or the City's control.

h. Severability. Any section, subsection, sentence, clause, phrase, or portion of this franchise ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**Section 22**. **Repeal of Other Ordinances.** All other ordinances, agreements and resolutions or parts thereof inconsistent or in conflict with the terms hereof shall be canceled, annulled, repealed, and set aside; provided, that this franchise ordinance shall not take effect or become in force until the requirements for adopting a franchise ordinance under Kansas statute have occurred.

**Section 23**. **Effectiveness.** This franchise ordinance is made under and in conformity with the laws of the State of Kansas. Before the final passage of this ordinance, it shall be read at three [3] regular meetings of the Governing Body. After final passage, this ordinance shall take effect and be in force after the expiration of sixty [60] days from the date of final passage by the Governing Body and after publication in the official City newspaper for two [2] consecutive weeks following final passage, unless a proper protest is filed, or franchisee fails to provide written acceptance within the sixty [60] day period.

(Ord. 1944C; Effective Date 04-20-2002)

# ARTICLE 17. TELCOVE INVESTMENT, LLC

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.

e. "City" - means the City of Leawood.

f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

g. "Facilities" - means telephone and telecommunications lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

h. "Grantee" - means TelCove Investment, LLC, a telecommunications local exchange service provider. References to Grantee shall also include as appropriate any and all successors and assigns.

i. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue;

(4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

k. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back, provided the City provides Grantee with written notice ninety days (90) before the end of the calendar year. Notwithstanding any of the foregoing, City acknowledges Grantee's right to add to its end users customers bill a surcharge equal to the pro rata share of any such gross receipts or access line fee as set forth in K.S.A. 12-2001(r).

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a quarterly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a gross receipts or access line statement showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take reasonably adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability and umbrella or excess liability insurance of not less than One Million Dollars ($1,000,000) per occurrence, One Million Dollars ($1,000,000) aggregate. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas.

This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of two (2) years from the effective date of this Contract franchise. Thereafter, this Contract franchise will renew for two (2) additional one (1) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood<br>4800 Town Center Drive<br>Leawood, Kansas 62111 | Office of the General Counsel<br>TelCove, Inc.<br>121 Champion Way<br>Canonsburg, PA 15317<br>(724) 743-9791 (fax) |
| | cc: TelCove Investment, LLC<br>Attn: Operations Manager<br>2001 Grand Blvd., Suite 200<br>Kansas City, MO 64108<br>(816) 421-2169 (ph) |

or to replacement addresses that may be later designated in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City.

**SECTION 13. CONFIDENTIALITY.**

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**

Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

(Ord. 2129C; Effective Date 11-20-2005)

# ARTICLE 18. EXTENET SYSTEMS, INC.

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "City" - means the City of Leawood, Kansas.

b. "Competitive infrastructure provider" means an entity which leases, sells or otherwise conveys Facilities located in the Public Right-of-Way, or the capacity or bandwidth of such Facilities for use in the provision of Telecommunications services, Internet services or other intrastate and interstate traffic, but does not itself provide services directly to end users within the corporate limits of the City.

c. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications within the City.

d. "Facilities" - means the Grantee's cables, wires, lines, towers, wave guides, optic fiber, antennae, receivers and any associated converters, or other equipment, comprising the Grantee's System located within the Public Rights of Way, designed and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications service as a Competitive infrastructure provider to or from locations within the City.

e. "Grantee" - means ExteNet Asset Entity LLC, a Competitive Infrastructure Provider providing Telecommunications service and capacity via a distributed antennae system within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

f. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public Rights of Way owned by the City or other third-parties, such as poles, ducts or conduits.

g. "Telecommunications service" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a.. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying competitive infrastructure including Telecommunication services within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b.. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

(1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or

(3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public or private property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions

and ordinances (hereinafter "Laws") adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto and the City's zoning and land-use laws to specifically include the City's Development Ordinance and related rules and regulations and amendments thereto, to the extent such laws do not conflict with or are preempted by any Federal law or regulation.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

In consideration of this Contract franchise, Grantee agrees to remit to the City an annual franchise fee of $25 per site in the Public right-of-way upon which Grantee has attached its facilities. The franchise fee shall be paid in advance and shall commence upon the installation of Grantee's facilities. As to any new facility installed at a site during any calendar year, such fee shall be prorated based on the number of days in the calendar year remaining from the installation date.

a. Within 15 days following the effective date of this Contract franchise ordinance, Grantee shall pay a prorated franchise fee based on the number of days in the calendar year remaining. Thereafter, Grantee shall pay on an annual basis without requirement for invoice or reminder from the City, within 15 days of the calendar year for which the payment applies; provided, that as to any new Facility installed during any calendar year, such fee shall be prorated and paid as to that partial calendar year. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

b. Upon written request by the City, but no more than once per year, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the manner in which the franchise fee was calculated for the period covered by the payment.

c. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.

d. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

e. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

f. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee's Facilities.

Grantee 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 degree that it is found by a court of competent jurisdiction to be caused by the negligence, gross negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT.**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

   (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

   (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

**a.** The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers and other authority established under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of five (5) years from the effective date of this Contract franchise ordinance. Thereafter, this Contract franchise will automatically renew for two (2) additional one (1) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

d. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood | ExteNet Asset Entity, LLC |
| Attn: City Clerk | Attn: General Counsel |
| 4800 Town Center Drive | 3030 Warrenville, Rd. |
| Leawood, Kansas 66212 | Suite 340 |
| (913) 339-6700 phone | Lisle, IL 60532 |
| | (630) 505-3800 phone |

or to replacement addresses that may be later designated in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, or between wholly owned subsidiaries, or to an entity with which Grantee is under common ownership or control, upon written notice to the City. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the city of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract with regard to indemnity, bonding, and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under this Contract franchise shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City, at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have thirty (30) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and such contract shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with Kansas statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 2964C; Effective Date: 11-21-2019)
(Ord. No. 2580C; Effective Date: 11-06-2012)
(Ord. No. 2511C; Effective Date: 12-21-2016)

# APPENDIX B. FRANCHISES

## ARTICLE 19. UNITE PRIVATE NETWORKS , LLC

**SECTION 1. DEFINITIONS.**
For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
e. "City" - means the City of Leawood.
f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
g. “Effective Date” – means April 28, 2018.
h. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.
i. "Grantee" – means Unite Private Networks, LLC, a telecommunications local exchange service provider providing local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

j. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

k. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

l. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

m. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
   1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
   2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
   3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate it Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed the maximum Access line fee allowed by Statute. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

a. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

b. Grantee shall pay on a quarterly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

c. Upon forty-five (45) days prior written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is, in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

e. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

f. Unless previously paid, within sixty (60) days of the effective date of this Ordinance, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Ordinance.

g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. The franchise fee is compensation pursuant to K.S.A. 12-2001(j) and shall in no way be deemed a tax of any kind.

h. Grantee shall remit an access line (franchise) fee or a gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee 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 Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the state of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:
    1. Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
    2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances, (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of two (2) years from the Effective Date of this Contract franchise. Thereafter, this Contract franchise will renew for two (2) additional one (1) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood | Charlene White |
| 4800 Town Center Drive | Vice President, Real Estate |
| Leawood, Kansas 62111 | 7200 NW 86th Street, Suite M |
| Attn:City Clerk | Kansas City, MO 64153 |
| (913) 339-9325 fax | 816-903-9401 fax |

or to replacement addresses that may be later designed in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to any entity controlling, controlled by or under common control with Grantee. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract franchise, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 2890C; Effective Date: 05-29-2018)
(Ord. No.2659C; Effective Date: 04-25-2014)

# ARTICLE 20. MOBILITIE, LLC

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

a. “City” - means the City of Leawood, Kansas.

b. “Competitive infrastructure provider” means an entity which leases, sells or otherwise conveys Facilities located in the Public Right-of-Way, or the capacity or bandwidth of such Facilities for use in the provision of Telecommunications services, Internet services or other intrastate and interstate traffic, but does not itself provide services directly to end users within the corporate limits of the City.

c. “Contract franchise” - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications within the City.

d. “Facilities” - means the Grantee’s cables, wires, lines, towers, wave guides, optic fiber, antennae, receivers and any associated converters, or other equipment, comprising the Grantee’s System located within the Public Rights of Way, designed and constructed for the purpose of producing, receiving, amplifying or distributing Telecommunications service as a Competitive infrastructure provider to or from locations within the City.

e. “Grantee” - means Mobilitie, LLC, a Competitive Infrastructure Provider providing Telecommunications service and capacity via a distributed antennae system within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

f. "Gross Revenue" means and includes any and all income and other consideration of whatever nature in any manner gained or derived by Grantee or its affiliates from or in connection with the provision of competitive infrastructure and Telecommunications service through Grantee’s Facilities, either directly by Grantee or indirectly through its affiliates, to customers of such Telecommunications services within the City, including any imputed revenue derived from commercial trades and barters equivalent to the full retail value of goods and services provided by Grantee. Gross Revenue shall not include: (a) sales, ad valorem, or other types of "add-on" taxes, levies, or fees calculated by gross receipts or gross revenues which might have to be paid to or collected for federal, state, or local government (b) non-collectable amounts due Grantee or its affiliates; (c) refunds or rebates; and (d) non-operating revenues such as interest income or gain from the sale of an asset.

g. “Public right-of-way” - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public Rights of Way owned by the City or other third-parties, such as poles, ducts or conduits.

h. “Telecommunications service” - means providing the means of transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying competitive infrastructure including Telecommunication services within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public or private property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances (hereinafter "Laws") adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto and the City's zoning and land-use laws to specifically include the City's Development Ordinance and related rules and regulations and amendments thereto, to the extent such laws do not conflict with or are preempted by any Federal law or regulation.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

In consideration of this Contract franchise, Grantee agrees to remit to the City an annual franchise fee of 5% of Gross Revenues. To determine the franchise fee, Grantee shall calculate its Gross Revenues and multiply such amount by 5%.

a. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

b. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the amount of Gross Revenues for the period covered by the payment, and the manner in which the franchise fee was calculated.

c. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.

d. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

e. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

f. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee's Facilities.

Grantee 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 degree that it is found by a court of competent jurisdiction to be caused by the negligence, gross negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should Grantee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. Grantee shall provide not less than the following insurance:

   (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

   (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers and other authority established under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of two (2) years from the effective date of this Contract franchise ordinance. Thereafter, this Contract franchise will automatically renew for two (2) additional one (1) year terms, unless either party notifies the other party of its intent to terminate or renegotiate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

d. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

| **The City:** | **Grantee:** |
|---|---|
| The City of Leawood | Mobilitie, LLC |
| Attn: City Clerk | Attn: General Counsel |
| 4800 Town Center Drive | 2220 University Drive |
| Leawood, Kansas 66212 | Newport Beach, CA |
| (913) 339-6700 phone | 312-638-5320 phone |

or to replacement addresses that may be later designated in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and any transfer or assignment is prohibited unless provided for by state law.

**SECTION 13. CONFIDENTIALITY.**

Information provided to the City under this Contract franchise shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City, at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have thirty (30) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and such contract shall be deemed effective on the date Grantee files acceptance with the City.

**SECTION 15. PAYMENT OF COSTS.**
In accordance with Kansas statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 16. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 17. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 2812C; Effective Date: 12-06-2016)

# ARTICLE 21. TELEPORT COMMUNICATIONS AMERICA, LLC

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office-based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, and lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.

b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.

c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(2), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.

d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.

e. "City" - means the City of Leawood.

f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.

g. “Effective date” – means December 3, 2018.

h. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

i. "Grantee" – means Teleport Communications America, LLC, a telecommunications carrier and telecommunications service provider providing competitive local exchange service and/or operating Facilities within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.

j. “Gross Receipts” - shall mean only those receipts collected from within the corporate boundaries of the City and that are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee’s Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.

k. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state Corporation Commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.

l. "Public right-of-way" - means 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, easements obtained by utilities or private easements in platted subdivisions or tracts.

m. “Telecommunication local exchange services provider” – means a local exchange carrier as defined in subsection (h) of K.S.A. 66-1,187 and amendments thereto, and/or a telecommunications carrier as defined in subsection (m) of K.S.A. 66-1,187 and amendments thereto, which does, or in good faith intends to, provide local exchange service. The term shall not include an interexchange carrier or competitive access provider that does not provide local exchange service, or any wireless communication services provider.

n. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. Subject to the provisions of K.S.A. 12-2001, and amendments thereto, there is hereby granted to Grantee this nonexclusive Contract franchise to provide telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way., This Contract franchise does not:
   1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
   2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or,
   3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on property or facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).

d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. Access to the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee has the right to construct, maintain and operate it Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No.1834C, and amendments thereto.

c. When the City requests removal, relocation or adjustment of Grantee's Facilities within the Public right-of-way for construction or maintenance activities related to improvements that are, in whole or in part, for private benefit, such private party or parties shall reimburse Grantee for the cost of removal, relocation or adjustment, in an amount equal to the percentage of the private benefit received. Grantee shall not be obligated to commence the removal, relocation or adjustment until receipt of funds for the costs from such private party or parties. Further, Grantee shall have no liability for delays caused by a private party's failure to reimburse costs. Grantee understands, however, that the City has no obligation to collect such reimbursement.

d. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed $2.00 per Access line per month. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.

b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.

c. Grantee shall pay on a monthly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the month for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City either a 9K2 (gross receipts) or 9KN (access lines) statement showing the manner in which the franchise fee was calculated.

e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

h. The franchise fee required herein pursuant to K.S.A. 12-2001(j) as amended shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and K.S.A. 17-1902, and amendments thereto. The franchise fee shall in no way be deemed a tax of any kind.

i. Grantee shall remit an access line (franchise) fee or gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunication local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

a. It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

b. Grantee 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 Grantee, any agent, officer, director, representative, employee or subcontractor of Grantee, while installing, repairing or maintaining Facilities in the Public right-of-way.

c. 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 Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with insurers rated at least A-VII by AM Best and that are lawfully permitted to do business in the state of Kansas. Grantee shall provide the following insurance:

1. Statutory workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed and an employers' liability limit for bodily injury of $1,000,000 each accident, by disease policy limits and by disease each employee.
2. Commercial general liability, written on Insurance Services Office (ISO) policy form CG 00 01 or its equivalent, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of Two Million Dollars ($2,000,000) combined single limit per occurrence and in the aggregate for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured as its interests may appear with respect to liability arising from Grantee's operations under this Contract franchise.

b. As an alternative to the requirements of subsection (a), Grantee may self-insure and, as such, Grantee has the ability to provide coverage in an amount not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in aggregate, to protect the City from and against claims by any person for loss or damage from personal injury, bodily injury, death or property damage occasioned by Grantee, or alleged to so have been caused or occurred as respects this Contract franchise. If Grantee elects to self-insure, it shall furnish to the City a certificate of self-insurance listing the City as additionally insured with respect to liability arising from Grantee's operations under this contract franchise. In the event Grantee elects to self-insure its obligation to include City as an additional insured, the following provisions shall apply:

1. City shall promptly and no later than thirty (30) days after notice thereof provide Grantee with written notice of any claim, demand, lawsuit or the like, for which it seeks coverage pursuant to the section and provide Grantee with copies of any demands, notices, summonses or legal papers received in connection with such claim, demand, lawsuit or the like;

2. City shall not settle any such claim, demand, lawsuit or the like without the prior written consent of Grantee; and,
3. City shall fully cooperate with Grantee in the defense of the claim, demand, lawsuit or the like.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force. Grantee shall timely notify the City if the insurance is cancelled or non-renewed and not replaced. Upon renewal or replacement of any such insurance policies, the Grantee shall notify the City, in writing, and provide a current Certificate of Insurance.

d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a construction bond in the amount of Fifty Thousand Dollars ($50,000), payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the state of Kansas, and satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

a. In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures:
   1. Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice, pursuant to Section 12 of this Contract franchise, upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise;
   2. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided, pursuant to Section 12 of this Contract franchise, reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter.

3. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

b. Nothing herein shall prevent the City or Grantee from invoking any other remedy that may otherwise exist at law.

**SECTION 8. RESERVATION OF RIGHTS.**

a. To the extent permitted by law, the City specifically reserves its right and authority as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of: the laws of the State of Kansas as the same may be amended; its Home Rule powers and other authority established pursuant to the Constitution of the State of Kansas; nor, any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of: the laws of the State of Kansas or applicable federal laws and regulations as the same may be amended; under the Constitution of the State of Kansas; nor, any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of the Contract franchise or any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise) and/or rulings that may be the basis for parties entering into this Contract franchise .

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of six (6) years from the effective date of this Contract franchise. Thereafter, this Contract franchise will renew for two (2) additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.

c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.

d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. MOST FAVORED NATION**

Pursuant to K.S.A. 12-2001 and K.S.A. 17-1902, and amendments thereto, City represents and warrants that all benefits, terms and conditions in this Contract franchise are and, during the term of this Contract franchise, will continue to be no less favorable to Grantee in the same or similar circumstances than those currently being offered to or that may be offered and agreed to by City and any other local exchange carrier, telecommunications carrier, or video services provider, or Internet Protocol services provider, regardless of the form or nature of the agreement with any such other carrier or provider, and that the City shall treat Grantee in a competitively neutral, non-discriminatory manner.

**SECTION 12. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or overnight delivery by a nationally recognized courier. All written notices shall be deemed delivered upon actual receipt or refusal of delivery.

**The City:**

The City of Leawood
4800 Town Center Drive
Leawood, Kansas
Attn: City Clerk

**Grantee:**

Teleport Communications America, LLC
One AT&T Way – Office 3D169F
Bedminster, NJ 07921
ATT: Right of Way Manager

With a required copy to:

Teleport Communications America, LLC
Attn.: Legal Dept – Network Operations
208 S. Akard Street
Dallas, TX 75202-4206

or to replacement addresses that may be later designed in writing.

**SECTION 13. TRANSFER AND ASSIGNMENT.**

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to: a wholly owned parent or subsidiary; between wholly owned subsidiaries; or to an entity with which Grantee is under common ownership or control, upon written notice to the City.

**SECTION 14. CONFIDENTIALITY.**
Information provided to the City under K.S.A. 12-2001, and amendments thereto, shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and K.S.A. 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 15. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas.

**SECTION 16. PAYMENT OF COSTS.**
In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 17. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 18. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war, terrorism and other disasters beyond Grantee's or the City's control.

(Ord. No. 2917C; Effective 02-05-2019)

# ARTICLE 22. VERIZON WIRELESS [VAW] LLC

**SECTION 1. DEFINITIONS.**

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

a. "Affiliate"- when used in relation to Grantee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

b. "City" - means the City of Leawood, Kansas.

c. "Communications Service" **-** means the transmission or receipt of voice, video, data, broadband Internet or other forms of digital or analog signals over Communications Equipment. To the extent Licensee's services are wireless, it shall mean "personal wireless services" and "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities, as described in K.S.A. 66-2019(b)(19)

d. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to use the City's Public right-of-way to provide Wireless Services as a Wireless Service Provider.

e. "Facilities" - means Grantee's "antennas," "accessory equipment," "wireless facilities," "small cell facilities," "transmission equipment," "distributed antenna system," and any "wireless support structure" (all as such terms are defined or described in K.S.A. 66-2019, as amended) comprising Grantee's system located within the Public right-of-way, and to the extent permitted under any applicable Laws (defined in Section 3b), that are designed and constructed for the purpose of producing, receiving, amplifying or distributing Wireless Services.

f. "Grantee" - means VERIZON WIRELESS (VAW) LLC, a Delaware limited liability company d/b/a Verizon Wireless authorized to do business in Kansas, a Wireless Services Provider providing Wireless Services within the City. References to Grantee shall also include as appropriate any and all successors and assigns.

g. "Public right-of-way" - means 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 Services or other non-wire communications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts. The term does not include infrastructure located within the Public right-of-way owned by the City or other third-parties, such as poles, ducts or conduits, use of which shall require a separate license agreement for attachment to city facilities.

h. “Wireless Infrastructure Provider” - means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a wireless service provider. (See K.S.A. 66-2019(b)(20))

i. “Wireless Services” - means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities. (See K.S.A. 66-2019(b)(19))

j. “Wireless Services Provider” – means a provider of Wireless Services. (See K.S.A. 66-2019(b)(24))

**SECTION 2. GRANT OF CONTRACT FRANCHISE.**

a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Wireless Services as a Wireless Services Provider within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:

1. Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
2. Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
3. Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the facilities owned or controlled by the City or a third-party.

c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission (FCC) or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public or private property).

d. Grantee shall not provide any additional services for which a franchise is required by the City, including but not limited to services as a Wireless Infrastructure Provider, without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.

e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

**SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.**

a. Pursuant to K.S.A. 66-2019, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.

b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances (hereinafter "Laws") adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to the City's ordinance for managing the use and occupancy of the Public right-of-way, codified in the Code of the City of Leawood, 2000, Chapter 13, Article 3, and amendments thereto and the City's zoning and land-use laws to specifically include the Leawood Development Ordinance and related rules and regulations and amendments thereto, to the extent such laws do not conflict with or are preempted by any Federal law or regulation.

c. Grantee shall participate in the Kansas One Call utility location program.

**SECTION 4. COMPENSATION TO THE CITY.**

a. In consideration of this Contract franchise, Grantee agrees to remit to the City an annual franchise fee of $25 per site in the Public right-of-way upon which Grantee has attached its Facilities. The franchise fee shall commence upon the Effective Date of the applicable Supplement to the Master License Agreement between the City and Grantee. As to any new Facility installed at a site during any calendar year, such fee shall be prorated based on the number of days in the calendar year remaining from the Effective Date of the applicable Supplement to the Master License Agreement.

It is understood that Grantee's Facilities are primarily wireless communications antennae and their necessary transmission and accessory equipment, and that the Facilities might be attached to a wireless support structure, utility pole, street light or similar structure.

b. Grantee shall pay the franchise fee in advance on an annual basis without requirement for invoice or reminder from the City, and within 15 days of the first day of the calendar year for which the payment applies; provided, that as to any new Facility installed during any calendar year, such fee shall be prorated and paid as to that partial year within 30 days after the Effective Date of the applicable Supplement to the Master License Agreement between the City and Grantee. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.

c. Upon written request by the City, but no more than once per year, Grantee shall submit to the City a statement, executed by an authorized officer of Grantee or his or her designee, showing the manner in which the franchise fee was calculated for the period covered by the payment.

d. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City.

e. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.

f. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars ($1,000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

g. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 66-2019, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.

**SECTION 5. INDEMNITY AND HOLD HARMLESS.**

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage caused by their gross negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including observing marker posts when working near Grantee's Facilities.

Grantee 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 degree that it is found by a court of competent jurisdiction to be caused by the negligence, gross negligence or wrongful act of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under state 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 Grantee and does not create or grant any rights, contractual or otherwise, to any other person or entity.

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

**SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND.**

a. During the term of this Contract franchise, Grantee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed, authorized or permitted to do business in the State of Kansas. Grantee shall provide the following insurance:
    1. Statutory Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed and employers' liability with a limit of $1,000,000 each accident/disease/policy limit.
    2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of Five Million Dollars ($5,000,000) combined single limit per occurrence for bodily injury, (including death) and property damage. The City shall be included as an additional insured as their interest may appear under this Agreement with respect to liability arising from Grantee's operations under this Contract franchise.

b. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and within fifteen (15) days of any renewal thereof, deliver to the City a certificate of insurance reasonably satisfactory in form and content to the City, evidencing that the above insurance is in force.

c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of $50,000, payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way, provided the aforementioned performance bond shall not be required if Grantee has currently posted and in place a comparable $50,000 bond pursuant to the City's Ordinance for Managing The Use and Occupancy of the Public Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and reasonably satisfactory to the City Attorney in form and substance.

**SECTION 7. REVOCATION AND TERMINATION.**

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this Contract franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Contract franchise is to be revoked and terminated; provided, to afford Grantee due process, Grantee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Contract franchise, Grantee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Contract franchise shall be deemed revoked and terminated at the end of this thirty (30) day period, unless Grantee has instituted such an appeal. If Grantee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of Grantee to comply with any of the provisions of this Contract franchise or the doing or causing to be done by Grantee of anything prohibited by or in violation of the terms of this Contract franchise shall not be a ground for the revocation or termination thereof when such act or omission on the part of Grantee is due to any cause or delay beyond the control of Grantee or to bona fide legal proceedings.

**SECTION 8. RESERVATION OF RIGHTS.**

a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Wireless Services and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.

b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

**SECTION 9. FAILURE TO ENFORCE.**

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

**SECTION 10. TERM AND TERMINATION DATE.**

a. This Contract franchise shall be effective for a term of six (6) years beginning on the Effective Date of this Contract franchise. Thereafter, this Contract franchise will automatically renew for two additional two (2) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least ninety (90) days before the termination of the then current term. The additional terms shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.

b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder. In the event a renegotiation is initiated pursuant to this Section, then compensation paid to the City shall also be updated as to reflect the current market rate paid for wireless infrastructure providers within the City.

c. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.

d. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

**SECTION 11. POINT OF CONTACT AND NOTICES**

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

**The City:**
City of Leawood
Attn: City Clerk
4800 Town Center Drive
Leawood, Kansas 66211
(913)-663-9100

**Grantee:**
Verizon Wireless (VAW) LLC
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attn: Network Real Estate

**With a copy to:**
City of Leawood
Attn: City Attorney
4205 Town Center Drive
Leawood, Kansas 66212

or to replacement addresses that may be later designated in writing.

**SECTION 12. TRANSFER AND ASSIGNMENT.**
This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City to (i) any Affiliate of Grantee; (ii) any successor in interest to Grantee in connection with any merger, acquisition, or similar transaction; or (iii) any purchaser of all or substantially all of Grantee's assets used to provide Communications Services to residents and businesses located in the City of Leawood, Kansas. Following any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment.

**SECTION 13. CONFIDENTIALITY.**
Information provided to the City under this Contract franchise shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City, at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

**SECTION 14. ACCEPTANCE OF TERMS.**
Grantee shall have sixty (60) days after the final passage and approval of this Contract franchise to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Contract franchise, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Contract franchise and acceptance shall constitute a contract between the City and Grantee subject to the provisions of the laws of the state of Kansas, and such contract shall be deemed effective on the later of the date Grantee files acceptance with the City or publication of this Contract franchise in accordance with Statute (the "Effective Date").

**SECTION 15. PUBLICATION OF ORDINANCE**
The City Clerk is hereby directed to publish a copy of this Contract franchise once in the official City newspaper.

**SECTION 16. PAYMENT OF PUBLICATION COSTS.**
In accordance with Kansas Statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

**SECTION 17. SEVERABILITY.**
If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

**SECTION 18. FORCE MAJEURE.**
Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

(Ord. No. 2928C; Effective Date 02-25-19)